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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Joan H. Toal
Acting Circuit Court Judge

Appellate Case No. 2023-000727

Lenora Childers, Individually and as Personal Representative of the
Estate of Lewis C. Childers, ...

Plaintiff,

v.

Davis Mechanical Contractors, Inc.; Flame Refractories, Inc.;
General Boiler Casing Company, Inc.; HEFCO, Inc.; J.R. Dean
Company, Inc.; Payne & Keller Company; SFB, Incorporated;
Stafford Insulation Company; Standard Insulation Company of
N.C., Inc.; Systra Engineering, Inc.; United Construction Co. of
Rome, Inc.; Wind Up, Ltd., Individually and as Successor-in-
Interest to Pipe & Boiler Insulation, Inc. f/k/a Carolina Industrial
Insulating Co., ...

Defendants,

Flame Refractories, Inc., United Construction Co. of Rome, Inc.,
Wind Up, Ltd., Individually and as Successor-in-Interest to Pipe &
Boiler Insulation, Inc. f/k/a Carolina Industrial Insulating Co.,
Payne & Keller Company, and PBI QSF, LLC, By and Through
Their Duly Appointed Receiver Peter D. Protopapas, ...

Third-Party
Plaintiffs,

v.

Zurich American Insurance Company (Individually and as
Successor to Northern Insurance Company of New York, Maryland
American General Insurance Company, and Maryland Casualty
Company); Allstate Insurance Company; John Tighe; Sean
Anthony Beatty; Dennis William Cahill; Catherine Ann Carlino;
Andre Lefebvre; David Dean Shumway; Gil Chandler, Michael
Davenport; Linda Young Pettigrew; Gwyn Wallace Fuller; Daniel
Robert Keddie; Julie Ann Fortune; Michael John Crall; James
Francis Meehan; Larry Gene Simmons; Arrowpoint Group, Inc.;
Arrowpoint Capital Corp.; Admiral Insurance Company;
Continental Insurance Company (Individually and as Successor in
interest to Harbor Insurance Company); Hartford Accident and

Indemnity Company, Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company, National Union Fire Insurance Company of Pittsburgh, PA, Medmarc Casualty Insurance Company, Individually and as Successor in Interest to Dependable Insurance Company, Inc., Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company, Lexington Insurance Company, First State Insurance Company, Birmingham Fire Insurance Company, Certain Underwriters at Lloyd's of London and various London Market Companies, South Carolina Property and Casualty Insurance Guaranty Association, R.L. Jarrett (Underwriting) Agency, Inc., U.S. Risk, L.L.C., Rexel USA, Inc., Compass Risk Services, LLC, SKRLA, LLC, Century Indemnity Company, in its own capacity and as successor to CCI Insurance Company, as successor to Insurance Company of North America, United States Fire Insurance Company, and Fireman's Fund Insurance Company,

Third-Party
Defendants,

of which

Payne & Keller Company, by and through its Receiver Peter D. Protopapas, is the Respondent,

and

AIG Property Casualty Company, formerly known as Birmingham Fire Insurance Company; Lexington Insurance Company; National Union Fire Insurance Company f/k/a Stonewall Insurance Company, individually and as successor in interest to Stonewall Surplus Lines Insurance Company; Continental Insurance Company, individually and as successor in interest to Harbor Insurance Company; and Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company are the Appellants.

**APPENDIX IN SUPPORT OF APPELLANTS' EMERGENCY MOTION TO CLARIFY
AND ENFORCE RULE 205 - VOLUME II**

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

LENORA CHILDERS, Individually and as
Personal Representative of the Estate of LEWIS
C. CHILDERS,

Plaintiff,

v.

Case No. 2021-CP-40-03484

Davis Mechanical Contractors, Inc., Flame
Refractories, Inc., General Boiler Casing
Company, Inc., HEFCO, Inc., J.R. Deans
Company, Inc., Payne & Keller Company, SFB,
Incorporated, Stafford Insulation Company,
Standard Insulation Company of N.C., Inc.,
Systra Engineering, Inc., United Construction
Co. of Rome, Inc., Wind Up, Ltd., Individually
and as Successor-in-Interest to Pipe & Boiler
Insulation, Inc. f/k/a Carolina Industrial
Insulating Co.,

Defendants.

Flame Refractories, Inc., United Construction
Co. of Rome, Inc., Wind Up, Ltd., Individually
and as Successor-in-Interest to Pipe & Boiler
Insulation, Inc. f/k/a Carolina Industrial
Insulating Co., and Payne & Keller Company
By and Through Their Duly Appointed
Receiver Peter D. Protopapas,

Third-Party Plaintiffs,

v.

Zurich American Insurance Company
(Individually and as Successor to Northern
Insurance Company of New York, Maryland
American General Insurance Company, and
Maryland Casualty Company); Allstate
Insurance Company; John Tighe; Sean Antony
Beatty; Dennis William Cahill; Catherine Ann
Carlino; Andre Lefebvre; David Dean

**CERTAIN INSURERS' MOTION TO
VACATE OR IN THE ALTERNATIVE
MOTION TO RECONSIDER THE
COURT'S OCTOBER 5, 2023 ORDER**

Shumway; Gil Chandler, Michael Davenport; Linda Young Pettigrew; Gwen Wallace Fuller; Daniel Robert Keddie; Julie Ann Fortune; Michael John Crall; James Francis Meehan; Larry Gene Simmons; Arrowpoint Group, Inc.; Arrowpoint Capital Corp.; Admiral Insurance Company; Continental Insurance Company (Individually and as Successor in interest to Harbor Insurance Company); Hartford Accident and Indemnity Company, Travelers Casualty & Surety Company f/k/a/ Aetna Casualty & Surety Company, National Union Fire Insurance Company of Pittsburgh, PA, Medmarc Casualty Insurance Company, Individually and as Successor in Interest to Dependable Insurance Company, Inc., Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in Interest to Stonewall Surplus Lines Insurance Company, Lexington Insurance Company, First State Insurance Company, Birmingham Fire Insurance Company, Certain Underwriters at Lloyd's of London and various London Market Companies, South Carolina Property and Casualty Insurance Guaranty Association, R.L. Jarrett (Underwriting) Agency, Inc., U.S. Risk, LLC, Rexel USA, Inc., Compass Risk Services, LLC, SKRLA, LLC, Century Indemnity Company, in its own capacity and as successor to CCI Insurance Company, as successor to Insurance Company of North America, United States Fire Insurance Company, and Fireman's Fund Insurance Company,

Third-Party Defendants.

CERTAIN INSURERS' MOTION TO VACATE OR IN THE ALTERNATIVE MOTION TO RECONSIDER THE COURT'S OCTOBER 5, 2023 ORDER

Third-Party Defendants AIG Property Casualty Company, formerly known as Birmingham Fire Insurance Company; Lexington Insurance Company; National Union Fire Insurance Company of Pittsburgh, PA; Berkshire Hathaway Specialty Insurance Company, formerly known

as Stonewall Insurance Company; and The Continental Insurance Company, individually and as successor in interest to Harbor Insurance Company (hereinafter collectively referred to as “Certain Insurers”), respectfully move pursuant to Rule 59 and 60, SCRCP, for entry of an Order vacating the Court’s October 5, 2023 Order or, in the alternative, altering or amending the October 5, 2023 Order.

SUMMARY

The Court’s October 5, 2023 Order (“October 5 Order”) violates Rule 205, SCACR, is procedurally improper, and is based on numerous incorrect statements of fact and law. Because the Court lacked jurisdiction to enter the Order, the Order should be vacated. If the Court does not vacate, then the Court should alter and amend the Order and enter an order denying Plaintiff’s Motion to Revoke the dissolution of Payne & Keller Company (“Payne & Keller”) because the retroactive application of the Texas fraud statute violates the Texas Constitution and, even if the statute did apply, the facts do not support a finding of fraud.

First, the question of Payne & Keller’s dissolution and whether it can be revoked are currently on appeal before the Court of Appeals. Pursuant to Rule 205, SCACR, these matters are in the exclusive jurisdiction of the Court of Appeals. Respectfully, this Court lacks jurisdiction to rule on Plaintiff’s Motion while these issues are pending appeal.

Second, the Court also lacks the authority to revoke the dissolution of a Texas corporation. Under the U.S. Constitution, South Carolina must respect the sovereign acts of other states, including the creation and dissolution of a corporation. *See, e.g., Young v. JCR Petroleum, Inc.*, 423 S.E.2d 889, 892 (W. Va. 1992). Thus, the power to create, dissolve, or reinstate a Texas corporation belongs exclusively to the Texas government. Because the Court had no jurisdiction or power to enter the October 5 Order, the order is void and should be vacated.

Third, the Court ruled on the request for revocation without giving the parties the opportunity for discovery or a further hearing, contradicting its prior statements that it would do so. In the July 10 hearing, the Court said that it was not “closing the book” on Plaintiff’s motion to revoke, and that it would “reconvene these proceedings” if the Court of Appeals returned the case to the Circuit Court. (Ex. 1, July 10, 2023 Tr. 78:18-79:1). Similarly, the Court’s March 31, 2023 Order stated that the parties would have “the opportunity to explore this issue through the discovery process.” (March 1, 2023 Order, p. 5). Nevertheless, the Court issued the October 5 Order without discovery or a reconvened hearing, which deprived Certain Insurers of their due process rights to discovery and to submit additional evidence and argument in opposition to Plaintiff’s Motion.

Fourth, Plaintiff has no standing to seek the revocation of Payne & Keller’s dissolution. Despite sitting for multiple depositions over multiple decades, Lewis Childers never once identified Payne & Keller as a source of any asbestos exposure. Plaintiff certainly cannot be heard to seek revocation of the dissolution of a company that never harmed Mr. Childers. Further, discovery has not revealed any work Payne & Keller ever performed in South Carolina.

Fifth, the Texas Constitution prohibits retroactive application of statutes. The October 5 Order relies on a provision in the Texas Business Organizations Code that was enacted more than fifteen years after Payne & Keller’s dissolution. This provision cannot be applied retroactively to resurrect barred claims. *See* Tex. Const. art. I, § 16 (“No . . . retroactive law . . . shall be made.”).

Sixth, the factual assertions in the October 5 Order are erroneous:

- 1) **Payne & Keller did not “hastily” dissolve.** It dissolved because it sold substantially all of its assets. (Ex. 2, Purchase Agreement). It changed its name prior to dissolving because it gave up the right to use the name Payne & Keller as part of the asset sale. (Ex. 2, Purchase Agreement, p. 21). The process took place over the course of months. Thus, the evidence shows Payne & Keller dissolved because it completed its corporate purpose.

- 2) **Payne & Keller did not face thousands of asbestos suits.** Plaintiff has only located *one* asbestos suit against Payne & Keller prior to 1986, and that case was dismissed with prejudice before the dissolution. (Ex. 1, July 10, 2023 Tr. 8:15-18) (Plaintiff admitting the “claim was dismissed on May 21, 1986 with prejudice”). Plaintiff paints a picture of Payne & Keller fraudulently dissolving in the face of a tidal wave of asbestos suits. There is absolutely no evidence before the Court to support this assertion.
- 3) **Payne & Keller did not face thousands of dioxin claims.** Plaintiff gravely misstates the dioxin claims relating to Charter International Oil Company. Charter may have faced “thousands” of alleged dioxin claims, but not Payne & Keller. Rather, Charter claimed that Payne & Keller owed indemnification obligations to Charter for a tiny subset of the dioxin claims – injuries to Payne & Keller employees only. What Plaintiff portrays as “thousands” was in fact no more than a handful. *See In re Charter Co.*, 63 B.R. 568, 570 (M.D. Fla. 1986) (noting that Charter only identified **three** proofs of claims that were allegedly subject to indemnity by Payne & Keller). Also, there is absolutely no evidence that any dioxin claims owed by Payne & Keller went unpaid.
- 4) **Payne & Keller did not dissolve without assuring that claims asserted within three years of its dissolution could be satisfied.** In fact, the Receiver alleges that Payne & Keller continued to secure insurance for the three years following its dissolution – presumably so that Payne & Keller could satisfy any obligations it owed during its 3-year post-dissolution liabilities under Texas law. (Ex. 3, Second Amended Third-Party Complaint, ¶¶ 153 & 157) (alleging Stonewall issued policies to Payne & Keller up until October 6, 1988 and that National Union issued policies up until April 1, 1989).

For the foregoing reasons, the Court’s October 5 Order should be vacated or, if not vacated, substituted with an Order denying Plaintiff’s Motion.

FACTS

A. The life and death of Payne & Keller.

Payne & Keller, Inc. was a corporation incorporated and headquartered in Texas, formed by Mr. Payne and Mr. Keller. Payne and Keller, Inc. filed Articles of Incorporation in Texas on March 13, 1961 for the purpose of carrying on a construction business. (Ex. 4, Art. of Inc.).

In 1980, Dumez USA, the United States subsidiary of a French company called Dumez S.A., acquired Payne & Keller, Inc. (Ex. 5, Payne & Keller 30(b)(6) 38:10-13). Two companies, Dumez USA and Jacobs Engineering Group, Inc., were interested in purchasing Payne & Keller, Inc. at this time, but Dumez was the ultimate purchaser as it made a higher offer. (Ex. 9, Morhman

Declaration, ¶25). In 1982, Payne & Keller, Inc. and two other companies merged to form Payne & Keller Company. (Ex. 5, Payne & Keller 30(b)(6) 38:10-18); (Ex. 6, Art. of Merger, pp. 2-3). Payne & Keller Company remained a Texas corporation in accordance with the then-applicable Texas Business Corporations Act. (Ex. 6, Art. of Merger, p. 3). As Payne & Keller's 30(b)(6) deponent explained: "So by 1982, there are other company names. The – what I call the old Payne and Keller, Inc. that Mr. Payne and Mr. Keller owned, um, is gone. It's now Payne & Keller Company." (Ex. 5, Payne & Keller 30(b)(6) 39:3-7). Thus, by 1982, Payne & Keller Company was a subsidiary of a much larger corporate entity.

Dumez USA operated Payne & Keller at a loss for several years. (Ex. 9, Mohrman Declaration, ¶ 25). As a result, Dumez USA did what corporations often do – it decided to sell the assets of its subsidiary Payne & Keller Company and to cease that business. The previous interested buyer of Payne & Keller – Jacobs Engineering Group, Inc. – was the beneficiary of Dumez USA's decision. That decision resulted in a 1986 Purchase Agreement between Dumez USA, Payne & Keller Company, Bayou-Maintenance, Inc.,¹ Payne & Keller Corp.² and Jacobs Engineering Group, Inc., a California corporation. (Ex. 2, Purchase Agreement, p. 1). Pursuant to the terms of the Purchase Agreement, Payne & Keller Company sold certain "assigned contracts," machinery and equipment, and additional items. (Ex. 2, Purchase Agreement, pp. 1-2). The end result was that Payne & Keller Company was selling "substantially all of the [its] operating assets" (Ex. 2, Purchase Agreement, p. 4).

As part of the Purchase Agreement, Payne & Keller Company gave up its right to use the "Payne & Keller" name. (Ex. 2, Purchase Agreement, p. 21). As a result, and as anticipated in the

¹ Bayou Maintenance was another subsidiary of Dumez USA.

² Payne & Keller Corp. owned all of the shares of Payne & Keller Company. In turn, Dumez USA owned all of the shares of Payne & Keller Corp. (Ex. 2, Purchase Agreement, p. 12).

Purchase Agreement, Payne & Keller Company changed its name to Frentex Enterprises Company on October 20, 1986, which was subsequently changed to Frentex Enterprises Company of Texas (“Frentex”). (Ex. 7, Articles of Amendments to Articles of Incorporation); (Ex. 2, Purchase Agreement, p. 17).

Once it sold substantially all of its assets and gave up its name, Payne & Keller Company – now Frentex – no longer had any reason to continue its corporate existence. Thus, Frentex submitted its Articles of Dissolution to the Texas Secretary of State. (Ex. 8, Art. of Dissolution). The dissolution filing included an accompanying “Consent Action of the Sole Shareholder of Frentex Enterprises Company of Texas” and a letter from the Comptroller of Public Accounts for the State of Texas certifying that Frentex was in good standing and had paid its required franchise taxes.

Under then-applicable Texas law, the Texas Secretary of State would review the articles and, only if he determined the dissolution conformed to Texas law, stamp the articles “Filed.” Tex. Bus. Corp. Act, Art. 6.07 (1984). On December 3, 1986, the Texas Secretary of State stamped Payne & Keller’s Articles of Dissolution “Filed.” (Ex. 8, Articles of Dissolution). Thus, Payne & Keller has been lawfully dissolved for nearly thirty-seven years. The company grew; was acquired by Dumez USA; and when Dumez USA could not operate the company profitably, it ultimately decided to sell the corporate assets and shut down the business. This is a normal trajectory for many businesses; not constructive fraud.

B. Discovery has not revealed any work performed by Payne & Keller in South Carolina nor that it injured Plaintiff.

Over thirty years after its Texas dissolution, this Court appointed Peter Protopapas as a South Carolina receiver for Payne & Keller. Notably, the Court did so in reliance on allegations by Plaintiff Lenora Childers that her husband was exposed to asbestos by Payne & Keller

operations in South Carolina. (Compl. ¶ 24) (“Plaintiff’s claims against PAYNE & KELLER COMPANY arise out of this Defendant’s business activities in the State of South Carolina.”).

At one point in time, Payne & Keller registered to do business in South Carolina, among numerous other states. However, discovery has not revealed any work that Payne & Keller ever actually performed in this State. Counsel for Payne & Keller in this action submitted a lengthy and detailed declaration setting out the various efforts taken to identify any South Carolina jobsites. (Ex. 9, Mohrman Declaration). Despite those extensive efforts, no South Carolina worksites could be identified. This resulted in Payne & Keller’s 30(b)(6) deponent confirming in deposition that Payne & Keller was not aware of any work performed in South Carolina. (Ex. 5, Payne & Keller 30(b)(6) Dep. pp. 133-134).

Thus, discovery has not supported the allegations that led to this Court’s appointment of a receiver over Payne & Keller. As the evidence currently stands, the Court has appointed a South Carolina receiver over a dissolved Texas corporation even though exhaustive searching has failed to reveal any evidence that the company ever actually performed work in South Carolina.

Plaintiff has no standing to seek revocation of Payne & Keller’s dissolution because there is simply no evidence that Lewis Childers was ever exposed to asbestos by Payne & Keller Company. Mr. Childers was deposed in multiple cases, including:

- 1) *Charlotte Gaye Smith v. CBS Corp., et al.*, 2015-CP-46-2155, Dec. 15, 2015 (424 pages transcript);
- 2) *Thomas Jessie Gilliam v. Owens-Illinois, Inc.*, C/A No. 85-3283 (D.S.C.), Dec. 2, 1988;
- 3) *Charles R. Smart v. Owens-Illinois, Inc., et al*, C/A No. 87-1904 (D.S.C.), Oct. 30, 1989;
- 4) *Lewis Childers v. AC&S, Inc., et al*, 98-CP-23-2527, Feb. 25, 1999;

He also signed multiple exposure affidavits. Neither his testimony nor his affidavits ever identified Payne & Keller.

C. The issues raised in Plaintiff's Motion are currently pending before the South Carolina Court of Appeals – which this Court has previously acknowledged.

Travelers and Certain Insurers previously moved to dissolve the Payne & Keller Receivership. The Receiver filed an opposition to those motions, and the Plaintiff's current Motion to Revoke is a near-verbatim recitation of the Receiver's opposition arguments. On March 31, 2023, this Court denied Travelers' and Certain Insurers' Motions to Dissolve the Payne & Keller Receivership. (March 31, 2023, Order Denying Motion to Dissolve). The Order addressed the propriety of continuing the receivership, the scope of the receivership, and – importantly – whether Payne & Keller's dissolution was subject to challenge under a constructive fraud theory. On April 28, 2023, Travelers and Certain Insurers appealed that Order, thus divesting this Court of jurisdiction over those issues on appeal. *See* Rule 205, SCACR.

At the July 10, 2023, hearing on Plaintiff's Motion, the Court determined that the issues regarding Payne & Keller's dissolution were pending before the Court of Appeals. As a result, this Court withheld any further action on the issue pending a ruling from the appellate courts: "So I am going to hold my ruling in abeyance until we hear from the Court of Appeals." (Ex. 1, July 10, 2023 Tr. 75:8-9). At counsel for Certain Insurers' request, the Court made clear that it was not ending the hearing:

MR. SAWYER: Just for point of clarification, the impact holding pending a ruling by the court, will there be another hearing. I have points I wanted to put on the record, but I don't want to waste the court's time if we're going to have the Court of Appeals.

THE COURT: Yes, I should say that and make that clear, that this is an adjourned proceeding not a –

MR. SAWYER: We're not closing the book.

THE COURT: Or a paused proceeding, I guess you could say. *I am not declaring the hearing at an end. I am pausing it or adjourning it until I receive further information.* Right now, my main concern is the Court of Appeals and my authority. *But if there are other things from the plaintiff or from the insurance companies with respect to what they're trying to do right now or from the receiver, for that matter, I will certainly take those into account. I will reconvene these proceedings* at an earlier time if what I'm submitted from the Court of Appeals dictates so, or at least, when the Court of Appeals has decided whether they're going to do it.

(Ex. 1, July 10, 2023 Tr. 78:6-79:1).

At the time of the hearing on Plaintiff's Motion to Revoke Termination, the Court of Appeals was still deciding whether the issues were immediately appealable and whether it would keep the appeal. On August 9, 2023, the Court of Appeals held that it would allow the appeal to proceed. (Ex. 10, Order of the Court of Appeals). Thus, the matter of whether Payne & Keller fraudulently dissolved remains before the Court of Appeals, and merits briefing is underway.

After the appeal was allowed to proceed on August 8, the Court again acknowledged that these issues were pending before the Court of Appeals at a hearing on August 21, 2023, reiterating that the Court would hold in abeyance any rulings pending an outcome from the Court of Appeals. (Ex. 11, Aug. 21, 2023 Tr. p. 64).

There is no colorable argument that the Plaintiff's Motion falls outside the scope of matters "affected by the appeal." Plaintiff's motion is a near-verbatim reiteration of the arguments that the Receiver and this Court ruled upon in the Order now on appeal. Therefore, those issues are within the exclusive jurisdiction of the Court of Appeals.

Moreover, this Court repeatedly assured the parties – in its written order and from the bench – that there would be an opportunity for discovery and a reconvened hearing before any ruling. Despite those assurances, the Court entered Plaintiff's proposed order without any forewarning, without any reconvened hearing, and without any meaningful opportunity for discovery.

ARGUMENT

I. This Court lacks jurisdiction because the issues raised in the Order are squarely before the South Carolina Court of Appeals.

“Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal . . .” Rule 205, SCACR (emphasis added). “Pursuant to Rule 205, the service of a notice of appeal divests the trial court of jurisdiction over matters affected by the appeal . . .” *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 532, 787 S.E.2d 485, 493 (2016).

In the October 5 Order, the Court concluded that it could exercise personal jurisdiction over the Motion to Revoke, relying on the Court of Appeal’s September 8, 2023 Order on the Receiver’s Motion to Clarify. However, the Receiver’s Motion to Clarify in the Court of Appeals only raised Rule 241. The Receiver never asked the Court of Appeals to address Rule 205, and the Court of Appeals’ single-judge, one-paragraph order does not address that rule. As the Supreme Court recognized in *Stokes-Craven*, “Rule 205 divests the lower court or administrative tribunal of jurisdiction over ‘*matters affected by the appeal*,’” which includes subsequent proceedings – or even a subsequent suit – “based on the outcome of the appealed verdict, judgment, or ruling.” *Id.* at 534, 787 S.E.2d at 494 (emphasis in original). Thus, in *Stokes-Craven*, Rule 205 vested the appellate court with exclusive jurisdiction over matters “affected by the appeal” not only in the case on appeal, but also in a subsequent malpractice suit based on the same issues.

Only a few years before *Stokes-Craven*, the Supreme Court clarified the impact of Rule 205. *See Lancaster v. Georgia-Pacific Corp.*, 403 S.C. 136, 742 S.E.2d 867 (2013). In that case, the parties to an appeal reached a settlement that required presentation to and approval by the trial court. As a result, they sought a stay of the appeal. The Supreme Court agreed to stay the case, but it held “the trial court cannot take action as contemplated by the parties unless the case is [first]

remanded to that court.” *Id.* at 137, 742 S.E.2d at 868. “Pursuant to Rule 205, SCACR, upon service of the notice of appeal, the appellate Court has exclusive jurisdiction over the appeal, with the exception of matters not affected by the appeal. The appellate court retains jurisdiction until the remittitur is sent to the lower court.” *Id.* Therefore, regardless of any stay under Rule 241, Rule 205 precluded the Circuit Court from taking any action “except with regard to matters not affected by the appeal.” *Id.*; *see also Wingate v. Wingate*, 289 S.C. 574, 347 S.E.2d 878 (1985) (addressing Rule 205’s predecessor and holding that family court lacked jurisdiction to modify alimony payments because original award of alimony was pending on appeal).

The Court’s October 5 Order rules on the very matters that are pending before the appellate court. Plaintiff’s Motion is a wholesale restatement of the Receiver’s opposition to the Motion to Dissolve, and thus the entirety of the Court’s October 5, 2023 Order addresses issues that are on appeal. For example, the Order on appeal held the “Receiver has presented sufficient evidence at the pleading stage to support a claim that Payne and Keller’s 1986 dissolution was the result of, at least, constructive fraud.” (Ex. 12, Order Denying Dissolution, pp. 4-5). Similarly, the order on appeal rejected that argument that the application of Section 11.153 of the Texas Organizations Business Code to Payne & Keller’s 1986 dissolution violated the Texas Constitution’s prohibition against retroactive application of statutes. *See* Tex. Const. art. I, § 16. (Ex. 12, Order Denying Dissolution, p. 6). The Court cannot properly find constructive fraud and revoke Payne & Keller’s dissolution until those issues are resolved on appeal.

There is also a more fundamental problem with the Court’s Order. If the receivership is illegal, then the Receiver has no say in what defenses Payne & Keller raises. As it stands, Payne & Keller did not oppose the Plaintiff’s Motion because the Receiver prevented any such opposition. Now – while the propriety of the receivership in the first instance is pending appellate

review – the Court’s Order proceeds to revoke a thirty-seven-year-old dissolution without hearing opposition from Payne & Keller because that opposition has been blocked by the Receiver. This creates significant due process concerns.

The language of Rule 205 is clear, as are the Supreme Court’s recent decisions reiterating Rule 205’s application in *Stokes-Craven* and *Lancaster*. The issues raised in Plaintiff’s Motion and ruled upon in the Court’s October 5 Order are the very issues pending before the Court of Appeals. In fact, the Court’s October 5 Order goes so far as to state:

The Receiver has conducted substantial research regarding Payne & Keller, including the reasons for Payne & Keller’s purposed dissolution and the underlying reasons for that dissolution. Much of that history is set forth in the Receivers’ Response to Third Party Defendant Travelers Casualty & Surety Company’s Motion to Dismiss Third Party Claims and Dissolve the Payne & Keller Receivership filed January 13, 2023 and subsequently repeated in the instant motion. Large portions of those undisputed facts and the applicable law are reiterated here in whole or in part.

(Oct. 5, 2023 Order, p. 2). Thus, the Court’s Order expressly acknowledges that it is addressing the very facts and law raised in the prior motion that is currently pending on appeal before the South Carolina Court of Appeals. Therefore, the Court of Appeals has exclusive jurisdiction over these issues, and this Court respectfully lacked jurisdiction to issue the October 5 Order.

II. The Court does not have the power to order reinstatement of a dissolved Texas corporation.

The October 5 Order states: “[T]his Court orders that Payne & Keller Company be reinstated as provided by Section 11.153 of the TBOC.” Respectfully, the Court lacked the authority to issue that order. South Carolina’s courts have no power to change the dissolution of a Texas corporation, or to direct the Texas Secretary of State to create, dissolve, or reinstate a Texas corporation. That power belongs to Texas.

This is a matter of state sovereignty. A corporation is a creature of the state that created it, and that state controls its legal existence. Article IV, Section 1 of the U.S. Constitution requires the Court to give full faith and credit to the “public Acts, Records, and judicial Proceedings of every other State.” The dissolution of Payne & Keller in Texas is one such act, and the Court must give it full faith and credit.

Courts across the country, including in Texas, recognize that they have no authority to change the organizational status of foreign corporations. *See Mitchell v. Hancock*, 196 S.W. 694, 698 (Tex. Ct. App. 1917) (“we know of no authority for the courts of this state to dissolve a foreign corporation on any ground”); *Raharney Cap., LLC v. Cap. Stack LLC*, 138 A.D.3d 83, 86–87, 25 N.Y.S.3d 217, 219 (1st Dep’t 2016) (“We agree with the near-universal view that the courts of one state do not have the power to dissolve a business entity formed under another state’s laws.”); *Hadeed v. Advanced Vascular Res. of Johnstown, LLC*, No. 3:15-cv-22, 2017 WL 4998663, at *20 (W.D. Pa. Oct. 30, 2017) (Full Faith and Credit Clause requires each state to respect the sovereign acts of other states, including as respects the creation and dissolution of corporations).³ South Carolina should respect Texas’s authority over its corporations, as Texas would respect South Carolina’s.

Indeed, South Carolina law expressly upholds this principle: it does not permit the Court to “regulate the organization” of a “foreign corporation authorized to transact business in this state.” S.C. Code Ann. § 33-15-105(c); *see Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 650, 817 S.E.2d 273, 278 (2018). Rather, a foreign corporation is entitled to regulation of its organizational structure by its own state. Especially so for Payne & Keller, which has virtually *no*

³ A small minority of courts have found that this issue is not a jurisdictional one, but even those decisions do not suggest that a court can take control of the organization of a foreign corporation simply because it registered to do business in a state.

connection to South Carolina aside from registering to do business here. (Ex. 9, Morhman Declaration); (Ex. 5, Payne & Keller 30(b)(6), pp. 133-134). The Court's order undoing Texas's dissolution and termination of Payne & Keller's corporate existence under Texas law violates the U.S. Constitution and South Carolina law, and it should be vacated for this reason as well.

III. The Court entered Plaintiff's proposed order despite previously ordering that discovery on these issues would take place and despite assuring the parties that the hearing on Plaintiff's Motion was not closed.

"The Due Process Clause requires all parties be given 'an opportunity to be heard in a meaningful way.'" *Halsey v. Simmons*, 432 S.C. 54, 58, 849 S.E.2d 578, 580 (2020) (quoting *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008)). "The law . . . does not permit a court to issue judgment against a party before giving that party an opportunity to present evidence in support of [its] position." *Id.*

The Court told the parties in its March 31, 2023 Order that discovery would take place on the Receiver's claim of fraudulent dissolution. (Ex. 12, March 31, 2023 Order, p. 5) ("Such a determination will be made after the parties have had the opportunity to explore this issue through the discovery process."). The Court then stated on July 10, 2023 that it was not closing the book on the hearing. After being informed that Certain Insurers had points that they wanted to put on the record, the Court assured the parties that "I am not declaring the hearing at an end. I am pausing it or adjourning it until I receive further information." (Ex. 1, July 10, 2023 Tr. 78:7-17). The Court went on to state that it would reconvene the hearing if the case returned from the Court of Appeals and that the parties would be free to provide additional submissions to the Court. (Ex. 1, July 10, 2023 Tr. 78:18-25).

Despite the Court's assurances, the Court signed Plaintiff's proposed Order with no opportunity for discovery, no reconvened hearing, and no warning that the Court was prepared to

rule on the matter.⁴ Had the Court provided any warning, Certain Insurers would have filed a Rule 56(e) affidavit regarding discovery that needed to be completed before the Motion would be ready for a ruling. The signing of the Order without the promised discovery, reconvened hearing, or any warning deprived Certain Insurers of fundamental due process rights to participate in discovery on these issues and to be heard.

IV. Plaintiff did not plead fraud, and Plaintiff lacks standing to seek the revocation of Payne & Keller’s dissolution.

Plaintiff did not plead fraud. *See* Rule 9(b), SCRPC (“In all averments of fraud . . . the circumstances constituting fraud . . . shall be stated with particularity.”). There is no request for a finding of fraud or revocation of Payne & Keller’s dissolution in Plaintiff’s operative or prior complaints. In fact, Plaintiff sought this Court’s appointment of a receiver on the express basis that Payne & Keller *was* a dissolved entity. (Ex. 13, Pl.’s Mot. to Appoint a Receiver Over Payne & Keller Company, p. 1) (“Payne & Keller is a dissolved Texas corporation.”). Thus, Plaintiff’s request for revocation of the dissolution is not properly before the Court because it is not pled and it is contrary to the position Plaintiff previously took when seeking appointment of the Receiver.

Moreover, Plaintiff has no standing to seek revocation of Payne & Keller’s dissolution because Plaintiff has not made the initial showing that Payne & Keller ever harmed Plaintiff. Lewis Childers was deposed four times over the span of three decades. Despite four depositions spanning hundreds of pages of testimony, he never once uttered the words “Payne & Keller.” Plaintiff has

⁴ The October 5 Order also finds that discovery already took place on the issue of dissolution, citing to the Receiver’s Notice of Filing of Insurer Discovery. (October 5 Order, p. 7). However, the Receiver served discovery on the insurers in October of 2022. At that time the insurers responded to that discovery, the issue of fraudulent dissolution was not pled. The Receiver did not reveal his assertion of fraudulent dissolution until filing the Response to the Motions to Dissolve, which was not filed until January 13, 2023. Shortly thereafter, the Court entered its order on the Motion to Dissolve, and that order has since been on appeal. Thus, there has not been any meaningful opportunity to conduct discovery.

not presented any evidence of exposure to asbestos caused by Payne & Keller. Thus, Plaintiff lacks any basis to assert any claim against Payne & Keller.

Even ignoring the broader standing issue, Plaintiff more specifically lacks standing to challenge the dissolution of Payne & Keller. Payne & Keller dissolved in 1986 – decades before Lewis Childers developed any asbestos-related disease. Plaintiff alleges Payne & Keller dissolved to avoid dioxin claims that it allegedly knew about in 1986. There is no basis to assert that Payne & Keller knew of Plaintiff’s claims, which did not come into existence until decades later. Thus, there is no colorable argument that Payne & Keller fraudulently dissolved to avoid liability owed to Plaintiff, and Plaintiff has no standing to assert fraudulent dissolution against Payne & Keller.

For similar reasons, Plaintiff cannot satisfy the elements of “actual fraud” or “constructive fraud” under Texas law. “Actual fraud” requires proof of a misrepresentation and reliance by the plaintiff. *Strobach v. WesTex Cmty. Credit Union*, 621 S.W.3d 856, 879 (Tex. App. 2021), review denied (Sept. 3, 2021). “Constructive fraud” requires breach of a “legal or equitable duty” existing through a fiduciary or confidential relationship. *Id.* Plaintiff has not produced any evidence of any of these required elements. Her assertions of actual fraud or constructive fraud should be rejected for that reason as well. See *In re Est. of Kuykendall*, 206 S.W.3d 766, 771 (Tex. App. 2006) (plaintiffs’ claims of actual or constructive fraud failed because they failed to produce evidence of a misrepresentation or reliance, or “any evidence of a fiduciary or confidential relationship.”).

V. Discovery has not revealed any work performed by Payne & Keller in South Carolina.

As discussed in the facts section above, discovery to date has failed to reveal any work ever performed by Payne & Keller in South Carolina. (Ex. 9, Mohrman Declaration); (Ex. 5, Payne & Keller 30(b)(6), pp. 133-134). Thus, even if there were any factual basis to support undoing Payne & Keller’s dissolution – there is not – this Court would not be the place for that action.

VI. The Texas Constitution prohibits retroactive application of the fraudulent dissolution statute.

Plaintiffs admit that Payne & Keller dissolved in 1986. (Pl.’s Mot. to Revoke Termination, p. 4) (“On December 3, 1986, Frentex filed its articles of dissolution and certificate of dissolution . . .”). Under the then-applicable Texas law, any suits against Payne & Keller had to be made within three years of dissolution. Tex. Bus. Corp. Act Art. 7.12 (1984). Thus, by December 3, 1989, Payne & Keller could neither sue nor be sued. Payne & Keller was fully protected by the Texas statute of repose.

Plaintiff’s Motion and the Court’s Order rely on Section 11.153 of the current version of the Texas Business Organizations Code to set aside Payne & Keller’s dissolution. Section 11.153 permits a court to “order the revocation of termination of an entity’s existence that was terminated as a result of actual or constructive fraud.” Tex. Bus. Org. § 11.153 (2021). However, this provision did not exist in the 1986 version of the Texas Business Corporations Act – nor did anything like it. The Texas General Assembly did not enact any form of a fraud exception to dissolution until 2005, after the Texas Business Corporations Act became the Texas Business Organizations Code. Business Entities And Associations, 2005 Tex. Sess. Law Serv. Ch. 64 (H.B. 1319) (VERNON’S). Thus, the fraud provision did not come into existence until 2005 – almost twenty years after Payne & Keller dissolved.

While many jurisdictions prohibit ex post facto laws, the Texas Constitution goes a step further and prohibits retroactive application of statutes: “No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligations of contract, shall be made.” Tex. Const. art. I, § 16 (emphasis added). The Texas Supreme Court has long held that one such example of an illegal retroactive law is one that would “revive causes of action already barred . . .” *De Cordova v. City of Galveston*, 4 Tex. 470, 480 (1849). The Texas Supreme Court long ago recognized that

when a law operates “in favor of a defendant as a defense against a claim made against him,” “it must be said that a right exists, has become fixed or vested, and is beyond the reach of retroactive legislation if there be a constitutional prohibition of such laws.” *Mellinger v. City of Houston*, 3 S.W. 249, 253 (Tex. 1887). Furthermore, this interpretation is not limited to Texas. Rather, this “so far as we have been enabled to ascertain, has been the ruling in every state in this Union which has a constitution provision in terms forbidding retroactive laws, in which any ruling upon the question has been made.” *Id.*

The Texas Supreme Court has repeatedly held that the prohibition against retroactive laws applies to a law that would have the effect – either directly or indirectly – of reviving a claim that is otherwise barred by a statute of limitations or repose. For example, in *Baker Hughes, Inc. v. Keco R. & D., Inc.*, 12 S.W.3d 1 (Tex. 2000), the Supreme Court rejected application of an extension of the statute of limitations for misappropriation of trade secrets claims when doing so would revive an already barred claim:

The principal issue we address here is whether a claim for misappropriation of trade secrets that was barred by limitations was revived by the later [statutory] enactment . . . which extended the limitations period from two years to three years and adopted the discovery rule for determining accrual. We hold that for [the statute] to have such effect would violate the prohibition against retroactive laws in article I, section 16 of the Texas Constitution.

Id. at 2. It is “settled law” in Texas “that, after a cause has become barred by the statute of limitation, the defendant has a vested right to rely on such statute as a defense.” *Id.* at 4 (citations omitted). “Thus, we have written that a statute extending the limitations period of a claim already barred by limitations violates the Texas Constitution’s prohibition against retroactive laws, which is article I, section 16.” *Id.* (citation omitted); *see also Wilson v. Work*, 62 S.W.2d 490, 547 (Tex. 1933) (“[I]t is settled law that, after a cause of action has become barred by the statute of limitation, the defendant has a vested right to rely on such statute as a defense.”).

Texas' Supreme Court has repeatedly reached this conclusion, beginning at least as early as the *Mellinger* case in 1887 and continuing as recently as 2010 in *Robinson v. Crown Cork & Seal Co., Inc.*, 335 S.W.3d 126, 140 (quoting with approval that "if an attempt were made by law, either by implication or expressly to revive causes of action already barred; such legislation would be retrospective within the intent of the prohibition, and would therefore be wholly inoperative.") (quoting *De Cordova*, 4 Tex. at 480). In fact, the Texas Supreme Court has invalidated statutes as prohibitively retroactive three times, all in cases involving extensions of statutes of limitations.⁵ *Id.* at 146 (citing *Baker*, *Mellinger*, and *Wilson*).

Before the Texas General Assembly enacted the fraud statute in 2005, suits by or against Payne & Keller had already been barred by Texas' repose statute for approximately sixteen years. Payne & Keller had the right to rely on the legal impact of its dissolution based on the law as it existed at the time of the dissolution. Retroactively applying a change in the law that took place sixteen years later seeks to force Payne & Keller to go back in time. This is the very purpose of the prohibition against retroactive application of laws:

Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly

In other words, the rules should not change after the game has been played.

Robinson, 335 S.W.3d at 139 (quoting *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265-266, 114 S.Ct. 1483 (1994)).

⁵ The Texas Supreme Court in *Robinson* adopted a new test for whether a statute was prohibitively retroactive. However, the Supreme Court held, "[t]he results in all of our cases applying the constitution provision would be the same under this test." *Id.* at 146. Thus, the three prior cases holding that a statute cannot be used to resurrect a claim barred by the statute of limitations continue to remain binding Texas law.

The Court's application of the fraud statute to Payne & Keller here revives causes of action that had long been barred. In doing so, the Court's Order impermissibly applies a Texas statute retroactively in violation of the Texas Constitution and multiple cases from the Texas Supreme Court.

VII. The factual and legal conclusions in the Order are based on misstatements of the underlying facts and law.

The Court's October 5, 2023 Order cites the "historical record" and "[e]vents surrounding Payne & Keller's dissolution" as the basis for revoking Payne & Keller's dissolution. These purported facts lack any evidentiary support. The reality is that Payne & Keller wound up its business after selling essentially all of its assets in a run-of-the-mill asset sale. There is absolutely no evidence that Payne & Keller's dissolution was motivated by an intent to avoid creditors. Quite the contrary. Dumez USA chose to sell Payne & Keller's assets and the Payne & Keller name. Once that sale closed, Payne & Keller no longer had any reason to maintain its existence – its business was done. Thus, even if the fraud statute could be applied retroactively – it cannot – the evidence does not support the Court's finding of fraudulent dissolution.

A. The truth of the matter is that Payne & Keller wound up as a normal part of business operations after undergoing the sale of substantially all of its assets – like businesses do all the time.

Payne & Keller went through a number of corporate transactions prior to its ultimate winding up in 1986. As set out in detail in the facts above, Payne & Keller was purchased by Dumez USA in 1980. Dumez USA was unable to run Payne & Keller successfully. Thus, in or around 1986, Dumez USA chose to sell Payne & Keller's asset and its name. After that sale, Payne & Keller had no more corporate purpose. As a result, it did exactly what corporations that have ceased their business operations do every day across the county – it dissolved. The undisputed evidence is that the Articles of Dissolution were submitted to the Texas Secretary of State and the

Texas Secretary of State filed the dissolution, confirming that the Secretary of State found that the dissolution complied with the requirements of Texas law. The documentary evidence of the dissolution provides no evidence whatsoever of fraud.

B. Payne & Keller maintained in place insurance at least until April 1, 1989.

Texas corporations law only permitted suits by or against Payne & Keller for three years immediately following its dissolution. *See* Tex. Bus. Corp. Act Art. 7.12 (1984). The Court’s October 5, 2023 Order finds the Charter dioxin claims matured on January 16, 1987 and that: “Payne & Keller dissolved before the Charter dioxin claims matured and, contrary to the representations it made to the Secretary of State, failed to make adequate provision for the payment of either those claims or the variety of other occupational injury claims that it had faced . . .” (Oct. 5 Order, p. 5). This is incorrect.

First, Payne & Keller Corporation, the immediate parent of Payne & Keller Company – continued to procure liability coverage following the dissolution of Payne & Keller Company, into 1989. (Ex. 14, Endorsement extending National Union policy period to April 1, 1989). Second, Plaintiff – who bears the burden of proof on any claim of fraud – has not presented evidence of *any* claims that went unpaid.⁶

C. The Plaintiff paints a picture of Payne & Keller dissolving in the face of “thousands” of dioxin suits, but a simple reading of the Bankruptcy Court’s Order in *In re Charter* makes clear that Payne & Keller faced only three such claims.

The Plaintiff’s Motion and this Court’s Order focus heavily on dioxin claims and *In re Charter Co.* Thus, it appears the Court placed special weight on this issue in making its

⁶ The Order also appears to imply that Payne & Keller was somehow responsible for the \$5.275 million awarded to personal injury dioxin claimants or the roughly \$6 million awarded to the state and federal governments. Those amounts were part of a class settlement with *Charter*, not Payne & Keller. No evidence or case law submitted to this Court has suggested in any way that Payne & Keller was responsible for those settlement amounts.

constructive fraud finding. The Court cites *In re Charter Oil* as the critical evidence of Payne & Keller dissolving to avoid an “indemnification obligation [that] encompassed more than a thousand claims arising from occupational dioxin exposure.” (Oct. 5 Order, p. 4). However, a simple reading of *In re Charter Oil* shows that **Charter** may have faced “more than a thousand” claims, but Payne & Keller faced no more than a handful of such claims. And Plaintiff has not identified a single such claim that went unpaid.

In *In re Charter Oil*, the Bankruptcy Court addressed Payne & Keller’s right to recover on mechanic’s and materialmen’s liens after Charter sold its Houston refinery. 63 B.R. 568 (M.D. Fla. 1986). Charter claimed it could withhold payment of Payne & Keller’s liens because Payne & Keller **may** have owed a duty to indemnify Charter for **a tiny portion** of the dioxin claims asserted against Charter. The bankruptcy court explained the indemnity agreement: “P&K will hold CIOC harmless from any and all claims, judgments, and awards for damages to property or injuries **suffered by P & K employees** arising out of work on the refinery unless such damage or injury was caused by the negligence of” Charter. *Id.* at 570 (emphasis added). Thus, no one in that case claimed Payne & Keller owed a duty to indemnify Charter for “thousands” of dioxin claims. In fact, the bankruptcy court stated: “CIOC relies on twelve separate claims of which **only three** filed proofs of claims in this bankruptcy proceeding.” *Id.* (emphasis added). Thus, Payne & Keller faced **three** dioxin claims—not “thousands.”

Further, Payne & Keller informed the bankruptcy court that it had insurance to cover those potential obligations. *Id.* Nothing in the *Charter Oil* decision indicates that this statement was untrue. In fact, the bankruptcy court noted: “[t]here is no allegation that P & K is insolvent or unable to pay if an indemnity obligation arises.” *Id.* at 571. Thus, Charter— who was in the best position to test Payne & Keller’s statement regarding insurance and who had the most interest in

raising that challenge – apparently agreed that Payne & Keller had sufficient insurance to cover the potential indemnity obligations. Plaintiff here has not presented any evidence to the contrary.

Thus, Plaintiff’s – and the Court’s – reliance on *Charter Oil* is misplaced. *Charter Oil* shows Payne & Keller faced three, and at most twelve, indemnity claims, Payne & Keller had insurance to cover those claims, and there is no evidence that any claims went unpaid.

D. The existence of a single asbestos claim – which was dismissed before Payne & Keller dissolved – is far from sufficient evidence to support a finding that Payne & Keller fraudulently dissolved.

The Court’s Order finds that Payne & Keller faced a single asbestos suit in 1986, which was dismissed on May 21, 1986. There is no evidence of any asbestos claims pending against Payne & Keller when it sold its assets, nor when it dissolved.

The existence of a single past suit – that was dismissed – is far from the type of evidence necessary to support a finding of fraud. The Court’s Order attempts to bootstrap this single lawsuit by finding “by then, asbestos-related personal injury claims were filling court dockets.” (Oct. 5 Order, p. 3). However, there is no evidence that Payne & Keller was aware of asbestos-related claims against *other* companies, much less that any such knowledge was the motivating factor for the sale of the company’s assets. If thousands of suits were filling the dockets, the fact that Payne & Keller was not named in those lawsuits is strong evidence that Payne & Keller had no reason to think that it would become a defendant in the decades to come.

The Order states “Payne & Keller worked on valve replacements at a Citgo Petroleum Corporation facility . . . which has since been the subject of asbestos litigation,” citing to *Seeney v. Citgo Petroleum Corp.*, 848 F.2d 664, 666 (5th Cir. 1988) and *Bourque v. Anco Insulations, Inc.*, 25 So. 3d 1008 (La. App. 3 Cir. 2009). However, the *Seeney* case does not have anything to do with asbestos. Instead, that case dealt with Payne & Keller employees who were injured in an explosion during work at a refinery. 848 F.2d at 665 (“Seeney and Calvin Demeritt filed separate

suits in negligence and strict liability against [Citgo] . . . for injuries they sustained in an explosion at Citgo’s refinery . . .”). The Fifth Circuit’s decision in *Seeney* never references asbestos.

The *Bourque* case does reference asbestos, but the Court of Appeals in that case found that all of that plaintiff’s exposure to asbestos occurred on a ship. 25 So.3d at 101 (“The record does not suggest that the plaintiff offered testimony disputing that the relevant work he did for the defendant was over navigable waters.”). Moreover, *Bourque* is a 2009 decision. There is no credible argument that Payne & Keller could anticipate 2009 litigation when it dissolved in 1986. Far from fraud, this evinces nothing.⁷

In sum, neither the facts nor the law cited by Plaintiffs and incorporated into the Court’s October 2023 Order are correct. As a factual matter, the history of Payne & Keller shows the typical and unsurprising lifecycle of a company. It started. It was acquired by one larger corporation. That corporation sold the company’s assets and wound up the company. The final step in winding up was to dissolve the corporation, which started the three-year clock for any claims against the company. During that interim, the company continued to procure liability insurance to cover Payne & Keller liabilities. After three years, the company’s dissolution and potential liability became final. Far from fraudulent, this is a common trajectory for a corporation.

CONCLUSION

For the above-stated reasons, the Court’s October 5 Order should be vacated. In the alternative, if the Court does not vacate the Order, Certain Insurers submit that the Order should be withdrawn and substituted with an Order denying Plaintiff’s Motion.

MURPHY & GRANTLAND, P.A.

By: s/Wesley B. Sawyer

⁷ Plaintiff also alleges that Payne & Keller worked on an insulation replacement project for Archer Daniels Midland. Again, the mere fact that Payne & Keller did work is of no consequence, and it certainly does not indicate evidence of fraud.

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Counsel for Third-Party Defendants AIG Property Casualty Company, formerly known as Birmingham Fire Insurance Company; Lexington Insurance Company; National Union Fire Insurance Company of Pittsburgh, PA; Berkshire Hathaway Specialty Insurance Company, formerly known as Stonewall Insurance Company; and The Continental Insurance Company, individually and as successor in interest to Harbor Insurance Company

October 16, 2023
Columbia, South Carolina

EXHIBIT 1

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Richland	)	2021-CP-40-03484
	)	
	)	
LENORA CHILDERS, INDIVIDUALLY	)	
and as Personal Representative)	)	
of the Estate of LEWIS C.	)	
CHILDERS,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
DAVIS MECHANICAL CONTRACTORS,	)	
INC.,	)	
FLAME REFRACTORIES, INC.,	)	
GENERAL BOILER CASING COMPANY,	)	
INC., HEFCO, INC.,	)	
J.R. DEANS COMPANY, INC.,	)	
PAYNE & KELLER COMPANY,	)	
SFB, INCORPORATED,	)	
STAFFORD INSULATION COMPANY,	)	
STANDARD INSULATION COMPANY OF	)	
N.C., INC.,	)	
UNITED CONSTRUCTION CO. OF	)	
ROME, INC.,	)	
	)	
DEFENDANTS,	)	

July 10, 2023
Charleston, South Carolina

BEFORE:

THE HONORABLE JEAN TOAL, JUDGE.

APPEARANCES:

THEILE MCVEY, ESQ.
Attorney for the Plaintiff

HARRY LEE, ESQ.
WESLEY SAWYER, ESQ.
TODD CARROLL, ESQ.
Attorneys representing some of the Defendants

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: Ladies and gentlemen of the asbestos bar,
2 we'll begin with Childers, the Estate of Lewis C. Childers
3 against Davis Mechanical and many others. This is
4 2021-CP-40-03484. This is Plaintiff's motion to revoke
5 the termination of Payne & Keller.

6 Who will speak?

7 MS. MCVEY: Good afternoon, Your Honor, Theile McVey
8 for the Childers family.

9 THE COURT: You may proceed.

10 MS. MCVEY: Thank you, Your Honor. First, Judge, let
11 me say it's been a long time since I've been to the
12 Charleston County courthouse, and it is much nicer than
13 the Richland County courthouse.

14 THE COURT: Oh, my Lord.

15 MS. MCVEY: Thank you for hearing us today. You are
16 familiar with a lot of the issues that this motion seeks
17 to have you address, but just for clarity of the record
18 and for everybody's benefit, I thought it would be
19 helpful to go through a little bit of the history about
20 what's been going on with this case.

21 Your Honor, as you know, Payne & Keller was sued in
22 this case. They did not answer the complaint. They went
23 into default. And Mr. Protopapas was appointed on the
24 motion as a receiver for Payne & Keller. That happened on
25 August 27th, 2021.

1 Payne & Keller is a dissolved Texas corporation. As
2 part of his duties, he went through and did significant
3 research, including kind of the circumstances around why
4 Payne & Keller resolved.

5 Your Honor, the Receiver's team briefed this issue
6 extensively when Travelers filed their motion to dismiss
7 the third-party complaint and to revoke the receivership.
8 So you had a lot of this in front of you before, but
9 there's some new information you didn't have.

10 THE COURT: Just to be sure the record is complete
11 for purposes of review, this matter -- Travelers' piece in
12 this matter was heard. I made a ruling adverse to
13 Travelers. The matter was then appealed and is awaiting
14 disposition at the Court of Appeals?

15 MS. MCVEY: Yes, ma'am. We're not part of that
16 appeal, but my understanding is that the Court of Appeals
17 has asked for briefing related to whether or not the
18 orders that they appealed are appealable.

19 THE COURT: Are appealable, right, so that's still
20 there?

21 MS. MCVEY: That's right.

22 THE COURT: But just making it clear, that case is a
23 different case from what you are arguing here. And your
24 arguments here are addressed in the Childers case and the
25 defaulting defendant Payne & Keller?

1 MS. MCVEY: That's right. And, Your Honor, those
2 motions were brought in the third-party case in this case,
3 but to be clear, they're different issues. The issues on
4 appeal in that case are Travelers' motion to dismiss and
5 the motion to, I think it's called revoke the
6 receivership, if I'm using that language correctly. And I
7 know that Mr. Robinson is here for the Receiver if you
8 have questions. And, of course, Mr. Carroll for
9 Travelers.

10 THE COURT: Right. And just to, I guess, complete
11 the clarifications that I'm sure Travelers will want to
12 have made on the record at the appropriate time, nothing
13 about the participation, the continuing participation in
14 this matter as it impacts Payne & Keller waives the rights
15 that have been asserted in the third-party case with
16 respect to jurisdiction and all the other things?

17 MS. MCVEY: I think that's right, Your Honor. In my
18 view, it's two separate cases. And so, Your Honor, we
19 represent the Childers family in the underlying asbestos
20 case where we allege that his disease was caused by some
21 acts or omissions from Payne & Keller itself.

22 But I think the history of Payne & Keller is
23 important for us all to remember. They operated for
24 decades building and maintaining kind of major petro
25 chemical and heavy industrial facilities. The way I

1 thought about it that we're familiar with here is a little
2 bit of a Daniel-type corporation.

3 They abruptly dissolved just as a flood of asbestos
4 claims are being filed, including thousands in Texas.
5 Immediately after Payne & Keller learned that it could
6 face significant liability as a creditor in a pending
7 bankruptcy case back in 1986, they dissolved. Payne &
8 Keller had a significant historic insurance to address
9 those issues and they still dissolved.

10 The evidence in the record before you, and, Judge,
11 it's the only evidence in the record before you is that
12 Payne & Keller dissolved with an intent to avoid or ignore
13 those liabilities in violation of the statutory duty to
14 creditors to make adequate provisions for those
15 liabilities.

16 So in our exhibits that we've sent to you in a
17 notebook, we have examples of past jobs. For example, in
18 1981, Payne & Keller worked on an insulation replacement
19 project for Archer Daniels. That's Exhibit 1 to our
20 brief. They also worked on a wall replacement at Citgo
21 Petroleum Corporation in Louisiana. We cited those two
22 cases in our brief.

23 Your Honor, by 1983, some of Payne & Keller's own
24 insurance policies explicitly excluded coverage for
25 asbestos-related claims. In the years before its

1 dissolution, Payne & Keller agreed in service contracts to
2 indemnify companies from financial responsibility for any
3 property damage or personal injury claims resulting or
4 arising from the work completed by Payne & Keller. And
5 that's in that in re Charter bankruptcy case that we cited
6 to you in our briefs.

7 During the 1980s, Payne & Keller defended itself
8 against a variety of tort claims arising from occupational
9 exposures. In fact, in 1983, the Louisiana Court of
10 Appeals affirmed that Payne & Keller and its insurer,
11 Aetna, which is now a Travelers Corporation were liable
12 for a Workers' Compensation claim bought by former
13 employee of Payne & Keller. The disability in that case
14 was silicosis.

15 In 1986, Payne & Keller was a defendant in a Texas
16 asbestos case brought by the law firm of Barron and Budd.
17 That's Exhibit 2. The claim was dismissed on May 21, 1986
18 with prejudice. And, Your Honor, although I don't know
19 the specifics of that, in my experience, a claim is
20 dismissed with prejudice when a settlement is paid.

21 By then, asbestos personal injury claims were filling
22 court dockets. In the Eastern district of Texas alone,
23 there were more than 3,000 asbestos claims that had been
24 filed by 1981.

25 In the weeks before Payne & Keller's dissolution,

1 Payne & Keller was alleged to be liable for significant
2 personal injury claims. Those were arising from toxic
3 occupational exposure to the Houston refinery.

4 In a bankruptcy proceeding, which is where we got a
5 lot of this information, filed by Charter International
6 Oil, Payne & Keller sought payment for services it had
7 provided.

8 Charter objected on the grounds that Payne & Keller
9 agreed to indemnify Charter for the personal injury claims
10 then totaling more than a 1,000. The Bankruptcy court
11 denied Charter's objection quoting the claims had not been
12 reduced to judgment and an unmatured claim could not be
13 also against Payne & Keller's mature claim unless Payne &
14 Keller was insolvent.

15 Payne & Keller told the Court that it was not
16 insolvent and asserted that it maintained insurance that
17 would cover any indemnification obligation owed to
18 Charter. Immediately after this decision was ordered by
19 the bankruptcy court, July 31 of 1986, Payne & Keller then
20 took steps to dispose of its assets and dissolve.

21 So just briefly, Your Honor, not to wear everybody
22 out, but a timeline. So the Bankruptcy court order
23 happens in July of 1986. September 29th, 1986, Payne &
24 Keller parent company executed a specific guarantee with
25 Payne & Keller.

1 They didn't even purchased its aspects guaranteeing
2 certain aspects of Payne & Keller's performance, and
3 that's Exhibit 4 to our motion. September 30th, 1986, the
4 sale was intended to close, but it was delayed.

5 October 1st, 1986, Charter filed a proof of claim on
6 behalf of plaintiffs in the bankruptcy proceeding.

7 October 7th, 1986, Payne & Keller executed its agreement
8 selling substantially all of its assets.

9 Payne & Keller retained liabilities, including those
10 arising from its operations. They agreed to indemnify and
11 hold us harmless for a range of claims, including NEPI
12 claims.

13 They agreed to maintain \$6 million of insurance
14 coverage for those claims for two years at the closing.
15 And they capped its overall liability to \$5 million in the
16 aggregate. Again, that's found in the guarantee, Exhibit
17 4.

18 October 7th, 1986, Payne & Keller changed its name to
19 Premtex Enterprise Corporation. They filed amended
20 articles of incorporation October 20th, 1986. It's found
21 in Exhibit 6. October 27th, 1986, Premtex adopted its
22 articles of dissolution. That's Exhibit 7.

23 On December 3rd of 1986, Premtex filed its articles
24 of dissolution and certification of dissolution
25 representing, and I quote, all debts, obligations and

1 liabilities of the corporation have been paid, discharged
2 or adequate provisions have been made thereof.

3 At the time they made that certification, there were
4 potentially thousands of Dioxin claims pending. The
5 guarantee was the only provision made for the payment of
6 significant known current and decades of future liability.

7 January 16th, 1987, the bankruptcy court entered an
8 order approving settlement of Dioxin claims against
9 Charter. The court ordered 5.275 million to the 1,000
10 plus PI claimants, one million to the State of Missouri,
11 five million to the US EPA.

12 Payne & Keller dissolved despite knowing those claims
13 were out there, contrary to the representation it made to
14 the secretary of state and failed to make adequate
15 provisions for the payment of those claims. And they knew
16 there would be claims going forward because, of course,
17 there were already pending asbestos claims.

18 Your Honor, you had this timeline in front of you
19 when Travelers filed their motion, but what you, also, did
20 not have in front of you and what Travelers did not come
21 forth and put forward is any contrary facts to what I've
22 just given you.

23 The Receiver filed a report this week. I assume the
24 court has seen that. And in that, he filed many of the
25 insurers for Payne & Keller, their discovery responses.

1 And in those discovery responses, the Receiver asked them
2 what information do you have about the facts surrounding
3 the dissolution? Do you have anything? Without
4 exception, they all answered no, we don't have any
5 contrary facts to what you have.

6 The Receiver, also, in his report put forth evidence
7 that the time of its dissolution, Payne & Keller had
8 extraordinary amounts of insurance and the receiver put
9 forth in its report that there were hundreds of millions
10 of dollars on its face of available insurance to cover
11 claims, future claims, including asbestos claims.

12 So, Your Honor, the only evidence, the uncontroverted
13 evidence in this record is that Payne & Keller at the time
14 of its dissolution knew that there were claims currently
15 pending in Bankruptcy court and there would be more
16 coming. And they knew that. And in spite of that, they
17 wanted to dissolve anyway without providing appropriate
18 monies for future claims.

19 Your Honor, the Texas business organization code TBOC
20 11.153 of the code authorizes the court to revoke
21 corporations termination of its own corporate existence if
22 that termination was, and I quote, a result of actual or
23 constructive fraud.

24 And it further goes on to say, notwithstanding any
25 provision of this code to the contrary, a court may order

1 the revocation of termination of its existence that is
2 terminated as a result of actual or constructive fraud.
3 The revocation of the corporate termination under the
4 Texas business code enables a corporate entity to pursue
5 claims as if it were never dissolved.

6 11.153 BI-2 says, and I quote, the revocation relates
7 back to the affected date of the termination and takes
8 effect as of that date and the entity's status as an
9 entity continues in effect as if that termination of the
10 entity's existence had never occurred.

11 So what I'm asking you to do, I'm asking you to find
12 -- and I'm going to go through what constructive and
13 actual fraud means. I'm asking you to find that Payne &
14 Keller dissolved and its dissolution was part of the
15 actual or constructive fraud.

16 So I looked to -- and it's just a red herring that --
17 let me say this. No other party has filed an objection to
18 my motion other than these insurance carriers. And their
19 only goal is that they don't have to pay any money out of
20 their policies, policies that Payne & Keller paid for.

21 Now, they can go and argue all they want that their
22 policies don't cover whatever claims that claimants are
23 making, but their only goal is they don't have to pay any
24 money for insurance that they acknowledge they had and
25 that Payne & Keller paid for.

1 So we look to see what the Texas Supreme Court has
2 said about what is the actual and constructive fraud?
3 Judge, we said it to you in our brief, but the Castleberry
4 vs. Branscum, and it's 721 S.E.2d 270, a Supreme Court of
5 Texas opinion from 1986.

6 It says, and I quote, actual fraud usually involves
7 dishonesty with purpose or intent to deceive, whereas
8 constructive fraud is the breach of a legal or equitable
9 duty, which irrespective of moral feelings, the law
10 declares fraudulent because of its tendency to deceive
11 others to violate confidence or to injure public interest.

12 And then we look at other Texas cases. There's
13 another case called Latham vs. Burgher, B-U-R-G-H-E-R, 320
14 S.W.3d 602. And there, the Court -- this case is about
15 dissolving a company after an attorney threatens to file
16 suit for damages. And the court in that case said a
17 rational juror could have decided that Latham's conduct in
18 dissolving a corporation in the face of Burgher's claims
19 represented dishonesty or purposes or an actual intent to
20 deceive, i.e. actual fraud.

21 There is ample evidence and, Judge, it's the only
22 evidence before you that Payne & Keller engaged at a
23 minimum of constructive fraud, and I would argue even
24 actual fraud.

25 The company terminated its corporate existence to

1 avoid liability for both current and future toxic torts,
2 silica and asbestos personal injury claims. And Payne &
3 Keller was keenly aware as demonstrated of those claims
4 when the decision to dissolve was made.

5 The historical record developed today suggests that
6 Payne & Keller's work included significant construction
7 projects and industries and time periods where we know
8 they used asbestos and we know that asbestos disease has a
9 long latency period from the date of exposure. That's not
10 disputed.

11 Now, in your order where you deny Travelers' motion
12 to dismiss, the parties in that case did not ask you to
13 make a finding of fraud. They simply asked you to say
14 based on what we have before us, the motion to dismiss
15 should be denied.

16 We have put forth all the evidence. We have put
17 forth information about insurance policies, about
18 potential claims and that has not been disputed. No
19 carrier has come forth in their briefing and said here's
20 an affidavit. Here's a different fact. They just make
21 procedural arguments.

22 The one thing they want you to apply is Texas
23 three-year statute of repose, but they don't want you to
24 apply the fraud exception to the Texas business code.

25 We know that Payne & Keller had hundreds of millions

1 of dollars of insurance and that this dissolution was
2 fraudulent, constructive or actual as defined by the Texas
3 business organization code. Revoking the dissolution is
4 the appropriate step.

5 Payne & Keller cannot dispute the facts that we have
6 put forth and they don't say that our facts are wrong.
7 The insurers have not put forth alternative facts. They
8 don't say that our facts are wrong. There's no affidavit,
9 no witness, no other discovery. I think you should hear
10 from these carriers. I want you to do that. They filed
11 an objection. But I do question what standing they have
12 in this case to argue about.

13 One question I would have for the carriers is if they
14 were to agree, they never will, but if they were to agree
15 we have put forth facts that establish constructive or
16 actual fraud, would they agree that the revocation would
17 be the right thing to do? I don't think they'll answer
18 your question when you ask them that, but I think it's an
19 important question to ask.

20 Many of their procedural points you've addressed in
21 other orders, so I don't want to get into them too much.
22 But I do want to address a moment -- unless you want me
23 to, I want to address for a moment the South Carolina ties
24 Payne & Keller has.

25 They make a big deal out of that. Judge, we put

1 forth in the brief that Payne & Keller was registered to
2 do business in South Carolina beginning in 1967 and was
3 here for decades.

4 Payne & Keller subsidiary, M & W Equipment maintained
5 a sales office in Rock Hill, South Carolina. Daniel
6 corporation purchased a Payne & Keller affiliate in 1977.
7 Other than insurance assets, the receiver's investigation
8 has not uncovered any provision that Payne & Keller made
9 for any of its known or expected creditors at the time of
10 dissolution.

11 Your Honor, I'm sure you're aware of this, but I
12 think it was just two weeks ago, June 27th, 2023, the
13 United States Supreme Court in the Mallory versus Norfolk
14 Southern Railroad case, it was a personal jurisdiction
15 case, but in that case Norfolk Southern had registered to
16 do business in the State of Pennsylvania. Nothing else
17 happened in Pennsylvania at that time other than them
18 registering to do business. And the Supreme Court said
19 that's enough. Your Honor, I would argue that is enough
20 here, too. And we have more than that in this case.

21 Your Honor, the only other defense I'll address, a
22 lot of the other ones I think are red herrings, but
23 Travelers makes the point at the beginning of the case
24 that we should not be able to go forward with this motion
25 because my case is stayed as a result of the pending

1 appeal to the Court of Appeals. And, Your Honor, as we
2 discussed at the beginning of the case, it is two separate
3 issues. The issues they have on appeal are different than
4 what I'm asking you to do here.

5 So let me be clear what I think we would ask this
6 court to do. We are asking you to make a finding of
7 constructive fraud as defined under the statute in Texas
8 and Texas law.

9 We're asking you to make that finding that Payne &
10 Keller dissolved and that it was constructive fraud with
11 all the pending cases out there. And then we're asking
12 that you order the receiver to go to Texas and file with
13 the Texas secretary of state to reconstitute this company
14 under Texas business code 11.153. That's what we'd ask
15 you to do. I'm happy to address any other defenses that
16 Travelers raised you'd like me to or I can sit back and
17 come back in reply.

18 THE COURT: Very well.

19 Mr. Lee. Mr. Carroll.

20 MR. CARROLL: With your permission, my colleague,
21 Harry Lee, who I believe has appeared in front of you
22 before.

23 THE COURT: Yes.

24 MR. CARROLL: Thank you.

25 THE COURT: Thank you.

1 MR. LEE: Thank you, Your Honor, may it please the
2 Court. Harry Lee, Steptoe and Johnson, for Travelers
3 defense. I'd like to start out, Your Honor, with the
4 jurisdictional point. Your Honor, raised that point.
5 Ms. McVey spoke a little bit about it at the end, but I
6 think that's where we should begin.

7 Your Honor asked whether the claims at issue in the
8 motion to dissolve the receivership are in the same case
9 as the claims at issue here for the motion to revoke the
10 termination. Yes, they're in the same case.

11 There's an original complaint and then there's third
12 party claims. So we're in the same case. And that case
13 with respect to the motion to consolidate receivership is
14 on appeal.

15 Your Honor is correct, Ms. McVey was correct, there
16 is a question that's been asked by the South Carolina
17 Court of Appeals as to appealability, submissions have
18 been made on that issue and we are awaiting word from the
19 South Carolina Court of Appeals as to whether we're going
20 forward and what the schedule would be. But the Notice of
21 Appeal has been filed.

22 THE COURT: All right. Let's be clear what you
23 appealed. What did you appeal?

24 MR. LEE: I appealed all the issues that were
25 raised --

1 THE COURT: What ruling of mine?

2 MR. LEE: Yes.

3 THE COURT: What did I rule?

4 MR. LEE: You ruled for various reasons that the
5 motion to dissolve the receivership was denied.

6 THE COURT: The motion to dissolve was denied.

7 MR. LEE: Right. And there are --

8 THE COURT: And --

9 MR. LEE: There were various findings made in order
10 to reach that decision.

11 THE COURT: And the denial of a motion is not
12 ordinarily appealable. What makes this an appealable --
13 because you're asking me to stay as you contend that this
14 is an appealable issue.

15 MR. LEE: Well, I'm asking you to --

16 THE COURT: Well, I take that back. You say as long
17 as I've got an appeal up there and they haven't said it's
18 not an appealable issue it's stayed, right?

19 MR. LEE: Well, it's not just stayed, but this court
20 is deprived of jurisdiction to handle the issues that are
21 on appeal. That's Rule 205. The State Rule is 241.

22 So the effect of your ruling, Your Honor, if -- if
23 you said as a result of my ruling, Harry, you need to go
24 down the street and do this. Theoretically, under 241, I
25 don't have to go down the street and do this unless

1 there's an exception to the stay rule of 241 or someone
2 moves to lift the stay if I've appealed.

3 THE COURT: But I didn't do anything.

4 MR. LEE: You're right.

5 THE COURT: You wanted to dissolve the receivership.

6 MR. LEE: Correct.

7 THE COURT: So the whole issue before me was the
8 legitimacy of the receivership.

9 MR. LEE: Correct.

10 THE COURT: The matters we're talking about today
11 have nothing to do with the dissolving of the
12 receivership.

13 MR. LEE: Your Honor, I --

14 THE COURT: They have to do with the status of Payne
15 & Keller, whom you do not represent. You represent an
16 insurance company.

17 MR. LEE: I do.

18 THE COURT: And this thing has to do with the status
19 of Payne & Keller as a dissolved Texas corporation.

20 MR. LEE: And the basis for the motion to dissolve
21 the receiver --

22 THE COURT: And it has to do with the management of
23 the receivership, which I created several years ago with
24 respect to Payne & Keller. It asked for certain
25 directives to the receiver in a receivership, right?

1 MR. LEE: It did, but the --

2 THE COURT: And what does that have to do with your
3 motion to dissolve the receivership?

4 MR. LEE: The grounds for the motion to dissolve the
5 receivership were the status of Payne & Keller. That was
6 the basis for dissolving the receivership. The
7 receivership should not have existed in our view because
8 Payne & Keller doesn't exist. And it doesn't exist
9 because it was terminated through a dissolution process.
10 Your Honor ruled that that dissolution process was prima
11 facie fraudulent.

12 We've appealed that issue. Your Honor ruled that the
13 revocation statute, which was issued in 2021, which we
14 believe cannot be applied retroactively, that it could be
15 applied retroactively. We've appealed that. Those issues
16 are embedded in the grounds for this motion.

17 They're the same issues. And under Rule 205, not
18 Rule 241, but Rule 205, diversity is divested in this
19 court on those issues. They are necessary issues to
20 deciding this motion.

21 And with respect to whether anyone can sue Payne &
22 Keller after 1989 decided by Your Honor in the motion for
23 the dissolution of receivership is the basis for this
24 motion. They've argued that it can be. We've argued it
25 can't be.

1 The retroactivity of the 2021 revocation statute, we
2 believe it cannot be retroactive. Your Honor said it was
3 and that issue is on appeal. It's required to decide that
4 issue here again.

5 And the whole point of 205 is when issues have been
6 decided that the trial court will not go on with the case,
7 will not go on with the issues and will not make further
8 decisions and provide further relief while the issues are
9 pending before the Court of Appeals.

10 The Court of Appeals has the notice. It's going to
11 decide those issues. It's going to say who's right and
12 who's wrong on those issues. And then when the trial
13 court is advised of that, the trial court will go on. It
14 may be that Travelers loses, and it may be the Court will
15 go on at that point, but it can't go on now is our point,
16 Your Honor, under Rule 205.

17 And that, also, includes the evidentiary presentation
18 you've heard today. That presentation was made to Your
19 Honor with respect to the motion to dissolve the
20 receivership because the status of this company, Payne &
21 Keller, is at issue as to whether there should be a
22 receiver or not.

23 THE COURT: That's not what the Court of Appeals is
24 asking you to resolve at this moment at all.

25 MR. LEE: We are --

1 THE COURT: You are asking something preliminary to
2 that. They're asking -- they don't want any briefing on
3 all this stuff about actual and constructive fraud and
4 dissolution of Payne & Keller and all that kind of thing.
5 They only want to know whether the denial of your motion
6 is appealable.

7 MR. LEE: Which depends on whether Payne & Keller was
8 dissolved fraudulently.

9 THE COURT: No, sir, it does not. Your appeal
10 doesn't depend on that one bit. Your appeal is an appeal
11 of a denial of your motion. They're not going to get into
12 whether Payne & Keller should be dissolved. That's not
13 before them at all. What is before them is strictly a
14 procedural matter, which is if you make a motion before a
15 trial judge and the motion is denied, is that an
16 appealable matter?

17 MR. LEE: The denial of the motion continuing the
18 receivership, which we believe is immediately appealable,
19 and the grounds for that will be argued. One of the
20 grounds Your Honor wrote in Your Honor's order was that
21 the evidence presented to her had made out a prime facie
22 case of constructive fraud.

23 THE COURT: Right. Just like if I deny a motion to
24 dismiss, I will deny it on the basis that the pleadings
25 make out a prime facie case. That's not the final ruling

1 in the case at all.

2 MR. LEE: Agreed.

3 THE COURT: You're trying to characterize it that way
4 because that's the only way you can get the Court of
5 Appeals to address it.

6 MR. LEE: Well, let me --

7 THE COURT: If I had made a final ruling, they could
8 address it, but they can't address something that's not a
9 final ruling.

10 MR. LEE: Your Honor, with respect to the
11 appealability of whether a receivership is continued, I
12 believe that we can make the arguments as to why that
13 receivership should not be continued and to refute --

14 THE COURT: Well, I'd be amazed if they let you do
15 that. I've been proved wrong many times by appellate
16 courts and I'm just a trial judge.

17 MR. LEE: Understood --

18 THE COURT: They get to do what they --

19 MR. LEE: And I fully understand that --

20 THE COURT: All they ought to be doing is deciding
21 whether or not the denial of the motion, which simply
22 allows the matter to go forward for further adjudication
23 is sufficient to give them complete jurisdiction to decide
24 if these matters or this thing has been constructively
25 little fraudulent or acted in a fraudulent way. I don't

1 find that it was. I find that there is sufficient
2 material in the pleadings and other information presented
3 to make that finding.

4 MR. LEE: The finding that you're being asked to make
5 today is that as a matter of law there was fraud. As a
6 matter of law --

7 THE COURT: Right.

8 MR. LEE: -- summary judgment fraud occurred.

9 THE COURT: That's right.

10 MR. LEE: And our point --

11 THE COURT: Now, what you're asking me to do in the
12 other case is to dissolve the receivership.

13 MR. LEE: Yes, because there was no constructive
14 fraud.

15 THE COURT: Because there was no constructive fraud.

16 MR. LEE: And Your Honor said --

17 THE COURT: And I said no, I'm not going to do that.
18 Now, I'm going to take up the merits of what I said no,
19 I'm not going to bypass the merits and simply dissolve the
20 receivership. That's what you want, dissolve the
21 receivership, Judge, and then you won't make any of these
22 decisions.

23 Well, all I did was say no, we're going to continue
24 on receivership. There's a bunch of static for all kind
25 of reasons, one of which is this, but not all of them.

1 There's a merits claim quite apart from whether this P and
2 K should have been dissolved.

3 I have many receiverships involving dissolved
4 corporations that are not going to be undissolved or
5 anything else. They were dissolved for abandonment of
6 their certificate or whatever reason. But they have
7 legacy insurance, that's the real situation involving this
8 file because that is who is paying for your victims' fund.
9 All right. Very, very able argument. That's the real
10 deal in this thing.

11 I created these receiverships because as long as
12 these defunct corporations are in the hands simply of
13 carrier's lawyer, their assets will not be marshaled for
14 protection and claims. They were hiding the ball. That's
15 what happened with Coble. That's what happened a bunch of
16 these other things. I said, well, we're going to get
17 somebody independent in there, a receiver, to act in the
18 best interest of the corporation. And that's what's being
19 done here. That's what you're trying to prevent being
20 done because then we'll have a specific discussion of
21 these charts that show all this insurance.

22 So that's what we're really talking about. We're not
23 talking about the Texas law or anything else or
24 receivership itself.

25 MR. LEE: Well --

1 THE COURT: We're talking about an attempt to evade
2 any kind of examination of potential insurance that Payne
3 & Keller, even if it was completely dissolved. And my
4 ability to look at that, the merits of the matter is not
5 at all impacted by whether Payne & Keller was dissolved or
6 not and, frankly, it's not even impacted by whether Payne
7 & Keller is a receivership.

8 Payne & Keller is a defendant in this lawsuit.
9 That's all that needs to be said. And I am, at this
10 point, dealing with that defendant and its potential
11 insurance.

12 MR. LEE: I believe I do understand all that, Your
13 Honor. I understand you want to keep it to the basics and
14 I fully appreciate the job that Your Honor is undertaking,
15 not just this matter --

16 THE COURT: I know you do. Listen, you've got fine
17 counsel in this room, Todd Carroll in principle and
18 honesty and so you don't have to apologize for the
19 position you take. I'm not suggesting that one darn bit.
20 You're doing a good job, as you should be.

21 MR. LEE: But just to understand, the South Carolina
22 Court of Appeals may disagree with us, but we do intend to
23 brief whether the decision that the evidence presented to
24 Your Honor before, which is exactly the same evidence
25 today, it hasn't changed one bit, is prima facie evidence

1 of constructive fraud in a situation where the facts are
2 what they are.

3 THE COURT: And that will be so contrary to the way
4 the appellate practice system is set up in this state.
5 What you're asking them to do is on an undeveloped issue
6 where I've only made a preliminary decision that the
7 pleadings allowed them to go forward and not decide
8 whether constructive fraud or actual fraud, you're asking
9 the Court of Appeals to make that decision. That's what
10 you're asking me to do.

11 MR. LEE: It may be unique, Your Honor. I understand
12 if there was a Rule 12 motion and it was simply a motion
13 to dismiss that wouldn't be appealed, but here because
14 whether the receivership should continue is appealed and
15 is based --

16 THE COURT: How is -- if I deny it, how is that
17 appealable? That's not a final decision.

18 MR. LEE: Because there's a statute that says in
19 South Carolina that one of the immediately appealable
20 things is when a trial judge continues a receivership over
21 the objection of a party. That's immediately appealable.
22 It has to go up. It is now up. The Court of Appeals will
23 tell us whether we're wrong or not.

24 THE COURT: Well, that's a South Carolina
25 receivership, is it not? You're talking about the South

1 Carolina receivership law --

2 MR. LEE: Yes, yes. Yep, but that's immediately
3 appealable. It has been appealed and the decision about
4 whether that receivership should exist or not depends upon
5 whether Payne & Keller exists or not. And so all the
6 issues as to whether Payne & Keller exist, that was the
7 argument.

8 THE COURT: It can exist or not exist. Receiverships
9 can be had for active corporations, dissolved
10 corporations --

11 MR. LEE: Understood.

12 THE COURT: That's yet to be determined exactly what
13 they are.

14 MR. LEE: But it's in front of the Court of Appeals
15 now is my issue. And I don't want to beat a horse. I
16 said what I've said. I'm not here to argue with Your
17 Honor.

18 THE COURT: I understand. I understand. I'm
19 probably being unfair for pushing this. You continue your
20 argument.

21 MR. LEE: One of the other issues that was in the
22 motion to dissolve the receivership issue, and is in this
23 issue is also whether this Court has the power to do what
24 Ms. McVey is asking you to.

25 Now, she said something for the first time, not in

1 her papers, at the end of her presentation and Your Honor
2 was busily writing that down at the end, which was what I
3 want you to do, Your Honor, after you grant our motion is
4 I want you to order the receiver to go to Texas and ask
5 the Texas Comptroller for accounts, Secretary of State to
6 revoke the termination of Payne & Keller. That had never
7 been suggested before. That's a different take.

8 We don't believe that -- we believe that what had
9 been asked before was that Your Honor revoke the
10 termination of Payne & Keller. And one of the arguments
11 we made before is Your Honor doesn't have been the power,
12 no South Carolina court has the power to do that.

13 We still believe in that. We still have that as one
14 of the issues on appeal with respect to the receivership
15 issue, but that's something that I need to think about
16 because that would then have the matter decided in Texas.
17 That would then have a Texas proceeding where Texas agency
18 folks and anybody interested in Payne & Keller would then
19 have to figure out whether that order justifies the
20 revocation. But Your Honor isn't ordering the revocation,
21 that's a different suggestion by Ms. McVey. I honestly
22 need to think about that, as to whether that's a procedure
23 that gets away from or gets around the power of this Court
24 and limits the power of this Court.

25 THE COURT: You're going right to the heart of the

1 thing I've been concerned about most of all, it's not the
2 Court of Appeal's business. You're going right to the
3 heart of it. That's why I'm fighting so hard because
4 that's the first time I heard about that, too.

5 I have a lot of questions about whether I on my own
6 albeit applying Texas law had the authority to undo the
7 Texas dissolution by order of this Court. And I think
8 there's a lot of difference between that and what is now
9 being asked, which is that I direct the receiver to pursue
10 a certain course of action before the proper tribunal.

11 In that connection, you may know, and I'm sure you
12 all do know because you follow these things all over the
13 country, but the Receiver has been directed to go into a
14 lot of different courts to pursue matters that relate to
15 receiverships in South Carolina, that is not unusual at
16 all.

17 I remember the first receivership I ever knew about,
18 which was the reason I came to brainstorm about these
19 defunct corporations and receiverships with Gann
20 (phonetic) and Coble was an old case involving New South
21 Life Insurance Company in South Carolina. And my senior
22 partner and I created a receivership for New South to
23 defend against what was going to be a bunch of claims,
24 just like P and K did, just like P and K did.

25 MR. LEE: Well, Your Honor, it's our view that the

1 Texas court is the one that should be doing what's --

2 THE COURT: They're saying, look, Judge, we think you
3 should direct the receiver to go to Texas and get their
4 determination about this dissolution. How could you
5 possibly fuss about that? That's what I don't understand.

6 MR. LEE: Tell you the truth, I'm remarking that I've
7 heard it for the first time today because until now,
8 they've been asking this court to revoke the termination.

9 THE COURT: Now, they're asking something different.

10 MR. LEE: And if they're going to go to Texas and
11 file this motion in a proceeding and then get factual
12 determinations and get people whose got personal
13 jurisdiction and get witness testimony from them and so
14 forth because there is no personal knowledge information,
15 there's nothing suggesting --

16 THE COURT: I don't know what that procedure will
17 involve and I don't think you do either, Mr. Lee, but I
18 doubt it's going to involve what you think it's going to
19 very, which is this factual hearing down here.

20 I don't know that that's at all what's going on. Be
21 that as it may, all this stern and burn about whether
22 there is evidence of constructive fraud has resolved
23 itself today into a request to direct a receiver to revoke
24 the dissolution of P and K. What's wrong with that?

25 MR. LEE: Well, for one, on this point here, it

1 should be done in Texas. A Texas court will tell a Texas
2 agency what it should and shouldn't do.

3 THE COURT: Well, in a way, I'm going to be making
4 that determination because what they're asking me to do is
5 say constructive fraud. Now, I want you to do the
6 administrative thing by going to Texas and asking Texas to
7 on behalf of your corporation to revoke the dissolution
8 admitted by you, the corporation, constructive fraud.
9 Now, how can you -- what's your -- what kind of -- I just
10 don't understand how you --

11 MR. LEE: I don't think Payne & Keller has said they
12 committed constructive fraud.

13 THE COURT: That's what they're planning on doing.

14 MR. LEE: They said it might have. That's the --

15 THE COURT: No, what they're saying is they want me
16 to make that determination. They want me to take that
17 determination down to Texas and say please exercise your
18 administrative duty and revoke this dissolution. We've
19 got it, a judge has found it. That's what they're asking.

20 MR. LEE: I don't know that Payne & Keller has yet
21 asked you to do that.

22 THE COURT: The receiver for Payne & Keller.

23 MR. LEE: The receiver for Payne & Keller -- I have
24 not seen a motion for you to revoke from the receiver to
25 revoke the termination. It's coming from the plaintiff.

1 THE COURT: Well, exactly. It is. It is.

2 MR. LEE: So the receiver has not made a motion
3 saying we committed constructive fraud, Payne & Keller did
4 and we'd like you to find that.

5 THE COURT: That's correct. That's correct.

6 MR. LEE: The plaintiff has done that. And it's a
7 very significant difference.

8 THE COURT: Exactly, and that puts it a step away
9 from this third party and Court of Appeals, as well, does
10 it not?

11 MR. LEE: Well, if there's an order to the receiver,
12 go on down to Texas, start a proceeding and decide whether
13 you think there was constructive fraud or not or find
14 out --

15 THE COURT: That's not what he's going to do at all.
16 He's going to do just like I would do as the secretary of
17 State if I'm going to represent a corporation that's
18 already dissolved. I'm going to file revocation papers.
19 It's an administrative act for the Secretary of State to
20 then revoke the dissolution. That's what he's going to
21 do.

22 MR. LEE: If he has a finding that the secretary will
23 accept the fraud.

24 THE COURT: Well, if I make that finding, Texas --

25 MR. LEE: And my only point coming full circle is we

1 don't believe Your Honor has the right to make that -- a
2 South Carolina court has a right to make that finding.

3 THE COURT: The Court of Appeals is going have the
4 right to make that finding.

5 MR. LEE: Well, the Court of Appeals could
6 potentially make the finding that the evidence they
7 presented doesn't come close or even anywhere near a prime
8 face case of fraud. I can go through that, Your Honor, as
9 to why because --

10 THE COURT: They can make that as a reversal of my
11 ruling, right?

12 MR. LEE: Yes.

13 THE COURT: Well, I haven't ruled that yet.

14 MR. LEE: Your Honor did write in an order that there
15 is a showing of a prima facie case of fraud.

16 THE COURT: Yes. That's not a permanent finding.

17 MR. LEE: Understood, but it is where we are and
18 it's the reason for continuing the receivership.

19 THE COURT: I understand.

20 MR. LEE: Let me turn, Your Honor, to the evidence.

21 THE COURT: All right.

22 MR. LEE: Because I think it's important to go
23 through that.

24 THE COURT: Let's look at it.

25 MR. LEE: This is a fraud claim, fraud.

1 THE COURT: Yes.

2 MR. LEE: 9(b) particularly requirements to plead
3 nowhere to be found. No reply to the affirmative defense
4 that Payne & Keller raised to the statute of repose. No
5 reply to that under 8(c) with any pleading of
6 particularity to fraud.

7 There's no pleading at all. Nothing for us to shoot
8 at, nothing for us to investigate. Simply someone
9 gathering documents back from 1986 and trying to tell a
10 story.

11 That story has almost nothing to do with asbestos,
12 nothing to do with asbestos. It's a story about a company
13 that's involved in the industry that worked in a lot of
14 places. That in 1986, got sidled with somebody about
15 Dioxin claims, not asbestos claims. As of that point in
16 time, they had one asbestos claim made against it that was
17 dismissed and no record or evidence suggesting that it was
18 paid, just that it was dismissed.

19 In the three years after the dissolution, from '86 to
20 '89, no record of any asbestos claims, no outrage, no
21 wondering why did Payne & Keller do this, no effort to
22 revoke the termination, no effort to revoke the
23 termination for 35 years or more until now. Payne &
24 Keller, big company, everybody knows about them.

25 All the plaintiffs' lawyers are real good at naming

1 folks and making sure every defendant is named. There is
2 a smattering of claims. They are dealt with by the
3 insurance, and they are paid. No one has been shorted.

4 THE COURT: Let me stop you right there one minute.

5 MR. LEE: Okay.

6 THE COURT: Payne & Keller was dissolved in Texas.

7 MR. LEE: With parents who have agreed to indemnify.
8 So you have people taking care of the claims, not Payne &
9 Keller.

10 THE COURT: Well, is that how your insurance company
11 and you lawyers like you and Todd got into this thing is
12 through insurance companies for the indemnitors?

13 MR. LEE: No, we are insurance companies for Payne &
14 Keller.

15 THE COURT: Exactly. That means you're insurers for
16 Payne & Keller, at least, the argument is because that was
17 before asbestos claims were excluded from the policies.
18 And at a time when policies were written as per current --

19 MR. LEE: Right.

20 THE COURT: -- not as claims made policy. That's
21 what gets you in this picture.

22 MR. LEE: Yes.

23 THE COURT: So you're directly in it as an insurer of
24 Payne & Keller. And you can't on the one hand tell me oh,
25 Payne & Keller is doing nothing. They're completely

1 dissolving everything. But you're acting for them as a
2 lawyer. The defendant in the lawsuit is not Travelers or
3 Aetna. It's Payne & Keller. And you as their insurer are
4 acting for Payne & Keller. So what gives you --

5 MR. LEE: Well, Mr. Carroll and I aren't involved in
6 any of that, okay? We're not involved in any defense --

7 THE COURT: But that's what's happening for your
8 company --

9 MR. LEE: So --

10 THE COURT: -- where these claims are being defended
11 and you're the one arguing.

12 MR. LEE: So let me tell you what happens.

13 THE COURT: All right.

14 MR. LEE: Payne & Keller gets named. Their status
15 has been revoked. They've been terminated. They get
16 dismissed. They name the right company, okay, and the
17 insurers for that company get involved. But in the
18 meantime, we have to get involved to get Payne & Keller
19 dismissed. And they're always dismissed. No one seeks to
20 revoke the termination. No one challenges it, 35 plus
21 years. No one is shorted any money. That's what
22 happened.

23 And Mr. Carroll and I weren't involved in this until
24 a year or two ago. So all that has happened way before we
25 got anywhere near. We're arguing on the coverage issues.

1 We're arguing, obviously, on the termination issues. And
2 yes, when you have a Texas insurer and you have a
3 dissolution statute that has a three-year statute of
4 repose that goes not just to 2003, but all the way before
5 1986 through the predecessor of the statute, section 7.12
6 provides that there's a three-year statute of repose.

7 And certain states, not all of them, but certain
8 states do this. They have decided for their corporations
9 that form there are going to have this finality and they
10 expect that the other states in the country will respect
11 that.

12 Now, whether they do or they don't, but that's the
13 expectation. Certainly, the South Carolina authorities
14 here knew when the Payne & Keller signed up to be
15 registered to do business here, which appears that they've
16 never done, by the way.

17 There's no evidence of anyone doing business here for
18 Payne & Keller, but we'll get to that in a minute. But
19 South Carolina knew they were a Texas company and they
20 would know that Texas has statute of repose. So that
21 three-year cut off claims by anybody is going to apply to
22 that company doing business in this state. And yet, they
23 let them do business in this state.

24 There's no condition that says you can't do business
25 in the state as a Texas company because we have a statute

1 of repose and we don't like it. It applies and it applied
2 all the way back to 1986.

3 THE COURT: The Secretary of State doesn't make any
4 determination of that domestication of foreign
5 corporations for the purposes of doing business in the --

6 MR. LEE: I'm sure they don't look into it.

7 THE COURT: Nobody does.

8 MR. LEE: But the statutes are what the statutes are
9 and they existed. And I'm sure Texas expects that they
10 will be respected. Whether they are or they aren't, I
11 don't know. But like I said, there are other states like
12 this. Not that many, but they exist. There are many
13 states that have dissolution, but you can still sue them
14 after the three-year period.

15 But turning back to the evidence, the evidence here,
16 as I said, is there was not when they dissolved. When
17 Payne & Keller dissolved, there was no evidence. There
18 was no evidence of a single asbestos claim pending against
19 them or a threat to be filed against them. Not one. Yet,
20 what's being asked here is a determination that Payne &
21 Keller defrauded this asbestos claim when it terminated.
22 This asbestos claim that was filed 35 years later. It
23 should have been expected. It should have made provision
24 for it. And somehow that was fraud by dissolving in that
25 manner.

1 This is an action mostly by the plaintiff. It's not
2 made upon a motion of every other asbestos claim. It's
3 not made on behalf of other kinds of plaintiffs. This is
4 this person's asbestos claim. And this person is saying I
5 was defrauded in 1986 when Payne & Keller didn't have a
6 single asbestos claim against it or a single threat of an
7 asbestos claim against it.

8 All it knew was that there were asbestos claims
9 against lots of companies, not Payne & Keller and not
10 Payne & Keller in the three years afterwards.

11 In addition, with respect to the claims it knew about
12 or that were threatened, it handled them in the three-year
13 repose period. They got paid. They didn't get stiffed.
14 The officers and directors made provisions for those
15 claims and they paid them.

16 THE COURT: Well, now, how does that line up with the
17 fact that you say there's this indemnity out there that
18 continues to pay claims all the way, asbestos claims? I
19 mean, link those two up for me.

20 MR. LEE: Well, Your Honor, I don't know why the
21 indemnity isn't the resolution. Maybe there's some sort
22 of cap, maybe there's some sort of argument that those
23 companies are making about what they pay or what they
24 don't pay. They're not my clients.

25 THE COURT: Well, you started this off by arguing

1 that you all relate to these indemnitors. You get these
2 things dismissed because you can send them to the
3 indemnitors. This is not some hands off relationship you
4 have with these people.

5 If you're not doing what lawyers do to the Coble
6 Corporation and trying to pass them off as somebody that's
7 making an active decision, then you're handing it off to
8 someone that can make an active decision on behalf of
9 whoever is responsible for the dues of P and K. And what
10 you're saying is it's indemnitors. I mean, that's an
11 ongoing relationship that y'all have with them.

12 MR. LEE: I don't think that P and K can have a
13 relationship with anybody. They're dissolved. They're --

14 THE COURT: Well, how are you as the insurer going to
15 these indemnitors and getting them to take over the
16 settlement for claims against Payne & Keller if what you
17 just said is true?

18 MR. LEE: Based upon the sale documents. The sale
19 documents provide that these companies are going to pick
20 this up and Payne & Keller is going to go away.

21 THE COURT: But the way you get into it is somebody
22 sues Payne & Keller and you're their insurer and that's
23 how you get into it.

24 MR. LEE: My client is their insurer and has been for
25 years and still is today.

1 THE COURT: And you're still taking some very active
2 measures on behalf of this dissolved corporation to keep
3 from paying claims yourself.

4 MR. LEE: Your Honor, with respect, we're not doing
5 anything on behalf of Payne & Keller. We're not
6 representing them, we're not advocating for them.

7 THE COURT: You're sending the claims against Payne &
8 Keller to indemnitors for them to pay, are you not? I
9 mean, that's what you said.

10 MR. LEE: I think maybe there's a misunderstanding.
11 When Payne & Keller gets named, a lawyer after the verdict
12 being paid by the insurance company shows up and says
13 Payne & Keller is not a company.

14 THE COURT: Right.

15 MR. LEE: So we're specially appearing to let the
16 court know that and have the court aware of the
17 arrangements Payne & Keller made.

18 THE COURT: Which is indemnity arrangements.

19 MR. LEE: With other companies that we don't
20 represent and we don't control what Travelers doesn't
21 insure.

22 THE COURT: But you tell through the indemnitors --

23 MR. LEE: We tell the plaintiff and then the
24 plaintiff goes out and sues however it wants to and Payne
25 & Keller goes away and nobody attempts to revoke its

1 termination.

2 THE COURT: Well, that's a lot of present involvement
3 in the affairs of a company you say you don't have
4 anything to do with is all I got to say. And the reason
5 is because it owes the insurance policies, the legacy
6 policies, still cover matters that began with an exposure
7 when the policies are in existence, but has a long latency
8 period and, therefore, goes back to that time. It can't
9 be that way for purposes of coverage and at the same time
10 say we don't have anything to do with it.

11 MR. LEE: Well, Your Honor, if the company is
12 terminated, you can't legally quote, unquote represent it.

13 THE COURT: Oh, yes, you can. You can have
14 receiverships for the first purpose of marshaling the
15 assets of that defunct or dissolved corporation in aid of
16 protection of claims.

17 MR. LEE: I don't disagree with you, but I think
18 there's a difference between dealing with assets and
19 acting for a company that doesn't exist.

20 THE COURT: Well, you act for a company that doesn't
21 exist because you have the assets. You're the insurance
22 company. So you can do it in one sense, but not in
23 another? That doesn't make any sense, Mr. Lee, with great
24 respect for your intellect and your knowledge on coverage
25 matters, although I have done it many times.

1 MR. LEE: Your Honor, the facts that we are presented
2 with is -- and we didn't do it. We weren't involved with
3 it. Payne & Keller dissolved. There's a statute that
4 says after three years, they can't be sued.

5 THE COURT: But their insurance is still viable and
6 that's who you're representing.

7 MR. LEE: Their insurance is viable to the extent
8 they can be held liable.

9 THE COURT: Right.

10 MR. LEE: And they can't be held liable anymore.
11 That's just a simple -- you can say we're taking advantage
12 of it or whatever you like, but that's fact. They can't
13 be held liable anymore, so there's nothing for us to pay.
14 They can't have a judgment against them. They can't --

15 THE COURT: Then why in the world do you do any of
16 this? Why does Travelers hire you to represent them to
17 file these claims against Payne & Keller? Because if
18 they're defunct and you don't have to do anything, then
19 why do they hire you at all?

20 MR. LEE: Because of the arguments being made in this
21 case, that they shouldn't be terminated. That they should
22 come back to life. They should have a judgment be allowed
23 to be entered against them.

24 THE COURT: This is a fairly unique set of
25 circumstances and arguments being made, but you've been

1 defending them for a long time in cases where you can make
2 exactly the argument you're making.

3 They're defunct, they're out of business, they're
4 gone, they're dissolved, therefore, we have no
5 responsibility. And that's what you tell the plaintiffs
6 when you tell them here's where you get your money. But
7 the insurance company is paying you to do that why?

8 MR. LEE: Well, they're not paying me to do that.
9 I'm not involved with that. That's --

10 THE COURT: Well, they're paying somebody to do it.

11 MR. LEE: I'm sure they have to pay somebody to do it
12 because there's nobody around to say it except for them.
13 There's no one around to tell the court hey, the plaintiff
14 is suing somebody that is terminated.

15 THE COURT: Well, why would it matter? If they're
16 out of business and can't be sued or anything else, they
17 can get a judgment for 34 million dollars against Payne &
18 Keller the next time one of these cases is tried and you
19 wouldn't have any problem with it up at Travelers. I bet
20 Travelers wouldn't want that --

21 MR. LEE: So long as the termination is upheld and
22 that judgment will be vacated, but it shouldn't get to a
23 judgment because all you do is tell the court Payne &
24 Keller is dissolved. It doesn't exist anymore, so you
25 need to stop court and the court says okay. Because

1 nobody can test it and nobody has for years because nobody
2 thinks anybody ever got defrauded.

3 THE COURT: The problem with that argument as I see
4 it, you have contractual -- and this is why they hired
5 you, so let's quit fooling. That Travelers policy or
6 Aetna policy was written back in the 80s when the exposure
7 occurred --

8 MR. LEE: Yes.

9 THE COURT: -- still applies to those obligations as
10 that occurred because of torts committed at that time.
11 And the fact that they are now no longer in existence
12 won't make any difference because the plaintiff can still
13 collect that insurance. That's why you're still in this
14 case.

15 MR. LEE: And I'm not -- again, fully respecting the
16 court and I don't want to argue with the court and I'll
17 move on as a result of this, but the insurance obligations
18 are to pay judgments or to pay settlements that can only
19 be entered into by a company that exists.

20 It can only be entered against a company that exists.
21 There is no obligation of an insurance company to pay
22 something that can't be incurred. It can't be incurred by
23 our insured. Texas has said so. It can't be incurred.
24 That company cannot incur anymore liabilities after 1989,
25 so there's nothing --

1 THE COURT: They occurred these liabilities before
2 1989. That's the point.

3 MR. LEE: Not these liabilities.

4 THE COURT: Oh, yeah. I mean, this case is not
5 existing in a vacuum. The reason for the Childers case is
6 because -- and the reason you're involved in this case is
7 because they are claiming injuries that occurred during a
8 time when Payne & Keller was alive and had insurance.

9 MR. LEE: Had injuries, yes, not judgments.

10 THE COURT: Well, the judgments relate back to that
11 time in terms of getting money from the insurance company.

12 MR. LEE: The way the Texas statute is written, Your
13 Honor, it says no liability after the dissolution repose
14 period. There's no liability.

15 THE COURT: Well --

16 MR. LEE: And, Your Honor, again, I know that the
17 court cares deeply about people who have been injured and
18 should and the court cares deeply --

19 THE COURT: Don't hang that on me. I was the first
20 member of the South Carolina Supreme Court to ever be
21 primarily a defense lawyer and a member of the South
22 Carolina Defense Lawyers Association. I care about
23 fairness of these proceedings and that's all.

24 MR. LEE: It's not --

25 THE COURT: If they end up getting a judgment for

1 nothing, that's as it should be. don't go hanging it on me
2 that I'm making these determinations because of some
3 concern for the plight of the plaintiffs. That's not it
4 at all. It's what the corporate law requires. That's
5 what drives me.

6 MR. LEE: I meant no disrespect. I actually meant it
7 as a compliment because I would say that about myself and
8 I'm a defense lawyer. You should care and I understand.
9 I understand you're trying to be fair, but the statute
10 says what it says and the facts are what they are.

11 These facts don't come close, Your Honor,
12 respectfully. They can't because there's no known or
13 threatened asbestos claims that Payne & Keller knew about
14 during that time period.

15 Beyond, Your Honor -- and I'll finish up now, beyond
16 the lack of any pleading and the evidence being
17 insufficient, Your Honor, we have also raised a latches
18 and estoppel issue. I'm not going to bother arguing that
19 and I'll be happy to answer any further questions or reply
20 to Ms. McVey if there is any.

21 THE COURT: Thank you, sir.

22 Ms. McVey, any reply?

23 MS. MCVEY: Your Honor, I don't know if you want to
24 hear from the Receiver or not. The only thing I would
25 say --

1 THE COURT: Well, yeah, I do want to hear from the
2 Receiver.

3 Mr. Robinson, are you here for the receiver?

4 MR. ROBINSON: Yes, Your Honor. You want me to come
5 up there or can I talk --

6 THE COURT: No, I'm just speaking as a batter with
7 being on the bench.

8 MR. ROBINSON: I am here for the Receiver, Your
9 Honor.

10 THE COURT: No, you come to the podium. I don't
11 think you can -- Mr. Kinard, that passed right over him.
12 I'm suggesting you need to be right up here on the bench.

13 MR. ROBINSON: I got a big bench, Your Honor.

14 THE COURT: I do that for all my former clerks.

15 MR. ROBINSON: Your Honor, John Robinson here for
16 Peter Protopapas, the Receiver for Payne & Keller. As the
17 Court is aware, the Receiver filed last week a report, the
18 Receiver's report on July 6th, 2023, along with a motion
19 to seal certain exhibits.

20 THE COURT: Yes.

21 MR. ROBINSON: We've also filed a notice of filing of
22 discovery responses, which the receiver is in -- which the
23 receiver received, and we filed a notice of filing of
24 policies of insurance.

25 Your Honor, we did that because, of course, once the

1 plaintiff filed the motion, we wanted to have all of these
2 things in the record as they may be relevant to the
3 court's consideration. And as the court-appointed
4 receiver, we wanted to make that information available to
5 the court and any parties that would be reviewing the
6 information of the receiver.

7 Your Honor, first of all, to be clear that the --
8 we're here today for the plaintiff's motion to
9 reconstitute Payne & Keller under a statute, the Texas
10 statute that allows such action to take place if a Court
11 finds constructive or actual fraud.

12 The carriers are in this case as a defendant in a
13 coverage action. They are here by virtue of them being
14 named as a defendant in a coverage action which the
15 receiver has filed against them. And that is not unusual.
16 The carriers are in a number of receivers --

17 THE COURT: The receiver starts off representing
18 Payne & Keller?

19 MR. ROBINSON: Correct.

20 THE COURT: The receiver then on behalf of Payne &
21 Keller third party, the insurance company in that case
22 assigned coverage?

23 MR. ROBINSON: That's correct.

24 THE COURT: So as Mr. Lee, quite ably began in this
25 matter, it's all in this case?

1 MR. ROBINSON: Correct.

2 THE COURT: Different aspects of this case. One is a
3 different action. It's a third-party action. And then
4 there is the main action, which is the plaintiff's action
5 against Payne & Keller?

6 MR. ROBINSON: Correct. And to that point, Your
7 Honor, the carriers are here today as named defendants in
8 a coverage action.

9 Now, they have filed an objection to the plaintiff
10 is -- to the plaintiff's petition for a motion to -- for a
11 finding of constructive fraud. And they have been
12 speaking on that today, which, you know, certainly, is
13 their right, they're a third party to the case. But I
14 want to at the outset say that the receiver has no
15 interest in being part of continuing any fraud if a fraud
16 has occurred. That is not his role in this case and I
17 don't think the court would instruct him to do so.

18 So what we have is the evidence that has been
19 presented to the court through discovery responses,
20 through public filings by the plaintiff and, also, by what
21 the receiver has found in his own investigation. And as
22 we have said in the report, the receiver has not uncovered
23 any facts that are inconsistent with the facts alleged by
24 the plaintiff or that are inconsistent with the receiver's
25 prior filings in response to the carrier's motion to

1 dissolve.

2 The issue of constructive fraud, as the plaintiff has
3 illustrated through the Texas Supreme Court, says
4 constructive fraud is the breach of some legal or
5 equitable duty, which irrespective of moral guilt, the law
6 declares fraudulent because of its tendency to deceive
7 others, to violate confidence or to injure public
8 interest.

9 Your Honor, based on the information that the
10 receiver has uncovered and based on the filings of the
11 report, the receiver has not received any evidence
12 contrary to the allegations that have been made, including
13 as late as Friday when the carriers filed their objections
14 to the plaintiff's motion, there were no facts that were
15 alleged that were contradicted.

16 So in the sense of where we are today versus where we
17 were back in January, which I want to talk about in a few
18 minutes, the receiver is not in possession nor is any
19 party of evidence not presented to the court of any facts
20 that contradict facts being alleged by the plaintiffs
21 today as it relates to a dissolution.

22 THE COURT: Let me stop you right there. Here's the
23 big pitch as I see it with respect to the dissolution of
24 Payne & Keller. They say at the time Payne & Keller was
25 dissolved, there were no asbestos cases. You say there

1 were 3,000 asbestos cases -- or the plaintiff says there
2 were 3,000 asbestos cases. Help me through that.

3 MR. ROBINSON: So, Your Honor, in our report, we have
4 identified -- and these are in the public record. There
5 is -- the plaintiff -- I want to lead up and answer that
6 question if I may.

7 So let's not forgot that it is the carriers who have
8 brought this issue to the forefront, and it's the carrier
9 who prevailed upon this Court to take -- undertake an
10 in-depth analysis of the Texas business statute when they
11 filed their motion to dismiss and their motion to dissolve
12 the receivership.

13 THE COURT: Right. And in that connection, what
14 they're saying, Mr. Robinson, is when you can't -- they
15 say it's a complete negative. They say at the time that
16 Payne & Keller receivership was -- I mean, dissolution was
17 filed way back when that there were no -- Payne & Keller
18 was not aware of nor were there any asbestos claims
19 pending against Payne & Keller.

20 MR. ROBINSON: Your Honor, I don't think that's true.
21 I think if you look at the bankruptcy case that is cited
22 both in the receiver's motion to -- or response to the
23 carrier's motion to dismiss and if you look at our report,
24 there are a number of cases that were filed in the -- from
25 1983 all the way up through their dissolution in 1986

1 against Payne & Keller.

2 THE COURT: Yeah. Now, here's what they say about
3 that. They say with respect to in re Charter, that's the
4 bankruptcy case, these were personal injury claims arising
5 from refinery work.

6 They were Dioxin, Dioxin, however you pronounce it.
7 They were Dioxin claims, not asbestos claims. So what I'm
8 asking is where are the asbestos claims? Now, what you
9 say in the report here is that they were a defendant in a
10 Texas asbestos case filed by the law firm of Baron & Rudd
11 -- or Budd.

12 MR. ROBINSON: Baron & Budd, yes.

13 THE COURT: Hank Hanniger against Brown and Roof
14 (phonetic).

15 MR. ROBINSON: Yes, Your Honor.

16 THE COURT: And that the case that Payne & Keller --
17 the claims filed against Payne & Keller in that case were
18 dismissed on May 21st, 1986, but by then, asbestos related
19 personal injury claims filled the court's docket in the
20 Eastern district of Texas alone more than 3,000
21 asbestos-related personal injury claims have been filed by
22 1981. See the party of John Mansfield. What I'm asking
23 is this, how many of those -- do any of those involve
24 directly Payne & Keller?

25 MR. ROBINSON: I don't know the answer to that off

1 the top of my head, Your Honor, but --

2 THE COURT: That's what they're asserting. There
3 were asbestos claims around, but there were none against
4 Payne & Keller.

5 MR. ROBINSON: So, Your Honor, we have a couple of
6 things that were going on between 1980 and their
7 dissolution in 1987. There were a number of toxic tort
8 claims that were being brought against Payne & Keller.

9 THE COURT: Dioxin.

10 MR. ROBINSON: And by 1986, they had been involved
11 in, at least, one --

12 THE COURT: Asbestos case.

13 MR. ROBINSON: -- asbestos, which we didn't talk
14 about. During that same time period, we also know that
15 there were thousands of claims pending relating to
16 asbestos.

17 THE COURT: Yeah, but, I mean, asbestos cases, but
18 any of them pertaining to Payne & Keller, do we know?

19 MR. ROBINSON: Again, I'm going to have to -- I'll
20 confer in a minute. I don't know the answer to that. I
21 do know that they filed with the secretary of state's
22 office a statement stating that they had made adequate
23 provisions for claims. We know that is not the case.

24 THE COURT: Well, as I understood what the argument
25 was about this is because there were asbestos claims and

1 because Payne & Keller's leadership knew that yeah,
2 they're fighting actively Dioxin, but they knew they had
3 been dealing with asbestos products and the predict was
4 that there were going to begin to be a whole bunch of
5 them, they changed their name to Premtex and attempted to
6 sell themselves and, ultimately, dissolved. The question
7 is were they making provision for impure asbestos claims?

8 MR. ROBINSON: Well, Your Honor, again, I'm going to
9 have to confer in a moment, but I think the question you
10 raised and the statements that you just said is they were
11 aware of claims and they didn't make adequate provisions
12 for them.

13 The statute from what I understand the plaintiff is
14 moving under is if there was constructive fraud in the
15 dissolution, whatever that fraud might be would be the
16 reason that the court would be reconstituting, whether
17 it's an asbestos claims, dioxin claims.

18 Whatever constructive fraud -- and there's a fairly
19 broad definition under the Texas Supreme Court. Whatever
20 that constructive fraud might be, whatever provisions or
21 liabilities that they were aware of but did not make
22 adequate provisions for, under the Texas statute, as I
23 read it, would allow for the reconstituting of the
24 company.

25 I know we are talking specifically about the asbestos

1 claims that may have been pending at the time in 1986, but
2 I don't think only asbestos claims could support a finding
3 of constructive fraud. Again, once I sit down, I'll try
4 to find out the answer if there are any pending, but I
5 don't think that the Texas statute excludes any other type
6 of claims from the constructive fraud part of the statute.

7 THE COURT: What you're arguing is even if there
8 weren't asbestos claims, if they committed constructive
9 fraud by trying to avoid the dioxin claims or whatever
10 other claims they thought they were going to avoid and not
11 making adequate provisions for the payment of those
12 claims, then they committed constructive fraud.

13 MR. ROBINSON: So, Your Honor, again, the receiver
14 does not want to be and it does not intend to be a part of
15 continuing any fraud if it occurred, whether it's an
16 asbestos claim, a Dioxin claim, we're appointed by the
17 court.

18 THE COURT: I understand.

19 MR. ROBINSON: The receiver is appointed by the court
20 to identify marshal assets. The only reason we're here on
21 this issue is because the plaintiff in January was before
22 -- I'm sorry, the carriers in January were before this
23 court trying to dissolve a corporation. And there was
24 some discussion at that time regarding the different
25 states and the dissolution statutes we talked about, for

1 instance, in Coble, you required a publication. That's
2 not required, I don't believe, in Texas and I believe
3 Mr. Carroll made that point that Texas has a different
4 statute.

5 But one of the differences, which I think they're
6 wanting to pull back from in the Texas statute is that
7 while there's no publication requirement, there is an
8 avenue after the Fifth Circuit, as this court nows,
9 determined that even in the face of fraud, you could not
10 allow a company or a carrier for that company to honor any
11 claims for the company itself and the Texas legislature
12 said no, no, we're not -- that is not what our law should
13 be. So they actually amended it in 2021 to put this exact
14 exception in here, which the plaintiffs knew about. And,
15 again, the receiver brought it up in defense of a motion
16 to dissolve.

17 The Receiver did not affirmatively file a pleading
18 saying there was fraud. They're just saying there is a
19 Texas statute that allows a company to be reconstituted,
20 which based on --

21 THE COURT: And based on what the Plaintiffs are
22 asking you to do, you're asking that you be allowed to do
23 what you need to do so that you can pursue available
24 assets.

25 MR. ROBINSON: Well, that's correct, Your Honor. I

1 want to make sure I understand exactly what you just said.
2 I think what the receiver is saying is that we have not
3 received any evidence to contradict what the filings are
4 in this case that appear to and do meet the statutory
5 requirements of the finding of constructive fraud. And
6 the carriers in their role as the third party defendants
7 or in their role today on behalf of Payne & Keller, they
8 have not presented any evidence contradicting what has
9 been put in the record.

10 I will say I want to -- I've heard it a couple of
11 times and, Your Honor, I just think we probably ought to
12 address it. I've heard a couple of times that there's no
13 connections to South Carolina, Payne & Keller. I will
14 point out that in Exhibit O of the receiver's memorandum
15 in opposition of the carrier's motion, original motion to
16 dismiss, the -- and this is in the record because it was
17 Exhibit O.

18 This is a letter from John Wartharson (phonetic)
19 dated 9/29/73 to -- it says, subject, Payne & Keller, and
20 it was produced in discovery Z-A-I-C P & K 0281. It says,
21 Recently, P and K has been awarded new jobs in South
22 Carolina and Tampa, Florida.

23 Richardson will also be involved in South Carolina
24 because of these new jobs. Please endorse the 9173 to add
25 South Carolina and Florida to P & K's WC and CL policies

1 using the same clause, presumably, for North Carolina.
2 So, Your Honor, we have this incidentally 1973. Again,
3 the --

4 THE COURT: Yes, I was trying to look at this.
5 They're giving insurance coverage for things in South
6 Carolina, that document makes that clear.

7 MR. ROBINSON: Your Honor, then the policies --

8 THE COURT: Of course, you got the regular holders,
9 which is if you domesticate yourself in South Carolina,
10 that is enough and even the US Supreme Court is now
11 agreeing with that. That's been something that's been
12 continued for years.

13 The Supreme Court recently said hey, if you -- as
14 part of a corporation, domesticate yourself in the form of
15 a corporation in a particular state, that's all you need
16 to have presence in the state, to do business in a
17 particular state.

18 MR. ROBINSON: That's correct, Your Honor, and I
19 received some of the filings over the weekend by carriers.
20 I went back and looked at our prior notice of filings of
21 the policies. And in our Receiver's report, we include
22 the Exhibit C, which is an add of imdenible [sic]
23 companies in Rock Hill, South Carolina.

24 THE COURT: Yeah.

25 MR. ROBINSON: So in our notice of filings of

1 policies in the Hartford policy, which is Page 25 of our
2 notice of filing, M and W is named as an additional
3 insurer.

4 In the Hartford broker document, which was Page 47 of
5 that filing, M and W was a holding yard for the equipment.
6 And then in the Travelers policy, interestingly, in 1978,
7 which was filed in our notice of filing on Page 107 of the
8 receiver's policy, M and W is again referenced.

9 So this whole idea that, you know, they just weren't
10 here, I just don't know that the evidence supports that.
11 I know that's not the issue before this court today. The
12 issue before this court is whether there is sufficient
13 evidence -- have the plaintiffs submitted sufficient
14 evidence for a finding of constructive fraud. I think this
15 Court has already determined it has the ability to make
16 that judgment.

17 Importantly, this court did not previously make that
18 judgment at the January hearing and, in fact, said it was
19 not making that judgment and asked the parties to conduct
20 discovery.

21 The Receiver went through the discovery that had been
22 produced, none of which was in the record in January and
23 receiver, I believe, received two additional pieces of
24 discovery and introduced those into evidence through its
25 notice of filings for this Court's consideration. Those

1 issues, as you pointed out, were not decided by this court
2 in January.

3 As we understand what the Plaintiff has done now --
4 incidentally, the responses from the carriers, who have
5 not identified anything in their discovery responses that
6 contradicts the timeline of the allegation of the
7 plaintiff or of the public documents that have been
8 referenced.

9 So with that, Your Honor, I'm going to sit down and
10 see if I can find out the answer to your question unless
11 the court has any other questions.

12 THE COURT: Go right ahead.

13 MR. ROBINSON: Thank you, Your Honor.

14 THE COURT: All right. One moment, Ms. McVey.

15 MR. ROBINSON: Your Honor, in response to the
16 question regarding pending asbestos cases in 1986, we
17 have, as you know, submitted -- well, first of all, there
18 was not one asbestos case prior to 1986. We know that's
19 not true because we've identified the one.

20 Also, Barron and Budd has filed numerous cases as
21 direct action lawsuits in Louisiana, which, incidentally,
22 are still valid claims because of the direct action
23 against carriers in Louisiana. They are one of the few
24 states that have a direct action against the carrier. But
25 those claims are still being defend by Payne & Keller's

1 carriers on the direct action statute that Louisiana has.
2 As for any other specific cases, I'm going to have to go
3 back and take a look at them. Again, Your Honor, I don't
4 think that issue is dispositive of whether there was
5 constructive fraud, but the cases that we have found are
6 in our report.

7 THE COURT: Okay.

8 MR. ROBINSON: All right.

9 THE COURT: Ms. McVey.

10 MS. MCVEY: Your Honor, I'll just be very brief. I
11 don't think there's anything that requires the pending
12 cases to be the exact same injury that Mr. Childers had.
13 I don't think it has to be asbestos, nothing that says
14 that. But, Your Honor, they knew there were going to be
15 asbestos claims.

16 They worked with asbestos. They knew that there's a
17 latency period. It's 1986. It's not like this happened
18 in 1950 where they didn't know about it. They, of course,
19 knew about it. They knew it was coming. OSHA had been
20 passed. I mean, it was out there. It's unreasonable.

21 Mr. Lee is a very good lawyer and he said we know all
22 these claims have been paid. We know they were. They
23 provided for them. There's not one shred of evidence of
24 that in the record. What we do have is a guarantee,
25 right? And the guarantee -- and I'll give it up to Your

1 Honor, but it's in one of the exhibits to our thing.
2 There was a guarantee for \$6 million.

3 THE COURT: That was in the dissolution.

4 MS. MCVEY: This is the guarantee for the parent --
5 you know, they said the parent company is going to take
6 care of all these claims. \$6 million. Well, we know in
7 1987 that the bankruptcy court ordered over one \$1 million
8 against Charter. And Charter had a right to go back after
9 Payne & Keller. And the dissolution requires and they
10 signed off on it -- not they, the insurance carrier, Payne
11 & Keller, all debts, obligations and liabilities of the
12 corporation have been paid, discharged or adequate
13 provision have been made thereof. That didn't happen,
14 Your Honor.

15 They knew there were going to be years and years of
16 asbestos claims coming, and it's not a surprise they
17 didn't have anybody in 1986. There's a long latent
18 period. That's the problem. That's the constructive
19 fraud.

20 Your Honor, we would ask you to make a finding of
21 constructive fraud today. Make that factual finding.
22 There's been no evidence contrary to that. And then ask
23 the Receiver to go to Texas and file with the Secretary of
24 State.

25 THE COURT: Let me ask you this. Biggest piece of

1 heartburn I've got about this whole thing, what to do
2 about the Court of Appeals now.

3 MS. MCVEY: Yes, ma'am.

4 THE COURT: Help me with that.

5 MS. MCVEY: Sure. I believe it's totally separate
6 issues. They filed a motion to dismiss saying the court
7 had dissolved and receivership. That has nothing to do
8 with my case against Payne & Keller. It's totally
9 separate.

10 Payne & Keller is not coming here and saying that to
11 you, the carriers are. I'm not even sure they have
12 standing to do that in this case. I believe it's two
13 separate and distinct issues.

14 THE COURT: So the fact it's a third-party claim in
15 this case, in your view, does not sufficiently integrate
16 with the things against Payne & Keller?

17 MS. MCVEY: Well, they were asking for separate
18 things. Nobody asked you to make a finding of
19 constructive fraud.

20 THE COURT: All I was asked to do was say whether
21 there was sufficient information in the pleadings to
22 justify denying their motion to -- they wanted to dissolve
23 it, get rid of it. And I said we're going to keep on
24 going because there's sufficient allegations here that
25 have to be pursued.

1 MS. MCVEY: Yes, ma'am.

2 THE COURT: But, of course, now, we're dead center on
3 the allegations and if I were to rule for you, then how
4 does that impact the appeal and the denial of the motion
5 to dismiss?

6 MS. MCVEY: I don't think it does affect the appeal.
7 I think the appeal -- either the Court of Appeals is going
8 to say this is not immediately appealable motion to
9 dismiss, but even if they do, that appeal goes on.

10 They may reverse what you ruled and say the
11 receivership shouldn't have been put in place. But for
12 me, it doesn't affect what I am doing in this underlying
13 case. They put forth no evidence, nobody else has other
14 than what we have put forth. It's uncontroverted.

15 THE COURT: But they're appealing, essentially, the
16 failure to -- it's not a motion to dismiss. It's a motion
17 to get rid of the Receiver.

18 MS. MCVEY: Well, it was two things, I think. I'm
19 not even in that case. I understood it to be a motion to
20 dismiss the third party complaint.

21 THE COURT: Right.

22 MS. MCVEY: And a motion to revoke the receivership.

23 THE COURT: Right. And I denied them both.

24 MS. MCVEY: Right. I have nothing to do with -- I
25 mean, what I'm asking you today in my view has nothing to

1 do with those two issues.

2 THE COURT: All right. I understand the argument.

3 MR. LEE: Your Honor, may I very briefly?

4 THE COURT: Certainly. Certainly. I'm struggling.

5 MR. LEE: Honestly, very briefly. The question, Your
6 Honor --

7 THE COURT: I am acutely aware of my role as a
8 circuit court judge. I am not supposed to get outside my
9 guard rails and that's what I don't want to do in
10 connection with something that's pending in front of an
11 appellate court.

12 MR. LEE: It's matters affected by the appeal, not
13 the same case, not the same claim, not the same motion,
14 but --

15 THE COURT: It does say that.

16 MR. LEE: Secondly, Your Honor, with respect to the
17 3,000 claims. I think you saw a shift here because I said
18 there were no asbestos claims pending or threatened
19 against Payne & Keller --

20 THE COURT: That doesn't give me as much heartburn --

21 MR. LEE: Okay.

22 THE COURT: I mean, if the claim is they permitted a
23 fraud on -- because they had all these claims pending,
24 they knew what the future was going to hold because they
25 knew asbestos has a much longer latency period. Dioxin

1 was, man, there was a direct exposure and the claim was
2 made.

3 The asbestos is unique in that, in that it takes so
4 long. The claim is they knew what was in front of them.
5 They were trying to get out of -- they were trying to get
6 out of the Dioxin claims, too, but they knew that the
7 other things was looming.

8 MR. LEE: Well, I would think that Ms. Childers
9 doesn't have standing to say that other people were
10 defrauded because failure to provide for Dioxin claims,
11 which, by the way, they were resolved. No Dioxin claim
12 ever moved to revoke the termination. No Dioxin claim
13 ever sued --

14 THE COURT: She's got a coverage against you people
15 and that's why Ms. Childers wants to keep the receivership
16 going.

17 MR. LEE: Absolutely, but I don't think she has
18 standing to keep the receivership going because of Dioxin
19 claims. And if she doesn't have --

20 THE COURT: She says that is evidence they knew of
21 what the future held.

22 MR. LEE: All right. So --

23 THE COURT: Asbestos was just going to take longer to
24 manifest. They knew if they were having all these Dioxin
25 claims that asbestos was next.

1 MR. LEE: And I understand that and I would posit,
2 Your Honor, respectfully, that if you're going to declare
3 fraud, you have to know they knew. You can't do it
4 through some circumstantial inference of claims against
5 other people and what's going on in the industry.

6 I think fraud requires a much more heightened set of
7 evidence than the connecting of a few dots that are
8 indirect, don't even involve a known or threatened
9 asbestos claim against Payne & Keller at the time. And
10 I'll stop there with that argument, Your Honor.

11 Lastly, with respect to the receiver's discussion --

12 THE COURT: Well, let me just stop you there for a
13 minute. I mean, what the plaintiff is trying to do is to
14 get the receiver to take certain action with respect to
15 Payne & Keller's status of being a dissolved corporation,
16 but whether they are dissolved or not, they still got a
17 coverage claim against you, they say.

18 MR. LEE: Yes, they do.

19 THE COURT: And that's going to continue.

20 MR. LEE: Well, it will continue if Payne & Keller
21 can be held liable. If Payne & Keller can't be held
22 liable, there's no reason to ever bother the carrier. And
23 they can't be held liable because it's revoked and under
24 Texas law, they can't. There is nothing to do.

25 THE COURT: Well, how does the 2021 amendment affect

1 that?

2 MR. LEE: Well, the 2021 amendment allows for -- as
3 of 2021 under the Texas constitution for folks to attempt
4 to revoke termination.

5 THE COURT: Which is exactly why they're doing this.

6 MR. LEE: And under the Texas constitution, having
7 the statute of repose already passed, it is
8 unconstitutional for them to allow --

9 THE COURT: That hasn't been determined.

10 MR. LEE: Well, Your Honor actually ruled against us
11 on that and that's going to be up on appeal. That's one
12 of the newest issues that's going to be up on appeal.
13 That's going to be a decision that are matters affecting
14 that appeal. Your Honor wrote in your order that you
15 disagreed with us, that they could apply it retroactively.
16 The appellate court is going to have to decide whether
17 that's right or wrong. It's going to decide that matter
18 for this purpose. And it's going to decide that matter
19 for the prior purpose, which is the receivership. Again,
20 no disrespect, Your Honor, but that's an issue that's
21 going to be dead center because you decided it.

22 Your Honor, lastly, with respect to the issue of
23 whether Payne & Keller was in South Carolina.

24 THE COURT: You know, you're just not going to change
25 my mind on that.

1 MR. LEE: Well --

2 THE COURT: They were domesticated here. They had a
3 subsidiary or a live corporation that had advisements all
4 over Rock Hill.

5 MR. LEE: I just want to explain, Your Honor, we
6 didn't know that until Friday. The receiver did not tell
7 us that until Friday.

8 THE COURT: Okay.

9 MR. LEE: What the receiver did tell us is with
10 respect to this plaintiff, who is the one making this
11 motion. That with respect to this plaintiff, they have
12 been on a diligent search and there is no evidence with
13 respect to this plaintiff there is any proximity, product
14 ID at all with respect to any of the job sites he pleads.

15 Now, I know Your Honor tends to wait till right
16 before trial to see what gets developed. And I understand
17 that in the context of a motion for summary judgment, what
18 I'll call prior, but here, it matters to standing. Here,
19 it matters as to whether a plaintiff can go so far as to
20 ask this court to revoke termination of a Texas company
21 without any evidence that this plaintiff ever came in
22 contact with this company.

23 There can't be fraud if the plaintiff wasn't harmed
24 by this company. And there's not a shred of evidence and
25 the receiver says there isn't any, affirmatively says

1 there isn't any. So we would ask that that issue be
2 decided or dealt with now because it decides standing for
3 this plaintiff.

4 THE COURT: I feel you want me to decide some things
5 and other things, not at all.

6 MS. MCVEY: Your Honor, sorry to interrupt, but I
7 don't know what he's reading from for that information.

8 MR. LEE: It's from Payne & Keller's responses and
9 actions to plaintiff's first amended notice of 30(b)(6)
10 deposition of Payne & Keller Company and subpoena duces
11 tecum. It was sent to the court this morning by
12 Mr. Carroll, or maybe last night, I'm not sure, and served
13 on others. It's page 28.

14 THE COURT: Hang on a minute. Don't speak so
15 quickly.

16 MS. MCVEY: Your Honor, it's Payne & Keller's
17 objections.

18 THE COURT: Let me look at it.

19 MR. LEE: It's on Page --

20 THE COURT: I think Todd sent it.

21 MR. LEE: It was cited in our papers.

22 THE COURT: No, this was something different.

23 MS. MCVEY: I sent this yesterday evening. It's a
24 separate email.

25 THE COURT: Twenty-eight.

1 MR. LEE: The second full paragraph, second sentence.

2 THE COURT: Hang on.

3 (Pause.)

4 I'm not much persuaded by the merits arguments,
5 Mr. Lee, I'll be honest with you, but I am still concerned
6 about the timing of granting this thing in the face of
7 this appeal.

8 So I am going to hold my ruling in abeyance until we
9 hear from the Court of Appeals. In the meantime, I am
10 going to cogitate upon some of these other matters
11 Mr. Carroll has sent me and kind of look back over the
12 receiver's report in the light of that.

13 I'll be very candid with you. I'm not much persuaded
14 by the merits of what's being argued on your behalf, but I
15 don't want to step beyond my boundaries with the Court of
16 Appeals. That's what's got me held up. So I am going to
17 hold it in any abeyance.

18 I would really appreciate if y'all would keep me
19 advised, both sides, about what's happening with that
20 because that's really more -- who is going to be most
21 directly impacted about that, not the plaintiffs. They're
22 more the receiver and the insurance company.

23 MR. LEE: We'll be happy to let you know immediately.

24 THE COURT: So you guys need to keep me posted as to
25 what is going on. And I don't mean when something final

1 comes down. I want to know all along the line. I would
2 appreciate y'all updating me with filings that have been
3 made in this appeal so that I understand better exactly
4 what's going on. That's another thing that I hadn't
5 thought to do was to sit down and look over the Court of
6 Appeals record in this thing, but I ought to do that.
7 Before I decide, I'm going to plunder and make these
8 rulings.

9 So that's what I'm going to do. I don't normally do
10 that. I apologize, y'all have the right to expect me to
11 rule from the bench like I ordinarily do, but I'm
12 concerned about it.

13 MR. ROBINSON: Your Honor, on behalf of the receiver,
14 if I may, the document that was e-mailed to you last
15 night -- of course, this came up in the January hearing.
16 It was mistakenly represented in the January hearing that
17 that document was prepared by a lawyer hired by
18 Mr. Protopapas. The documents that they are referring to,
19 of course, are prepared by lawyers they hired.

20 THE COURT: I understand. And I think that was an
21 honest mistake, apparently.

22 MR. ROBINSON: Right, but this is the same document
23 that they're allowing --

24 THE COURT: Yes, that's kind of what I thought when I
25 looked at it. I got that other thing marked from my other

1 hearings.

2 MR. ROBINSON: Your Honor, also, I just want for the
3 record, there was a reference that they didn't know about
4 this until Friday, their work in South Carolina. Of
5 course, these were their documents, some of which I was
6 referring to. The Travelers policy --

7 THE COURT: Yeah, but I understand that Mr. Robinson
8 and you're making the very correct argument in that
9 regard, no doubt about it. But there's been so much back
10 and forth between the parties and this discovery is
11 exactly what I anticipated and the reason why I
12 anticipated it, very strange and bizarre.

13 What all this is about is discovery and forth and,
14 ultimately, we'll get back to where we can rule. That's
15 why I have a little heartburn about whether there's
16 something else out there that will impact my ruling with
17 regard to Ms. McVey's motion.

18 Mr. Sawyer, now, you're going to come in here as a
19 complete third-party to everything?

20 MR. SAWYER: We're joining in the motions, Your
21 Honor. Everything is going in the appeal. So we were
22 involved, Your Honor. Just for point of clarification in
23 terms of --

24 THE COURT: Hang on, it's not fair for you to just
25 stand up. When you get to the podium, you tell them who

1 you are and who you're representing.

2 MR. SAWYER: Thank you, Your Honor. Wesley Sawyer,
3 and I represent National Union Fire Insurance Company and
4 five other carriers. They're all listed on my card. For
5 the ease of time, I'll do it in a way, Your Honor.

6 Just for point of clarification, the impact holding
7 pending a ruling by the court, will there be another
8 hearing. I have points I wanted to put on the record, but
9 I don't want to waste the court's time if we're going to
10 have the Court of Appeals.

11 THE COURT: Yes, I should say that and make that
12 clear, that this is an adjourned proceeding, not a --

13 MR. SAWYER: We're not closing the book.

14 THE COURT: Or a paused proceeding, I guess you could
15 say. I am not declaring the hearing at an end. I am
16 pausing it or adjourning it until I receive further
17 information.

18 Right now, my main concern is the Court of Appeals
19 and my authority. But if there are other things from the
20 plaintiff or from the insurance companies with respect to
21 what they're trying to do right now or from the receiver,
22 for that matter, I will certainly take those into account.
23 But I will reconvene these proceedings at an earlier time
24 if what I'm submitted from the Court of Appeals dictates
25 so or, at least, when the Court of Appeals has decided

1 whether they're going to do it.

2 MS. MCVEY: Your Honor, I would just ask --

3 THE COURT: I'll say the thing that gives me great
4 heartburn about that, I don't think they have any business
5 doing this. And I know what the very next thing that's
6 going to happen, they rule against you, y'all are going to
7 go to the Supreme Court.

8 I've already said several times on the record and
9 they're tired of this, taking what is clearly unappealable
10 orders and delaying proceedings in these complex cases for
11 that reason. So I just tell you, I'm trying to be
12 differential to my appellate brothers and sisters, but
13 it's not easy.

14 MS. MCVEY: Your Honor, I would just state our
15 frustration with these -- we believe the interrogatory
16 appeal is slowing down my case.

17 THE COURT: Yeah, slowing down my docket.

18 MS. MCVEY: It's pretty frustrating. The other point
19 I would make is Mr. Sawyer and others only filed joinders
20 to Travelers motions. If he has other points he wants to
21 make, he ought to file something so I know what they are.

22 THE COURT: I agree with that completely.

23 MR. SAWYER: Your Honor, it would have been points
24 that would have piggy backed part of what was discussed in
25 the briefs and then addressing the Mallory case, which was

1 not addressed at all until the arguments this morning.

2 So --

3 THE COURT: Mr. Sawyer, you knew what was going on
4 and you should have filed something.

5 MR. SAWYER: That's fine. I had no idea that Mallory
6 would come up, Your Honor. And I apologize for that.

7 THE COURT: Well, it's like a lying dog over there.
8 A: I got a real interest in this thing. Y'all don't have
9 a ruling.

10 MR. SAWYER: Well, we did argue, also, at the other
11 hearing, too. I stood up and make points in that argument
12 as well, Your Honor.

13 THE COURT: You look at that chart of existing
14 insurance, it's all over it.

15 MR. SAWYER: I understand. Thank you, Your Honor.

16 THE COURT: Thank you.

17 MR. LEE: Thank you for your time, Your Honor.

18 (Whereupon, the proceedings were concluded.)
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25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Richland County, South Carolina, on the 10th day of July,
2023.

September 6, 2023

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

EXHIBIT 2

Part 1

EXHIBIT 2

Part 1

PURCHASE AGREEMENT

This Agreement is made and entered into at Pasadena, California on October 7, 1986 by and among PAYNE & KELLER COMPANY, a Texas corporation and BAYOU-MAINTENANCE, INC., a Louisiana corporation (hereinafter individually and collectively referred to as "Sellers"), DUMEZ USA a French society and PAYNE & KELLER CORPORATION, a Texas corporation, (collectively "Shareholder") and JACOBS ENGINEERING GROUP INC., a California corporation ("Jacobs").

In consideration of the mutual benefits to be derived by the several parties hereto and the mutual agreements herein contained, the parties hereby mutually covenant and agree with each other as follows:

ARTICLE ONE: SALE AND TRANSFER OF ASSETS
OF SELLERS; PAYMENT BY PURCHASER;
AND CERTAIN RELATED MATTERS

1.1. Sellers agree that they will sell, transfer, convey and deliver to Jacobs (or to one or more subsidiaries of Jacobs as Jacobs may designate by written notice given within ten days of the execution of this Agreement (the "designated subsidiaries"), Jacobs and the designated subsidiaries being hereinafter collectively referred to as the "Purchaser") at the closing provided for in Paragraph 8 hereof (hereinafter called the "Closing") the following:

(i) The contracts listed on Schedule A (the "Assigned Contracts") for a price equal to the net difference between (A) the dollar amount of the accounts receivable listed on Schedule C (the "Accounts Receivable") of Sellers with respect to such Assigned Contracts and (B) the dollar amount of the accounts payable listed on Schedule D (the "Accounts Payable") of Sellers with respect to such Assigned Contracts (said net amount being referred to herein as the "Net Receivables"), together with all of Sellers' right, title and interest in and to such Accounts Receivable; and

(ii) The machinery and equipment listed on Schedule B (the "Purchased Assets") for a price of \$725,000. If, prior to the 45th day following the Closing Date, Purchaser's physical inventory of the Purchased Assets reveals that the amount or nature of the Purchased Assets is in Purchaser's opinion substantially reduced from that listed in Schedule B,

then the parties shall negotiate in good faith for a reduction in the \$725,000 purchase price. However, there shall be no increase in the \$725,000 purchase price, irrespective of the results of said physical inventory. "Substantially reduced" means

(A) 20% or more of the Purchased Assets with an original cost of \$1,000 or more but less than \$10,000 are unaccounted for; or

(B) any item with an original cost of \$10,000 or more is unaccounted for.

Substantially reduced has no application to the operating condition of the Purchased Assets. Furthermore, all claims for reduction of the purchase price for the Purchased Assets must be made prior to the 75th day following the Closing Date.

Accounts Payable and Accounts Receivable shall be determined as of the close of business on the business day immediately preceding the Closing Date and the dollar amount of the Accounts Receivable and Accounts Payable with respect to the Assigned Contracts will be determined within 30 days after the Closing. Such sale, conveyance, transfer and delivery shall be free and clear of all liabilities, obligations, liens and encumbrances, except the Accounts Payable.

1.2. Purchaser agrees to deliver to Sellers at the Closing the following:

(i) Certified or official bank checks in Los Angeles Clearing House funds or wire transfer funds payable to the order of Sellers in an aggregate sum equal to (A) the lesser of (i) \$2,000,000 or (ii) the amount of the Net Receivables, plus (B) the sum of \$725,000. In the event Seller's chief financial officer is unable to certify at Closing that the difference between the dollar amount of the receivables listed on Schedule C and the dollar amount of accounts payable listed on Schedule D in his opinion equals or exceeds \$2,000,000, then the amount payable at Closing under Paragraph 1.2(i)(A) shall be Seller's best estimate of the Net Receivables as certified to by Sellers' Chief Financial Officer. The balance of the purchase price, if any there be, shall be determined and paid in accordance with the provisions of 1.3(i) hereof. The Purchase Price shall be allocated among Sellers in accordance with written instructions to be received from Sellers at least two business days prior to the Closing; and

(ii) Duly executed Assumption Agreements in the form attached hereto as Annex I.

1.3. (i) Purchaser may, at its sole election, assign to Sellers any Accounts Receivable that have not been collected as of such 90th day following the Closing Date, and the amount of such Accounts Receivable so reassigned shall further reduce Net Receivables. If Net Receivables less (A) any reduction under Paragraph 1.1(ii) in the purchase price paid for the Purchased Assets under Paragraph 1.2(i)(B) and (B) the amount of any Accounts Receivable reassigned by Purchaser to Sellers are in excess of \$2,000,000, then Purchaser shall pay such excess to Sellers on the 90th day following the Closing Date. If Net Receivables less (A) any reduction under Paragraph 1.1(ii) in the purchase price paid for the Purchased Assets under Paragraph 1.2(i)(B) and (B) the amount of any Accounts Receivable reassigned by Purchaser to Sellers are less than the amount paid by Purchaser to Seller on Closing under Paragraph 2.1(i)(A), then Sellers shall pay Purchaser the amount of such difference on the 90th day following the Closing Date. Amounts due under this Paragraph 1.3(i) shall not bear interest. The balance due from one party to the other under this Paragraph 1.3(i) shall be payable by certified or official bank check in Los Angeles Clearing House funds or by wire transfer and, in the case of a payment by Purchaser to Sellers, shall be allocated among Sellers in accordance with written instructions to be delivered by Sellers to Purchaser not less than two business days prior to such 90th day following the Closing. If the amount owed by any party is in dispute, he shall pay the portion thereof which is not in dispute.

(ii) At the Closing, Sellers shall deliver to Purchaser or its designated subsidiaries Bills of Sale substantially in the form of Annex II hereto and all such instruments of conveyance, assignment and transfer as shall, in the opinion of Messrs. Barton, Klugman & Oetting, counsel for Purchaser, be effective to vest in Purchaser, or its designated subsidiaries, marketable title to the assets to be sold, conveyed, transferred and delivered hereunder.

(iii) Concurrently with the Closing, Sellers shall deliver to Purchaser all such contracts, drawings, designs, commitments, books and records and other data as Purchaser may reasonably require (including safety and workmen's compensation data and any data relating to accidents or occurrences) in order to perform the Assigned Contracts and shall put Purchaser and its designated subsidiaries in actual possession and operating control of the Purchased Assets.

(iv) Concurrently with the Closing, Sellers shall turn over possession to Purchaser of its bank "lock box" and permit Purchaser to collect all accounts receivable payments. Purchaser shall promptly remit to Sellers any receipts which do not represent payments of Accounts Receivable under the Assigned Contracts. At Sellers' request, Purchaser shall permit representatives of Sellers to be present at the opening of said receipts, and Purchaser shall at Seller's request prepare an accounting of all payments received.

(v) Should Sellers receive payments on any Accounts Receivable after Closing (except on Accounts Receivable reassigned to Sellers under Paragraph 1.3(i) for payments received after such reassignment), then Sellers shall immediately forward such payments to Purchaser.

1.4. At the Closing, Sellers and Purchaser shall enter into a short-term lease for a portion of Sellers' Houston, Texas real property, substantially in the form of Annex III hereto.

1.5. Sellers, Purchaser and Shareholder shall take all such corporate action, including the calling and holding of all meetings of shareholders and boards of directors required by any applicable law for the purpose of considering and approving the execution, delivery and performance of this Agreement on the respective parts of Sellers, Purchaser and Shareholder.

1.6. In order to effectuate the sales, conveyances, transfers and deliveries contemplated by Section 1.1 hereof, Sellers and Shareholder shall from time to time following the Closing execute and deliver at the request of Purchaser all such further instruments of conveyance, assignment and further assurances as may be reasonably necessary or appropriate in order to vest in and confirm to Purchaser good and marketable title and the right to use and enjoy, free of any liens or encumbrances, the Assigned Contracts and the Purchased Assets.

1.7. Sellers and Purchaser hereby agree that the Assigned Contracts and the Purchased Assets constitute substantially all of the operating assets of Payne & Keller Company and Bayou-Maintenance Inc., and each of Sellers agree that it is assigning all rights to its experience rating for Texas unemployment insurance purposes to Purchaser, to the extent such experience rating is assignable and otherwise permitted by applicable laws, rules and regulations, and agrees to cooperate and to provide

evidence with respect to such assignment. Sellers and Shareholder agree to execute any and all documents reasonably necessary to enable Purchaser to acquire all employment tax, contributions and benefit bases under all applicable federal and state laws of Sellers; provided, however, Sellers make no representations that they or any of them can effectively transfer said bases to Purchaser under applicable federal and state laws affecting Sellers.

1.8. Closing of the transactions contemplated by this Agreement will take place at 9:00 A.M., local time then in effect, on ~~September 30, 1986~~ at the law offices of Sullivan, King and Sabom, 5005 Woodway, Suite 300, Houston, Texas 77056, or at such other time, date and place as shall be mutually agreed upon by the parties (the "Closing Date"). In the event that the Closing shall not have occurred by October 31, 1986 either Sellers and Shareholder on the one hand or Purchaser on the other hand shall have the right, without liability to the other parties hereto, to terminate and cancel this Agreement in its entirety.

ARTICLE TWO: REPRESENTATIONS AND WARRANTIES
OF SELLERS AND SHAREHOLDER

Sellers and Shareholder shall furnish to Purchaser the exhibits specified below. All such exhibits shall either be attached hereto or delivered concurrently with the signing hereof; in either event all such exhibits shall be suitably marked for identification and shall be deemed incorporated herein. Sellers and Shareholder hereby jointly and severally warrant and represent to and covenant with Purchaser as follows:

2.1. Each of Sellers and Shareholder is a corporation duly incorporated, validly existing and in good standing under the laws of the state of its incorporation as set forth in the preamble to this Agreement; has all necessary corporate powers to own its properties and to carry on its business as now conducted and operated by it and is duly qualified to do intrastate business and is in good standing in each jurisdiction in which failure to so qualify would have a material and adverse effect on its business or financial condition.

2.2. All of the issued and outstanding stock of Dumez USA is owned by Dumez, S.A., a French societe anonyme; all of the issued and outstanding stock of Payne & Keller Corporation is owned by Dumez USA; and all of the issued and outstanding stock of Payne & Keller Company and of Bayou-Maintenance Inc. is owned by Payne & Keller Corporation. In each case the respective owners of such shares as set forth in the prior sentence are the only

October 7, 1986
Effective as of
the close of
Sellers' business
on October 5, 1986



persons entitled to vote the shares of the corporations whose shares they hold, and no holder of such shares has granted any right to vote any of such shares to any other person. Each of Sellers and Shareholder agrees to vote all of such shares in favor of the transactions contemplated by this Agreement.

2.3. Each of Sellers and Shareholder have full power to carry out their obligations under this Agreement subject to obtaining the necessary consents from third persons or entities.

2.4. Each of Sellers has within the times and in the manner prescribed by law filed all federal, state and local tax returns required by law and has paid when due or accrued on its books all taxes, assessments and penalties shown to be due and payable thereon. There are no pending disputes involving Sellers or any of them as to such taxes.

2.5. The job records relating to the Assigned Contracts as shown to representatives of Purchaser and as to be delivered hereunder accurately set forth in all material respects all transactions pertaining to the Assigned Contracts and do not omit to set forth any such transactions.

2.6. The Accounts Receivable to be assigned to Purchaser hereunder arose from valid transactions in the ordinary course of business and are collectible at their full amounts. Except as disclosed in Exhibit 2.6, there are no arrangements for extended payment terms with respect to such Accounts Receivable.

2.7. Exhibit 2.7 to this Agreement sets forth a listing of each of the Assigned Contracts or a written description of such Assigned Contracts where such Assigned Contract is oral, signed in such case by a representative of Sellers. Copies of Assigned Contracts will be available to Purchaser for inspection. Except as disclosed in Exhibit 2.7, none of the Assigned Contracts requires the maintenance of any payment or performance bonds by Sellers or any of them or will require the maintenance of such bonds by Purchaser or its designated subsidiaries nor are there any documents executed by Shareholder, Dumez, S.A. or any of Sellers which guarantee, directly or indirectly, the performance of any of Sellers under any of the Assigned Contracts.

2.8. Except as disclosed in Exhibit 2.8, there are no patents, trademarks or trade secrets pertaining to the businesses of Sellers. Neither of Sellers nor Shareholder has granted, and neither shall grant, to any other person, firm or corporation the right to use, or will

after the Closing Date use, the words "Payne & Keller" or "Bayou Maintenance" or any portion thereof as a trademark, trade name, corporate name or firm name or any portion thereof or in any other manner.

2.9. At Closing Sellers will have good and marketable title to all of the Purchased Assets free and clear of restrictions on or conditions to transfer or assignment. At Closing all Purchased Assets will be free and clear of all security interests, liens, pledges, charges, encumbrances, equities, or claims, conditions or restrictions. All of the Purchased Assets will be transferred to Purchaser in their "as is, where is" condition.

2.10. There is no pending, or to the best of the knowledge of Sellers and Shareholder, any threatened labor dispute, strike or work stoppage affecting the business of Sellers or any of them.

2.11. There is no default or event that with notice or lapse of time, or both, would constitute a default by any party under any of the Assigned Contracts. Neither any of Sellers nor Shareholder has received any notice that any party to any of the Assigned Contracts intends to cancel or terminate any of such Assigned Contracts, to exercise or not exercise any options under any of them, or to make any claims with respect to them.

2.12. Each of Sellers and Shareholder, to the best of their knowledge, has complied with, in all material respects, and is not in material violation of, all applicable treaties, statutes, laws and regulations affecting its properties or the operation of its business. Without limiting the generality of the foregoing, neither any of Sellers, Shareholder nor any employee nor agent of any of Sellers or Shareholder has during the past four years made any payments to or received any payments from any person, firm, corporation or governmental or other agency that would have been required to be disclosed under applicable disclosure policies of the Securities and Exchange Commission if Sellers or Shareholder had then been registered under Section 12 of the Securities and Exchange Act of 1934, as amended, or that would be unlawful under the Foreign Corrupt Practices Act, 15 U.S.C. Section 78dd, and, since December 31, 1981 neither Sellers, Shareholder nor any officer, director, employee nor, to the best of their knowledge, any agent of any of them has made or had outstanding any offer, promise to pay or authorization of the payment of money or anything of value that would be in violation of said Act.

2.13. Except as set forth in Exhibit 2.13, there is no suit, action, arbitration or legal, administrative or other proceeding or governmental investigation pending or, to the best of their knowledge threatened, against Sellers or Shareholder adversely affecting in any way the Assigned Contracts or the Purchased Assets, the defense of which have not been unconditionally accepted by Seller's insurance carrier. Sellers have furnished or made available to Purchaser copies of all relevant court papers and other documents relating to any of the matters set forth in Exhibit 2.13 and a list of matters unconditionally accepted by Seller's insurance carrier. ~~Said list shall include client name, project involved, notice of claim, date of occurrence, amount claimed and description of incident.~~ Neither Sellers nor Shareholder are in default with respect to any order, writ, injunction or decree of any federal, state, local or foreign court, department, agency or instrumentality, and except as set forth in Exhibit 2.13, neither any of Sellers nor Shareholder is presently engaged in any legal action to recover moneys due to it or damages sustained by it for any amount in excess of \$25,000.

2.14. Except as set forth in Exhibit 2.14, the consummation of the transactions contemplated by this Agreement will not result in or constitute any of the following: (i) a breach of any term or provision of this Agreement; (ii) a default or event that, with notice or lapse of time or both, would be a default, breach or violation of any lease, license, promissory note, conditional sales agreement, indenture, mortgage, deed of trust or other agreement or instrument to which any Seller or Shareholder is a party or by which any of them or the property of any of them is encumbered or bound or of the articles or certificates of incorporation or bylaws of any of them, which default, breach or violation would have a material and adverse effect on the business or assets of Sellers or Shareholder or any of them being sold and conveyed hereunder; (iii) an event that would prevent any party from terminating any agreement without violation of such agreement or to accelerate the maturity of any indebtedness or other obligation of any of Sellers or Shareholder; or (iv) the creation or imposition of any lien, charge or encumbrance on any of the properties of Sellers or Shareholder or any of them being sold and conveyed hereunder.

2.15. None of the representations and warranties made by Sellers or Shareholder herein or made in any exhibit, certificate, schedule or memorandum furnished or to be furnished by them or on their behalf contains or will contain any material untrue statement or omit any fact the omission of which would be materially misleading.

ARTICLE THREE: REPRESENTATIONS AND WARRANTIES
OF PURCHASER

Purchaser warrants and represents to and covenants with Sellers and Shareholder as follows:

3.1. Jacobs and its designated subsidiaries are corporations duly incorporated, validly existing and in good standing under the laws of their respective states of incorporation, have all necessary powers to own properties and to carry on business as now conducted and operated and are duly qualified to do intrastate business and are in good standing in all of the jurisdictions in which the failure so to qualify would have a material and adverse effect on their business or financial condition.

3.2. The execution, delivery and performance of this Agreement by Purchaser and the consummation of the transactions contemplated herein have been duly authorized by all requisite corporate action on the part of Purchaser. This Agreement is, and any documents or instruments delivered on or after the Closing Date pursuant hereto will be legal, valid and binding obligations of Purchaser enforceable in accordance with their terms (except insofar as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally).

3.3. Neither the execution and delivery of this Agreement, nor compliance with the terms and provisions of this Agreement, on the part of Purchaser will cause Purchaser to breach any statute, ordinance or regulation of any governmental authority, domestic or foreign, or will conflict with or result in a breach of any of the terms, conditions or provisions of any agreement or instrument to which Purchaser is a party, or by which it may be bound, or constitute a default thereunder.

ARTICLE FOUR: OBLIGATIONS OF SELLERS AND
SHAREHOLDER BEFORE CLOSING

Sellers and Shareholder jointly and severally covenant that from the date of this Agreement until the Closing:

4.1. Purchaser and its counsel, accountants and other representatives shall have full access during normal business hours to all books, accounts, records, contracts and documents of or relating to the Assigned Contracts and the Purchased Assets. Sellers and Shareholder shall furnish or cause to be furnished to Purchaser and its

representatives all data and information concerning such matters that may reasonably be requested.

4.2. Sellers shall carry on their respective businesses and activities diligently and in substantially the same manner as previously carried out and shall not make or institute any unusual or novel methods of operation, purchase, sale, lease, management or accounting that would vary materially from those methods used by them as of the date of this Agreement.

4.3. Sellers shall continue to carry their existing insurance, subject to variations and amounts required by the ordinary operations of their businesses.

4.4. As soon as reasonably practical after the execution and delivery of this Agreement, and in any event on or before the Closing Date and as a condition precedent to the obligations of Sellers or Purchaser to consummate the transactions contemplated by this Agreement, Sellers shall use their best efforts to obtain the written consents in the form of Annexes IV and V hereto of all persons whose consents to the assignment of the Assigned Contracts are required under the terms thereof (a list of such persons is set forth on Exhibit 4.4) and shall furnish to Purchaser executed copies of such consents. Failure of Sellers to obtain said consents for any reason shall not constitute a breach of this Agreement, the securing of consents being conditions precedent to the obligations to consummate the transactions contemplated herein. The forms of consent to be used are set forth in Annexes IV and V hereto or such other form of consent as may be acceptable to Purchaser. Purchaser shall exercise its best efforts and execute and deliver any documents and instruments that may be reasonably required to assist in obtaining such consents; provided, however, that Purchaser shall not be obligated under this paragraph to execute any guaranty, assumption of liability or other document or instrument requiring it to assume any obligations not contemplated by this Agreement.

ARTICLE FIVE: OBLIGATIONS OF PURCHASER BEFORE CLOSING .

5.1. Purchaser agrees that, until the Closing has been consummated, Purchaser and its officers, directors and other representatives will hold in strict confidence any confidential data or information regarding Sellers or Shareholder obtained in connection with this transaction or Agreement. If the transactions contemplated by this Agreement are not consummated, then Purchaser will return to Sellers and Shareholder all such data and information furnished hereunder and not disclose such information to

third parties. Purchaser shall use reasonable efforts not to consciously use any such information for its own purposes to the detriment of Sellers.

ARTICLE SIX: CONDITIONS PRECEDENT TO THE
OBLIGATIONS OF PURCHASER TO
PERFORM

The obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject to the satisfaction on the Closing Date of all of the conditions set forth in 4.4 and Article Six, unless otherwise waived by Purchaser in writing prior to Closing, in which event the waived conditions will be deemed satisfied.

6.1. Except as otherwise permitted by this Agreement, all representations and warranties by Sellers and Shareholder in this Agreement or in any written statement that shall be delivered to Purchaser by any of them under this Agreement shall be true in all material respects on and as of the Closing Date as though made at that time.

6.2. Sellers and Shareholder shall have performed, satisfied and complied in all material respects with all covenants, agreements and conditions that they are required by this Agreement to perform, satisfy or comply with on or before the Closing Date.

6.3. There shall not have been any materially adverse change in the operations of Sellers or Shareholder or any of them, and neither Sellers, Shareholder nor any of them shall have sustained any material loss or other event, whether or not insured, that materially and adversely affects its ability to conduct its operations, to perform the Assigned Contracts or to perform this Agreement; provided, however, operating losses sustained by Sellers shall not be deemed a material adverse change so long as Sellers can properly conduct their operation in the ordinary course of business.

6.4. Purchaser shall have received a certificate, dated the Closing Date and signed and verified by the chief executive officer of each of Sellers and Shareholder certifying in such detail as Purchaser and its counsel may reasonably request that the conditions specified in Paragraphs 6.1, 6.2 and 6.3 have been fulfilled.

6.5. Purchaser shall have received from Messrs. Sullivan, King and Sabom, counsel for Sellers and Shareholder, a letter dated the Closing Date in form and substance reasonably satisfactory to Purchaser to the effect that:

(i) Each of Sellers and Shareholder is a corporation incorporated and existing and in good standing under the laws of the respective jurisdiction of its incorporation and has all necessary corporate power to own its properties as now owned and to operate its business as now operated in those foreign jurisdictions in which it is presently doing business;

(ii) Each of Sellers and Shareholder has the corporate power and authority to make, execute, deliver and perform this Agreement; this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by the boards of directors and shareholders of the respective Sellers and Shareholder in accordance with all applicable laws, rules and regulations; and, except insofar as enforcement thereof may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights and except as specific performance or other equitable remedies may not be available in certain circumstances, this Agreement constitutes the valid, binding and enforceable obligation of Sellers and Shareholder;

(iii) Dumez USA is the record and beneficial owner of all of the issued and outstanding shares of Payne & Keller Corporation; and Payne & Keller Corporation is the record owner of all of the issued and outstanding shares of Payne & Keller Company and of Bayou-Maintenance, Inc., and to the best of the knowledge of said counsel such respective shareholders are the only persons entitled to vote any of such shares;

(iv) Neither the execution nor the delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement will:

(a) constitute a violation or breach of the articles of incorporation or bylaws of any of Sellers or Shareholder; or

(b) conflict with or result in a breach of any of the terms, conditions or provisions of the Assigned Contracts or any agreement to which Sellers or Shareholder is a party and which is known to such counsel; or

(c) constitute an event that would permit any party to any such agreement to terminate or accelerate the maturity of any indebtedness or other obligation of Sellers or Shareholder in accordance with the terms thereof

and thereby materially and adversely impair Sellers' and Shareholder's powers to consummate the transactions contemplated under the terms of this Agreement; or

(d) constitute an event that would result in the creation or imposition of any lien, charge or encumbrance on any asset of Sellers or Shareholder to be transferred, sold or assigned pursuant hereto.

(v) Based solely upon counsel's review of reports of appropriate UCC filing officers, such additional procedures as may be reasonable and customary in the State of Louisiana, and the minute books of Sellers and Shareholder, there are no security interests, liens, charges or encumbrances against the Purchased Assets;

(vi) The instruments of conveyance, transfer and assignment executed and delivered by Sellers and Shareholder under this Agreement at the Closing are duly and properly authorized, executed and delivered and are binding and effective against Sellers and Shareholder, respectively, in accordance with their terms.

The letter of such counsel may, at counsel's election, recite any or all of the procedures followed by counsel in forming any or all of the opinions expressed therein. In rendering his opinions, counsel may rely upon certificates of governmental authorities and of officers of Sellers and Shareholder and upon opinions of associate counsel and counsel authorized to practice law in Louisiana and in France.

6.6. There shall have been delivered to Purchaser the Guaranty of Dumez, S.A. in the form attached hereto as Annex VI and an agreement by Dumez, S.A. not to compete with Purchaser in the field of contract maintenance in the form attached hereto as Annex VII. These documents shall be duly executed before a notary public whose signature shall be authenticated by a United States consul.

6.7. No action, suit or proceeding before any court or governmental body or authority pertaining to the transactions contemplated by this Agreement or to their consummation shall have been instituted or threatened on or before the Closing Date.

6.8. The execution and delivery of this Agreement by Sellers and Shareholder and the performance of their

respective covenants and obligations hereunder shall have been duly authorized by all necessary corporate action, and Purchaser shall have received copies of all resolutions pertaining to that authorization certified by the respective secretaries of Sellers and Shareholder.

6.9. The execution, delivery and performance of this Agreement by Purchaser shall have been approved by the Board of Directors of Purchaser.

6.10. Any necessary agreements and consents to the consummation of the transactions contemplated by this Agreement or otherwise pertaining to the matters covered by it shall have been obtained by Sellers and Shareholder and delivered to Purchaser.

6.11. All of the Assigned Contracts shall have been assigned to Purchaser or its designated subsidiary or subsidiaries with appropriate consents in the form of Annexes IV and V where necessary, so that Purchaser and such subsidiaries shall have full rights under said Assigned Contracts.

6.12. Purchaser hereby waives compliance by Sellers with any applicable Bulk Sales Laws. In consideration for such waiver Sellers and Shareholder agree to indemnify Purchaser as provided in Article Nine hereof.

6.13. The form and substance of all certificates, instruments, opinions and other documents delivered to Purchaser under this Agreement shall be satisfactory in all reasonable respects to Purchaser and its counsel.

ARTICLE SEVEN: CONDITIONS PRECEDENT TO
THE OBLIGATIONS OF SELLERS
AND SHAREHOLDER TO PERFORM

The obligations of Sellers and Shareholder to consummate the transactions contemplated by this Agreement are subject to the satisfaction on the Closing Date of all of the conditions set forth in 4.4 and Article Seven, unless otherwise waived in writing by Sellers and Shareholder in which event the waived condition will be deemed satisfied.

7.1. All representations and warranties by Purchaser contained in this Agreement or any written statement delivered by Purchaser under this Agreement shall be true in all material respects on and as of the Closing Date as though such representations and warranties were made on and as of that date.

7.2. Purchaser shall have performed, satisfied and complied in all material respects with all covenants and agreements and satisfied all conditions that it is required by this Agreement to perform, comply with or satisfy before or at the Closing.

7.3. Sellers and Shareholder shall have received a certificate dated the Closing Date signed by the president and the chief financial officer of Purchaser certifying that the conditions specified in Paragraphs 7.1 and 7.2 have been fulfilled.

7.4. Purchaser shall have furnished to Sellers and Shareholder an opinion, dated the Closing Date, of Messrs. Barton, Klugman & Oetting, counsel for Purchaser, in form and substance reasonably satisfactory to Sellers and Shareholder to the effect that:

(i) Jacobs and its designated subsidiaries are corporations duly incorporated, validly existing and in good standing under the laws of their respective States of incorporation and have all requisite corporate power to perform their obligations under this Agreement;

(ii) Purchaser has the corporate power and authority to make, execute, deliver and perform this Agreement; this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by the boards of directors and shareholders of Purchaser in accordance with all applicable laws, rules and regulations; and, except insofar as enforcement thereof may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights and except as specific performance of other equitable remedies may not be available in certain circumstances, this Agreement constitutes the valid, binding and enforceable obligation of Purchaser;

(iii) Every consent, approval, authorization or order of any court or governmental agency or body that is required for the consummation by Purchaser of the transactions contemplated by this Agreement has been obtained and will be in effect on the Closing Date;

(iv) The consummation of the transactions contemplated by this Agreement does not violate or contravene any of the provisions of any charter, bylaw or resolution of Purchaser or of any indenture,

agreement, judgment or order to which Purchaser is a party or by which Purchaser is bound; and

(v) The instruments and documents executed and delivered by Purchaser under this Agreement at the Closing are duly and properly authorized, executed and delivered and are binding and effective against Purchaser in accordance with their terms.

In rendering their opinions, counsel for Purchaser may rely upon certificates of governmental authorities and upon opinions of associate counsel.

7.5. The execution and delivery of this Agreement by Purchaser and the performance of its covenants and obligations under it shall have been duly authorized by all necessary corporate action, and Sellers and Shareholder shall have received copies of all resolutions pertaining to that authorization, certified by the secretary or an assistant secretary of Purchaser.

7.6. No action, suit or proceeding before any court or any governmental body or authority pertaining to the transactions contemplated by this Agreement or to its consummation shall have been instituted or threatened on or before the Closing Date.

7.7. There shall have been delivered by Purchaser to Sellers and Shareholder the payment and Assumption Agreements provided for in Paragraph 1.2.

7.8. The execution, delivery and performance of this Agreement by Sellers have been approved by the Boards of Directors of each Seller.

7.9. The form and substance of all certificates, instruments, opinions and other documents delivered to Sellers and Shareholder under this Agreement shall be satisfactory in all reasonable respects to Sellers, Shareholder and their counsel.

ARTICLE EIGHT: THE CLOSING

8.1. The Closing shall take place on the date, at the time and at the place specified in Paragraph 1.8 hereof or as otherwise established pursuant thereto.

8.2. (i) At the Closing, Sellers and Shareholder shall deliver or cause to be delivered to Purchaser the following:

(a) The documents referred to in Article Six hereof or evidence satisfactory to Purchaser and its counsel that each condition referred to therein has been satisfied;

(b) Executed counterparts of all assignments, consents and novation agreements with respect to the Assigned Contracts required hereby;

(c) The Bill of Sale in the form attached hereto as Annex II;

(d) Such fully executed documents as may be necessary, including Certificates of Amendments of Articles of Incorporation, providing for name changes as described in paragraph 9.4 hereof or for withdrawal of its right to do business in foreign jurisdictions where such withdrawal will permit Purchaser to use the name upon filing of the withdrawal, in form suitable for filing with the appropriate state agencies in the states where Sellers and Shareholders are incorporated and in all states where Sellers and Shareholders are qualified or registered to do business; and

(e) All such other instruments of assignment and transfer as Purchaser may reasonably require.

(ii) Concurrently with the delivery of the documents required by this Article Eight, Sellers shall put Purchaser and the designated subsidiaries into full possession and enjoyment of the Purchased Assets.

(iii) Sellers and Shareholder at or after the Closing Date shall execute, acknowledge and deliver any further deeds, assignments, conveyances and other assurances, documents and instruments of transfer reasonably requested by Purchaser and shall take any other action consistent with the terms of this Agreement that may be reasonably requested by Purchaser for the purpose of assigning, transferring, granting and conveying and confirming to Purchaser or reducing to possession the Assigned Contracts and the Purchased Assets. If requested by Purchaser, Seller shall, and Shareholder shall insure that Seller shall, procure or otherwise enforce in their own names for the benefit of Purchaser and at the sole cost and expense of Purchaser any claims, rights or benefits that are to be transferred to Purchaser by this Agreement and that require prosecution or enforcement in the name of Sellers or any of them.

(iv) Purchaser shall give Sellers and Shareholder all such reasonable assistance, including the furnishing of employees as witnesses and the furnishing of documents in the files of Purchaser that were received from Sellers as Sellers or Shareholder may reasonably require in order to defend any claims, lawsuits or asserted tax liability against Sellers or Shareholder, but at the expense of Sellers and Shareholder.

8.3. At the Closing, Purchaser shall deliver or cause to be delivered to Sellers the following:

(i) The documents referred to in Article Seven hereof or evidence reasonably satisfactory to counsel for Sellers and Shareholder that each condition referred to therein has been satisfied;

(ii) Payment of the sum determined in accordance with Paragraphs 1.2.

8.4. If Jacobs designates one or more subsidiaries to receive conveyances and delivery of the assets to be sold, conveyed and delivered hereunder pursuant to paragraph 1.1 hereof, then Jacobs shall nonetheless continue to have primary liability to Sellers and Shareholders as if no such designation had been made under Paragraph 1.1.

8.5. All documents and instruments to be delivered at the Closing shall be regarded as having been delivered concurrently, and no document or instrument shall be regarded as having been delivered until all have been delivered.

ARTICLE NINE: OBLIGATIONS OF SELLERS AND SHAREHOLDER AFTER THE CLOSING

9.1. Sellers and Shareholder, jointly and severally, shall defend, indemnify and hold Purchaser harmless against any Net Losses in respect of any and all claims, demands, costs, expenses, obligations, liabilities, damages, recoveries and deficiencies, including interest, penalties and reasonable attorneys' fees that Purchaser may incur or suffer and that arise or result from any of the following:

(a) Any breach of or failure by Sellers or Shareholder or any of them to perform any of its or their obligations, warranties, covenants or agreements in this Agreement;

(b) ~~Claims for failure to perform, warranty claims under, negligence in the performance of or misfeasance in the performance of any of the Assigned Contracts by Sellers, Shareholder or any of them or any subcontractor or supplier, regardless of tier, or any of them based on facts, omissions or events that occurred prior to Closing;~~

(c) Claims for injury to or death of any person or damage to property relating to the business, operations or assets of Sellers or Shareholder or any of them or any subcontractor or supplier, regardless of tier, or any of them whether related to the Assigned Contracts or the Purchased Assets or otherwise based on facts, omissions or events that occurred prior to Closing;

(d) Any claim, assessment, judgment or liability of Sellers or Shareholder not assumed by Purchaser pursuant to this Agreement;

(e) Claims under the Equal Employment Opportunity Act and the Fair Labor Standards Act or other like legislation wherein it is asserted that Purchaser is liable as a successor employer of the employees or former employees of Sellers, Shareholder or any of them based on facts, omissions or events that occurred prior to Closing;

(f) Any claim for taxes arising from the business or operations of Sellers, Shareholder or any of them or from the performance of this Agreement, any claims, whether under the Employee Retirement Income Security Act or otherwise related to any pension, profit-sharing or other employee benefit plan to which Sellers, Shareholder or any of them are a party or to which they or any of them contribute; and any claims related to the withdrawal of Sellers, Shareholder or any of them from any pension, profit-sharing or other employee benefit plan maintained by them or any of them or by any union;

(g) Purchaser's waiver of compliance by Sellers and Shareholder with any Bulk Sales Laws applicable to the transactions contemplated by this Agreement;

(h) The termination of employment by Sellers of any employee of Sellers, whether or not such employee is hired by Purchaser, including but not limited to, claims for breach of employment contract, accrued vacation, pension or other retirement benefits, wages, and medical, life insurance or disability benefits.

As to any claim for which Purchaser would otherwise be entitled to indemnification hereunder, Purchaser shall nevertheless be entitled to indemnification hereunder notwithstanding that it is claimed, alleged or proved that the injury, death, damage, loss or failure to perform was caused in part by Purchaser, but Purchaser shall not be entitled to indemnification hereunder for its sole negligence; provided, however, that Sellers and Shareholder shall have a right of setoff for that portion of the damages attributable to the active fault of Purchaser under the doctrine of comparative negligence.

9.2. For purposes hereof the term "net losses" shall mean the monetary loss incurred or suffered by Purchaser after taking into account any insurance proceeds paid to Purchaser with respect to the event(s) which caused such loss. Purchaser shall be entitled to reimbursement by Seller for insurance deductibles or retentions, losses in excess of insurance moneys paid, payments made by Purchaser pursuant to paid loss, retrospective rating plan, fronting of policy or other similar procedure. Any sums received by Purchaser from an insurance company wholly-owned by Purchaser shall not reduce the losses indemnified hereunder except to the extent of sums reinsured by a third party company and thus not losses of the wholly-owned company. Nothing herein shall be construed as a waiver of any right of subrogation which any insurance company may be entitled to under any insurance policy maintained by Purchaser. Purchaser shall not be obligated to make any claim against any insurance company should it elect not to do so.

9.3. Purchaser shall promptly notify Sellers and Shareholder of the existence of any claim, demand or other matter to which their indemnification obligations would apply and shall give them a reasonable opportunity to defend the same at their own expense and with counsel of their own selection; provided, however, that Purchaser shall at all times also have the right to participate fully in the defense at its own expense. The parties agree to cooperate in good faith to use all reasonable efforts to amicably settle any claims prior to litigation. If Sellers and Shareholder shall, within a reasonable time after this notice, fail to defend, then Purchaser shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle (exercising reasonable business judgment) the claim or other matter on behalf, for the account and at the risk of Sellers and Shareholder. If the claim is one that by its nature cannot be defended solely by Sellers and Shareholder, then Purchaser shall make available all such information and assistance that Sellers or Shareholder may reasonably request.

9.4. After the Closing Date, neither any of Sellers nor Shareholder shall use or employ in any manner directly or indirectly the names "Payne & Keller" or "Bayou-Maintenance", and each of Sellers and Shareholder shall take and cause to be taken all necessary action by their respective boards of directors, shareholders and any other persons in order to change their respective names to names not similar to the foregoing. Sellers and Shareholder shall coordinate such name changes with Purchaser so that one or more of Purchaser's designated subsidiaries may use such names.

9.5. (i) Each of Sellers and Shareholder agrees that it will not at any time within the five year period immediately following the Closing Date compete with Purchaser in the business of contract maintenance engaged in by Sellers during the year preceding the Closing Date, either directly or indirectly, alone or as a member of a partnership, joint venture or otherwise.

(ii) Contract maintenance for purposes of this paragraph shall mean the maintenance of mechanical and chemical equipment and not janitorial-type maintenance or maintenance of civil construction works such as buildings not associated with petrochemical plants, airfields, dams, bridges and roads; provided, however, the following shall not be deemed to be in competition with Purchaser: the operations and business of Skrla in the form presently being conducted; performance by Sellers of warranty obligations on closed construction contracts not assumed by Purchaser; the completion of any warranty obligation for construction contracts not assigned to Purchaser.

(iii) The parties intend that the covenant contained in the preceding clause (i) of this Paragraph 9.5 shall be construed as a series of separate covenants, one for each county in the United States within the geographic area covered by this section. Except for geographic coverage, each such separate covenant shall be deemed identical in terms to the covenant contained in the preceding paragraph. If in any judicial proceeding a court shall refuse to enforce any of the separate covenants deemed included in this paragraph, then such unenforceable covenant shall be deemed eliminated from the provisions of this Agreement for the purpose of those proceedings to the extent

necessary to permit the remaining separate covenants to be enforced.

(iv) The purpose of this Section 9.5 is to assure Purchaser of the benefits of the Assigned Contracts and Purchased Assets, and no separate consideration has been bargained for with respect to the covenants provided in this Section 9.5.

ARTICLE TEN: OBLIGATIONS OF PURCHASER AFTER THE CLOSING

10.1. Purchaser shall defend, indemnify and hold Sellers and Shareholder harmless against any Net Losses in respect of any and all claims, demands, costs, expenses, obligations, liabilities, damages, recoveries and deficiencies, including interest, penalties and reasonable attorneys' fees that Sellers or Shareholder may incur or suffer and that arise or result from any of the following:

(a) Any breach of or failure by Purchaser to perform any of its obligations, warranties, covenants or agreements in this Agreement;

(b) Claims for failure to perform, warranty claims under, negligence in the performance of or misfeasance in the performance of any of the Assigned Contracts by Purchaser based upon facts, omissions or events that occur after the Closing;

(c) Claims for injury to or death of any person or damage to property relating to the business, operations or assets of Purchaser whether related to the Assigned Contracts or the Purchased Assets or otherwise based on facts, omissions or events that occur after the Closing;

(d) Any claim, assessment, judgment or liability of Sellers or Shareholder assumed by Purchaser pursuant to this Agreement.

(e) Claims under the Equal Employment Opportunity Act and the Fair Labor Standards Act or other like legislation wherein it is asserted that Purchaser is liable as the employer of the employees or former employees of Sellers, Shareholder or any of them based upon facts, omissions or events that occur after the Closing.

As to any claim for which Sellers and Shareholder would otherwise be entitled to indemnification hereunder, Sellers and Shareholder shall nevertheless be entitled to

indemnification hereunder notwithstanding that it is claimed, alleged or proved that the injury, death, damage, loss or failure to perform was caused in part by Sellers or Shareholder; but Sellers and Shareholder shall not be entitled to indemnification hereunder for their sole negligence; provided, however, that Purchaser shall have a right of setoff for that portion of the damages attributable to the active fault of Sellers or Shareholder under the doctrine of comparative negligence.

10.2. For purposes hereof the term "net losses" shall mean the monetary loss incurred or suffered by Sellers and Shareholder after taking into account any insurance proceeds paid to Sellers and Shareholder with respect to the event(s) which caused such loss. Sellers and Shareholder shall be entitled to reimbursement by Purchaser for insurance deductibles or retentions, losses in excess of insurance moneys paid, payments made by Sellers and Shareholder pursuant to paid loss, retrospective rating plan, fronting of policy or other similar procedure. Any sums received by Sellers and Shareholder from an insurance company wholly-owned by Sellers or Shareholder shall not reduce the losses indemnified hereunder except to the extent of sums reinsured by a third party company and thus not losses of the wholly-owned company. Nothing herein shall be construed as a waiver of any right of subrogation which any insurance company may be entitled to under any insurance policy maintained by Sellers and Shareholder. Sellers and Shareholder shall not be obligated to make any claim against any insurance company should it elect not to do so.

10.3. Sellers or Shareholder shall promptly notify Purchaser of the existence of any claim, demand or other matter to which its indemnification obligations would apply and shall give Purchaser a reasonable opportunity to defend the same at its own expense and with counsel of its own selection; provided, however, that Sellers and Shareholder shall at all times also have the right to participate fully in the defense at their own expense. The parties agree to cooperate in good faith to use all reasonable efforts to amicably settle all claims prior to litigation. If Purchaser shall, within a reasonable time after this notice, fail to defend, then Sellers and Shareholder shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle (exercising reasonable business judgment) the claim or other matter on behalf, for the account and at the risk of Purchaser. If the claim is one that by its nature cannot be defended solely by Purchaser, then Sellers and Shareholder shall make available all such information and assistance that Purchaser may reasonably request.

ARTICLE ELEVEN: PUBLICITY

All notices to third parties and all other publicity concerning the transactions contemplated by this Agreement to be made by Purchaser or Sellers and Shareholder shall be jointly planned and coordinated by and between Purchaser and Shareholder. No party shall act unilaterally in this regard without the prior approval of the other; however, this approval shall not be unreasonably withheld.

ARTICLE TWELVE: COSTS

12.1. Sellers and Shareholder on the one hand and Purchaser on the other hand each agree to indemnify and hold harmless the other against any loss, liability, damage, cost, claim or expense incurred by reason of any brokerage commission, finder's fee alleged to be payable because of any act, omissions or statement of the indemnifying party.

12.2. Except as otherwise provided herein each of the parties shall pay all costs and expenses incurred or to be incurred by it in negotiating and preparing this Agreement and in closing and carrying out the transactions contemplated by this Agreement, including, but not limited to, fees and costs of legal counsel, accountants, investment bankers and consultants.

ARTICLE THIRTEEN: FORM OF AGREEMENT

13.1. The subject headings of the Articles of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

13.2. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

13.3. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ARTICLE FOURTEEN: PARTIES

14.1. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement or otherwise confer on any third person or entity the status of a "Third Party Beneficiary."

14.2. This Agreement shall be binding on and shall inure to the benefit of the parties to it and their respective heirs, legal representatives, successors and assigns; provided, however, Purchaser may not prior to Closing assign any of its rights under it, except to a wholly owned subsidiary corporation or lower tier wholly owned subsidiary corporation of Purchaser. No such assignment by Purchaser shall relieve Purchaser of any of its obligations or duties under this Agreement.

14.3. Any waiver or consent that may be given by Purchaser or by Sellers or Shareholder, as the case may be, hereunder shall be valid and binding upon such party if signed by the Chairman of the Board of Directors, President or any Vice President of such party.

ARTICLE FIFTEEN: REMEDIES

15.1. Notwithstanding any breach or default by any of the parties of any of their respective representations, warranties, covenants, or agreements under this Agreement, if the purchase and sale contemplated by it shall be consummated at the Closing, each of the parties waives any rights that it or he may have to rescind this Agreement or the transaction consummated by it; provided, however, this waiver shall not affect any other rights or remedies available to the parties under this Agreement or under the law.

15.2. If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

15.3. Subject to the provisions of Section 1.8 relating to the postponement of the Closing Date, either Purchaser or Sellers and Shareholder may on the Closing Date terminate this Agreement without liability to any other party, if, but only if:

(i) any bona fide action or proceeding shall be pending against any party on the Closing Date that could result in an unfavorable judgment, decree or order that would prevent or make unlawful the carrying out of this Agreement or if any agency of the federal or of any state government shall have objected at or before the Closing Date to this acquisition or to any other action required by or in connection with this Agreement;

(ii) all of the conditions to such party's obligations set forth herein are not satisfied; or

(iii) the legality and sufficiency of any steps taken and to be taken by the parties in carrying out this Agreement shall not have been approved by counsel as required by this Agreement.

15.4. If prior to Closing either Purchaser or Sellers or Shareholder materially defaults in the due and timely performance of any of its or their warranties, covenants or agreements under this Agreement, or is unable to satisfy any condition to be satisfied by such party hereunder, then such party may at any time prior to or on the Closing Date give written notice to the other parties of such default or failure. Upon receipt of such notice the receiving party may by notice either terminate this Agreement without liability of any party to any other party or may waive such default or failure. The failure of the receiving party to give notice hereunder shall be deemed to be a waiver of such default or failure.

15.5. Notwithstanding any investigations that Purchaser may make, Purchaser is relying on the representations, warranties, covenants and agreements of Sellers and Shareholder as set forth in this Agreement. Accordingly, all representations, warranties, covenants and agreements of the parties contained in this Agreement or in any instrument, certificate, opinion or other writing provided for in it shall survive the Closing for a period of four years; provided, however, that with respect to Paragraphs 9.1(b), 9.1(c), 10.1(b) and 10.1(c) the period shall be the statute of limitations applicable to the occurrence which gave rise to the claim, and Paragraph 9.5 shall survive for a period of five years after Closing.

ARTICLE SIXTEEN: NOTICES

All notices, requests, demands, waivers and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the second day after mailing if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, and properly addressed as follows:

To Sellers and Shareholder at:

Payne & Keller Corporation
P. O. Box 262546
Houston, Texas 77207-2546

Attention: President

with copy to:

John J. King
Sullivan, King & Sabom
P. O. Box 2482
Houston, Texas 77252

To Purchaser at:

Jacobs Engineering Group Inc.
251 South Lake Avenue
Pasadena, California 91101

Attention: Joseph J. Jacobs
Chairman of the Board

with copy to:

Robert H. Klugman
Barton, Klugman & Oetting
333 South Grand Avenue, 37th Floor
Los Angeles, California 90071

Any party may change its address for purposes of this paragraph by giving the other parties written notice of the new address in the manner set forth above.

IN WITNESS WHEREOF, the parties to this Agreement
have duly executed it on the day and year first above
written.

DUMEZ, USA

By 

By Attorney in fact

PAYNE & KELLER CORPORATION

By 

By chrn

PAYNE & KELLER COMPANY

By 

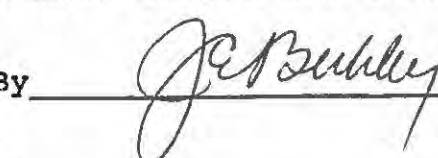
By chrn

BAYOU-MAINTENANCE INC.

By 

By chrn

JACOBS ENGINEERING GROUP INC.

By 

By _____

ANNEXES TO AGREEMENT

<u>Annex</u>	<u>Subject</u>	<u>Principal Reference</u>
I	Form of Assumption	1.2(ii)
II	Form of Bill of Sale	1,3(ii); 8.2(i)(c)
III	Form of Lease	1.4
IV	Form of Assignment and Consent (Written Consent)	4.4
V	Form of Assignment and Consent (Verbal Consent)	4.4
VI	Form of Dumez, S.A. Guaranty	6.6
VII	Form of Dumez, S.A. Covenant Not To Compete	6.6

SCHEDULES TO AGREEMENT

<u>Schedule</u>	<u>Subject</u>	<u>Principal Reference</u>
A	Assigned Contracts	1.1(i)
B	Purchased Assets	1.1(ii)
C	Accounts Receivable	1.1(i)
D	Accounts Payable	1.1(i)

EXHIBITS TO BE FURNISHED
BY SELLERS AND SHAREHOLDER

<u>Description</u>	<u>Paragraph</u>
Extended Payment Terms	2.6
Assigned Contracts	2.7
Patents, etc.	2.8
Litigation	2.13
Violation of other agreements	2.14
Persons whose consents are required	4.4

ASSUMPTION AGREEMENT

This ASSUMPTION AGREEMENT is made and entered into at _____ on _____, 1986 by and among Payne & Keller Company, a Texas corporation and Bayou-Maintenance, Inc., a Louisiana corporation (hereinafter individually and collectively referred to as "Sellers"), and Payne & Keller Corporation, a Texas corporation, Dumez, USA, a societe ("Shareholder") and _____, a _____ corporation ("Assignee").

RECITALS

A. This Assumption Agreement is made and entered into pursuant to a certain Purchase Agreement dated _____, 1986 between Sellers, Shareholder and Purchaser, pursuant to which on this date Sellers are transferring and assigning to Purchaser or its designated subsidiaries (as defined in the Purchase Agreement) the Assigned Contracts and related Accounts Receivable and the Purchased Assets, as defined therein.

B. A part of the consideration to be given by Purchaser for the Assigned Contracts, Accounts Receivable and Purchased Assets is the agreement by Purchaser to assume, to perform and to pay certain covenants and liabilities of Sellers as hereinafter described.

ANNEX I

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Assignee hereby:

1. Assumes and agrees to perform Sellers' obligations under the Assigned Contracts listed on the attached Exhibit "A";

2. Assumes and agrees to pay the Accounts Payable listed on Exhibit "B" of Sellers related to such Assigned Contracts.

All other liabilities of Sellers, Shareholder, and each of them, including the following liabilities or obligations, if ever in existence, shall be and continue to be the liabilities and obligations of the Sellers, Shareholder, and their respective successors in interest:

A. Expenses, liabilities and obligations of Sellers, and Shareholder, if any, arising out of the transactions provided for in the Purchase Agreement or incurred by them in respect to any transaction occurring after the date hereof or attributable to the transfer of assets hereunder, the liquidation and dissolution of Sellers and the distribution of their respective assets to Shareholder.

B. Liabilities of Sellers and Shareholder, if any, for their failure to perform any of the covenants contained in the Purchase Agreement.

C. Liabilities of Sellers and Shareholder for income, franchise, license, gross receipts, sales or use or other taxes of any sort or kind, unless otherwise reflected in the Accounts Payable.

D. Liabilities under the Employee Retirement Income Security Act or any similar act and liabilities to any union, pension, profit sharing or employee welfare plan of any sort or nature.

E. Liabilities for which Assignee is entitled to indemnification under the provisions of the Purchase Agreement.

Sellers and Shareholder covenant to pay or cause to be paid all liabilities and to fulfill all obligations and covenants of Sellers and not assumed by Assignee hereunder or under the Purchase Agreement as and when the same become due; provided, however, that Sellers and Shareholder shall have the right to contest in good faith in appropriate proceedings all such liabilities until all time for further appeals has lapsed.

IN WITNESS WHEREOF, the parties hereto have caused this Assumption Agreement to be signed in their corporate

names by their duly authorized officers on the day and year first above written.

DUMEZ, USA

By _____

By _____

PAYNE & KELLER CORPORATION

By _____

By _____

PAYNE & KELLER COMPANY

By _____

By _____

BAYOU-MAINTENANCE INC.

By _____

By _____

(Assignee)

By _____

By _____

BILL OF SALE

For valuable consideration, the receipt of which is hereby acknowledged, Payne & Keller Company, a Texas corporation, and Bayou-Maintenance, Inc., a Louisiana corporation (the "Sellers), upon the terms and subject to the covenants, conditions and warranties set forth in that certain Purchase Agreement between the Sellers and Jacobs Engineering Group Inc., a California corporation, dated _____, 1986 hereby sell, grant and assign and transfer to _____ the following:

1. All of the contracts listed on Exhibit A, which is attached hereto and hereby made a part hereof, together with the accounts receivable listed on Exhibit B, which is attached hereto and made a part hereof, of the Sellers pertaining to said contracts;
2. All of the machinery and equipment listed on Exhibit C, which is attached hereto and hereby made a part hereof; and
3. The names, trademarks and trade styles "Payne & Keller" and "Bayou-Maintenance";
4. All books and records of the Sellers relating to the foregoing; and

ANNEX II

5. All muniments and evidences of ownership of the foregoing.

SELLERS MAKE NO AFFIRMATION OF FACT AND MAKE NO PROMISE RELATING TO THE FITNESS, MERCHANTABILITY OR OPERABLE CONDITION OF ANY TANGIBLE ASSET SOLD HEREUNDER. SELLERS AND PURCHASER AGREE THAT ALL SUCH TANGIBLE ASSETS SOLD HEREBY ARE SOLD ON AN "AS IS" "WHERE IS" BASIS AND SELLERS DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE WHATSOEVER WITH RESPECT TO THE TANGIBLE ASSETS BEING SOLD.

IN WITNESS WHEREOF the Sellers have caused this Bill of Sale to be signed in their corporate names by their duly authorized officers on _____, 1986 at

_____.

PAYNE & KELLER COMPANY

By _____

By _____

BAYOU-MAINTENANCE INC.

By _____

By _____

EXHIBIT 2

Part 2

EXHIBIT 2

Part 2

(FORM OF ASSIGNMENT TO BE USED

WHERE THERE IS A WRITTEN CONTRACT)

ASSIGNMENT

The undersigned, _____
(Name of Payne & Keller Company)
a _____ Corporation, hereby assigns to
_____, a _____ Corporation,
(Name of Jacobs Subsidiary)
(herein called "Assignee") all of assignor's right, title, interest,
benefits, burdens and obligations in, to and under the contract
between _____ and _____
(Name of Client) (Name of Payne & Keller Company)
dated _____, 19____ for _____
_____ services to be performed on _____
(Name of Client)
site at _____, _____, a copy of which,
including all amendments, is attached hereto as Exhibit "A", and
Assignee accepts said Assignment on the terms hereof. This
Assignment is made in connection with the Purchase Agreement
dated _____, 1986 between Payne & Keller Company,
Bayou-Maintenance, Inc., Dumez USA, Payne & Keller Corporation
and Jacobs Engineering Group Inc.

Now therefore, this Assignment has been executed at
_____, on the day and year set forth below.

Dated: _____, 1986

Signed: _____
(Name of Payne &
Keller Company)

Signed: _____
(Name of Assignee)

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

(FORM OF ASSIGNMENT TO ☐ USED
WHERE THERE IS NOT A FORMAL WRITTEN CONTRACT)

ASSIGNMENT

The undersigned, _____
(Name of Payne & Keller Company)
a _____ Corporation, hereby assigns to
_____, a _____ Corporation,
(Name of Jacobs Subsidiary)
(herein called "Assignee) all of assignor's right, title, interest,
benefits, burdens and obligations in, to and under the contract
between _____ and _____
(Name of Client) (Name of Payne & Keller Company)
for _____ services to be
performed on _____ site at _____
(Name of Client)
_____. Attached hereto as Exhibit "A" is a copy
of all documents which comprise the terms and conditions on
which the project is being performed and a written summary
of the status of the project. Assignee accepts said Assignment on
the terms hereof. This Assignment is made in connection with the
Purchase Agreement dated _____, 1986 between Payne &
Keller Company, Bayou-Maintenance, Inc., Dumez USA, Payne & Keller
Corporation and Jacobs Engineering Group Inc.

Now therefore, this Assignment has been executed at
_____, on the day and year set forth below.

Dated: _____, 1986

Signed: _____
(Name of Payne &
Keller Company)

Signed: _____
(Name of Assignee)

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT "A"

SUMMARY OF TERMS AND CONDITIONS

Description of Project:

Description of Scope of Work:

Charging Basis:

Payment Terms:

Other Terms and Conditions:

COVENANT NOT TO COMPETE

This COVENANT NOT TO COMPETE is given by the undersigned pursuant to Paragraph 6.6 of that certain Purchase Agreement (the "Purchase Agreement") made and entered into by and among Payne & Keller Company, Bayou-Maintenance, Inc. (hereinafter referred to as "Sellers"), Payne & Keller Corporation and Dumez USA (hereinafter referred to as "Shareholder") and Jacobs Engineering Group Inc. (hereinafter referred to as "Purchaser").

In consideration for the financial benefits to be received by this societe and its subsidiaries, the undersigned agrees as follows:

For a period of five years the undersigned agrees not to

- (i) form any subsidiary or division, or
- (ii) form or join any partnership or joint venture

to engage in work in the United States substantially similar to the work being performed by Payne & Keller Company or by Bayou-Maintenance, Inc. during the year immediately prior to Closing of the Purchase Agreement dated 1986 among those companies and Jacobs Engineering Group Inc ("the Purchase Agreement").

Additionally, the undersigned agrees not to acquire the majority control, or assume operational responsibility, of any company doing business in the United States, whose principal or dominant business is substantially similar to the work being performed under the "Assigned Contracts: as defined in the Purchase Agreement.

The agreement given in the preceding paragraph shall be construed as a series of separate covenants, one for each county in the United States. Except for geographic coverage, each such separate covenant shall be deemed identical in terms to the covenant contained in the preceding paragraph.

If in any judicial proceeding, a court shall refuse to enforce any of these separate covenants deemed included in this paragraph, then such unenforceable covenant shall be deemed eliminated from the provisions of this Agreement for the purpose of those proceedings to the extent

ANNEX III

necessary to permit the remaining separate covenants to be enforced.

DUMEZ, S.A.

By _____
345 Avenue Georges Clemenceau
92022 Nanterre Cedex
Paris, France

SPECIFIC GUARANTY

1. In consideration for the financial benefits to be received by this society and its subsidiaries, and subject to the terms and conditions hereof and specifically the provisions of paragraph 9 hereof, the undersigned ("Guarantor") hereby irrevocably guarantees the performance by Payne & Keller Corporation, Payne & Keller Company, Bayou-Maintenance Inc. and Dumez USA (hereinafter referred to individually and collectively as the "Companies") of each and every warranty, representation and covenant of the Companies under that certain Purchase Agreement dated _____, 1986 ("Purchase Agreement") by and among the Companies and Jacobs Engineering Group Inc. and its designated subsidiaries (hereinafter referred to individually and collectively as "Jacobs"), including, without limitation, the covenants of the Companies contained in said Purchase Agreement to indemnify Jacobs against certain liabilities.

2. A separate action or actions may be brought and prosecuted against Guarantor, whether such action is brought against the Companies or whether the Companies be joined in any such action or actions regarding the obligations of the Companies to Jacobs under the Purchase Agreement. Any part payment by the Companies or other circumstance that operates to toll any statute of limitations as to the Companies shall operate to toll the statute of limitations as to Guarantor.

3. Guarantor hereby authorizes Jacobs, without notice or demand and without affecting Guarantor's liability hereunder, from time to time, with the agreement of the Companies, to renew, extend or otherwise change the terms of the Purchase Agreement or any part thereof.

4. Guarantor waives any right to require Jacobs to proceed against the Companies. Jacobs may, at its election, exercise any right or remedy it may have against the Companies without affecting or impairing in any way the liability of Guarantor hereunder except to the extent any amounts due from the Companies to Jacobs under the Purchase Agreement have been paid. Guarantor waives any defense arising out of the loss of any right of reimbursement or subrogation or other right or remedy of Guarantor against all amounts payable by the Companies to Jacobs under the Purchase Agreement, whether resulting from such election by Jacobs, or otherwise. Until all amounts payable by the Companies to Jacobs under the Purchase Agreement and all covenants under the Purchase Agreement shall have been paid or performed in full, Guarantor shall have no right of subrogation and waives any right to enforce any remedy that Jacobs now has or may hereafter have against the Companies. Guarantor waives notice of acceptance of this Guaranty. Guarantor assumes the responsibility for

being and keeping informed of the financial condition of the Companies and of all other circumstances bearing upon the risk of nonpayment or nonperformances that diligent inquiry would reveal, and agrees that, absent a request for such information by Guarantor, Jacobs shall have no duty to advise Guarantor of information known to it regarding such condition or any such circumstances.

5. Guarantor agrees to pay reasonable attorneys' fees and all other costs and expenses that may be incurred by Jacobs in the enforcement of this Guaranty.

6. This Specific Guaranty shall be construed under the law of the State of Texas. Inasmuch as Payne & Keller Corporation is headquartered and domiciled in the State of Texas and the Guarantor is not present in nor does it conduct business anywhere in the United States, Guarantor consents to the jurisdiction of the courts of the State of Texas and of any federal court in Texas in connection with Jacobs' enforcement of this Guaranty; provided that the foregoing does not constitute a consent to jurisdiction for any purpose other than the enforcement of this Guaranty or for the benefit of any person, corporation or entity other than Jacobs for the purposes specified herein nor does the foregoing consent to jurisdiction mean nor shall it be construed to mean that the Guarantor is present in or doing business in the United States, or any state thereof.

7. Guarantor irrevocably waives personal service of any summons, complaint or other legal process, and agrees that service shall be made upon Guarantor by certified or registered mail, postage prepaid, posted by air mail if to an address outside the United States, and addressed to Guarantor, attention Jean Paul Parayre, at the address set forth below. Similar type notice shall be given to Guarantor's legal counsel; to wit:

Sullivan, King & Sabom
5005 Woodway, Suite 300
Houston, Texas 77056

Attention: John J. King, Esq.

Guarantor shall have 60 days from receipt of said service to appear in such action. If Guarantor fails to appear or answer within such 60-day period, then Guarantor shall be deemed in default, and judgment may be entered against Guarantor. Guarantor agrees that any judgment against it entered in accordance with this Guaranty may be entered and enforced in the courts of the Republic of France. The undersigned agrees that any notice, other than service of summons - complaint or

other legal process, which is given to Companies shall be deemed given to Guarantor.

8. Guarantor further guarantees that it will maintain or cause to be maintained insurance in an amount of not less than \$6,000,000, insuring Companies under the Purchase Agreement for claims described in Section 9.1(c) of the Purchase Agreement for a period of two years after the Closing Date as defined under the Purchase Agreement, naming Jacobs as additional insured.

9. Notwithstanding any other provisions herein to the contrary:

A. Guarantor's total liability hereunder to Jacobs (exclusive of any sums paid by parties signatory to the Purchase Agreement or their insurance companies) shall not exceed:

(i) \$5,000,000 in the aggregate; plus

(ii) the cost of defending any claims as required by the Purchase Agreement.

B. All causes of action, defenses, claims, counterclaims, rights of set off and any other rights or remedies belonging or available to the Companies, whether jointly or severally, against Jacobs, may be asserted by Guarantor against Jacobs in Guarantor's own name and in their stead, without the necessity of joinder of any of the Companies. Any claims or causes of action of Jacobs pertaining to one of its designated subsidiaries may be brought or enforced by such designated subsidiary without the necessity of joinder of Jacobs or its other designated subsidiaries.

C. The fact of liquidation, bankruptcy or other termination of existence of any of Companies shall not be a defense to payment under this Guaranty.

D. Nothing in this Guaranty, whether express or implied, is intended to confer any rights or remedies under or by reason of this Guaranty on any persons other than Jacobs and its successors and assigns, nor is anything in this Guaranty intended to relieve or discharge the obligation or liability of any third persons to Jacobs, nor shall any provision give any third persons any right of subrogation or

action over or against Guarantor or otherwise
confer on any third person or entity the status
of a "Third Party Beneficiary."

DUMEZ, S.A.

By _____

345 Avenue Georges Clemenceau
92022 Nanterre Cedex
Paris, France

Schedule A
to
Purchase Agreement
List of Assigned Contracts

CONTRACT NO.	CLIENT	JOB LOCATION	CONTRACT ASSIGNED TO		
			P&K CO. UMC	INC.	JEMCI
1.	<u>Payne & Keller Company Contracts</u>				
	1.1. <u>Baton Rouge, La.</u>				
1-17-84	4459	Exxon Chemicals Americas	Baton Rouge, LA.	X	
	5403	Clark Oil & Refg.	Mt. Airy, LA.	X	
4-21-86	6401	Lion Oil Co.	Eldorado, Ark.	X	
	5110	Shell Western E&P, Inc.	New Orleans, La.	X	
7-22-85	1101	DuPont	LaPlace, LA	X	
1-1-86	1451	Uniroyal	Geismar, LA		X
1-3-78	1474	Triad	Geismar, LA		X
1-1-86	1485	Big Three Industries, Inc.	Plaquemine, LA		X
	2501	American Can Co.	Butler, AL		X
5-1-84	4550	H O Processing	Claiborne, AL		X
10-1-85	5502	Union Carbide	Chickasaw, AL		X
4-24-84	5202	Alcoa	Mobile, AL		X
4-1-86	3469	Georgia Gulf (Plaquemine Div.)	Plaquemine, LA		X
3-31-86	6405	Shell Oil Co.	LaPlace, LA		X
	1.2 <u>Houston, Texas</u>				
Oral	3117	ADM-West	Decatur, IL		X
Oral	3150	ADM-East	Decatur, IL		X
Oral	3183	ADM	Peoria, IL		X

	CONTRACT NO.	CLIENT	JOB LOCATION	CONTRACT ASSIGNED TO		
				UMC	P&K CO. INC.	JEMCI
Oral	3190	ADM	Clinton, Iowa			X
3-4-86	3409	Colonial Pipeline	Galena Park, TX			X
2-14-86	3412	Georgia Gulf (Houston Div.)	Pasadena, TX			X
2-17-81	3601	Northwest Alloys, Inc.	Addy, Wash.			X
4-7-83	4103	Dow Chemical	LaPorte, TX			X
11-1-85	4407/4460/5405	Champion Int'l	Pasadena, TX			X
8-1-84	4405	Exxon Chemical Americas (Plastics)	Mt. Belvieu, TX			X
10-12-81	4461	Exxon Company U.S.A.	Baytown, TX			X
12-14-84	5121/6119	Borden, Inc.	Geismar, LA			X
12-31-85	6101	Alcoa	Rockdale, TX			X
2-21-86	6105	U.S. Industrial Chem. Co.	Deer Park, TX			X
4-28-86	6114	Kimberly-Clark Corp.	Paris, TX			X
5-1-86	6118	Stauffer Chemical	Houston, TX			X
1-13-86	3101	GATX Terminals Corp.	Galena Park, TX			X

2. Bayou Maintenance, Inc. Contracts

10-31-83	4403	Allemania Chem.	Plaquemine, LA	X
as of 6-3-85	4406	Ciba-Geigy Corp.	St. Gabriel, LA	X
	4416/4454	Stauffer Chemical	St. Gabriel, LA	X
	~~4474~~	~~Bayou Steel Corp.~~	~~LaPlace, LA~~	~~X~~
as of 1-1-86	4463	Chevron Chem. Co.	Belle Chasse, LA	X

	CONTRACT NO.	CLIENT	JOB LOCATION	CONTRACT ASSIGNED TO		
				UMC	P&K CO. INC.	JEMCI
as of 1-1-86	4464	Chevron Chem. Co.	Belle Chasse, LA		X	
			TOTAL 38	<u>9</u>	<u>10</u>	<u>19</u>

Copies of each of the Assigned Contracts have been furnished to Purchaser.

860:WN:27

Schedule B
to
Purchase Agreement
List of Purchased Assets

Attached hereto as Exhibits "A" and "B" are a Fixed Asset Schedule and Tools and Furniture General Summary, respectively.

PAYNE & KELLER COMPANY

Description	Date Acquired	Original Acquisition Cost	Net Book Value 12/31/65
PAYNE AND KELLER COMPANIES			14-Jul-66
FIXED ASSETS			
AUTOS & TRUCKS (BATON ROUGE)		753,778.87	65,259.89
AUTOS & TRUCKS (BAYOU MAINTENANCE)		64,285.95	1,061.41
AUTOS & TRUCKS (HOUSTON)		662,381.85	45,967.40
MACHINERY & EQUIPEMENTS (BATON ROUGE)		1,285,252.78	181,862.95
MACHINERY & EQUIPEMENTS (HOUSTON)		788,773.53	102,855.45
TOTAL P & K COMPANY :		3,474,392.98	396,287.10

All U.S. Dollar figures set forth on Exhibit "A" relate to the costs of items on the books of accounts of Sellers and bear no relationship or have no relevancy to the purchase price paid by Purchaser for these assets subject, however, to the provisions of Paragraph 1.1(ii) (A) and (B) of the Purchase Agreement.

Statements on Exhibit "A" such as "General Condition" or "Comments" are not part of Sellers' representations and warranties and merely reflect opinion of persons who reviewed or inspected the assets. The statements have no legal significance in the transaction between Sellers and Purchaser.

EXHIBIT "A"

ASSET #	Description	Date Acquired	Original Acquisition Cost	Net Book Value 12/31/85	HOURS 15 JUNE 1986	MILEAGE 15 JUNE 1986	ASSI- GEMENT	Client	General Condition	Comments
DIVISION 20 : AUTOS & TRUCKS										
VPR001	1962 Chevy 36 Pass Bus	05/19/81	900.00	0.00	NA	28,952	yard	NA	fair	engine knocking - some rust
VPR002	1965 Ford School Bus	04/01/81	9,000.00	0.00	NA	64,394	yard	NA	fair	some rust
VFR001	Flatbed Dump Truck	12/09/76	10,107.72	0.00	NA	52,000	yard	NA	fair	fuel tank - body rust
VFR002	Flatbed Dump Truck	12/28/77	10,501.42	0.00	NA	55,000	6707	Boise	fair	body has new paint
VFR003	Ford F-600 Flatbed	03/22/82	22,095.65	0.00	NA	35,000	6401	Lion Oil	good	no comment
VFR004	Ford F-350 Flatbed	08/31/82	10,696.98	0.00	NA	40,000	yard	NA	good	no comment
VFR005	Ford F-600 Dump Truck	07/22/82	19,274.97	0.00	NA	15,000	yard	NA	good	no comment
VFR006	1984 GMC Flat Bed (1ton)	07/02/84	11,130.70	4,121.31	NA	36,000	2501	American C	fair	service truck
VFR007	1976 Ford Flat Bed (1ton)	07/02/84	5,610.92	2,076.04	NA	90,000	2501	American C	poor	welding truck
VFR008	1977 Ford Flat Bed (1ton)				NA	22,000	5202	ALCOA	fair	no comment
VFR009	79 Ford Dump FB28VEK3750	06/11/85	3,000.00	2,130.00	NA	25,000	yard	NA	good	no comment
VFR010	78 Chevy StakeCOL338V159838	06/11/85	1,425.00	1,011.75	NA	53,000	yard	NA	fair	no comment
VFR011	78 Chevy StakeCOL338V160036	06/11/85	1,425.00	1,011.75	NA	55,000	4459	Exxon	fair	no comment
VFR012	79 Ford Stake F37HCE66679	06/11/85	1,900.00	1,349.00	NA	40,000	4459	Exxon	good	new paint
VPR036	Ford F-150 Pickup	05/17/79	6,650.30	0.00	NA	NA	SOLD	NA	NA	sold 3/84
VPR092	Ford F-150 Pickup	05/22/79	6,502.04	0.00	NA	NA	SOLD	NA	NA	sold 7/84
VPR093	Ford F-150 Pickup	06/27/79	6,502.04	0.00	NA	NA	SOLD	NA	NA	sold 6/84
VPR090	Ford F-150 Pickup	07/31/79	6,505.22	0.00	NA	NA	SOLD	NA	NA	sold 4/84
VPR102	Ford F-150 Pickup	09/19/79	6,442.71	0.00	NA	NA	SOLD	NA	NA	sold 3/84
VPR104	Ford F-250 Pickup	10/11/79	7,667.12	0.00	NA	07,000	yard	NA	fair	body OK - service truck
VPR106	Ford F-150 Pickup	12/07/82	6,713.28	0.00	NA	177,000	yard	NA	fair	body fair - rebuilt engine
VPR107	Ford F - 150 Pickup	03/11/80	6,782.46	0.00	NA	NA	SOLD	NA	NA	sold 4/84
VPR100	Ford F - 150 Pickup	03/11/80	6,782.46	0.00	NA	140,000	NA	NA	scrapped	used for spare parts
VPR109	Ford F - 150 Pickup	03/11/80	6,782.46	0.00	NA	153,000	6701	Marathon	fair	body fair - engine loose
VPR113	Ford F - 150 Pickup	04/23/80	6,767.49	0.00	NA	NA	SOLD	NA	NA	sold 7/84
VPR120	Ford F - 150 Pickup	06/27/80	6,675.71	0.00	NA	125,000	1451	Uniroyal	fair	body fair - rebuilt engine
VPR121	Ford F - 150 Pickup	08/11/80	7,191.04	0.00	NA	125,000	1451	Uniroyal	fair	body fair - rear main leaking
VPR126	Ford F - 150 Pickup	10/16/80	6,963.00	0.00	NA	100,000	1451	Uniroyal	fair	body fair - engine fair
VPR127	Ford F - 150 Pickup	10/16/80	6,963.00	0.00	NA	90,000	4459	Exxon	fair	body fair - engine loose
VPR128	Ford F - 150 Pickup	10/16/80	6,963.00	0.00	NA	130,000	1451	Uniroyal	fair	body fair - engine fair
VPR129	Ford F - 150 Pickup	03/05/81	7,065.72	0.00	NA	NA	SOLD	NA	NA	sold 11/84
VPR130	Ford F - 150 Pickup (NOB)	10/16/80	6,963.00	0.00	NA	126,000	NA	NA	scrapped	used for spare parts
VPR131	Ford F - 150 Pickup				NA	NA	SOLD	NA	NA	2/8
VPR132	Ford F - 150 Pickup (NOB)	10/16/80	6,963.00	0.00	NA	101,000	1000	GLA	fair	mobile area
VPR133	Ford F - 150 Pickup	10/16/80	6,963.00	0.00	NA	76,000	yard	NA	poor	body bad - engine bad
VPR134	Ford F - 150 Pickup (NOB)	10/16/80	6,963.00	0.00	NA	110,000	1451	Uniroyal	fair	body fair - engine fair
VPR135	Ford F - 150 Pickup	10/16/80	6,963.00	0.00	NA	113,000	6707	boise	fair	body fair - rebuilt engine
VPR136	Ford F - 150 Pickup	10/16/80	7,062.47	0.00	NA	140,000	1000	GLA	fair	body fair, rebld engine, check f
VPR137	Ford F - 150 Pickup	10/16/80	7,000.47	0.00	NA	05,000	yard	NA	poor	engine and body bad
VPR138	Ford F - 150 Pickup	10/16/80	7,790.47	0.00	NA	95,000	6701	Marathon	fair	body good - engine loose
VPR140	Ford F - 150 Pickup	2/84	7,091.47	291.99	NA	119,000	4459	Exxon	poor	body bad
VPR141	Ford F - 150 Pickup	04/03/81	7,091.47	0.00	NA	121,000	5202	Alcoa	poor	body bad
VPR142	Ford F - 150 Pickup	04/11/81	7,301.24	0.00	NA	162,000	yard	NA	poor	overall bad shape
VPR145	Ford F - 150 Pickup	06/22/81	7,023.10	0.00	NA	107,000	1451	Uniroyal	poor	body bad - engine OK
VPR146	Ford F - 150 Pickup	06/22/81	7,023.10	0.00	NA	134,000	yard	NA	poor	body fair - engine bad

PAYNE & KELLER COMPANY

ASSET #	Description	Date Acquired	Original Acquisition Cost	Net Book Value 12/31/85	HOURS 15 JUNE 1986	MILEAGE 15 JUNE 1986	ASSI- GMENT	Client	General Condition	Comments
VPR147	Ford F - 150 Pickup	04/11/81	7,211.24	0.00	NA	174,000	yard	NA	poor	body bad - engine bad
VPR148	Ford F - 150 Pickup	06/26/81	7,698.25	0.00	NA	182,865	NA	NA	scrapped	use for spare parts
VPR149	Ford F - 150 Pickup	07/06/81	7,776.78	0.00	NA	88,000	yard	NA	fair	body fair - engine good
VPR151	Ford F - 150 Pickup	07/31/81	7,698.25	0.00	NA	125,000	1000	GLA	poor	back end wrecked - engine good
VPR152	Ford F - 150 Pickup	08/31/81	7,776.78	0.00	NA	131,000	yard	NA	poor	body needs work - engine bad
VPR153	Ford F - 150 Pickup	11/20/81	8,528.44	0.00	NA	72,820	5752	Holston	good	body & engine good
VPR154	Ford F - 150 Pickup	11/20/81	8,528.44	0.00	NA	115,000	yard	NA	fair	new engine - body fair
VPR155	Ford F - 150 Pickup	11/20/81	8,528.44	0.00	NA	108,000	4459	Exxon	fair	body needs work
VPR158	Ford F - 150 Pickup	11/20/81	8,528.44	0.00	NA	98,000	6406	Stauffer L	poor	body & engine need work
VPR159	Ford F - 150 Pickup	11/20/81	8,528.44	0.00	NA	106,000	1451	Uniroyal	fair	body needs work - engine fair
VPR160	Ford F - 150 Pickup	11/20/81	8,528.44	0.00	NA	106,000	6701	Marathon	poor	body bad
VPR161	Ford F - 150 Pickup	05/20/82	8,837.32	0.00	NA	128,000	1000	GLA	fair	body fair - engine under repair
VPR162	Ford F - 150 Pickup	05/20/82	8,837.32	0.00	NA	110,000	6707	Boise	poor	body & engine poor
VPR163	Ford F - 150 Pickup	05/20/82	8,837.32	0.00	NA	88,000	1451	Uniroyal	fair	new engine - body fair
VPR164	Ford F - 150 Pickup	06/22/82	8,883.34	0.00	NA	97,000	5752	Holston	fair	body bad - very dirty
VPR165	Ford F - 150 Pickup	07/13/82	8,858.62	0.00	NA	85,000	5121	Liquid Air	good	body good
VPR166	Ford F - 150 Pickup	07/31/82	8,881.43	0.00	NA	NA	HOUSTON	NA	NA	no comment
VPR167	1983 Ford F-150 Pickup	11/29/82	8,299.38	0.00	NA	85,000	4459	Exxon	good	body good - engine OK
VPR168	1983 Ford F-150 Pickup	11/29/82	8,299.38	0.00	NA	80,000	6401	Lion Oil	good	no comment
VPR169	1983 Ford F-150 Pickup	12/07/82	8,299.38	0.00	NA	95,000	6401	Lion Oil	good	body good - rebuilt engine
VPR170	1983 Ford F-150 Pickup	12/07/82	8,299.38	0.00	NA	78,000	1101	du Pont	good	no comment
VPR173	1983 Ford F-150 Pickup	01/31/83	8,299.38	0.00	NA	85,000	1000	GLA	fair	body fair - engine good
VPR174	1983 Ford F-150 Pickup	01/31/83	8,299.38	0.00	NA	95,000	1000	GLA	poor	body bad - engine good
VPR175	1983 Ford F-150 Pickup	02/28/83	8,299.38	511.79	NA	80,000	4459	Exxon	good	body fair - engine good
VPR176	1983 Ford F-150 Pickup	08/19/83	8,379.00	516.70	NA	58,000	3471	Georgia BF	good	some rust
VPR177	Ford F-150 Pickup	05/09/84	8,843.68	2,976.16	NA	39,000	4416	Stauffer	good	no comment
VPR178	Ford F-150 Pickup	05/09/84	8,843.68	2,976.16	NA	78,000	6701	Marathon	good	no comment
VPR179	Ford F-150 Pickup	05/09/84	8,843.68	2,976.16	NA	52,000	5502	union carb	good	some rust
VPR180	Ford F-150 Pickup	05/09/84	8,843.68	2,976.16	NA	45,000	1000	GLA	good	no comment
VPR181	1984 Ford F-150 Pickup	07/02/84	8,843.68	2,976.16	NA	68,000	1474	Triad	good	no comment
VPR182	1984 Ford F-150 Pickup	07/02/84	8,843.68	2,976.16	NA	38,000	1451	Uniroyal	good	no comment
VPR183	1984 Ford F-150 Pickup	07/02/84	8,843.68	2,976.16	NA	63,000	yard	NA	good	no comment
VSR021	1979 chevy MALIBU 1N19W9K544983	06/11/85	1,300.00	923.00	NA	75,000	1000	GLA	good	no comment
VSR023	Ford LTD Sedan	09/11/80	8,381.72	0.00	NA	NA	HOUSTON	NA	NA	no comment
VSR029	Ford LTD Sedan	04/09/81	8,250.64	0.00	NA	67,000	1000	GLA	good	no comment
VSR030	Ford LTD Sedan	07/24/81	8,700.69	0.00	NA	120,000	1000	GLA	poor	no comment
VSR032	Ford LTD Sedan	02/19/82	9,467.12	0.00	NA	105,000	1000	GLA	fair	no comment
VSR034	Ford LTD Sedan	05/24/82	9,531.95	0.00	NA	96,000	1000	GLA	good	no comment
VSR036	Ford LTD Sedan (MOB)	06/15/82	9,711.16	0.00	NA	85,000	1000	GLA	good	no comment
VSR037	Ford LTD Sedan	06/15/82	9,136.00	0.00	NA	NA	HOUSTON	NA	NA	no comment
VSR038	1983 Olds Regency 98	03/09/83	10,388.19	0.00	NA	NA	HOUSTON	NA	NA	no comment
VSR039	1983 Olds Delta 98	03/09/83	12,539.91	0.00	NA	NA	HOUSTON	NA	NA	no comment
VSR040	1984 Chevrolet Impala Sedan	05/25/84	10,473.35	3,875.14	NA	65,000	1000	GLA	good	no comment
VSR041	1984 Chevrolet Impala Sedan	05/28/84	10,473.35	3,875.14	NA	77,000	1000	GLA	good	no comment
VSR042	1984 Chevrolet Impala Sedan	05/25/84	10,473.35	3,875.14	NA	60,000	1000	GLA	good	no comment
VSR043	1984 Chevrolet Impala Sedan	05/25/84	10,473.35	3,875.14	NA	65,000	1000	GLA	good	no comment
VSR044	1984 Chevrolet Impala Sedan	05/25/84	10,473.35	3,875.14	NA	65,000	1000	GLA	good	no comment
VSR045	1984 Chevrolet Impala (MOB)	06/04/84	10,473.35	3,875.14	NA	55,000	1000	GLA	good	no comment
VSR046	1984 Olds 88 (K-100)	06/26/85	13,194.48	4,881.96	NA	NA	HOUSTON	NA	NA	no comment

PAYNE & KELLER COMPANY

ASSET #	Description	Date Acquired	Original Acquisition Cost	Net Book Value 12/31/85	HOURS 15 JUNE 1986	MILEAGE 15 JUNE 1986	ASSI- GMENT	Client	General Condition	Comments
VSR047	1984 Olds 88 royale				NA	75,000	1000	G&A	good	no comment
	1 1982 Ford F250 PU (ex Cardinal)	2/84	9,041.00	2,350.65	NA	NA	SOLD	NA	NA	sold 3/84
VSR031	OLDSMOBILE (BMI)	10/ /81	11,443.93	0.00	NA	75,000	1000	G&A	good	no comment
VPR144	FORD-150 PICK-UP (BMI)	06/ /81	8,172.59	0.00	NA	112,000	4464	chevron	fair	bad body
VPR123	FORD-150 PICK-UP (BMI)	10/ /80	6,963.00	263.53	NA	98,000	4463	chevron	fair	body fair - engine loose
VPR139	FORD-150 PICK-UP (BMI)	12/ /80	7,841.47	297.27	NA	142,000	6716	chevron	poor	body bad - engine bad
VPR150	FORD-150 PICK-UP (BMI)	07/ /81	8,122.67	0.00	NA	165,000	6102	atlas	fair	body fair - engine loose
VPR157	FORD-150 PICK-UP (BMI)	11/ /81	8,528.44	0.00	NA	108,000	4426	ciba-geigy	poor	body & engine bad
VFR119	FORD-150 PICK-UP (BMI)	06/ /80	6,675.71	252.66	NA	133,000	4416	stauffer	fair	body fair - engine bad
VPR116	FORD-150 PICK-UP (BMI)	06/ /80	6,538.14	247.95	NA	181,000	yard	NA	poor	broken window - engine bad
TOTAL P & K ----->			753,778.87	65,257.87						
TOTAL BMI ----->			64,285.95	1,061.41						
TOTAL DIVISION 20 : AUTOS & TRUCKS			818,064.82	66,321.30						

ASSET #	Description	Date Acquired	Original Acquisition Cost	Net Book Value 12/31/85	HOURS 15 JUNE 1986	MILEAGE 15 JUNE 1986	ASSI- GEMENT	Client	General Condition	Comments
DIVISION 10 : AUTOS & TRUCKS										
CF- 52	Truck Bed for '75 Truck	02/07/70	3,174.85	0.00	NA	NA	yard	NA	fair	no comment
F - 38	68 Chevy Bus 55527A14370300	09/16/74	3,580.00	0.00	NA	90,000	yard	NA	poor	no comment
F - 39	74 Ford F133 PU F60DV081340	08/08/74	6,276.76	0.00	NA	40,000	yard	NA	fair	no comment
F - 42	75 Ford F133 PU F19YLA2097	02/18/75	3,954.21	0.00	NA	204,850	yard	NA	poor	no comment
F - 45	Flatbed Dumptruck F60DV081508	08/24/77	8,835.29	0.00	NA	50,000	yard	NA	fair	no comment
F - 46	Flatbed Dumptruck F60DV081621	08/24/77	8,399.84	0.00	NA	20,000	6716	cameron	fair/pr	no comment
F - 47	77 Ford Fuel truck F82FV09921	10/31/77	12,686.17	0.00	NA	224,500	yard	NA	fair	no comment
F - 48	'71 Chevy Flatbed C5531D133247	06/27/78	150.00	0.00	NA	NA	NA	NA	scrapped	no comment
F - 49	'78 Ford 350 F375KCA7049	06/14/78	6,864.80	0.00	NA	107,000	6105	usi	fair	new engine
F - 50	'76 Chevy C68TR CCE61B121310	07/07/81	3,680.00	0.00	NA	50,045	yard	NA	rough	rough but usable
F - 51	'80 Ford F8D1N704H081059	03/17/82	15,427.50	0.00	NA	40,000	6101	alcoa	good	no comment
F - 52	'82 Ford F250/1FTHF25F00NA18190	05/18/82	9,197.60	0.00	NA	100,000	yard	NA	fair	no comment (see CF - 52)
F - 53	'82 Ford F250/1FTHF25Z3DRA26113	06/07/82	9,525.55	0.00	NA	60,524	yard	NA	good/fr	no comment
F - 54	1970 Dump Truck M50CUG61741	03/19/83	7,995.00	493.16	NA	174,000	3101	gatx	fair/pr	no comment
F - 56	GMC 1981 truck	01/84	33,424.72	3,263.77	NA	50,000	yard	NA	fair	no comment
FGN - 1	Trailer gooseneck	10/31/79	10,850.85	0.00	NA	NA	6105	usi	fair	needs flooring ,painting done
K - 64	'78 Ford LTD B063H193910	06/16/78	6,344.53	0.00	NA	NA	NA	NA	SOLD	no comment
K - 81	'80 Ford Fairmont Dk920175590	04/29/80	6,570.20	0.00	NA	85,000	yard	NA	poor	no comment
K - 87	'81 Ford LTD 1FABP33F00U114598	03/81	8,439.65	0.00	NA	100,000	1000	G&A	fair	no comment
K - 91	'81 Ford LTD 1FABP33F00U171935	06/25/81	8,885.92	0.00	NA	102,500	4459	exxon	fair	no comment
K - 93	'81 Ford LTD 1FABP33F00U169432	07/07/81	10,977.14	0.00	NA	90,400	1000	G&A	poor	no comment
K - 96	'81 Ford LTD 1FAEP33F15U179153	07/07/81	8,845.66	0.00	NA	76,700	1000	G&A	fair	no comment
K - 97	82 OLDS 88	10/31/81	11,930.50	0.00	NA	65,275	1000	G&A	fair	no comment
K - 99	'81 Ford 4DR/ 1FABP33F70U149075	07/13/81	8,894.04	0.00	NA	100,000	1000	G&A	fair	no comment
~~K - 101~~	~~83 Cadillac 1G6AD693009100202~~	~~01/85~~	~~21,422.47~~	~~0.00~~	~~NA~~	~~60,000~~	~~1000~~	~~G&A~~	~~good~~	~~no comment~~
K - 102	83 OLDS 88				NA	112,000	yard	NA	fair	no comment
K - 103	'83 OLDS 88/ 1G6AY69Y70X307731	10/29/82	12,564.71	0.00	NA	NA	NA	EATON ROUG	NA	no comment
K - 105	83 FORD LTD 1FABP33F70Z100000	01/85	9,610.41	0.00	NA	80,000	1000	G&A	fair	no comment
~~K - 107~~	~~84 OLDS 60 1G6AY69Y60X332970~~	~~01/85~~	~~13,026.40~~	~~4,819.30~~	~~NA~~	~~52,900~~	~~1000~~	~~G&A~~	~~good~~	~~no comment~~
K - 109	84 OLDS 88				NA	60,000	1000	G&A	fair	no comment
K - 109	Ford LTD 1982	01/84	9,773.37	5,590.03	NA	90,000	5121	liquid air	fair	no comment
K - 110	1984 OLDS 88	02/28/84	13,336.20	4,934.42	NA	40,000	1000	G&A	good	no comment
K - 111	Ford LTD Sedan 1982	12/84	8,641.55	0.00	NA	130,000	1000	G&A	fair	no comment
K - 112	LTD ford 1981				NA	100,000	1000	G&A	fair	no comment
K - 113	82 Ford Sedan LTD	01/85	9,526.00	2,476.70	NA	124,000	1000	G&A	fair	no comment
~~K - 114~~	~~83 OLDS 98~~				~~NA~~	~~50,000~~	~~1000~~	~~G&A~~	~~fair~~	~~no comment~~
K - 115	LTD ford 1982				NA	100,000	1000	G&A	fair	no comment
OT104-1	10 x 40 Office Trailer	03/31/69	2,784.00	0.00	NA	NA	yard	NA	fair	no comment
R - 156	'77 Ford F600 F15GUB09655	03/06/78	5,483.11	0.00	NA	NA	NA	NA	scrapped	no comment
R - 156	'77 Ford F800 Additions	11/10/77	4,422.70	0.00	NA	NA	NA	NA	scrapped	no comment
R - 163	79 FORD PU	09/26/78	6,005.20	0.00	NA	NA	NA	NA	scrapped	no comment
R - 165	'79 Ford F150 PU F15GXE02113	03/29/79	6,260.00	0.00	NA	NA	NA	NA	SOLD	no comment
R - 179	'80 Ford F150 PU F15FL6J0947	02/22/80	6,713.20	0.00	NA	104,443	4461	exxon	poor	no comment
R - 181	'80 Ford F150 PU F15ELH06324	04/30/80	6,734.20	0.00	NA	119,162	yard	NA	poor	no comment
R - 162	'80 Ford F150 PU F15ELH67000	04/30/80	6,673.54	0.00	NA	104,000	NA	NA	scrapped	no comment

FAYNE & KELLER COMPANY

ASSET #	Description	Date Acquired	Original Acquisition Cost	Net Book Value 12/31/85	HOURS 15 JUNE 1986	MILEAGE 15 JUNE 1986	ASSI- GMENT	Client	General Condition	Comments
R - 163	'80 Ford F150 PU F15ELJAD738	04/20/80	7,211.64	0.00	NA	NA	NA	NA	scrapped	no comment
R - 165	'81 Ford F150 PU F15EBBUA11608	10/22/80	6,997.93	0.00	NA	150,000	4461	exxon	fair	no comment
R - 186	'81 Ford F150 PU F15E1BUA11613	10/22/80	6,997.93	0.00	NA	186,000	yard	NA	poor	poor but usable
R - 187	'81 Ford F150 PU F15E7BUA11616	10/22/80	6,997.93	0.00	NA	98,000	4461	exxon	fair	new engine september 1985
R - 188	'81 Ford F150 PU F15E5BUA11615	10/22/80	6,997.93	0.00	NA	119,091	yard	NA	poor	no comment
R - 198	'81 Ford F150 PU F15E6BUA11607	10/22/80	6,997.93	0.00	NA	186,700	yard	NA	fair	no comment
R - 191	'81 Ford F150 PU F15EBBUA11611	10/22/80	6,997.93	0.00	NA	126,479	4461	exxon	poor	no comment
R - 192	'81 Ford F150 PU F15E6BUA11610	10/22/80	6,997.93	0.00	NA	151,865	4461	exxon	poor	no comment
R - 193	'81 Ford F150 PU F15EXBUA11612	10/22/80	6,997.93	0.00	NA	185,000	4461	exxon	poor	no comment
R - 194	'81 Ford F150 PU F15E9BUA11617	10/17/80	6,997.93	0.00	NA	89,521	4461	exxon	poor	needs engine
R - 195	'81 Ford F150 PU F15EBBUA11614	10/17/80	6,997.93	0.00	NA	88,000	3101	gatx	poor	no comment
R - 196	'81 Ford F150 PU F15E0BUA19797	11/07/80	7,837.13	0.00	NA	137,367	4461	exxon	poor	no comment
R - 197	'81 Ford F150 PU F15E7BUA19798	11/07/80	7,837.13	0.00	NA	102,920	6101	alcoa	fair	new engine and body works
R - 198	'81 Ford F150 PU F15E3BUA21124	11/25/80	7,837.13	0.00	NA	91,500	4103	dow	poor	no comment
R - 199	'81 Ford F150 PU F15E0BUA24976	12/03/80	7,837.13	0.00	NA	96,000	6403	hill pet	fair	new engine september 1985
R - 201	'81 Ford F150 PU F15E2BUA24977	11/25/80	7,837.13	0.00	NA	153,350	yard	NA	poor	no comment
R - 204	'82 Ford F150/ 1FTDF15FXCUA1318910/31/81		8,215.77	0.00	NA	68,000	5759	stauffer	fair	no comment
R - 205	'82 Ford F150/ 1FTDF15FXCUA1318810/31/81		8,215.77	0.00	NA	130,000	5759	stauffer	fair	no comment
R - 207	'82 Ford F150/ 1FTDF15F6CUA1319010/31/81		8,215.77	0.00	NA	86,900	4407	champion	fair	no comment
R - 208	'82 Ford F150/ 1FTDF15F6CUA1319110/31/81		8,215.77	0.00	NA	68,000	yard	NA	fair	no comment
R - 209	'82 Ford F150/1FTDF15E4CNA50952	06/23/82	8,872.83	0.00	NA	NA	NA	NA	SOLD	no comment
R - 211	'82 Ford F150/FTDF15F9CPA90392	08/21/82	8,717.50	0.00	NA	70,621	6719	big three	fair	no comment
R - 212	'82 Ford F150/FTDF15F8CPA90393	08/21/82	8,717.50	0.00	NA	54,000	3412	georgia gf	fair	no comment
R - 213	'82 Ford F150/FTDF15F2CPA90394	08/21/82	8,717.50	0.00	NA	79,000	5759	stauffer	fair	no comment
R - 214	'82 Ford F150/1FTDF15F4CAA90395	08/21/82	8,717.50	0.00	NA	84,622	6105	usi	fair	no comment
R - 215	'82 Ford F150/FTDF15F6CPA90396	08/21/82	8,717.50	0.00	NA	97,500	4461	exxon	fair	no comment
R - 216	'79 Ford F150/F156KEC2102	06/25/79	6,502.04	0.00	NA	100,000	4103	dow	poor	no comment
R - 217	'80 Ford F150/ FTDF15E4BLA1002	10/16/80	6,963.00	0.00	NA	81,247	yard	NA	poor	no comment
R - 218	'81 Ford F150/ FTDF15E3BUA	06/27/81	7,823.10	0.00	NA	77,091	yard	NA	fair	no comment
R - 219	PU Truck Ford 56350	04/13/84	8,843.68	2,976.16	NA	42,500	6105	usi	good	no comment
R - 220	PU Truck Ford 56351	04/13/84	8,843.68	2,976.16	NA	45,000	3190	adm	good	no comment
R - 221	PU Truck Ford 56354	04/13/84	8,843.68	2,976.16	NA	29,000	4407	champion	good	no comment
R - 222	PU Truck Ford 56353	04/13/84	8,843.68	2,976.16	NA	37,916	6101	alcoa	good	no comment
R - 223	PU Truck Ford 85362	06/04/84	8,435.68	3,121.20	NA	31,460	6110	usi	good	no comment
R - 224	'84 Ford Pickup		8,435.67	3,121.20	NA	40,500	4407	champion	good	no comment
R - 225	'84 Ford Pickup		8,435.68	3,121.20	NA	40,000	5759	stauffer	good	no comment
R - 226	'84 Ford Pickup		8,435.67	3,121.20	NA	35,000	4405	exxon	good	no comment
R - 227	Ford f - 150 Pick up				NA	87,000	6403	hill pet	fair	no comment
TER002	1964 Hobbsard Flat Trailer	03/01/66	2,907.75	0.00	NA	NA	NA	NA	baton rgerio	comment
	2 Radios Auto Fleet	12/15/70	7,248.86	0.00	NA	NA	NA	NA	NA	see TOOL INVENTORY
	3 Motorola Communications	08/03/72	3,560.54	0.00	NA	NA	NA	NA	NA	see TOOL INVENTORY
	4 Cushman 12HP Haulster	05/17/74	1,792.00	0.00	NA	NA	NA	NA	scrapped	no comment
	5 Cushman 12HP Haulster	05/17/74	1,792.00	0.00	NA	NA	NA	NA	scrapped	no comment
	6 14' Omaha Std Platform	08/21/74	1,251.00	0.00	NA	NA	NA	NA	scrapped	no comment
	7 Solo Serobody Mod 4553	03/03/75	617.30	0.00	NA	NA	NA	NA	scrapped	no comment
	9 Cardinal Service typewriter	01/84	296.00	0.00	NA	NA	NA	NA	scrapped	no comment
TOTAL DIVISION 10 : AUTOS & TRUCKS			662,301.85	45,967.40						

PAYNE & KELLER COMPANY

ASSET #	Description	Date Acquired	Original Acquisition Cost	Net Book Value 12/31/85	HOURS 15 JUNE 1986	MILEAGE 15 JUNE 1986	ASSI- GMENT	Client	General Condition	Comments
DIVISION 2B : MACHINERY & EQUIPMENT										
A - 39	J.D. J480 Diesel	08/26/69	10,357.96	0.00	NA	NA	NA	NA	scrapped	no comment
A - 53	TSI Model 1800 Zapper	05/28/81	1,233.67	139.82	NA	NA	NA	NA	scrapped	no comment
A - 57	INTCO HD 750 Air Compres (MOB)	04/08/81	8,783.85	2,313.86	NA	NA	2581	american c	fair	no comment
A - 59	6 HP 30 Gal Air Compres (MOB)	04/06/81	1,047.28	118.63	NA	NA	NA	NA	scrapped	no comment
A - 77	Beveling Band & Transmission	01/15/82	2,273.06	257.65	NA	NA	NA	NA	NA	see TOOL INVENTORY
BH0001	580D Case Backhoe	12/30/81	34,923.28	3,953.00	2800	NA	yard	NA	fair	needs minor works
BH0002	Case 580D Backhoe	01/01/84	38,763.14	24,420.78	698	NA	yard	NA	good	no comment
BUF008	Portable Bldg 10X20				NA	NA	NA	NA	scrapped	holly beach
BUF009	Portable Building	11/30/80	1,326.00	0.00	NA	NA	yard	NA	poor	needs doors & windows, skid
BUF012/2(2)	8 x 16 Portable Bldg (MOB)	07/30/81	1,990.00	225.50	NA	NA	yard	NA	fair	tool room, roof leak
BUF014	Portable Bldg 10X20				NA	NA	NA	NA	scrapped	holly beach
BUF023	8 x 12 Portable Bldg	11/04/80	715.50	0.00	NA	NA	yard	NA	fair	tool room
BUF024	10 x 20 Portable Bldg	12/03/80	1,566.42	0.00	NA	NA	yard	NA	fair	need doors
BUF026	Used 10 x 12 Portable Bldg	01/23/81	995.93	0.00	NA	NA	NA	NA	scrapped	no comment
BUF027	Used 10 x 12 Portable Bldg	01/23/81	1,138.20	0.00	NA	NA	yard	NA	bad	storage
BUF028	Used 10 x 12 Portable Bldg	01/23/81	995.93	0.00	NA	NA	yard	NA	poor	needs roof & skid
BUF030	Portable Bldg 10X20				NA	NA	yard	NA	fair	tool room, skid
BUF031	Used 12x12 Portable bldg				NA	NA	6707	Boise	fair	tool room
BUF033	10 x 20 Portable Building (MOB)	06/19/81	2,382.15	269.99	NA	NA	yard	NA	fair	lunch shack
BUF034	Used 12x12 Portable bldg				NA	NA	yard	NA	good	tool room
BUF035	Used 8X10 Portable Bldg.				NA	NA	NA	NA	scrapped	no comment
BUF036	Used 12x12 Portable bldg				NA	NA	NA	NA	scrapped	no comment
BUF037	Used 12x12 Portable bldg				NA	NA	5582	union carb	poor	walls loose, skin bad
BUF038	Used 12x12 Portable bldg				NA	NA	yard	NA	fair	insulated
BUF039	Used 8X16 Portable Bldg.				NA	NA	yard	NA	poor	no comment
CRA001	Grove Model LRT Sec 18 Ton	11/09/80	90,300.00	0.00	1100	NA	6601	Degussa	good	no comment
CRA002	Grove Mod RT Hyd Crane 18 Ton	11/09/80	91,160.00	0.00	520	NA	6701	Marathon	good	no comment
CRA003	Grove Mod RT Hyd Crane 18 Ton	11/09/80	90,300.00	0.00	3500	NA	6110	Tyson	good	new paint
CRA004	Grove Mod RT Hyd Crane 18 Ton	11/09/80	89,870.00	0.00	4700	NA	6401	Lion Oil	good	no comment
CRA005	Grove Mod RT Hyd Crane 18 Ton	05/19/72	44,535.53	0.00	4800	NA	yard	NA	good	new paint
CRA006	RT - 50 Grove 14 Ton	10/19/72	50,469.95	0.00	2200	NA	6707	Boise	fair	need paint
CRA007	RT - 50 Grove 14 Ton	07/17/75	65,524.00	0.00	2800	NA	yard	NA	fair	need paint
CRA008	RT-501 Grove 14 Ton	09/02/81	81,900.00	8,832.81	7000	NA	yard	NA	fair	all cylinders rebilt/needs pain
CRA009	Clark Crane 14 Ton	06/04/75	63,932.00	0.00	1500	NA	yard	NA	poor	used in yard only
CRA020	Grove TM Crane 80 Ton	09/00/82	265,830.00	82,132.30	2300	NA	yard	NA	good	upper needs paint
GPE001	Generator 6.5 KW	2/84	2,816.00	672.00	NA	NA	5000	chevron	good	no comment
GPE002	Generator 5 KW	04/23/81	1,282.60	145.32	NA	NA	yard	NA	good	no comment
GPE500	Portable Generator 5KW				NA	NA	yard	NA	good	no comment
GPE501	Portable Generator 5KW				NA	NA	NA	NA	scrapped	no comment
IME001	Ice Machine UR 12-0046	12/31/80	3,057.84	0.00	NA	NA	yard	NA	good	no comment
IME002	Ice Machine				NA	NA	yard	NA	bad	needs many parts
LEL001	Lietz Theadolite	10/12/82	3,865.82	1,204.73	NA	NA	4459	exxon	good	no comment
LEL002	Lietz Auto Level & Tripod	10/20/82	1,351.50	421.13	NA	NA	yard	NA	good	no comment
LEL003	K&E Optic				NA	NA	yard	NA	poor	old, not repairable
LPE001	PDM 20-130 Hyd Lift Trk	05/25/81	5,247.00	594.66	NA	NA	yard	NA	good	no comment

ASSET #	Description	Date Acquired	Original Acquisition Cost	Net Book Value 12/31/85	HOURS 15 JUNE 1986	MILEAGE 15 JUNE 1986	ASSI- GEMENT	Client	General Condition	Comments
M4G001	Mortar mixer (2 bags capacity)	06/28/83	1,002.25	497.80	NA	NA	yard	NA	good	no comment
PCG001	Centrifugal Pump				NA	NA	5121	liquid air	good	no comment
PDG001	Diaphragm Pump Gas 3"				NA	NA	yard	NA	good	no comment
PDG002	Diaphragm Pump Gas 2"				NA	NA	6701	marathon	good	no comment
PDG003	Diaphragm Pump Gas 3"				NA	NA	5752	holston	good	no comment
PDG500	Diaphragm Pump Gas 3"				NA	NA	4719	holston	good	no comment
PDP001	3" Wilder Airpump M-15	02/28/82	1,423.92	161.41	NA	NA	yard	NA	good	no comment
PDP002	Diaphragm Pump 2"				NA	NA	yard	NA	good	no comment
PDP003	Warren Rupp Sandpiper Pump	09/13/81 *	1,320.38	149.68	NA	NA	6401	lion oil	good	no comment
PDP004	Hydraulic Power Pump	2/84	1,330.00	443.30	NA	NA	yard	NA	good	no comment
PIF002	Mac Hi 24 3/8" Hydro Pump	01/07/80	1,471.28	0.00	NA	NA	5752	Holston	good	rebuilt
SJE001	Elect Washer Mod. 41000	07/28/80	2,670.00	0.00	NA	NA	yard	NA	good	used at yard
TER001	Trailer				NA	NA	yard	NA	good	needs new floor
TER002	Trailer				NA	NA	yard	NA	good	no comment
TEX001	Lietz B-2 Auto Level & Tripod	06/11/81	3,253.68	368.73	NA	NA	yard	NA	good	no comment
TEX002	Davis White Transit				NA	NA	6707	boise	fair	old type
TEX003	Lietz Auto Level & Tripod	10/12/82	1,720.38	536.16	NA	NA	6601	Degussa	good	no comment
TEX004	K & E Transit Model 740150	12/04/80	1,537.00	0.00	NA	NA	NA	NA	scrapped	no comment
TDF001	Kubota Diesel Tractor	05/22/81	6,778.70	768.23	1500	NA	yard	NA	fair	needs minor work
TDF001	Office Trailer	08/15/78	2,538.00	0.00	NA	NA	6707	Boise	good	with ac/heat
TDF002	Elder Office Trailer	03/30/79	8,882.50	0.00	NA	NA	yard	NA	good	with ac/heat, window let
TDF003	Elder Office Trailer				NA	NA	NA	NA	scrapped	holly beach
TDF015	Elder Office Trailer	03/30/79	3,515.20	0.00	NA	NA	5030	chevron	good	with ac/heat
TDF016	Camelot #4441 Trailer	03/15/77	5,944.95	0.00	NA	NA	NA	NA	scrapped	no comment
TDF019	Office Trailer	09/01/78	2,482.00	0.00	NA	NA	yard	NA	fair	one room with ac/heat
TDF020	B9 Dow Trailer	12/30/81	5,317.00	602.56	NA	NA	yard	NA	fair	tool room, with ac/heat
TDF021	12 x 60 Office Trailer	11/07/83	6,007.44	3,023.42	NA	NA	1000	GLA	good	Baton Rouge Office
TDF022	12 x 50 Office Trailer	11/07/83	5,248.98	2,607.01	NA	NA	1000	GLA	good	Baton Rouge Office
TDF023	12 x 50 Office Trailer	11/07/83	5,248.98	2,607.01	NA	NA	1000	GLA	good	Baton Rouge Office
TP0001	535 Pipe Threader	2/84	1,844.21	514.71	NA	NA	6716	Cameron	good	no comment
TP0004	535 Pipe Threader				NA	NA	5121	Liquid Air	good	no comment
TP0005	535 Pipe Threader				NA	NA	4459	Exxon	good	no comment
TP0006	535 Pipe Threader				NA	NA	5502	Union Carb	good	no comment
TP0010	535 Pipe Threader				NA	NA	6118	CKI	good	no comment
TP0012	535 Pipe Threader				NA	NA	6707	Boise	good	no comment
TP0013	535 Pipe Threader				NA	NA	yard	NA	good	no comment
TP0014	535 Pipe Threader				NA	NA	6701	marathon	good	no comment
TP0015	535 Pipe Threader				NA	NA	5121	Liquid Air	good	no comment
TP0016	535 Pipe Threader				NA	NA	yard	NA	good	no comment
TP0017	535 Pipe Threader	02/00/83	2,215.50	686.61	NA	NA	yard	NA	good	no comment
TP0018	535 Pipe Threader	02/03/83	2,215.50	686.61	NA	NA	6401	Lion Oil	good	no comment
TS6001	WACKER PACKER (compactor)				NA	NA	yard	NA	poor	needs repair
TS6002	WACKER PACKER (compactor)				NA	NA	yard	NA	poor	needs repair
TS6003	WACKER PACKER (compactor)				NA	NA	yard	NA	good	no comment
TS6000	WACKER PACKER (compactor)				NA	NA	yard	NA	bad	no comment
TS6001	WACKER PACKER (compactor)				NA	NA	yard	NA	poor	no comment
TWE001	Puller (for electric cables)	2/84	1,215.40	607.70	NA	NA	yard	NA	fair	no comment
TWE002	Puller (for electric cables)	2/84	1,215.40	607.70	NA	NA	yard	NA	fair	no comment
VAN 001	27' Van Trailer V10 5462	04/17/85	1,325.00	1,086.50	NA	NA	6707	Boise	good	office tool room

PAYNE & KELLER COMPANY

ASSET #	Description	Date Acquired	Original Acquisition Cost	Net Book Value 12/31/85	HOURS 15 JUNE 1986	MILEAGE 15 JUNE 1986	ASSI- GEMENT	Client	General Condition	Comments
VAN 022	27' Van Trailer VID 5468	04/17/85	1,325.00	1,086.50	NA	NA	6110	C&I	good	office tool room
VF1001	X-Ray Film Viewer	03/24/81	550.00	62.30	NA	NA	5121	Liquid Air	good	no comment
WFB001	Farm Wagon	06/12/81	1,823.20	206.60	NA	NA	yard	NA	good	no comment
WFB002	Farm Wagon	06/12/81	1,823.20	206.60	NA	NA	yard	NA	poor	needs floor
WFB003	Farm Wagon	06/12/81	1,823.20	206.60	NA	NA	yard	NA	fair	no comment
WFB004	Farm Wagon	06/12/81	1,823.20	206.60	NA	NA	yard	NA	good	no comment
WFB005	Farm Wagon	06/12/81	1,823.96	116.00	NA	NA	yard	NA	poor	needs floor
WFB006	Farm Wagon	06/12/81	1,823.96	116.00	NA	NA	yard	NA	poor	needs floor
WFB007	Farm Wagon (Pneumatic Tires)	12/16/82	1,850.00	325.42	NA	NA	yard	NA	fair	tires bad
WFB008	Farm Wagon (Pneumatic Tires)	12/16/82	1,850.00	325.42	NA	NA	yard	NA	bad	needs floor
WFE003	200 Amp DC Welder (MOB)	04/10/81	2,247.62	254.74	NA	NA	yard	NA	good	no comment
WFE004	200 Amp Miller EWM				NA	NA	yard	NA	good	no comment
WML001	400 Amp Diesel Welder	04/30/81	6,762.00	766.40	NA	NA	5121	Liquid Air	good	no comment
WML002	400 Amp Diesel Welder (MOB)	04/30/81	6,699.00	755.22	NA	NA	yard	NA	good	rebuild engine
WPM001	250 Amp Diesel Welder	04/27/81	5,143.12	582.87	NA	NA	yard	NA	good	on trailer
WPM002	250 Amp Diesel Welder	04/22/81	5,227.92	592.53	NA	NA	4459	Exxon	good	on trailer
WPM003	250 Amp Diesel Welder	04/22/81	5,094.60	577.30	NA	NA	4459	Exxon	good	on trailer
WPM004	250 Amp Diesel Welder	04/22/81	5,094.60	577.30	NA	NA	6401	Lion Oil	good	on trailer
WPM005	250 Amp Diesel Welder	05/04/81	5,143.12	582.87	NA	NA	yard	NA	good	on trailer
WPM006	250 Amp Diesel Welder	05/04/81	5,143.12	582.87	NA	NA	6701	Marathon	good	on trailer
WPM007	250 Amp Diesel Welding Mach	10/05/82	5,453.70	1,699.50	NA	NA	6110	Atlas	good	on trailer
WPM008	250 Amp Diesel Welding Mach	10/05/82	5,453.70	1,699.50	NA	NA	yard	NA	good	on trailer
WPM009	250 Amp Diesel Welding Mach	12/09/82	5,483.30	1,700.00	NA	NA	yard	NA	good	on trailer
WPM010	250 Amp Diesel Welding Mach	12/16/82	5,483.30	1,700.00	NA	NA	6701	Marathon	good	on trailer
WPM011	250 Amp Diesel Welding Mach	12/16/82	5,483.30	1,700.00	NA	NA	6707	Boise	good	on trailer
WPM012	250 Amp Diesel Welding Mach	12/16/82	5,483.30	1,700.00	NA	NA	yard	NA	good	on trailer
WPM013	250 Amp Diesel Welding Mach	12/16/82	5,483.30	1,700.00	NA	NA	4459	Exxon	good	on trailer
WPM014	250 Amp Diesel Welder	05/11/81	5,227.92	606.63	NA	NA	4459	Exxon	good	on trailer
WPM015	250 Amp Welding Machine	02/07/86	3,225.00	3,225.00	NA	NA	6110	C&I	good	on trailer
WPM016	250 Amp Welding Machine	02/07/86	3,225.00	3,225.00	NA	NA	6110	C&I	good	on trailer
WMS002	200 Amp Welding Machine (MOB)	04/07/81	3,272.64	370.96	NA	NA	6717	union carb	fair	on trailer
WMS004	200 Amp Welding Machine				NA	NA	yard	NA	good	new paint
WMS006	200 Amp Welding Machine				NA	NA	yard	NA	fair	needs sheet metal
WMS007	200 Amp Welding Machine				NA	NA	yard	NA	fair	needs sheet metal
WMS011	200 Amp Welding Machine				NA	NA	yard	NA	fair	needs paint, on trailer
WMS014	200 Amp Welding Machine				NA	NA	4473	Allemania	fair	on trailer
WMS015	200 Amp Welding Machine				NA	NA	yard	NA	good	new paint
WMS017	200 Amp Welding Machine				NA	NA	yard	NA	fair	needs paint, sheet metal
WMS018	200 Amp Welding Machine				NA	NA	5015	Leaf River	fair	on trailer
WMS019	200 Amp Welding Machine				NA	NA	yard	NA	fair	needs paint, sheet metal
WMS022	200 Amp Welding Machine				NA	NA	yard	NA	bad	engine o/h need paint
WMS023	200 Amp Welding Machine				NA	NA	yard	NA	fair	needs sheet metal
WMS024	200 Amp Welding Machine				NA	NA	yard	NA	fair	needs paint, on trailer
WMS025	200 Amp Welding Machine				NA	NA	yard	NA	fair	needs paint
WMS026	200 Amp Welding Machine				NA	NA	NA	NA	scrapped	no comment
WMS027	200 Amp Welding Machine				NA	NA	yard	NA	fair	needs paint
WMS028	200 Amp Welding Machine				NA	NA	yard	NA	fair	needs paint, sheet metal
WMS031	200 Amp Welding Machine				NA	NA	NA	NA	scrapped	no comment
WMS032	200 Amp Welding Machine				NA	NA	6401	Lion Oil	fair	on trailer

PAYNE & KELLER COMPANY

ASSET #	Description	Date Acquired	Original Acquisition Cost	Net Book Value 12/31/85	HOURS 15 JUNE 1986	MILEAGE 15 JUNE 1986	ASSI- GMENT	Client	General Condition	Comments
WMS033	200 Amp Welding Machine				NA	NA	yard	NA	fair	on trailer
WMS034	200 Amp Welding Machine				NA	NA	yard	NA	fair	needs paint
WMS035	200 Amp Welding Machine				NA	NA	6716	Cameron	fair	needs paint
WMS036	200 Amp Welding Machine				NA	NA	6716	Cameron	fair	on trailer
WMS038	200 Amp Welding Machine				NA	NA	5121	Liquid Air	fair	needs paint
WMS039	200 Amp Welding Machine				NA	NA	NA	NA	scrapped	no comment
WMS040	200 Amp Welding Machine				NA	NA	yard	NA	fair	on trailer
WMS041	200 Amp Welding Machine				NA	NA	yard	NA	fair	needs paint
WMX001	300 Amp Lincoln EWM (elec)				NA	NA	yard	NA	fair	no comment
WMX002	300 Amp Lincoln EWM (elec)				NA	NA	5522	Union Carb	fair	no comment
WMX004	Miller B - Pack EWM (elec)				NA	NA	yard	NA	good	no comment
2	Calibrator AMTEK GAS	2/84	1,758.00	583.30	NA	NA	NA	NA	NA	see TOOL INVENTORY
3	Comparator	2/84	1,545.00	515.00	NA	NA	NA	NA	NA	see TOOL INVENTORY
4	Tester	2/84	2,320.00	773.30	NA	NA	NA	NA	NA	see TOOL INVENTORY
5	Bender	2/84	1,952.25	650.69	NA	NA	NA	NA	NA	see TOOL INVENTORY
6	Bender	2/84	2,048.00	688.00	NA	NA	NA	NA	NA	see TOOL INVENTORY
7	Raychem. Equip.	2/84	1,931.20	643.70	NA	NA	NA	NA	NA	see TOOL INVENTORY
8	Raychem. Equip.	2/84	800.00	266.70	NA	NA	NA	NA	NA	see TOOL INVENTORY
9	Bender	2/84	1,215.00	405.00	NA	NA	NA	NA	NA	see TOOL INVENTORY
10	IBM Equip.	2/84	995.00	331.90	NA	NA	NA	NA	NA	see TOOL INVENTORY
11	Fuller	2/84	2,757.00	919.00	NA	NA	NA	NA	NA	see TOOL INVENTORY
12	Recorder	2/84	1,244.25	314.72	NA	NA	NA	NA	NA	see TOOL INVENTORY
13	Bender	2/84	1,426.25	375.42	NA	NA	NA	NA	NA	see TOOL INVENTORY
14	Calibrator AMTEK GAS	2/84	2,065.00	653.30	NA	NA	NA	NA	NA	see TOOL INVENTORY
15	Megger METER ELECT	2/84	1,237.00	412.30	NA	NA	NA	NA	NA	see TOOL INVENTORY
16	Radios	2/84	5,510.00	1,836.60	NA	NA	NA	NA	NA	see TOOL INVENTORY
17	Radios	2/84	1,590.00	530.00	NA	NA	NA	NA	NA	see TOOL INVENTORY
18	Tugger	2/84	1,215.40	607.70	NA	NA	NA	NA	NA	see TOOL INVENTORY
21	Hydraulic Bender	2/84	4,395.81	2,197.91	NA	NA	NA	NA	NA	see TOOL INVENTORY
TOTAL DIV. 20 : EQUIPMENT & MACHINERY			1,265,252.70	181,862.95						

ASSET #	Description	Date Acquired	Original Acquisition Cost	Net Book Value 12/31/85	HOURS 15 JUNE 1986	MILEAGE 15 JUNE 1986	ASSI- ELEMENT	Client	General Condition	Comments
DIVISION 18 : MACHINERY & EQUIPMENT										
AC6101	150 CFM Compressor on Trailer	08/19/83	2,210.25	1,860.94	NA	NA	yard	NA	poor	engine overhaul required
C - 124	Grove Hydraulic Rough 14t	12/07/69	30,851.43	0.00	6200	NA	4461	exxon	fair	new paint,hydraulic leaks
C - 126	Grove RT-58 14 Ton Crane	08/14/74	54,491.48	0.00	5400	NA	5757	warren	fair	needs paint
C - 130	Insley Mod H560 track hoe	03/29/76	33,187.00	0.00	5200	NA	3181	gatx	fair	body in bad shape
C - 132	Grove RT-49 12 Ton Crane	03/24/75	63,862.17	0.00	6000	NA	yard	NA	fair	no comment
C - 134	Grove RT-58 Hydraulic 15t	11/05/80	96,382.42	22,241.71	3100	NA	3181	gatx	fair	needs painting and soon overhaul
C - 135	Grove RT-58 Hydraulic 15t	11/05/80	96,257.42	22,212.70	3000	NA	6719	big 3	fair	needs painting
C - 136	Grove RT-58 Hydraulic 15t	11/05/80	96,382.42	22,241.71	2500	NA	3421	georgia gf	good	good engine rebuilt in 1983
C - 137	Grove RT-58 Hydraulic 15t	11/05/80	96,382.42	22,241.71	4100	NA	4407	champion	fair	needs engine works
C - 138	Hein Werner Tackhoe C12B	09/22/81	31,420.50	1,990.13	1600	NA	yard	NA	fair	soon to go to gatx
CS 12-1	OFFICE TRAILER 10x20 skid				NA	NA	5757	warren	poor	no comment (schak)
FSC - 1	40 STORAGE CONTAINER				NA	NA	6101	alcoa	good	no comment
FTV - 3	27' TOOL VAN				NA	NA	6101	alcoa	fair	no comment
FTV 1/2	40' van Trailers	01/00/84	4,650.00	2,929.50	NA	NA	5757	warren	fair	no comment
MC61003	mortar mixer				NA	NA	yard	NA	poor	engine needs works
OS12-1	Atlantic Mobile Office	08/21/74	3,535.00	0.00	NA	NA	4461	exxon	rough	no comment
OS12-2	Office Trailer Mod 810	07/07/77	2,295.00	0.00	NA	NA	5757	warren	fair	used as change shack
OT 02-5	OFFICE TRAILER 8x20				NA	NA	4461	exxon	rough	used as tool trailer
OT104-3	10 x 42 Office Trailer	10/08/74	4,355.40	0.00	NA	NA	yard	NA	rough	no comment
OT104-6	OFFICE TRAILER 10x40				NA	NA	4461	exxon	fair	no comment
OT104-7	OFFICE TRAILER 10x40				NA	NA	yard	NA	fair	no comment
OT105-4	OFFICE TRAILER 10x50				NA	NA	4407	champion	fair	no comment
OT126-2	OFFICE TRAILER 12x60				NA	NA	3181	gatx	fair	no comment
T33	Caterpillar Tractor	08/25/77	29,093.00	0.00	NA	NA	yard	NA	good	good engine rebuilt in 1983
WD101	DIESEL WELDING MACHINE				NA	NA	6101	alcoa	good	no comment (trailer)
WD102	DIESEL WELDING MACHINE				NA	NA	6101	alcoa	good	no comment (trailer)
WE01	ELECTRIC WELDING MACHINE				NA	NA	4407	champion	fair	no comment
WE02	ELECTRIC WELDING MACHINE				NA	NA	yard	NA	poor	no comment
WE03	250 Amp Hobart Weld TR250	10/08/82	644.70	201.38	NA	NA	yard	NA	fair	no comment
WE04	ELECTRIC WELDING MACHINE				NA	NA	6101	alcoa	fair	no comment
WE05	ELECTRIC WELDING MACHINE				NA	NA	6101	alcoa	fair	no comment
WE06	ELECTRIC WELDING MACHINE				NA	NA	yard	NA	poor	engine needs works
WG100	Lincoln Gas Welder	12/11/70	1,482.44	0.00	NA	NA	yard	NA	fair	no comment
WG101	K6090 SM - SA 200 Lincoln	09/30/71	1,210.00	0.00	NA	NA	4461	exxon	fair	no comment
WG102	K6090 SM - SA 200 Lincoln	07/25/72	1,210.00	0.00	NA	NA	yard	NA	fair	no comment
WG103	Lincoln Gas Welder	09/30/74	1,750.00	0.00	NA	NA	yard	NA	fair	no comment
WG104	GAS WELDING MACHINE				NA	NA	6105	usi	fair	no comment
WG105	GAS WELDING MACHINE				NA	NA	6105	usi	fair	no comment
WG106	GAS WELDING MACHINE				NA	NA	6105	usi	fair	no comment
WG107	GAS WELDING MACHINE				NA	NA	3181	gatx	fair	no comment (on trailer)
WG108	GAS WELDING MACHINE				NA	NA	4407	champion	fair	no comment
WG109	GAS WELDING MACHINE				NA	NA	yard	NA	fair	no comment
WG110	GAS WELDING MACHINE				NA	NA	4407	champion	fair	no comment (on trailer)
WG111	GAS WELDING MACHINE				NA	NA	4407	champion	fair	no comment
1 CP - 125	Paving Breaker	04/30/61	561.15	0.00	NA	NA	NA	NA	NA	see TOOL INVENTORY

PAYNE & KELLER COMPANY

ASSET #	Description	Date Acquired	Original	Net	HOURS 15 JUNE 1986	MILEAGE 15 JUNE 1986	ASSI- GEMENT	Client	General Condition	Comments
			Acquisition Cost	Book Value 12/31/85						
2	K & E Transit	04/10/62	488.00	0.00	NA	NA	NA	NA	NA	see TOOL INVENTORY
3	Transit Dietzen	05/06/63	655.00	0.00	NA	NA	NA	NA	NA	see TOOL INVENTORY
4	Level Buff & Buff	05/06/63	417.36	0.00	NA	NA	NA	NA	NA	see TOOL INVENTORY
5	(3) Johnson 2 Way Radios	06/25/65	641.10	0.00	NA	NA	NA	NA	NA	see TOOL INVENTORY
6	Transit Path 722	01/22/68	557.17	0.00	NA	NA	NA	NA	NA	see TOOL INVENTORY
7	Level Path A - 121	01/22/68	468.28	0.00	NA	NA	NA	NA	NA	see TOOL INVENTORY
8	Level & Transit	06/01/68	1,040.30	0.00	NA	NA	NA	NA	NA	see TOOL INVENTORY
9	LS - 1888 Fair Leads Revolv	08/30/68	1,177.29	0.00	NA	NA	NA	NA	NA	see TOOL INVENTORY
10	Lifting Crane Attachment	11/14/68	9,510.00	0.00	NA	NA	NA	NA	scrapped	no comment
11	Motorola Radio	05/10/70	1,638.97	0.00	NA	NA	NA	NA	NA	see TOOL INVENTORY
12	Motorola Radio	05/31/79	1,859.37	0.00	NA	NA	NA	NA	NA	see TOOL INVENTORY
13	Cushman Scooter FL80 Haul	01/19/81	4,481.08	222.25	NA	NA	yard	NA	scrapped	no comment
14	Delco HP Washer 181-10583	03/04/82	1,885.28	587.05	NA	NA	NA	NA	NA	see TOOL INVENTORY
15	Lietz 115 Transit & Tripod	04/20/82	874.10	272.81	NA	NA	NA	NA	NA	see TOOL INVENTORY
16	Motg-20 Air Saw 1212104509288	05/06/82	1,772.16	552.48	NA	NA	NA	NA	NA	see TOOL INVENTORY
17	Calibrator	12/07/83	1,669.50	881.36	NA	NA	NA	NA	NA	see TOOL INVENTORY
18	Calibrator	12/06/83	1,669.50	881.36	NA	NA	NA	NA	NA	see TOOL INVENTORY
19	Insul	01/00/84	7,738.50	1,433.10	NA	NA	NA	NA	NA	see TOOL INVENTORY
20	CSC	01/00/84	14,516.78	0.00	NA	NA	NA	NA	NA	see TOOL INVENTORY
21	Test Eqpt - East Calibrator	01/00/84	1,028.35	647.86	NA	NA	NA	NA	NA	see TOOL INVENTORY
22	Insul Equipment - Forrest Mfg.	05/19/84	2,567.32	1,617.41	NA	NA	NA	NA	NA	see TOOL INVENTORY
TOTAL DIV. 10 : EQUIPEMENT & MACHINERY			708,773.53	102,055.45						
TOTAL GENERAL ASSETS			3,474,392.98	396,287.10						

TOOLS & FURNITURE
GENERAL SUMMARY
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TOOL & SITE FURNITURE	HOUSTON	:	\$279,408.66
TOOL & SITE FURNITURE	BATON ROUGE	:	\$638,445.00

TOTAL GENERAL:			\$917,853.66

All U.S. Dollar figures set forth on *Exhibit "B"* relate to the costs of items on the books of Sellers and bear no relationship or have no relevancy to the purchase price paid by Purchaser for these assets; subject, however, to the provisions of Paragraph 1.1(ii) (A) and (B) of the Purchase Agreement.

Statements on *Exhibit "B"* such as "General Condition" or "Comments" are not part of Sellers' representations and warranties and merely reflect opinions of persons who reviewed or inspected the assets. The statements have no legal significance in the transaction between Sellers and Purchaser.

EXHIBIT "B"

TOOL INVENTORY (HOUSTON)

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QTY	CODE	ITEM	UNIT PRICE	TOTAL
2		BENDER, CONDUIT, 1-1/4"-5", ELEC. OR HYD	750.00	1,500.00
2		BENDER, CONDUIT, 1/2"-2", HAND, HYDRAULIC	400.00	800.00
7		BENDER, CONDUIT, 1/2"-2", MECHANICAL	700.00	4,900.00
2		BENDER, CONDUIT, WHEELED, ELECTRIC	700.00	1,400.00
5		BOLT CUTTERS, 24" - 36"	50.00	250.00
3		BEVELER, PIPE, #05A, 1-1/2" - 4"	200.00	600.00
1		BEVELER, PIPE, #15A, 4" - 8"	400.00	400.00
4		BEVELER, PIPE, #25A, 8" - 12"	800.00	3,200.00
1		BEVELER, PIPE, #35A, 14" - 10"	1,200.00	1,200.00
3		BEVELER, PIPE, #45A, 22" - 36"	1,600.00	4,800.00
7		BUGGIES, BOTTLE	75.00	525.00
3		CLAMPS, LINEUP, 2"	68.75	206.25
5		CLAMPS, LINEUP, 3"	73.25	366.25
2		CLAMPS, LINEUP, 4"	78.00	156.00
5		CLAMPS, LINEUP, 6"	115.75	578.75
5		CLAMPS, LINEUP, 8"	130.80	654.00
3		CLAMPS, LINEUP, 10"	158.25	474.75
5		CLAMPS, LINEUP, 12"	174.50	872.50
1		CLAMPS, LINEUP, 14"	193.00	193.00
5		CLAMPS, LINEUP, 16"	200.00	1,000.00
2		CLAMPS, LINEUP, 20"	242.00	484.00
3		CLAMPS, LINEUP, 24"	265.00	795.00
1		CLAMPS, LINEUP, 30"	325.00	325.00
3		CLOCK, TIME	780.00	2,340.00
3		W-2 CHIPPER, PNEUMATIC	375.00	1,125.00
1		MILWAUKEE 5300 CHIPPER, ELEC.	175.00	175.00
5		CUTTER, PIPE, 1/8" - 2"	67.50	337.50
3		CUTTER, PIPE, 2" - 4"	187.25	561.75
1		CUTTER, PIPE, TYPE 360	100.00	100.00
5		DRILL MOTOR, 3/8" ELECTRIC	125.00	625.00
7		DRILL MOTOR, 1/2" ELECTRIC	160.00	1,120.00
3		DRILL MOTOR, 1/2" PNEUMATIC	226.95	680.85
2		DRILL MOTOR, 3/4" ELECTRIC MAT. BASE	1,490.00	2,980.00
1		DRILL MOTOR, 3/8" PNEUMATIC	510.00	510.00
70		FIRE EXTINGUISHERS	49.00	3,430.00
3		GENERATOR, PORTABLE, 5KW	1,050.00	3,150.00
1		GENERATOR, PORTABLE, 6.5KW	1,250.00	1,250.00
33		GRINDER, ANGLE, ELECTRIC, 7"	137.50	4,537.50
5		GRINDER, STRAIGHT ELECTRIC	218.00	1,090.00
5		GRINDER, ANGLE, PNEUMATIC, 7"	425.00	2,125.00
1		HILTI ROTOHAMMER, TE-12	525.00	525.00
2		HILTI ROTOHAMMER, TE-17	525.00	1,050.00
1		HILTI ROTOHAMMER, TE-22	525.00	525.00
1		HILTI ROTOHAMMER, TE-52	800.00	800.00
3		HILTI GUN, NAIL, ELECTRIC	350.00	1,050.00

TOOL INVENTORY (HOUSTON)
=====

QTY	CODE	ITEM	UNIT PRICE	TOTAL
1		HAMMER ROTARY, AIR	690.00	690.00
1		HAMMER, JACK, 90#	900.00	900.00
3		HAMMER, JACK, 60#	775.00	2,325.00
1		HAMMER, JACK, 30#	375.00	375.00
5		HOIST, CHAIN, HAND, 1-1/2 TON	350.00	1,750.00
3		HOIST, CHAIN, HAND, 2 TON	417.50	1,252.50
3		HOIST, CHAIN, HAND, 3 TON	500.00	1,500.00
4		HOIST, CHAIN, HAND, 1/2 TON	99.00	396.00
1		HOIST, CHAIN, HAND, 1 TON	179.00	179.00
4		HYDRAULIC PUMPS, ELECTRIC	500.00	2,000.00
17		HOIST, RATCHET, HAND, 1-1/2 TON	200.00	3,400.00
13		HYDRAULIC PUMPS, HAND	100.00	1,300.00
6		JACK, HYDRAULIC, PORTA POWER TO 20 TON	250.00	1,500.00
2		JACK, HYDRAULIC, PORTA POWER, 21 - 50 TON	450.00	900.00
5		JACK, HYDRAULIC, LADDERS, 28' - 40' EXT	175.00	875.00
3		LEVEL, AND TRIPOD	175.00	525.00
1		NIBBLER, AIR	1,280.00	1,280.00
11		NUT SPLITTER, HYDRAULIC W/PUMP	200.00	2,200.00
3		OILERS, RIDGID 318	138.00	414.00
2		OVEN, ELECTRODE, #450 LARGE	350.00	700.00
13		OVEN, ELECTRODE, RODBOXES	150.00	1,950.00
105		PIPE JACKS	60.00	6,300.00
1		PIPE PULLER, C.I., 2" - 4"	150.00	150.00
1		PUMPS, 2" DIAPHRAGM W/HOSE	1,000.00	1,000.00
1		PUMPS, TEST, HYD. PNEU. MAG 24	1,500.00	1,500.00
1		PULLER, 6 TON	78.50	78.50
2		PLATE COMPACTOR	1,244.70	2,489.40
150		SAFETY BELTS W/LANYARD	39.00	5,850.00
15		SAW, BAND, PORTABLE, ELECTRIC	270.00	4,050.00
1		SAW, BAND, WHEELED, ELECTRIC	600.00	600.00
4		SAW, JIG	50.00	200.00
14		SAW, CIRCULAR, 7-1/4"	135.00	1,890.00
1		SAW, RECIP. PNEU. W/PIPE CLAMP	1,040.00	1,040.00
1		SAW, 10" TABLE	450.00	450.00
0		SAW, SHEAR, 4" FOREST #648		0.00
1		SAW, CUT OFF, BLACK & DECKER	495.00	495.00
1		SAW, CUT OFF, AIR	1,050.20	1,050.20
4		SOCKETS, IMPACT, 3/4" DRIVE, 15/16"	5.00	20.00
1		SOCKETS, IMPACT, 3/4" DRIVE, 7/8"	5.00	5.00
1		SOCKETS, IMPACT, 3/4" DRIVE, 15/16"	5.25	5.25
1		SOCKETS, IMPACT, 3/4" DRIVE, 1"	6.00	6.00
2		SOCKETS, IMPACT, 3/4" DRIVE, 1-1/16"	7.65	15.30
2		SOCKETS, IMPACT, 3/4" DRIVE, 1-1/8"	8.50	17.00
1		SOCKETS, IMPACT, 3/4" DRIVE, 1-3/16"	9.00	9.00
12		SOCKETS, IMPACT, 3/4" DRIVE, 1-1/4"	9.75	117.00

TOOL INVENTORY (HOUSTON)

QTY	CODE	ITEM	UNIT PRICE	TOTAL
1		SOCKETS, IMPACT, 3/4" DRIVE, 1-5/16"	9.75	9.75
2		SOCKETS, IMPACT, 3/4" DRIVE, 1-3/8"	10.00	20.00
1		SOCKETS, IMPACT, 3/4" DRIVE, 1-7/16"	10.75	10.75
2		SOCKETS, IMPACT, 3/4" DRIVE, 1-1/2"	11.50	23.00
1		SOCKETS, IMPACT, 3/4" DRIVE, 1-5/8"	12.50	12.50
5		SOCKETS, IMPACT, 1" DRIVE, 1-1/16"	7.75	38.75
4		SOCKETS, IMPACT, 1" DRIVE, 1-1/8"	8.50	34.00
3		SOCKETS, IMPACT, 1" DRIVE, 1-3/16"	9.00	27.00
6		SOCKETS, IMPACT, 1" DRIVE, 1-1/4"	9.94	59.64
3		SOCKETS, IMPACT, 1" DRIVE, 1-5/16"	10.00	30.00
3		SOCKETS, IMPACT, 1" DRIVE, 1-3/8"	10.50	31.50
10		SOCKETS, IMPACT, 1" DRIVE, 1-7/16"	10.75	107.50
7		SOCKETS, IMPACT, 1" DRIVE, 1-1/2"	11.00	77.00
1		SOCKETS, IMPACT, 1" DRIVE, 1-9/16"	11.25	11.25
11		SOCKETS, IMPACT, 1" DRIVE, 1-5/8"	11.45	125.95
5		SOCKETS, IMPACT, 1" DRIVE, 1-11/16"	12.50	62.50
5		SOCKETS, IMPACT, 1" DRIVE, 1-3/4"	13.00	65.00
6		SOCKETS, IMPACT, 1" DRIVE, 1-13/16"	13.75	82.50
3		SOCKETS, IMPACT, 1" DRIVE, 1-7/8"	14.85	44.55
2		SOCKETS, IMPACT, 1" DRIVE, 1-15/16"	16.25	32.50
4		SOCKETS, IMPACT, 1" DRIVE, 2"	18.75	75.00
5		SOCKETS, IMPACT, 1" DRIVE, 2-1/16"	20.50	102.50
2		SOCKETS, IMPACT, 1" DRIVE, 2-1/8"	23.75	47.50
5		SOCKETS, IMPACT, 1" DRIVE, 2-3/16"	26.00	130.00
2		SOCKETS, IMPACT, 1" DRIVE, 2-1/4"	30.75	61.50
1		SOCKETS, IMPACT, 1" DRIVE, 2-5/16"	36.25	36.25
3		SOCKETS, IMPACT, 1" DRIVE, 2-3/8"	43.95	131.85
1		SOCKETS, IMPACT, 1" DRIVE, 2-7/16"	47.00	47.00
2		SOCKETS, IMPACT, 1" DRIVE, 2-1/2"	50.95	101.90
2		SOCKETS, IMPACT, 1" DRIVE, 2-9/16"	54.00	108.00
1		SOCKETS, IMPACT, 1" DRIVE, 2-3/4"	56.25	56.25
1		SOCKETS, IMPACT, 1" DRIVE, 2-15/16"	60.00	60.00
1		SOCKETS, IMPACT, 1" DRIVE, 3-1/8"	60.00	60.00
2		SOCKETS, IMPACT, ACC, 1/2x10 EXT	8.75	17.50
3		SOCKETS, IMPACT, ACC, 3/4X1 MALE ADAPTOR	7.95	23.85
3		SOCKETS, IMPACT, ACC 3/4 UNIVERSAL	32.50	97.50
1		SOCKETS, IMPACT, ACC 3/4X1 FEMALE ADAPTOR	14.22	14.22
1		SOCKETS, IMPACT, ACC, 1" UNIVERSAL	40.50	40.50
1		SOCKETS, IMPACT, ACC 1" FEM X 1-1/2" MALE	15.00	15.00
1		SOCKETS, IMPACT, ACC, 1'X8" EXTENSION	445.00	445.00
5		THREADER, PIPE, 535 RIDGID W/DIE HEAD	2,200.00	11,000.00
3		THREADER, PIPE, 700 RIDGID, ELECTRIC	765.00	2,295.00
4		THREADER, PIPE, 141 RIDGID, 2-1/2" - 4"	650.00	2,600.00
4		THREADER, PIPE, RIDGID 300	1,000.00	4,000.00
1		THREADER, PIPE, RIDGID 200	800.00	800.00
1		THREADER, PIPE, TOLEDO #2BJ THREADER HEAD	500.00	500.00
1		TRANSIT, DIETZEN	1,000.00	1,000.00
1		TAMPER, PNEUMATIC	825.00	825.00
25		TOOL BOXES, METAL	250.00	6,250.00
2		TUGGER, WIRE, ELECTRIC	375.00	750.00

TOOL INVENTORY (HOUSTON)
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QTY	CODE	ITEM	UNIT PRICE	TOTAL
3		VACUUM BLOWER FISH TAPE	175.00	525.00
5		VIBRATOR, CONCRETE, ELECTRIC	702.00	3,510.00
15		WISE, TRIPOD, CHAIN	210.00	3,150.00
1		WISE, TRIPOD, JAW	210.00	210.00
3		WACKER PACKER	800.00	2,400.00
1		WHEELER HEAVY DUTY PIPE CUTTER	450.00	450.00
3		WHEEL BARROW	64.50	193.50
1		WRENCH, IMPACT, 3/4" PNEUMATIC	375.00	375.00
5		WRENCH, IMPACT, 1" PNEUMATIC	400.00	2,000.00
6		WRENCH, IMPACT, SCREWDRIVER, ELECTRIC	121.00	726.00
2		WRENCH, IMPACT, 1/2" ELECTRIC	147.00	294.00
2		WRENCH, IMPACT, 1/2" PNEUMATIC	250.00	500.00
1		WRENCH, COMBINATION, 1-1/16"	14.20	14.20
2		WRENCH, COMBINATION, 1-1/2"	23.25	46.50
4		WRENCH, COMBINATION, 1-7/16"	25.00	100.00
3		WRENCH, COMBINATION, 1-1/2"	25.00	75.00
9		WRENCH, COMBINATION, 1-5/8"	25.00	225.00
5		WRENCH, COMBINATION, 1-11/16"	27.00	135.00
7		WRENCH, COMBINATION, 1-3/4"	29.00	203.00
5		WRENCH, COMBINATION, 1-13/16"	35.00	175.00
12		WRENCH, COMBINATION, 1-7/8"	36.00	432.00
13		WRENCH, COMBINATION, 2"	42.50	552.50
8		WRENCH, COMBINATION, 2-1/16"	53.00	424.00
8		WRENCH, COMBINATION, 2-1/8"	60.00	480.00
9		WRENCH, COMBINATION, 2-3/16"	64.00	576.00
8		WRENCH, COMBINATION, 2-1/4"	67.00	536.00
6		WRENCH, COMBINATION, 2-3/8"	92.50	555.00
4		WRENCH, COMBINATION, 2-1/2"	100.00	400.00
5		WRENCH, HAMMER, 1-1/16"	22.30	111.50
5		WRENCH, HAMMER, 1-1/8"	27.00	135.00
7		WRENCH, HAMMER, 1-1/4"	27.25	190.75
5		WRENCH, HAMMER, 1-5/16"	27.55	137.75
12		WRENCH, HAMMER, 1-7/16"	27.80	333.60
10		WRENCH, HAMMER, 1-1/2"	30.00	300.00
17		WRENCH, HAMMER, 1-5/8"	32.65	555.05
8		WRENCH, HAMMER, 1-11/16"	35.00	280.00
11		WRENCH, HAMMER, 1-3/4"	40.30	443.30
25		WRENCH, HAMMER, 1-13/16"	41.00	1,025.00
10		WRENCH, HAMMER, 1-7/8"	43.60	436.00
6		WRENCH, HAMMER, 1-15/16	44.00	264.00
28		WRENCH, HAMMER, 2"	44.50	1,246.00
13		WRENCH, HAMMER, 2-3/16"	45.80	595.40
10		WRENCH, HAMMER, 2-1/4"	46.75	467.50
4		WRENCH, HAMMER, 2-5/16"	49.00	196.00
9		WRENCH, HAMMER, 2-3/8"	51.25	461.25
4		WRENCH, HAMMER, 2-1/8"	45.00	180.00
4		WRENCH, HAMMER, 2-1/2"	52.75	211.00
12		WRENCH, HAMMER, 2-9/16"	53.25	639.00
3		WRENCH, HAMMER, 2-5/8"	54.50	163.50

TOOL INVENTORY (HOUSTON)

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QTY	CODE	ITEM	UNIT PRICE	TOTAL
8		WRENCH, HAMMER, 2-3/4"	56.75	454.00
7		WRENCH, HAMMER, 2-15/16"	60.00	420.00
1		WRENCH, CHAIN, RIDGID C-14	17.00	17.00
1		WRENCH, CHAIN, RIDGID C-18	25.00	25.00
1		WRENCH, CHAIN, RIDGID C-24	50.00	50.00
2		WRENCH, CHAIN, RIDGID C-36	105.00	210.00
1		WRENCH, CHAIN, FOR 3/4" - 4" PIPE	90.00	90.00
3		WRENCH, PIPE, 24" RIDGID	38.75	116.25
5		WRENCH, PIPE, 36" RIDGID	68.45	342.25
4		WRENCH PIPE, 48" RIDGID	107.00	428.00
1		WRENCH, SPUD, 1-1/2"	25.10	25.10
3		WRENCH, SPUD, 1-7/16"	29.00	87.00
12		WRENCH, SPUD, 1-1/2"	30.00	360.00
5		WRENCH, SPUD, 1-5/8"	31.75	158.75
6		WRENCH, SPUD, 1-13/16"	32.50	195.00
6		WRENCH, SPUD, 2"	37.50	225.00
1		WRENCH, TORQUE, 1" DRIVE	381.00	381.00
1		WRENCH, TORQUE, 1/2" DRIVE	89.10	89.10
1950		WELDING LEAD	1.00	1,950.00
23		CUTTING HEADS, VICTOR RECUAR	78.50	1,805.50
17		MIXING BARRELS	56.70	963.90
20		OXYGEN REGULATORS	40.00	800.00
10		ACETYLENE REGULATORS	40.00	400.00
7		ARGON REGULATORS	65.00	455.00
3		VICTOR MT 409 LONG BARREL TORCH	161.00	483.00
1		VICTOR MT 412 LONG BARREL TORCH	161.00	161.00
2		VICTOR MT 404 SHORT BARREL TORCH	161.00	322.00
1000		CUTTING HOSE (APPROX)	0.455	455.00
9		DEMOLITION HEADS	155.00	1,395.00
11		ROSEBUDS	22.50	247.50
9		AIR ARC GOUGING RIGS	195.00	1,755.00
300		PURGE HOSE (APPROX)		135.00
1		RATCHETS, RIDGID 12R	37.50	37.50
4		RATCHETS, TOLEDO (THREADERS)	37.50	150.00
2		RATCHETS, PROTO 1" DRIVE	85.00	170.00
12		PIPE THREADING DIES, RIDGID 1/2"	50.00	600.00
11		PIPE THREADING DIES, RIDGID, 3/4"	55.00	605.00
14		PIPE THREADING DIES, RIDGID, 1"	60.00	840.00
12		PIPE THREADING DIES, RIDGID, 1-1/4"	62.50	750.00
7		PIPE THREADING DIES, RIDGID, 1-1/2"	65.00	455.00
10		PIPE THREADING DIES, RIDGID, 2"	70.00	700.00
1		PIPE THREADING DIES, TOLEDO, 1/2"	45.00	45.00
1		PIPE THREADING DIES, TOLEDO, 3/4"	50.00	50.00
2		PIPE THREADING DIES, TOLEDO, 1-1/4"	55.00	110.00
1		PIPE THREADING DIES, TOLEDO, 1-1/2"	60.00	60.00
2		PIPE THREADING DIES, TOLEDO, 2"	65.00	130.00
4		PIPE REAMERS, 2"	72.85	291.40
2		RIDGID ADAPTORS, 1" DRIVE	35.00	70.00

TOOL INVENTORY (HOUSTON)

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QTY	CODE	ITEM	UNIT PRICE	TOTAL
1		TRANSMATION MODEL 1040	1,200.00	1,200.00
3		TRANSMATION MODEL 1061	500.00	1,500.00
1		TRANSMATION MODEL 1062	500.00	500.00
1		YOKOGALA MEGGER	150.00	150.00
1		SIMPSON #260 VOM	150.00	150.00
1		DYNASCAN #1650 TRI-OUTPUT POWER SUPPLY	100.00	100.00
1		DIGITAL DENSITOMETER	250.00	250.00
3		PENWALT "WALLY" BOXES	1,200.00	3,600.00
1		"HOT STOCK" FIBERGLASS	185.00	185.00
1		INSIDE MICROMETER	59.30	59.30
2		DIAL INDICATOR	60.00	120.00
1		SCHERR DIAL INDICATOR	60.00	60.00
1		OUTSIDE MICROMETER, 6" - 12"	148.50	148.50
1		GREENLEE #690 FISH TAPE ACC KIT	75.00	75.00
4		KNOCKOUT PUNCH SET GREENLEE #730	900.00	3,600.00
1		BURNDY Y35 HYPRESS W/BOX	600.00	600.00
4		LARGE GREENLEE SHEAVES	200.00	800.00
1		GREENLEE #682 EXTENSION BODM KIT	350.00	350.00
1		TMB 8 CRIMPER	407.00	407.00
1		INSTRUMENTATION DEAD WEIGHT TESTER	1,000.00	1,000.00
1		DEAD WEIGHT TESTER	1,000.00	1,000.00
3		SCOTT AIRPACKS	1,000.00	3,000.00
5		COPY MACHINES	1,050.00	5,250.00
2000		AIR HOSE	0.60	1,200.00
3		FAB TABLES	200.00	600.00
28		OFFICE DESK	150.00	4,200.00
12		SWIVEL CHAIR	50.00	600.00
24		2-DRAWER FILE CABINETS	50.00	1,200.00
24		4-DRAWER FILE CABINETS	100.00	2,400.00
9		FOLDING TABLES	50.00	450.00
43		CHAIRS, OFFICE	30.00	1,290.00
18		TYPEWRITERS	1,000.00	18,000.00
34		CALCULATORS	300.00	10,200.00
7		2-WAY MOBILE RADIO UNITS FOR VEHICLES	1,050.00	7,350.00
2		2-WAY RADIO BASE STATION	2,250.00	4,500.00
10		2-WAY RADIO UNITS, HAND HELD	1,000.00	10,000.00
1		PAINT POT W/HOSE & GUN	1,000.00	1,000.00
1		6 SACK SANDBLASTING POT W/HOSE, HOOD, ETC	2,500.00	2,500.00

\$279,408.65

TOOL INVENTORY (BATON ROUGE)

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QTY	CODE	ITEM	UNIT PRICE	TOTAL
8	ACE	AIR CONDITIONER, ELEC	200.00	1,600.00
12	AGW	ARC GOUGE	100.00	1,200.00
10		ADDING MACHINE	140.00	1,400.00
4		BEAM CLAMP	74.00	296.00
10	BAH	BLOWER, AIR HORN, COPPUS	400.00	4,000.00
24	BCH	BENDER, CONDUIT & PIPE, HAND	600.00	14,400.00
3	BCP	BENDER, CONDUIT & PIPE, POWER	1,500.00	4,500.00
14	BCX	BINDER, CHAIN	64.00	896.00
32	BOX	BOX, GANG METAL	350.00	11,200.00
40	BPF	BEVELER, PIPE FLAME	1,000.00	40,000.00
5	BFH	BAR, PRY	45.00	225.00
150	BPO	BINDER, PRINT, OFFICE	35.00	5,250.00
4	BPX	BASKET, PERSONNEL	400.00	1,600.00
2	BRB	BOTTLE RACK, STORAGE	400.00	800.00
6	BRX	BARRICADE, ROAD	55.00	330.00
20	BSO	BLOCK, SNATCH	47.00	940.00
8	BSR	BAR, SPREADER	600.00	4,800.00
275	BSS	BELT, SAFETY	39.00	10,725.00
21	BTH	BENDER, TUBING, HAND	45.00	945.00
4	BTX	BOX, TOOL, HAND	50.00	200.00
10		BANDING TOOL	14.00	140.00
1		BEVELER TUBE, POWER	1,900.00	1,900.00
8		BLOWER GUN, HAND	74.00	592.00
1		BUGGIE GEORGIA GAS	676.00	676.00
150		BITS, UTILITY	15.00	2,250.00
8		CONCRETE JITTERBUG.	64.00	512.00
12		CONCRETE COME-A-LONG	8.00	96.00
2		CONCRETE BUCKET, 1/2 YARD	1,121.00	2,242.00
4		CONCRETE SUMP CONE	23.00	92.00
2	CBE	CHARGER, BATTERY ELEC.	100.00	200.00
8	CBH	CUTTER, BOLT, HAND	80.00	640.00
37	CBW	CART, BOTTLE, WHEELED	150.00	5,550.00
1	CCH	CUTTER, CABLE, HAMMER TYPE	75.00	75.00
2	CCI	CUTTER, CAST IRON	250.00	500.00
12	CCP	CHIPPER, CONCRETE, PNEUMATIC	450.00	5,400.00
32	CCX	CLAMP. "C"	25.00	800.00
18	CDS	CHAIR, DESK, SWIVEL	50.00	900.00
2	CDT	CALIBRATOR, DEAD WEIGHT TEST	2,100.00	4,200.00
5	CEH	CHAIN, ENGINEERS	60.00	300.00
22	CFM	CHAIR, FOLDING, METAL	30.00	660.00
17	CFO	CABINET, FILE, OFFICE	100.00	1,700.00
19	CFS	CAN, FUEL, SAFETY	41.00	779.00
8	CHP	CHISEL, PNEUMATIC	455.00	3,640.00
61	CIW	COOLER, ICE, WATER	25.00	1,525.00
75	CLP	CLAMP, LINE-UP, PIPE	179.00	13,425.00
20	CPH	CHAIN, PULL W/HOOKS	36.00	720.00
4	CPL	CLAMP, PLATE, LIFTING	125.00	500.00
20	CPR	CUTTER, PIPE, ROLLER, HAND	113.00	2,260.00
1		CALIBRATOR, AMTEX	216.00	216.00

TOOL INVENTORY (BATON ROUGE)

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QTY	CODE	ITEM	UNIT PRICE	TOTAL
2	CSP	CALIBRATOR, SAND POT	1,000.00	2,000.00
2	CSU	CALIBRATOR, DECADE	1,920.00	3,840.00
2	CTE	CLOCK, TIME, ELEC.	750.00	1,500.00
8	CTS	CHAIR, TYPIST, SWIVEL	35.00	280.00
3	CVE	CLEANER, VACUUM, ELEC.	260.00	780.00
3	CWB	CALIBRATOR, WALLY BOX	1,850.00	5,550.00
50		CALIBRATOR, GAUGES	450.00	22,500.00
1		CALIBRATOR, FLUKE A	279.00	279.00
1		CALIBRATOR, FLUKE B	216.00	216.00
1		CALIBRATOR, DIGITAL	1,023.00	1,023.00
1		CALIBRATOR, GAS, AMTEX	2,149.00	2,149.00
4		CALIBRATOR, MONOMETER	244.00	976.00
1	DAE	DRILLMOTOR, ANGLE ELEC.	350.00	350.00
1	DBW	DOLLY, BOTTLE, WHEELED (NOT BOTTLE CART)	89.00	89.00
4	DHB	DRILL, HAND BATTERY OPERATED W/CHARGER	250.00	1,000.00
27	DHE	DRILLMOTOR, ELEC.	100.00	2,700.00
8	DHP	DRILLMOTOR, PNEUMATIC	370.00	2,960.00
2	DME	DRILLMOTOR, MAG BASE, ELECTRIC	1,875.00	3,750.00
25	DFD	DESK, OFFICE	150.00	3,750.00
1	DPW	DOLLY, PIPE WHEELED	200.00	200.00
14	DRE	DRILLMOTOR, ROTO-HAMMER, ELECTRIC	690.00	9,660.00
1	DTM	DRILLING & TAPPING MACHING (HOT TAP)	1,050.00	1,050.00
1	DCP	DRILL, CONCRETE, PNEUMATIC	470.00	470.00
65	EFS	EXTINGUISHER, FIRE	63.00	4,095.00
90		EXTENSION CORDS	38.00	3,420.00
6	FBC	FLOAT, BULL, CONCRETE	64.00	384.00
8		FUNNEL, FLUID	12.00	96.00
6		FORK, PITCH	13.00	78.00
95	GAE	GRINDER, ANGLE ELEC (LESS 11 SCRAPPED)	114.00	10,830.00
5	GAP	GRINDER, ANGLE, PNEUMATIC	470.00	2,350.00
24	GDE	GRINDER, DIE, ELEC (LESS 4 SCRAPPED)	284.00	6,816.00
2	GDP	GRINDER, DIE, PNEUMATIC	425.00	850.00
1	GEP	GRINDER, END, PNEUMATIC	125.00	125.00
6	GHS	GUN, HILTI, SHOT (LESS 2 SCRAPPED)	350.00	2,100.00
1	GPE	GRINDER, PENCIL, ELEC.	125.00	125.00
3	GPP	GRINDER, PENCIL, PNEUMATIC	218.00	654.00
3	GSE	GUN, SCREW, ELEC.	74.00	222.00
40		GUN, CAULKING, HAND	3.00	120.00
200		GUARDS, FACE	7.00	1,400.00
48	HAO	HOSE, AIR W/CHICAGO FITTINGS	26.00	1,248.00
23	HBH	HANDLE, BULL FLOAT DIFF. LENGTHS	27.00	621.00
44	HCH	HOIST, CHAIN, HAND	270.00	11,880.00
3	HHE	HEATER, HAND, ELECTRIC	125.00	375.00
7	HJP	HAMMER, JACK, PNEUMATIC DIFF. SIZES	845.00	5,915.00
10	HLF	HEATER, LIQUID FUEL SALAMANDERS	75.00	750.00
121	HOA	HOSE, OXY/ACET.	20.00	2,420.00

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TOOL INVENTORY (BATON ROUGE)

QTY	CODE	ITEM	UNIT PRICE	TOTAL
2	PHH	PUMP, HAND, HYDRAULIC	150.00	300.00
31		PICK AXE, HAND	13.00	403.00
15		HOE, HAND	13.00	195.00
65	RAI	REGULATOR, ARGON, WELDING	60.00	3,900.00
77	RAW	REGULATOR, ACET., TORCH	60.00	4,620.00
7	RLE	ROD, LEVEL, ENGINEER	36.00	252.00
89	ROW	REGULATOR, OXY., TORCH	60.00	5,340.00
6	RPH	REAMER, PIPE, HAND	66.00	396.00
8	RPO	RACK, PRINT, OFFICE	168.00	1,344.00
8	RNO	REGULATOR, NITROGEN, ORGANIT	60.00	480.00
3	RSA	RESPIRATOR, SCOTT AIR PAC	780.00	2,340.00
12		RAKE, HAND	15.00	180.00
3		RADIO, HAND, W/CHARGER	1,600.00	4,800.00
4		RADIO, CB	150.00	600.00
4		SAW, HOLE KIT	43.00	172.00
22		SAW, HACK, HAND	8.00	176.00
12		SAW, CARPENTER, HAND	18.00	216.00
6	SAX	SOCKET, ADAPTER	18.00	108.00
38	SBE	SAW, BAND, ELEC. (LESS 12 SCRAPPED)	278.00	10,564.00
50	SCA	SCAFFOLDING, TUBING 46 JOINTS NO BUCK	8.00	1,200.00
8	SCE	SAW, CIRCULAR, ELEC.	186.00	1,488.00
4	SCG	SAW, CHAIN, GAS	391.00	1,564.00
6	SCX	SPREADER, CABLE	96.00	576.00
20	SEX	SPROCKET, EXTENSION	35.00	700.00
19	SFH	SPREADER, FLANGE, SCREW-PIN	50.00	950.00
8	SFT	STAND, FUEL TANK	200.00	1,600.00
352	SIL	SOCKET, IMPACT, 1" DRIVE	35.00	12,320.00
156	SIM	SOCKET, IMPACT, 3/4" DRIVE	15.00	2,340.00
25	SIS	SOCKET, IMPACT, 1/2" DRIVE	7.40	185.00
251	SIX	SOCKET, IMPACT 1-1/2" DRIVE	40.00	10,040.00
3	SNP	SCALER, NEEDLE, PNEUMATIC	290.00	870.00
3	SQE	SAW, QUICK, ELECTRIC	171.00	513.00
5	SRE	SAW, RECIPROCATING, ELECTRIC	309.00	1,545.00
2	SRP	SAW, RECIPROCATING, PNEUMATIC W/CLAMP	1,025.00	2,050.00
1	SSE	SAW, SHOT ELECTRIC	84.00	84.00
238	SSP	SHACKLES, SCREW-PIN	65.00	15,470.00
5	STO	STAND, TYPEWRITER, OFFICE	89.00	445.00
11	SUJ	SOCKET, UNIVERSAL JOINT	36.00	396.00
4	SWE	SAW, JIG, ELECTRIC	32.00	128.00
6		SCRAPPERS	3.00	18.00
6		SLEEVES, CABLE	126.00	756.00
4		SWING BLADES	12.00	48.00
8		SHIN GUARDS	47.00	376.00
71		SHOVELS	8.00	568.00
14		SQUARE FRAMING	6.00	84.00
32	TBD	THREADER, RIDGID R-11, BOLT DIE HEAD	55.94	1,790.08
75	TBW	TORCH, OXY/ACET., BUTT	40.00	3,000.00
6	TBX	TROLLY, BEAM	85.00	510.00

TOOL INVENTORY (BATON ROUGE)

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QTY	CODE	ITEM	UNIT PRICE	TOTAL
13	TFF	TABLE, FAB., FIELD	200.00	2,600.00
5	TFO	TABLE, FOLDING, OFFICE	50.00	250.00
12	TFX	TANK, FUEL	599.00	7,188.00
85	THW	TORCH, OXY/ACET., HEAD	63.00	5,355.00
14	TIG	TORCH, HELI-ARC	120.00	1,680.00
4	TPA	THREADER 700 ADAPTER	97.00	388.00
80	TPD	THREADER, RIDGID R-12, PIPE DIE HEAD	30.00	2,400.00
9	TPE	THREADER, 700	384.00	3,456.00
32	TPH	THREADER, PIPE, HAND W/DIE	46.00	1,472.00
1	TPL	TORCH, PLATE W/TRACK	680.00	680.00
2	TPT	THREADER, PIPE, 300	450.00	900.00
11	TPX	THREADER, RIDGID 811, PIPE DIE HEAD	177.00	1,947.00
3	TPY	THREADER, PIPE 141	450.00	1,350.00
18	TRB	TORCH, ROSEBUD	26.00	468.00
7	TRI	TRIPOD, LEVEL OR TRANSIT	122.00	854.00
17	TSB	TORCH, SHORT BARREL	177.00	3,009.00
16	TLB	TORCH, LONG BARREL	180.00	2,880.00
2		TYPEWRITER, IMB	798.00	1,596.00
21		TOOL BOX, PIPEFITTER, COMPLETE	500.00	10,500.00
18		TOOL BOX, MILLWRIGHT, COMPLETE	800.00	14,400.00
5		TOOL BOX, MECHANIC, COMPLETE	1,500.00	7,500.00
11		TOOL BOX, ELECTRICIAN, COMPLETE	500.00	5,500.00
2		TOOL BOX, CARPENTER, COMPLETE	350.00	700.00
2	VBF	WISE, BENCH, PLASTABOND	205.00	410.00
6	VBC	WISE, BENCH, CHAIN	141.00	846.00
1	VBM	WISE, BENCH, MACHINIST	388.00	388.00
6	VBX	VEHICLE, BICYCLE, PLANT	150.00	900.00
3	VBF	VACUUM, BLOWER, FISH TAPE	572.00	1,716.00
9	VCE	VIBRATOR, CONCRETE, ELECTRIC	677.00	6,093.00
28	VTC	WISE, TRIPOD, CHAIN	143.00	4,004.00
15	VTJ	WISE, TRIPOD, JAW	170.00	2,550.00
2	VTP	WISE, TRIPOD, PLASTIBOND	225.00	450.00
43	WAH	WRENCH, ADJUSTABLE	9.00	387.00
13	WBX	WHEEL BARROW	71.00	923.00
542	WCH	WRENCH, COMBINATION, HAND	35.00	18,970.00
11	WCP	WRENCH, CHAIN PIPE	43.00	473.00
23		WRENCH, OPEN END	15.00	345.00
28		WRENCH, BOX END	15.00	420.00
375	WHX	WRENCH, HAMMER	44.00	16,500.00
2	WIE	WRENCH, IMPACT, ELECTRIC	380.00	760.00
34	WIH	WRENCH, SPUD, HAND	22.00	748.00
4	WIP	WRENCH, IMPACT, PNEUMATIC, 1/2"	169.00	676.00
16		WRENCH, IMPACT, PNEUMATIC, 3/4"	440.00	7,040.00
14		WRENCH, IMPACT, PNEUMATIC, 1"	525.00	7,350.00
81	WPH	WRENCH, PIPE, HAND	42.22	3,420.00
4	WRH	WRENCH, RATCHET, HAND, 3/4"	169.00	676.00
5	WSH	WRENCH, SCAFFOLD, HAND	55.00	275.00
3	WTH	WRENCH, TORQUE, HAND, 1"	1,066.00	3,198.00
68	WWW	WHIP, WELDING	40.00	2,720.00

TOOL INVENTORY (BATON ROUGE)

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QTY	CODE	ITEM	UNIT PRICE	TOTAL
2		WRENCH, TORQUE, HAND, 3/4"	380.00	760.00
6		WRENCH, TORQUE, HAND, 1/2"	71.00	426.00
20		WRENCH, VISE GRIP	8.00	160.00
50		WRENCH, CHANNEL LOCK, 720.730	9.00	450.00
35		WIRE CUTTERS, HAND	7.00	245.00
46		WRENCH, STRAP	18.00	828.00
15		WRENCH, PLIERS	9.00	135.00
14		WRENCH, NEEDLENOSE	7.00	98.00
8		WRENCH, DONUT	34.00	272.00
			TOTAL:	\$638,445.00

Schedule C
to
Purchase Agreement

List of Accounts Receivable of Sellers
at October 5, 1986

The dollar amount of the Accounts Receivable as of October 5, 1986 with respect to the Assigned Contracts listed on Schedule A to the Purchase Agreement shall be determined on or before the thirtieth (30th) day after the Closing.

850:10 KI

Schedule D
to
Purchase Agreement

List of Accounts Payable of Sellers at
October 5, 1986

The dollar amount of the Accounts Payable as of October 5, 1986 with respect to the Assigned Contracts listed on Schedule A to the Purchase Agreement shall be determined on or before the thirtieth (30th) day after the Closing.

850:10 KI

Exhibit 2.6
to
Purchase Agreement

There are no arrangements for extended payment terms on the Accounts Receivable of Sellers described in Schedule C to the Purchase Agreement.

Exhibit 2.7
to
Purchase Agreement

1. Attached to this Exhibit 2.7 as Attachment 1 is a Schedule of written Assigned Contracts.

2. Attached to this Exhibit 2.7 as Attachments 2-5 are written summary descriptions of the terms and status of each oral Assigned Contract signed by a representative of Sellers.

3. Several of the Assigned Contracts provide that the property owner may require performance or other surety bonds. Currently, none of Sellers' customers require posting of any bonds in connection with Sellers' performance of the Assigned Contracts.

There are no documents executed by Shareholder, Dumez, S.A. or any of Sellers which guarantee, directly or indirectly, the performance of any of Sellers under any of the Assigned Contracts.

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EXHIBIT 3

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

LENORA CHILDERS, Individually and as
Personal Representative of the Estate of LEWIS
C. CHILDERS,

2021-CP-40-03484

Plaintiff, In Re:

v.

Asbestos Personal Injury Litigation Coordinated
Docket

Davis Mechanical Contractors, Inc., Flame
Refractories, Inc., General Boiler Casing
Company, Inc., HEFCO, Inc., J.R. Deans
Company, Inc., Payne & Keller Company, SFB,
Incorporated, Stafford Insulation Company,
Standard Insulation Company of N.C., Inc.,
Systra Engineering, Inc., United Construction
Co. of Rome, Inc., Wind Up, Ltd., Individually
and as Successor-in-Interest to Pipe & Boiler
Insulation, Inc. f/k/a Carolina Industrial
Insulating Co.,

SECOND AMENDED SUMMONS

Defendants.

Flame Refractories, Inc., United Construction
Co. of Rome, Inc., Wind Up, Ltd., Individually
and as Successor-in-Interest to Pipe & Boiler
Insulation, Inc. f/k/a Carolina Industrial
Insulating Co., Payne & Keller Company, and
PBI QSF, LLC, By and Through Their Duly
Appointed Receiver Peter D. Protopapas,

Third-Party Plaintiffs,

v.

Zurich American Insurance Company
(Individually and as Successor to Northern
Insurance Company of New York, Maryland
American General Insurance Company, and
Maryland Casualty Company); Allstate
Insurance Company; John Tighe; Sean Antony

Beatty; Dennis William Cahill; Catherine Ann Carlino; Andre Lefebvre; David Dean Shumway; Gil Chandler, Michael Davenport; Linda Young Pettigrew; Gwyn Wallace Fuller; Daniel Robert Keddie; Julie Ann Fortune; Michael John Crall; James Francis Meehan; Larry Gene Simmons; Arrowpoint Group, Inc.; Arrowpoint Capital Corp.; Admiral Insurance Company; Continental Insurance Company (Individually and as Successor in interest to Harbor Insurance Company); Hartford Accident and Indemnity Company, Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company, National Union Fire Insurance Company of Pittsburgh, PA, Medmarc Casualty Insurance Company, Individually and as Successor in Interest to Dependable Insurance Company, Inc., Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company, Lexington Insurance Company, First State Insurance Company, Birmingham Fire Insurance Company, Certain Underwriters at Lloyd's of London and various London Market Companies, South Carolina Property and Casualty Insurance Guaranty Association, R.L. Jarrett (Underwriting) Agency, Inc., U.S. Risk, L.L.C., Rexel USA, Inc., Compass Risk Services, LLC, SKRLA, LLC, Century Indemnity Company, in its own capacity and as successor to CCI Insurance Company, as successor to Insurance Company of North America, United States Fire Insurance Company, and Fireman's Fund Insurance Company,

Third-Party Defendants.

TO THE ABOVE-NAMED THIRD-PARTY DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Third Amended Third-Party Complaint in this action, a copy of which is hereby served on you, and to serve a copy of your Answer to the said Third Amended Third-Party Complaint upon the subscribers at 2110 N. Beltline Blvd., Columbia, South Carolina 29204, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Third Amended Third-Party Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in such Third Amended Third-Party Complaint.

Respectfully submitted,

Dated: July 14, 2022

RIKARD & PROTOPAPAS, LLC

By: s./ Brian M. Barnwell

Brian M. Barnwell (SC Bar 78249)
Rikard & Protopapas, LLC
2110 N. Beltline Blvd.,
Columbia, South Carolina 29204
803.978.6111
bb@rplegalgroup.com

Attorney for Third-Party Plaintiffs

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

LENORA CHILDERS, Individually and as
Personal Representative of the Estate of LEWIS
C. CHILDERS,

2021-CP-40-03484

Plaintiff,

v.

In Re:
Asbestos Personal Injury Litigation Coordinated
Docket

Davis Mechanical Contractors, Inc., Flame
Refractories, Inc., General Boiler Casing
Company, Inc., HEFCO, Inc., J.R. Deans
Company, Inc., Payne & Keller Company, SFB,
Incorporated, Stafford Insulation Company,
Standard Insulation Company of N.C., Inc.,
Systra Engineering, Inc., United Construction
Co. of Rome, Inc., Wind Up, Ltd., Individually
and as Successor-in-Interest to Pipe & Boiler
Insulation, Inc. f/k/a Carolina Industrial
Insulating Co.,

**SECOND AMENDED THIRD-PARTY
COMPLAINT**

Defendants.

Flame Refractories, Inc., United Construction
Co. of Rome, Inc., Wind Up, Ltd., Individually
and as Successor-in-Interest to Pipe & Boiler
Insulation, Inc. f/k/a Carolina Industrial
Insulating Co., Payne & Keller Company, and
PBI QSF, LLC, By and Through Their Duly
Appointed Receiver Peter D. Protopapas,

Third-Party Plaintiffs,

v.

Zurich American Insurance Company
(Individually and as Successor to Northern

Insurance Company of New York, Maryland American General Insurance Company, and Maryland Casualty Company); Allstate Insurance Company; John Tighe; Sean Antony Beatty; Dennis William Cahill; Catherine Ann Carlino; Andre Lefebvre; David Dean Shumway; Gil Chandler, Michael Davenport; Linda Young Pettigrew; Gwyn Wallace Fuller; Daniel Robert Keddle; Julie Ann Fortune; Michael John Crall; James Francis Meehan; Larry Gene Simmons; Arrowpoint Group, Inc.; Arrowpoint Capital Corp.; Admiral Insurance Company; Continental Insurance Company (Individually and as Successor in interest to Harbor Insurance Company); Hartford Accident and Indemnity Company, Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company, National Union Fire Insurance Company of Pittsburgh, PA, Medmarc Casualty Insurance Company, Individually and as Successor in Interest to Dependable Insurance Company, Inc., Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company, Lexington Insurance Company, First State Insurance Company, Birmingham Fire Insurance Company, Certain Underwriters at Lloyd's of London and various London Market Companies, South Carolina Property and Casualty Insurance Guaranty Association, R.L. Jarrett (Underwriting) Agency, Inc., U.S. Risk, L.L.C., Rexel USA, Inc., Compass Risk Services, LLC, SKRLA, LLC, Century Indemnity Company, in its own capacity and as successor to CCI Insurance Company, as successor to Insurance Company of North America, United States Fire Insurance Company, and Fireman's Fund Insurance Company,

Third-Party Defendants.

COMES NOW Flame Refractories, Inc.; United Construction Co. of Rome, Inc.; Wind Up, Ltd., Individually and as Successor-in-Interest to Pipe & Boiler Insulation, Inc. f/k/a Carolina Industrial Insulating Co., Payne & Keller Company, and PBI QSF, LLC (collectively, “Third-Party Plaintiffs”) by and through their duly appointed receiver Peter D. Protopapas (the “Receiver”), complaining of the third-party defendants Zurich American Insurance Company (Individually and as Successor to Northern Insurance Company of New York, Maryland American General Insurance Company, and Maryland Casualty Company); Allstate Insurance Company; John Tighe; Sean Antony Beatty; Dennis William Cahill; Catherine Ann Carlino; Andre Lefebvre; David Dean Shumway; Gil Chandler, Michael Davenport; Linda Young Pettigrew; Gwyn Wallace Fuller; Daniel Robert Keddie; Julie Ann Fortune; Michael John Crall; James Francis Meehan; Larry Gene Simmons; Arrowpoint Group, Inc.; Arrowpoint Capital Corp.; Admiral Insurance Company; Continental Insurance Company (Individually and as Successor in interest to Harbor Insurance Company); Hartford Accident and Indemnity Company, Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company, National Union Fire Insurance Company of Pittsburgh, PA, Medmarc Casualty Insurance Company, Individually and as Successor in Interest to Dependable Insurance Company, Inc., Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company, Lexington Insurance Company, First State Insurance Company, Birmingham Fire Insurance Company, Certain Underwriters at Lloyd’s of London and various London Market Companies, South Carolina Property and Casualty Insurance Guaranty Association, R.L. Jarrett (Underwriting) Agency, Inc., U.S. Risk, L.L.C., Rexel USA, Inc., Compass Risk Services, LLC, SKRLA, LLC, Century Indemnity Company, in its own capacity

and as successor to CCI Insurance Company, as successor to Insurance Company of North America LLC, United States Fire Insurance Company, Fireman's Fund Insurance Company (collectively, "Third-Party Defendants"), who through undersigned counsel respectfully show unto the Court as follows:

PARTIES

1. The Third-Party Plaintiffs appearing by and through their duly appointed Receiver, who maintains his principal place of business in Richland County, South Carolina, bring this Third Amended Third-Party Complaint. This Court appointed the Receiver to undertake actions to administer all assets of the Third-Party Plaintiffs, including, without limitation, their insurance policies. *See* Ex. A, Flame Refractories Receivership Order; Ex. B, United Construction Receivership Order; Ex. C, Pipe & Boiler Receivership Order, Ex. D, Payne & Keller Receivership Order, and Ex. E, Payne & Keller Order Granting Payne & Keller Motion to Clarify.
2. The Receiver was appointed over Payne & Keller and entities related to the historic operations of Payne & Keller Company, including Payne & Keller, Inc.; Payne & Keller of Louisiana, Inc.; Bayou Maintenance, Inc.; Bayou Maintenance and Constructors, Inc.; Payne & Keller Gulf Coast, Inc.; Frentex Enterprises Company; and Frentex Enterprises Company of Texas (collectively "Payne & Keller"). This Court appointed the Receiver to administer all assets of Payne & Keller, including without limitation its insurance policies. (*See* Ex. D at 1–2 ("This order is inclusive of, but not limited to, the right and obligation to administer any insurance assets of Payne & Keller as well as any claims related to the actions, or failures to act, of Payne & Keller's insurance carriers."); *see also* Ex. E.

3. PBI QSF, LLC, a Delaware limited liability company (the “QSF”), is the intended transferee and assignee of insurance proceeds and subrogation, contribution, “other insurance,” and similar rights (“Contribution Rights”) pursuant to a settlement reached with one of Pipe & Boiler’s insurance carriers since this case was filed. The QSF has its principal place of business in South Carolina. The QSF asserts its Contribution Rights against the remaining Third-Party Defendants. The Third-Party Defendants take the position that these Contribution Rights are assertable on a pro-rata basis in accordance with the South Carolina Supreme Court’s decision in *Crossman Communities of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 717 S.E.2d 589 (2011), and, to the extent the QSF must advance funds or defend itself against the assertion of claims by the Third-Party Defendants, the QSF is an appropriate party to this action.
4. The Receiver is informed and believes that Third-Party Defendant Zurich American Insurance Company (Individually and as Successor to Northern Insurance Company of New York, Maryland American General Insurance Company, and Maryland Casualty Company) is a corporation organized under the laws of New York, with its principal place of business located in Illinois.
5. The Receiver is informed and believes that Third-Party Defendant Allstate Insurance Company is a corporation organized under the laws of Illinois, with its principal place of business located in Illinois.
6. The Receiver is informed and believes the following with regard to the individual Third-Party Defendants named in the complaint, all of whom hold roles at Arrowood, or held roles at Arrowood at relevant times (collectively, the “Individual Arrowood Third-Party Defendants”):

- a. John Tighe (“Tighe”) is, and at all relevant times has been, the President and Chief Executive Officer, and Chairman of the Board of Arrowood. Tighe owns 20% of Arrowpoint Capital.
- b. Sean Anthony Beatty (“Beatty”) is, and at all relevant times has been, a Senior Vice President and the Chief Financial Officer, as well as a director of Arrowood. Beatty owns 12.8% of Arrowpoint Capital.
- c. Dennis William Cahill (“Cahill”) is, and at all relevant times has been, a Senior Vice President and Planning Governance Executive, as well as director of Arrowood. Cahill owns 12.8% of Arrowpoint Capital.
- d. Catherine Ann Carlino (“Carlino”) is, and at all relevant times has been, a Senior Vice President, a Planning & Governance Executive, and a director of Arrowood.
- e. Andre Lefebvre (“Lefebvre”) is, and at all relevant times has been, a Senior Vice President and Financial Risk Officer, as well as a director of Arrowood.
- f. David Dean Shumway (“Shumway”) is, and at all relevant times has been, a Senior Vice President and Chief Investment Officer, as well as a director of Arrowood.
- g. Gil Chandler (“Chandler”) is, and at all relevant times has been, a Vice President and Assistant Corporate Secretary, as well as a director of Arrowood.
- h. Michael Davenport (“Davenport”) is, and at relevant times has been, a Vice President and Controller, as well as a director of Arrowood.
- i. Linda Young Pettigrew (“Pettigrew”) is, and at all relevant times has been, the Corporate Secretary of Arrowood.

- j. Gwyn Wallace Fuller (“Fuller”) is, and at all relevant times has been, the Treasurer of Arrowood.
 - k. Daniel Robert Keddie (“Keddie”) is a director, and all relevant times has been a Vice President and Chief Actuary (as well as the Appointed Actuary) of Arrowood.
 - l. Julie Ann Fortune (“Fortune”) at relevant times was a Senior Vice President and Chief Claims Officer, as well as a director of Arrowood.
 - m. John Crall (“Crall”) at relevant times was a director of Arrowood.
 - n. James Francis Meehan (“Meehan”) was at relevant times a Senior Vice President and the General Counsel, as well as a director of Arrowood.
 - o. Larry Gene Simmons (“Simmons”) was at relevant times a director of Arrowood.
- 7. The Receiver is informed and believes that Arrowpoint Group, Inc. is a Delaware corporation with its principal place of business in North Carolina.
 - 8. The Receiver is informed and believes that Arrowpoint Capital Corporation is a Delaware corporation with its principal place of business in North Carolina.
 - 9. The Receiver is informed and believes that Admiral Insurance Company is a corporation organized under the laws of the state of Delaware with its principal place of business in New Jersey.
 - 10. The Receiver is informed and believes that Continental Insurance Company (Individually and as Successor in interest to Harbor Insurance Company), is a corporation organized under the laws of the state of Illinois with its principal place of business in Pennsylvania.

11. The Receiver is informed and believes that Hartford Accident and Indemnity Company is organized under the laws of the state of Connecticut with its principal place of business in Connecticut.

12. Plaintiff is informed and believes that defendant First State Insurance Company (“First State” or “Hartford”) is a corporation organized under the laws of the State of Connecticut, with its principal place of business located in the Commonwealth of Massachusetts. Further, First State agreed that “in any suit instituted against it upon this contract this Company will abide by the final decision of such Court or any Appellate Court in the event of an appeal.” Moreover, by including the “service of suit clause” in its contract of insurance with Payne & Keller, Hartford has consented to the jurisdiction of this Court. In pertinent part, the Hartford Policies contain the following service of suit clause:

It is agreed that in the event of the failure of this Company to pay any amount claimed to be due hereunder, this Company, at the request of the Insured, will submit to the jurisdiction of any Court of Competent Jurisdiction within the United States and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court.

By virtue of the foregoing service of suit clause, First State agreed to comply with all requirements necessary to give this Court jurisdiction, and further agreed that all matters pertinent to the instant dispute shall be determined by this Court. The portion of the “service of suit” clause which states that “all matters arising hereunder shall be determined in accordance with the law and practice of such Court” is a valid “choice of forum” clause. First State has consented to the jurisdiction of this Court and, accordingly, this action may not be removed or transferred to any other court.

13. Plaintiff is informed and believes that defendant Birmingham Fire Insurance Company

("Birmingham Fire") is a corporation organized under the laws of New York with its principal place of business in New York.

14. Plaintiff is informed and believes that defendants Certain Underwriters at Lloyd's, London ("Lloyd's Underwriters"), and any and all London Market Insurers that participated in any of the policies at issue in this action ("London Market Insurers"), are an association of underwriters and individual insurance companies existing under the laws of the United Kingdom or another foreign sovereign with their principal place of business in London, England, that sold or subscribed to insurance policies covering plaintiff (generally referred to herein as "Lloyd's Underwriters and London Market Insurers"). At all times relevant hereto, Lloyd's Underwriters and London Market Insurers were authorized, through their respective agents, to underwrite insurance policies covering risks in the State of South Carolina and elsewhere. Lloyd's Underwriters and London Market Insurers agreed further that "in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal." Moreover, Lloyd's Underwriters and London Market Insurers, and those defendant insurers which issued follow form policies or otherwise incorporate the "service of suit" language in the Lloyd's Underwriters and London Market Insurer policies by the terms of the policies issued and subscribed by them, have consented to the jurisdiction of this Court. In pertinent part, the Lloyd's Underwriters and London Market Insurer policies, and those defendant insurers that issued follow form coverage policies to the same, contain the following service of suit clause:

It is agreed that in the event of the failure of Underwriters hereon to pay any amount claimed to be due hereunder, Underwriters hereon, at the request of the Assured, will submit to the jurisdiction of any Court of competent jurisdiction

within the United States and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court.

By virtue of the foregoing service of suit clause, Lloyd's Underwriters and London Market Insurers, and the following form defendant insurers agreed to the jurisdiction of the court of Payne & Keller's choosing, agreed to comply with all requirements necessary to give such court jurisdiction, and further agreed that all matters pertinent to the instant dispute shall be determined by such court. The portion of the "service of suit" clause which states that "all matters arising hereunder shall be determined in accordance with the law and practice of such Court" is a valid "choice of forum" clause. The financial responsibility for Lloyd's Underwriters and certain of the London Market Insurers currently rests with National Indemnity Company ("NICO"), a subsidiary of Berkshire Hathaway, Inc., the largest insuring organization in the United States as measured by total admitted assets (in excess of \$135 billion) and by policyholder surplus (in excess of \$65 billion). Resolute Management, Inc., another Berkshire Hathaway subsidiary, makes claims decisions for Lloyd's Underwriters and certain of the London Market Insurers. The term "Lloyd's Underwriters" when used in this complaint includes its agent and reinsurers including without limitation NICO, Resolute Management, and Equitas Limited, a successor to Lloyd's Underwriters. On information and belief, NICO is also financially responsible for the obligations of defendants National Union, Lexington, Birmingham Fire, Continental and Stonewall, all of whose claims decisions are also made by Resolute Management.

15. Plaintiff is informed and believes that the Guaranty Association is an association formed under the laws of South Carolina.

16. Plaintiff is informed and believes that R.L. Jarrett Underwriting Agency, Inc. is a corporation organized under the laws of the State of Texas, with its principal place of business located in the State of Texas.
17. Plaintiff is informed and believes that U.S. Risk LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business located in the State of Texas.
18. The Receiver is informed and believes that Rexel USA, Inc. is a corporation organized under the laws of Delaware with its principal place of business in the State of Texas.
19. The Receiver is informed and believes that Compass Risk Services, LLC is a limited liability company organized under the laws of Texas with its principal place of business in the State of Texas.
20. The Receiver is informed and believes that SKRLA LLC ("SKRLA") is a limited liability company organized under the laws of Texas with its principal place of business in the State of Texas.
21. The Receiver is informed and believes that Century Indemnity Company ("Century Indemnity") is a corporation organized under the laws of Pennsylvania with its principal place of business in Pennsylvania.
22. The Receiver is informed and believes that United States Fire Insurance Company ("U.S. Fire") is a corporation organized under the laws of Delaware with its principal place of business in the State of New Jersey.
23. The Receiver is informed and believes that Fireman's Fund Insurance Company ("Fireman's Fund") is a corporation organized under the laws of Illinois with its principal place of business in the State of Illinois.

24. The Receiver believes that one or more additional insurance companies issued or may have issued policies of insurance to one or more of the Third-Party Plaintiffs that are responsive to the losses described herein (“Additional Third-Party Defendants”). Such Additional Third-Party Defendants may include one or more insurance companies managed by organizations located in New Hampshire, Massachusetts, or other jurisdictions. When the identities of these Additional Third-Party Defendants become known to Third-Party Plaintiffs, this Complaint may be amended *nunc pro tunc* to state the true identity of such Additional Third-Party Defendants.

JURISDICTION

25. This Court has jurisdiction over the matters alleged herein pursuant to S.C. Code Ann. §§ 36-2-802 and 36-2-803, Article V of the Constitution of the State of South Carolina, and the Court’s plenary powers. This Court appointed Peter D. Protopapas as Receiver of Third-Party Plaintiffs.

VENUE

26. Venue is proper in this Court as it is the Receiver Court with cases pending and anticipated new filings in this Court. Further, on March 3, 2019, pursuant to the Order of the Supreme Court of South Carolina, Order Number 2017-03-03-01, the Honorable Jean H. Toal was appointed to have jurisdiction in all circuits in this state to dispose of all pretrial matters and motions, as well as trials, arising out of asbestos and asbestos litigation filed within the state court system. Thus, the Honorable Jean H. Toal will have jurisdiction over this matter.

FACTUAL BACKGROUND

27. Third-Party Plaintiffs’ historic operations, and the historic operations of their predecessors, included the installation, repair, replacement, removal, or disturbance of thermal insulation and

other building materials. Those operations allegedly exposed persons to asbestos who thereby suffered bodily injury or personal injury (the “Asbestos Allegations”). The alleged bodily injury or personal injury resulting from the Asbestos Allegations has resulted in suits against Third-Party Plaintiffs (“Asbestos Suits”), including the instant suit filed by Lenora Childers, Individually and as Personal Representative of the Estate of Lewis C. Childers.

THIRD-PARTY PLAINTIFF CAROLINA INDUSTRIAL INSULATION

A. The Zurich Policies

28. Third-Party Defendant Zurich American Insurance Company (as Successor to Northern Insurance Company of New York) issued primary general liability policies (“The Zurich Policies”) to Carolina Industrial Insulation Co. (“Carolina Industrial”).¹ The Zurich Policies have standard terms and conditions. The Zurich Policies have a duty to defend or to reimburse defense costs on behalf of Carolina Industrial against any and all Carolina Industrial Asbestos Suits alleging any potential for coverage, even if the Asbestos Allegations in such suits are groundless, false, or fraudulent. The duty to defend is joint, several, indivisible, and supplemental. The Zurich Policies require Zurich fully to defend any Carolina Industrial Asbestos Suit alleging bodily injury during any Zurich Policy period. The Zurich Policies have a separate duty fully to indemnify Carolina Industrial from and against any and all Carolina Industrial Asbestos Suits with bodily injury taking place during any Zurich Policy period. It is the burden of Zurich to prove any limitation on or exclusion of coverage. Specifically, Zurich

¹ Pipe & Boiler merged with Carolina Industrial on September 15, 1983. The merged entity continued operating under the name “Pipe & Boiler Insulation, Inc.”

issued primary general liability coverage to Carolina Industrial for at least the three policy periods from January 1, 1973 – January 1, 1976.

29. The Receiver for Carolina Industrial continues to require all pertinent parties to conduct a diligent search for additional policies issued by Zurich or any of its predecessors, successors, subsidiaries, or affiliates. Should additional policies be located, this Third Amended Third-Party Complaint may be amended to include such additional Zurich Policies.
30. Zurich has failed fully to acknowledge or accept its insuring obligations under the Zurich Policies. An actual and justiciable dispute exists between these parties.

B. The Allstate Policies

31. Third-Party Defendant Allstate issued primary general liability policies to Carolina Industrial (“The Allstate Policies”). The Allstate Policies have standard terms and conditions. The Allstate Policies have a duty to defend or to reimburse defense costs on behalf of Carolina Industrial against any and all Carolina Industrial Asbestos Suits alleging any potential for coverage, even if the Asbestos Allegations in such suits are groundless, false or fraudulent. The duty to defend is joint, several, indivisible and supplemental. The Allstate Policies require Allstate fully to defend any Carolina Industrial Asbestos Suit alleging bodily injury during any Allstate Policy period. The Allstate Policies have a separate duty fully to indemnify Carolina Industrial from and against any and all Carolina Industrial Asbestos Suits with bodily injury taking place during any Allstate Carolina Industrial Policy Period. It is the burden of Allstate to prove any limitation on or exclusion of coverage. Specifically, Allstate issued primary general liability coverage to Carolina Industrial for at least the three policy periods January 1, 1970 – January 1, 1973.

32. The Receiver for Carolina Industrial continues to require all pertinent parties to conduct a diligent search for additional policies issued by Allstate or any of its predecessors, successors, subsidiaries or affiliates. Should additional policies be located, this Third Amended Third-Party Complaint will be amended to include such additional Allstate Policies.
33. Allstate has failed fully to acknowledge or accept its insuring obligations under the Allstate Policies. An actual and justiciable dispute exists between these parties.

C. The Continental Policies

34. On information and belief, Third-Party Defendant Continental issued general liability policies to Carolina Industrial (“The Continental Carolina Industrial Policies”). The Continental Carolina Industrial Policies have standard terms and conditions. The Continental Carolina Industrial Policies have a duty to defend or to reimburse defense costs on behalf of Carolina Industrial against any and all Carolina Industrial Asbestos Suits alleging any potential for coverage, even if the Asbestos Allegations in such suits are groundless, false, or fraudulent. The duty to defend is joint, several, indivisible, and supplemental. The Continental Carolina Industrial Policies require Continental fully to defend any Carolina Industrial Asbestos Suit alleging bodily injury during any Continental Carolina Industrial Policy period. The Continental Carolina Industrial Policies have a separate duty fully to indemnify Carolina Industrial from and against any and all Carolina Industrial Asbestos Suits with bodily injury taking place during any Continental Carolina Industrial Policy period. It is the burden of Continental to prove any limitation on or exclusion of coverage. Specifically, upon information and belief, Continental issued primary general liability coverage to Carolina Industrial for multiple policy periods between January 1, 1978 and January 1, 1983.

35. The Receiver for Carolina Industrial continues to require all pertinent parties to conduct a diligent search for additional policies issued by Continental or any of its predecessors, successors, subsidiaries or affiliates. Should such additional policies be located, this Third Amended Third-Party Complaint will be amended to include such additional Continental Carolina Industrial Policies.
36. Continental has failed, or will fail, fully to acknowledge or accept its insuring obligations under the Continental Carolina Industrial Policies. An actual and justiciable dispute exists between these parties.

D. The U.S. Fire Policies

37. On information and belief, Third-Party Defendant U.S. Fire issued standard excess liability policies to Carolina Industrial at least between 1976 and 1983 (“The U.S. Fire Carolina Industrial Policies”). The U.S. Fire Carolina Industrial Policies contain standard terms and conditions. It is the burden of U.S. Fire to prove any limitation on or exclusion of coverage.
38. The Receiver for Carolina Industrial continues to require all pertinent parties to conduct a diligent search for additional policies issued by U.S. Fire or any of its predecessors, successors, subsidiaries or affiliates. Should additional policies be located, this Third Amended Third-Party Complaint will be amended to include such additional U.S. Fire Carolina Industrial Policies.
39. U.S. Fire has repudiated its insurance contracts as respects to all of the Carolina Industrial Asbestos Suits and as respects to all of the asbestos suits ever to be filed against Carolina Industrial by asserting that the “products hazard” exclusion in its policies bars coverage for any suit alleging liability based on Carolina Industrial’s use of “products” containing asbestos.

Every asbestos suit alleges the plaintiff's injurious exposure to asbestos via one or more "products." At least one "actual and justiciable dispute" therefore exists between U.S. Fire and Carolina Industrial.

THIRD-PARTY PLAINTIFF FLAME REFRACTORIES

A. The Admiral Policies

40. Third-Party Defendant Admiral Insurance Company issued general liability policies to Flame Refractories for at least two policy periods: from April 1, 1985 to April 1, 1986 and from April 1, 1986 to April 1, 1987 ("The Admiral Flame Refractories Policies"). The Admiral Flame Refractories Policies have standard terms and conditions. The Admiral Flame Refractories Policies have a duty to defend or to reimburse defense costs on behalf of Flame Refractories against any and all Flame Refractories Asbestos Suits alleging any potential for coverage, even if the Asbestos Allegations in such suits are groundless, false, or fraudulent. The duty to defend is joint, several, indivisible, and supplemental. The Admiral Flame Refractories Policies require Admiral fully to defend any Flame Refractories Asbestos Suit alleging bodily injury during any Admiral Flame Refractories Policy period. The Admiral Flame Refractories Policies have a separate duty fully to indemnify Flame Refractories from and against any and all Flame Refractories Asbestos Suits with bodily injury taking place during any Admiral Flame Refractories Policy period. It is the burden of Admiral to prove any limitation on or exclusion of coverage. Specifically, upon information and belief, Admiral issued primary general liability coverage to Flame Refractories for multiple policy periods between 1970 and April 1, 1987.

41. The Receiver for Flame Refractories continues to require all pertinent parties to conduct a diligent search for additional policies issued by Admiral or any of its predecessors, successors, subsidiaries or affiliates. Should such additional policies be located, this Third Amended Third-Party Complaint will be amended to include such additional Admiral Flame Refractories Policies.
42. Admiral has failed to fully acknowledge or accept its insuring obligations under the Admiral Flame Refractories Policies. An actual and justiciable dispute exists between these parties.

B. The Hartford Policy

43. Third-Party Defendant Hartford Accident and Indemnity Company issued an excess liability policy to Flame Refractories² for at least one policy period from April 1, 1985 to April 1, 1986 (“The Hartford Flame Refractories Policy”). The Hartford Flame Refractories Policy has standard terms and conditions. It is the burden of Hartford to prove any limitation on or exclusion of coverage.
44. The Receiver for Flame Refractories continues to require all pertinent parties to conduct a diligent search for additional policies issued by Hartford or any of its predecessors, successors, subsidiaries or affiliates. Should additional policies be located, this Third Amended Third-Party Complaint may be amended to include such additional Hartford Flame Refractories Policies.
45. Hartford has failed, or will fail, fully to acknowledge or accept its insuring obligations under the Hartford Policy. An actual and justiciable dispute exists between these parties.

² Flame Refractories and United Construction Co. of Rome, Inc. merged in 1986, leaving Flame Refractories as the surviving entity.

C. The First State Policies

46. Third-Party Defendant First State Insurance Company issued an excess liability policy to Flame Refractories for at least two policy periods: from April 1, 1978 to April 1, 1979 and from April 1, 1979 to June 1, 1979 (“The First State Flame Refractories Policy”). The First State Flame Refractories Policy has standard terms and conditions. It is the burden of Hartford to prove any limitation on or exclusion of coverage.
47. The Receiver for Flame Refractories continues to require all pertinent parties to conduct a diligent search for additional policies issued by First State or any of its predecessors, successors, subsidiaries or affiliates. Should additional policies be located, this Third Amended Third-Party Complaint may be amended to include such additional First State Flame Refractories Policies.

D. The Century Indemnity Policies

48. Upon information and belief, Third-Party Defendant Century Indemnity issued primary general liability insurance policies to Flame Refractories for at least the policy periods, January 1, 1979 to January 1, 1980 and January 1, 1980 to January 1, 1981 (“The Century Indemnity Flame Refractories Primary Policies”). The Century Indemnity Flame Refractories Primary Policies have standard terms and conditions. The Century Indemnity Flame Refractories Primary Policies have a duty to defend or to reimburse defense costs on behalf of Flame Refractories against any and all Flame Refractories Asbestos Suits alleging any potential for coverage, even if the Asbestos Allegations in such suits are groundless, false, or fraudulent. The duty to defend is joint, several, indivisible, and supplemental. The Century Indemnity Flame Refractories Primary Policies require Century Indemnity to fully defend any Flame

Refractories Asbestos Suit alleging bodily injury during any Century Indemnity Flame Refractories Primary Policy period. The Century Indemnity Flame Refractories Primary Policies have a separate duty to fully indemnify Flame Refractories from and against any and all Flame Refractories Asbestos Suits with bodily injury taking place during any Century Indemnity Flame Refractories Primary Policy period. It is the burden of Century Indemnity to prove any limitation on or exclusion of coverage.

49. Century Indemnity also issued excess liability policies to Flame Refractories at least for the policy period January 1, 1979 to January 1, 1980. (“The Century Indemnity Flame Refractories Excess Policies”). The 1979–80 policy is immediately excess of the primary policy identified above for the January 1, 1979 to January 1, 1980 period. The Century Indemnity Flame Refractories Excess Policies have standard terms and conditions. It is the burden of Century Indemnity to prove any limitation or exclusion of coverage.
50. The Receiver for Flame Refractories continues to require all pertinent parties to conduct a diligent search for additional policies issued by Century Indemnity or any of its predecessors, successors, subsidiaries or affiliates. Should additional policies be located, this Third Amended Third-Party Complaint may be amended accordingly.
51. Century Indemnity has failed, or will fail, to fully acknowledge or accept its insuring obligations under the Century Indemnity Flame Refractories Policies. An actual and justiciable dispute exists between these parties.

E. The Continental Policies

52. Third-Party Defendant Continental issued excess liability policies to Flame Refractories for at least the January 1, 1983 to January 1, 1984 policy period (“The Continental Flame

Refractories Policies”). The Continental Flame Refractories Policies have standard terms and conditions. It is the burden of Continental to prove any limitation or exclusion of coverage.

53. The Receiver for Flame Refractories continues to require all pertinent parties to conduct a diligent search for additional policies issued by Continental or any of its predecessors, successors, subsidiaries or affiliates. Should additional policies be located, this Third Amended Third-Party Complaint may be amended accordingly.

54. Continental has failed, or will fail, to fully acknowledge or accept its insuring obligations under the Continental Flame Refractories Policies. An actual and justiciable dispute exists between these parties.

F. The Fireman’s Fund Policies

55. Third-Party Defendant Fireman’s Fund issued excess liability policies to Flame Refractories for at least the January 1, 1984 to January 1, 1985 policy period (“The Fireman’s Fund Flame Refractories Policies”). The Fireman’s Flame Refractories Policies have standard terms and conditions. It is the burden of Fireman’s Fund to prove any limitation on or exclusion of coverage.

56. The Receiver for Flame Refractories continues to require all pertinent parties to conduct a diligent search for additional policies issued by Fireman’s Fund or any of its predecessors, successors, subsidiaries or affiliates. Should additional policies be located, this Third Amended Third-Party Complaint may be amended to include such additional Fireman’s Fund Flame Refractories Policies.

THIRD-PARTY PLAINTIFF PIPE & BOILER INSULATION COMPANY

A. The Arrowood Policies

57. Arrowood Indemnity Company, formerly known as Security Insurance Company of Hartford, issued general liability policies to Pipe & Boiler (“The Arrowood Policies”). Specifically, Arrowood issued primary general liability coverage to Pipe & Boiler for at least the five policy periods January 1, 1981 – January 1, 1986, and issued umbrella coverage to Pipe & Boiler for at least the three policy periods January 1, 1983 – January 1, 1986.
58. Arrowood has failed fully to acknowledge or accept its insuring obligations under the Arrowood Policies. An actual and justiciable dispute exists between the Receiver and Arrowood.

i. The ownership and control of Arrowood³

59. Arrowood, formerly Royal Indemnity Company, was previously a member of the Royal & Sun Alliance USA, Inc. (“RSAUSA”) insurance group, whose ultimate parent was RSA Insurance Group plc. Arrowood is licensed to sell insurance in all 50 states.
60. In September 2003, RSAUSA announced a strategic change that resulted in the sale of the majority of its businesses under various renewal rights transactions. In 2004, RSAUSA also implemented a Plan of Reorganization and Consolidation that reduced the number of its insurance companies in the United States.
61. On March 3, 2007, Arrowpoint Capital, which was formed in 2006 and owned by Arrowood’s management and independent directors, purchased 100% of the interests of Arrowpoint

³ The following allegations pertain specifically to the acts and omissions of the Individual Arrowood Third-Party Defendants, Arrowpoint Group, Inc., and Arrowpoint Capital Corp., herein collectively referred to as “the Arrowood Defendants.”

General Partnership, the U.S. holding entity which owned all of the RSAUSA businesses. The approval of the transaction by the Delaware Department of Insurance (“DOI”) resulted in the Delaware Insurance Commissioner’s Order (“Order”) which subjected Arrowood to certain requirements. Those requirements included that Arrowood’s then parent, RSAUSA, provide Arrowood with a stop loss reinsurance agreement. According to a 2014 financial examination report for Arrowood issued by the Delaware DOI, by then, the RSAUSA stop loss reinsurance agreement had already become fully incurred, and there are no remaining limits of liability under the stop loss reinsurance agreement available for unpaid claims.

62. In addition, in accordance with the Order, Arrowood cannot pay dividends or sell or distribute assets in the ordinary course of business without the Delaware DOI’s approval (which the Individual Arrowood Third-Party Defendants have wrongfully circumvented or violated the order by paying themselves exorbitant salaries and benefits far outside the norm for insurance companies actively engaged in business, much less companies in runoff whose only business is adjusting claims).
63. The ownership structure of Arrowood has, and the officers and directors of Arrowood have, changed very little since 2007.
64. The Individual Arrowood Third-Party Defendants, in their capacities for Arrowood and as officers and directors of Arrowood’s parent companies (Arrowpoint Group and Arrowpoint Capital), have maintained absolute control of Arrowood over the relevant years. Maintenance of such total control has been central to the Arrowood Third-Party Defendants’ ability to engage in the wrongful conduct set forth in this complaint.

65. A critical component of the application of RSAUSA to spin off what is now Arrowood was the commitment of RSAUSA to infuse an additional \$287.5 million into the insurance companies for the specific stated purposes of payment of policyholder claims. As the then Delaware Insurance Commissioner concluded:

[I]n the event of continued adverse development beyond that projected by the Applicants (but consistent with the stressed financial conditions considered by the Department in its financial analysis, the British parent's \$287.5 million capital infusion may be barely sufficient to cover all outstanding claims.

In the Matter of The Proposed Acquisition of Royal Indemnity Company, Insurance Department of the State of Delaware, Docket No. 313, Decision and Final Order at 6 (Feb. 20, 2007).

66. Little did the (non-Delaware) insurance regulators know that the plan was or morphed into one to use a substantial part of that \$287.5 million not to pay policyholder claims but, instead, to wrongfully pay exorbitant salaries to Arrowood management and “management fees” to Arrowpoint.

ii. *Insurance companies are regulated to protect policyholders, and their officers, directors, and ultimate control persons owe the insurance companies' policyholders a duty of care.*

67. Insurance companies are regulated to protect consumers. As the National Association of Insurance Commissioners (“NAIC”) has written:

The fundamental reason for government regulation of insurance is to protect American consumers. Insurance is more heavily regulated than other types of business because of the complexity of the insurance contracts, the lack of sufficient information for insurance consumers to adequately shop for prices and adequacy of coverage and because insurance contracts are generally contracts of adhesion. Conceptually insurance regulation is very simple. The public wants two things from insurance regulators. **They want solvent insurers who are financially able to make good on the promises**

they have made and they want insurers to treat policyholders and claimants fairly. All regulatory functions will fall under either solvency regulation or market regulation to meet these two objectives. State insurance regulatory systems are accessible and accountable to the public and sensitive to local social and economic conditions. State regulation has proven that it effectively protects consumers and ensures that promises made by insurers are kept. Insurance regulation is structured around several key functions, including insurer licensing, producer licensing, product regulation, market conduct, financial regulation and consumer services.

NAIC and the Center for Insurance Policy and Research, State Insurance Regulation, *available at* https://www.naic.org/documents/topics_white_paper_hist_ins_reg.pdf, at 2 (last accessed Jan. 20, 2022) (emphasis added).

68. Indeed, the insurance statutes and regulations are designed to require the interests of policyholders to be of paramount concern for the officers, directors, and other persons who exercise ultimate control over regulated and licensed insurance companies. For example, every state has detailed restrictions on transactions within an insurance holding company system (regulated by state insurance Holding Company Acts) to make sure that an insurance company does not improperly transfer funds to the detriment of policyholders. Another example is debt. If an insurance company wants to borrow money, unlike a non-regulated company, any such debt is subordinated to the interests of policyholders and evidenced by what is referred to as a “surplus note,” such that repayment is subject to regulatory approval.
69. Insurers must be operated by individuals who are honest and trustworthy. Indeed, every year, the signatories to the Arrowood statutory financials must personally attest to the veracity of such information, stating:

The officers of this reporting entity being duly sworn, each depose and say that they are the described officers of said reporting entity, and that on the reporting period stated above, all of the herein described assets were the absolute property of the said reporting entity, free and clear from any liens

or claims thereon, except as herein stated, and this statement, together with related exhibits, schedules, and explanations therein contained, annexed or referred to, is a full and true statement of all the assets and liabilities and of the condition and affairs of the said reporting entity as of the reporting period stated above, and of its income and deductions therefrom for the period ended, and have been completed in accordance with the NAIC Annual Statement Instructions and Accounting Practices and Procedures manual except to the extent that (1) state law may differ; or (2) that state rules or regulations require differences in reporting not related to accounting practices and procedures, according to the best of their information, knowledge, and belief, respectively. Furthermore, the scope of this attestation by the described officers also includes the related corresponding electronic filing with the NAIC, when required, that is an exact copy (except for formatting differences due to electronic filing) of the enclosed statement. The electronic filing may be requested by various regulators in lieu of or in addition to the enclosed statement.

See, e.g., Annual Statement as of December 31, 2020 of the Condition and Affairs of the Arrowood Indemnity Company at 1.

70. Insurance company accounting is slightly different than GAAP accounting. An insurer has assets and liabilities with the net difference called the “surplus” or “policyholders’ surplus.” Policyholders’ surplus (together with the company’s stated capital) is roughly equivalent to the net worth of the insurer. As liabilities for losses and expenses increase or assets decrease, the policyholders’ surplus is diminished.

71. Insurance companies must set loss reserves with integrity:

Reserves are liabilities. They reflect an insurer’s financial obligations with respect to the insurance policies it has issued. An insurer’s two major liabilities are loss reserves and unearned premium reserves. Loss reserves are an insurance company’s best estimate of what it will pay in the future for claims. Unearned premium reserves represent the premiums paid for coverage that has not yet been used because the policy has not expired. If the policy was cancelled by the policyholder, for example, the insurer would have to return the dollar amount of unused coverage.

Loss reserves are generally the largest liability on an insurer’s balance sheet. When a claim is filed, a reserve is established for payment of that claim.

Property claims are usually clear-cut and are paid soon after a claim is filed. But with product liability and other so-called long tail coverages, the total harm caused may not be apparent for some time and the ultimate cost of claims may not be known for years, especially in complex cases that are litigated. In such cases, claims adjusters and actuaries continuously reevaluate costs as new information on the claim becomes available and adjust reserves accordingly based on their experience and judgment.

Companies pay considerable attention to their loss reserves. **Serious under-reserving may cause an insurer to over-estimate its policyholder surplus. . . . making its financial health appear better than it is.**

Insurance Information Institute, Financial Reporting, available at: <https://www.iii.org/publications/commercial-insurance/how-it-functions/financial-reporting> (last accessed Jan. 20, 2022) (emphasis added).

72. “Loss reserves” are estimates of unpaid losses that have been booked by an insurer to be paid in the future. There are, in the most general sense, two different types of loss reserves established by property and casualty insurers. One is a case reserve for reported losses. A case reserve should be a good faith estimate of the amount for which a particular claim will ultimately be settled or adjudicated.
73. The other type of loss reserves that an insurer is required to establish is called “IBNR” or “incurred but not reported” loss reserves. IBNR is calculated by the insurer’s appointed actuary using various actuarial tools to estimate (a) losses that have occurred but have not been reported and (b) adverse development of case reserves on known losses (these are also at times referred to as “Bulk Reserves”).
74. In addition to loss reserves, insurance companies must establish reserves for expenses. There are two main types of expenses for a typical operating insurer. One is called “Allocated Loss Adjustment Expense” or “ALAE.” ALAE is generally attributed to the processing of specific

insurance claims. Examples of ALAE are independent adjusters and outside defense counsel with respect to a particular claim.

75. In contrast, “Unallocated Loss Adjustment Expenses,” or “UALAE,” are internal costs and expenses incurred by an insurance company that cannot be associated with specific claims but are related to the claims adjustment process, such as administrative and internal expenses related to the settlement of claims. Examples of UALAE are employees acting in the capacity of claims managers handling claims, establishing loss reserves, providing authority to settle claims, and making coverage determinations.
76. “Incurred losses” are a combination of amounts that are paid for losses, together with loss reserves on reported claims. If an insurance company is adequately reserved, as unpaid losses become paid losses, the incurred amount should not materially change, as the amount simply is recharacterized from a “reserved” amount to a “paid” amount. The same is true for loss adjustment expenses.
77. All of those reserves—incurred loss reserves, ALAE, ULAE, and IBNR/Bulk Reserves—in the aggregate are commonly referred to as the “carried reserves” of the insurer.
78. Every property and casualty insurer domiciled in Delaware, such as Arrowood, is required on a yearly and quarterly basis under 18 Del. Code § 526A to file with regulators an Annual Statement and Quarterly Statement, setting forth detailed information regarding, *inter alia*, its case reserves, IBNR and Bulk reserves, loss adjustment expenses, and “other underwriting expenses.” Every insurer must file those Statements with the regulators in every state in which it is licensed.

79. In addition, every insurer must annually file a Management Discussion and Analysis (“MD&A”). The purpose of the MD&A is to add qualitative information to the quantitative Annual Statement. As the Securities and Exchange Commission has explained,

The Commission has long recognized the need for a narrative explanation of the financial statements, because a numerical presentation and brief accompanying footnotes alone may be insufficient for an investor to judge the quality of earnings and the likelihood that past performance is indicative of future performance. MD&A is intended to give the investor an opportunity to look at the company through the eyes of management by providing both a short and long-term analysis of the business of the company.

Securities and Exchange Commission, Securities Act Release No. 6711 (April 24, 1987) [52 FR 13715].

80. Moreover, every property and casualty insurance company doing business in Delaware, unless exempt (which Arrowood is not), is required to submit to the Delaware DOI the opinion of an appointed actuary, entitled “Statement of Actuarial Opinion,” with supporting documentation on a yearly basis with respect to the loss and expense reserves established and reported by the company. *See* 18 Del. Code. § 1132.
81. The critical role of the Appointed Actuary cannot be overstated, particularly for an insurer such as Arrowood which as of the spin-off had significant asbestos liabilities. The Appointed Actuary must be a member of a professional actuarial association that requires adherence to the same Code of Professional Conduct promulgated by the actuarial credentialing societies, requires adherence to the U.S. Qualification Standards, and participates in the Actuarial Board for Counseling and Discipline when its members are practicing in the U.S.
82. The Appointed Actuary must report to the Board of Directors each year on the items within the scope of the Actuarial Opinion. The Actuarial Opinion and the Actuarial Report must be

made available to the Board of Directors. The Appointed Actuary must explicitly identify whether his/her actuarial opinion provides a reasonable determination of the insurer's reserves. In so doing, the Appointed Actuary must provide relevant comment paragraphs to address Company-Specific Risk Factors and the risk of material adverse deviation.

83. When the insurer's carried reserve amount is less than the minimum amount that the Appointed Actuary believes is reasonable, the Appointed Actuary should issue a Statement of Actuarial Opinion that the carried reserve amount does not make a reasonable provision for the liabilities associated with the specified reserves. In addition, the Appointed Actuary should disclose the minimum amount of reserves that the Appointed Actuary believes is reasonable.
84. As a matter of insurance law and/or regulation promulgated by the NAIC, other key elements of the work of the Appointed Actuary include:
- a. A description of the Appointed Actuary's relationship to the Company, with clear presentation of the Appointed Actuary's role in advising the Board of Directors and/or management regarding the carried reserves. The Actuarial Report should identify how and when the Appointed Actuary presents the analysis to the Board of Directors and, where applicable, to the officer(s) of the Company responsible for determining the carried reserves.
 - b. An exhibit that ties to the Annual Statement and compares the Appointed Actuary's conclusions to the carried amounts consistent with the segmentation of exposure or liability groupings used in the analysis. The Appointed Actuary's conclusions include the Appointed Actuary's point estimate(s), range(s) of reasonable estimates, or both.

- c. An exhibit or appendix showing the change in the Appointed Actuary's estimates from the prior Actuarial Report, including extended discussion of factors underlying any material changes. The exhibit or appendix should illustrate the changes on a net basis but should also include the changes on a gross basis, if relevant. If the Appointed Actuary is newly appointed and does not review the work of the prior Appointed Actuary, then the Appointed Actuary should disclose this.
 - d. Extended comments on trends that indicate the presence or absence of risks and uncertainties that could result in material adverse deviation.
 - e. Extended comments on factors that led to unusual IRIS ratios for One-Year Reserve Development to Policyholders' Surplus, Two-Year Reserve Development to Policyholders' Surplus, or Estimated Current Reserve Deficiency to Policyholders' Surplus, and how these factors were addressed in prior and current analyses.
- iii. ***NAIC IRIS Ratios are designed to uniformly measure solvency and liquidity to highlight troubled companies for state insurance regulators.***

85. The NAIC Insurance Regulatory Information System (IRIS) is a collection of analytical solvency tools and databases designed to provide state insurance departments with an integrated approach to screening and analyzing the financial condition of insurers operating within their respective states. IRIS is intended to assist state insurance departments in targeting resources to those insurers in greatest need of regulatory attention.

86. The IRIS Ratios are a set of ratios designed to measure solvency and liquidity. They are calculated from insurers' annual statements that are filed with the NAIC, and insurers that fail four or more tests can be placed under the supervision of their domicile regulator.

87. IRIS Ratios are particularly important where an insurer, like Arrowood, is licensed nationally, since most regulators have limited resources and cannot spend significant time and attention on foreign insurers licensed but not domiciled in their state. The NAIC IRIS Ratios provide the non-domiciliary regulators with important guidance as to the financial wherewithal of the foreign insurer. If an insurer is outside of more than four (4) of the NAIC Ratios, the insurer will come to the attention of the non-domiciliary regulators as a troubled company.

88. Delaware insurance regulations also require that an “Enterprise Risk Report” be filed by the “ultimate controlling person” of an insurer, which here is Arrowood Capital:

The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to Section 5004(l) of the Act shall furnish the required information on Form F, hereby made a part of these regulations.

19 Del. Reg. 642 (2016).

89. Enterprise Risk is a defined term in insurance regulation. Under Delaware regulations,

“Enterprise risk” – The term ‘enterprise risk’ shall mean any activity, circumstance, event or series of events, involving 1 or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer’s risk-based capital to fall into company action level as set forth in § 5803 of this title or would cause the insurer to be in hazardous financial condition as set forth in Section 3 of Department of Insurance Regulation 304 – Standards and Commissioner’s Authority for Companies Deemed to be in Hazardous Financial Condition [18 DE Admin. Code § 304-3.0].

18 Del. Code § 5001(4).

90. The foregoing statutory requirements were enacted to impose duties upon the officers, directors, and ultimate controlling persons of insurance companies doing business or domiciled in Delaware to protect the solvency of licensed insurers for the benefit of their policyholders.

91. In addition to the Delaware insurance laws, the Arrowood Third-Party Defendants at all times were well aware of Arrowood's obligation to comply with the insurance laws and regulations in each state in which it was licensed to sell insurance (all 50 states in the case of Arrowood) and, according to Schedule T of Arrowood's Annual Statement, Arrowood has, in varying amounts, significant insurance liabilities in every state other than North Dakota and Wyoming.
92. Insurers have a statutory obligation to be solvent. Under applicable Delaware law, Title 18, Chapter 59 § 5901(a), "The capital of a stock insurer . . . shall be deemed to be impaired, and the insurer shall be deemed to be insolvent, when such insurer is not possessed of assets at least equal to all liabilities and required reserves together with its total issued and outstanding capital stock, it a stock insurer, . . . required by this title to be maintained for the kind or kinds of insurance it is then authorized to transact."
93. Under 18 Del. Code § 5802, Arrowood, like every Delaware domestic insurer, is required to prepare and submit by March 1 of each year to the Delaware Insurance Commissioner a report of its RBC levels as of the end of the calendar year just ended, "in a form as is required by the RBC instructions." "RBC instructions" is a phrase defined as "the RBC report including risk-based capital instructions adopted by the NAIC [National Association of Insurance Commissioners]; as such, RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC." 18 Del. Code § 5802(9).
94. The NAIC has explained Risk Based Capital requirements as follows:

Risk-Based Capital (RBC) is a method of measuring the minimum amount of capital appropriate for a reporting entity to support its overall business operations in consideration of its size and risk profile. RBC limits the amount of risk a company can take. It requires a company with a higher amount of risk to hold a higher amount of capital. Capital provides a cushion to a company against insolvency. RBC is intended to be a minimum

regulatory capital standard and not necessarily the full amount of capital that an insurer would want to hold to meet its safety and competitive objectives. In addition, RBC is not designed to be used as a stand-alone tool in determining financial solvency of an insurance company; rather it is one of the tools that give regulators legal authority to take control of an insurance company.

Federal Bar Association, “Insurance Tax Seminar Session 7A – Capital Planning: One Concept to Rule Them All,” available at <https://www.fedbar.org/wp-content/uploads/2019/12/Session-7A-PPT-REV-pdf-1.pdf> (last visited Jan. 20, 2022).

95. Thus, a Delaware regulated insurer has two different financial thresholds that it must maintain:
 - a. It must, under § 5901, maintain “assets at least equal to all liabilities and required reserves,” and
 - b. Pursuant to § 5801, maintain adequate Risk-Based Capital.
96. Although the statutory references obviously vary by state, the basic rules (as dictated by the NAIC) are the same.
97. If a regulated insurer does not maintain adequate surplus or comply with RBC rules, the regulators are required to assume control over the company.
98. Moreover, federal statutes impose harsh penalties when insurers knowingly and with the intent to deceive file with state regulators false financial statements. Indeed, officers and directors who willfully misappropriate funds from insurers can be personally liable under those same statutes. *See, e.g.*, 18 U.S.C. § 1033.

iv. *Pipe & Boiler purchased insurance policies issued by Arrowood.*

99. Security Insurance Company of Hartford issued primary general liability coverage to Pipe & Boiler for at least the two policy periods January 1, 1981 – January 1, 1983, which policies have been administered by Arrowood in runoff since 2007.

100. The officers, directors, Appointed Actuary, and other ultimate controlling persons had a duty to (a) operate Arrowood in a manner consistent with the insurance statutes and regulations of Delaware to protect the interests of Arrowood's policyholders and (b) make accurate and timely regulatory filings and disclosures.

v. *The Arrowood Third-Party Defendants' Conversion of Assets of Arrowood*

101. On March 4, 2007, John Tighe, then CEO of both Arrowpoint and Arrowood, announced,

Our focus has always been on our obligation to all of our policyholders – the successful completion of this transaction is a huge win for them . . . The transaction builds on the strong success we've achieved to date through our restructuring efforts and provides us with a solid foundation for taking the business forward. Most importantly, it represents an excellent outcome for our policyholders, who are the primary beneficiaries of the acquisition and the additional \$287.5 million it provides.

See "Arrowpoint Capital Finalizes Acquisition of Royal & SunAlliance USA Businesses, Arrowpoint Capital Press Release, March 4, 2007, available at <https://www.arrowpointcap.com/Arrowpoint/GetPrintPage.aspx?pageId=500> (last accessed Jan. 20, 2022).

102. In approximately 2007, Arrowood, with approximately \$3 billion in surplus, stopped writing new business and thus, other than investment income on its assets, ceased to have income from operations, and commenced to be engaged solely in the "runoff" of its claims. Arrowood wrote little-to-no new business in and after 2007.
103. Arrowood's sole functions after it was put in runoff were (a) to operate the insurer in a legally compliant manner, and (b) to process and administer claims under insurance policies that had been issued when it was writing insurance, including the primary general liability

policies it issued to Pipe & Boiler for at least the two policy periods January 1, 1981 – January 1, 1983.

104. But the Individual Arrowood Third-Party Defendants, in their management capacities for Arrowood and its parent companies (Arrowpoint Group and Arrowpoint Capital) consistently have failed to properly establish and maintain loss and expense reserves for known and unreported claims, which resulted in Arrowood’s statutory financial reports having an appearance of solvency that misrepresented the true nature of Arrowood’s deepening financial woes. The ongoing and consistent yearly under-reserving of losses and expenses allowed the Arrowood Third-Party Defendants to maintain the air of solvency and liquidity while millions of dollars in Arrowood funds were improperly and wrongfully transferred from Arrowood through exorbitant salaries, benefits, management fees to its parent companies, and expenses, all performed for the personal benefit of various present and former employees of Arrowood (including the Individual Arrowood Third-Party Defendants herein) as well as its parent companies (Arrowpoint Group and Arrowpoint Capital). The net result has been to cause Arrowood’s policyholders’ surplus to drop to the point that Arrowood’s RBC Level under 18 Del. Code § 5801 is now at a precarious Company Action Level RBC as defined in that statute.
105. The true extent of the diversion of funds that should have been preserved for Arrowood’s policyholders is to be determined through discovery; however, it is known from the annual MD&A filed with regulators regarding various pension plans for present and former employees that Arrowood maintains “a non-qualified deferred compensation plan for a select group of management and highly compensated employees.” Arrowood Indemnity Co., Management’s Discussion and Analysis of Financial Condition and Results of Operations for the Year Ended

December 31, 2020, at 8. This plan may include Third-Party Defendants Tighe and Cahill, and probably a number of others of the Individual Arrowood Third-Party Defendants.

106. Arrowood management also employed other means to deplete or divert the assets of Arrowood to the detriment of its policyholders, but to the benefit of the Arrowood Third-Party Defendants.

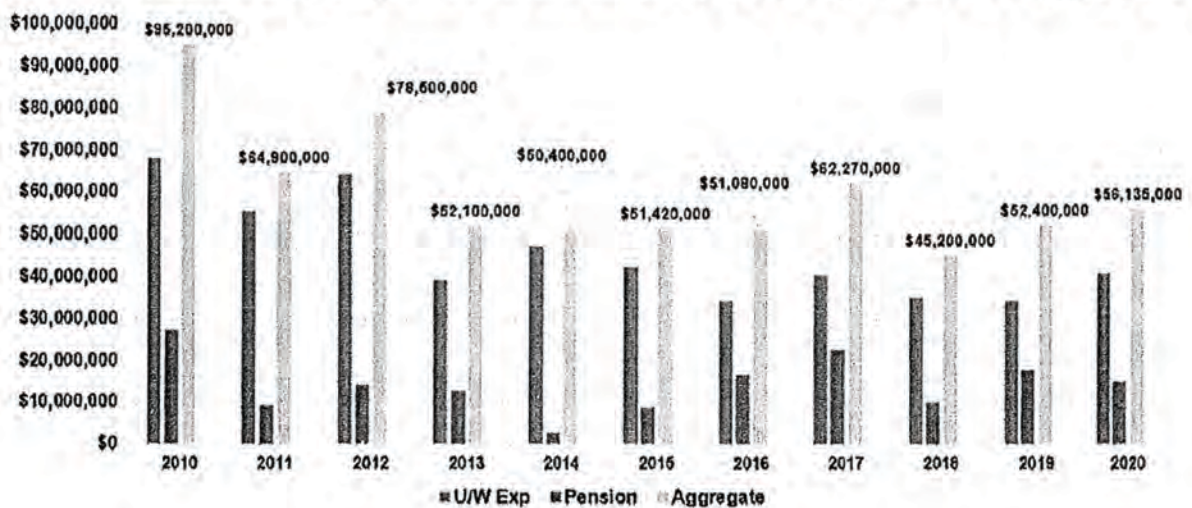
107. Arrowood Indemnity was the 100% owner of another insurer, Arrowood Surplus Lines Insurance Company (“ASL”). As of December 31, 2011, ASL had a Policyholders’ Surplus of \$184 million. The Arrowood Third-Party Defendants implemented a strategy to slowly upstream the \$184 million surplus of ASL. By 2015, \$120 million had been so (?) “upstreamed.” However, Arrowood’s 2015 MD&A filed with the regulators states that a dividend from ASL resulted in “additional unaffiliated equity, commodity and limited partnership holdings.” (emphasis added). Any diversion to unaffiliated entities would constitute an improper diversion of a material portion of the assets of Arrowood to the detriment of policyholders and to the benefit of the Arrowood Third-Party Defendants.

108. Arrowood was a party to a Tax Allocation agreement. That Tax Allocation agreement typically would have allowed the Arrowpoint Group to offset taxable gains against losses of Arrowood. There is no clear public record of Arrowood receiving its properly allocable portion of any such tax savings each year, but PwC’s 2019 audit reflected that Arrowood took an unexplained \$7.7 million tax write-off of money due from its parent company, one of the Arrowood Third-Party Defendants herein.

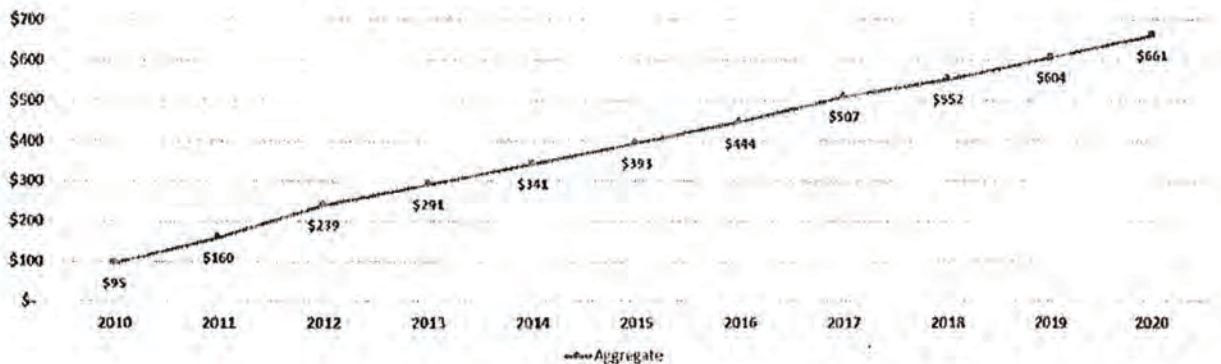
109. The below charts, produced by Arrowood in its publicly filed Annual Statements, quantify some of the material amounts, both annually and in the aggregate, of untoward management

fees, grossly excessive salaries, and other emoluments that the Arrowood Third-Party Defendants have distributed or diverted from the policyholders' surplus for the benefit of management (including, but not limited to, the Individual Arrowood Third-Party Defendants), Arrowpoint, and present and former Arrowood employees.

Other Underwriting Expense and Pension Costs and in the Aggregate



Other Underwriting Expense and Pension Costs and in the Aggregate



110. In 2007, Arrowood had total admitted assets of \$2,998,163,220. Those admitted assets steadily decreased between 2007 and 2020, to \$848,361,366 in 2020, despite the company

having strong net investment gains. Indeed, between 2011 and 2020, Arrowood's net investment gain was as follows for each year:

Net Investment Gain	
2011	\$74,639,663
2012	\$64,643,502
2013	\$54,871,494
2014	\$63,288,306
2015	\$57,762,477
2016	\$48,650,645
2017	\$43,746,769
2018	\$50,921,661
2019	\$40,607,859
2020	\$34,958,745

111. With regard to policyholders, Arrowood's policyholders' surplus also has decreased significantly year after year. In 2007, Arrowood's policyholder surplus was \$445,627,238. The number steadily declined to \$94 million by 2020.

112. Arrowood also has consistently failed to set proper reserves for claims. Year after year, Arrowood has booked reserve deficiencies.

vi. The Arrowood Defendants manipulated reserves as set forth in Schedule P to the Arrowood Annual Statement

113. All insurance company annual statements contain a "Schedule P." The data within schedule P are organized by "Accident Year." "Accident Year" is typically defined as follows:

Accident Year Data – a method of arranging loss and exposure data of an insurer or group of insurers or within a book of business, so that all losses associated with accidents occurring within a given calendar year and all premium earned during that same calendar year are compared. Thus, regardless of individual policy periods and regardless of when a loss is reported or is paid, accident year data 2015 will include all premiums earned during 2015 and will include all losses occurring in 2015.

IRMI, Accident Year Data, available at <https://www.irmi.com/term/insurance-definitions/accident-year-data> (last accessed Jan. 20, 2022).

114. Schedule P provides details, both on an aggregate basis (Parts 1, 2, 3, and 4) and by Line of Business, of critical reserve information. Schedule P, Part 2 Summary provides the details of all Incurred Losses (including bulk reserves and IBNR), which guides the calculation of two of the twelve IRIS Ratios – the One-year and Two-year Adverse Development Ratios. The Schedule P, Part 2 Summary for 2020 is as shown here:

Annual Statement for the year 2020 of the **Arrowood Indemnity Company**

SCHEDULE P - PART 2 - SUMMARY

Years in Which Losses Were Incurred	Incurred Net Losses and Defense and Cost Containment Expenses Reported at Year End (\$000 omitted)										DEVELOPMENT	
	1	2	3	4	5	6	7	8	9	10	11	12
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	One Year	Two Year
1. Prior.....	933,833	937,288	947,193	1,005,279	1,004,000	1,026,778	1,054,822	1,073,195	1,119,956	1,144,330	24,374	71,135
2. 2011.....	56,108	3,034	3,538	3,796	3,868	4,087	3,321	4,373	4,328	4,095	(233)	(277)
3. 2012.....	XXX	49,613	6,084	6,208	6,116	6,098	6,063	6,020	5,834	5,547	(287)	(473)
4. 2013.....	XXX	XXX	31,276	5,291	5,256	5,282	5,240	5,241	5,195	5,001	(194)	(240)
5. 2014.....	XXX	XXX	XXX	13,538	3,014	3,044	3,096	3,089	3,079	3,131	51	42
6. 2015.....	XXX	XXX	XXX	XXX	8,084	2,554	2,520	2,487	2,437	2,416	(21)	(71)
7. 2016.....	XXX	XXX	XXX	XXX	XXX	4,850	1,705	1,767	1,772	1,785	13	18
8. 2017.....	XXX	XXX	XXX	XXX	XXX	XXX	4,351	874	895	885	(10)	10
9. 2018.....	XXX	XXX	XXX	XXX	XXX	XXX	XXX	2,386	645	640	(5)	(1,746)
10. 2019.....	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	1,252	633	(619)	XXX
11. 2020.....	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	8,338	XXX	XXX
12. Totals.....											23,071	68,399

Arrowood Indemnity Company 2020 Annual Statement, at 63.

115. The One-Year Ratio (column 11) measures the development of unpaid losses and loss adjustment expenses based on loss adjustment expenses reported one year prior. The Two-Year Ratio (column 12) measures the development of loss and loss adjustment expenses reported two years ago. Negative results indicate that the reserves were deficient and have since adversely developed. Adverse developments evidence inadequate reserving.

116. This chart demonstrates that for each year going back to 2011, the oldest publicly available information, the Arrowood Third-Party Defendants failed to establish adequate Reserves, year after year, for multiple years. Because an insurer's management and its Appointed Actuary are responsible for establishing a reasonable reserve estimate (and its auditor, PwC, is responsible for an independent verification of those reserves), this state of affairs for Arrowood should, at a minimum, be considered reckless conduct on the part of the Arrowood Defendants.
117. But the Arrowood Third-Party Defendants did not just fail to establish adequate reserves for "Prior Years." To disguise the patent inadequacy of "Prior Year" reserves, so as not to have the appearance of deficient reserves on a cumulative basis, starting no later than 2007, the Arrowood Third-Party Defendants established a materially and clearly artificially large reserve in the first year of any given Accident Year, and then the next year, immediately reduce the Accident Year reserve by 90% or more. The net result of this machination was to make Arrowood's overall reserves appear redundant when, in fact, they were significantly deficient. Added to this ruse as of year-end 2020 was the use of an artificial negative IBNR/Bulk reserve for Accident Year 2020 in the amount of \$17 million. When combined with the grossly inadequate Prior Year Reserves, the Arrowood Third-Party Defendants were able to mask two highly significant IRIS Ratios (the One-Year and Two-Year Adverse Development Ratios), which, in turn, avoided heightened scrutiny from ancillary regulators (*i.e.* all states other than Delaware), including South Carolina. The Arrowood Third-Party Defendants accomplished their goal, but could not have done so without a complicit actuary who filed properly to measure IBNR. That critical actuary was Daniel R. Keddie.

118. Arrowood appointed Keddie as its Appointed Actuary on March 14, 2004, and Keddie continued to serve in that role until his retirement on July 9, 2021. Arrowood Annual Statement General Interrogatories Part 1 – Common Interrogatories #11 (setting forth appointment).
119. Actuaries are subject to a uniform Code of Conduct, adopted by all five U.S.-based actuarial organizations. *See* American Academy of Actuaries 2009 Yearbook and Leadership Manual at 69. The Code of Conduct contains 14 Precepts, two of which are crucial to the instant analysis:

PRECEPT 1. An Actuary shall act honestly, with integrity and competence, and in a manner to fulfill the profession's responsibility to the public and to uphold the reputation of the actuarial profession

...

ANNOTATION 1-4. An Actuary shall not engage in any professional conduct involving dishonesty, fraud, deceit, or misrepresentation or commit any act that reflects adversely on the actuarial profession.

...

PRECEPT 8. An Actuary who performs Actuarial Services shall take reasonable steps to ensure that such services are not used to mislead other parties.

Id. at 70, 71.

120. Keddie ignored those Code of Conduct Precepts, and instead complied with the requirements of his fellow Third-Party Arrowood Defendants to the significant detriment of the Arrowood policyholders, including Pipe & Boiler, by issuing reports every year wrongfully attesting to the reasonableness of the Arrowood reserves.
121. Even though Keddie was credentialed as an Associate of the Casualty Actuarial Society at all material times and, as such, was bound by the Code of Conduct, his primary and critical role over the past 15 years was to facilitate the plan the Arrowood Third-Party Defendants hatched to consistently under-reserve all losses and expenses so that Arrowood assets would

be used not for Arrowood's policyholders as legally required, but instead for the Arrowood Third-Party Defendants' benefit—to pay salaries and management fees to Arrowpoint.

122. Perhaps most troubling, over the last ten years, the expenses Arrowood characterizes as non-claim expenses have been astronomical. Between 2011 and 2020, the Arrowood Third-Party Defendants caused Arrowood to pay the following salaries (primarily to the Individual Arrowood Third-Party Defendants) and management fees (wrongfully paid to Arrowpoint, Arrowood's parent company), as set forth in Arrowood's statutory annual statements:

<u>Year</u>	<u>Salaries</u>	<u>Management Fees</u>
2011	\$22,711,734	\$2,007,592
2012	\$27,165,164	\$4,821,266
2013	\$28,563,024	\$4,539,749
2014	\$21,681,769	\$4,255,422
2015	\$26,790,534	\$4,763,587
2016	\$30,785,393	\$5,009,820
2017	\$26,919,005	\$5,064,432
2018	\$21,360,756	\$5,266,542
2019	\$20,266,145	\$4,909,334
2020	\$22,083,049	\$4,820,219
Total	\$248,326,594	\$45,457,963

123. That is, the Arrowood Third-Party Defendants caused Arrowood to pay nearly \$250 million in salaries—more than would be expected by an active insurance company the size of Arrowood, and far more than typically would be paid by a comparable property and casualty insurer in runoff during the relevant ten-year period – and over \$45 million in “management fees” to its owner (which were improper asset transfers). These monies, which Arrowood should have held and invested to meet its liabilities to its policyholders, as well as to injured asbestos plaintiffs, were taken from the company under false pretenses based on claim reserves that were underreported.

124. Furthermore, had the Arrowood Third-Party Defendants not wrongfully diverted millions of dollars from Arrowood, and instead kept that money with Arrowood to establish adequate reserves for claims and invested the funds, Arrowood would have had substantially more money to adjust and pay claims, considering the investment gains that Arrowood realized with the funds that the Arrowood Third-Party Defendants did not wrongfully divert.

125. In its 2020 Management's Discussion and Analysis, signed by a number of the Individual Arrowood Third-Party Defendants, Arrowood admitted as follows:

The Company is required to maintain certain levels of capital and surplus. The minimum level is based on the individual lines of business for which the Company is licensed. As of December 31, 2020, the Company's RBC ratio, which is the ratio of the Company's adjusted capital to Authorized Control Level, is at the Company Action Level. As required, an RBC plan will be filed with the Delaware Department of Insurance. Discussions are ongoing with the Delaware Department of Insurance regarding the Company's business plan. The operations continue to have risks and uncertainties that could have a material adverse impact on the Company's capital position and ability to maintain capital in excess of regulatory RBC requirements including (i) credit risk of and/or potential disputes with reinsurers; (ii) adverse loss development on certain long-tail lines including workers compensation, asbestos and environmental and professional and general liability.

Arrowood Indemnity Company MD&A for the Year Ended December 31, 2020, at 6-7.

126. While the Delaware DOI, or another insurance department of another state, may require Arrowood to take action to correct its deficient financial circumstances, Pipe & Boiler is not confident that the Delaware DOI will do so in a timely fashion, nor that any other insurance regulator will act in time to remedy the situation.

127. For instance, the Individual Arrowood Third-Party Defendants' failure to post adequate reserves for Arrowood's claims has been a consistent and recurring problem. Indeed, between

2009 and 2014, Arrowood sustained a net underwriting loss of \$464 million. Between 2014 and 2018, Arrowood sustained a net underwriting loss of \$374 million.

128. Indeed, in addition to conceding that Arrowood's RBC Level is at Company Action Level under 18 Del. Code § 5801, Arrowood's 2020 Annual Statement shows that Arrowood has failed 6 of the 13 Insurance Regulatory Information System ("IRIS") tests. As the NAIC notes in its Insurance Regulatory Information Systems ("IRIS") Manual:

The NAIC Insurance Regulatory Information System (IRIS) is a collection of analytical solvency tools and databases designed to provide state insurance departments with an integrated approach to screening and analyzing the financial condition of insurers operating within their respective states. IRIS, developed by the state insurance regulators participating in NAIC committees, is intended to assist state insurance departments in targeting resources to those insurers in greatest need of regulatory attention.

...

IRIS helps by providing solvency tools and databases that highlight those insurers that merit the highest priority in the allocation of the state insurance regulators' resources, thus directing those resources to the best possible use.

NAIC Insurance Regulatory Information System (IRIS) Ratios Manual (2017 ed.) at 9.

129. Pipe & Boiler has tendered the asbestos bodily injury claims that have been filed against it to Arrowood for defense and indemnity coverage under the primary commercial general liability policies that it purchased between 1981 and 1983. Pipe & Boiler is not the only insured of Arrowood that has tendered such claims to Arrowood since 2019; Arrowood insured a number of other similarly situated companies which are seeking defense and indemnity for similar asbestos bodily injury claims. Yet, as evident in Schedule T of Arrowood's Annual Statements for 2019 and 2020, Arrowood has *reduced* its claim reserves ("Unpaid Losses") in 2019 (as compared to 2018), and again *reduced* its reserves in 2020 (as compared to 2019).

130. That is, Arrowood has not posted any realistic reserves for the hundreds (if not thousands) of claims that its insureds, including Pipe & Boiler, have tendered for defense and indemnity coverage, and if and when such reserves are properly posted, Arrowood's financial situation will be shown to be that much worse.

131. The Delaware Insurance Code defines "Enterprise Risk" as follows:

"(4) 'Enterprise risk.' – The term 'enterprise risk' shall mean any activity, circumstance, event or series of events, involving 1 or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital to fall into company action level as set forth in § 5803 of this title or would cause the insurer to be in hazardous financial condition as set forth in Section 3 of Department of Insurance Regulation 304 – Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition [CDR 18-300-304-3.0].⁴"

18 Del. Code § 5001(4).

132. While the Arrowood Third-Party Defendants, as the ultimate controlling persons of Arrowood, were required to file an annual Enterprise Risk Report with the Delaware Department of Insurance based on the facts set forth above, the Arrowood Third-Party Defendants failed to do so, or did not file such a report that accurately and completely sets forth the Enterprise Risk Arrowood faced, to the detriment of Pipe & Boiler and Arrowood's other policyholders.

⁴ 18 DE Admin. Code § 304-3.0 sets forth the standards, either singly or a combination of two or more, that the Delaware Department of Insurance Commissioner may consider to determine whether the continued operation of an insurer transacting an insurance business in Delaware might be deemed to be hazardous to its policyholders, creditors, or the general public.

vii. *The misleading Reports on Examination*

133. Every state conducts financial examinations of the insurers that it regulates. This is consistent with the obligation of the domiciliary state to protect policyholders. The purpose of these financial examinations is to determine the insurer's fiscal condition and compliance with applicable laws and regulations.
134. In Delaware, the Bureau of Company Examination, Rehabilitation and Guaranty ("BERG") performs that examination function. BERG "is responsible for ensuring the financial health and stability of insurance companies in Delaware. It does so by analyzing and assessing the financial condition of insurance companies domesticated and doing business in Delaware in order to protect consumers and, if necessary, by managing, rehabilitating or liquidating financially impaired insurers." Delaware Department of Insurance Company Regulation (BERG), <https://insurance.delaware.gov/divisions/berg/> (last visited Jan. 20, 2022).
135. BERG clearly failed in the discharge of its responsibilities concerning Arrowood as it allowed the Arrowood Third-Party Defendants' reckless scheme to be implemented and maintained. Delaware will at times engage independent actuaries to provide assistance on financial examinations. Here, BERG retained and apparently relied upon INS Consultants, Inc. ("INS"), an independent consulting actuarial firm, to review and analyze the adequacy of the carried reserves of Arrowood as part of the state's financial examinations.
136. In reviewing the Arrowood reserves, the credentialed actuarial principals of INS were required to comply with the Actuarial Code of Conduct. They knew at all times that their work

would be relied upon by the regulators of all states, not just Delaware. Indeed, the conclusion of the INS Report, dated October 18, 2019, states:

The assistance of the consulting actuarial firm, INS Consultants, Inc., the consulting information systems specialist firm, INS Services, Inc., the Company's outside audit firm, PwC, and the Company's management and staff was appreciated and is acknowledged.

Delaware Department of Insurance, Examination Report of the Arrowood Surplus Lines Insurance Company as of December 31, 2018, dated October 18, 2019. The same wording can be found in the 2015 Report on Examination for Arrowood as of December 13, 2014.

137. INS Consultants, Inc. and its credentialed principals knew, had reason to know, or should have known in 2015 and 2019 that the carried reserves of Arrowood were consistently, year after year, materially inadequate. And yet, both of those Reports on Examination are silent as to such reserve inadequacy. INS Consultants, Inc. at all times knew that if a company with assets and liabilities of the magnitude of Arrowood was required to significantly increase its carried reserves, that would adversely and materially impact its solvency, its RBC ratios, and its IRIS Ratios, and that, as a result, the regulators of other states would quickly focus their attention on Arrowood. BERG and others at the Delaware Department of Insurance knew that in such an event, other regulators would force Delaware to take action to stop the wrongful conduct of the Arrowood Third-Party Defendants.

viii. The Arrowood Third-Party Defendants cannot rely on safe harbors.

138. The Arrowood Third-Party Defendants believe that they have been artful in taking certain actions to protect their wrongful conduct from question. But they have been living with a false sense of security. They have no safe harbors for their wrongful conduct.

139. The first “safe harbor” that the Arrowood Third-Party Defendants will claim was Keddie’s conduct as the Appointed Actuary. Despite his legal and ethical obligations, despite the Schedule P machinations, and notwithstanding Arrowood’s patent and consistent under-reserving for the past 15 years, Keddie wrongfully attested to the “reasonableness” of Arrowood’s reserves upon which the Arrowood Third-Party Defendants would rely in the annual Arrowood MD&A. One of the Arrowood Third-Party Defendants’ most significant wrongful acts was their failure to properly reserve for Unallocated Loss Adjustment Expense. The Unallocated Loss Adjustment Expenses have been one of the most significant drivers of the losses Arrowood has sustained over the past 10 years.
140. Next, the Arrowood Third-Party Defendants may attempt to rely on the Delaware Department of Insurance’s acquiescence as a “safe harbor.” The Arrowood Third-Party Defendants surely will have made various regulatory filings seeking permission from the Delaware Department of Insurance to commit some of the conduct set forth herein. But regardless of whether the Arrowood Third-Party Defendants believed that they secured absolution by such filings, that does not vitiate in any manner their liability for their abandonment of their primary obligation to Arrowood’s policyholders.
141. Pipe & Boiler alleges that all of its primary coverage provides an unlimited supplemental duty to defend, and provides “per occurrence” coverage for operations claims, with no limit to the number of occurrences. Pipe & Boiler also alleges that its umbrella coverage, when and if to the extent located and identified, provides for an unlimited supplemental duty to defend when there is no responsive primary coverage and that such umbrella coverage also responds on a per occurrence basis with no limit to the number of occurrences.

THIRD-PARTY PLAINTIFF PAYNE & KELLER

142. Payne & Keller’s historic operations included the installation, repair, replacement, removal, or disturbance of thermal insulation and other building materials. Those operations allegedly exposed persons to asbestos who thereby suffered bodily injury (the “Asbestos Allegations”). The alleged bodily injury resulting from the Asbestos Allegations has resulted in suits against Payne & Keller, including the instant suit and those referenced above (“Payne & Keller Asbestos Suits”).

A. Rexel’s and SKRLA’s Competing Claims to Payne & Keller’s Insurance Program

143. Since his appointment, the Receiver has become aware that Third-Party Defendants Rexel and SKRLA periodically make claims against Payne & Keller’s historical insurance program by tendering Rexel-related and SKRLA-related lawsuits to the Payne & Keller insurers. Rexel and SKRLA tender these lawsuits to the Payne & Keller insurers by way of their agent and claims administrator, Third-Party Defendant Compass Risk Services, LLC. without any communication or coordination with the Receiver.

144. The Receiver is informed and believes that Rexel’s and SKRLA’s uncoordinated and competing claims to Payne & Keller’s insurance program will interfere with his efficient and orderly administration of his duties as the receiver for Payne & Keller. In carrying out his duties, Payne & Keller’s receiver has made inquiries about the role of Rexel and SKRLA and the competing claims to Payne & Keller’s insurance policies, but these inquiries have gone unanswered. Moreover, the existence of these competing claims from Rexel and SKRLA have thwarted, or will thwart, the Receiver’s efforts to reach agreements with certain of Payne & Keller’s insurers regarding their rights and obligations under these insurance

policies. As such, a justiciable controversy exists between the Receiver for Payne & Keller and Rexel and between the Receiver and SKRLA regarding the rights and responsibilities of each relative to the Payne & Keller insurance program. Similarly, a controversy exists between the Receiver for Payne & Keller and Rexel and SKRLA's agent Compass Risk Services regarding the rights of Compass to submit claims to the Payne & Keller insurers without any communication or disclosing any information in response to requests for information made by the Receiver for Payne & Keller. The Receiver seeks declaratory relief regarding these issues to guide his performance of his duties. The Receiver has joined the known Payne & Keller insurers to this action because their rights and responsibilities, as between the Receiver and Rexel and between the Receiver and SKRLA, will be delineated herein.

B. The 1965 to 1973 Policies

145. During various policy periods from March 1, 1965 to March 1, 1973, Payne & Keller was insured by one or more primary insurers for which the Guaranty Association is responsible, including Reliance Insurance Company and Highlands Underwriting Insurance Company, the latter of which was subject to a liquidation order issued by the 23rd Judicial District, Travis County, dated October 29, 2021, and, upon information and belief, one or more existing defendants including defendant Maryland American General Insurance Company, all of which issued primary general liability policies to Payne & Keller ("The 1965 to 1973 Policies"). The 1965 to 1973 Policies have standard terms and conditions. The 1965 to 1973 Policies have a duty to defend Payne & Keller against any and all Payne & Keller Asbestos Suits alleging any potential for coverage, even if the Asbestos Allegations in such

suits are groundless, false, or fraudulent. The duty to defend is joint, several, indivisible, and supplemental. These policies require the insurers fully to defend any Payne & Keller Asbestos Suit alleging bodily injury. These policies have a separate duty fully to indemnify Payne & Keller from and against any and all Payne & Keller Asbestos Suits with bodily injury taking place during any portion of the 1965 to 1973 Policy periods.

146. The Guaranty Association and other pertinent defendant insurers have failed to fully acknowledge, delineate or accept their insuring obligations under the 1965 to 1973 Policies as between Rexel and Payne & Keller or between SKRLA and Payne & Keller. An actual and justiciable dispute exists between and among these parties.

C. The Zurich Policies

147. Defendant Zurich, individually and as successor in interest to Maryland American General Insurance Company and Maryland Casualty Company, issued general liability policies to Payne & Keller (“The Zurich Policies”). The Zurich Policies have standard terms and conditions. The Zurich Policies have a duty to defend Payne & Keller against any and all Payne & Keller Asbestos Suits alleging any potential for coverage, even if the Asbestos Allegations in such suits are groundless, false, or fraudulent. The duty to defend is joint, several, indivisible, and supplemental. The Zurich Policies require Zurich fully to defend any Payne & Keller Asbestos Suit alleging bodily injury during any Zurich Policy period. The Zurich Policies have a separate duty fully to indemnify Payne & Keller from and against any and all Payne & Keller Asbestos Suits with bodily injury taking place during any Zurich Policy period. It is the burden of Zurich to prove any limitation on or exclusion of coverage. Specifically, Zurich issued primary general liability coverage to Payne & Keller for at least

the three policy periods from March 1, 1968 – March 1, 1971 and at least five policy periods March 1, 1973 – March 1, 1978, and may have issued such policies during earlier policy periods.

148. Zurich has failed to fully acknowledge, delineate or accept its insuring obligations under the Zurich Policies between Rexel and Payne & Keller or between SKRLA and Payne & Keller. An actual and justiciable dispute exists between these parties.

D. The Aetna Policies

149. Defendant Aetna issued general liability policies to Payne & Keller (“The Aetna Policies”). The Aetna Policies have standard terms and conditions. The Aetna Policies have a duty to defend Payne & Keller against any and all Payne & Keller Asbestos Suits alleging any potential for coverage, even if the Asbestos Allegations in such suits are groundless, false or fraudulent. The duty to defend is joint, several, indivisible and supplemental. The Aetna Policies require Aetna fully to defend any Payne & Keller Asbestos Suit alleging bodily injury during any Aetna Policy period. The Aetna Policies have a separate duty fully to indemnify Payne & Keller from and against any and all Payne & Keller Asbestos Suits with bodily injury taking place during any Aetna Policy Period. It is the burden of Aetna to prove any limitation on or exclusion of coverage. Specifically, Aetna issued primary general liability coverage to Payne & Keller for at least the seven policy periods March 1, 1978 – April 1, 1985.

150. Aetna has failed to fully acknowledge, delineate or accept its insuring obligations under the Aetna Policies between Rexel and Payne & Keller or between SKRLA and Payne & Keller. An actual and justiciable dispute exists between these parties.

E. The Continental Policies

151. Defendant Continental issued umbrella liability policies to Payne & Keller (“The Continental Policies”). The Continental Policies have standard terms and conditions. The Continental Umbrella Policies have a separate duty fully to indemnify Payne & Keller from and against any and all Payne & Keller Asbestos Suits with bodily injury taking place during any Continental Policy Period. It is the burden of Continental to prove any limitation on or exclusion of coverage. Specifically, Continental issued umbrella liability coverage to Payne & Keller for at least the two policy periods March 1, 1979 – March 1, 1980 and April 1, 1985—April 1, 1986.

152. Continental, by and through Resolute Management and NICO, has failed to fully acknowledge, delineate or accept its insuring obligations under the Continental Policies as between Rexel and Payne & Keller or between SKRLA and Payne & Keller. An actual and justiciable dispute exists between these parties.

F. The National Union Policies

153. Defendant National Union issued general liability policies to Payne & Keller (“The National Union Policies”). The National Union Policies have standard terms and conditions. The National Union Policies have a duty to defend Payne & Keller against any and all Payne & Keller Asbestos Suits alleging any potential for coverage, even if the Asbestos Allegations in such suits are groundless, false or fraudulent. The duty to defend is joint, several, indivisible and supplemental. The National Union Policies require National Union fully to defend any Payne & Keller Asbestos Suit alleging bodily injury during any National Union Policy period. The National Union Policies have a separate duty fully to

indemnify Payne & Keller from and against any and all Payne & Keller Asbestos Suits with bodily injury taking place during any National Union Policy Period. It is the burden of National Union to prove any limitation on or exclusion of coverage. Specifically, National Union issued primary general liability coverage to Payne & Keller for at least the three policy periods April 1, 1985—April 1, 1989, and issued umbrella liability coverage to Payne & Keller for at least the three policy periods April 1, 1985—October 6, 1988.

154. National Union, by and through Resolute Management and NICO, has failed to fully acknowledge, delineate or accept its insuring obligations under the National Union Policies as between Rexel and Payne & Keller or between SKRLA and Payne & Keller. An actual and justiciable dispute exists between these parties.

G. The Dependable Policy

155. Defendant Dependable issued at least one umbrella liability policy to Payne & Keller (“The Dependable Policy”). The Dependable Policy has standard terms and conditions. The Dependable Policy has a separate duty fully to indemnify Payne & Keller from and against any and all Payne & Keller Asbestos Suits with bodily injury taking place during any Dependable Policy Period. It is the burden of Dependable to prove any limitation on or exclusion of coverage. Specifically, Dependable issued umbrella liability coverage to Payne & Keller for at least the policy period March 1, 1976—March 1, 1977.

156. Dependable has failed to fully acknowledge, delineate or accept its insuring obligations under the Dependable Policy as between Rexel and Payne & Keller or between SKRLA and Payne & Keller. An actual and justiciable dispute exists between these parties.

H. The Stonewall Policies

157. Defendant Stonewall issued umbrella liability policies to Payne & Keller (“The Stonewall Policies”). The Stonewall Policies have standard terms and conditions. The Stonewall Policies have a separate duty fully to indemnify Payne & Keller from and against any and all Payne & Keller Asbestos Suits with bodily injury taking place during any Stonewall Policy Period. It is the burden of Stonewall to prove any limitation on or exclusion of coverage. Specifically, Stonewall issued umbrella liability coverage to Payne & Keller for at least the three policy periods March 1, 1976—March 1, 1977 and April 1, 1986—October 6, 1988.

158. Stonewall, by and through Resolute Management and NICO, has failed to fully acknowledge, delineate or accept its insuring obligations under the Stonewall Policies as between Rexel and Payne & Keller or between SKRLA and Payne & Keller. An actual and justiciable dispute exists between these parties.

I. The Lexington Policy

159. Defendant Lexington issued at least one umbrella liability policy to Payne & Keller (“The Lexington Policy”). The Lexington Policy has standard terms and conditions. The Lexington Policy has a separate duty fully to indemnify Payne & Keller from and against any and all Payne & Keller Asbestos Suits with bodily injury taking place during any Lexington Policy Period. It is the burden of Lexington to prove any limitation on or exclusion of coverage. Specifically, Lexington issued umbrella liability coverage to Payne & Keller for at least the policy period April 1, 1985—April 1, 1986.

160. Lexington, by and through Resolute Management and NICO, has failed to fully

acknowledge, delineate or accept its insuring obligations under the Lexington Policy as between Rexel and Payne & Keller or between SKRLA and Payne & Keller. An actual and justiciable dispute exists between these parties.

J. The First State Policies

161. Defendant First State issued at least four umbrella liability policies to Payne & Keller (“The Hartford Policies”). The Hartford Policies have standard terms and conditions. The Hartford Policies have a separate duty fully to indemnify Payne & Keller from and against any and all Payne & Keller Asbestos Suits with bodily injury taking place during any Hartford PolicyPeriod. It is the burden of First State to prove any limitation on or exclusion of coverage. Specifically, First State issued umbrella liability coverage to Payne & Keller for at least the policyperiods March 1, 1976—March 1, 1977, April 1, 1983—April 1, 1985, and May 15, 1985—April 1, 1986.

162. First State has failed to fully acknowledge, delineate or accept its insuring obligations under the Hartford Policies as between Rexel and Payne & Keller or between SKRLA and Payne & Keller. An actual and justiciable dispute exists between these parties.

K. The Birmingham Fire Policies

163. Defendant Birmingham Fire issued at least two umbrella liability policies to Payne & Keller (“The Birmingham Fire Policies”). The Birmingham Fire Policies have standard terms and conditions. The Birmingham Fire Policies have a separate duty fully to indemnify Payne & Keller from any and all Payne & Keller Asbestos Suits with bodily injury taking place during any Birmingham Fire Policy Period. It is the burden of Birmingham Fire to prove any limitation or exclusion of coverage. Specifically, Birmingham Fire issued

umbrella liability coverage to Payne & Keller for at least the two policy periods April 1, 1983—April 1, 1985.

164. Birmingham Fire, by and through Resolute Management and NICO, has failed to fully acknowledge, delineate or accept its insuring obligations under the Birmingham Fire Policies as between Rexel and Payne & Keller or between SKRLA and Payne & Keller. An actual and justiciable dispute exists between these parties.

L. The Lloyd's Underwriters & London Market Insurers Policy

165. Defendants Lloyd's Underwriters and London Market Insurers issued at least one umbrella policy to Payne & Keller ("The Lloyd's Policy"). The Lloyd's Policy has standard terms and conditions. The Lloyd's Policy has a separate duty fully to indemnify Payne & Keller from and against any and all Payne & Keller Asbestos Suits with bodily injury taking place during any Lloyd's Policy Period. The Lloyd's Policy also contains the "service of suit" clause as set forth above. It is the burden of Lloyd's to prove any limitation on or exclusion of coverage. Specifically, Lloyd's issued umbrella liability coverage to Payne & Keller for at least the policy period April 1, 1984—April 1, 1985.

166. Defendant Lloyd's Underwriters, by and through Resolute Management and NICO, have failed to fully acknowledge, delineate or accept their insuring obligations under the Lloyd's Policy as between Rexel and Payne & Keller or between SKRLA and Payne & Keller. An actual and justiciable dispute exists between these parties.

M. The Reliance Policies and the Guaranty Association

167. Reliance Insurance Company ("Reliance") issued general liability policies to Payne & Keller ("The Reliance Policies"). The Reliance Policies have standard terms and

conditions. It is the burden of any insurer, or an entity standing in the place of the insurer, to prove any limitation or exclusion of coverage. Reliance issued primary general liability coverage to Payne & Keller for at least the three policy periods March 1, 1965—March 1, 1968.

168. On information and belief, Reliance Insurance Company was liquidated on October 3, 2001.

169. The Guaranty Association was statutorily created to protect the policy holders of insolvent insurance companies like Reliance. The Guaranty Association “is considered the insurer to the extent of its obligation on the covered claims and, to this extent, has all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.” S.C. Code Ann. §38-31-60(b).

N. The Highlands Policies and the Guaranty Association

170. On information and belief, Highlands Underwriters Insurance Company issued general liability policies to Payne & Keller including policy numbers GA 2038 (March 1, 1971 to March 1, 1972) and GA 2278 (March 1, 1972 to March 1, 1973).

171. On information and belief, Highlands is currently in liquidation proceedings in Texas, by order dated October 29, 2021, staying all proceedings against Highlands.

172. The Guaranty Association was statutorily created to protect the policy holders of insolvent insurance companies like Highlands. The Guaranty Association “is considered the insurer to the extent of its obligation on the covered claims and, to this extent, has all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.” S.C. Code Ann. § 38-31-60(b).

O. R.L. Jarrett and U.S. Risk Broker Services

173. R.L. Jarrett served as an insurance broker and underwriter to Payne & Keller, facilitating and issuing certain quota share policies in conjunction with other Third-Party Defendants herein, including at least First State and Lloyd's.

174. Upon information and belief, in or before 1990, U.S. Risk acquired one or more entities related to R.L. Jarrett, which makes U.S. Risk the successor-in-interest to R.L. Jarrett.

FIRST CAUSE OF ACTION
DECLARATORY JUDGMENT

175. Third-Party Plaintiffs incorporate the foregoing paragraphs by reference.

176. Peter Protopapas is the duly appointed Receiver of Third-Party Plaintiffs, giving him the power and authority fully to administer all assets of Third-Party Plaintiffs, accept service on behalf of Third-Party Plaintiffs, engage counsel on behalf of Third-Party Plaintiffs, and take any and all steps necessary to protect the interests of Third-Party Plaintiffs, whatever they may be. Since appointment, the Receiver has expended substantial time and incurred expenses to identify potential assets and responsive policies and to defend Third-Party Plaintiffs' Asbestos Suits in fulfillment of his responsibilities as Receiver. The Receiver will continue to expend substantial time and incur expenses in connection with Third-Party Plaintiffs' Asbestos Suits.

177. An actual and justiciable controversy exists between the Receiver and the Third-Party Defendant Insurers, including their obligations to pay for the Receiver's activities in connection with the defense of Third-Party Plaintiffs' Asbestos Suits.

178. Judicial declarations are necessary and appropriate at this time, under the circumstances alleged above, so that the Receiver may ascertain these rights against Third-Party Defendants.
179. Pursuant to S.C. Code Ann. § 15-65-100, the Receiver shall be allowed such commissions as may be fixed by the Court appointing the Receiver.
180. Pursuant to the Supreme Court of South Carolina's ruling in *Ex Parte Simons*, 289 S.C. 1, 344 S.E.2d 151 (1986), a Receiver's fee is based on the value of the Receiver's services and at the appointing Court's discretion.
181. The Receiver respectfully requests this Court to declare that Third-Party Defendants must fairly compensate the Receiver for the substantial time, effort, and expenses expended in connection with the defense of asbestos suits potentially covered under the Third-Party Defendants' policies and to further declare that this obligation is unlimited and shall continue as long as there are Asbestos Suits pending against Third-Party Plaintiffs.

SECOND CAUSE OF ACTION
DECLARATORY JUDGMENT

182. Third-Party Plaintiffs incorporate the foregoing paragraphs as if repeated verbatim herein.
183. Pursuant to *Jeffcoat v. Morris*, 300 S.C. 526, 389 S.E.2d 159 (Ct. App. 1989), a Receiver holds the property coming into his or her hands by the same right and title as the person for whose property he or she is receiver.
184. Upon information and belief, Third-Party Plaintiffs purchased insurance policies from Third-Party Defendant Insurers. These policies are the property of the Third-Party Plaintiffs.

185. Third-Party Plaintiffs seek a judicial declaration that all policies, evidence of policies and documents relating to their placement, purchase and underwriting, including, but not limited to, such documents in the possession of Third-Party Defendants are the property of the Receiver and shall be delivered immediately to the Receiver to be maintained in his sole possession for his unrestricted use in carrying out his duties.

THIRD CAUSE OF ACTION
DECLARATORY JUDGMENT

186. Third-Party Plaintiffs incorporate the foregoing paragraphs by reference.

187. The Receiver seeks a declaration and order that Third-Party Defendants Zurich, Continental, Allstate, and U.S. Fire issued primary general liability coverage to Carolina Industrial, subject to the per occurrence and aggregate limits of those policies, and that Zurich, Continental, and Allstate have an unlimited supplemental duty to defend and to pay or reimburse defense costs.

188. The Receiver seeks a further declaration as to the interpretation and meaning of the insurance policies that Third-Party Defendants Zurich, Continental, Allstate, and U.S. Fire issued to Carolina Industrial (the “Carolina Industrial Insurance Policies”), as follows:

- a. The Carolina Industrial Insurance Policies cover all Carolina Industrial Asbestos Suits that allege bodily injury, personal injury, injurious exposure, progression of injury and/or disease, manifestation of illness, or death during any of the policy periods;

- b. Each Carolina Industrial asbestos suit “triggers” the Carolina Industrial Insurance Policies as long as an asbestos plaintiff alleges injury during the period of the policy;
- c. Carolina Industrial may select the policy or policy years to which to assign or allocate in full each Carolina Industrial Asbestos Suit-related loss;
- d. In the case of any claimed ambiguity in any Carolina Industrial Insurance policy, such ambiguity shall be construed in favor of the broadest coverage afforded under the Carolina Industrial Insurance Policies;
- e. Defense costs for the Carolina Industrial asbestos suits are supplemental, and the payment of defense costs does not erode or impair any limit of liability of any of the Carolina Industrial Insurance Policies with a duty to defend;
- f. If any allegation or cause of action in a Carolina Industrial Asbestos Suit is potentially covered under the Carolina Industrial Insurance Policies with a duty to defend, then the insurer must fully defend or reimburse in full the costs of defending against all of the allegations and all of the causes of action in the complaint;
- g. Each Carolina Industrial Insurance Policy is required to pay or reimburse all sums that the insured becomes legally obligated or reasonably required to pay as damages by reason of Carolina Industrial Asbestos Suits;
- h. Each Carolina Industrial Insurance Policy must indemnify covered Carolina Industrial Asbestos Suits, in full, up to its “per occurrence” limit, regardless of whether a continuing injury spans multiple policy periods;

- i. The Carolina Industrial Asbestos Suits that allege exposure to asbestos during Carolina Industrial's work are subject only to the "per occurrence" limits of the Carolina Industrial Insurance Policies;
 - j. Any aggregate limit on coverage in any of the Carolina Industrial Insurance policies is a limitation on coverage, and therefore each insurer has the burden to prove, based on the evidence, that a Carolina Industrial Asbestos Suit is subject to the aggregate limit in the Carolina Industrial Insurance Policies, if any; and
 - k. Each insurer has the burden to prove, based on the evidence, that any particular Carolina Industrial Asbestos Suit is either a "products" claim or a "completed operations" claim, as those terms are defined in the Carolina Industrial Insurance Policies, in order for the insurer to disclaim coverage for a Carolina Industrial Asbestos Suit against Carolina Industrial otherwise alleging injury during any Carolina Industrial Insurance policy period.
189. Actual and justiciable controversies therefore exist between Carolina Industrial and Third-Party Defendants Zurich, Continental, Allstate, and U.S. Fire concerning their obligations under the Carolina Industrial Insurance Policies.

FOURTH CAUSE OF ACTION
DECLARATORY JUDGMENT

190. Third-Party Plaintiffs incorporate the foregoing paragraphs by reference.
191. The Receiver seeks a declaration and order that Third-Party Defendants Admiral, Hartford, First State, Century Indemnity's predecessor, Continental, and Fireman's Fund issued primary and excess general liability coverage to Flame Refractories, subject to the

per occurrence and aggregate limits of those policies, and that Admiral and Century Indemnity have an unlimited supplemental duty to defend, through the provision of appropriate and qualified defense counsel, and to pay or reimburse defense costs.

192. The Receiver seeks a further declaration as to the interpretation and meaning of the insurance policies that Third-Party Defendants Admiral, Hartford, First State, Century Indemnity's predecessor, Continental, and Fireman's Fund issued to Flame Refractories (the "Flame Refractories Insurance Policies"), as follows:

- a. The Flame Refractories Insurance Policies cover all Flame Refractories Asbestos Suits that allege bodily injury, personal injury, injurious exposure, progression of injury and/or disease, manifestation of illness, or death during any of the policy periods;
- b. Each Flame Refractories asbestos suit "triggers" the Flame Refractories Insurance Policies as long as an asbestos plaintiff alleges injury during the period of the policies;
- c. Flame Refractories may select the policy or policy years to which to assign or allocate in full each Flame Refractories Asbestos Suit-related loss;
- d. In the case of any claimed ambiguity in any Flame Refractories Insurance Policies, such ambiguity shall be construed in favor of the broadest coverage afforded under the Flame Refractories Insurance Policies;
- e. Defense costs for the Flame Refractories asbestos suits are supplemental, and the payment of defense costs does not erode or impair any limit of liability of any of the Flame Refractories Insurance Policies with a duty to defend;

- f. If any allegation or cause of action in a Flame Refractories Asbestos Suit is potentially covered under the Flame Refractories Insurance Policies with a duty to defend, then the insurer must fully defend or reimburse in full the costs of defending against all of the allegations and all of the causes of action in the complaint;
- g. Each Flame Refractories Insurance Policy is required to pay or reimburse all sums that the insured becomes legally obligated or reasonably required to pay as damages by reason of Flame Refractories Asbestos Suits;
- h. Each Flame Refractories Insurance Policy must indemnify covered Flame Refractories Asbestos Suits, in full, up to its “per occurrence” limit, regardless of whether a continuing injury spans multiple policy periods;
- i. The Flame Refractories Asbestos Suits that allege exposure to asbestos during Flame Refractories’ work are subject only to the “per occurrence” limits of the Flame Refractories Insurance Policies;
- j. Any aggregate limit on coverage in any of the Flame Refractories Insurance policies is a limitation on coverage, and therefore each insurer has the burden to prove, based on the evidence, that a Flame Refractories Asbestos Suit is subject to the aggregate limit in the Flame Refractories Insurance Policies, if any; and
- k. Each insurer has the burden to prove, based on the evidence, that any particular Flame Refractories Asbestos Suit is either a “products” claim or a “completed operations” claim, as those terms are defined in the Flame Refractories Insurance Policies, in order for the insurer to disclaim coverage for a Flame Refractories

Asbestos Suit against Flame Refractories otherwise alleging injury during any Flame Refractories Insurance Policy period.

193. Actual and justiciable controversies therefore exist between Flame Refractories and Third-Party Defendants Admiral, Hartford, First State, Century Indemnity, Continental, and Fireman's Fund concerning their obligations under the Flame Refractories Insurance Policies for which they are responsible.

FIFTH CAUSE OF ACTION
BREACH OF CONTRACT

194. Third-Party Plaintiff Flame Refractories incorporates the forgoing paragraphs by reference.
195. Flame Refractories was insured by one or more policies issued by Third-Party Defendant Admiral. The Receiver for Flame Refractories provided timely notices to Third-Party Defendant Admiral of the Flame Refractories Asbestos Suits.
196. Third-Party Defendant Admiral unreasonably and without proper cause, has either failed to defend entirely or has failed to provide an appropriate defense for Flame Refractories in the Flame Refractories Asbestos Suits as required by the policies it issued to Flame Refractories.
197. The failure of Third-Party Defendant Admiral to provide a proper defense to Flame Refractories in the Flame Refractories Asbestos Suits has caused, and will continue to cause, harm and damages to Flame Refractories, including, but not limited to, incurring legal fees (or unnecessary legal fees) that should be paid for by Third-Party Defendant Admiral.

SIXTH CAUSE OF ACTION
BREACH OF CONTRACT

198. Third-Party Plaintiff Carolina Industrial incorporates the foregoing paragraphs by reference.
199. Carolina Industrial was insured by one or more policies issued by Third-Party Defendants Zurich, Continental, and Allstate.
200. Carolina Industrial has provided or will provide timely notices to Third-Party Defendants Zurich, Continental, and Allstate of the Carolina Industrial Asbestos Suits.
201. Third-Party Defendants Zurich, Continental, and Allstate unreasonably and without proper cause, have failed or will fail to defend Carolina Industrial in the Carolina Industrial Asbestos Suits as required by the policies they issued to Pipe & Boiler.
202. The failure of Third-Party Defendants Zurich, Continental, and Allstate to provide a defense to Carolina Industrial in the Carolina Industrial Asbestos Suits has caused, and/or will continue to cause, harm and damages to Carolina Industrial, including, but not limited to, incurring legal fees that should be paid for by Defendants Zurich, Continental, and/or Allstate.

SEVENTH CAUSE OF ACTION
UNFAIR OR DECEPTIVE TRADE PRACTICES AFFECTING COMMERCE

203. Third-Party Plaintiff Pipe & Boiler Insulation incorporates the foregoing paragraphs by reference.
204. Prior to its dissolution, Pipe & Boiler was a North Carolina corporation.

205. Under N.C. Gen. Stat. § 75-1.1(a), unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful.
206. Under N.C. Gen. Stat. § 75-1.1(b), “commerce” includes all business activities, however denominated. The business of insurance falls within the ambit of “in commerce,” and people who buy insurance are consumers whose welfare Chapter 75 of the North Carolina Statutes was intended to protect. *See Pearce v. American Defender Life Ins. Co.*, 316 N.C. 461, 469 (1986).
207. N.C. Gen. Stat. § 75-16 provides as follows: “if any person shall be injured or the business of any person, firm or corporation shall be broken up, destroyed or injured by reason of any act or thing done by any other person, firm or corporation in violation of the provisions of this Chapter, such person, firm or corporation so injured shall have a right of action on account of such injury done, and if damages are assessed in such case judgment shall be rendered in favor of the plaintiff and against the defendant for treble the amount fixed by the verdict.”
208. N.C. Gen. Stat. § 58-63-15 defines unfair methods of competition and unfair or deceptive practices in the business of insurance. Subsection (5) thereof provides as follows:

False Financial Statements. - Filing with any supervisory or other public official, or making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive.

Making any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such

insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer.

209. The Arrowood Defendants, and each of them, have violated N.C. Gen. Stat. § 58-63-15, and, therefore, N.C. Gen. Stat. Chapter 75, by making false statements in each of Arrowood's Annual Statements and other financial reports and documents to the extent, *inter alia*, that those documents stated or implied that moneys paid by Arrowood in the form of salaries to the Individual Arrowood Defendants, and management fees paid to Arrowpoint Group and/or Arrowpoint Capital, were legitimate payments by Arrowood, and failing to correctly state in those documents that such payments were, in reality, bogus payments made to loot Arrowood and siphon off its funds to line the pockets of the Arrowood Defendants, and otherwise unjustly enrich the Arrowood Defendants, at the expense and harm of policyholders, including Pipe & Boiler.

210. In addition, the Arrowood Defendants, and each of them, have violated N.C. Gen. Stat. § 75-1.1 by unfairly and deceptively looting Arrowood through exorbitant salaries, management fees, and other unreasonable expenses payable to the Arrowood Defendants, causing Arrowood to become impaired and in violation of the applicable risk-based capital requirements and in a position where it cannot pay all current and future policyholder claims.

211. Pipe & Boiler has suffered actual injury as a result of the Arrowood Defendants' unfair and deceptive practices as alleged herein because Arrowood is now, as a direct and proximate result of the Arrowood Defendants' wrongful conduct, in a financial position where it will be unable to comply entirely with its defense and indemnity obligation to Pipe & Boiler. In short, as a direct and proximate result of the Arrowood Defendants' wrongful

looting and filing of false financial statements, and other conduct as alleged herein, Arrowood will be placed in liquidation years after it should have been placed in receivership, which would have allowed for a solvent run-off, and years after the Arrowood Defendants improperly paid benefits to themselves, resulting in an insolvent winding up of the company. Pipe & Boiler will, at best, receive pennies on the dollar with respect to the insurance coverage that Pipe & Boiler is entitled to under its primary commercial general liability policies issued between 1981 and 1983. But for the Arrowood Defendants' conduct, the company would have been able to pay its claim obligations. As a direct and proximate result of the Arrowood Defendants' unfair and deceptive trade practices as alleged herein, Pipe & Boiler will not receive millions of dollars of insurance coverage for which it paid and to which it is entitled.

212. Pipe & Boiler has been injured and damaged as a result of the Arrowood Defendants' unfair and deceptive practices as alleged herein, in violation of N.C. Gen. Stat. § 75-1.1, and is therefore entitled to recover damages in an amount that will be proven at trial, is in excess of any applicable jurisdictional limits, and is subject to treble damages under N.C. Gen. Stat. § 75-16.

213. Pipe & Boiler further seeks a declaration that the actions of the Arrowood Defendants with regard to Arrowood were in fact unfair and deceptive.

EIGHTH CAUSE OF ACTION **CONSTRUCTIVE TRUST**

214. Third-Party Plaintiff Pipe & Boiler incorporates the foregoing paragraphs by reference.

215. A constructive trust is a duty or relationship imposed by courts of equity to prevent the unjust enrichment of the holder of title to, or of an interest in, property which such holder

acquired through fraud, breach of duty, or some other circumstance, making it inequitable for him to retain it against the claim of the beneficiary or the constructive trust. A constructive trust is a fiction of equity, brought into operation to prevent unjust enrichment through the breach of some duty or other wrongdoing. There is a common, indispensable element in the many types of situations out of which a constructive trust is deemed to arise. This common element is some fraud, breach of duty, or other wrongdoing by the holder of the property.

216. The Arrowood Third-Party Defendants have taken possession of the property of Arrowood – to wit, funds – of which they should not have taken through their wrongful and deceptive acts as alleged herein.

217. The funds that the Arrowood Third-Party Defendants have wrongfully diverted from Arrowood should have remained with Arrowood so that the company would have had additional resources available to meet its contractual obligations to policyholders, including Pipe & Boiler, and injured claimant third parties. The funds would have remained in Arrowood had the Arrowood Third-Party Defendants not filed false or misleading financial statements and prevented state insurance regulators from knowing the extent of problems and taking action to place the company into receivership. The proper and appropriate remedy under the circumstances here is for the Court to exercise its equitable power and authority to require the Arrowood Third-Party Defendants to return those funds that they have wrongfully diverted from Arrowood's policyholders in an amount to be proven at trial.

NINTH CAUSE OF ACTION
TORTIOUS INTERFERENCE WITH CONTRACT

218. Third-Party Plaintiffs incorporate the foregoing paragraphs by reference.
219. Arrowood issued at least five contracts of insurance to Pipe & Boiler during the period January 1, 1981 to January 1, 1986.
220. As corporate officers and directors of Arrowood's parent companies, the Individual Arrowood Third-Party Defendants have maintained absolute control of Arrowood.
221. The Individual Arrowood Third-Party Defendants each were aware of the insurance contracts into which Arrowood had entered with insureds, including Pipe & Boiler.
222. Despite their knowledge of these contracts of insurance, the Individual Arrowood Third-Party Defendants, acting in their various roles as officers, directors, employees, and owners of Arrowood, intentionally made decisions and took actions that breached the insurance contracts between Arrowood and Pipe & Boiler.
223. For instance, the Individual Arrowood Third-Party Defendants, in their management capacities for Arrowood and its parent companies, consistently have failed to properly establish and maintain loss and expense reserves for known and unreported claims, which resulted in Arrowood's statutory financials having an appearance of solvency that misrepresented the true nature of Arrowood's deepening financial woes.
224. The Individual Arrowood Third-Party Defendants' actions of looting Arrowood through exorbitant salaries, management fees, and other unreasonable expenses payable to the Individual Arrowood Third-Party Defendants, caused Arrowood to become impaired and in violation of the applicable risk-based capital requirements and in a position where it cannot pay all current and future policyholder claims.

225. There was no justification for the Individual Arrowood Third-Party Defendants' decisions not to properly report loss and expense reserves, and to divert funds that should have been preserved for Arrowood's policyholders, other than to feather the nests of the Individual Arrowood Third-Party Defendants, and to otherwise put the interests of the employees of Arrowood ahead of the interests of Arrowood's policyholders, including Pipe & Boiler.

226. As a direct and proximate result of the Individual Arrowood Third-Party Defendants' tortious interference with the contract between Arrowood and Pipe & Boiler as alleged herein, Pipe & Boiler will not receive millions of dollars of insurance coverage for which it paid and to which it is entitled.

TENTH CAUSE OF ACTION
NEGLIGENT SUPERVISION

227. Third-Party Plaintiff Pipe & Boiler incorporates the foregoing paragraphs by reference.

228. Arrowpoint Group and Arrowpoint Capital employed or were otherwise responsible for the actions of each of the Individual Arrowood Third Party Defendants during their employment with Arrowood.

229. Arrowpoint Group and Arrowpoint Capital negligently supervised the actions of the Individual Arrowood Third-Party Defendants.

230. Arrowpoint Group and Arrowpoint Capital's negligent supervision caused harm to Pipe & Boiler by allowing the Individual Arrowood Third-Party Defendants to loot and siphon funds from Arrowood so that Arrowood no longer had sufficient resources available to meet its contractual obligations to policyholders, including Pipe & Boiler, and injured claimant third parties. As a direct and proximate result of Arrowpoint Group and Arrowpoint Capital's

negligent supervision as alleged herein, Pipe & Boiler will not receive millions of dollars of insurance coverage for which it paid and to which it is entitled.

ELEVENTH CAUSE OF ACTION
DECLARATORY JUDGMENT

231. As outlined above, since his appointment, the Receiver has become aware that Third-Party Defendants Rexel and SKRLA periodically make claims against Payne & Keller's historical insurance program by tendering Rexel-related and SKRLA-related lawsuits to the Payne & Keller insurers. Rexel and SKRLA tender these lawsuits to the Payne & Keller insurers by way of their agent and claims administrator, Third-Party Defendant Compass Risk Services, LLC. without any communication or coordination with the Receiver.

232. The Receiver is informed and believes that Rexel's and SKRLA's uncoordinated and competing claims to Payne & Keller's insurance program will interfere with his efficient and orderly administration of his duties as the receiver for Payne & Keller. In carrying out his duties, Payne & Keller's receiver has made inquiries about the role of Rexel and SKRLA and the competing claims to Payne & Keller's insurance policies, but these inquiries have gone unanswered. Moreover, the existence of these competing claims from Rexel and SKRLA have thwarted, or will thwart, the Receiver's efforts to reach agreements with certain of Payne & Keller's insurers regarding their rights and obligations under these insurance policies. As such, a justiciable controversy exists between the Receiver for Payne & Keller and Rexel and between the Receiver and SKRLA regarding the rights and responsibilities of each relative to the Payne & Keller insurance program. Similarly, a controversy exists between the Receiver for Payne & Keller and Rexel and SKRLA's agent Compass Risk

Services regarding the rights of Compass to submit claims to the Payne & Keller insurers without any communication or disclosing any information in response to requests for information made by the Receiver for Payne & Keller. The Receiver seeks declaratory relief regarding these issues to guide his performance of his duties. The Receiver has joined the known Payne & Keller insurers to this action because their rights and responsibilities, as between the Receiver and Rexel and between the Receiver and SKRLA, will be delineated herein.

233. The Receiver therefore seeks declarations, after thorough discovery regarding Rexel's and SKRLA's competing claims to the Payne & Keller insurance program, regarding the nature, extent, and priority (if any) of Rexel's and SKRLA's claims to the Payne & Keller insurance coverage so as to provide the Receiver with guidance and certainty as to how to go about carrying out his duties as the Receiver for Payne & Keller and to provide the Payne & Keller insurers with certainty and guidance as to the delineation of their rights and responsibilities as between Rexel and Payne & Keller and between SKRLA and Payne & Keller in this regard.

PRAYER FOR RELIEF

WHEREFORE, Third-Party Plaintiffs, by and through their duly appointed Receiver, demand judgment against Third-Party Defendants as follows:

- A. For the Receiver's compensation in connection with the defense of asbestos suits against Third-Party Plaintiffs in an amount set by this Court;
- B. For an order requiring that Third-Party Defendants provide to the Receiver complete and authentic copies of any general liability and excess liability insurance policies they

issued to Pipe & Boiler together with all other documents and things relating to these policies, including (but not limited to) certificates of insurance, underwriting manuals and documents, and claims files for the Receiver's unrestricted use in carrying out his duties;

- C. For an order requiring Third-Party Insurer Defendants Zurich, Continental, Allstate, and U.S. Fire to defend Carolina Industrial in full—under policies containing a duty to defend—against all asbestos suits alleging bodily injury during the Third-Party Defendants' policy periods unless and until either Third-Party Defendants can show unequivocally, based on the evidence adduced in the litigation, that an exclusion in their respective policies otherwise bars coverage for a suit;
- D. For an order requiring Third-Party Insurer Defendants Admiral, Hartford, First State, Century Indemnity, Continental, and Fireman's Fund to defend Flame Refractories in full—under policies containing a duty to defend—against all asbestos suits alleging bodily injury during the Third-Party Defendants' policy periods unless and until these Third-Party Defendants can show unequivocally, based on the evidence adduced in the litigation, that an exclusion in its policies otherwise bars coverage for a suit;
- E. As described in detail above, the Receiver seeks a further declaration as to the interpretation and meaning of the Third-Party Plaintiffs' insurance policies:
 - i. The Third-Party Plaintiffs' Insurance Policies cover all Third-Party Plaintiffs' Asbestos Suits that allege any bodily injury, personal injury, injurious exposure, progression of injury and/or disease, manifestation of illness, or death during any of its policy periods;

- ii. Each Third-Party Plaintiffs' asbestos suit "triggers" at least one Third-Party Plaintiffs' Insurance policy as long as an asbestos plaintiff alleges injury during the period of the policy;
- iii. Third-Party Plaintiffs may select the policy or policy years to which to assign or allocate in full each asbestos loss;
- iv. In the case of a claimed ambiguity in any Third Party Plaintiffs' Insurance policy, such ambiguity shall be construed in favor of the broadest coverage afforded under the Third-Party Defendants' policies, and Third-Party Defendants bear the burden of proof as to any such ambiguity;
- v. Defense costs for the Third-Party Plaintiffs' asbestos suits are supplemental, and the payment of defense costs does not erode or impair any limit of liability of any of the Third-Party Plaintiffs' Insurance policies;
- vi. If any allegation in a Third-Party Plaintiffs' Asbestos Suit is potentially covered under the Third-Party Plaintiffs' Insurance Policies, then the responsive insurer must defend or reimburse in full the costs of defending against all of the allegations and all of the causes of action in the complaint;
- vii. Each Third-Party Plaintiffs' Insurance Policy is required to pay or reimburse all sums that the insured becomes legally obligated or reasonably required to pay as damages by reason of the Third-Party Plaintiffs' Asbestos Suits;
- viii. Each Third-Party Plaintiffs' Insurance Policy must indemnify covered Third-Party Plaintiffs' Asbestos Suits, in full, up to its "per occurrence" limits, regardless of whether a continuing injury spans multiple policy periods;

- ix. The Third-Party Plaintiffs' Asbestos Suits that allege exposure to asbestos during Third-Party Plaintiffs' work are subject only to the "per occurrence" limits of the Third-Party Plaintiffs' Insurance policies;
 - x. Any aggregate limit on coverage in any of the Third-Party Plaintiffs' Insurance Policies is a limitation on coverage, and the insurers therefore have the burden to prove, based on the evidence, that a Third-Party Plaintiffs' Asbestos Suit is subject to the aggregate limit in the Third-Party Plaintiffs' Insurance Policies, if any; and
 - xi. Each insurer has the burden to prove, based on the evidence, that any particular Third-Party Plaintiffs' Asbestos Suit is either a "products" claim or a "completed operations" claim, as those terms are defined in the Third-Party Plaintiffs' Insurance Policies, in order for the insurer to disclaim coverage for an Asbestos Suit against a Third-Party Plaintiff otherwise alleging injury during the Third-Party Plaintiffs' insurance policy period.
- F. For an order declaring that Third-Party Defendants Zurich, Continental, and Allstate are liable for the damages incurred by Carolina Industrial due to their breaches of contract, including, but not limited to, reimbursing Carolina Industrial for any legal fees and costs incurred by defending the Carolina Industrial Asbestos Suits.
- G. For an order declaring that Third-Party Defendant Admiral is liable for the damages incurred by Flame Refractories due to its breaches of contract, including, but not limited to, reimbursing Flame Refractories for any legal fees (or inappropriate legal fees) and costs incurred by defending the Flame Refractories Asbestos Suits.

- H. As to the Arrowood Defendants, compensatory and punitive damages in an amount to be proven at trial; and for a declaration that the actions of each of the Arrowood Defendants, together and individually, constituted unfair and deceptive practices.
- I. A constructive trust to recover the amounts that the Arrowood Defendants wrongfully diverted from Arrowood's policyholders, and a preliminary and permanent injunction prohibiting the Arrowood Defendants from further such diversions;
- J. Compensatory and punitive damages against The Individual Arrowood Defendants in an amount to be proven at trial;
- K. For an order outlining the orderly priority of claims as between Rexel and Payne & Keller and between SKRLA and Payne & Keller with respect to the Payne & Keller insurers. Specifically, the Receiver therefore seeks declarations, after thorough discovery regarding Rexel's and SKRLA's competing claims to the Payne & Keller insurance program, regarding the nature, extent, and priority (if any) of Rexel's and SKRLA's claims to the Payne & Keller insurance coverage so as to provide the Receiver with guidance and certainty as to how to go about carrying out his duties as the Receiver for Payne & Keller and to provide the Payne & Keller insurers with certainty and guidance as to the delineation of their rights and responsibilities as between Rexel and Payne & Keller and between SKRLA and Payne & Keller in this regard.
- L. For such other and further relief as the Court may deem just and proper, including pre-judgment and post-judgment interest as provided by South Carolina law.

Respectfully submitted,

RIKARD & PROTOPAPAS, LLC

Dated: July 14, 2022

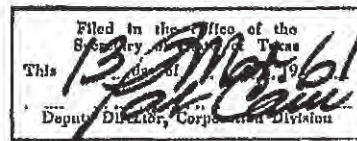
By: s./ Brian M. Barnwell

Brian M. Barnwell (SC Bar 78249)
Rikard & Protopapas, LLC
2110 N. Beltline Blvd.,
Columbia, South Carolina 29204
803.978.6111
bb@rplegalgroup.com

Attorney for Third-Party Plaintiffs

EXHIBIT 4

ARTICLES OF INCORPORATION
OF
PAYNE AND KELLER, INC.



We, the undersigned natural persons of the age of twenty-one years or more, at least two of whom are citizens of the State of Texas, acting as incorporators of a corporation under the Texas Business Corporation Act, do hereby adopt the following Articles of Incorporation for such corporation:

ARTICLE ONE

The name of the corporation is PAYNE AND KELLER, INC.

ARTICLE TWO

The period of its duration is perpetual

ARTICLE THREE

The purpose or purposes for which the corporation is organized are:

To carry on and conduct a general engineering and contracting business, including therein the designing, constructing, enlarging, repairing, removing or otherwise engaging in any work upon buildings, roads, highways, manufacturing plants, equipment, machinery, bridges, piers, docks, mines, shafts, waterworks, railroad, railway structures and all iron, steel, wood, masonry and earth construction and to extend and receive any contracts or assignments of contracts therefor, or related thereto, or connected therewith and to manufacture and furnish the building materials and supplies connected therewith;

To acquire, lease, purchase, invest in, construct, manufacture or otherwise obtain and to hold, own, maintain, operate, use and otherwise enjoy or deal in and to sell, convey, transfer, exchange, pledge, mortgage or otherwise dispose of any

works, plants, pipelines, apparatus, devices, appliances, facilities, goods, wares and merchandise and personal property of every class and description;

To acquire, hold, use, sell, assign, lease, grant licenses in respect of, mortgage or otherwise dispose of letters patent of the United States or of any foreign country, patent rights, licenses and privileges, inventions, improvements in processes, copyrights, trademarks and trade names relating to or useful in connection with any business of this corporation;

In general, to carry out any other business in connection with the foregoing and to have and exercise all the powers conferred by the laws of Texas upon corporations formed under the Texas Business Corporation Act and to do any and all of the things hereinbefore set forth to the same extent as natural persons might or could do.

ARTICLE FOUR

The aggregate number of shares which the corporation shall have authority to issue is ONE THOUSAND (1,000) of common stock of the par value of ONE DOLLAR (\$1.00) each.

ARTICLE FIVE

The corporation will not commence business until it has received for the issuance of its shares consideration of the value of One Thousand Dollars (\$1,000.00), consisting of money, labor done or property actually received.

ARTICLE SIX

The post office address of its initial registered office is 3410 Dixie Drive, Houston, Texas, and the name of its initial registered agent at such address is Joe T. Payne.

ARTICLE SEVEN

The number of directors constituting the initial board of directors is four (4), and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualified are:

J. G. McCullough	3126 Askew Houston, Texas
A. A. Weber	7606 Wilmerdean Houston, Texas
Joe T. Payne	1402 Peppertree Houston, Texas
Paul F. Keller	1402 Anne Humble, Texas

ARTICLE EIGHT

The names and addresses of the incorporators are:

J. G. McCullough	3126 Askew Houston, Texas
A. A. Weber	7606 Wilmerdean Houston, Texas
Joe T. Payne	1402- Peppertree Houston, Texas
Paul F. Keller	1402 Anne Humble, Texas

ARTICLE NINE

Except as may otherwise be provided in the by-laws, the board of directors of this corporation is expressly authorized to alter, amend, or repeal the by-laws or to adopt new by-laws of this corporation, without any action on the part of the stockholders, but the by-laws made by

the directors and the powers so conferred may be altered
or repealed by the stockholders.

IN WITNESS WHEREOF, we have hereunto set our hands
as of the 10 day of March, 1961.

J. G. McCullough
J. G. McCullough

A. A. Weber
A. A. Weber

Joe T. Payne
Joe T. Payne

Paul F. Keller
Paul F. Keller

THE STATE OF TEXAS §

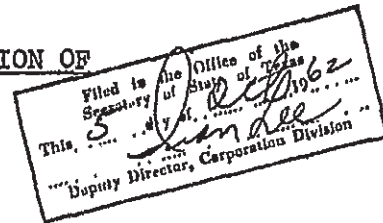
COUNTY OF HARRIS §

I, Virginia Miller, a Notary Public, do
hereby certify that on this 10th day of March, 1961,
personally appeared before me J. G. McCULLOUGH, A. A. WEBER,,
JOE T. PAYNE and PAUL F. KELLER, who each being by me first
duly sworn severally declared that they are the persons who
signed the foregoing document as incorporators, and that the
statements therein contained are true.

Virginia Miller
Notary Public in and for
Harris County, T e x a s



ARTICLES OF AMENDMENT
TO THE ARTICLES OF INCORPORATION OF
PAYNE AND KELLER, INC.



Pursuant to the provisions of Article 4.04 of the Texas Business Corporation Act, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation.

ARTICLE ONE

The name of the corporation is PAYNE AND KELLER, INC.

ARTICLE TWO

The following amendment to the Articles of Incorporation was adopted by the shareholders of the corporation on September 15, 1962. Such amendment to the Articles of Incorporation is for the purpose of increasing the authorized common stock of the corporation from one thousand (1,000) shares of the par value of \$1.00 each to one hundred thousand (100,000) shares of the par value of \$1.00 each.

The amendment alters or changes Article Four of the original or amended Articles of Incorporation, and Article Four is hereby amended to read as follows:

"The aggregate number of shares which the corporation shall have authority to issue is One Hundred Thousand (100,000) of common stock of the par value of One Dollar (\$1.00) each."

ARTICLE THREE

The number of shares of the corporation

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outstanding at the time of such adoption was one thousand (1,000) and the number of shares entitled to vote thereon was one thousand (1,000).

ARTICLE FOUR

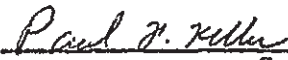
The holders of all the shares outstanding and entitled to vote on said amendment have signed a consent in writing adopting said amendment.

ARTICLE FIVE

This amendment does not effect a change in the amount of stated capital of the corporation.

PAYNE AND KELLER, INC.

By 
President


Secretary

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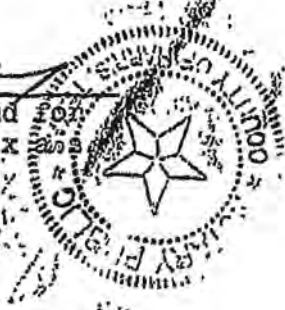
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THE STATE OF TEXAS §
COUNTY OF HARRIS §

I, J. J. Seamus, a Notary Public, do hereby certify that on this the 15th day of September, 1962, personally appeared before me Joe T. Payne, who declared that he is President of the corporation executing the foregoing document, and being first duly sworn, acknowledged that he signed the foregoing document in the capacity therein set forth, and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

J. J. Seamus
Notary Public in and for
Harris County, Texas

A circular notary seal for J. J. Seamus, Notary Public in and for Harris County, Texas. The seal features a five-pointed star in the center and the words "NOTARY PUBLIC" and "HARRIS COUNTY TEXAS" around the perimeter.

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EXHIBIT 5

1 Electric may have been a Payne & Keller company
2 starting in 1967, but it looks to us, by 1973 or
3 '4, it was no longer a Payne & Keller Company,
4 just based on the filings that we've read.

5 Um, J.G. McCullough Construction was
6 also a Payne & Keller Company, um, through Joe
7 Payne, Inc., uh, up until sometime in -- in
8 fact, I think perhaps, uh, the Jacobs agreement
9 in '86.

10 So this is why in 1980, Joe Payne,
11 Inc. becomes Payne & Keller Company, and this is
12 when Dumez acquired Payne & Keller, sometime in
13 -- in May or so of 1980.

14 And then in 1982, what happens is
15 Payne and Keller, Inc., Payne & Keller of
16 Louisiana, Inc., Payne & Keller Gulf Coast, Inc.
17 merge into Payne & Keller, Inc. and a new
18 company is formed named Payne & Keller Company.

19 I know it's very confusing, but so in
20 1982, under Dumez USA ownership, there's a Payne
21 & Keller Company, and there's a Payne and Keller
22 Corporation, and that sets, then, the stage for
23 -- you mentioned Cardinal. The Cardinal
24 companies were companies that were formed under
25 the Dumez ownership, Cardinal Engineering,

1 Cardinal Services, um, Cardinal Insulation in
2 '82.

3 So by 1982, there are other company
4 names. The -- what I call the old Payne and
5 Keller, Inc. that Mr. Payne and Mr. Keller
6 owned, um, is gone. It's now Payne & Keller
7 Company.

8 And then 1986 comes around. And
9 October 7th of 1986, Jacobs Engineering Group
10 acquires just Payne & Keller Company and another
11 company that Dumez owned, which is called Bayou
12 Maintenance, Inc. And that was formed in 1980
13 under Dumez, and I believe it was dissolved, um,
14 in 1986 after the -- the Jacobs agreement.

15 So it's very difficult to try to put
16 all this on a -- on one page, um, but this is
17 what we've learned through the secretary of
18 state's records and through talking to a few of
19 the former Payne & Keller employees that are
20 retired and still alive.

21 Q. Okay. A few questions.

22 So, first, J.G. McCullough
23 Construction, do you know when they were
24 acquired by any Payne -- or any Joe Payne
25 entity?

1 Q. Do you know if, uh, Payne & Keller
2 employees had certain uniforms they had to wear?

3 A. I don't know.

4 Q. Do you know if they had hardhats or
5 badges or anything that identified them as
6 Payne & Keller employees on third-party
7 worksites?

8 A. I don't know.

9 Q. Okay. It is true, sir, that
10 Payne & Keller, um, at some point became
11 licensed to do business in both North Carolina
12 and South Carolina, right?

13 A. Yes.

14 Q. What years?

15 A. Um, South Carolina, I believe, was
16 1967. I don't have North Carolina memorized.

17 Q. So from relatively near the beginning
18 of the company, uh, Payne & Keller was
19 authorized to do business in the State of South
20 Carolina?

21 A. Well, from 1967 on, that would be
22 right.

23 Q. All right. I'm going to save some of
24 my questions because of our agreement, um, but
25 let me ask you broadly: Do you know, um, of any

1 worksites Payne & Keller was at in the State of
2 South Carolina?

3 A. We haven't found any.

4 Q. Do you agree that the purpose of
5 registering to do business in a state is to, in
6 fact, do business in that state?

7 A. Yes.

8 MS. MOHRMAN: Objection, form.

9 THE WITNESS: Yes. I believe that
10 would be the intent or at least to -- to attempt
11 to do business in the state, yes.

12 BY MR. CHAPMAN:

13 Q. Are you aware of any other -- uh,
14 strike that.

15 Is it your belief as the
16 representative of Payne & Keller that
17 Payne & Keller registered as a -- as a -- or let
18 me reask that question.

19 Um, do you believe, as the corporate
20 representative of Payne & Keller, that
21 Payne & Keller became authorized to do business
22 in the State of South Carolina because it
23 intended to do business in the State of South
24 Carolina?

25 A. I think that's a reasonable

EXHIBIT 6

DEC 30 1982

ARTICLES OF MERGER
OF PAYNE AND KELLER, INC.,
PAYNE & KELLER OF LOUISIANA, INC., AND
PAYNE & KELLER GULF COAST, INC.

Clerk I M
Corporations Section

Pursuant to the provisions of Part Five of the Texas Business Corporation Act and Part XI of the Louisiana Business Corporation Law, the undersigned domestic and foreign corporations adopt the following Articles of Merger for the purpose of merging them into one of such corporations:

ARTICLE I: The names of the merging corporations, the states under the laws of which they are respectively organized, the number of shares of common stock outstanding of each of the corporations and the number of such shares voted for approval of the Plan and Agreement of Merger are:

<u>Name of Corporation</u>	<u>State</u>	<u>Shares Outstanding</u>	<u>Shares Approving</u>
Payne and Keller, Inc.	Texas	10,000	10,000
Payne & Keller of Louisiana, Inc.	Louisiana	1,000	1,000
Payne & Keller Gulf Coast, Inc.	Louisiana	50	50

ARTICLE II: The laws of Louisiana and of Texas permit such merger.

ARTICLE III: The surviving corporation is Payne and Keller, Inc., the name of which is to be changed to Payne & Keller Company pursuant to the following Plan and Agreement of Merger, and it is governed by the laws of the State of Texas.

ARTICLE IV: Each of the merging corporations is a wholly owned subsidiary of Payne & Keller Corporation. The following Plan and Agreement of Merger was approved by unanimous resolution of the Board of Directors of Payne & Keller Corporation in accordance with the Texas Business Corporation Act and the Louisiana Business Corporation Law on December 21, 1982:

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER dated December 21, 1982, among PAYNE AND KELLER, INC., a Texas corporation ("P&K"), PAYNE & KELLER OF LOUISIANA, INC., a Louisiana corporation ("P&K Louisiana"), and PAYNE & KELLER GULF COAST, INC., a Louisiana corporation ("P&K Gulf Coast").

W I T N E S S E T H:

WHEREAS, P&K is a corporation organized and existing under the laws of the State of Texas, with its principal office located at 1710 Telephone Road, Houston, Texas 77023;

WHEREAS, P&K has a capitalization consisting of 100,000 authorized shares of common stock, with par value of \$1.00 each, of which 10,000 shares are issued and outstanding, all of which shares are owned by Payne & Keller Corporation;

WHEREAS, P&K Louisiana is a corporation organized and existing under the laws of the State of Louisiana, with its principal office located at 9969 Professional Boulevard, Baton Rouge, Louisiana 70809;

WHEREAS, P&K Louisiana has an authorized capitalization of 10,000 shares of common stock, with par value of \$1.00 each, of which 1,000 shares are issued and outstanding, all of which shares are owned by Payne & Keller Corporation; and

WHEREAS, P&K Gulf Coast is a corporation organized and existing under the laws of the State of Louisiana, with its principal office at 9969 Professional Boulevard, Baton Rouge, Louisiana 70809;

WHEREAS, P&K Gulf Coast has an authorized capitalization of 1,000 shares of common stock, without par value, of which 50 shares are issued and outstanding, all of which shares are owned by Payne & Keller Corporation; and

WHEREAS, the respective Boards of Directors of P&K, P&K Louisiana and P&K Gulf Coast (hereinafter collectively referred to as the "Constituent Corporations") have determined that it is advisable that P&K Louisiana and P&K Gulf Coast be merged into P&K, on the terms and conditions hereinafter set forth, in accordance with the applicable provisions of the laws of the State of Texas and of the State of Louisiana, which laws permit such merger;

NOW, THEREFORE, in consideration of the premises and of the mutual agreements, covenants and provisions hereinafter contained, the parties hereto agree that P&K Louisiana and P&K Gulf Coast shall be merged into P&K and that the terms and conditions of such merger and the manner and basis of converting the shares of P&K Louisiana and P&K Gulf Coast into shares of P&K shall be as follows:

ARTICLE I

At the Effective Time of the Merger (as hereinafter defined), P&K, P&K Louisiana and P&K Gulf Coast shall be merged into a single corporation, in accordance with the applicable provisions of the laws of the State of Texas and of the State of Louisiana, by P&K Louisiana and P&K Gulf Coast merging into P&K, which shall be the surviving corporation. At the Effective Time

of the Merger, the separate existence of P&K Louisiana and of P&K Gulf Coast shall cease, and existence of P&K shall continue unaffected and unimpaired by the merger, with all the rights, privileges, immunities and powers, and subject to all the duties and liabilities, of a corporation organized under the Business Corporation Act of the State of Texas.

ARTICLE II

2.1. The Articles of Incorporation of P&K shall, at the Effective Time of the Merger, be and hereby are amended by deleting Article One in its entirety and by substituting the following in place thereof:

"ARTICLE ONE

The name of the corporation is PAYNE & KELLER COMPANY." The Articles of Incorporation of P&K, as so amended, shall be and constitute the Articles of Incorporation of the surviving corporation from and after the Effective Time of the Merger until the same shall be altered or amended as provided by law.

2.2. The bylaws of P&K shall be and remain the bylaws of P&K until altered, amended or repealed as provided by law.

2.3. At the Effective Time of the Merger, the directors and officers of P&K shall be as follows:

<u>Name</u>	<u>Office</u>
H. M. Martin	Chairman of the Board of Directors
Richard F. Phillips	Director and President
Gilbert Thierry	Director
Harlan M. Stein	Director and Executive Vice President
William C. Mannear	Director and Executive Vice President
Philippe H. Petitfrere	Senior Vice President and Secretary
Walter L. Roberts	Vice President
Donald J. Boutwell	Vice President

Muriel M. Dixon
Keigh C. Leake

Assistant Secretary
Assistant Secretary

Such directors and officers shall continue in office and shall constitute the directors and officers of P&K until their respective successors shall be elected or appointed and qualified.

ARTICLE III

At the Effective Time of the Merger:

3.1. P&K shall possess all the rights, privileges, immunities, powers and franchises of a public as well as of a private nature, and shall be subject to all of the restrictions, disabilities and duties, of each of the Constituent Corporations; and all property, real, personal and mixed, including all patents, applications for patents, trademarks, trademark registrations and applications for registration of trademarks, together with the good will of the business in connection with which said patents and marks are used, and all debts due on whatever account, including subscriptions to shares of capital stock, and other choses in action and all and every other interest of or belonging to or due to each of the Constituent Corporations shall be deemed to be transferred to and vested in P&K without further act or deed, and the title to any real estate, or any interest therein, vested in any of the Constituent Corporations shall not revert or be in any way impaired by reason of the merger.

3.2. P&K shall be responsible and liable for all the liabilities and obligations of each of the Constituent Corporations; and any claim existing or action or proceeding pending by

or against any of the Constituent Corporations may be prosecuted to judgment as if the merger had not taken place, or P&K may be substituted in its place and neither the rights of creditors nor any liens upon the property of any of the Constituent Corporations shall be impaired by the merger. P&K shall execute and deliver any and all documents which may be required for it to assume or otherwise comply with outstanding obligations of P&K Louisiana or P&K Gulf Coast.

3.3. The aggregate amount of the net assets of the Constituent Corporations which is available for payments of dividends immediately prior to the merger, to the extent that the value thereof is not transferred to stated capital by issuance of shares of stock or otherwise, shall continue to be available for the payment of dividends.

ARTICLE IV

The manner and basis of converting the shares of stock of each of the Constituent Corporations into shares of stock of P&K are as follows:

4.1. The shares of common stock of P&K, whether authorized or issued at the Effective Time of the Merger shall not be converted or exchanged as a result of the merger, but at said time, all shares of common stock of P&K theretofore authorized (whether issued or unissued) shall be and be deemed to be shares of common stock of P&K, and all such shares of P&K outstanding at the Effective Time of the Merger, including shares held in the

treasury of P&K, shall remain outstanding, shall be and be deemed fully-paid and non-assessable.

4.2. Each share of common stock of P&K Louisiana and of P&K Gulf Coast issued and outstanding at the Effective Time of the Merger and all rights in respect thereof, shall, at said time, be converted into and exchanged for one share of presently authorized and unissued common stock of P&K.

4.3. As soon as practicable after the Effective Time of the Merger, each holder of shares of common stock of P&K Louisiana or P&K Gulf Coast shall surrender the outstanding certificate or certificates theretofore representing said shares of common stock of P&K Louisiana and of P&K Gulf Coast to P&K, and each such holder shall receive in exchange therefore a certificate or certificates representing the number of shares of common stock of P&K into which the shares of common stock of P&K Gulf Coast and P&K Louisiana theretofore represented by the surrendered certificate or certificates shall have been converted.

4.4. All shares of common stock of P&K into which shares of common stock of P&K Louisiana and P&K Gulf Coast are converted shall be fully-paid and non-assessable.

ARTICLE V

5.1. This Plan shall be submitted to the stockholders of each Constituent Corporation as provided by the applicable laws of the States of Texas and Louisiana. After the approval or adoption thereof by the stockholders of each Constituent Corpora-

tion in accordance with the requirements of the laws of the States of Texas and Louisiana, all required documents shall be executed, filed and recorded and all required acts shall be done in order to accomplish the merger under the provisions of the applicable statutes of the States of Texas and Louisiana.

5.2. This Plan may be terminated at any time prior to the Effective Time of the Merger, either before or after action thereon by the stockholders of the Constituent Corporations, by mutual consent of the Constituent Corporations, expressed by action of their respective Boards of Directors.

5.3. If the merger contemplated hereby shall be consummated, P&K shall pay all expenses of accomplishing the merger. If the merger is not consummated, each of the Constituent Corporations shall pay one-third of all expenses incurred in connection therewith.

ARTICLE VI

The merger shall become effective when the following actions shall have been taken: (1) this Plan has been adopted and approved on behalf of each Constituent Corporation in accordance with the Business Corporation Law of the State of Louisiana and the Business Corporation Act of the State of Texas, (2) this Plan as so adopted and approved, has been certified, executed and acknowledged in accordance with the Business Corporation Law of the State of Louisiana, and has been filed in the office of the Secretary of State of the State of Louisiana, and (3) Articles of Merger (with this Plan attached as a part thereof), setting forth

the information required by, and executed and verified in accordance with, the Texas Business Corporation Act, has been filed in the office of the Secretary of the State of Texas, but in no event sooner than 12:01 a.m. on January 1, 1983 (the time and date when all such action shall have been taken being herein referred to as the "Effective Time of the Merger").

IN WITNESS WHEREOF, the corporate parties hereto, pursuant to authority given by their respective Boards of Directors, have caused this Agreement and Plan of Merger to be entered into and signed by their respective directors, or a majority of them, and in their respective corporate names by their respective Presidents or Vice Presidents, and their corporate seals to be hereunto affixed, and to be attested by their respective Secretaries or Assistant Secretaries, all as of the date and year first above written.

(Signature spaces deleted from Agreement and Plan of Merger)

Dated: December 21, 1982

PAYNE AND KELLER, INC.

By: *W. Phillips*
President

By: *W. Henry*
Secretary

PAYNE & KELLER OF LOUISIANA, INC.

By: *W. Phillips*
President

W. Henry
Secretary

PAYNE & KELLER GULF COAST, INC.

By: *W. Phillips*
President

W. Henry
Secretary

I, Philip P. Pittman, Secretary of Payne and Keller, Inc., a corporation organized and existing under the laws of the State of Texas (the "Corporation"), do hereby certify, as such Secretary, that the Agreement and Plan of Merger attached to the Articles of Merger to which this certificate is attached, after having been duly signed on behalf of the Corporation and having been signed on behalf of Payne & Keller of Louisiana, Inc. and Payne & Keller Gulf Coast, Inc., both corporations of the State of Louisiana, was duly approved pursuant to Section 5.07 of the Business Corporation Act of the State of Texas on the 21st day of December, 1982, by the written consent of the sole stockholder holding 10,000 shares of the capital stock of the Corporation, the same being all of the shares issued and outstanding, which Agreement and Plan of Merger was thereby adopted as the act of the sole stockholder of Payne and Keller, Inc., and the duly adopted agreement and act of the Corporation.

WITNESS MY HAND this 21st day of December, 1982.

W. W. W. W.

Secretary

SUBSCRIBED AND SWORN TO BEFORE ME, this the 21st day of December, 1982.

M. M. M. M.

NOTARY PUBLIC IN AND FOR
THE STATE OF T E X A S

I, Philip Stiller, Secretary of Payne & Keller of Louisiana, Inc., a corporation organized and existing under the laws of the State of Louisiana (the "Corporation"), do hereby certify, as such Secretary, that the Agreement and Plan of Merger attached to the Articles of Merger to which this certificate is attached, after having first been duly signed on behalf of the Corporation and having been signed on behalf of Payne and Keller, Inc., a corporation of the State of Texas, and on behalf of Payne & Keller Gulf Coast, Inc., a corporation of the State of Louisiana, was duly approved pursuant to Art. 12:112 of the Business Corporation Law of the State of Louisiana, on the 21st day of December, 1982, by the written consent of the sole stockholder holding 1,000 shares of the capital stock of the Corporation, the same being all the shares issued and outstanding, which Agreement and Plan of Merger was thereby adopted as the act of the sole shareholder of said Payne & Keller of Louisiana, Inc., and the duly adopted agreement and act of the Corporation.

WITNESS MY HAND this 21st day of December, 1982.

W. H. H. H.
Secretary

SUBSCRIBED AND SWORN TO BEFORE ME, on this the 21st day of December, 1982.

M. M. M. M.
NOTARY PUBLIC IN AND FOR
THE STATE OF Texas

I, Philip S. Stiffler, Secretary of Payne & Keller Gulf Coast, Inc., a corporation organized and existing under the laws of the State of Louisiana (the "Corporation"), do hereby certify, as such Secretary, that the Agreement and Plan of Merger attached to the Articles of Merger to which this certificate is attached, after having first been duly signed on behalf of the Corporation and having been signed on behalf of Payne and Keller, Inc., a corporation of the State of Texas, and on behalf of Payne & Keller of Louisiana, Inc., a corporation of the State of Louisiana, was duly approved pursuant to Art. 12:112 of the Business Corporation Law of the State of Louisiana, on the 21st day of December, 1982, by the written consent of the sole stockholder holding 1,000 shares of the capital stock of the Corporation, the same being all the shares issued and outstanding, which Agreement and Plan of Merger was thereby adopted as the act of the sole shareholder of said Payne & Keller Gulf Coast, Inc., and the duly adopted agreement and act of the Corporation.

WITNESS MY HAND this 21st day of December, 1982.

W. Stiffler

Secretary

SUBSCRIBED AND SWORN TO BEFORE ME, on this the 21st day of December, 1982.

Michael M. Dixon

NOTARY PUBLIC IN AND FOR
THE STATE OF Texas

State of
Louisiana
Secretary of
State



COMMERCIAL DIVISION
225.925.4704

Fax Numbers

225.932.5317 (Admin. Services)
225.932.5314 (Corporations)
225.932.5318 (UCC)

ELECTRONICALLY FILED - 2023 Oct 16 3:00 PM - RICHLAND - COMMON PLEAS - CASE#2021CP4003484

Name	Type	City	Status
PAYNE & KELLER OF LOUISIANA, INC.	Business Corporation	NEW ORLEANS	Inactive

Previous Names

BAYOU MAINTENANCE AND CONSTRUCTORS, INC. (Changed: 3/22/1972)

Business: PAYNE & KELLER OF LOUISIANA, INC.

Charter Number: 29425610D

Registration Date: 5/27/1971

Domicile Address

1300 HIBERNIA BLDG.
NEW ORLEANS, LA 70112

Mailing Address

1300 HIBERNIA BLDG.
NEW ORLEANS, LA 70112

Principal Office Address

Status

Status: Inactive

Inactive Reason: MERGED

File Date: 5/27/1971

Last Report Filed: 1/1/1975

Type: Business Corporation

Mergers (1)

Filed Date	Effective Date:	Type	Charter#	Chater Name	Role
12/30/1982	12/30/1982	MERGE	25712370F	FRENTX ENTERPRISES COMPANY OF TEXAS	SURVIVOR
			29425610D	PAYNE & KELLER OF LOUISIANA, INC.	NON-SURVIVOR
			31812480D	PAYNE AND KELLER GULF COAST, INC.	NON-SURVIVOR

Amendments on File (3)

App. Vol. II 302

Description	Date
Supplemental Initial Report	6/23/1971
Name Change	3/22/1972
Merger	12/30/1982

Print

ELECTRONICALLY FILED - 2023 Oct 16 3:00 PM - RICHLAND - COMMON PLEAS - CASE#2021CP4003484

EXHIBIT 7

OCT 20 1986

Clark II-H
R COMPANY Section

Clark II-H
R COMPANY Section

App. Vol. II 305

STATE OF TEXAS §
COUNTY OF HARRIS §

I, Deborah Reese, a notary public do hereby certify that on this 7th day of October, 1986, personally appeared before me Bernard Hunter, Vice President, of Payne & Keller Corporation, who being by me first duly sworn, declared that he is the person who signed the foregoing document as incorporator, and that the statements therein contained are true.

DEBORAH REESE

Deborah Reese
My Commission Expires: 8/26/89

Notary Public in and
for the State of Texas

Printed name of notary

My commission expires: _____

850:3]

Clerk IX-G
Corporations Section

App. Vol. II 307

STATE OF TEXAS S
 S
 COUNTY OF HARRIS S

I, Melinda Winn, a notary public do hereby certify that on this 22nd day of October, 1986, personally appeared before me Bernard Gautier, President of Frentex Enterprises Company of Texas, who being by me first duly sworn, declared that he is the person who signed the foregoing document as incorporator, and that the statements therein contained are true.

Melinda Winn
 Notary Public in and
 for the State of Texas

Melinda Winn
 Printed name of notary

My commission expires: 04-24-90

850:3]

EXHIBIT 8

00056830197
 FILED
 In the Office of the
 Secretary of State of Texas

DEC 03 1986

ARTICLES OF DISSOLUTION

Clerk IN
 Corporations Section

Pursuant to the provisions of Article 6.06 of the Texas Business Corporation Act, the undersigned corporation adopts the following Articles of Dissolution for the purpose of dissolving:

1. The name of the Corporation is FRENTEX ENTERPRISES COMPANY OF TEXAS.

2. The names and respective addresses of its officers are:

NAME	OFFICE	ADDRESS
Bernard Gautier	President	P. O. Box 262546 Houston, Texas 77207-2546
John J. King	Secretary	5005 Woodway Houston, Texas 77056

3. The names and respective addresses of its directors are:

NAME	ADDRESS
Bernard Gautier	P. O. Box 262546, Houston, Texas 77207-2546
Lucien Dehan	P. O. Box 262546, Houston, Texas 77207-2546
John J. King	5005 Woodway, Houston, Texas 77056

4. A written consent to dissolve, A COPY OF WHICH IS ATTACHED, has been signed by all shareholders of the corporation, or in their behalf by their duly authorized attorney.

5. All debts, obligations and liabilities of the corporation have been paid, discharged, or adequate provision has been made therefor.

6. All remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests.

7. Adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

DATED this the 27 day of October, 1986.

By: [Signature]
Bernard Gautier
Its President

By: [Signature]
John J. King
Its Secretary

STATE OF TEXAS

§
§
§

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this the 27 day of October, 1986, personally appeared Bernard Gautier, who being by me first duly sworn, declared that he is the President of the above corporation, that he signed the foregoing document as such officer of said corporation, and that the statements contained therein are true and correct.

[Signature]
Notary Public in and for
the State of Texas

Printed Name of Notary

My commission expires: _____

STATE OF TEXAS

§
§
§

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this the 27 day of October, 1986, personally appeared John J. King, who being by me first duly sworn, declared that he is the Secretary of the above corporation, that he signed the foregoing document as such officer of said corporation, and that the statements contained therein are true and correct.

[Signature]
Notary Public in and for
the State of Texas

Printed Name of Notary

My commission expires: MELINDA WINN

My Commission Expires: 4/24/90

850:33dr

CONSENT ACTION OF THE SOLE SHAREHOLDER OF
FRENTEX ENTERPRISES COMPANY OF TEXAS

The undersigned, constituting the sole shareholder of Frentex Enterprises Company of Texas, formerly known as "Payne & Keller Company", a Texas corporation (the "Company"), acting pursuant to Article 9.10A of the Texas Business Corporation Act, as amended, hereby consents to the adoption of and does hereby adopt the resolutions hereinafter set forth with the same force and effect as if said resolutions were duly adopted by a unanimous vote of the shareholder of the Company at a meeting thereof duly and regularly called for those purposes, to-wit:

RESOLVED, that the resolutions of the Board of Directors recommending that the Company be dissolved and liquidated, be and the same are hereby adopted and approved in all respects; and be it

FURTHER RESOLVED, that the dissolution and liquidation of the Company be consummated as soon as practicable; and be it

FURTHER RESOLVED, that when and as assets of the Company are reduced to cash, provision having been made for the debts and liabilities of the Company, distribution may be made to the shareholders of the Company from time to time, as partial distributions on account of the complete liquidation of the Company, in such amounts as the Board of Directors may from time to time determine; and be it

FURTHER RESOLVED that the proper officers of the Company be and they hereby are authorized and directed to take all such action as they may deem necessary or appropriate to consummate the liquidation and dissolution of the Company, including the execution and delivery of all documents necessary to effectuate the liquidation and dissolution of the Company.

1

By:

Signature: C. R. ...





BOB BULLOCK
Comptroller

COMPTROLLER OF PUBLIC ACCOUNTS
STATE OF TEXAS
AUSTIN, 78774

NOVEMBER 25, 1986

MELINDA WINN, SULLIVAN KING AND SABOM
5005 WOODWAY
HOUSTON, TX 77056

THE STATE OF TEXAS

COUNTY OF TRAVIS

I, Bob Bullock, Comptroller of Public Accounts of the State of Texas
DO HEREBY CERTIFY that according to the records of this office
FRENTEX ENTERPRISES COMPANY OF TEXAS
is, as of this date, in good standing with this office, for the
purpose of dissolution, merger or withdrawal having filed the
required franchise tax reports and having paid the franchise tax
computed to be due thereunder through April 30, 1987.

GIVEN UNDER MY HAND AND SEAL OF OFFICE
in the City of Austin, this 25th day
of November, 1986, A.D.

BOB BULLOCK
COMPTROLLER OF PUBLIC ACCOUNTS

05-329-3(3-84)

Charter/COA No. 172882-0



BOB BULLOCK
Comptroller

COMPTROLLER OF PUBLIC ACCOUNTS
STATE OF TEXAS
AUSTIN, 78774

NOVEMBER 25, 1986

MELINDA WINN, SULLIVAN KING AND SABOM
5005 WOODWAY
HOUSTON, TX 77056

THE STATE OF TEXAS

COUNTY OF TRAVIS

I, Bob Bullock, Comptroller of Public Accounts of the State of Texas
DO HEREBY CERTIFY that according to the records of this office
FRENTEX ENTERPRISES COMPANY OF TEXAS
is, as of this date, in good standing with this office, for the
purpose of dissolution, merger or withdrawal having filed the
required franchise tax reports and having paid the franchise tax
computed to be due thereunder through April 30, 1987.

GIVEN UNDER MY HAND AND SEAL OF OFFICE
in the City of Austin, this 25th day
of November, 1986, A.D.

BOB BULLOCK
COMPTROLLER OF PUBLIC ACCOUNTS

05-329-3(3-84)

Charter/COA No. 172882-0

EXHIBIT 9

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
LENORA CHILDERS, individually and as	)	
Personal Representative of the Estate of	)	C/A No. 2021-CP-40-03484
LEWIS C. CHILDERS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
	)	
3M COMPANY, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

DECLARATION OF HANNAH L. MOHRMAN

I, Hannah L. Mohrman, declare as follows:

1. I am an attorney licensed to practice before all of the courts of the State of California and am a partner with Bowman and Brooke LLP, attorneys of record for defendant Payne & Keller Company ("P&K Company"). I have personal knowledge of the facts stated herein. If called and sworn as a witness, I could and would competently testify to the following.

2. This Declaration is prepared in support of counsel for P&K Company's investigation of P&K Company's corporate history and work performed while and prior to the date P&K Company¹ was in operation.

3. Based upon counsel's investigation, Payne and Keller Corporation (P&K Company's parent company) was a contracting and engineering firm hired mainly in heavy construction projects such as building roads, highways, bridges and tunnels,

¹ The Texas Secretary of State records show that on December 30, 1982, Payne and Keller, Inc. merged with Payne & Keller of Louisiana, Inc. and Payne & Keller Gulf Coast, with Payne and Keller, Inc. as the surviving entity. With this merger, Payne and Keller, Inc. changed its name to Payne & Keller Company ("P&K Company").

deep water terminals and water distribution and sewage plants; and in the construction and maintenance of various manufacturing and processing facilities in the petroleum, chemical and paper mill industries, among others, as well as gas pipelines and gas compressor stations.”

4. Bowman and Brooke LLP was first retained on September 29, 2021, to represent Payne & Keller in Childers v. Payne & Keller, case no. 2021CP4003484. Since then, Bowman and Brooke LLP has been retained to represent Payne & Keller in the following cases:

- a. Agner, Tommy D. v. Payne & Keller, case no. 2021-CP-40-05069, on October 13, 2021;
- b. Blair, Thomas v. Payne & Keller, case no. 2022-CP-40-00096, on January 24, 2023;
- c. Bostian, Brenda v. Payne & Keller, case no. 2021-CP-40-04877, on October 1, 2021;
- d. Davis, James Franklin v. Payne & Keller, case no. 2022-CP-40-02381, on May 10, 2022;
- e. Flynn, Jerry v. Payne & Keller, case no. 2023-CP-40-00663, on February 13, 2023;
- f. Gonce, Sandra, et al. v. Payne & Keller, case no. 2023-CP-40-02933, on June 9, 2023;
- g. Goodwin, Dorothy Jean Fox v. Payne & Keller, case no. 2020-CP-40-04613 on June 14, 2022.
- h. Graham, Willard v. Payne & Keller, case no. 2023-CP-40-02986, on June 28, 2023;
- i. Hale, Mary v. Payne & Keller, case no. 2023-CP-40-00811, on February 28, 2023;
- j. Love, James v. Payne & Keller, case no. 2021-CP-40-06190, on December 28, 2021;

- k. McLeod, Larry v. Payne & Keller, case no. 2023-CP-40-01652, on; April 18, 2023;
- l. Parr, Greer & Deborah v. Payne & Keller, case no. 2022-CP-40-01899, on April 20, 2023;
- m. Pierce, Linwood v. Payne & Keller, case no. 2022-CP-40-06194, on January 11, 2023; and
- n. Sawyer, Ray & Helen v. Payne & Keller, case no. 2023-CP-38-00132, on February 20, 2023;
- o. Thomas, Donald v. Payne & Keller, case no. 2022-CP-40-00280, on January 20, 2023; and
- p. Wood, Christopher v. Payne & Keller, case no. 2022-CP-40-01245, on January 20, 2023.

CORPORATE HISTORY

Prior to the Formation of Payne & Keller Company

5. Counsel for P&K Company obtained and reviewed Secretary of State records from various states and learned of the following:

- a. On March 13, 1961, Payne and Keller, Inc. was formed as a Texas Corporation and was organized under the laws of Texas. Attached hereto as Exhibit "A" is a true and correct copy of the March 13, 1961, Texas SOS Articles of Incorporation;
 - i. Starting in the mid-1960s Payne and Keller Inc. and following P&K Company's formation in 1982, Payne and Keller Inc. and P&K Company formally registered to conduct business in twelve other states: Alabama (1972), Illinois (1974), Iowa (1981), Mississippi (1972), North Carolina (1966), Oregon (1984), South Carolina (1967), Tennessee (1967), Massachusetts, Indiana,

Wyoming and Michigan¹.

1. Attached hereto as Exhibit "B" is a true and correct copy of the printout of the Alabama SOS website showing P&K Company was qualified as a foreign corporation by the Alabama Secretary of State on October 17, 1972. This certificate was withdrawn on October 31, 1986.
2. Attached hereto as Exhibit "C" is a true and correct copy of the printout of the Illinois SOS website showing P&K Company became qualified to conduct business in Illinois on August 14, 1974, which was withdrawn on January 6, 1987;
 - a. Also attached hereto as Exhibit "C" are a true and correct copy of P&K Company's 1984 and 1985 Annual Report filed with the Illinois SOS;
 - b. Also attached hereto as Exhibit "C" is a true and correct copy of the 1991 Affidavit of Compliance showing P&K Company is a dissolved Texas corporation, filed with the Illinois SOS;
3. Attached hereto as Exhibit "D" is a true and correct copy of a printout from the Iowa SOS website showing P&K Company became qualified to conduct business in Iowa on August 24, 1981;
4. Attached hereto as Exhibit "E" is a true and correct copy of the Mississippi SOS records showing P&K Company became qualified to conduct business in Mississippi on

¹ Counsel for P&K Company searched these dates based upon counsel's initial findings regarding P&K Company's corporate history and work performed while and prior to the date P&K Company¹ was in operation.

May 17, 1972, which was subsequently withdrawn on April 27, 1987;

5. Attached hereto as Exhibit "F" is a true and correct copy of the North Carolina SOS records filing which shows Payne & Keller, Inc. became qualified to conduct business in North Carolina on May 18, 1966;
 - a. Also attached hereto as Exhibit "F" is a true and correct copy of the March 14, 1983, Articles of Amendment filed with the North Carolina SOS records showing Payne & Keller, Inc. changed its name to P&K Company;
6. Attached hereto as Exhibit "G" is a true and correct copy of a printout of the Oregon SOS website and SOS records showing P&K Company became qualified to conduct business in Oregon on October 15, 1984; and,
7. Attached hereto as Exhibit "H" is a true and correct copy of the South Carolina SOS records showing P&K Company became qualified to conduct business in South Carolina on July 17, 1967, and dissolved on November 7, 1986;
8. Attached hereto as Exhibit "I" are true and correct copy of a printout of the Tennessee SOS website and SOS records showing P&K Company became qualified to conduct business in Tennessee on September 26, 1967, which was subsequently withdrawn on October 31, 1986;
9. Attached hereto as Exhibit "J" is a true and correct copy of the May 4, 1984, Massachusetts Foreign Corporation Certificate approving P&K Company's Foreign

Corporation Certificate, which was subsequently withdrawn on September 9, 1987;

10. Attached hereto as Exhibit "K" is a true and correct copy of the Indiana SOS records showing P&K Company's Revocation of Certificate of Authority was filed on July 31, 1989;

11. Attached hereto as Exhibit "L" is a true and correct copy of the Michigan SOS website showing P&K Company was qualified as a foreign corporation by the Michigan Secretary of State on November 18, 1980. This qualification was withdrawn on October 4, 1982; and,

12. Attached hereto as Exhibit "M" is a true and correct copy of the Wyoming SOS website showing P&K Company was qualified as a foreign corporation by the Wyoming Secretary of State on January 11, 1982. This certificate became inactive on November 10, 1986;

13. Counsel for P&K Company's search of Maine's SOS records for P&K Company related records resulted in zero results.

b. On August 31, 1962, J.G. McCullough Construction Co. was incorporated by J.G. McCullough, Joe Payne and Paul Keller. Attached hereto as Exhibit "N" is a true and correct copy of the August 31, 1962, Articles of Incorporation filed with the Texas SOS;

i. On April 2, 1953, M&W Equipment Company, Inc. was incorporated by J.G. McCullough, A.E. Whitney and Geneva L. Whitney. Attached hereto as Exhibit "O" is a true and correct copy of the April 2, 1953, Articles of Incorporation filed with the Texas SOS.

- c. On December 11, 1962, SKRLA, Inc. was formed as a Texas Corporation and was organized under the laws of Texas. Attached hereto as Exhibit “P” is a true and correct copy of the December 11, 1962, Articles of Incorporation filed with the Texas SOS;
- d. On August 10, 1970, Mike Gay, Incorporated was formed as a Texas Corporation and was organized under the laws of Texas. Attached hereto as Exhibit “Q” is a true and correct copy of the August 10, 1970, Articles of Incorporation filed with the Texas SOS; and,
- e. On May 21, 1971, Mike Gay, Incorporated changed its name to Joe Payne, Incorporated. Attached hereto as Exhibit “R” is a true and correct copy of the May 21, 1971, Articles of Amendment filed with the Texas SOS.

6. Counsel for P&K Company obtained and reviewed the 1976 book Houston History of a Giant by Jim Hutton and Jim Henderson and learned the following:

- a. In 1967, Payne and Keller, Inc. was sold to an unknown purchaser. Attached hereto as Exhibit “S” is a true and correct copy of the relevant portions of Houston History of a Giant; and,
- b. In 1971, Joe Payne, Incorporated repurchased Payne and Keller, Inc. – Id.

7. Counsel for P&K Company obtained and reviewed records from the Louisiana Secretary of State (“Louisiana SOS”) and learned of the following:

- a. On May 27, 1971, Bayou Maintenance & Constructors, Inc. was formed as a Louisiana Corporation that was organized under the laws of Louisiana by M.H. Gay, Archie R. Estess and Lynda L. Wilson. Attached hereto as Exhibit “T” is a true and correct copy of the May 27, 1971, Articles of Incorporation filed with the Louisiana SOS;
 - i. On June 23, 1971, Joe T. Payne, Harold L. Gilbert, Herschel M. Martin, Jr., and Jan L. Jones were added as directors to Bayou

Maintenance & Constructors, Inc. Attached hereto as Exhibit “U” is a true and correct copy of the June 23, 1971, Amendment to Charter of Bayou Maintenance & Constructors, Inc. filed with the Louisiana SOS.

- b. On March 22, 1972, Bayou Maintenance & Constructors, Inc. changed its name to Payne & Keller of Louisiana, Inc. Attached hereto as Exhibit “V” is a true and correct copy of the March 22, 1972, Amendment to Charter of Bayou Maintenance & Constructors, Inc. filed with the Louisiana SOS;
 - i. Texas SOS records show Payne & Keller of Louisiana submitted an Application for Certificate of Authority on January 14, 1975, filed a Statement of Change of Registered Office on July 9, 1982, and an Application for Certificate of Withdrawal on August 17, 1982. Attached hereto as Exhibits “QQQ” are a true and correct copies of the Texas SOS Records for Payne & Keller of Louisiana.
 - ii. Also attached hereto as Exhibit “RRR” are Payne & Keller of Louisiana’s Texas Franchise Tax Record obtained from the Texas Comptroller’s Office for the time period of January 14, 1975, to August 17, 1982.
- c. On May 2, 1977, Payne & Keller Gulf Coast, Inc. was formed as a Louisiana Corporation that was organized under the laws of Louisiana. Attached hereto as Exhibits “W” are true and correct copy of the May 2, 1977, Articles of Incorporation and July 1, 1977, Amendment to the Articles of Incorporation filed with the Louisiana SOS;
 - i. Based on P&K Company’s research, these Louisiana companies were businesses for construction and maintenance of industrial and commercial facilities.

8. Texas SOS records show Payne & Keller Gulf Coast, Inc. submitted an Application for Certificate of Authority on December 5, 1977. Attached hereto as Exhibits "OOO" is a true and correct copy of the December 5, 1977, Application for Certificate of Authority from the Texas SOS.

a. Also attached hereto as Exhibit "PPP" are Payne & Keller Gulf Coast, Inc.'s Texas Franchise Tax Record obtained from the Texas Comptroller's Office for the time period of December 5, 1977, to December 30, 1982.

9. Mississippi SOS records show Payne & Keller Gulf Coast, Inc. registered to conduct business in Mississippi on March 10, 1983, following its merger with Payne and Keller, Inc. Attached hereto as Exhibit "X" is a true and correct copy of the Mississippi SOS records showing Payne & Keller Gulf Coast, Inc. became qualified to conduct business in Mississippi on March 10, 1983.

10. Wyoming SOS records show Payne & Keller Gulf Coast, Inc. applied for incorporation in Wyoming on January 9, 1981. Attached hereto as Exhibit "EEE" is a true and correct copy of the Wyoming SOS records for Payne & Keller Gulf Coast, Inc.

11. Mississippi SOS records show Payne & Keller Gulf Coast, Inc. applied for Certificate of Authority in Mississippi on May 27, 1971. Attached hereto as Exhibit "FFF" is a true and correct copy of the Mississippi SOS records for Payne & Keller Gulf Coast, Inc.

12. Counsel for P&K Company located and interviewed William Yates, former President of SKRLA, Inc. Mr. Yates was employed by SKRLA, Inc. from 1973 to 1977. When SKRLA, Inc. was sold to Daniel International in July 1977, Mr. Yates temporarily worked for Payne & Keller Corporation until September 1977 when Daniel International was sold to Fluor and subsequently sold to Joe Payne, Incorporated. Mr. Yates remained a SKRLA, Inc. employee until May 1989.

13. On October 31, 1980, Joe Payne, Incorporated changed its name to Payne & Keller Corporation. Attached hereto as Exhibit "Y" is a true and correct copy of

the October 31, 1980, Articles of Amendment of the Articles of Incorporation of Joe Payne, Incorporated.

14. Counsel for P&K Company interviewed Joe Payne's former pilot and Payne & Keller employee, Roland Irby, and learned that P&K Company was sold to Dumez by 1980. William Yates, former President of SKRLA, Inc. and former employee of Payne & Keller Corporation also confirmed P&K Company was sold to a US subsidiary of a French Company, Dumez S.A. in 1979 or 1980.

- a. Counsel for P&K Company has to date through official filings been unable to confirm but believe this sale occurred before June 12, 1980, as Gilbert Thierry of Dumez is shown as a Director of Payne & Keller, Inc. in the Tennessee SOS records. See Exhibit "I"
- b. This is further confirmed by the fact that Dumez employee, Bernard Gautier, is listed as the Secretary in the October 31, 1980, Articles of Amendment of the Articles of Incorporation of Joe Payne, Incorporated. Id.
- c. And, by the July 6, 1981, Forbes article obtained by Counsel for P&K Company, which shows the "Dumez Group" owned 100% of P&K Company's predecessor, Payne & Keller Corporation. Attached hereto as Exhibits "Z" is a true and correct copy of the July 6, 1981, article.
- d. This is also confirmed by the April 1, 1982, Special Endorsement No. 33 which adds Dumez U.S.A. as an additional insured to the April 1, 1982, through April 1, 1983, Aetna Casualty and Surety Company Comprehensive Liability Policy. Attached hereto as Exhibit "AA" is a true and correct copy of the April 1, 1982, Special Endorsement No. 33 naming Dumez U.S.A. as an additional insured.
- e. Additionally, per the October 7, 1986, Purchase Agreement, at the time of this agreement, all Payne & Keller Corporation and P&K Company subsidiaries were wholly owned by DUMEZ USA Corporation. See

para. 2.2 below.

15. All of the issued and outstanding stock of Dumez USA is owned by Dumez, S.A., a French societe anonyme; all of the issued and outstanding stock of Payne & Keller Corporation is owned by Dumez USA; and all of the issued and outstanding stock of Payne & Keller Company and of Bayou-Maintenance Inc. is owned by Payne & Keller Corporation. In each of the respective owners of such shares as set forth in the prior sentence are the only person entitled to vote the shares of the corporations whose shares they hold, and no holder of such shares has granted nay right to vote any of such shares to any other person. Each of Sellers and Shareholders agrees to vote all of such shares in favor of the transactions completed by this Agreement.

Attached hereto as Exhibit "BB" is a true and correct copy of the October 7, 1986, Purchase Agreement.

16. Counsel for P&K Company also investigated the following companies as they appeared in the documents reviewed in their investigation of P&K Company but do not know their relationship or association with P&K Company:

- a. Cardinal Engineering Company incorporated in Louisiana on January 29, 1974, and applied for certificate of authority in Texas from April 18, 1979 to October 27, 1986. Attached hereto as Exhibit "GGG" and "HHH" are true and correct copy of Texas and Louisiana SOS records for Cardinal Engineering Company.
- b. Cardinal Service Company incorporated in Louisiana on March 18, 1976, and applied for certificate of authority in Texas from April 16, 1979, to April 11, 1986. Attached hereto as Exhibit "III" is a true and correct copy of Texas SOS records for Cardinal Service Company.
- c. Cardinal Insulation incorporated in Texas on January 19, 1983, and dissolved in April 11, 1986. Attached hereto as Exhibit "JJJ" is a true and correct copy of Texas SOS records for Cardinal Insulation.
- d. Richardson Electrical and Instrumentation Company, Inc. incorporated in Texas on October 6, 1967, and applied for certificate of authority in Louisiana on February 12, 1973. Attached hereto as Exhibit "KKK"

and “LLL” are true and correct copy of Texas and Louisiana SOS records for Cardinal Engineering Company.

Formation of Payne & Keller Company

17. The Texas Secretary of State records show that on December 30, 1982, Payne and Keller, Inc. merged with Payne & Keller of Louisiana, Inc. and Payne & Keller Gulf Coast, with Payne and Keller, Inc. as the surviving entity. With this merger, Payne and Keller, Inc. changed its name to **Payne & Keller Company** (“P&K Company”) attached hereto as Exhibit “CC” is a true and correct copy of the December 30, 1982, Agreement and Plan of Merger filed with the Texas SOS.

- a. Each of the merging corporations became wholly owned subsidiaries of Payne & Keller Corporation. See Article IV of the Texas Secretary of State Articles of Incorporation. Id.
- b. Additionally, Philippe Petitfrere of Dumez is listed as the secretary. Id.

18. Counsel for P&K Company requested P&K Company's C-Corporation tax returns from the State of South Carolina Department of Revenue for the time period of 1967 to 1986 and learned the records are no longer available due to the Department's retention policy. Attached hereto as Exhibit “DDD” are the State of South Carolina Department of Revenue's responses to P&K Company's request.

October 7, 1986 Purchase Agreement

19. Under the October 7, 1986, Purchase Agreement, P&K Company entered into an asset sale between Dumez and Jacobs. Attached hereto is a true and correct copy of the October 7, 1986, Purchase Agreement between Payne & Keller Company and Dumez. Attached hereto as Exhibit “BB” is a true and correct copy of the October 7, 1986, Purchase Agreement.

20. According to this agreement, P&K Company sold its listed assets and a book of customer contracts, 33 in total, to an entity of Jacobs Engineering Group, Inc. named “P & E, Inc.” a California company. Under the agreement, Jacobs would take over the 38 contracts at jobsites in Alabama, Arkansas, Illinois, Iowa, Louisiana and

Texas and assign them to various Jacobs companies. All records, designs, drawings and other things related to the 38 contracts were to be turned over to P & E, Inc. as part of the agreement. Moving forward, Jacobs would assume company liabilities from October 7, 1986, and P&K Company would assume liabilities before October 7, 1986. Id.

21. Further, Bayou-Maintenance, Inc. was a listed seller in the purchase agreement with Jacobs and sold 5 company contracts, all in Louisiana. Id.

22. Additionally, per the October 7, 1986, Purchase Agreement, at the time of this agreement, all Payne & Keller Corporation and P&K Company subsidiaries were wholly owned by DUMEZ USA Corporation. See section 2.2 of the Purchase Agreement. See Exhibit "BB."

23. As stated above, P&K Company was sold to Dumez prior to October 31, 1980, when Joe Payne, Incorporated changed its name to Payne & Keller Corporation, as confirmed by Joe Payne's former pilot, Roland Irby and William Yates, former President of SKRLA, Inc.

a. This is further confirmed by a July 6, 1981, Forbes article, which shows the Dumez Group owned 100% P&K Company's predecessor, Payne & Keller Corporation. Attached hereto as Exhibits "Z" is a true and correct copy of the July 6, 1981, Forbes article.

24. The October 7, 1986, Purchase Agreement shows the following law firms received copies of "all notices, requests, demands, waivers and other communication" under the Agreement: 1) Sullivan, King & Sabom; and 2) Barton, Klugman & Oetting.

a. Counsel for P&K Company investigated both law firms and learned Sullivan, King & Sabom is no longer in business. Counsel contacted attorney Melinda Winn, former employee of Sullivan, King & Sabom and the Notary Public identified in the October 23, 1986, Articles of Amendment to the Articles of Incorporation of Payne & Keller Corporation filed with the Texas SOS, to inquire if she has additional

knowledge of P&K Company's corporate history without success. Attached hereto as Exhibit "DD" is a true and correct copy of the October 23, 1986 Articles of Amendment to the Articles of Incorporation of Payne & Keller Corporation filed with the Texas SOS.

- b. Barton, Klugman & Oetting is an active law firm and Managing Partner, Tod V. Beebe, has been an employee since 1981. We inquired into Mr. Beebe's knowledge of the 1986 asset sale between Dumez and Jacobs and his knowledge of Dumez's acquisition of Payne & Keller Corporation and P&K Company subsidiaries before the 1986 asset sale. Unfortunately, Mr. Beebe could not locate any files to assist with Counsel for P&K Company's inquiry. Exhibit "EE" is a true and correct copy of the privileged February 2022 email exchange between Hannah Mohrman, Counsel for P&K Company, and Mr. Beebe. Counsel for P&K Company is willing to meet and confer with Plaintiff's counsel regarding this privileged document.

25. Most of the officers and employees of P&K Company are now retired or deceased. Counsel for P&K Company located and spoke to Mr. Payne's widow, Mrs. Dorothy Payne in January 2022. Mrs. Payne married Mr. Payne in 1966. While she was not involved in the day-to-day operations of her husband's companies, she believes Mr. Payne's companies provided workers at various construction sites when employees were on strike. Counsel for P&K Company asked Mrs. Payne to search for any records that may be helpful in counsel's investigation of P&K Company's corporate history and work performed while P&K Company was in operation. Mrs. Payne located a booklet titled "Payne & Keller General Contractors" attached hereto as Exhibit "FF" which explains the organization, capabilities and references for "Payne & Keller General Contractors."

- a. Mrs. Payne was familiar with the sale of Payne & Keller Corporation to Dumez and based on her memory, both Dumez and Jacobs were

interested in purchasing the company, but all shares of Payne & Keller Corporation were sold to Dumez because they made a higher offer. Dumez ran the company at a loss for a few years and later sold all of their interest in Payne & Keller Corporation to Jacobs. This follows the language in the October 7, 1986, Purchase Agreement and our interviews of Mr. Irby and Mr. Yates.

- b. Counsel for P&K Company has been unable to obtain a copy of the agreement memorializing the original sale of Payne & Keller Corporation to Dumez.

Frentex

26. On October 20, 1986, Payne & Keller Corporation (P&K Company's parent company) changed its name to Frentex Enterprises Corporation. Attached hereto as Exhibit "GG" is a true and correct copy of the October 23, 1986, Articles of Amendment to the Articles of Incorporation of Payne & Keller Corporation filed with the Texas SOS.

- a. Also attached hereto as Exhibit "MMM" are Frentex Enterprises Corporation's Texas Franchise Tax Record obtained from the Texas Comptroller's Office for the time period of August 11, 1970, to May 12, 1989.

27. On October 24, 1986, Payne & Keller Company changed its name to Frentex Enterprises Company of Texas. Attached hereto as Exhibit "HH" is a true and correct copy of the October 24, 1986, Articles of Amendment to the Articles of Incorporation of Frentex Enterprise Company filed with the Texas SOS.

28. On December 3, 1986, Frentex Enterprises Company of Texas dissolved and liquidated all assets. Attached hereto as Exhibit "II" is a true and correct copy of the December 3, 1986, Articles of Dissolution filed with the Texas SOS.

- a. Also attached hereto as Exhibit "NNN" are Frentex Enterprises Company's Texas Franchise Tax Record obtained from the Texas

Comptroller's Office for the time period of March 13, 1961, to December 3, 1986.

29. On May 12, 1989, Frentex Enterprises Corporation merged with SKRLA Inc. with SKRLA, Inc. as the surviving company. Attached hereto as Exhibit "JJ" is a true and correct copy of the May 12, 1989, Articles of Merger of Frentex Enterprises Corporation and SKRLA, Inc. filed with the Texas SOS.

Dumez USA

30. Dumez Group is a French industrial company with origins dating to 1880 which offers a range of services in national and regional development of local industries and public services, particularly in urban planning and in the protection of the environment, to local communities, industrial companies, and individuals.
<https://www.encyclopedia.com/books/politics-and-business-magazines/lyonnaise-des-eaux-dumez>

31. Counsel for P&K Company obtained the Texas SOS records for Dumez-SGR, Inc. which shows the company was incorporated in Texas on July 29, 1977, and dissolved on April 2, 1984. Attached hereto as Exhibit "KK" is a true and correct copy of the Dumez-SGR Texas SOS Records obtained on January 19, 2022.

a. Dumez and Dumez U.S.A. are listed as shareholders in the Dumez-SGR, Inc.'s February 17, 1984, Articles of Incorporation. Id.

32. Counsel for P&K Company obtained and reviewed the French book 150 Years of Civil Engineering by Dominique Barjot, Jacques Dureuil (https://books.google.com/books?id=PS8EPPQhbU0C&pg=RA4-PP4&lpg=RA4-PP4&dq=dumez+in+texas+1980&source=bl&ots=u04U_lldown&sig=ACfU3U3hIVxgeLTHx5mUhh8rCCN38GABg&hl=en&sa=X&ved=2ahUKEwiR-YjSr_b1AhWvl4kEHXmSADgQ6AF6BAGqEAM#v=onepage&q=dumez%20in%20texas%201980&f=false) and learned Dumez established itself in the U.S. as early as 1980, when it acquired a Houston company in Texas.

33. Further, Counsel for P&K Company obtained and reviewed a July 6, 1981 Forbes article, which shows the Dumez Group owned 100% P&K Company's predecessor, Payne & Keller Corporation. Attached hereto as Exhibit "Z" is a true and correct copy of the July 6, 1981, Forbes article.

34. Additionally, William Yates, former President of SKRLA, Inc. and former employee of Payne & Keller Corporation confirmed P&K Company was sold to Dumez in 1979 or 1980 before it was sold to Jacobs in 1986. Mr. Yates confirmed working with Bernard Gautier Philippe H. Petitfrere and Gilbert Thierry of Dumez during this period.

35. Bernard Gautier:

- a. Bernard Gautier is listed as the Secretary in the October 31, 1980, Articles of Amendment of the Articles of Incorporation of Joe Payne, Incorporated. Attached hereto as Exhibit "LL" is a true and correct copy of the October 31, 1980, Articles of Amendment of the Articles of Incorporation of Joe Payne, Incorporated.
- b. Bernard Gautier is listed as an Officer of Bayou Maintenance Inc. in the October 27, 1986, Louisiana SOS Affidavit to Dissolve Corporation. Attached hereto as Exhibit "MM" is a true and correct copy of the Louisiana SOS filings for Bayou Maintenance Inc., including the October 27, 1986, Affidavit to Dissolve Corporation.
- c. Bernard Gautier is listed as Secretary, Vice President in the June 1981 Annual Report of Payne and Keller of Louisiana, Inc. filed with the Louisiana Secretary of State. Attached hereto as Exhibit "NN" is a true and correct copy of the June 1981 Annual Report of Payne and Keller of Louisiana, Inc.
- d. Bernard Gautier is listed as President in the J.G. McCullough Construction Co.'s April 11, 1986, Articles of Dissolution. Attached hereto as Exhibit "OO" is a true and correct copy of the J.G. McCullough Construction Co.'s April 11, 1986, Articles of Dissolution

filed with the Texas SOS.

- e. Bernard Gautier is listed as President in the M&W Equipment Company, Inc.'s April 11, 1986, Articles of Dissolution. Attached hereto as Exhibit "PP" is a true and correct copy of the M&W Equipment Company, Inc.'s April 11, 1986, Articles of Dissolution filed with the Texas SOS.
36. Philippe H. Petitfrere:
- a. Philippe H. Petitfrere is listed as the Senior vice President and Secretary of P&K Company in the December 30, 1982, Merger Agreement between Payne and Keller, Inc., Payne & Keller of Louisiana, Inc. and Payne & Keller Gulf Coast, which formed **Payne & Keller Company**. Attached hereto as Exhibit "CC" is a true and correct copy of the December 30, 1982, Agreement and Plan of Merger filed with the Texas SOS.
 - b. He is listed as the "new registered agent" in the July 9, 1982, Statement of Change of Registered Agent filed by J.G. McCullough Construction Co. Attached hereto as Exhibit "QQ" is a true and correct copy of the July 9, 1982, Statement of Change of Registered Agent filed with the Texas SOS;
 - c. He is listed as the "new registered agent" in the July 9, 1982, Statement of Change of Registered Agent filed by M&W Equipment Company, Inc. Attached hereto as Exhibit "RR" is a true and correct copy of the July 9, 1982, Statement of Change of Registered Agent filed with the Texas SOS;
 - d. There were several attempts to contact Mr. Petitfrere and Mr. Gautier in furtherance of P&K Company counsel's due diligence. First, counsel for P&K Company attempted to contact Mr. Maurice Letulle of M. Letulle, C. Letulle-Joly, G. Deloison, who notarized Dumez's signature

to the October 7, 1986 Purchase Agreement. See Exhibit BB, part 3, pages 23-25. Counsel also attempted to contact Mr. Petitfrere and Mr. Gautier telephonically on May 26, 2022, and again on June 17, 2022. Further, P&K Company counsel sent e-mail's on June 15, 2022, to Mr. Petitfrere and on June 17, 2022, to Mr. Letulle attempting to establish a time to speak about Dumez, P&K, and any knowledge they have about the entities. Exhibit "SS" are true and correct copies of the privileged June 15, 2022, and June 17, 2022, e-mails from P&K Company's counsel to Mr. Letulle and Mr. Petitfrere. Counsel for P&K Company is willing to meet and confer with Plaintiff's counsel regarding this privileged document.

37. Gilbert Thierry was a Dumez, S.A. management employee in 1980 and a Director of Payne & Keller Corporation since June 1980.

- a. Gilbert Thierry is listed as a Director of Dumez-SGR Incorporated in the February 17, 1984, Articles of Dissolution filed with the Texas SOS. See Exhibit "KK"
- b. Gilbert Thierry is also shown as a Director of Payne & Keller, Inc. in the Tennessee SOS records. See Exhibit "I"
- c. Gilbert Thierry is shown as a Director of Payne & Keller, Inc. in the Wyoming SOS records, with his address listed as 345 Ave. Georges Clemenceau, 92022 Nanterre Cedex, Paris, France. See Exhibit "EEE"
- d. Gilbert Thierry is also shown as a Director of Payne & Keller, Inc. in the May 4, 1984, Massachusetts Foreign Corporation Certificate approving P&K Company's Foreign Corporation Certificate, which also shows his address as 345 Ave. Georges Clemenceau, 92022 Nanterre Cedex, Paris, France. See Exhibit "J"

38. P&K Company counsel's investigation led counsel to believe both Mr.

Gautier and Mr. Petitfrere are in France. Accordingly, counsel hired a private investigator in France to help locate both individuals to inquire into their knowledge of the sale of Payne & Keller Corporation to Dumez and Dumez's subsequent sale of Payne & Keller Corporation to Jacobs as outlined in the October 7, 1986, Purchase Agreement. Unfortunately, the French private investigator's initial findings revealed Mr. Gautier may be deceased and they could not locate Mr. Petitfrere. Attached hereto as Exhibit "TT" is a true and correct copy of the May 30, 2022, Report prepared by LowCostDetectives.

39. P&K Company counsel's investigated various counties in the States of North and South Carolina. Counsel called nearly 100 counties in the State of North Carolina in an effort to locate Payne & Keller worksites and any of their related entities. Also, counsel called nearly 46 counties in the State of South Carolina in an effort to locate Payne & Keller worksites and any of their related entities. For instance, in North Carolina, counsel called county building inspectors, zoning commissions, commercial construction permit, and county financial departments related to commercial construction. All inquiries from both states yielded the same information. It was explained to counsel that there were no records for Payne & Keller or any related entities dating back more than seven years, at the most, from the current date. In furtherance of P&K Company counsel's due diligence, counsel e-mailed the State Archives for North Carolina to inquire about possible Payne & Keller worksites between 1970-1990. The State Archives primarily focus on government contracts, and they did not possess any records on Payne & Keller Company. Exhibit "YY" is a true and correct copy of the February 14-15, 2022, privileged e-mail exchange between P&K Company's counsel and North Carolina's archives. Counsel for P&K Company is willing to meet and confer with Plaintiff's counsel regarding this privileged document.

SCOPE OF WORK

40. Based upon counsel's investigation, Payne and Keller Corporation (P&K Company's parent company) was a contracting and engineering firm hired mainly in

heavy construction projects such as building roads, highways, bridges and tunnels, deep water terminals and water distribution and sewage plants; and in the construction and maintenance of various manufacturing and processing facilities in the petroleum, chemical and paper mill industries, among others, as well as gas pipelines and gas compressor stations.

- a. According to the booklet titled "Payne & Keller General Contractors" obtained from Mrs. Payne, Payne & Keller General Contractors worked on the following: 1) chemical petroleum and petrochemical construction; 2) personnel for maintenance and operations labor; 3) manpower and equipment for shutdown and turnaround at plants; 4) installation for the production of cement, forgings, chemical and petroleum products, paper, aluminum extrusions, fertilizer, molasses and pipe, site clearance, building construction and equipment installation of manufacturing facilities; 5) management and supervisory staff for engineering and construction of bridges, tunnels, water distribution and control system; and, 6) environmental control (i.e. sewage plants, waste water collection). See page 16 the booklet titled "Payne & Keller General Contractors" attached hereto as Exhibit "FF."

41. Below is the division of scope of work amongst SKRLA, Payne & Keller Corporation and M&W Equipment Company, Inc. based on P&K Company's research, including conversations with Mr. Yates:

- a. Payne & Keller Corporation performed work in the petroleum, chemical and wood pulp and paper industries;
- b. SKRLA was involved in site work, concrete, excavation, paving, concrete underground work, small bridge work for municipalities; and,
- c. M&W Equipment Company, Inc. assisted with the procurement and transportation associated with the equipment for concrete, excavation and steel work.

WORKSITES

P&K Corporation

42. Counsel for P&K Company reviewed the following pleadings and discovery from other litigation (i.e., Bostonian, Agner) to confirm Payne & Keller worksites:

- a. Lenora Childers, individually and as Personal Representative of the Estate of Lewis C. Childers v. Davis Mechanical Contractors Inc. (Case No. 2021CP4003484) (Richland County Court of Common Pleas)
- b. Oscar I. Driver vs. Union Carbide Corporation, et al, No. 2011-4923 Division "B" Section 15 (Orleans Parish District Court). Attached hereto as Exhibit "UU" is a true and correct copy of the June 8, 2012, Motion for Summary Judgment.
- c. Oscar Driver III v. Union Carbide Corporation (Case No. 2011-04923) (Orleans Parish District Court)
- d. Carlton Ray Huggins and Suzette Huggins v. Air & Liquid Systems Corporation, et al. Case No. 2019 L 000318 (Third Circuit Madison County, Illinois). Attached hereto as Exhibit "VV" is a true and correct copy of the June 10, 2019, deposition of Carlton Huggins;
- e. Coleman et al v. H.C. Price Co. et al (Case No. 2:11-cv-02937) (E.D.La.);
- f. Bobby Davis, et al vs. Owens-Corning, et al, (Case No. No. 153-174322-98) (Tarrant County, Texas - 153rd Judicial District). Attached hereto as Exhibit "WW" is a true and correct copy of the November 10, 2000, deposition of Jerald Baker;
- g. Wayne Bourgeois vs. Huntington Ingalls, Inc., et al., Ex Parte Petition for Order to Perpetuate Testimony Pursuant to LA. C.C.P. Art. 1430.1, (Case No. 2016-9604 c/w 2017-2187) (Orleans Parish District Court). Attached hereto as Exhibit "XX" is a true and correct copy of the

November 30, 2016, deposition of Wayne Bourgeois. Attached hereto as Exhibit "XX" is a true and correct copy of the June 21, 2017, Plaintiffs' Answers to Interrogatories and Responses to Request for Production of Documents.

- h. Payne & Keller's Company, Inc.'s Motion for Summary Judgment; Wayne Bourgeois vs. Huntington Ingalls, Inc., et al. No. 2016-9604 c/w 2017-2187 (Civil District Court for the Parish of Orleans State of Louisiana) Division "E" Section: 16.
- i. Bobby Davis, et al vs. Owens-Corning, et al, (Tarrant County, Texas) 153rd Judicial District - No. 153-174322-98.
- j. Chevron Oronite Company LLC v. Jacobs Field Services North America Inc. (Case No. 2:18-cv-02279) (E.D.La.)

Exhibit "ZZ" is a privileged Chart, prepared by counsel, of Payne & Keller worksites confirmed thus far by Counsel for P&K Company along with the source of the information. Counsel for P&K Company is willing to meet and confer with Plaintiff's counsel regarding this privileged document.

- 43. Counsel for P&K Company also reviewed the following sources to confirm Payne & Keller worksites:
 - a. Booklet titled "Payne & Keller General Contractors" obtained from Mrs. Payne
 - b. October 7, 1986, Payne & Keller Purchase Agreement; Schedule A to Purchase Agreement List of Assigned Contracts
 - c. Search of Occupational Safety and Health Administration ("OSHA") records. Attached hereto as Exhibit "AAA" is a true and correct copy of the list of OSHA violations and citations identified in counsel's investigation of P&K Company. No OSHA citations were issues for the Texas parent, Payne and Keller, Inc. Counsel located the following two OSHA citations related to asbestos standards for the Payne and Keller

subsidiary, Payne & Keller of Louisiana, Inc.

- i. Counsel for P&K Company requested all documents related to OSHA Inspection number 16133209 for Payne & Keller in Baton Rouge, LA dated August 28, 1980, and 16123200 dated April 19, 1979 for Payne & Keller Louisiana in Geismer, LA, as these were the only asbestos related violation. Attached hereto as Exhibit "AAA" is a true and correct copy of the FOIA Request.
- ii. On December 8, 2022, OSHA advised there have no records related to violations 16123200 & 16133209. Attached hereto as Exhibit "AAA" is a true and correct copy of OSHA's December 8, 2022, response.
- d. Insurance records received in response to FOIA requests. See Exhibit "BBB" for a comprehensive accounting of all insurance records requested and received in response to FOIA requests
- e. Archived newspaper and magazine articles
- f. Records from the Tennessee Division of Business Services Department of State
- g. Records from Washington's Secretary of State Records
- h. P&K Company counsel analyzed approximately 402,159 Duke Energy Documents. Counsel scanned the documents for any nexus between Duke Energy and Payne & Keller and any related subsidiaries in an effort to exhaust all outstanding resources that could yield any connection to the subject entities and have yet to identify any documents related to Payne & Keller.

44. Counsel for P&K Company also searched for records related to P&K Company from the following construction trades, association newsletters and the United States Environmental Protection Agency and were told they have no records related to Payne & Keller and therefore counsel were unsuccessful in obtaining meaningful

information in counsel's investigation of P&K Company's worksites:

- a. American Hygiene Foundation (AIHA)
 - b. Industrial Hygiene Foundation
 - c. National Safety Council
 - d. ACGIH
 - e. American Society of Mechanical Engineers (ASME)
 - f. American Public Health Association
 - g. American Medical Association
 - h. NIOSH (part of the CDC)
 - i. Chemical Manufacturer's Association
45. The following trade organizations were unable to be located, or have since closed down with no current contact information found:
- a. Asbestos Information Society (now the American Institute of Architects)
 - b. Industrial Medical Association
 - c. American Industrial Hygiene Association
 - d. Asbestos Textile Institute
 - e. American Occupational Medicine Association

46. Counsel for P&K Company received insurance records through a FOIA request. The documents identified insurance carriers National Union Fire Company of Pittsburgh, PA, and AETNA Casualty and Surety Company – The Standard Fire Insurance Company along with coverage policies issued to Payne & Keller Corporation. The documents were thoroughly analyzed for any information relating to the P&K Company and any potential unidentified worksites. However, there is not enough corroborating data points and connectors, outside of merely naming a potential plant or location, to confirm the physical presence of P&K Company. Attached hereto as Exhibit “BBB” is a true and correct copy of the FOIA request reviewed.

47. Exhibit “CCC” is a true and correct copy of the privileged list of witnesses Counsel for P&K Company investigated and contacted as a part of the investigation into

P&K Company's corporate history and worksite. Counsel for P&K Company is willing to meet and confer with Plaintiff's counsel regarding this privileged document.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 7th day of July, 2023 at Torrance, California.

A handwritten signature in black ink, appearing to read 'H. Mohrman', written over a horizontal line.

Hannah L. Mohrman

CERTIFICATE OF SERVICE

I hereby certify that this 7th day of July, 2023, a copy of the foregoing **DECLARATION OF HANNAH L. MOHRMAN** was filed electronically, which will serve all counsel of record.

A handwritten signature in black ink, appearing to read 'Hannah L. Mohrman', written over a horizontal line.

Hannah L. Mohrman

EXHIBIT 10

The South Carolina Court of Appeals

Lenora Childers, Individually and as Personal
Representative of the Estate of Lewis C. Childers,
Plaintiff,

v.

Davis Mechanical Contractors, Inc.; Flame Refractories,
Inc.; General Boiler Casing Company, Inc.; HEFCO,
Inc.; J.R. Deans Company, Inc.; Payne & Keller
Company; SFB, Incorporated; Stafford Insulation
Company; Standard Insulation Company of N.C., Inc.;
Systra Engineering, Inc.; United Construction Co. of
Rome, Inc.; Wind Up, Ltd., Individually and as
Successor-in-Interest to Pipe & Boiler Insulation, Inc.
f/k/a Carolina Industrial Insulating Co.; Defendants.

Flame Refractories, Inc.; United Construction Co. of
Rome, Inc.; Wind Up, Ltd., Individually and as
Successor-in-Interest to Pipe & Boiler Insulation, Inc.
f/k/a Carolina Industrial Insulating Co.; and Payne &
Keller Company, By and Through Their Duly Appointed
Receiver, Peter D. Protopapas, Third-Party Plaintiffs,

v.

Zurich American Insurance Company (Individually and
as Successor to Northern Insurance Company of New
York, Maryland All American General Insurance
Company, and Maryland Casualty Company); Allstate
Insurance Company; John Tighe; Sean Antony Beatty;
Dennis William Cahill; Catherine Ann Carlino; Andre
Lefebvre; David Dean Shumway; Gil Chandler; Michael
Davenport; Linda Young Pettigrew; Gwyn Wallace
Fuller; Daniel Robert Keddie; Julie Ann Fortune;
Michael John Crall; James Francis Meehan; Larry Gene
Simmons; Arrowpoint Group, Inc.; Arrowpoint Capital
Corp.; Admiral Insurance Company; Continental

Insurance Company, Individually and as Successor in interest to Harbor Insurance Company; Hartford Accident and Indemnity Company; Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company; National Union Fire Insurance Company of Pittsburgh, PA; Medmarc Casualty Insurance Company, Individually and as Successor in Interest to Dependable Insurance Company, Inc.; Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company; Lexington Insurance Company; First State Insurance Company; Certain Underwriters at Lloyd's of London and Various London Market Companies; South Carolina Property and Casualty Insurance Guaranty Association; R.L. Jarrett (Underwriting) Agency, Inc.; U.S. Risk, LLC; Rexel USA, Inc.; and Compass Risk Services, LLC, Third-Party Defendants,

Of which, Payne & Keller Company, By and Through Their Duly Appointed Receiver, Peter D. Protopapas, is the Respondent,

and

AIG Property Casualty Company, formerly known as Birmingham Fire Insurance Company; Lexington Insurance Company; National Union Fire Insurance Company of Pittsburgh, PA; Berkshire Hathaway Specialty Insurance Company f/k/a Stonewall Insurance Company, Individually and as Successor in interest to Stonewall Surplus Lines Insurance Company; and Continental Insurance Company, Individually and as Successor in interest to Harbor Insurance Company;

and

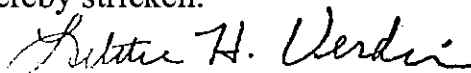
Travelers Casualty and Surety Company, f/k/a the Aetna Casualty and Surety Company, are Appellants.

Appellate Case No. 2023-000727

ORDER

After careful consideration of the parties' memoranda on appealability, this appeal shall proceed. However, nothing in this order prevents the parties from raising the issues of appealability and standing in their briefs.

Respondent's motion to strike Appellants' May 25, 2023 filings is granted. The May 25, 2023 filings which were designated by Appellants as returns to Respondent's "motion to dismiss," are hereby stricken.



FOR THE COURT

Columbia, South Carolina

cc:

Wesley Brian Sawyer, Esquire
Matthew Todd Carroll, Esquire
Mary Elizabeth O'Neill, Esquire
Harry Lee, Esquire
Brian Montgomery Barnwell, Esquire
John Belton White, Jr., Esquire
Marghretta Hagood Shisko, Esquire
Brady Edwards, Esquire
Scott Shutte, Esquire
Christopher Rutledge Jones, Esquire

FILED
Aug 09 2023

EXHIBIT 11

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

LENORA CHILDERS,

Plaintiff,

vs.

C.A. No.: 2021-CP-40-03484

PAYNE & KELLER COMPANY, INC.,
ET AL.,

Defendants,

vs.

U.S. RISK, LLC, ET AL.

Third-Party Defendants.

MOTIONS HEARING

BEFORE THE HONORABLE
CHIEF JUSTICE (RET.) JEAN TOAL

DATE TAKEN: Monday, August 21, 2023

TIME START: 1:15 p.m.

TIME END: 2:32 p.m.

LOCATION: Richland County Judicial Center
1701 Main Street
Columbia, South Carolina

REPORTED BY: SHERI L. BYERS, RPR
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202
803.212.0012

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pdp@rplegalgroup.com

I N D E X

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E X H I B I T S

(None were proffered.)

1 what is acceptable conduct for litigants as
2 sophistication as these insurance companies and
3 well below the level of what ought to be
4 expected of attorneys appearing here.

5 But I am going to stay with what I did. I
6 am going to hold in abeyance any ruling with
7 respect to this stay or to further clarifying
8 the position of the parties.

9 I will tell you, I don't regard this stay
10 as inhibiting the receiver one bit in continuing
11 to pursue the existence of these policies and
12 the coverage provided for them for actions that
13 are pending here in South Carolina. Which is
14 what the receiver was empowered to do and what
15 the receiver is doing.

16 I fully expect these insurance companies
17 to -- that are not being cooperative, whose
18 conduct has been revealed in this hearing today,
19 to follow the example of Zurich and the others
20 who are being fair with this Court and candid
21 with all courts in which these complex matters
22 are being litigated.

23 But my patience is not endless, and I know
24 this litigation well enough to know that
25 something else is going to crop up here before

1
2 CERTIFICATE OF REPORTER3
4 I, Sheri L. Byers, Registered
5 Professional Reporter and Notary Public of the State
6 of South Carolina at Large, do hereby certify:7 That the foregoing proceedings were
8 taken before me on the date and at the time mentioned
9 on page 1 and the proceedings were recorded
10 stenographically by me and were thereafter transcribed
11 under my direction; that the foregoing transcript as
12 typed is a true, accurate and complete record of the
13 proceedings to the best of my ability.14 I further certify that I am neither
15 related to nor counsel for any party to the cause
16 pending or interested in the events thereof.17 Witness my hand, I have hereunto
18 affixed my official seal this 23rd day of August,
19 2023, at Lexington, Lexington County, South Carolina.
20
21
22
23
24
25

Sheri L. Byers,
Registered Professional Reporter,
Notary Public
State of South Carolina at Large
My Commission expires:
October 30, 2023

EXHIBIT 12

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

LENORA CHILDERS, Individually and as
Personal Representative of the Estate of
LEWIS C. CHILDERS,

Plaintiff,

Case No. 2021-CP-40-03484

v.

Davis Mechanical Contractors, Inc., et al.,

Defendants.

Flame Refractories, Inc.; United Construction
Co. of Rome, Inc.; Wind Up, Ltd.,
Individually and as Successor-in-Interest to
Pipe & Boiler Insulation, Inc. f/k/a Carolina
Industrial Insulating Co.; and Payne & Keller
Company, By and Through Their Duly
Appointed Receiver, Peter D. Protopapas,

Third-Party Plaintiffs,

v.

Zurich American Insurance Company, et al.,

Third-Party Defendants.

**ORDER DENYING THIRD-PARTY
DEFENDANT TRAVELERS CASUALTY
AND SURETY COMPANY'S MOTION
TO DISMISS THIRD-PARTY CLAIMS
AND DISSOLVE THE PAYNE &
KELLER RECEIVERSHIP**

This matter comes before the Court on Third-Party Defendant Travelers Casualty and Surety Company's ("Travelers") August 24, 2022 Motion to Dismiss Third-Party Claims and Dissolve the Payne & Keller Receivership.¹ Payne & Keller Company, by and through its duly

¹ On September 19, 2022, Defendants AIG Property Casualty Company, formerly known as Birmingham Fire Insurance Company; Lexington Insurance Company; National Union Fire Insurance Company of Pittsburgh, PA; Berkshire Hathaway Specialty Insurance Company, formerly known as Stonewall Insurance Company; The Continental Insurance Company, individually and as successor in interest to Harbor Insurance Company; and Certain as yet

appointed receiver, Peter D. Protopapas (“the Receiver”), filed a Response in Opposition to the Motion on January 13, 2023, and Travelers filed a Reply in Support of the Motion on January 25, 2023.² The Court heard oral arguments on the Motion during a January 27, 2023 hearing. After careful consideration of the parties’ filings and arguments, and for the reasons stated below, Travelers’ Motion is **DENIED**.

BACKGROUND

On August 27, 2021, this Court entered an Order appointing Peter D. Protopapas as the Receiver for Defendant Payne & Keller Company on Plaintiff’s Motion to Appoint a Receiver. The Court’s Order vested the Receiver “with the power and authority [to] fully administer all assets of Payne & Keller” and, among other things, specifically instructed “the Receiver to investigate the existence of all insurance coverages potentially available to [Payne & Keller].” Thereafter, the Receiver discovered that Payne & Keller Company had conducted business under various corporate names before its dissolution. The Court accordingly granted the Receiver’s Motion to Clarify Order Appointing a Receiver for Payne & Keller Company on September 30, 2021, and entered an Order providing that “all of the Receiver’s duties and protections [in the August 7, 2021 Appointment Order] . . . extend[] to all of the P&K Entities and their predecessors, successors, affiliates, parents, assigns, and subsidiaries that may be discovered in the future.”

Pursuant to that authority, the Receiver initiated an insurance coverage action for Payne & Keller by way of a third-party action against multiple carriers in this case on February 23, 2022. Travelers appeared and filed a motion to dismiss the Receiver’s third-party claims and dissolve the Payne & Keller Receivership on August 24, 2022. After the Receiver served discovery requests

Unnamed Underwriters at Lloyd’s, London and Certain as yet Unnamed London Market Companies (the “Joining Defendants”) filed a Joinder to Travelers’ Motion.

² On January 26, 2023, the Joining Defendants filed a Joinder to Travelers’ Reply.

on Travelers, on November 16, 2022, Travelers moved for a protective order and again moved the Court for an order dissolving the Payne & Keller Receivership and dismissing Travelers from this case.

ANALYSIS

A. Standing

Travelers argues that the Receiver’s third-party claims should be dismissed because the Receiver lacks standing to bring them. Specifically, Travelers first contends that under section 15-65-10 of the South Carolina Code, the Receiver only has authority over Payne & Keller property located within the State of South Carolina, and (according to Travelers) Payne & Keller’s insurance policies are not property within this State. *See generally* § 15-65-10 (“A receiver may be appointed by a judge of the circuit court, either in or out of court . . . (4) When a corporation has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights, and, in like cases, of the property within this State of foreign corporations . . .”). Even assuming Travelers’ interpretation of section 15-65-10 is correct, the Court finds the Receiver has alleged and presented sufficient evidence to demonstrate that Travelers issued insurance policies insuring Payne & Keller risks nationwide, including within South Carolina. Accordingly, the Receiver was properly appointed under section 15-65-10 and has standing to assert the third-party claims raised in this action. *See* S.C. Code Ann. § 38-61-10 (“All contracts of insurance on property, lives, or interests in this State are considered to be made in the State . . . and are subject to the laws of this State.”); *Sangamo Weston v. Nat’l Sur. Corp.*, 307 S.C. 143, 149, 414 S.E.2d 127, 130 (1992) (“[I]t is immaterial where the contract was entered into. Further there is no requirement that the policyholders or insurers be citizens of South Carolina. What is solely relevant is where the property, lives, or interests insured are located.”).

Travelers cites *Howard v. Allen*, 254 S.C. 455, 176 S.E.2d 127 (1970) for the proposition that insurance policies are not “property.” This case does not support Travelers argument. In *Howard v. Allen*, a personal injury plaintiff sought to attach, as a debt, the defense and indemnity obligations of an insurance policy covering the defendant tortfeasor. *Howard* does not speak to whether the Travelers insurance policies protective of Payne & Keller are property within South Carolina for the purposes of the receivership statute.

Travelers also argues that the Receiver lacks standing to bring the third-party claims on behalf of Payne & Keller because, as a Texas corporation that dissolved in 1986, Payne & Keller is no longer able to sue or be sued under Texas law. Travelers relies on Section 11.359(a) of the Texas Business Organizations Code, which provides that a “claim by or against a terminated filing entity is extinguished unless an action or proceeding is brought on the claim not later than the third anniversary of the date of termination of the entity.” However, that statute further provides, “Notwithstanding Subsections (a) and (b), the extinguishment of an existing claim with respect to a terminated filing entity as provided by this section is nullified if . . . the filing entity’s termination is revoked with retroactive effect under Section 11.153 . . .” § 11.359(c). And section 11.153 of the Texas Business Organizations Code allows a court to “order the revocation of termination of an entity’s existence that was terminated as a result of actual or constructive fraud.” § 11.153(a); *see also* § 11.153(b) (“If the termination of an entity’s existence is revoked under Subsection (a): (1) the revocation relates back to the effective date of the termination and takes effect as of that date; and (2) the entity’s status as an entity continues in effect as if the termination of the entity’s existence had never occurred.”).

Here, the Receiver has presented sufficient evidence at the pleading stage to support a claim that Payne and Keller’s 1986 dissolution was the result of, at least, constructive fraud. *See Resp.*

in Opp’n, 8–13. Specifically, the Receiver asserts that Payne & Keller “terminated its corporate existence to avoid liability for both current and future toxic tort, silica, and asbestos personal liability claims, and Payne & Keller was keenly aware of those claims when the decision to dissolve Payne & Keller was made.” *Id.* at 9. In support of this contention, the Receiver submitted evidence that, prior to its dissolution: Payne & Keller was exposed to significant potential liability resulting from its construction work at a time when the use of asbestos-containing products was prevalent, its insurers began to exclude coverage for asbestos-related claims, and it contracted to indemnify companies with which it did business for personal injury claims arising out of its work. *Id.* at 9–10. Further evidence indicates that Payne & Keller began the dissolution process in response to demands for indemnification by an oil company in bankruptcy concerning over a thousand personal injury claims arising out of exposure to dioxin, and Payne and Keller dissolved without taking the steps necessary to ensure those claims, and others it reasonably expected to face absent dissolution, would be paid. *Id.* at 11–12.

Travelers has not disputed the Receiver’s evidence or submitted any countervailing evidence regarding the circumstances surrounding its dissolution. Accordingly, this Court finds the Receiver has made a prima facie showing that Payne & Keller “was terminated as a result of actual or constructive fraud,” § 11.153(a), and dismissal on the basis of the termination is unwarranted. *See Latham v. Burgher*, 320 S.W.3d 602, 610 (Tex. App. 2010) (ruling a company’s dissolution, conducted shortly after receiving notice of an intended lawsuit against it and without setting aside funds to address the liability of the lawsuit, could support a finding of fraud). This Court does not, however, find that fraud has been conclusively proven, nor does the Court order the revocation of Payne & Keller’s termination at this time. Such a determination will be made after the parties have had the opportunity to explore this issue through the discovery process.

Relying on *Robinson v. Crown Cork & Seal Co.*, 335 S.W.3d 126 (Tex. 2010), Travelers argues that applying section 11.153 to Payne & Keller’s dissolution would violate Article I, Section 16 of the Texas Constitution. However, as the *Robinson* court explained, “No bright-line test for unconstitutional retroactivity is possible.” *Id.* at 145. Instead, the court outlined a three-factor analysis that must be conducted. *Id.* Moreover, Travelers’ retroactivity argument as to section 11.153 undercuts its reliance on section 11.359, which was also enacted well after Payne & Keller’s dissolution.³ The Court declines Travelers’ invitation to retroactively apply section 11.359 in Travelers’ favor to dismiss the Receiver’s third-party claims while simultaneously holding the retroactive application of section 11.153 would violate the Texas Constitution, especially given that the Texas legislature added subsection (b) to section 11.153 in response to the Fifth Circuit’s determination that revoking an entity’s dissolution would not revive claims extinguished by section 11.359. *See Boudreaux v. C J R Framing*, 744 F. App’x 208, 211 (5th Cir. 2018).

B. Personal Jurisdiction

Travelers argues that the Receiver’s claims should also be dismissed under Rule 12(b)(2), SCRPC, because this Court lacks personal jurisdiction over Travelers in this case. The Court disagrees and finds the Receiver has made a prima facie showing that personal jurisdiction over Travelers exists. *See Brown v. Inv. Mgmt. & Research*, 323 S.C. 395, 399, 475 S.E.2d 754, 756 (1996) (stating when a defendant seeks dismissal for lack of personal jurisdiction under Rule 12(b)(2), “the plaintiff has the burden of showing jurisdiction is properly asserted; however, the law is well-settled that at the pre-trial stage only a prima facie showing is required”). In addition

³ The Court further notes that a predecessor to the Texas Business Organizations Code—the Texas Business Corporation Act—contained a fraudulent termination provision similar to section 11.153.

to relevant allegations in the Second Amended Complaint, the Receiver has also presented evidence that Travelers contracted with Payne & Keller to insure risks in all states, including South Carolina, and that Payne & Keller was registered to do business in South Carolina and had performed work in South Carolina when Travelers issued its policies. *See* Resp. in Opp’n, at 15–17 & Ex. M–O. Travelers’ conduct in issuing such policies to Payne & Keller supports a finding of personal jurisdiction and precludes dismissal on this basis. *See* S.C. Code Ann. § 36-2-803(A) (“A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person’s . . . contracting to insure any person, property, or risk located within this State at the time of contracting”); *McGee v. Int’l Life Ins. Co.*, 355 U.S. 220, 223 (1957) (“It is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with that State.”); *Ross v. Am. Income Life Ins. Co.*, 232 S.C. 433, 438-39, 102 S.E.2d 743, 745 (1958) (holding a single insurance policy mailed to an individual in this state was a sufficient contact to warrant the exercise of jurisdiction without violating Due Process).

C. Rule 14

Rule 14(a), SCRCP, allows a defendant to bring third-party claims against “a person not a party to the action who is or may be liable to him for all or part of the plaintiff’s claim against him.” Here, the Receiver has asserted claims against Travelers, which he alleges issued insurance policies to Payne & Keller that may provide coverage for, and therefore trigger indemnity obligations in relation to, the claims brought by the plaintiff in this action. Accordingly, the third-party claims are appropriate under Rule 14 and Travelers’ arguments for dismissal on this basis are rejected.

D. Rule 12(b)(8)

Finally, Travelers argues that the Receiver’s third-party claims should be dismissed under Rule 12(b)(8), SCRCF, because they are duplicative of claims brought against it in *Protopapas as Receiver for Payne & Keller Co. v. Am. Int’l Grp. et al.*, No. 3:21-cv-04086-JMC (D.S.C.). However, as the courts of this state have long observed, “The general rule is that an action may be pleaded in abatement of a second suit only when between the same parties and *in the same jurisdiction* and with the same object.” *Poston v. Home Ins. Co. of N.Y.*, 191 S.C. 314, 317–18, 4 S.E.2d 261, 262 (1939) (emphasis added). Because no separate action is pending between the Receiver and Travelers for the same claims in South Carolina state court, Rule 12(b)(8) does not provide a basis for dismissing the Receiver’s third-party claims here. *See Hill v. Hill*, 51 S.C. 134, 137, 28 S.E. 309, 310 (1897) (“[I]t is a well established doctrine that the pendency of another suit in a foreign jurisdiction cannot be pleaded in the domestic forum.”); *see, e.g., Hauge v. Curran*, No. 2011-UP-264, 2011 S.C. App. Unpub. LEXIS 300, at *4 (Ct. App. June 7, 2011) (reversing the trial court’s dismissal under Rule 12(b)(8) because the two similar actions were in different jurisdictions).

CONCLUSION

Based on the foregoing, as well as the arguments presented by the Receiver in his filings and at the January 27 hearing, **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT** Travelers’ Motion to Dismiss Third-Party Claims and Dissolve the Payne & Keller Receivership is hereby **DENIED**.⁴ Travelers’ November 16, 2022 Motion for Protective Order and to Dissolve Receivership, which relies solely on the standing arguments rejected above, is also **DENIED**.

⁴ The Joining Defendants’ motion is also denied.

IT IS SO ORDERED.

[JUDGE'S E-SIGNATURE PAGE FOLLOWS]



Richland Common Pleas

Case Caption: Lenora Childers , plaintiff, et al vs Davis Mechanical Contractors ,
defendant, et al
Case Number: 2021CP4003484
Type: Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2023-03-30 14:34:37 page 10 of 10

EEHECOTRONICALLYFILED-2023033015:130683PAM--RICHLAND--COMMONPLEAS--CASE#2021CP4003484

EXHIBIT 13

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
LENORA CHILDERS , Individually and as	)	C/A NO. 2021-CP-40-03484
Personal Representatives of the Estate of	)	
LEWIS C. CHILDERS ,	)	<i>In Re:</i>
	)	Asbestos Personal Injury Litigation
Plaintiff,	)	Coordinated Docket
	)	
v.	)	
	)	
DAVIS MECHANICAL	)	
CONTRACTORS, INC. , et al.	)	
	)	
Defendants.	)	

**PLAINTIFF'S MOTION TO APPOINT A RECEIVER OVER PAYNE & KELLER
COMPANY PURSUANT TO S.C. CODE §15-65-10(4)**

Plaintiff, pursuant to S.C. Code §15-65-10(4), moves this Court to appoint a receiver over Payne & Keller Company. This entity is a defendant in the above-captioned action and the Plaintiff would respectfully show the Court as follows:

BACKGROUND

Payne & Keller Company ("Payne & Keller"), was a supplier and installers of asbestos insulation in the southeastern United States during the 1960s, 1970s, 1980s and 1990s. Payne & Keller is a dissolved Texas corporation.¹ With its dissolution, Payne & Keller leaves its creditors, namely the thousands of men and women it exposed to asbestos, without any meaningful entity to proceed against and, apparently, disposed of its assets without regards to those creditors. Now, apparently, all that remains of Payne & Keller is its insurance coverage.

Plaintiff requests that this Court appoint Peter Protopapas as the Receiver over Payne & Keller to determine what assets, including insurance coverage, is available Payne & Keller and

¹ See South Carolina Secretary of State business entities search information attached as Exhibit A.

that the receiver be granted such further and other powers as may be appropriate, including, but not limited to, the acceptance of service of claims, retaining counsel, making claims against insurance policies which may exist and otherwise wholly administrate all of the assets and attendant business of Payne & Keller .

LAW AND ARGUMENT

South Carolina Code §15-65-10(4) state states that a receiver may be appointed by a judge of the circuit court, either in or out of court:

. . . . (4) When a corporation has been dissolved, is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights, and in like cases, of the property within this state of foreign corporations . . .

It is undisputed that Payne & Keller, because of its dissolution/suspension, has forfeited their rights to do business in South Carolina.

Section 15-65-20 requires that notice of this application be provided to the party to the action whose property is sought to be put in the hands of a receiver. Plaintiff, concurrently herewith, has served copies of this motion on the South Carolina Secretary of State.²

CONCLUSION

For the foregoing reasons, the appointment of a receiver for Payne & Keller for all purposes, including, but not limited to taking possession of and disposing of any remaining assets of Payne & Keller is appropriate. Plaintiff requests that this Court issue an order appointing a receiver as soon as practicably possible and for such other and further relief to which they may be entitled. Plaintiff respectfully suggests that Peter Protopapas be appointed the receiver over Payne & Keller.

² Plaintiff served the South Carolina Secretary of State. *See* Affidavit of Charles W. Branham, III, Confirmation of Service Attached as Exhibit A.

Respectfully submitted,

s/Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

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ATTORNEYS FOR PLAINTIFF

August 23, 2021

Columbia, South Carolina.

EXHIBIT 14

ENDORSEMENT

This endorsement, effective 12:01 A.M. 01/01/89 forms a part of policy No. GLA 501 0553 issued to SKRLA, Inc. by National Union Fire Insurance Company of Pittsburgh, PA

In consideration of an additional premium to be adjusted by Audit, it is agreed that the policy expiration date is extended to 04-01-89.

Authorized Representative

**RM-5
BH/lw
10/02/89**

PROOF OF SERVICE

I, the undersigned of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellant, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specific below by emailing them at the addresses below:

Pleading(s): Appellants' Emergency Motion to Clarify and Enforce Rule 205 and
Accompanying Appendices I-III

Parties Served:

Peter D. Protopapas (pdp@rplegalgroup.com)
Brian M. Barnwell (bb@rplegalgroup.com)
John B. White, Jr. (jwhite@johnbwhitelaw.com)
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Brady Edwards (brady.edwards@morganlewis.com)

Counsel for Respondent Payne & Keller Corp., through its Receiver Peter D. Protopapas

October 23, 2023