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Jan 03 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Joan H. Toal
Acting Circuit Court Judge

Appellate Case No. 2023-000727
Circuit Court Case No. 2021-CP-40-03484

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 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, formerly known as 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 the Appellants.

MOTION FOR CERTIFICATION BY THE SUPREME COURT

Pursuant to Rule 204(b), SCACR, Appellants 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 (collectively “Appellants”) move this Court pursuant to Rule 204(b), SCACR, to certify this case for review because it involves “issue[s] of significant public interest” and “legal principle[s] of major importance.” The case is now pending in the Court of Appeals as No. 2023-000727 and in the Circuit Court as No. 2021-CP-40-03484.

INTRODUCTION AND SUMMARY

This case involves two major issues of public interest and legal importance that merit this Court’s immediate review. The first issue is whether a South Carolina court may appoint a receiver for a long-dissolved foreign corporation with no property in South Carolina, based only on that corporation’s out-of-state insurance policies, which are not property “within this state” as statutorily required for appointment of a receiver in South Carolina. The second issue is whether a South Carolina court has the authority to alter the corporate status of a dissolved foreign corporation and revive claims against that corporation or whether that power exclusively belongs to the foreign state; and, if South Carolina does have that authority, whether it can exercise it in violation of the foreign state’s Constitution and established law.

These issues underlie the order that is the subject of the pending appeal and this motion: the Circuit Court’s March 31, 2023 order (the “Order”) (Appx. 4-10). The Order approved the continuation of a receivership over Payne & Keller Company (“Payne & Keller”), a Texas corporation that was established in 1961 and duly dissolved in 1986 under Texas law. The receivership was illegitimate from the outset because Payne & Keller had no property “within the state” as South Carolina law requires.

After he was appointed, the Receiver asserted claims against Appellants and other alleged insurers of Payne & Keller. But Payne & Keller had no capacity to sue or be sued. When Payne & Keller dissolved in Texas in 1986, Texas had a three-year statute of repose for dissolved companies, now codified at Tex. Bus. Org. Code § 11.359(a).¹ Under that statute, Payne & Keller could not sue or be sued after 1989. All unasserted claims by or against Payne & Keller were terminated as of that date.

Based on these two grounds—that a receiver could not be appointed because Payne & Keller had no property in the state and Payne & Keller could not sue or be sued—the insurers, including Appellants, moved in the Circuit Court to terminate the receivership over Payne & Keller and dismiss the Receiver’s third-party claims against them.² The Circuit Court denied their motion in the Order. First, it ruled that insurance policies issued to Payne & Keller outside South Carolina by out-of-state insurers constitute property within the state sufficient to justify a receivership. This ruling contradicted this Court’s decision in *Howard v. Allen*, 254 S.C. 455, 459, 176 S.E.2d 127, 128 (1970), which held that out-of-state policies are not property in this state, and thus they could not be the basis for attachment in *in rem* proceedings. Second, the Circuit Court continued the receivership based on the Receiver’s unpled allegations that Payne & Keller’s dissolution in 1986 was fraudulent and could be revoked under new Texas laws passed decades after that dissolution. In so doing, the Circuit Court asserted jurisdiction over an issue—Payne & Keller’s corporate existence—that belonged before the courts of Texas, not South Carolina; it allowed an unpled

¹ In 1986 and 1989, that provision was codified at Tex. Bus. Corp. Act, Art. 7.12 (1984).

² In the Circuit Court, Appellants joined the motion to dissolve and dismiss filed by Travelers Casualty and Surety Company. (Appx. 182). Like Appellants, Travelers has appealed the Circuit Court’s March 31, 2023 order to the Court of Appeals

claim of fraudulent dissolution to be litigated; and it violated the Texas Constitution's prohibition against the retroactive application of statutes.

Appellants have appealed the Order to the South Carolina Court of Appeals, and the Court of Appeals has accepted the appeal. However, because respect for another state's laws, corporations, and property is an important issue of interstate comity, the Court should certify this appeal now and put an end to this ongoing interference with Texas's authority and laws. Further, the Receiver's suit against Appellants has created significant burdens on them and the South Carolina courts that will continue if the litigation is not stopped. The Receiver has issued at least 33 sets of discovery requests encompassing over 1,350 requests in total and at least 12 deposition notices to Appellants, and has filed six motions to compel against Appellants in the last two months.

The important public and legal interests at stake are not unique to this one case. This suit is an example of a common pattern in the asbestos docket, in which the same plaintiffs' law firm sues dissolved foreign corporations with no property in South Carolina and/or with viable statute of repose defenses, and then seeks Mr. Protopapas's appointment, at which point he pursues insurance proceeds notwithstanding the lack of South Carolina property and/or the presence of absolute defenses to liability.

This case stands as a prime example of this practice. The plaintiff in this case, Lenora Childers, originally named ten dissolved defendants—although the typical asbestos suit names dozens, if not hundreds of defendants. After dismissing one defendant, Plaintiff, within months, had obtained appointment of the same receiver over each of the remaining nine defendants. This action, by design, had the effect of multiplying receiverships. In turn, the Receiver filed third-party claims against a slew of insurance companies and even against numerous insurance company

officers and directors. It was not until Appellants and Travelers filed their Notices of Appeal that Plaintiff Childers finally added the dozens of traditional asbestos defendants typically named in these lawsuits.

The receiverships created in the asbestos docket include numerous out-of-state defendants with no property in this State. In those cases, the Circuit Court justifies the creation of these receiverships by ruling that insurance policies issued to out-of-state defendants by out-of-state insurance companies are property within this State—even though this Court previously held that such policies are not something of value subject to *in rem* jurisdiction in South Carolina. *See infra* Section I. In this case, the receivership has also led to a breakdown in the adversary process, in which the Receiver has undermined the limitations defense of the dissolved foreign corporation to assert time-barred claims against its insurers. *See infra* Section II.

If the order below is permitted to stand, this pattern is sure to recur, burdening the South Carolina courts and putting other dissolved foreign corporations and their insurers unfairly and unlawfully at risk.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Payne & Keller’s corporate history is not disputed. Payne and Keller, Inc. filed Articles of Incorporation with the Texas Secretary of State on March 13, 1961, for the purpose of conducting “general engineering and contracting business.” (Appx. 186). In 1982, Payne and Keller, Inc. merged with Payne & Keller of Louisiana, Inc. and Payne & Keller Gulf Coast, Inc., with Payne and Keller, Inc. being the surviving entity. (Appx. 193-205). At the same time, Payne and Keller, Inc. changed its name to Payne & Keller Company and remained a Texas corporation. *Id.*

In fall 1986, Dumez USA, the owner of Payne & Keller, sold the assets of Payne & Keller, including the Payne & Keller name, to Jacobs Engineering Group, and ceased the Payne & Keller

business. (Appx. 208). As required by the Purchase Agreement, Payne & Keller filed Articles of Amendment on October 20, 1986, changing its name to Frentex Enterprises Company, and on October 24, 1986, Frentex Enterprises Company filed Articles of Amendment, changing its name to Frentex Enterprises Company of Texas (“Frentex”). (Appx. 285-288).

On October 27, 1986, Frentex, the company formerly known as Payne & Keller, which had sold its assets and name, took steps to dissolve. It executed a Consent Action stating the company’s resolution to dissolve and filed Articles of Dissolution with the Texas Secretary of State. (Appx. 289-292). Upon then-applicable Texas law, the Texas Secretary of State reviewed the articles and, if he determined the dissolution conformed to Texas law, he would 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,” which effectuated the dissolution. (Appx. 289).

In 2021, more than thirty years after Payne & Keller dissolved, Plaintiff Lenora Childers sued Payne & Keller and nine other defunct companies, asserting asbestos-related claims. (Appx. 27). Within a matter of months, Childers dismissed one defendant and moved for the appointment of a receiver, Peter Protopapas, over all nine of the remaining defendants. The Circuit Court, as Childers requested, appointed Mr. Protopapas as a receiver for Payne & Keller. (Appx. 20-22 & 66-68). Mr. Protopapas, as Receiver, then filed third-party claims against Payne & Keller’s alleged insurers, seeking declarations that the insurers were required to pay him for his services and that he could take possession of Payne & Keller’s insurance policies—policies that were issued in Texas to a Texas corporation. (Appx. 69-147).

Because Payne & Keller dissolved in 1986, however, it could not sue or be sued as of 1989 under Texas’s statute of repose for dissolved corporations, then codified at Tex. Bus. Corp. Act, Art. 7.12 and now codified at Tex. Bus. Org. Code § 11.359(a). Thus, the Receiver, who purports

to stand in the shoes of Payne & Keller, lacked standing to bring his claims because Payne & Keller had no capacity to sue or be held liable. The Circuit Court lacked a legal basis for appointing a receiver for a further reason: Payne & Keller has no property in South Carolina, which is a statutory requirement for the appointment of a receiver under South Carolina law. Thus—just as it would be inappropriate for a Texas court to take control of a South Carolina company and its insurance policies—the receivership does not belong in South Carolina and is an affront to the sovereignty of the State of Texas. Accordingly, Appellants moved to dissolve the receivership and dismiss the third-party claims. (Appx. 148-184).

The Circuit Court denied the motion. (Appx. 1). First, it erroneously reasoned that liability policies issued by out-of-state insurers to Payne & Keller in Texas constituted property in South Carolina. (Appx. 4). The Circuit Court also ruled that it had the power to determine that Payne & Keller’s dissolution was fraudulent and “order the revocation of Payne & Keller’s termination,” thereby reviving claims by or against the company. (Appx. 5). It found that the Receiver had made a “prima facie showing” that Payne & Keller’s dissolution was a “fraud” on potential plaintiffs who might sue the company outside the statutory three-year window, even if those plaintiffs only surfaced decades later. (*Id.*). Neither Childers nor the Receiver ever pleaded or alleged this claim of “fraud”—the Receiver first raised it in opposition to the motion to dissolve to salvage his claims and the receivership.

In reaching this conclusion, the Court relied on Tex. Bus. Org. Code § 11.153(a) & (b)—a new Texas statute originally enacted in 2005³ to authorize revocation of fraudulent corporate dissolutions and amended in 2021 to provide for relation back of the revocation order to the time

³ A predecessor provision to Tex. Bus. Org. Code § 11.153(a), Tex. Bus. Corp. Act Art. 6:08, was initially passed in 2003.

of dissolution. (Appx. 4-6). Without meaningful explanation, the Court declined to apply Texas’ constitutional prohibition against retroactive application of statutes (here, applying a 2021 statute to a 1986 dissolution), not even mentioning the Texas Supreme Court authority uniformly prohibiting the use of new statutes to revive previously-extinguished claims.

These erroneous rulings, which violated South Carolina and Texas law and usurped Texas’s authority over its corporations and property, present significant issues of public interest and legal concern, and this Court should review and reverse them.

I. WHETHER INSURANCE POLICIES ISSUED TO A TEXAS CORPORATION CONSTITUTE PROPERTY “WITHIN THIS STATE” OVER WHICH A RECEIVER CAN BE APPOINTED IS AN IMPORTANT QUESTION OF LAW AND PUBLIC INTEREST.

The historic liability insurance policies that Payne & Keller received in Texas from insurers outside South Carolina—as to which there is not even a judgment creditor in South Carolina—are not “the property within this State” that is required by S.C. Code Ann § 15-65-10(4) to support a South Carolina receivership. *See Boynton v. Consol. Indem. & Ins. Co.*, 185 S.E. 731, 737 (S.C. 1936) (reversing receiver’s appointment because foreign company had no property in South Carolina). In *Howard v. Allen*, 254 S.C. 455, 459, 176 S.E.2d 127, 128 (1970), this Court rejected the argument that an out-of-state defendant’s insurance policy creates *in rem* jurisdiction in South Carolina, explaining that “the insurer owes nothing until the liability of the insured and the amount thereof has been determined” and that the policy thus is not a debt in South Carolina *and* “is *nothing of economic value* to which the insured may make claim, receive, or assign.” (Emphasis added). The Circuit Court here decided to the contrary in the context of a receivership, marginalizing *Howard v. Allen* on the irrelevant ground that it addressed whether an insurance

policy is a debt in South Carolina, Order at 4,⁴ ignoring the Supreme Court’s related holding that such an insurance policy “is nothing of value to which the insured may make claim, receive or assign.” The Circuit Court’s decision thus impermissibly expands its jurisdiction and will lead (and has led) plaintiffs to commence litigation in South Carolina against foreign corporations and to seek the appointment of receivers based only on the existence of an out-of-state insurance policy that *might, someday* indemnify the foreign corporation *if* its liability is established.⁵ If other states were to apply a similar rationale, the ultimate outcome would be that 49 states could appoint 49 different receivers over one insurance policy issued to an insured in the 50th state. This is neither workable nor legally permissible.

II. WHETHER A SOUTH CAROLINA COURT HAS THE AUTHORITY TO REVIVE CLAIMS INVOLVING A DISSOLVED OUT-OF-STATE CORPORATION, VIOLATING ANOTHER STATE’S CONSTITUTION AND LAWS AND ARROGATING TO ITSELF THAT STATE’S AUTHORITY OVER ITS CORPORATIONS, IS AN IMPORTANT ISSUE OF LAW AND PUBLIC INTEREST.

The Circuit Court’s ruling that it has the power to order revocation of a foreign corporation’s decades-old dissolution in another state and thereby revive long-extinguished claims further expands the Circuit Court’s judicial authority, interferes with the sovereignty and laws of other states, and will multiply litigation in this jurisdiction that does not belong here.

⁴Even if the insurance policies at issue in this case were viewed as debts, black letter law is that “the situs of [a] . . . debt lies with the debtor.” *Long v. Baldt*, 464 F. Supp. 269, 273 (D.S.C. 1979); see *H.J. Baker & Bro. v. Doe*, 70 SE. 431, 433 (S.C. 1911) (“simple contract debts are assets at the domicile of the debtor”).

⁵See 75 C.J.S. Receivers § 475 (“In accordance with the general rule as to extraterritorial rights, neither the court nor the receiver appointed by it has authority over property beyond the boundaries of its territorial jurisdiction.”); *Great Western Min. & Mfg. Co. v. Harris*, 198 U.S. 561, 575 (1905) (a receiver has “no extraterritorial power . . . which the court appointing him can confer . . . to enable him to go into a foreign jurisdiction to take possession of the debtor’s property. . . .”) (citation omitted).

(a) The Circuit Court’s ruling on the corporate status and propriety of dissolution of a foreign corporation is an impermissible projection of South Carolina judicial authority extraterritorially. The Circuit Court should have given full faith and credit to Texas’s dissolution of Payne & Keller. *See* U.S. Const. art. IV, § 1 (full faith and credit “to the public . . . Records . . . of every other State); *see also Young v. JCR Petroleum, Inc.*, 188 W. Va. 280-283-84, 423 S.E.2d 889, 892-93 (1992) (Full Faith and Credit Clause of federal constitution “requires each state to respect the sovereign acts of the other states,” including “creation and dissolution of a corporation.”). South Carolina law expressly recognizes this principle, forbidding the State and its courts from interfering with a foreign corporation’s dissolution or corporate existence. S.C. Code § 33-15-105(c) (“This title does not authorize this State to regulate the organization . . . of a foreign corporation authorized to transact business in this state.”).

Thus, if a party wishes to seek revocation of dissolution, an action under Tex. Bus. Org. Code § 11.153 should be brought in a Texas court—just as an action to dissolve or revoke the dissolution of a South Carolina corporation should be brought in South Carolina, not in Texas or any other state. Indeed, Texas would respect South Carolina’s sovereignty over its own corporations in similar circumstances. *See Mitchell v. Hancock*, 196 S.W. 694, 698 (Tex. App. 1917) (courts of one state cannot dissolve foreign corporation because “[t]he power to create a corporation is an attribute of sovereignty, and it is therefore, as to its corporate existence, amenable to and controllable in this respect by the sovereignty which created it and by none other.”) (citation omitted). This governing rule was part of Texas law when the legislature passed Section 11.153. In keeping with this rule, Section 11.153 is found in Chapter 11 of the Texas Business Organizations Code, which is titled “Winding Up and Termination of *Domestic Entity*” (emphasis added), further demonstrating that Chapter 11 requires an action to be brought in Texas courts. All

of the Sections within Chapter 11 must be construed in pari materia. *See State v. Dyer*, 200 S.W.2d 813 (Tex. 1947) (term within dissolution-related statute should not be construed literally when more specific term of other dissolution-related statute gave it specific meaning). Although, like Section 11.153, many Sections within Chapter 11 refer generally to “a court” when describing actions related to dissolution,⁶ more specific references in other Sections within Chapter 11 make clear that “a court” means a Texas court.⁷ There is no basis to conclude that the Texas Legislature meant for references to courts in Chapter 11 to restrict jurisdiction to Texas courts in some instances but in others to create jurisdiction in the courts of all fifty states in the nation. Section 11.153’s reference to “a court” must be construed to mean a Texas court, and so the statute grants jurisdiction to revoke a prior dissolution only to Texas courts.

(b) No Texas court would permit revocation of Payne & Keller’s dissolution under Tex. Bus. Org. Code § 11.153 because that statute was enacted in 2005 and amended in 2021, long after the company’s 1986 dissolution. The Supreme Court of Texas has made it clear that the Texas Constitution, Art. I, § 16 (“No . . . retroactive law . . . shall be made”) bars the retroactive application of a statute to revive an extinguished claim. *See Robinson v. Crown Cork & Seal Co.*,

⁶Section 11.301 (“A court may enter a decree requiring . . . termination of the filing entity’s existence. . . .”); Section 11.306 (“a court shall stay entry of judgment” of termination under certain circumstances); Section 11.307 (appellate court affirming “a trial court’s findings . . . under this subchapter shall remand . . . to the trial court with instructions to grant” an opportunity to cure); Section 11.312 (referring to “the decree of a court requiring winding up”).

⁷Section 11.305 (“If a district court finds in an action under this subchapter that proper rounds exist under Section 11.301(a) for a winding up . . . , the court shall” make findings and enter judgment.”); Section 11.308 (“(a) The attorney general shall bring an action for involuntary winding up and termination . . . in . . . a district court of the county in which the registered office or principal place of business . . . is located; or . . . a district court of Travis County. (b) A district court described by Subsection (a) has jurisdiction of the action for involuntary winding up and termination.”).

Inc., 335 S.W.3d 126, 139-42 & 146 (Tex. 2010) (explaining that constitutional prohibition on retroactivity had been applied to invalidate revival of claims by retroactive application of statutes and further explaining that, under three-factor test announced in *Robinson*, the result in those and other cases “would be the same”); *Baker Hughes, Inc. v. Keco R.&D., Inc.*, 12 S.W.3d 1, 4 (Tex. 1999) (“a statute extending the limitations period of a claim already barred by limitations violations the Texas Constitution’s prohibition against retroactive laws”).

In its order, the Circuit Court dismissed the constitutional retroactivity prohibition on the general proposition that the prohibition does not bar all retroactive application of statutes, citing *Robinson*’s three-factor test for whether retroactivity conflicts with the prohibition. (Appx. 6). But the Order did not address the fact that the Texas Supreme Court has consistently held that the retroactive revival of extinguished claims is constitutionally barred.⁸ See *Baker Hughes*, 12 S.W.3d at 5; *Wilson v. Work*, 122 Tex. 545, 62 S.W.2d 490 (Tex. 1933) (per curiam) (original proceeding); *Mellinger v. City of Houston*, 68 Tex. 37, 3 S.W. 249, 254-255 (1887). Nor did the Circuit Court mention that in *Robinson*, when the Texas Supreme Court announced the three-factor test for prohibited retroactivity, it cited these cases and noted that they would come out the same way under the three-factor test. See *Robinson*, 335 S.W.3d at 146 and n.122.

(c) Permitting a section 11.153 claim for revocation to be casually litigated by motion conflicts with the statute’s reference to “an action under this section.” Here there was no “action

⁸The Circuit Court also observed that the Texas Business Corporations Act “contained a fraudulent termination provision similar to section 11.153.” Order at 5, n.3. The Circuit Court was referring to a 2003 enactment, Texas Bus. Corp. Act, Art. 6:08, which was not in effect when Payne & Keller dissolved in 1986 or when unasserted claims by and against it were barred in 1989. Similarly, the Circuit Court mistakenly believed that, in arguing for a three-year bar on unasserted claims Appellants were asking to retroactively apply Tex. Bus. Org. Code § 11.356. Order at 6. To the contrary, a statute with a three-year bar was in effect at the time of the 1986 dissolution and of the subsequent 1989 bar date. Texas Bus. Corp. Act, Art. 7.12 (enacted in 1955).

under [¶ 11.153],” which would require that fraud be pled with specificity and other procedural protections that would apply before a court could make a substantive determination of fraud. Nor did the plaintiff’s complaint or the Receiver’s third-party complaint allege fraud or invoke section 11.153. Indeed, the Receiver did not even file a motion, but instead introduced section 11.153 in his opposition to Appellants’ motion to dissolve the receivership and dismiss third-party claims. An opposition memorandum is not “an action under” section 11.153. A separate action was required to plead the section 11.153 claim, and that action should have been brought in Texas.

(d) The Circuit Court’s finding of “at least[] constructive fraud“ chiefly depended on the fact that Payne & Keller sold its assets to another company and dissolved in 1986 and asbestos cases had frequently been filed against *other* companies beginning in 1981. Order at 3-5.⁹ The Circuit Court’s finding of a “prima facie” case of fraud based on that circumstance is breathtaking and insupportable, especially so because the Receiver never claimed that Payne & Keller lacked liability insurance to cover potential claims in the three years following dissolution. The Circuit Court’s finding implies that in any situation where a company dissolves in an industry where other companies are facing claims or may face claims in the future, that company commits fraud, even if it maintains sufficient insurance coverage to cover claims asserted within the statutory period after its dissolution. This kind of ruling is both unprecedented and bad policy, because it would

⁹The Circuit Court also referred to Payne & Keller’s exposure to liability in asbestos cases, Order at 5, but the Receiver had offered evidence of only one such case, filed and *dismissed* in 1986 pre-dissolution. The Court also referred to evidence 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.” Order at 5. The Court was referring to *In re Charter Co.*, 63 B.R. 568 (M.D. Fla. 1986). The *Charter* decision shows that Charter Oil faced more than a thousand claims but Payne & Keller faced at most 12 claims it might have to indemnify, and only three of those claimants filed proofs of claim in the bankruptcy case. Moreover, the parties in *In re Charter Co.* all agreed that Payne & Keller had adequate insurance to address those claims. The Receiver never alleged—much less presented evidence—that any of the three went unpaid.

mean that no similarly-situated company could dissolve without facing claims of fraud from unidentified and unknown plaintiffs who might surface decades in the future. And, as to Payne & Keller, it means that its dissolution in 1986 was fraudulent as to a plaintiff who would not sue until 2021. Although in the order currently on appeal, the Circuit Court announced a limited finding of “sufficient evidence” of fraud “at the pleading stage” and of a “prima facie showing” of fraud, the Court ultimately entered a final order revoking Payne & Keller’s dissolution at Childers’s urging based on the same evidence. (Appx. 12-18). It did so without an evidentiary hearing and while Appellants’ appeal was pending in the Court of Appeals on these same issues, in violation of Rule 205, SCACR, which provided that the Court of Appeals had “exclusive jurisdiction” over these matters.

Certifying this case for this Court’s review is not only important because the Order infringes on Texas’s sovereignty over its dissolved corporations. It will also give this Court the opportunity to correct a breakdown in the adversary process. In this case, Plaintiff Childers successfully obtained orders appointing Mr. Protopapas as receiver for long-dissolved foreign corporations with no property in the state, including Payne & Keller, and without any notice or opportunity for anyone to oppose the appointment.

The order appointing Mr. Protopapas required him to “take any and all steps necessary to protect the interests of Payne & Keller whatever they may be.” (Appx. 20 & 24). Ordinarily, a person tasked with protecting the interests of a dissolved corporate defendant would assert applicable defenses and try to limit the defendant’s liability for underlying claims. But that is not what happened here. Instead, the Receiver attacked Payne & Keller’s dissolution as fraudulent and sought to revive the company based chiefly on the fact that asbestos suits were filed against *other* companies—not Payne & Keller—in the 1980s. And he did not assert the Texas constitutional bar,

which precluded the retroactive application of later statutes to revoke Payne & Keller's dissolution and revive claims by or against it. Nor did he explain how it could be in the interest of Payne & Keller to waive its dissolution defense.¹⁰ Yet the Circuit Court accepted his arguments and ruled that lawsuits by and against Payne & Keller could continue.

The result of this ruling has been to both establish Payne & Keller's susceptibility to suit where it would not otherwise exist and to permit litigation over its insurance policies that would not otherwise be possible. This breakdown in the adversarial system is problematic and has led to unprecedented rulings that predictably will recur in other cases. This Court's intervention is required to protect against improper receiverships over defunct foreign corporations, in which the court-appointed Receiver undermines the corporations' defenses so that he can assert time-barred claims against their insurers.

CONCLUSION

For the above-stated reasons, Appellants respectfully move this Court to certify this case for review pursuant to Rule 204(b), SCACR.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

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¹⁰Remarkably, the Receiver has been so determined to forego the statute of repose's application to claims involving Payne & Keller that he has sued an attorney who appeared on behalf of Payne & Keller in a *Texas* case because that attorney asserted Texas's bar on claims not asserted within three years of dissolution. *Protopapas v. Baker*, Case No. 2023-CP-4005203 (Richland Cty. Cir. Ct.). He sued the defense counsel even though the assertion of the statute of repose defense in that case resulted in dismissal of Payne & Keller.

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Counsel for Third-Party Defendants *AIG Property Casualty Company, formerly known as Birmingham Fire 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.*

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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 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, formerly known as 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 the	Appellants.

**APPENDIX IN SUPPORT OF APPELLANTS' MOTION FOR CERTIFICATION BY
THE SUPREME COURT**

<u>Document</u>	<u>Page</u>
Order Denying Third-Party Defendant Travelers Casualty and Surety Company’s Motion to Dismiss Third-Party Claims and Dissolve the Payne & Keller Receivership (March 31, 2023)	1
Findings of Fact and Conclusions of Law on Plaintiffs’ Motion to Revoke the Termination of Payne & Keller Company (Oct. 5, 2023).....	11
Order (Aug. 27, 2021)	20
Order Granting the Receiver for Payne & Keller Company’s Motion to Clarify the Receiver Order (Sep. 30, 2021).....	24
Summons and Complaint (Jul. 14, 2021)	27
Plaintiff’s Motion to Appoint a Receiver Over Payne & Keller Company Pursuant to S.C. Code §15-65-10(4) (Aug. 23, 2021)	66
Amended Summons and Amended Third-Party Complaint (Feb. 23, 2022)	69
Third-Party Travelers Casualty and Surety Company’s Notice of Motion and Motion to Dismiss Third-Party Claims and Dissolve the Payne & Keller Receivership (Aug. 24, 2022).....	148
Notice of Motion and Joinder to Third-Party Defendant Travelers Casualty and Surety Company’s Motion to Dismiss Third-Party Claims and Dissolve the Payne & Keller Receivership (Sep. 19, 2022)	182
Articles of Incorporation of Payne & Keller, Inc. (March 13, 1961)	186
Articles of Merger of Payne and Keller, Inc., Payne & Keller off Louisiana, Inc., and Payne & Keller Gulf Coast, Inc. (Dec. 30, 1982)	193
Purchase Agreement (Oct. 7, 1986)	208
Articles of Amendment (Oct. 20, 1986)	285
Articles of Amendment (Oct. 24, 1986)	287
Articles of Dissolution (Dec. 3, 1986)	289

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), SCRCP, 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), SCRCPP, 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

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
Plaintiffs,	)	Coordinated Docket
	)	
v.	)	
	)	
DAVIS MECHANICAL	)	
CONTRACTORS, INC. , et al.	)	
	)	
Defendants.	)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW ON PLAINTIFFS' MOTION TO
REVOKE THE TERMINATION OF PAYNE & KELLER COMPANY**

Before the Court is Plaintiffs' Motion to Revoke the Termination of Payne & Keller Company ("Payne & Keller") pursuant to Section 11.153 of the Texas Business Organizations Code ("TBOC"). As the parties know, Payne & Keller has appealed this Court's refusal to terminate the appointment of a receiver and dismiss the underlying receivership. As set forth below this matter is not stayed on appeal. Moreover, the Court does find that, based on the evidence below, Payne & Keller committed, at a minimum, constructive fraud when dissolving and thus revocation of the termination of Payne & Keller pursuant to Section 11.153 of the Texas Business Organizations Code is appropriate.

STATUS OF RECEIVERSHIP ON APPEAL

At the outset, and following the hearing on this matter, this Court asked for further clarification of the status of this matter during the pendency of the appeal. Specifically, this Court requested clarification on whether it retained jurisdiction to issue orders in this matter and whether the matter or portions thereof were stayed. As a result, the receiver sought clarification

from the Court of Appeals. On September 8, 2023, the Court of Appeals issued an order clarifying that under the law and statutes of South Carolina, that while the appeal of this Court's orders proceeds, the Receivership action is not stayed. See Order, *Childers v. Davis Mechanical*, 2023-000727 (S.C. App., Sept. 8, 2023). That matter having been resolved, a decision on the question of whether a finding of constructive fraud as to Payne & Keller's Texas dissolution is appropriate.

BACKGROUND

On August 27, 2021, this Court entered an order appointing Peter D. Protopapas ("Receiver") over this dissolved Texas Corporation. The Receiver has conducted substantial research regarding Payne & Keller, including the reasons for Payne & Keller's purported 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.

After operating for decades building and maintaining major petrochemical and heavy industrial facilities, Payne & Keller abruptly dissolved just as a flood of asbestos-related personal injury claims were being filed (including in Texas) and immediately after the company learned it could face significant toxic tort liability as a creditor in a pending bankruptcy proceeding. Despite the existence of significant historic insurance to address these liabilities, there is evidence that Payne & Keller dissolved with an intent to avoid (or, at the very least, ignore)

these liabilities in direct violation of the statutory duties it owed creditors to make adequate provision for these liabilities.

For example, in 1981, Payne & Keller worked on an insulation replacement project for Archer Daniels Midland (“Archer Daniels”). Archer Daniels initially awarded this project to another firm. After its workers went on strike, Archer Daniels cancelled that initial contract and assigned the remainder of the work to Payne & Keller. Payne & Keller also worked on valve replacements at a Citgo Petroleum Corporation facility in Westlake/Lake Charles, Louisiana, *see Seeney v. Citgo Petroleum Corp.*, 848 F.2d 664, 666 (5th Cir. 1988), which has since been the subject of asbestos litigation. *See Bourque v. Anco Insulations, Inc.*, 25 So. 3d 1008 (La. App. 3 Cir. 2009).

By 1983, some of Payne & Keller’s excess-level insurance policies expressly excluded coverage for asbestos-related claims, and, in the years before its dissolution, Payne & Keller agreed, in its service contracts, to indemnify companies from financial responsibility for any property damage or personal injury claims arising from the work completed by Payne & Keller employees. *See, e.g., In re Charter Co.*, 63 B.R. 568, 570 (Bankr. M.D. Fla. 1986).

During the 1980s, Payne & Keller defended itself against a variety of toxic tort claims arising from occupational exposures. In 1983, the Louisiana Court of Appeals affirmed that Payne & Keller and its insurer Aetna Surety & Casualty Company (now a Travelers company, the movant here) were liable for a workers’ compensation claim brought by a former Payne & Keller painter and sandblaster who was permanently disabled by silicosis. *See Thornell v. Payne & Keller, Inc.*, 442 So.2d 536 (La. App. 1st Cir. 1983), *cert. denied*, 445 So. 2d 1231 (La. 1984). In 1986, Payne & Keller was also a defendant in a Texas asbestos case filed by Baron & Budd. The claims against Payne & Keller filed in that case were dismissed on May 21, 1986, but by then, asbestos-

related personal injury claims were filling court dockets. In the Eastern District of Texas alone, more than 3,000 asbestos-related personal injury claims had been filed by 1981. *See Hardy v. Johns-Manville Sales Corp.*, 509 F. Supp. 1353, 1354 (E.D. Tex. 1981), *reversed in part*, 681 F.2d 334 (5th Cir. 1982).

In the weeks before it began its hasty dissolution process, Payne & Keller was alleged to be liable for significant personal injury claims arising from toxic occupational exposures at a Houston refinery. In a bankruptcy proceeding filed by the Charter International Oil Company (“Charter”), Payne & Keller sought payment for services provided to Charter, which were secured by mechanic’s and materialmen’s liens against the refinery. *See In re Charter Co.*, 63 B.R. 568 (Bankr. M.D. Fla. 1986). Charter objected to the claim on the grounds that Payne & Keller had agreed to indemnify Charter for personal injury claims arising from the refinery work and that this indemnification obligation encompassed more than a thousand claims arising from occupational dioxin exposure. The bankruptcy court denied Charter’s objection, holding that the claims of the dioxin class had not been reduced to judgment and, as “unmatured” claims, could not be “offset” against Payne & Keller’s matured claim, unless Payne & Keller was insolvent. *Id.* at 571. No such allegation had been made. To the contrary, Payne & Keller asserted that it maintained insurance that would cover any indemnification obligation it owed to Charter. *Id.* at 570. The court ordered Charter to pay Payne & Keller’s bankruptcy claim.

Immediately after this decision was issued (on July 31, 1986), Payne & Keller began taking steps to dispose of its assets and dissolve. On September 29, 1986, Payne & Keller’s parent company executed a Specific Guaranty with Payne & Keller and the entity that purchased its assets, guaranteeing certain aspects of Payne & Keller’s performance under a purchase

and sale agreement. The sale was initially intended to close the next day, on September 30, 1986, but was delayed. In the interim, on October 1, 1986, Charter filed a proof of claim on behalf of the dioxin plaintiffs in the bankruptcy proceeding. Only six days later, Payne & Keller sold its assets and began completing the rest of its dissolution-related paperwork:

- On October 7, 1986, Payne & Keller executed its purchase and sale agreement, selling substantially all of its assets.
- Payne & Keller retained liabilities including those arising from its operations. Payne & Keller agreed to indemnify and hold its Buyer harmless for a range of claims, including “[c]laims 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.” (Exhibit H, Purchase & Sale Agreement, ¶ 9(c).) Payne & Keller’s parent agreed to maintain \$6 million in insurance coverage for these claims for two years after closing and capped its overall liability to the Buyer to \$5 million in the aggregate.
- On October 7, 1986, Payne & Keller changed its name to Frentex Enterprises Company (“Frentex”). Frentex filed its amended articles of incorporation on October 20, 1986.
- On October 27, 1986, Frentex adopted its articles of dissolution.
- On December 3, 1986, Frentex filed its articles of dissolution and certificate of dissolution representing that “[a]ll debts, obligations and liabilities of the corporation have been paid, discharged, or adequate provision has been made thereof.” (*Id.* at ¶ 5.) With thousands of potential dioxin claims pending, the limited parental guaranty was the only provision made for the payment of significant known current and decades of future liabilities.
- On January 16, 1987, the dioxin class claims in the Charter bankruptcy proceeding matured. The bankruptcy court entered an order approving settlement of the dioxin class claims against Charter. The court authorized an award of \$5.275 million to the 1,105 personal injury dioxin claimants, \$1 million to the State of Missouri, and \$5 million to the United States Environmental Protection Agency for their dioxin-related contamination claims. *See In re Charter Co.*, 81 B.R. 90, 91 (M.D. Fla. 1987).

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—

and reasonably expected that it would face for many decades in the future. Because the company therefore dissolved as a result of (at the very least) constructive fraud, the termination of its corporate existence should be revoked, and pursuant to section 11.153 of TBOC.

LAW AND ANALYSIS

Section 11.153 of the TBOC¹ authorizes a court to revoke a corporation's termination of its own corporate existence if that termination was "as a result of actual or constructive fraud." § 11.153(a) ("Notwithstanding any provision of this code to the contrary, a court may order the revocation of termination of an entity's existence that was terminated as a result of actual or constructive fraud."). Revocation of the corporate termination enables the corporate entity to pursue claims as if it were never dissolved. "[T]he revocation relates back to the effective date of the termination and takes effect as of that date . . . [and] the entity's status as an entity continues in effect as if the termination of the entity's existence had never occurred." *Id.* at §11.153(b)(1)–(2).

In interpreting another provision of the TBOC imposing liability for "actual fraud," the Texas Supreme Court addressed the distinction between "actual fraud" and "constructive fraud":

Actual fraud usually involves dishonesty of purpose or intent to deceive, whereas constructive fraud is the breach of some legal or equitable duty which, irrespective of moral guilt, the law declares fraudulent because of its tendency to deceive others, to violate confidence, or to injure public interests.

Castleberry v. Branscum KM, 721 S.W.2d 270, 273 (Tex. 1986), *superseded on other grounds by statute, as recognized in SSP Partners v. Gladstrong Invs. (USA) Corp.*, 275 S.W.3d 444,

¹ Of note, Section 1.053 of the TBOC states the "code applies to the conduct of affairs with foreign countries and the other states of the United States only to the extent permitted under the United States Constitution."

455 (Tex. 2008) (citations omitted). For example, dissolving a company after an attorney threatens to file a suit for damages suggests an intent to avoid liability and is evidence of actual fraud. See *Latham v. Burgher*, 320 S.W.3d 602, 610 (Tex. App.—Dallas 2010, no pet.) (“A rational juror could also have decided Latham’s conduct in dissolving the corporation in the face of Burgher’s claim represented dishonesty of purpose or an intent to deceive, i.e., actual fraud.”).

The story of Payne & Keller’s dissolution appears clear, there is ample evidence supporting a claim that, at the very least, constructive fraud occurred in connection with Payne & Keller’s dissolution. Events surrounding Payne & Keller’s dissolution suggest that the company 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.

The historical record developed to date suggests that Payne & Keller’s work included significant construction projects in industries and time periods where the use of asbestos-containing products was prevalent, including manufacturing facilities and petrochemical facilities.

Finally, no party opposing Plaintiffs’ motion has come forth with any evidence to suggest that the facts as set forth in Plaintiffs’ motion are not accurate. Indeed, the receiver sent discovery to numerous insurance carriers seeking to learn what they knew, or did not know, about Payne & Keller’s history. See Receiver’s Notice of Filing of Insurer Discovery Responses, June 30, 2023. In each of those discovery responses, the various insurance carriers disclaimed any knowledge of the facts surrounding Payne & Keller’s dissolution. Thus, to the extent that this Court thought

that further discovery on the issue of constructive fraud needed to take place, it already has. And the facts remain the same, and uncontroverted.

CONCLUSION

In light of the evidence presented and the clear implication of that historical evidence, it is clear to this Court that, at the time it dissolved, Payne & Keller, as a result of the circumstances facing it, was constructively aware that it was leaving behind thousands of workers whose injuries from asbestos and other toxic diseases would manifest themselves over the next decades. It is precisely this type of knowledge, constructive or otherwise, and the resulting fraud, that Texas law provides for the revocation of a company's dissolution. Therefore, for all of the reasons set forth above and after review of all the evidence, Plaintiffs' motion for revocation of the dissolution of Payne & Keller is GRANTED and this Court orders that Payne & Keller Company be reinstated as provided by Section 11.153 of the TBOC.

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 2023-10-04 15:09:19 page 9 of 9

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.	)	
	)	<u>ORDER</u>
DAVIS MECHANICAL	)	
CONTRACTORS, INC. , et al.	)	
	)	
Defendants.	)	

CAME ON _____, 2021, to be heard the Plaintiff's Motion to Appoint a Receiver Over Payne & Keller Company, pursuant to S.C. Code §15-65-10(4). This Court finds that the application is meritorious under the applicable statute because Payne & Keller Company ("Payne & Keller") dissolved and Payne & Keller, a Texas Corporation, has forfeited its charter and has further failed to answer this case and therefore, Plaintiff requests for an expedited ruling on this motion is appropriate and also granted.

Therefore, this Court hereby appoints Peter Protopapas be and hereby is appointed Receiver in this case pursuant to the South Carolina Law with the power and authority fully administer all assets of Payne & Keller, accept service on behalf of Payne & Keller, engage counsel on behalf of Payne & Keller and take any and all steps necessary to protect the interests of Payne & Keller whatever they may be. 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 failure to act of Payne & Keller's insurance carriers.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the following rights, authority and powers with respect to the Respondent's property, to: 1) collect all accounts receivable of Respondent and all rents due to the Respondent from any tenant; 2) to change locks to all premises at which any property is situated; 3) open any mail addressed to the defendant and addressed to any business owned by the Respondent; redirect the delivery of any mail addressed to the Respondent or any business of the Respondent, so that the mail may come directly to the receiver; 4) endorse and cash all checks and negotiable instruments payable to Respondent, except paychecks for current wages; 5) hire a real estate broker to sell any real property and mineral interest belonging to the Respondents; 6) hire any person or company to move and store the property of Respondent; 7) to insure any property belonging to the Respondents (but not the obligation); 8) obtain from any financial institution, bank, credit union, savings and loan or title company, credit bureau or any other third party, any financial records belonging to or pertaining to the Defendants; 9) obtain from any landlord, building owner or building manager where the Respondent or the Respondent's business is a tenant, copies of the Respondent's lease, lease application, credit application, payment history and copies of Respondent's checks for rent or other payments; 10) hire any person or company necessary to accomplish any right or power under this Order; and 11) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of Respondent may be situated, and to review and obtain copies of all documents related to same.

Based on the Court's experience in other receivership matters, and in an effort to streamline these proceedings, the Court expects the Receiver to investigate the existence of all insurance coverages potentially available to the company in receivership. The Receiver will provide potential insurers with lists of work sites, contractors, and insurance brokers and agents to facilitate

the insurers' searches for coverage (specifically including coverage provided to any related or subsidiary companies of the company in receivership or any company for whom the company in receivership did work as an "additional insured" under coverage written to another entity). The Court expects all insurers to comply with subpoenas issued by this Court and its Receiver in effectuating these thorough searches.

The Court further orders that, as the Receiver Court, that the Receiver or Payne & Keller Insulation, Inc. may not be sued outside this Court without obtaining the Receiver's consent or an order of this Court prior to doing so.

AND IT SO ORDERED this _____ day of _____ 2021.

Jean Hoefer Toal, Chief Justice of the Supreme Court of
South Carolina (Retired), acting as Circuit Court Judge



Richland Common Pleas

Case Caption: Lenora Childers , plaintiff, et al vs Davis Mechanical Contractors ,
defendant, et al

Case Number: 2021CP4003484

Type: Order/Appointment of Receiver

So Ordered

Jean H. Toal

Electronically signed on 2021-08-27 08:31:22 page 4 of 4

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

Plaintiff,

v.

**DAVIS MECHANICAL
CONTRACTORS, INC.**, et al.,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2021-CP-40-03484

**ORDER GRANTING THE RECEIVER
FOR
PAYNE & KELLER COMPANY'S
MOTION TO CLARIFY THE
RECEIVER ORDER**

This matter comes before the Court by way of the Receiver for Payne & Keller Company's Motion to Clarify Order Appointing a Receiver for Payne & Keller Company issued by this Court on August 27, 2021. The Receiver's Motion is hereby GRANTED.

Peter D. Protopapas (the "Receiver") was appointed for Payne & Keller Company on August 27, 2021. Since his appointment, the Receiver has discovered that Payne & Keller Company did business under a series of corporate names before its final dissolution. The entities now known to the Receiver to be related to the historic operations of Payne & Keller Company are as follows: 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 the "P&K Entities").

This Order hereby clarifies that the Receiver's Order of Appointment entered on August 27, 2021, which is incorporated herein by reference, including all of the Receiver's duties and protections, extends to all of the P&K Entities and their predecessors, successors, affiliates, parents, assigns, and subsidiaries that may be discovered in the future. This Order also clarifies

that the reference to Payne & Keller Insulation, Inc. on page 3 of the Order of Appointment is a scrivener's error and is amended to state that neither the Receiver nor the P&K Entities may be sued outside this Court without obtaining the Receiver's consent or an order of this court prior to doing so.

IT IS SO ORDERD.

[ELECTRONIC SIGNATURE ON FOLLOWING PAGE]



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 2021-09-30 08:46:25 page 3 of 3

LENORA CHILDERS, individually and as Personal Representative of the Estate of LEWIS C. CHILDERS,	)	C/A NO. 2021-CP-40-
	)	
	)	
	)	
Plaintiff,	)	In Re:
v.	)	Asbestos Personal Injury Litigation
	)	Coordinated Docket
DAVIS MECHANICAL CONTRACTORS, INC.	)	
	)	
FLAME REFRACTORIES, INC.	)	<u>SUMMONS</u>
	)	
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.	)	
	)	

SUMMONS

TO DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action,
a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint

upon the Plaintiff's counsel, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service. If you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

s/Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

Jamie D. Rutkoski (SC Bar No. 103270)

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and

Charles W. Branham, III (TX Bar No. 24012323)

To Be Admitted *Pro Hac Vice*

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ATTORNEYS FOR PLAINTIFF

July 14, 2021

Columbia, South Carolina.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT

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
f/k/a PAYNE AND KELLER INC.

SFB, INCORPORATED
f/k/a FORD, BACON & DAVIS
INCORPORATED

STAFFORD INSULATION COMPANY

STANDARD INSULATION COMPANY OF
N. C., INC.

UNITED CONSTRUCTION CO. OF ROME,
INC.

Defendants.

C/A NO. 2021-CP-40-_____

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

Deceased Lung Cancer

COMPLAINT

(Jury Trial Demanded)

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff, LENORA CHILDERS, individually and as Personal Representative of the Estate of LEWIS C. CHILDERS, sues the named Defendants for compensatory and punitive damages, by and through her attorneys, and come before this court and alleges as follows:

GENERAL ALLEGATIONS

1. This action is brought pursuant to the Wrongful Death Act, S.C. Gen. Stat. 15-51-10 *et seq.*, for the wrongful death of the Decedent, Lewis C. Childers, on behalf of all persons entitled to recover damages.

2. This Court has personal jurisdiction over Defendants because Plaintiff's claims arise from Defendants' conduct in:

- (a) Transacting business in this State, including the sale, supply, purchase, and/or use of asbestos and/or asbestos-containing products, within this State;
- (b) Contracting to supply services or things in the State;
- (c) Commission of a tortious act in whole or in part in this State;
- (d) Having an interest in, using, or possessing real property in this State; and/or
- (e) Entering into a contract to be performed in whole or in part by either party in this State.

3. Each Defendant, or its predecessors in interest, that manufactured, sold, and/or distributed asbestos-containing products or raw asbestos materials for use in South Carolina and other states at times relevant to this action are referred to herein as "Product Defendants." At all times relevant to this action, the Product Defendants and the predecessors of the Product Defendants for whose actions the Product Defendants are legally responsible, were engaged in the manufacture, sale and distribution of asbestos-containing products and raw materials. Defendants that owned and/or controlled the work sites where Decedent Lewis C. Childers experienced

occupational exposure as a result of working with asbestos-containing equipment in his immediate vicinity are referred to herein as the “Premises Defendants.”

4. Plaintiff’s claims against the Product Defendants, as defined herein, arise out of Defendants’ purposeful efforts to serve directly or indirectly the market for their asbestos and/or asbestos-containing products in this State, either through direct sales or through utilizing an established distribution channel with the expectation that their products would be purchased and/or used within South Carolina.

5. Plaintiff’s claims against the Premises Defendants, as defined herein, arise out of Defendants’ ownership and/or control of real property located in South Carolina and North Carolina, and the purchase and use of asbestos-containing products on their premises located in South Carolina and North Carolina, and/or contracting with the employer of Decedent Lewis C. Childers in South Carolina and North Carolina for Decedent and others to cross state lines to work on Defendant’s premises.

6. All of the named Defendants are corporations who purposefully availed themselves of the privilege of doing business in this State, and who’s substantial and/or systematic business in South Carolina exposed Decedent Lewis C. Childers to asbestos in this State, subjecting them to the jurisdiction of the South Carolina courts pursuant to the South Carolina Long-Arm Statute and the United States Constitution.

7. Decedent Lewis C. Childers’ cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Decedent Lewis C. Childers’ lung cancer and other related injuries and therefore under South Carolina law, is the legal cause of Decedent’s injuries and damages.

8. Decedent was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

9. Decedent Lewis C. Childers worked with, or in close proximity to others who worked with, asbestos-containing materials including but not limited to asbestos-containing products and other asbestos-containing materials manufactured and/or sold by Defendants identified above.

10. Each of the named Defendants is liable for damages stemming from its own tortious conduct or the tortious conduct of an “alternate entity” as hereinafter defined. Defendants are liable for the acts of their “alternate entity” and each of them, in that there has been a corporate name change, Defendant is the successor by merger, by successor in interest, or by other acquisition resulting in a virtual destruction of Plaintiff’s remedy against each such “alternate entity”; Defendants, each of them, have acquired the assets, product line, or a portion thereof, of each such “alternate entity”; such “alternate entities” have acquired the assets, product line, or a portion thereof of each such Defendant; Defendants, and each of them, caused the destruction of Plaintiff’s remedy against each such “alternate entity”; each such Defendant has the ability to assume the risk-spreading role of each such “alternate entity;” and that each such defendant enjoys the goodwill originally attached to each “alternate entity.”

DEFENDANT	ALTERNATE ENTITY
PAYNE & KELLER COMPANY	PAYNE AND KELLER INC.
SFB, INCORPORATED	FORD, BACON & DAVIS INCORPORATED

11. Plaintiff has been informed and believes, and thereon alleges, that at all times herein mentioned, Defendants or their “alternate entities” were or are corporations, partnerships, unincorporated associations, sole proprietorships and/or other business entities organized and existing under and by virtue of the laws of the State of South Carolina, or the laws of some other state or foreign jurisdiction, and that said Defendants were and/or are authorized to do business in

the State of South Carolina, and that said Defendants have regularly conducted business in the State of South Carolina.

12. Plaintiff has been informed and believes, and thereon alleges, that progressive lung disease, lung cancer and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

13. As a direct and proximate result of the conduct as alleged within, Decedent Lewis C. Childers suffered permanent injuries, including, but not limited to, lung cancer and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

14. As a direct and proximate result of the conduct as hereinafter alleged, Decedent Lewis C. Childers incurred liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiff at this time. Plaintiff requests leave to supplement this Court and all parties accordingly when the true and exact cost of Decedent Lewis C. Childers' medical treatment is ascertained.

15. As a further direct and proximate result of the conduct as hereinafter alleged, Decedent Lewis C. Childers incurred, and will incur, loss of profits and commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiff. Plaintiff prays leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

16. Plaintiff hereby disclaims each and every claim or cause of action which does or may arise from any United States Marine Corps service or on any federal enclave. This disclaimer is not related solely to actions taken by or at the direction of a federal officer, but is, rather broader.

Plaintiff is not making any claims and are not alleging any causes of action against any entity for any asbestos exposure of any kind which occurred as a result of Decedent Lewis C. Childers' United States Marine Corps service. Moreover, Plaintiff is further disclaiming each and every claim or cause of action arising from any exposure to asbestos as a result of Lewis C. Childers' presence on or at any federal enclave. Plaintiff further disclaims each and every claim or cause of action arising under the United States Constitution and under any Federal Law or Regulation. Finally, Plaintiff disclaims each and every claim or cause of action which may be asserted under federal admiralty or maritime law. Courts across the Country have found that such disclaimers are proper and within the province of the Plaintiff to disclaim. Any removal by any defendant on the basis of the disclaimed claims will result in a motion for sanctions and seeking attorneys' fees.

THE PARTIES

17. Plaintiff Lenora Childers is currently a resident of the State of North Carolina. Decedent Lewis C. Childers was exposed to asbestos during the course of his career at various job sites, including but not limited to, locations in South Carolina and North Carolina.

18. The Plaintiff was appointed as the Personal Representative of the Estate of Lewis C. Childers (deceased) by the Probate Court of Cherokee County, South Carolina on or about June 18, 2020.

19. Defendant, **DAVIS MECHANICAL CONTRACTORS, INC.**, was a South Carolina corporation with its principal place of business in North Carolina. At all times material hereto, DAVIS MECHANICAL CONTRACTORS, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. DAVIS MECHANICAL

CONTRACTORS, INC. is sued as a Product Defendant. DAVIS MECHANICAL CONTRACTORS, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Decedent Lewis C. Childers, to lethal doses of asbestos. Plaintiff's claims against DAVIS MECHANICAL CONTRACTORS, INC. arise out of this Defendant's business activities in the State of South Carolina.

20. Defendant, **FLAME REFRACTORIES, INC.**, was a Florida corporation with its principal place of business in North Carolina. At all times material hereto, FLAME REFRACTORIES, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. FLAME REFRACTORIES, INC. is sued as a Product Defendant. FLAME REFRACTORIES, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Decedent Lewis C. Childers, to lethal doses of asbestos. Plaintiff's claims against FLAME REFRACTORIES, INC. arise out of this Defendant's business activities in the State of South Carolina.

21. Defendant, **GENERAL BOILER CASING COMPANY, INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, GENERAL BOILER CASING COMPANY, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials

at numerous jobsites throughout the southeastern United States. GENERAL BOILER CASING COMPANY, INC. is sued as a Product Defendant. GENERAL BOILER CASING COMPANY, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Decedent Lewis C. Childers, to lethal doses of asbestos. Plaintiff's claims against GENERAL BOILER CASING COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

22. Defendant, **HEFCO, INC.**, was a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, HEFCO, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. HEFCO, INC. is sued as a Product Defendant. HEFCO, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Decedent Lewis C. Childers, to lethal doses of asbestos. Plaintiff's claims against HEFCO, INC. arise out of this Defendant's business activities in the State of South Carolina.

23. Defendant, **J. R. DEANS COMPANY, INC.**, was a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, J. R. DEANS COMPANY, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. J. R. DEANS COMPANY, INC. is sued as a Product Defendant.

J. R. DEANS COMPANY, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Decedent Lewis C. Childers, to lethal doses of asbestos. Plaintiff's claims against J. R. DEANS COMPANY, INC. arise out of this Defendant's business activities in the State of South Carolina.

24. Defendant, **PAYNE & KELLER COMPANY** f/k/a PAYNE AND KELLER INC., was a Texas corporation with its principal place of business in Texas. At all times material hereto, PAYNE & KELLER COMPANY manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. PAYNE & KELLER COMPANY is sued as a Product Defendant. PAYNE & KELLER COMPANY is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Decedent Lewis C. Childers, to lethal doses of asbestos. Plaintiff's claims against PAYNE & KELLER COMPANY arise out of this Defendant's business activities in the State of South Carolina.

25. Defendant, **SFB, INCORPORATED** f/k/a FORD, BACON & DAVIS INCORPORATED, was a New Jersey corporation with its principal place of business in Texas. At all times material hereto, SFB, INCORPORATED manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. SFB, INCORPORATED is sued as a Product Defendant. SFB, INCORPORATED is also sued for the work it did at the various

industrial sites in the southeastern United States which exposed tens of thousands of people, including the Decedent Lewis C. Childers, to lethal doses of asbestos. Plaintiff's claims against SFB, INCORPORATED arise out of this Defendant's business activities in the State of South Carolina.

26. Defendant, **STAFFORD INSULATION COMPANY**, was a South Carolina corporation with its principal place of business in South Carolina. At all times material hereto, STAFFORD INSULATION COMPANY manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. STAFFORD INSULATION COMPANY is sued as a Product Defendant. STAFFORD INSULATION COMPANY is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Decedent Lewis C. Childers, to lethal doses of asbestos. Plaintiff's claims against STAFFORD INSULATION COMPANY arise out of this Defendant's business activities in the State of South Carolina.

27. Defendant, **STANDARD INSULATION COMPANY OF N.C., INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, STANDARD INSULATION COMPANY OF N.C., INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. STANDARD INSULATION COMPANY OF N.C., INC. is sued as a Product Defendant.

STANDARD INSULATION COMPANY OF N.C., INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Decedent Lewis C. Childers, to lethal doses of asbestos. Plaintiff's claims against STANDARD INSULATION COMPANY OF N.C., INC. arise out of this Defendant's business activities in the State of South Carolina.

28. Defendant, **UNITED CONSTRUCTION CO. OF ROME, INC.**, was a North Carolina corporation with its principal place of business in North Carolina. At all times material hereto, UNITED CONSTRUCTION CO. OF ROME, INC. manufactured, processed, imported, converted, compounded, supplied, installed, replaced, repaired, used, and/or retailed substantial amounts of asbestos and/or asbestos-containing products, materials, or equipment, including, but not limited to, the installation and removal of asbestos-containing thermal insulation and materials at numerous jobsites throughout the southeastern United States. UNITED CONSTRUCTION CO. OF ROME, INC. is sued as a Product Defendant. UNITED CONSTRUCTION CO. OF ROME, INC. is also sued for the work it did at the various industrial sites in the southeastern United States which exposed tens of thousands of people, including the Decedent Lewis C. Childers, to lethal doses of asbestos. Plaintiff's claims against UNITED CONSTRUCTION CO. OF ROME, INC. arise out of this Defendant's business activities in the State of South Carolina.

BACKGROUND FACTS

29. Decedent Lewis C. Childers brings this action for monetary damages as a result of contracting an asbestos-related disease.

30. Decedent Lewis C. Childers was diagnosed with lung cancer on or about April 2, 2020.

31. Decedent Lewis C. Childers' lung cancer was caused by his exposure to asbestos during the course of his employment.

32. During his work history, Decedent was exposed to Defendants' asbestos-containing products through his work as an insulator and maintenance technician from approximately 1960s to 2000s at various commercial and industrial jobsites located primarily in South Carolina and North Carolina. Decedent performed a variety of tasks throughout the facilities where he worked, including but not limited to, the removal and installation of asbestos-containing insulation and materials, construction and/or repair of boilers. Additionally, the maintenance technicians inspected, tested and adjusted various equipment including pumps, turbines, heat exchangers, pumps, fans and similar equipment. They coordinated their work with other maintenance personnel and worked in confined spaces. All of these activities exposed Decedent to asbestos and asbestos-dust.

33. During his work history, Decedent was further exposed through his work around other trades including carpenters, mechanics, pipefitters, boilermakers, insulators, and electricians. Decedent worked near and closely to a variety of tradesmen working on asbestos-containing pipe insulation, generators, turbines, boilers, valves, steam traps, pumps, furnaces, and other equipment, as well as tradesmen mixing, cutting, and installing asbestos-containing insulation and other products. All of these activities exposed Decedent to asbestos and asbestos-dust.

34. Decedent was exposed to Defendants' asbestos-containing products while employed as an insulator and maintenance technician for Duke Energy Corporation (Duke Power) at various industrial locations, including but not limited to the following:

- Oconee Nuclear plant – Seneca, SC
- Lee Steam plant – Pelzer, SC
- Catawba Nuclear Plant – York, SC
- Dan River Steam plant – Eden, SC
- Belews Creek plant – Walnut Cove, NC
- Riverbend Steam plant – Mount Holly, NC
- Cliffside Steam plant – Cliffside, NC
- Allen Steam plant – Belmont, NC

- Marshall Steam plant – Terrell, NC
- McGuire Nuclear plant – Huntersville, NC

35. Decedent was exposed to Defendants' asbestos-containing products while employed as an insulator for Daniels Construction at various industrial locations, including but not limited to the following:

- Bowater paper mill – Catawba, SC
- Hoechst Celanese a/k/a Fiber Industries – Darlington, SC
- Hoechst Celanese a/k/a Fiber Industries – Greenville, SC
- Hoechst Celanese a/k/a Fiber Industries – Spartanburg – SC
- Hoechst Celanese a/k/a Fiber Industries – Salisbury, NC

36. Decedent was exposed to Defendants' asbestos-containing products while employed as an insulator for Presnell Insulation Co. Inc. at various industrial locations, including but not limited to the following:

- Bowater paper mill – Catawba, SC
- Cannon Mills – Kannapolis, NC
- Cone Mills – Concord, NC
- Cone Mills, Kannapolis, NC
- various cotton mills in SC and NC

37. Decedent was exposed to Defendants' asbestos-containing products while employed as an insulator for Cooks Insulation Co. Inc. at various industrial locations, including but not limited to the following:

- Milliken – Cypress plant – Blacksburg, SC
- Milliken – Gerrish plant – Pendleton, SC
- various cotton mills in SC and NC

38. During the course of Decedent Lewis C. Childers' employment at the location(s) mentioned above, during other occupational work projects, and in other ways, Decedent was exposed to and inhaled, ingested, or otherwise absorbed asbestos fibers emanating from certain products he was working around.

39. Decedent Lewis C. Childers' cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Decedent Lewis C. Childers' lung cancer and other related injuries and therefore under South Carolina law, is the legal cause of Decedent's injuries and damages.

40. Decedent Lewis C. Childers was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

41. Decedent has been informed and believes, and thereon alleges, that progressive lung disease, lung cancer and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

42. As a direct and proximate result of the conduct as alleged within, Decedent Lewis C. Childers suffered permanent injuries, including, but not limited to, lung cancer and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

43. As a direct and proximate result of the conduct as hereinafter alleged, Decedent Lewis C. Childers incurred liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiff at this time. Plaintiff requests leave to supplement this Court and all parties accordingly when the true and exact cost of Decedent Lewis C. Childers' medical treatment is ascertained.

44. As a further direct and proximate result of the conduct as hereinafter alleged, Decedent incurred loss of profits and commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiff. Plaintiff

requests leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

FOR A FIRST CAUSE OF ACTION
(Product Liability: Negligence)

Plaintiff Complains of Defendants for a Cause of Action for Negligence Alleging as Follows:

45. Plaintiff incorporates herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

46. At all times herein mentioned, each of the named Defendants was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as “alternate entities,” engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely asbestos, other products containing asbestos, and products manufactured for foreseeable use with asbestos products.

47. At all times herein mentioned, Defendants, and/or their “alternate entities” singularly and jointly, negligently and carelessly researched, manufactured, fabricated, designed, modified, tested or failed to test, abated or failed to abate, inadequately warned or failed to warn of the health hazards, failed to provide adequate use instructions for eliminating the health risks inherent in the use of the products, labeled, assembled, distributed, leased, bought, offered for sale, supplied, sold, inspected, serviced, installed, contracted for installation, repaired, marketed, warranted, rebranded, manufactured for others, packaged and advertised, a certain product, namely

asbestos, other products containing asbestos, and products manufactured for foreseeable use with asbestos products, in that said products caused personal injuries to Decedent Lewis C. Childers and others similarly situated, (hereinafter collectively called “exposed persons”), while being used for their intended purpose and in a manner that was reasonably foreseeable.

48. The asbestos and asbestos-containing products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants’ asbestos and asbestos-containing products from causing Decedent Lewis C. Childers’ lung cancer, due to an inability of any asbestos-alternative to penetrate the pleural lining of Decedent Lewis C. Childers’ lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their “alternate entities.” Said alternatives were of comparable utility to the asbestos or asbestos-containing products of Defendants and/or their “alternate entities.” The gravity of the potential harm resulting from the use of Defendants’ asbestos or asbestos-containing products, and the likelihood such harm would occur to users of its products, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use by Decedent Lewis C. Childers. Defendants and/or their “alternate entities” had a duty to exercise due care in the pursuance of the activities mentioned above and Defendants, each of them, breached said duty of due care.

49. Defendants and/or their “alternate entities” knew or should have known, and intended that the aforementioned asbestos and asbestos-containing products would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would

break, crumble or be otherwise damaged; and/or that such products would be used for insulation, construction, plastering, fireproofing, soundproofing, automotive, aircraft and/or other applications, including, but not limited to grinding sawing, chipping, hammering, scraping, sanding, breaking, removal, “rip-out,” and other manipulation, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling by exposed persons, including Decedent Lewis C. Childers, would use or be in proximity to and exposed to said asbestos fibers.

50. At all times relevant, Defendants and/or their “alternate entities” were aware of their asbestos and asbestos-containing products’ defect but failed to adequately warn Decedent Lewis C. Childers, Decedent’s family members or others in their vicinity, as well as failed to adequately warn others of the known hazards associated with their products and/or failed to recall or retrofit their products. A reasonable manufacturer, distributor, or seller of Defendants’ products would have, under the same or similar circumstances, adequately warned of the hazards associated with their products.

51. Decedent Lewis C. Childers, Decedent’s family members and others in their vicinity used, handled or were otherwise exposed to asbestos and asbestos-containing products referred to herein in a manner that was reasonably foreseeable. Decedent’s exposure to asbestos and asbestos-containing products occurred at various locations as set forth in this Complaint.

52. Decedent Lewis C. Childers suffers from lung cancer, a cancer related to exposure to asbestos and asbestos-containing products. Decedent Lewis C. Childers was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury or disease.

53. Defendants’ conduct and defective products as described in this cause of action were a direct cause of Decedent Lewis C. Childers’ injuries, and all damages thereby sustained by

Decedent Lewis C. Childers. Plaintiff therefore seeks all compensatory damages in order to make them whole, according to proof.

54. Furthermore, the conduct of Defendants and/or their “alternate entities” in continuing to market and sell products which they knew were dangerous to Decedent Lewis C. Childers and the public without adequate warnings or proper use instructions was done in a conscious disregard and indifference to the safety and health of Decedent Lewis C. Childers and others similarly situated.

55. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, failing to recall or retrofit, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos and asbestos-containing products or products manufactured for foreseeable use with asbestos products, Defendants and/or their “alternate entities” did so with conscious disregard for the safety of “exposed persons” who came in contact with asbestos and asbestos-containing products, in that Defendants and/or their “alternate entities” had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos, asbestos-containing products or products manufactured for foreseeable use with asbestos products, including, but not limited to, asbestosis, lung cancer, lung cancer, and other lung damages. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their “alternate entities.”

56. Defendants and their “alternate entities” were aware that members of the general public and other “exposed persons,” who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos, asbestos-containing products, or products manufactured for foreseeable use with asbestos products, could

cause injury, and Defendants, and their “alternate entities,” each of them, knew that members of the general public and other “exposed persons,” who came in contact with asbestos and asbestos-containing products or products manufactured for foreseeable use with asbestos products, would assume, and in fact did assume, that exposure to asbestos and asbestos-containing products was safe, when in fact said exposure was extremely hazardous to health and human life.

57. The above-referenced conduct of Defendants, and their “alternate entities,” was motivated by the financial interest of Defendants, their “alternate entities,” and each of them, in the continuing, uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, assembly, distribution, lease, purchase, offer for sale, supply, sale, inspection, installation, contracting for installation, repair, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos, asbestos-containing products and products manufactured for foreseeable use with asbestos products. Defendants, their “alternate entities,” and each of them consciously disregarded the safety of “exposed persons” in pursuit of profit. Defendants were consciously willing and intended to permit asbestos and asbestos-containing products to cause injury to “exposed persons” without warning them of the potential hazards and further induced persons to work with and be exposed thereto, including Decedent Lewis C. Childers.

58. Decedent Lewis C. Childers and other exposed persons did not know of the substantial danger of using Defendants’ asbestos, asbestos containing-products, and products manufactured for foreseeable use with asbestos products. The dangers inherent in the use of these products were not readily recognizable by Decedent Lewis C. Childers or other exposed persons. Defendants and/or their “alternate entities” further failed to adequately warn of the risks to which Decedent and others similarly situated were exposed.

59. Defendants and/or their “alternate entities” are liable for the fraudulent, oppressive, and malicious acts of their “alternate entities,” and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and had full knowledge of, or should have known of, the acts of each of their “alternate entities” as set forth herein.

60. The herein-described conduct of Defendants, and their “alternate entities,” was and is willful, malicious, fraudulent, and outrageous and in conscious disregard and indifference to the safety and health of persons foreseeably exposed. Plaintiff, for the sake of example and by way of punishing said Defendants, seeks punitive damages according to proof against all defendants.

FOR A SECOND CAUSE OF ACTION

(Product Liability: Strict Liability - S.C. Code Ann. § 15-73-10, et seq.)

As a Second and Distinct Cause of Action for Strict Liability, Plaintiff Complains of Defendants, and Alleges as Follows:

61. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs.

62. Decedent Lewis C. Childers suffered from lung cancer, a cancer related to exposure to asbestos, asbestos-containing products and products manufactured for foreseeable use with asbestos products. Decedent Lewis C. Childers was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

63. The Defendants’ conduct and defective products as described above were a direct cause of Decedent Lewis C. Childers’ injuries, and the injuries and damages thereby sustained by Plaintiff.

64. Furthermore, the Defendants’ conduct and that of their “alternate entities” in continuing to market and sell products which they knew were dangerous to Decedent Lewis C. Childers and the public without adequate warnings or proper use instructions, was done in a

conscious disregard and indifference to the safety and health of Decedent Lewis C. Childers and others similarly situated.

65. Defendants and/or their “alternate entities” knew or should have known, and intended that the aforementioned asbestos and products containing asbestos would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for insulation, construction, plastering, fireproofing, soundproofing, automotive, aircraft and/or other applications, including, but not limited to grinding, sawing, chipping, hammering, scraping, sanding, breaking, removal, “rip-out,” and other manipulation, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling, “exposed persons,” including Decedent, would use or be in proximity to and exposed to said asbestos fibers.

66. Decedent Lewis C. Childers, Decedent’s family members, and others in their vicinity used, handled or were otherwise exposed to asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, referred to herein in a manner that was reasonably foreseeable. Decedent Lewis C. Childers’ exposure to asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products occurred at various locations as set forth in this Complaint.

67. Defendants and/or their “alternate entities” knew and intended that the above-referenced asbestos and asbestos-containing products would be used by the purchaser or user without inspection for defects therein or in any of their component parts and without knowledge of the hazards involved in such use.

68. The asbestos and asbestos-containing products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing

product. Said alternatives would have prevented Defendants' asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products from causing Decedent Lewis C. Childers' lung cancer, due to an inability of any asbestos-alternative to penetrate the pleural lining of Decedent Lewis C. Childers' lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their "alternate entities." Said alternatives were of comparable utility to the asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products of Defendants and/or their "alternate entities." The gravity of the potential harm resulting from the use of Defendants' asbestos or asbestos-containing products, and the likelihood such harm would occur, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use.

69. The defect existed in the said products at the time they left the possession of defendants, and/or their "alternate entities," and each of them. Said products were intended to reach the ultimate consumer in the same condition as it left defendants. Said products did, in fact, cause personal injuries, including lung cancer, asbestosis, other lung damage, and cancer to "exposed persons," including Decedent Lewis C. Childers herein, while being used in a reasonably foreseeable manner, thereby rendering the same defective, unsafe and dangerous for use.

70. Decedent Lewis C. Childers and other exposed persons did not know of the substantial danger of using Defendants' asbestos, asbestos-containing products, or products manufactured for foreseeable use with asbestos products. The dangers inherent in the use of these products were not readily recognizable by Decedent or other exposed persons. Said Defendants

and/or their “alternate entities” further failed to adequately warn of the risks to which Decedent Lewis C. Childers and others similarly situated were exposed.

71. Defendants’ defective products as described above were a direct cause of Decedent Lewis C. Childers’ injuries, and the damages thereby sustained.

72. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, Defendants, and/or their “alternate entities,” and each of them, did so with conscious disregard for the safety of Decedent Lewis C. Childers and other exposed persons who came in contact with the asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products, in that Defendants and/or their “alternate entities” had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products, including, but not limited to, lung cancer, asbestosis, other lung damages and cancers. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their “alternate entities.”

73. Defendants and/or their “alternate entities” were aware that members of the general public and other exposed persons, who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos or asbestos-containing products or products manufactured for foreseeable use with asbestos products could cause injury. Defendants and/or their “alternate entities” further knew that members of the general public and other exposed persons, who came in contact with asbestos, asbestos-containing

products, and products manufactured for foreseeable use with asbestos products would assume, and in fact did assume, that exposure to asbestos and asbestos- containing products was safe, when in fact exposure was extremely hazardous to health and human life.

74. The above-referenced conduct of Defendants and/or their “alternate entities” motivated by the financial interest of Defendants, their “alternate entities,” and each of them, in the continuing and uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, assembly, distribution, lease, purchase, offer for sale, supply, sale, inspection, installation, contracting for installation, repair, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products. Defendants and/or their “alternate entities” consciously disregarded the safety of “exposed persons” in their pursuit of profit and in fact consciously intended to cause injury to Decedent Lewis C. Childers and other exposed persons and induced persons to work with, be exposed to, and thereby injured by asbestos, asbestos-containing products, and products manufactured for foreseeable use with asbestos products.

75. Defendants are liable for the fraudulent, oppressive, and malicious acts of their “alternate entities,” and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and knew, or should have known of, the acts of each of their “alternate entities” as set forth herein.

76. The conduct of said defendants, their “alternate entities,” and each of them as set forth in this Complaint, was and is willful, malicious, fraudulent, outrageous and in conscious disregard and indifference to the safety and health of exposed persons. Plaintiff, for the sake of example and by way of punishing said Defendants, seeks punitive damages according to proof against all Defendants.

77. At all times herein mentioned, each of the named Defendants was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as “alternate entities,” engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely asbestos, other products containing asbestos and products manufactured for foreseeable use with asbestos products.

FOR A THIRD CAUSE OF ACTION
(Vicarious Liability of Defendants Based upon Respondeat Superior)

As a Third Distinct Cause of Action Against Defendants, Plaintiff Brings this Third Cause of Action for Vicarious Liability of Product and Premises Defendants Based upon Respondeat Superior and Alleges as Follows:

78. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs.

79. Prior to and during all relevant times Defendants and/or their “alternate entities” employed workers (hereinafter “employees”) in areas where defendants owned, maintained, controlled, managed and/or conducted business activities where Decedent worked and/or spent time as alleged above.

80. At all times herein mentioned, Defendants’ employees frequently encountered asbestos-containing products, materials, and debris during the course and scope of their employment, and during their regular work activities negligently disturbed asbestos-containing materials to which Decedent Lewis C. Childers was exposed.

81. Employees handling and disturbing asbestos-containing products in Decedent Lewis C. Childers' vicinity were the agents and employees of defendants and at all times relevant were subject to the control of Defendants with respect to their acts, labor, and work involving (a) the removal, transport, installation, cleaning, handling, and maintenance of asbestos-containing products, materials, and debris, and (b) the implementation of safety policies and procedures. Defendants controlled both the means and manner of performance of the work of their employees as described herein.

82. Employees handling and disturbing asbestos-containing products in Decedent Lewis C. Childers', Decedent's family members and others' vicinity received monetary compensation from Defendants in exchange for the work performed and these employees performed the work in the transaction and furtherance of Defendants' businesses.

83. Harmful asbestos fibers were released during Defendants' employees' use, handling, breaking, or other manipulation of asbestos-containing products and materials.

84. Once released, the asbestos fibers contaminated the clothes, shoes, skin, hair, and body parts of those exposed, including Decedent Lewis C. Childers, who also inhaled those fibers, and on the surfaces of work areas, where further activity caused the fibers to once again be released into the air and inhaled by Decedent Lewis C. Childers.

85. The asbestos and asbestos-containing materials were unsafe in that handling and disturbing products containing asbestos causes the release of asbestos fibers into the air onto surrounding surfaces, and onto persons in the area. The inhalation of asbestos fibers can cause serious disease and death.

86. Defendants' employees' use, handling and manipulation of asbestos-containing materials, as required by their employment and occurring during the course and scope of their

employment, did in fact, cause personal injuries, including lung cancer and other lung damage, to exposed persons including Decedent Lewis C. Childers.

87. Defendants' employees were negligent in their use, handling and manipulation of said products in that they failed to isolate their work with asbestos and/or to suppress asbestos fibers from being released into the air and surrounding areas. They also failed to take appropriate steps to learn how to prevent exposure to asbestos, failed to warn and/or adequately warn Decedent that he was being exposed to asbestos, failed to adequately warn Decedent Lewis C. Childers of the harm associated with his exposure to asbestos, and provide him with protection to prevent his inhalation of asbestos.

88. Defendants' employees knew or should have known that failure to take such steps would result in exposure to bystanders including Decedent Lewis C. Childers.

89. Defendants' employees owed Decedent Lewis C. Childers a duty to exercise due care and diligence in their activities while he was lawfully on the premises so as not to cause him harm.

90. Defendants' employees breached this duty of care as described above.

91. At all times mentioned, Decedent Lewis C. Childers was unaware of the dangerous condition and unreasonable risk of personal injury created by Defendants' employees' use of and work with asbestos-containing products and materials.

92. As a direct result of the Defendants' employees conduct, Decedent Lewis C. Childers' exposure to asbestos, asbestos-containing materials, and products manufactured for foreseeable use with asbestos products, each individually and together, caused severe and permanent injury to Decedent Lewis C. Childers and the damages and injuries as complained of herein by Plaintiff.

93. The risks herein alleged, and the resultant damages suffered by the Decedent Lewis C. Childers were typical of or broadly incidental to Defendants' business enterprises. As a practical matter, the losses caused by the torts of Defendants' employees as alleged were sure to occur in the conduct of Defendants' business enterprises. Nonetheless, Defendants engaged in, and sought to profit by, their business enterprises without exercising due care as described in this Complaint, which, on the basis of past experience, involved harm to others as shown through the torts of employees.

94. Based on the foregoing, Defendants as the employers of said employees are vicariously liable under the doctrine of respondeat superior for all negligent acts and omissions committed by their employees in the course and scope of their work that caused harm to Decedent Lewis C. Childers.

FOR A FOURTH CAUSE OF ACTION
(Premises Liability: Negligence as to Premises Owner/Contractor)

As a Fourth Distinct Cause of Action for General Negligence, Plaintiff Complains of Premises Defendants, and Alleges as Follows:

95. Plaintiff incorporates by reference, the preceding paragraphs as if fully set forth herein.

96. Prior to and during all relevant times, the Defendants and/or their "alternate entities" employed workers in areas where Defendants owned, maintained, controlled, managed and/or conducted business activities where Decedent Lewis C. Childers worked and/or spent time.

97. At all times herein mentioned, Defendants selected, supplied, and distributed asbestos-containing materials to their employees for use during their regular work activities, and said employees disturbed those asbestos-containing materials.

98. Defendants were negligent in selecting, supplying, distributing and disturbing the asbestos-containing products and in that said products were unsafe. Said products were unsafe

because they released asbestos fibers and dust into air when used which would be inhaled by Decedent Lewis C. Childers and settled onto his clothes, shoes, hands, face, hair, skin, and other body parts thus creating a situation whereby workers and by-standers including Decedent Lewis C. Childers would be exposed to dangerous asbestos dust beyond the present.

99. The asbestos, asbestos-containing materials, and products manufactured for foreseeable use with asbestos products described herein were unsafe in that handling and disturbing products containing asbestos causes the release of asbestos fibers into the air, and the inhalation of asbestos fibers causes serious disease and death. Here, the handling of the above-described asbestos-containing materials by Defendants' employees, as required by their employment and occurring during the course and scope of their employment, did, in fact, cause personal injuries, including lung cancer and other lung damage, to exposed persons, including Decedent.

100. At all times herein mentioned, Defendants knew or should have known that its employees and bystanders thereto, including Decedent Lewis C. Childers, frequently encountered asbestos-containing products and materials during the course and scope of their work activities.

101. At all times herein mentioned, Defendants knew or should have known that the asbestos-containing materials encountered by its employees and bystanders thereto including Decedent Lewis C. Childers, were unsafe in that harmful asbestos fibers were released during the use, handling, breaking, or other manipulation of asbestos-containing products and materials, and that once released, asbestos fibers can be inhaled, and can alight on the clothes, shoes, skin, hair, and body parts of those exposed, where further activity causes the fibers to once again be released into the air where they can be inhaled, all of which causes serious disease and/or death.

102. At all times herein mentioned, Defendants, in the exercise of reasonable diligence, should have known that absent adequate training and supervision, their employees and bystanders

thereto including Decedent Lewis C. Childers were neither qualified nor able to identify asbestos-containing products nor to identify the hazardous nature of their work activities involving asbestos-containing products.

103. At all times herein mentioned, Decedent Lewis C. Childers was unaware of the dangerous condition and unreasonable risk of personal injury created by the presence and use of asbestos-containing products and materials.

104. At all times herein mentioned, Defendants, in the exercise of reasonable diligence, should have known that workers and bystanders thereto, would bring dangerous dust home from the workplace and contaminate their family cars and homes, continuously exposing and potentially causing injury to others off the premises.

105. At all times herein mentioned, Defendants had a duty to use due care in the selection, supply, distribution and disturbance of asbestos-containing products and materials to its employees, to adequately instruct, train, and supervise their employees and to implement adequate safety policies and procedures to protect workers and persons encountering those workers, including Decedent Lewis C. Childers, from suffering injury or death as a result of the asbestos hazards encountered and created by the work of Defendants' employees.

106. Defendants' duties as alleged herein exist and existed independently of Defendants' duties to maintain their premises in reasonably safe condition, free from concealed hazards.

107. Defendants negligently selected, supplied, and distributed the asbestos-containing materials and failed to adequately train or supervise their employees to identify asbestos-containing products and materials; to ensure the safe handling of asbestos-containing products and materials encountered during the course of their work activities; and to guard against inhalation of asbestos fibers and against the inhalation of asbestos fibers by those who would come into close

contact with them after they had used, disturbed, or handled, said asbestos-containing products and materials during the course and scope of their employment by Defendants.

108. Defendants failed to warn its employees and bystanders thereto, including Decedent Lewis C. Childers, of the known hazards associated with asbestos and the asbestos-containing materials they were using and/or disturbing.

109. As a direct and proximate result of the conduct of Defendants in selecting, supplying, distributing and disturbing asbestos-containing materials or products manufactured for foreseeable use with asbestos products and failing to adequately train and supervise their employees and failing to adopt and implement adequate safety policies and procedures as alleged herein, Decedent Lewis C. Childers became exposed to and inhaled asbestos fibers, which was a substantial factor in causing Decedent Lewis C. Childers to develop asbestos-related disease lung cancer, and to suffer all damages attendant thereto.

FOR A FIFTH CAUSE OF ACTION
(Negligence Per Se)

As a Fifth Distinct Cause of Action for Negligence Per Se, Plaintiff Complains of Defendants, and Alleges as Follows:

110. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs.

111. The actions of Defendants also constituted negligence per se.

112. Defendants violated federal and state regulations relating to asbestos exposure. Such violations constitute negligence per se or negligence as a matter of law. Further, each such violation resulted in dangerous and unlawful exposures to asbestos for Decedent Lewis C. Childers. Plaintiff is not making any claims under federal law; instead, Plaintiff is simply using the violation of federal standards as proof of liability on her state-law theories. Further, the reference to Federal regulations does not create a federal question. See Merrell Dow Pharms., Inc.

v. Thompson, 478 U.S. 804 (1986). Any removal on this basis will be met with an immediate motion for remand and for sanctions.

113. The negligence per se of Defendants was a proximate cause of Decedent's injuries.

FOR A SIXTH CAUSE OF ACTION

(Product Liability: Breach of Implied Warranties - S.C. Code Ann. § 36-2-314)

As a Sixth Distinct Cause of Action for Breach of Implied Warranties, Plaintiff Complains of Defendants and Alleges as Follows:

114. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs.

115. Each of the Defendants and/or their "alternate entities" impliedly warranted that their asbestos materials or asbestos-containing products were of good and merchantable quality and fit for their intended use.

116. The implied warranty made by the Defendants and/or their "alternate entities" that the asbestos and asbestos-containing products were of good and merchantable quality and fit for the particular intended use, was breached. As a result of that breach, asbestos was given off into the atmosphere where Decedent Lewis C. Childers carried out his duties and was inhaled by Decedent Lewis C. Childers.

117. As a direct and proximate result of the breach of the implied warranty of good and merchantable quality and fitness for the particular intended use, Decedent Lewis C. Childers was exposed to Defendants' asbestos, asbestos-containing products, and/or products manufactured for foreseeable use with asbestos products and consequently developed lung cancer, causing Decedent to suffer all damages attendant thereto.

FOR A SEVENTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

For a Seventh Distinct Cause of Action for Fraudulent Misrepresentation, Plaintiff Complains of Defendants, and Alleges as Follows:

118. Plaintiff repeats and re-alleges the portions of the above paragraphs where relevant.

119. That during, before and after Decedent Lewis C. Childers' exposure to asbestos products manufactured by Defendants and/or their "alternate entities", the Defendants and/or their "alternate entities" falsely represented facts, including the dangers of asbestos exposure to Decedent Lewis C. Childers in the particulars alleged in the paragraphs above, while Defendants each had actual knowledge of said dangers of asbestos exposure to persons such as Decedent Lewis C. Childers. At the same time of these misrepresentations, Defendants each knew of the falsity of their representations and/or made the representations in reckless disregard of their truth or falsity.

120. The foregoing representations were material conditions precedent to Decedent Lewis C. Childers' continued exposure to asbestos-containing products. Defendants and/or their "alternate entities" each intended that Decedent Lewis C. Childers act upon the representations by continuing his work around, and thereby exposure to, the asbestos products. Decedent Lewis C. Childers was ignorant of the falsity of Defendants' representations and rightfully relied upon the representations.

121. As a direct and proximate result Decedent Lewis C. Childers' reliance upon Defendants' false representations, Decedent has suffered injury and damages as described herein.

FOR AN EIGHTH CAUSE OF ACTION
(Wrongful Death Action, S.C. Code Ann. § 15-51-10, et seq.)

For an Eighth Distinct Cause of Action for Wrongful Death, Plaintiff Complains of Defendants, and Alleges as Follows:

122. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs, where relevant.

123. Plaintiff brings this cause of action for Lewis C. Childers' wrongful death pursuant to S.C. Code Ann. § 15-51-10, for the benefit of Lenora Childers, as the widow of Decedent, and on behalf of the heirs of Lewis C. Childers, as defined by S.C. Code § 15-51-20.

124. As a direct and proximate result of the negligence, recklessness, carelessness, and intentional actions of Defendants as described above, Lewis C. Childers died on May 13, 2020, and his wife and heirs have and will endure pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow, loss of love, loss of society with the Decedent, loss of guidance from the Decedent, loss of his companionship and deprivation of the use and comfort of the Decedent's experience, knowledge and judgment in managing the affairs of himself and his beneficiaries, and they have been otherwise seriously damaged. Moreover, reasonable funeral expenses were incurred, and Plaintiff prays for judgment against Defendants in such amount of actual and punitive damages as the trier of fact may determine.

FOR A NINTH CAUSE OF ACTION
(Loss of Consortium)

For a Ninth Distinct Cause of Action for Loss of Consortium, Plaintiff Lenora Childers Complains of Defendants, and Alleges as Follows:

125. Plaintiff incorporates by reference, the preceding paragraphs, where relevant.

126. Decedent Lewis C. Childers and Plaintiff Lenora Childers were married on or about April 19, 2014, and at all times relevant to this action were husband and wife.

127. Prior to his injuries as alleged, Decedent Lewis C. Childers was able and did perform his spousal duties. As a proximate result thereof, subsequent to the injuries, Decedent

Lewis C. Childers has been unable to perform his spousal duties and the work and service usually performed in the care, maintenance and management of the family home. As a proximate result thereof, Plaintiff Lenora Childers was deprived of the consortium of her spouse, including the performance of duties, all to Decedent's damages, in an amount presently unknown to Plaintiff but which will be proven at time of trial.

128. As a direct and proximate result of the acts of Defendants and/or their "alternate entities" and the severe injuries caused to Decedent Lewis C. Childers as set forth herein, Decedent's spouse and Plaintiff Lenora Childers suffered loss of consortium, including but not by way of limitation, loss of services, marital relations, society, comfort, companionship, love, and affection of her spouse, and has suffered severe mental and emotional distress and general nervousness. Plaintiff prays judgment against Defendants, their "alternate entities" and each of them, as hereinafter set forth.

FOR A TENTH CAUSE OF ACTION
(Survival Action, S.C. Code Ann. § 15-5-90)

For a Tenth Distinct Cause of Action, known statutorily as a Survival Action, Plaintiff Complains of Defendants, and Allege as Follows:

129. Plaintiff incorporates herein by reference, as though fully set forth herein, each of the preceding paragraphs, where relevant.

130. Plaintiff, Lenora Childers, is the wife of Decedent Lewis C. Childers. Plaintiff, Lenora Childers, as Executor of the Estate of Lewis C. Childers, deceased, brings this survival action as allowed under S.C. Code Ann. § 15-5-90.

131. Plaintiff brings this cause of action for Decedent's medical, surgical and hospital bills, as well as for Decedent's conscious pain and suffering prior to his untimely death, as well as for the mental distress of Decedent due to knowledge of his impending death from his incurable disease.

132. As a direct and proximate result of the negligence, recklessness, carelessness, and in some cases intentional actions of Defendants as described, Decedent Lewis C. Childers endured conscious pain, suffering, mental anguish and distress until his untimely death, and Plaintiff prays for judgment against Defendants in such amount of actual and punitive damages as the trier of fact may determine is just.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment, joint and several, against Defendants and/or their “alternate entities” in an amount to be proved at trial, as follows:

1. For Decedent’s actual damages according to proof, including pain and suffering, mental distress, as well as medical, surgical and hospital bills;
2. For loss of income or earnings according to proof;
3. For loss of care, comfort and society;
4. For pecuniary loss of the beneficiaries/heirs including but not limited to funeral and burial costs, for mental shock and suffering of the beneficiaries/heirs, for wounded feelings of the beneficiaries/heirs, for grief and sorrow of the beneficiaries/heirs, loss of his companionship and deprivation of the use and comfort of the Decedent’s experience, knowledge and judgment in managing the affairs of himself and his beneficiaries;
5. For punitive damages according to proof;
6. For Plaintiff’s cost of suit herein;
7. For damages for breach of implied warranty according to proof;
8. For damages for fraudulent misrepresentation according to proof;
9. All economic and non-economic damages allowed pursuant to the Survival and Wrongful Death Act; and

10. For such other and further relief as the Court may deem just and proper, including costs and prejudgment interest as provided by South Carolina law.

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

Respectfully submitted,

s/Theile B. McVey

Theile B. McVey (SC Bar No. 16682)

Jamie D. Rutkoski (SC Bar No. 103270)

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ATTORNEYS FOR PLAINTIFF

July 14, 2021

Columbia, South Carolina.

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.

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:
Asbestos Personal Injury Litigation Coordinated
Docket

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.,

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., 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 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., and Compass Risk Services, LLC

Third-Party Defendants.

TO THE ABOVE-NAMED THIRD-PARTY DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the 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 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 Amended Third-Party Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in such Amended Third-Party Complaint.

Respectfully submitted,

Dated: February 23, 2022

RIKARD & PROTOPAPAS, LLC

By: s./ Brian M. Barnwell

Brian M. Barnwell (SC Bar 78249)
Rikard & Protopapas, LLC
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Attorneys 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.,

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., 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 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., and Compass Risk Services, LLC

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., and Payne & Keller Company (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., and Compass Risk Services, LLC (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 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. 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.

4. 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.
5. 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.
6. The Receiver is informed and believes that Arrowpoint Group, Inc. is a Delaware corporation with its principal place of business in North Carolina.
7. The Receiver is informed and believes that Arrowpoint Capital Corporation is a Delaware corporation with its principal place of business in North Carolina.

8. 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.
9. 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.
10. 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.
11. 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.

12. 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.

13. 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.

14. Plaintiff is informed and believes that the Guaranty Association is an association formed under the laws of South Carolina.
15. 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.
16. 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.
17. 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.
18. 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.
19. 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

20. 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

21. 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

22. 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

23. 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 issued primary general liability coverage to Carolina Industrial for at least the three policy periods from January 1, 1973 – January 1, 1976.

24. 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 Amended Third-Party Complaint may be amended to include such additional Zurich Policies.

¹ Pipe & Boiler merged with Carolina Industrial on September 15, 1983. The merged entity continued operating under the name “Pipe & Boiler Insulation, Inc.”

25. 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

26. 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.

27. 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 Amended Third-Party Complaint will be amended to include such additional Allstate Policies.

28. 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

29. 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.
30. 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 Amended Third-Party Complaint will be amended to include such additional Continental Carolina Industrial Policies.

31. 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.

THIRD-PARTY PLAINTIFF FLAME REFRACTORIES

D. The Admiral Policies

32. Third-Party Defendant Admiral Insurance Company issued general liability policies to Flame Refractories (“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.
33. 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 Amended Third-Party Complaint will be amended to include such additional Admiral Flame Refractories Policies.

34. 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.

E. The Hartford Policy

35. 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.

36. 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 Amended Third-Party Complaint may be amended to include such additional Hartford Flame Refractories Policies.

37. 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.

F. The First State Policies

38. 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

² Flame Refractories and United Construction Co. of Rome, Inc. merged in 1986, leaving Flame Refractories as the surviving entity.

State Flame Refractories Policy has standard terms and conditions. It is the burden of Hartford to prove any limitation on or exclusion of coverage.

39. 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 Amended Third-Party Complaint may be amended to include such additional First State Flame Refractories Policies.

THIRD-PARTY PLAINTIFF PIPE & BOILER INSULATION COMPANY

F. The Arrowood Policies

40. 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.
41. 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

42. 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.
43. 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.
44. 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 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.
45. 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

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.”

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).

46. The ownership structure of Arrowood has, and the officers and directors of Arrowood have, changed very little since 2007.

47. 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.

48. 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).

49. 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.*

50. 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).

51. 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.

52. 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.

53. 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.

54. 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).

55. “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.

56. 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”).
57. 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.
58. 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.
59. “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.

60. 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.
61. 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.
62. 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].

63. 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.

64. 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.
65. 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.
66. 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.
67. 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.

68. 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.
69. 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.
70. 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.
71. 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).

72. 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).

73. 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.

74. 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.

75. 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.”

76. 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).

77. 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).

78. 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.

79. Although the statutory references obviously vary by state, the basic rules (as dictated by the NAIC) are the same.
80. If a regulated insurer does not maintain adequate surplus or comply with RBC rules, the regulators are required to assume control over the company.
81. 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.*

82. 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.
83. 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*

84. 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).

85. 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.
86. 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.
87. 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

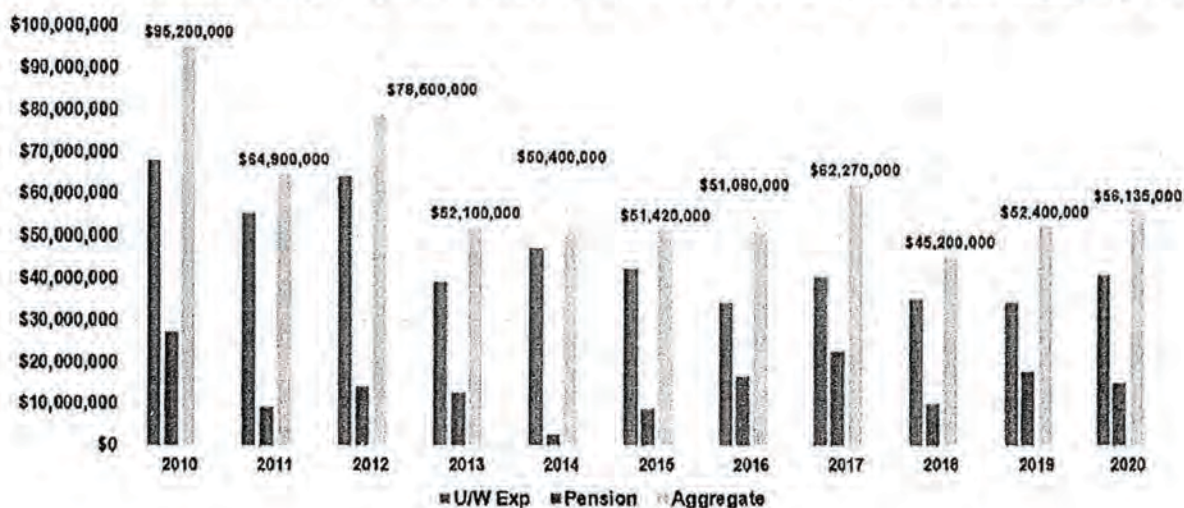
(including the Individual Arrowood Third-Party Defendants herein) as well as its parent companies (Arrowpoint Group and Arrowpoint Capital). The net result has been to cause Arrowood's policyholders' surplus to drop to the point that Arrowood's RBC Level under 18 Del. Code § 5801 is now at a precarious Company Action Level RBC as defined in that statute.

88. 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.
89. 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.
90. 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.

91. 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.
92. 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



93. 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

94. 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.

95. 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*

96. 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).

97. 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.

98. 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.

99. 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.

100. 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.

101. 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).

102. 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.

103. 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.

104. 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.

105. 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

106. 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.

107. 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.

108. 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.

109. 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.
110. 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.

111. 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.

112. 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).
113. 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.

114. 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).

115. 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.

vii. *The misleading Reports on Examination*

116. 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

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.

these financial examinations is to determine the insurer's fiscal condition and compliance with applicable laws and regulations.

117. 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).

118. 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.

119. 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.

120. 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.

121. 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.
122. 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.

123. 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.

124. 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

125. 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”).

Rexel’s Competing Claims to Payne & Keller’s Insurance Program

126. Since his appointment, the Receiver has become aware that Third-Party Defendant Rexel periodically makes claims against Payne & Keller’s historical insurance program by tendering Rexel-related lawsuits to the Payne & Keller insurers. Rexel tenders these Rexel-related lawsuits to the Payne & Keller insurers by way of its agent and claims administrator, Third-Party Defendant Compass Risk Services, LLC. without any communication or coordination with the Receiver.

127. The Receiver is informed and believes that Rexel’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 its competing claims to Payne & Keller’s insurance policies, but these inquiries have gone unanswered. Moreover, the existence of these competing claims from Rexel has 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 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’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, will be delineated herein.

1. *The 1965 to 1973 Policies*

128. 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.

129. 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. An actual and justiciable dispute exists between and among these parties.

2. The Zurich Policies

130. 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.

131. Zurich has failed to fully acknowledge, delineate or accept its insuring obligations under the Zurich Policies between Rexel and Payne & Keller. An actual and justiciable dispute exists between these parties.

3. The Aetna Policies

132. 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.

133. Aetna has failed to fully acknowledge, delineate or accept its insuring obligations under the Aetna Policies between Rexel and Payne & Keller. An actual and justiciable dispute exists between these parties.

4. *The Continental Policies*

134. 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.

135. 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. An actual and justiciable dispute exists between these parties.

5. *The National Union Policies*

136. 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.

137. 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. An actual and justiciable dispute exists between these parties.

6. The Dependable Policy

138. 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.

139. Dependable has failed to fully acknowledge, delineate or accept its insuring obligations under the Dependable Policy as between Rexel and Payne & Keller. An actual and justiciable dispute exists between these parties.

7. The Stonewall Policies

140. 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.

141. 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. An actual and justiciable dispute exists between these parties.

8. The Lexington Policy

142. 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.

143. 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. An actual and justiciable dispute exists between these parties.

9. The First State Policies

144. 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 Policy Period. 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 policy periods March 1, 1976—March 1, 1977, April 1, 1983—April 1, 1985, and May 15, 1985—April 1, 1986.

145. First State has failed to fully acknowledge, delineate or accept its insuring obligations under the Hartford Policies as between Rexel and Payne & Keller. An actual and justiciable dispute exists between these parties.

10. The Birmingham Fire Policies

146. 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.

147. 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. An actual and justiciable dispute exists between these parties.

11. The Lloyd’s Underwriters & London Market Insurers Policy

148. 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.

149. 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. An actual and justiciable dispute exists between these parties.

12. The Reliance Policies

150. 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).

13. The Highlands Policies and the Guaranty Association

151. On information and belief, Highlands is currently in liquidation proceedings in Texas, by order dated October 29, 2021, staying all proceedings against Highlands.

152. 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).

14. R.L. Jarrett and U.S. Risk Broker Services

153. 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.

154. 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

155. Third-Party Plaintiffs incorporate by reference paragraphs 1 through 28 as though fully set forth herein.

156. 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.

157. 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.
158. 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.
159. 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.
160. 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.
161. 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

162. Third-Party Plaintiffs incorporate by reference paragraphs 1 through 28 as though fully set forth herein.
163. 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.

164. 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.

165. 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

166. Third-Party Plaintiffs incorporate by reference paragraphs 1 through 28 as though fully set forth herein.

167. The Receiver seeks a declaration and order that Third-Party Defendants Zurich, Continental, and Allstate issued primary general liability coverage to Carolina Industrial, subject to the per occurrence and aggregate limits of those policies, and that those Third-Party Defendants have an unlimited supplemental duty to defend and to pay or reimburse defense costs.

168. The Receiver seeks a further declaration as to the interpretation and meaning of the insurance policies that Third-Party Defendants Zurich, Continental, and Allstate 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;
- f. If any allegation or cause of action in a Carolina Industrial Asbestos Suit is potentially covered under the Carolina Industrial Insurance Policies, 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.
169. Actual and justiciable controversies therefore exist between Carolina Industrial and Third-Party Defendants Zurich, Continental, and Allstate concerning their obligations under the Carolina Industrial Insurance Policies.

FOURTH CAUSE OF ACTION
DECLARATORY JUDGMENT

170. Third-Party Plaintiffs incorporate by reference paragraphs 1 through 28 as though fully set forth herein.
171. The Receiver seeks a declaration and order that Third-Party Defendants Admiral and First State issued primary and excess general liability coverage to Flame Refractories, subject to the per occurrence and aggregate limits of those policies, and that Third-Party Defendant Admiral has an unlimited supplemental duty to defend, through the provision of appropriate and qualified defense counsel, and to pay or reimburse defense costs.
172. The Receiver seeks a further declaration as to the interpretation and meaning of the insurance policies that Third-Party Defendant Admiral and First State issued to Flame Refractories, as follows:
- a. The Flame Refractories Insurance Policies issued by Admiral and First State 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 issued by Admiral and First State 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 policy issued by Admiral and First State, such ambiguity shall be construed in favor of

the broadest coverage afforded under the Flame Refractories Insurance Policies issued by Admiral and First State;

- 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 issued by Admiral and First State;
- f. If any allegation or cause of action in a Flame Refractories Asbestos Suit is potentially covered under the Flame Refractories Insurance Policies issued by Admiral and First State, 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 issued by Admiral and First State 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 issued by Admiral and First State 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 issued by Admiral and First State;

- 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 issued by Admiral and First State, if any; and
 - k. Third-Party Defendant Admiral and First State have 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 issued by Admiral and First State, 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.
173. Actual and justiciable controversies therefore exist between Flame Refractories and Third-Party Defendants Admiral and First State concerning their obligations under the Flame Refractories Insurance Policies issued by Admiral and First State.

FIFTH CAUSE OF ACTION
BREACH OF CONTRACT

174. Third-Party Plaintiff Flame Refractories incorporates by reference paragraphs 1 through 28 and 129 through 132 as though fully set forth herein.
175. 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.

176. 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.

177. 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

178. Third-Party Plaintiff Carolina Industrial incorporates by reference paragraphs 1 through 28 and 129 through 132 as though fully set forth herein.

179. Carolina Industrial was insured by one or more policies issued by Third-Party Defendants Zurich, Continental, and Allstate.

180. Carolina Industrial has provided or will provide timely notices to Third-Party Defendants Zurich, Continental, and Allstate of the Carolina Industrial Asbestos Suits.

181. 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.

182. 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

183. Third-Party Plaintiff Pipe & Boiler Insulation incorporates by reference paragraphs 29 through 113 as though fully set forth herein.
184. Prior to its dissolution, Pipe & Boiler was a North Carolina corporation.
185. 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.
186. 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).
187. 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.”

188. 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.

189. 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.

190. 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.

191. 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.

192. 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.

193. 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

194. Third-Party Plaintiff Pipe & Boiler incorporates by reference paragraphs 29 through 113 and 142 through 152 as though fully set forth herein.

195. 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.

196. 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.

197. 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

198. Third-Party Plaintiffs incorporate by reference paragraphs 29 through 113 as though fully set forth herein.
199. Arrowood issued at least five contracts of insurance to Pipe & Boiler during the period January 1, 1981 to January 1, 1986.
200. As corporate officers and directors of Arrowood's parent companies, the Individual Arrowood Third-Party Defendants have maintained absolute control of Arrowood.
201. The Individual Arrowood Third-Party Defendants each were aware of the insurance contracts into which Arrowood had entered with insureds, including Pipe & Boiler.
202. 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.
203. 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.

204. 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.

205. 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.

206. 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

207. Third-Party Plaintiff Pipe & Boiler incorporates by reference paragraphs 29 through 113 as though fully set forth herein.
208. 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.
209. Arrowpoint Group and Arrowpoint Capital negligently supervised the actions of the Individual Arrowood Third-Party Defendants.
210. 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

211. As outlined above, since his appointment, the Receiver has become aware that Third-Party Defendant Rexel periodically makes claims against Payne & Keller's historical insurance program by tendering Rexel-related lawsuits to the Payne & Keller insurers. Rexel tenders these Rexel-related lawsuits to the Payne & Keller insurers by way of its agent and claims administrator, Third-Party Defendant Compass Risk Services, LLC. without any communication or coordination with the Receiver.

212. The Receiver is informed and believes that Rexel'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 its competing claims to Payne & Keller's insurance policies, but these inquiries have gone unanswered. Moreover, the existence of these competing claims from Rexel has 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 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'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, will be delineated herein.

213. The Receiver therefore seeks declarations, after thorough discovery regarding Rexel's competing claims to the Payne & Keller insurance program, regarding the nature, extent, and priority (if any) of Rexel'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 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, and Allstate to defend Pipe & Boiler in full 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 and First to defend Flame Refractories in full against all asbestos suits alleging bodily injury during Third-Party Defendants Admiral's and First State's policy periods unless and until Third-Party Defendant Admiral or First State 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 with respect to the Payne & Keller insurers. Specifically, the Receiver therefore seeks declarations, after thorough discovery regarding Rexel's competing claims to the Payne & Keller insurance program, regarding the nature, extent, and priority (if any) of Rexel'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 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,

Dated: February 23, 2022

RIKARD & PROTOPAPAS, LLC

By: s./ Brian M. Barnwell

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Attorneys 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

Plaintiff,

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., 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), et al.

Third-Party Defendants

2021-CP-40-03484

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

**THIRD-PARTY DEFENDANT TRAVELERS CASUALTY AND SURETY COMPANY'S
NOTICE OF MOTION AND MOTION TO DISMISS THIRD-PARTY CLAIMS AND
DISSOLVE THE PAYNE & KELLER RECEIVERSHIP**

Third-Party Defendant Travelers Casualty and Surety Company (improperly named as Travelers Casualty & Surety Company), formerly known as The Aetna Casualty and Surety Company (improperly named as Aetna Casualty & Surety Company) (“Travelers”), by and through undersigned counsel, hereby moves (1) pursuant to Rules 12 and 14 of the South Carolina Rules of Civil Procedure (“SCRCP”), to dismiss the claims asserted against Travelers in the Second Amended Third-Party Complaint¹ of Defendant/Third-Party Plaintiff Payne & Keller Company, through its receiver, Peter D. Protopapas² (“Payne & Keller” or the “Receiver”)³ and (2) pursuant to S.C. Code § 15-65-10(4), to dissolve the Payne & Keller Receivership.

PRELIMINARY STATEMENT AND BACKGROUND

On November 23, 2021, Peter D. Protopapas, as Receiver for Payne & Keller, filed an insurance coverage action against Travelers and Payne & Keller’s other historical, out-of-state

¹ Paragraph 1 of the Receiver’s Second Amended Third-Party Complaint incorrectly states that the pleading is the “Third Amended Third-Party Complaint.” In fact, it is the Second Amended Third-Party Complaint (although it is the third iteration of the Receiver’s third-party complaint).

² The Receiver filed his Second Amended Third-Party Complaint in his capacity as the Receiver for 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. All allegations and claims against Travelers, however, appear to have been asserted by the Receiver solely in his capacity as the Receiver for Payne & Keller, not any of the other entities.

³ Travelers understands that the Court has denied other third-party defendant insurers’ motions to dismiss the Receiver’s third-party claims via a July 14, 2022 email. That decision does not affect this Motion as Travelers is asserting several new grounds that require dismissal and were not raised in the other insurers’ motions. To the extent any arguments asserted here were raised and denied in those prior motions, Travelers asserts them here to preserve its arguments and avoid potential waiver of any issue discussed herein.

insurers in the Court of Common Pleas of Richland County, South Carolina. *See Protopapas as Receiver for Payne & Keller Co. v. Am. Int'l Grp. et al.*, No. 2021CP4005768, Summons and Complaint for Declaratory Judgment and Breach of Contract, filed Nov. 23, 2021 (S.C. Ct. Common Pleas, Fifth Judicial Circuit). On December 20, 2021, Travelers removed the case to the United States District Court for the District of South Carolina, Columbia Division, because there is complete diversity of citizenship among the properly joined and served parties and the amount in controversy exceeds \$75,000. *See Protopapas as Receiver for Payne & Keller Co. v. Am. Int'l Grp. et al.*, No. 3:21-cv-04086-JMC, Dkt. No. 1 (Notice of Removal filed Dec. 20, 2021) (D.S.C.) (the "Federal Coverage Action"). On January 18, 2022, the Receiver filed an amended complaint in the Federal Coverage Action; Travelers then answered. *See id.* at Dkt. Nos. 23, 42. The Receiver also filed a motion to remand, along with a motion to stay the Federal Coverage Action pending resolution of the remand motion, both of which Travelers opposed. *See id.* at Dkt. Nos. 24, 47, 80, 119. Those motions have not been decided, and the Federal Coverage Action remains pending in federal court.

On July 14, 2022, the Receiver filed a Second Amended Third-Party Complaint against Travelers⁴ and the other insurance companies, even though the instant action is an *asbestos tort* case that has nothing to do with insurance coverage issues. The tort case was brought by plaintiff Lenora Childers, individually and as Personal Representative of the Estate Lewis C. Childers ("Childers"), pursuant to S.C. Gen. Stat. 15-51-10 *et seq.*, for the alleged wrongful death of Lewis C. Childers purportedly caused by exposure to asbestos and asbestos-containing products. *See generally* Pl.'s 1st Am. Compl. The defendants named in the Childers' complaint

⁴ The Second Amended Third-Party Complaint was served on Travelers on August 9, 2022 via the South Carolina Department of Insurance.

allegedly “manufactured, sold, and/or distributed asbestos-containing products or raw asbestos materials” and/or “controlled the work sites” where Childers was allegedly exposed to asbestos. *See id.* ¶ 3. Travelers is not named as a defendant, nor is any other insurance company, which is not surprising given that none of the insurance companies has ever manufactured, sold, or distributed asbestos-containing products. Nonetheless, the Receiver’s Second Amended Third-Party Complaint includes allegations and claims against Travelers and other insurers in an improper attempt to litigate here insurance coverage issues that are pending in the Federal Coverage Action.

The Receiver’s third-party claims against Travelers must be dismissed for several reasons.

First, the Receiver’s claims against Travelers must be dismissed because the Receiver lacks standing to assert claims against Travelers. Payne & Keller, according to the Receiver’s own filings, is a *Texas* corporation that dissolved in 1986. Under Texas corporate law, a dissolved corporation is not liable for post-dissolution claims and cannot sue or be sued with respect to any claim more than three years beyond dissolution. As a matter of settled receivership law, the Receiver stands in Payne & Keller’s shoes and does not acquire rights greater than those of Payne & Keller. Thus, the Receiver’s suit against Travelers is a nullity by operation of Texas corporate law. Moreover, even if the Receiver could bring suit, South Carolina law does not authorize nationwide receiverships over foreign corporations; it permits receiverships only with respect to property located within South Carolina. Insurance policies issued by Travelers to Payne & Keller in Texas are not property located in South Carolina.

What’s more, those lack of standing arguments also warrant dissolution of the Payne & Keller Receivership. First, because the law of Payne & Keller’s domicile (Texas) precludes any

suits by or against Payne & Keller brought after 1989, appointment of the Receiver here for the purpose of investigating and administering Payne & Keller's insurance assets was improper and must be undone. Second, the Receiver's third-party claims brought on behalf of Payne & Keller relate solely to alleged insurance assets of Payne & Keller under policies issued by foreign insurers; any insurance assets are property of the state where the debtor or obligor (*i.e.*, the insurers) are domiciled; and the Receiver admits that neither the debtor nor any of its insurers are domiciled in South Carolina. Thus, there is no South Carolina property over which the Receiver has any power—making a South Carolina Receiver powerless and a South Carolina receivership pointless and in need of dissolution.

Second, the Court lacks personal jurisdiction over Travelers. The Court has no general personal jurisdiction over Travelers because the company is not incorporated in South Carolina, it does not have its principal place of business in South Carolina, and it is not otherwise “essentially at home” in South Carolina. The Court also cannot exercise specific personal jurisdiction over Travelers because Payne & Keller's third-party claims against Travelers do not arise out of or relate to any contacts between Travelers and South Carolina.

Third, under SCRCP 14(a), a third-party claim may be asserted only 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.” A defendant acting as a third-party plaintiff must have a substantive claim against the third-party defendant founded upon derivative liability, *i.e.*, the outcome of the principal claim must impact the third-party defendant's liability. Here, Payne & Keller's third-party contract claims against Travelers are not “derivative” of Payne & Keller's alleged tort liability to Childers specifically. Rather, the third-party contract claims seek relief directly against Travelers, independent of Childers' claims, as demonstrated by the fact that Payne & Keller is pursuing

substantially identical relief in the first-filed Federal Coverage Action, a case to which Childers is not a party.

Finally, the third-party claims must be dismissed under SCRCP 12(b)(8), because the relief the Receiver seeks is the subject of the first-filed Federal Coverage Action, and the allegations and claims against Travelers in the instant case are substantially identical to those asserted there.

Accordingly, Travelers respectfully requests that the Court dismiss the third-party claims against it with prejudice and dissolve the Payne & Keller receivership.

ARGUMENT

I. The Receiver Lacks Standing to Bring Claims Concerning Payne & Keller’s Insurance Coverage Against Travelers, and Those Same Grounds Warrant Dissolution of the Payne & Keller Receivership.

“Standing to sue is a fundamental requirement in instituting an action.” *Joseph v. S.C. Dep’t of Lab., Licensing & Regul.*, 417 S.C. 436, 467, 790 S.E.2d 763, 779 (2016). In order for a party to have standing to bring an action, the party “must have a real, material, or substantial interest in the subject matter of the action.” *Id.*; see also *Sea Pines Ass’n for Prot. of Wildlife, Inc. v. S.C. Dep’t of Nat. Res.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001). “No justiciable controversy is presented unless the plaintiff has standing to maintain the action.” *Brock v. Bennett*, 313 S.C. 513, 519, 443 S.E.2d 409, 413 (Ct. App. 1994). Thus, “[o]nce it is determined a plaintiff has no standing to prosecute, the court must dismiss the action.” *Id.*

It is black-letter law that a plaintiff may not seek recovery on a claim that belongs to another, or that he otherwise lacks a right to bring. See, e.g., *Furman Univ. v. Livingston*, 244 S.C. 200, 204 (1964) (“It is fundamental that one without interest in the subject matter of a law suit has no legal standing to prosecute it.”); *Duke Power Co. v. S.C. Pub. Serv. Comm’n*, 284

S.C. 81, 96 (1985) (“In order to have standing to present a case before the courts of this State, a party must have a personal stake in the subject matter of the lawsuit.”).

Here, the Receiver does not allege any personal right or interest in the matters asserted in his Second Amended Third-Party Complaint. Instead, his right to sue is wholly dependent on, and derivative of, his authority as Receiver for Payne & Keller, a Texas corporation that dissolved in 1986. *See Nat’l Cash Register Co. v. Burns*, 217 S.C. 310, 313, 60 S.E.2d 615, 617 (1950) (“A primary concept of the law of receivers is that a receiver stands in the shoes of the debtor . . .”); *In re Am. Slicing Mach. Co.*, 125 S.C. 214, 218, 118 S.E. 303, 304 (1923) (“[I]t is clear that the appointment by the Court can vest in the Receiver no greater interest than the insolvent possessed.”).

Moreover, because Payne & Keller is not a South Carolina corporation, the Court’s authority to appoint a receiver over Payne & Keller is limited to Payne & Keller’s in-state property. Under South Carolina law, a “receiver may be appointed by a judge of the circuit court, either in or out of court . . . [w]hen 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.” S.C. Code § 15-65-10(4) (emphasis added).

These two bedrock principles of South Carolina receivership law doom the claims the Receiver seeks to assert on behalf of Payne & Keller for two distinct reasons. First, under Texas corporate law, a dissolved corporation cannot sue or be sued more than three years after its dissolution. That means the Receiver, standing in Payne & Keller’s shoes, cannot sue Travelers here. Second, even if the Receiver could sue on behalf of Payne & Keller contrary to Texas law, Payne & Keller’s insurance policies are not property of Payne & Keller located within South

Carolina, and therefore the Receiver lacks standing to administer or liquidate Payne & Keller's insurance policies.

A. Payne & Keller Cannot Sue or Be Sued Under Texas Law, So Payne & Keller's Claims Against Travelers Fail as a Matter of Law and Dissolution of the Payne & Keller Receivership Is Warranted.

Payne & Keller is a Texas corporation that dissolved in 1986. *See* Ex. A to Plaintiffs' Motion to Appoint a Receiver over Payne & Keller Co. Pursuant to S.C. Code § 15-65-10(4). Texas law provides that dissolved corporations are liable only for "existing claims." Tex. Bus. Orgs. Code Ann. § 11.351. Moreover, such claims can only be brought for three years after dissolution. *Id.* § 11.359; *see, e.g., Durham Clinic, P.A. v. Barrett*, 107 S.W.3d 761, 762 (Tex. App. 2003) (claim against dissolved corporation was barred because it was brought more than three years post-dissolution; under the statute, "a corporation shall not be liable for any claim other than an existing claim . . ."); *Boudreaux v. U.S. Framing*, No. 6:17-cv-0517, 2017 WL 6758448 (W.D. La. Nov. 21, 2017), *aff'd sub nom. Boudreaux v. C J R Framing Inc.*, 744 F. App'x 208 (5th Cir. 2018) ("[U]nder Texas law, a dissolved corporation is not liable for a post-dissolution claim."). Thus, Payne & Keller has an absolute defense to any personal injury tort claims that may now be brought against it.

In addition, a dissolved corporation may bring suit only within three years of the date of its dissolution. Under Texas corporate law, a "terminated filing entity continues in existence *until the third anniversary of the effective date of the entity's termination* only for purposes of: (1) prosecuting or defending in the terminated filing entity's name an action or proceeding brought by or against the terminated entity." Tex. Bus. Orgs. Code Ann. § 11.356(a) (emphasis added); *see also id.* § 11.359(a) ("[A]n existing 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.") (emphasis added).

Again, Payne & Keller dissolved in 1986. Its ability to sue lapsed in 1989. *See Emmett Props. v. Halliburton Energy Servs.*, 167 S.W.3d 365, 369-70 (Tex. App. 2005) (“[Plaintiff] was a ‘dissolved corporation’ with a dissolution date of February 12, 1999. As such, [Plaintiff] was required to bring suit on its claims within three years of this date, which was February 12, 2002. [Plaintiff], however, did not file suit until June 13, 2002, more than three years after the dissolution date. Therefore, [Plaintiff’s] claims were extinguished under article 7.12, section C, and the trial court properly granted the appellees’ motion for summary judgment.”)⁵; *Brooks v. Binger*, 2019 WL 3023226, at *2 (Tex. App. July 11, 2019) (“The trial court’s purported adjudication of claims by B2 Towing in a lawsuit commenced more than 26 years after B2 Towing’s dissolution amounted to a nullity. . . .”); *see also Carter v. Harvey*, 525 S.W.3d 420, 426 (Tex. App. 2017) (same). Appointment of a receiver cannot create a right to sue that does not exist under the Texas statutes that govern Payne & Keller’s corporate existence. *See Nat’l Cash Register Co.*, *supra*; *In re Am. Slicing Mach. Co.*, *supra*. Therefore, the Receiver lacks the authority to bring claims on behalf of Payne & Keller and his claims against Travelers must be dismissed for lack of standing.

As shown above, Texas law is clear that Payne & Keller may not sue or be sued at this point. *In re All Cases Against Sager Corp.*, 967 N.E.2d 1203, 1209 (Ohio 2012) (“We concur. The question of whether a dissolved foreign corporation has the capacity to sue or be sued is a matter determined by the law of the state of incorporation.”). And because Payne & Keller is no longer amenable to suit, foreign courts lack authority under the Full Faith and Credit Clause of

⁵ *Emmett* cites article 7.12 of the Texas Business Corporations Act (“TBCA”), the predecessor statute to the current Texas Business Organizations Code (“TBOC”). The TBOC replaced the TBCA on January 1, 2010 but made no substantive changes to TBCA article 7.12. *See Boudreaux v. U.S. Framing*, No. CV 6:17-0517, 2017 WL 6758448, at *3 (W.D. La. Nov. 21, 2017).

the United States Constitution to appoint a receiver over Payne & Keller for claims not pending before 1989. *Id.* at 1211 (“The authority to appoint a receiver for a dissolved foreign corporation is subject to constitutional limitations, notably the Full Faith and Credit Clause, obliging us to recognize Illinois corporation law as barring claims filed against Sager that were not pending on June 17, 2003. Thus, the court is without authority to appoint a receiver to ‘accept the process of claims, process defenses and marshal assets’ on behalf of the Sager Corporation, as the trial court ruled.”).

In *Sager*, the Ohio Supreme Court reversed an Ohio court’s appointment of a receiver for a defunct foreign corporation in an identical situation as here. *In re Sager*, 967 N.E.2d at 1211. *Sager* involved a plaintiff that sought appointment of a receiver to access Sager’s insurance assets to compensate the claimant for asbestos-related injuries. *See id.* at 1205. Sager was an Illinois corporation that dissolved in 1998. *Id.* Illinois law set a five-year post-dissolution window for claims to be brought by or against dissolved corporations, meaning Sager was amenable to suit until 2003. *Id.* But the claimants did not bring suit against Sager until 2007. *Id.* Sager sought summary judgment, in part arguing that the appointment of a receiver violated the Due Process, Commerce, and Full Faith and Credit Clauses of the United States Constitution. *Id.* The trial court and intermediate appellate court both disagreed and affirmed the receiver’s appointment. *Id.* Reversing the intermediate appellate court, the Ohio Supreme Court held that the Ohio trial court was “without authority to appoint a receiver” over foreign-domiciled Sager because “[t]he authority to appoint a receiver for a dissolved foreign corporation is subject to constitutional limitations, notably the Full Faith and Credit Clause” and the court was “oblig[ed] ... to recognize Illinois corporation law as barring claims filed against Sager that were not pending on June 17, 2003.” *Id.* at 1211. The Ohio Supreme Court also noted that “the existence

of an insurance policy is irrelevant” where “[n]o cause of action which accrues after dissolution may be brought against a dissolved corporation.” *Id.*

The principles underlying *Sager* forcefully demonstrate that this Court lacks the authority to appoint a receiver for Payne & Keller, because the company has not been amenable to suit under the laws of its state of incorporation (Texas) since 1989. Because Texas law bars Payne & Keller from suing or being sued, the Full Faith and Credit Clause of the United States Constitution requires this Court to honor Texas corporate law and prevents it from appointing a receiver over Payne & Keller in contravention of Texas law. Thus, the receivership must be dissolved.

Dismissal is also warranted by the fact, as observed in *Sager*, that insurance policies are worthless where a dissolved foreign corporation is immune from suit. *In re Sager*, 967 N.E.2d at 1211. Here, as Plaintiffs admit, “all that remains of Payne & Keller is its insurance coverage.” Pl.’s Mot. to Appoint a Receiver over Payne & Keller Co. Pursuant to S.C. Code § 15-65-10(4) at 1 (Aug. 23, 2021).

B. Because the Travelers Insurance Policies Are Not Property of Payne & Keller in South Carolina (Nor Are Any of the Other Insurers’ Policies), the Receiver Lacks Standing to Sue Travelers and the Receivership Must Be Dissolved.

Even if the Receiver could bring claims on behalf of Payne & Keller contrary to Texas law, his authority is circumscribed by South Carolina law, which strictly confines the powers of South Carolina receivers of foreign corporations to the corporation’s in-state property.

It is undisputed that Payne & Keller is not a South Carolina corporation. *See* 2d Am. Third-Party Compl. ¶ 1 (citing Ex. D, Order (identifying Payne & Keller as a dissolved “Texas

corporation”).⁶ The statute under which the Receiver was appointed—S.C. Code § 15-65-10(4)—does not authorize general receiverships over corporations not incorporated in South Carolina. It only permits South Carolina courts to appoint receivers for such foreign corporations to the extent of their “property within this state.” The South Carolina Supreme Court has confirmed that this statute means what it says: if a foreign corporation has property within South Carolina, a South Carolina court may appoint a receiver over that in-state property; if a foreign corporation has no in-state property, no receiver may be appointed. *See Boynton v. Consol. Indem. & Ins. Co.*, 185 S.E. 731, 737 (S.C. 1936) (reversing appointment of receiver where there was a “total failure of any proof” that the foreign company “has property in this state”).

The circumscribed nature of state receiverships over foreign corporations is a basic principle of state receivership law. *See, e.g.*, 17A FLETCHER CYC. CORP. § 8554, *Jurisdiction and power to appoint receivers—General receivers* (“But where the corporation has no property in the state, there would be nothing for the receiver to take under control, and the appointment would be an idle act that the courts cannot be called upon to perform.”) (collecting cases); *id.* § 8555, *Receivers to take charge of local assets* (“While denying the power to appoint a general receiver, the authorities agree that equity has jurisdiction to prevent the dissipation and

⁶ Nor are any of the entities “related to the historic operations of Payne & Keller Company” to which the Payne & Keller Receivership was extended pursuant to the September 30, 2021 Order Granting the Receiver for Payne & Keller Company’s Motion to Clarify the Receiver Order. *See* 2d Am. Third-Party Compl. ¶ Ex. E (Order Granting The Receiver For Payne & Keller Company’s Motion To Clarify The Receiver Order). That order identifies several companies, all of which were incorporated in either Texas or Louisiana, not South Carolina. *See* Payne & Keller, Inc. (Ex. A, Texas corporation); Payne & Keller of Louisiana, Inc. (Ex. B, Louisiana corporation); Bayou Maintenance, Inc. (Ex. C, Louisiana corporation); Bayou Maintenance and Constructors, Inc. (Ex. D, Louisiana corporation); Payne & Keller Gulf Coast, Inc. (Ex. E, Louisiana corporation); Frentex Enterprises Company (Ex. F, Texas corporation); and Frentex Enterprises Company of Texas (Ex. G, Texas corporation).

misapplication of assets of the foreign corporation within the state, and if necessary, to appoint a receiver of the assets . . .”) (collecting cases); *see also* 75 C.J.S. RECEIVERS § 475 (“In accordance with the general rule as to extraterritorial rights, neither the court nor the receiver appointed by it has authority over property beyond the boundaries of its territorial jurisdiction.”). As a matter of clear South Carolina law, the Receiver may have authority with respect to Payne & Keller’s property located within the state of South Carolina, but he has no authority with respect to Payne & Keller’s out-of-state property.

Insurance policies issued to Payne & Keller (in Texas) by Travelers (in Connecticut) are not “property [of Payne & Keller] within [South Carolina]” as required under the South Carolina receivership statute. The situs of intangible property such as a contractual obligation under an insurance policy is the domicile of the debtor/obligor (here, Travelers), whose domicile is its state of incorporation or principal place of business (here, Connecticut). *See, e.g., H.J. Baker & Bro. v. Doe*, 70 S.E. 431, 433 (S.C. 1911) (“The general rule of law is well settled that for the purposes of founding administration, all simple contract debts are assets at the domicile of the debtor.”); *Af-Cap Inc. v. Republic of Congo*, 383 F.3d 361, 371–72 (5th Cir. 2004) (“[C]ourts consistently hold that the situs of a debt obligation is the situs of the debtor [T]his rule’s general operation has been recognized by the Supreme Court.”); *Long v. Baldt*, 464 F. Supp. 269, 273 (D.S.C. 1979) (“the situs of the debt lies with the debtor”). Travelers is incorporated and has its principal place of business in Connecticut; it has few, if any, contacts with South Carolina, and all of the subject insurance policies were issued and delivered to Payne & Keller outside of South Carolina. *See infra* at § II; *see also* Ex. I (Declaration of Ann B. Mulcahy (“Mulcahy Decl.”)) at ¶¶ 3-6. Similarly, all other third-party defendant insurers are incorporated and maintain their principal places of business outside of South Carolina. *See* 2d Am. Third-Party

Compl. at ¶¶ 4-5, 7-14, 21-24. As a result, the subject contracts are plainly not “property [of Payne & Keller] within [South Carolina].” Accordingly, the Receiver has no standing to assert Payne & Keller’s rights or otherwise act on Payne & Keller’s behalf with respect to contracts of insurance between Travelers and Payne & Keller. The claims the Receiver asserts against Travelers in this action must be dismissed for this reason as well.

The Payne & Keller Receivership also must be dissolved for similar reasons. The Receiver’s Third-Party Claims, as they relate to Payne & Keller, relate solely to insurance assets. See 2d Am. Third-Party Compl. ¶¶ 142-174, Causes of Action 1, 2, 11, and “all that remains of Payne & Keller is its insurance coverage” (Pl.’s Mot. to Appoint a Receiver over Payne & Keller Co. Pursuant to S.C. Code § 15-65-10(4) at 1 (Aug. 23, 2021)). As discussed above, those assets are property of the state in which the issuing insurer is domiciled. See, e.g., *H.J. Baker*, 70 S.E. at 433; *Af-Cap*, 383 F.3d at 371–72; *Long*, 464 F. Supp. at 273. And the Receiver admits that none of Payne & Keller’s insurers are domiciled in South Carolina. See 2d Am. Third-Party Compl. at ¶¶ 4-5, 7-14, 21-24. Given that Payne & Keller has no property located in South Carolina for a receiver to administer, the Payne & Keller receivership has no point and must be dissolved.

II. The Court Lacks Personal Jurisdiction Over Travelers

Pursuant to SCRCP 12(b)(2), a court must grant a motion to dismiss where the plaintiff fails to allege plausible facts supporting the exercise of personal jurisdiction over the non-resident defendant. See *Power Prods. & Servs. Co., Inc. v. Kozma*, 665 S.E.2d 660, 664 (S.C. Ct. App. 2008). “The party seeking to invoke personal jurisdiction over a non-resident defendant . . . bears the burden of establishing jurisdiction.” *Id.* (citation omitted). “When a nonresident defendant attacks the allegations of a complaint based on jurisdiction, the court is

not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction.” *Id.* (citation omitted). “Personal jurisdiction over a nonresident defendant is a question to be resolved upon the facts of each particular case.” *Id.* (citation omitted). Because South Carolina’s long-arm statute has been interpreted to apply coextensively with the limits of due process, the sole question eventually “becomes whether the exercise of personal jurisdiction in this case would violate the strictures of due process.” *Id.* (citation omitted); *see also, e.g., S. Plastics Co. v. S. Com. Bank*, 423 S.E.2d 128, 130 (S.C. 1992) (“the question becomes whether the exercise of personal jurisdiction over the [nonresident defendant] comports with due process.”).

“‘Due process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.’” *Hidria, USA, Inc. v. Delo*, 783 S.E.2d 839, 843 (S.C. Ct. App. 2016) (quotation omitted). There are two prongs to the due process analysis: “‘(1) the ‘power’ prong, under which minimum contacts grant a court the ‘power’ to adjudicate the action; and (2) the ‘fairness’ prong, which requires the exercise of jurisdiction to be ‘reasonable’ or ‘fair.’” *Id.* (citation omitted). The plaintiff bears the burden of satisfying both; if either prong fails, the exercise of personal jurisdiction over the nonresident defendant fails to comport with the requirements of due process. *See id.* (citations omitted). Here, there is no basis for the Court to exercise either general or specific jurisdiction over Travelers.

A. The Court Does Not Have General Jurisdiction Over Travelers

“General jurisdiction is the State’s right to exercise personal jurisdiction over a defendant even though the suit does not arise out of or relate to the defendant’s contacts with the forum[.]” *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 655 S.E.2d 476, 478 (S.C. 2007) (citing

Burger King Corp. v. Rudzewicz, 471 U.S. 462, 473 n. 15, 105 S. Ct. 2174, 85 L.Ed.2d 528 (1985)). A nonresident corporation must have substantial contacts with the forum state to support a court's exercise of general jurisdiction when the nonresident's contacts do not directly relate to the plaintiff's cause of action. See *Cockrell v. Hillerich & Bradsby Co.*, 611 S.E.2d 505, 508 (S.C. 2005) (citations omitted).

Subject to the constraints imposed by federal due process, general jurisdiction is determined under S.C. Code Ann. § 36-2-802, which states: "A court may exercise personal jurisdiction over a person domiciled in, organized under the laws of, doing business, or maintaining his or its principal place of business in, this State as to any cause of action." For general jurisdiction to attach, the foreign corporation's activities or affiliations within the forum state must be "so continuous and systematic as to render [it] essentially at home in the forum State." *Daimler AG v. Bauman*, 571 U.S. 117, 119 (2014) (citation and internal quotation marks omitted); see also *Companion Prop. & Cas. Ins. Co. v. U.S. Bank Nat'l Ass'n.*, 3:15-cv-01300-JMC, 2016 WL 6781057, at *5 (D.S.C. Nov. 16, 2016) ("general jurisdiction requires affiliations so continuous and systematic as to render [the foreign corporation] essentially at home in the forum State, *i.e.*, comparable to a domestic enterprise in that State") (citation and internal quotation marks omitted)). "[O]nly a limited set of affiliations with a forum" can satisfy the "essentially at home" requirement. *Daimler*, 571 U.S. at 137. Thus, in order to haul a nonresident corporation into court to answer for claims that have nothing to do with the corporation's activities in or contacts with the forum state, the corporation must have substantial contacts with the forum state. See *Gibson v. Confie Ins. Grp. Holdings, Inc.*, 2:16-CV-02872-DCN, 2017 WL 2936219, at *5 (D.S.C. July 10, 2017) ("The threshold level of contacts with the

forum state required for the exercise of general jurisdiction is significantly higher than for specific jurisdiction and must be fairly extensive.” (citation omitted)).

A corporation typically will only be found “at home” in its state of incorporation and the state in which it has its principal place of business. *See Sutton v. Motor Wheel Corp., LLC*, No. 3:17-01161-MGL, 2018 WL 2197535, at *3 (D.S.C. May 14, 2018) (citation omitted); *see also Daimler*, 571 U.S. at 137 (“the place of incorporation and principal place of business are ‘paradig[m] ... bases for general jurisdiction.’” (citations omitted)). Only “in an exceptional case” may “a corporation’s operations in a forum other than its formal place of incorporation or principal place of business [] be so substantial and of such a nature as to render the corporation at home in that State.” *Daimler*, 571 U.S. at 139 n. 19. This exception is very limited, and plaintiffs face a heavy burden in proving it applies. *See Daimler*, 571 U.S. at 138 (rejecting as “unacceptably grasping” the proposition that a party can be subject to general jurisdiction in every state in which it “engages in a substantial, continuous, and systematic course of business”).⁷

⁷ *See also, e.g., Companion Prop. & Cas. Ins. Co.*, 2016 WL 6781057, at *7 (noting a party asserting general jurisdiction under *Daimler*’s “exceptional case” exception “faces a heavy burden,” and rejecting argument that foreign corporation was at home in South Carolina (citations omitted)); *Maseng v. Lenox Corp.*, 483 F. Supp. 3d 360, 368-69 (D.S.C. 2020) (“Lenox’s contacts with South Carolina are limited to one retail store in Myrtle Beach, South Carolina and the marketing, distribution, and sale of its own products in various retail stores in South Carolina. The Myrtle Beach retail store is one of the 20 retail stores that Lenox operates in 12 states. . . . Thus, while this contact is certainly systematic and continuous, it is not substantial enough to render Lenox ‘at home’ in South Carolina.”); *Sunny Days Entm’t, LLC v. Traxxas, L.P.*, 376 F. Supp. 3d 654, 660-61 (D.S.C. 2019) (nonresident company that sold toys to South Carolina customers through brick and mortar stores and online not subject to general jurisdiction in South Carolina); *Fidrych v. Marriott Int’l, Inc.*, No. 2:17-2195-BHH, 2018 WL 9811052, at *6 (D.S.C. Aug. 3, 2018) (nonresident corporation with 90 hotels and certificate of authority to transact business in South Carolina not subject to general jurisdiction in South Carolina).

Here, there is no basis for the assertion of general jurisdiction over Travelers. Travelers is incorporated in and has its principal place of business in Connecticut. *See* Ex. I at ¶ 3. Thus, the only way this Court can have general personal jurisdiction over Travelers is if Payne & Keller can meet its heavy burden of showing that Travelers' contacts with South Carolina are so continuous and systematic as to render it essentially at home in South Carolina. Payne & Keller cannot possibly meet its burden here.

Payne & Keller does not so much as allege that Travelers is subject to general jurisdiction in South Carolina, let alone explain how or why it could be. That is reason alone to reject any argument that Travelers is somehow at home in South Carolina. But even if the Court were to look past this pleading deficiency, Travelers' limited activities in South Carolina are plainly insufficient to render it at home in South Carolina. As set forth in the accompanying declaration of Ann B. Mulcahy:

- Travelers is a corporation with its principal place of business and state of incorporation outside of South Carolina (*see* Ex. I at ¶¶ 3, 6);
- Travelers' business operations are managed principally from its Connecticut offices (*see id.* at ¶ 4);
- None of Travelers' senior officers or directors are located in South Carolina (*see id.* at ¶ 5);
- Travelers does not have employees in South Carolina (*see id.* at ¶ 6);
- Travelers does not own or rent office space in South Carolina (*see id.* at ¶ 6);
- Travelers does not have any loan applications with South Carolina banks or financial institutions (*see id.* at ¶ 6); and
- Travelers does not hold meetings of directors in South Carolina (*see id.* at ¶ 6).

Simply put, Travelers is not "at home" in South Carolina, and Payne & Keller does not assert otherwise. Travelers' limited contacts with South Carolina relate solely to its insuring

relationship with certain South Carolina businesses and residents. Notably, Payne & Keller, a defunct Texas corporation, is not one such business. Accordingly, because Travelers is not incorporated in South Carolina, does not have its principal place of business in South Carolina, and otherwise lacks the type of contacts needed to render it essentially at home in South Carolina, general jurisdiction does not exist.

B. The Court Lacks Specific Jurisdiction Over Travelers

Specific jurisdiction exists where the plaintiff's claims arise out of or relate to the defendant's substantial contacts with the forum state. *See Coggeshall*, 655 S.E.2d at 478 ("Specific jurisdiction is the State's right to exercise personal jurisdiction because the cause of action arises specifically from a defendant's contacts with the forum" (citation omitted)); *Maseng*, 483 F. Supp. 3d at 365 ("A defendant has minimum contacts with a jurisdiction sufficient to subject it to specific jurisdiction in the forum state if 'the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.'" (quotation omitted)). Because South Carolina's long-arm statute has been interpreted to be coextensive with the limits of due process, the dispositive question for purposes of specific jurisdiction is whether the exercise of jurisdiction would comport with due process. *See Coggeshall*, 655 S.E.2d at 478; *S. Plastics Co.*, 423 S.E.2d at 131.

As noted above, to comport with due process in the specific jurisdiction context, Payne & Keller must allege plausible facts sufficient to satisfy both the "power" prong and the "fairness" prong. *See Hidria, USA, Inc.*, 783 S.E.2d at 843. "The court must (1) find that the defendant has the requisite minimum contacts with the forum, without which, the court does not have the 'power' to adjudicate the action and (2) find the exercise of jurisdiction is reasonable or fair." *Power Prods. & Servs. Co.*, 665 S.E. 2d at 665 (citation omitted). "If either prong fails, the

exercise of personal jurisdiction over the defendant fails to comport with the requirements of due process.’” *Id.* (quotation omitted). Payne & Keller has not come close to alleging specific jurisdiction facts sufficient to satisfy its burden as to either the “power” prong or the “fairness” prong.

1. The Power Prong Is Not Met

“A minimum contacts analysis requires a court to find that the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities.” *S. Plastics Co.*, 423 S.E.2d at 131 (citation omitted). Here, Travelers did not purposefully avail itself of the privileges of conducting activities in South Carolina in connection with the instant claims, given that there are no factual allegations or evidence that Travelers conducted activities in South Carolina that serve as the basis for Payne & Keller’s third-party claims against Travelers.

In its Second Amended Third-Party Complaint, Payne & Keller rotely alleges that “[t]his 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,” and that “[t]his Court appointed Peter D. Protopapas as Receiver of Third-Party Plaintiffs.” 2d Am. Third-Party Compl. ¶ 25. There are no jurisdictional allegations specific to Travelers. This is reason alone to find that specific personal jurisdiction is lacking. *See Sullivan v. Hawker Beechcraft Corp.*, 723 S.E.2d 835, 839 (S.C. Ct. App. 2012) (the mere “repeating of the [long-arm] statute is insufficient to support a finding of personal jurisdiction”).

Beyond this pleading deficiency, Payne & Keller cannot demonstrate the minimum, claim-specific contacts between Travelers and South Carolina necessary to meet the constitutional requirements of due process. Payne & Keller’s third-party claims against

Travelers do not arise from or relate to Travelers' contacts with South Carolina. Payne & Keller seeks insurance coverage rulings that have nothing to do with Travelers' limited contacts with South Carolina. The Receiver has not alleged, and cannot allege, that Travelers directed its Payne & Keller-related activities at residents of South Carolina, or that Payne & Keller's third-party claims against Travelers in this case arise out of Travelers' in-state activities. Indeed, Payne & Keller is not and has never been a South Carolina company, and all of the subject insurance policies were issued and delivered to Payne & Keller outside of South Carolina. Travelers is not alleged to have ever manufactured, distributed, or sold any Payne & Keller-related asbestos or asbestos-containing products in South Carolina or elsewhere, and the insurance policies Travelers issued to Payne & Keller are not alleged to have caused Childers' asbestos injuries.

Moreover, even assuming Travelers could have foreseen that Payne & Keller would be subject to asbestos tort lawsuits in South Carolina, foreseeability alone is insufficient to establish personal jurisdiction. *See Cockrell*, 611 S.E.2d at 509 ("The foreseeability that is critical to due process analysis" is that "the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there." (citation omitted)). Payne & Keller cannot avoid the absence of jurisdiction over Travelers by attempting to impute the South Carolina contacts of individual asbestos claimants (or others) to Travelers. The relevant contacts for jurisdictional purposes "must center on the contacts generated by the defendant and not on the unilateral actions of some other entity[.]" *Id.* at 508 (citation omitted); *see also Moosally v. W.W. Norton & Co., Inc.*, 594 S.E.2d 878, 885 (S.C. Ct. App. 2004) ("Because the due process requirements must be met as to each defendant, we must assess individually each defendant's contacts with South Carolina." (citations omitted)); *Walden v. Fiore*, 571 U.S. 277, 284 (2014)

(“the relationship must arise out of contacts that the ‘defendant *himself*’ creates with the forum State” (citation omitted) (emphasis in original)); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984). Indeed, the United States Supreme Court has made clear that the “unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction.” *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984) (citations omitted).⁸ Thus, the contacts asbestos claimants or others may have had with South Carolina are irrelevant to the question whether Travelers has sufficient minimum contacts with South Carolina to give rise to specific personal jurisdiction over Travelers.

In short, because Payne & Keller fails to allege facts sufficient to show that Travelers conducted activities in South Carolina that serve as the basis for Payne & Keller’s third-party claims against Travelers in this case, the exercise of personal jurisdiction over Travelers would violate due process under the power prong of the due process analysis.

2. The Fairness Prong is Not Met

It would also be unreasonable and unfair for the Court to exercise personal jurisdiction over Travelers in this case. Under the fairness prong of the due process analysis, a court should consider: “(1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident’s acts; (3) the inconvenience resulting to

⁸ See also, e.g., *Wallace v. Yamaha Motors Corp.*, No. 9:19- cv-0730-DCN, 2019 WL 6170419, at *3 (D.S.C. Nov. 20, 2019) (finding personal jurisdiction could not be exercised over a nonresident motorcycle manufacturer for product liability claims stemming from a vehicular accident because “conduct of plaintiffs or third parties that creates a connection between the defendant and the forum state will be disregarded”); *Sutton v. Motor Wheel Corp.*, 2018 WL 2197535, at *5 (finding personal jurisdiction did not exist over the defendant, a tire manufacturer, based on the contacts of a distributor of defendant’s tires that was authorized to transact business in South Carolina).

the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction." *Power Prods. & Servs. Co., Inc.*, 655 S.E.2d at 665 (citation omitted). Each of these considerations weighs in favor of declining to exercise jurisdiction over Travelers in this case.

With respect to the first two factors, Travelers' activities in South Carolina are not only limited, they are unrelated to the facts and circumstances of Payne & Keller's third-party claims against Travelers. As explained, Travelers is incorporated in Connecticut, its principal place of business is in Connecticut, none of its senior officers or directors are located in South Carolina, it does not have employees in South Carolina, and it does not own or rent office space in South Carolina. See Ex. I at ¶¶ 3-6. In addition, Payne & Keller was never a South Carolina company, and Travelers is not alleged to have done anything in South Carolina that forms the basis for Payne & Keller's third-party claims against Travelers in this case. Indeed, Payne & Keller's claims against Travelers are based on insurance policies that Travelers issued to Payne & Keller outside of South Carolina.

With respect to the third factor, no party would be inconvenienced if this Court were to find that it does not have jurisdiction over Travelers. The parties are litigating substantially identical claims in the first-filed Federal Coverage Action, which is pending in federal court in Columbia, South Carolina. Thus, the Receiver will have no reason to complain if his substantially identical claims are dismissed in this case. If anything, the parties to this asbestos tort case—particularly Childers—would be inconvenienced if the Receiver is allowed to implead Travelers and other insurers. Permitting the Receiver to pursue his duplicative third-party claims would expand unnecessarily the scope of the case and delay its ultimate resolution, thereby prejudicing Childers and the other parties, and wasting party and judicial resources.

Finally, South Carolina's interest in exercising jurisdiction here is minor. "[W]hile South Carolina has an interest in providing redress for its citizens, that interest is diminished when no business was transacted in this State and any contract formed was not to be performed in this State." *Aviation Assocs. & Consultants, Inc. v. Jet Time, Inc.*, 402 S.E.2d 177, 181 (S.C. 1991). Payne & Keller has never been a South Carolina company, and all of the policy contracts were issued to Payne & Keller outside of South Carolina. Further, given the existence of the first-filed Federal Coverage Action now pending in South Carolina federal court, a court located in South Carolina will still hear and resolve substantially identical claims if this Court were to decline to exercise jurisdiction over Travelers in this case, as it should.

Under the facts of this case, even if Payne & Keller could establish the minimum contacts necessary to meet the constitutional requirements of due process under the power prong (it cannot), the Court cannot exercise jurisdiction over Travelers under the fairness prong because it would be neither reasonable nor fair.

III. The Third-Party Claims Are Improper Under SCRCP 14 Because They Cannot Establish, and Are Not Based On, Derivative Liability of Childers' Tort Claims

Rule 14 of the SCRCP provides that a defendant "as a third-party plaintiff, may cause a summons and complaint to be served upon 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.*" S.C. R. Civ. P. 14(a) (emphasis added). This means that "the third-party plaintiff must have a substantive claim against the third-party defendant founded upon derivative liability," and "[t]he outcome of the principal claim must impact the third-party defendant's liability[.]" *First Gen. Servs. of Charleston, Inc. v. Miller*, 445 S.E.2d 446, 447 (S.C. 1994) (citation omitted). "Consequently, a non-party is subject to impleader [under SCRCP 14] only if there is a basis to assert he is liable to the named defendant(s) for all or part of the plaintiff's claim." *Smith v. Tiffany*, 799 S.E.2d 479, 486 (S.C.

2017); *see also Gathings v. Robertson Brokerage Co., Inc.*, 367 S.E.2d 423, 426 (S.C. Ct. App. 1988) (“Rule 14 may be used only when the substantive law permits the defendant to shift some or all of his liability [on the principal claim] to the impleaded party.” (quotation omitted)).

“The third party claim must be derivative of the plaintiff’s claim because [d]erivative liability is central to the operation of Rule 14.” *CNH Indus. Cap. Am. LLC v. Able Cont., Inc.*, No. 9:16-cv-2520-RMG, 2017 WL 512453, at *1 (D.S.C. Feb. 7, 2017) (citation and internal quotation marks omitted).⁹ “It is not sufficient that the third-party claim is a related claim; the claim must be derivatively based on the original plaintiff’s claim.” *Id.* (quotation omitted). “Rule 14(a) does not allow the defendant to assert a separate and independent claim even though the claim arises out of the same general set of facts as the main claim.” *Id.* (quotation and other citation omitted). “In other words, impleader ‘must involve an attempt to pass on to the third party all or part of the liability asserted against the defendant.... An impleader claim may not be used to assert any and all rights to recovery arising from the same transaction or occurrence as the underlying action.’” *Id.* (quotation omitted). Thus, “[a] third-party claim may be asserted . . . only when the third party’s liability is in some way dependent on the outcome of the main claim or when the third party is secondarily liable to the defending party.” *Id.* (citation omitted) (emphasis in original). “[A] third-party claim is ‘viable only where a proposed third party plaintiff says, in effect, ‘If I am liable to [the original] plaintiff, then my liability is only technical or secondary or partial, and the third party defendant is derivatively liable and must reimburse me for all or part ... of anything I must pay [the original] plaintiff.’” *For Life Prods.*,

⁹ Rule 14 of the Federal Rules of Civil Procedure is substantially the same as Rule 14 of the SCRCF. “In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules.” *Maybank v. BB&T Corp.*, 787 S.E.2d 498, 510 (S.C. 2016) (citation omitted).

LLC v. Universal Cos., Inc., No. 1:20CV00016, 2021 WL 1169532, at *4 (W.D. Va. Mar. 29, 2021) (quotation omitted).

Here, Payne & Keller's third-party *contract* claims against Travelers are not derivative of or dependent on Childers' *tort* claims against Payne & Keller. Payne & Keller does not and cannot allege that Travelers, an insurer, is derivatively liable if Payne & Keller is found responsible for Childers' alleged asbestos exposure. Nor does Payne & Keller allege that Travelers has any obligation to Childers.

Indeed, rather than seeking to establish derivative liability, the third-party claims seek relief directly from and against Travelers. Specifically, as to Travelers, the Receiver for Payne & Keller seeks the following relief:

- In Count I, a declaration 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." 2d Am. Third-Party Compl. ¶ 181.
- In Count II, a 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." *Id.* at ¶ 185.
- In Count XI, "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 in this regard." *Id.* at ¶ 233.
- In the Prayer for Relief, a "declaration as to the interpretation and meaning of the Third-Party Plaintiffs' insurance policies," ostensibly including any insurance policies Travelers issued to Payne & Keller. *Id.*, Prayer for Relief ¶ E.

These are direct claims against Travelers; they are not based on derivative liability and, as a result, they are not actionable under SCRCP 14. *See Miller*, 445 S.E.2d at 447 (explaining that, because third-party claims are dependent on derivative liability, “no right exists to implead a third-party defendant who is *directly* liable to the [third-party] plaintiff.” (citation omitted) (emphasis in original)). Payne & Keller’s third-party claims against Travelers seek broad insurance coverage contract rulings, including a declaration that Travelers “must fairly compensate the Receiver” for time spent defending “asbestos suits” generally (2d Am. Third-Party Compl. ¶ 181), a declaration that “all policies, evidence of policies and documents relating to their placement, purchase and underwriting . . . are the property of the Receiver and shall be delivered immediately to the Receiver (*id.* ¶ 185), and a declaration regarding “Rexel’s competing claims to the Payne & Keller insurance program” (*id.* ¶ 233). These claims are not specific to Childers and are not based on derivative liability.

Again, the instant case is a tort lawsuit related to alleged asbestos exposure. It has nothing to do with insurance policy obligations. Travelers’ insuring relationship with Payne & Keller is not alleged to have caused Childers’ injuries—nor could it. Childers is a stranger to the insurance contracts Travelers issued to Payne & Keller, and Childers has yet to establish that Payne & Keller has any liability to Childers.

“It is hardly necessary to cite cases or authorities to the effect that in a tort action, suit must first be brought against the insured or party claimed to be liable, and that an insurance carrier cannot be joined in such a suit, or suit brought individually against such a company; and in fact, it is universally forbidden that any evidence or reference be made to the fact that the defendant is protected by insurance.” *Ford v. Glens Falls Indem. Co. of Glens Falls, N.Y.*, 80 F. Supp. 347, 348 (E.D.S.C. 1948). Indeed, recognizing the distinct set of facts and issues relevant

to tort claims as opposed to contract claims, courts in South Carolina have long held that liability issues and insurance coverage issues should be litigated separately. *See Am. Fidelity Fire Ins. Co. v. Hood*, 37 F.R.D. 17, 24 (E.D.S.C. 1965) (dismissing tort cross-claims asserted in declaratory judgment action on insurance coverage because such claims did not arise from same transaction or occurrence as declaratory judgment claims); *Ex Parte Builders Mutual Ins. Co.*, 847 S.E.2d 87, 110-111 (S.C. 2020) (affirming trial court's decision to deny insurers' motions to intervene in underlying tort action, and recognizing that a separate declaratory judgment action is the proper forum to resolve insurance coverage issues).

The Payne & Keller insurance contracts themselves likewise reflect the parties' agreement that Payne & Keller cannot implead Travelers in a direct asbestos tort case before Payne & Keller's liability has been determined. For example, in a liability insurance policy Travelers issued to Payne & Keller for the policy period April 1, 1983 to April 1, 1986, the parties agreed that:

No action shall lie against the company [i.e., Travelers] unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, *nor until the amount of the insured's [i.e., Payne & Keller's] obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company. . . .*

No person or organization shall have any right under this policy to join the company as a party to any action against the insured to determine the insured's liability, nor shall the company be impleaded by the insured or his legal representative. . . .

Ex. H, at TRAV_SUB_002207 (policy number 61 AL 473361 SRA) (emphasis added).

In short, Payne & Keller's third-party claims against Travelers improperly ask this Court for contract-related judicial declarations unrelated to Childers' asbestos tort action and not

premised on derivative liability. Travelers, therefore, cannot be impleaded, and the third-party claims against Travelers must be dismissed.

IV. Payne & Keller’s Third-Party Claims Should Be Dismissed Under SCRCP 12(b)(8) Because They Are Duplicative of Payne & Keller’s Claims Against Travelers in the First-Filed Federal Coverage Action

Under SCRCP 12(b)(8), “[a] defendant may seek dismissal of an action . . . when another action is pending between the same parties for the same claim.” *Babb v. Shaw*, No. 2011-UP-440, 2011 WL 11735697, at *1 (S.C. Ct. App. Oct. 11, 2011) (citation and internal question marks omitted). “[T]he principle underlying Rule 12(b)(8) . . . [is] that duplicative litigation should be avoided[.]” *State ex rel. Wilson v. Condon*, 410 S.C. 331, 333 (S.C. 2014) (Toal, C.J.). “Avoiding concurrent litigation in both the courts of this state and the Federal District Court will foster wise judicial administration and conserve judicial resources.” *Id.* (citation omitted); *see also, e.g., Corbett v. City of Myrtle Beach*, 521 S.E.2d 276, 281 (S.C. Ct. App. 1999) (holding dismissal pursuant to SCRCP 12(b)(8) was appropriate where the “claim involves the same parties and is based upon the same facts and circumstances”).

As the following table demonstrates, the allegations and claims in both cases are substantially identical as to Travelers.

Allegations and Relief Sought as to Travelers in the Federal Coverage Action	Allegations and Relief Sought as to Travelers in the Instant Case
¶ 30 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	¶ 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.	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.
¶ 31 Aetna has failed to fully acknowledge or accept its insuring obligations under the Aetna Policies. An actual and justiciable dispute exists between these parties.	¶ 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.
Count I – Declaratory Judgment ¶ 62 Plaintiff seeks a judicial declaration that all policies, evidence of policies and documents relating to their placement, purchase and underwriting, and claims handling, including but not limited to such documents in the possession of defendants, are the property of the Receiver and shall be delivered immediately to the Receiver to be maintained in his sole possession.	Count II – Declaratory Judgment ¶ 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.
Count VII – Declaratory Judgment ¶ 94 Plaintiff respectfully requests this Court to declare that defendants must fairly	Count I – Declaratory Judgment ¶ 181 The Receiver respectfully requests this Court to declare that Third-Party Defendants must

compensate plaintiff for the substantial time, effort, and expenses plaintiff expended in connection with the defense of asbestos suits potentially covered under the defendants' policies and to further declare that this obligation is unlimited and shall continue as long as there is any Payne & Keller Asbestos Suit pending.	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.
Prayer for Relief ¶ D The Receiver seeks a further declaration as to the interpretation and meaning of the Payne & Keller insurance policies: i. The Payne & Keller Insurance Policies cover all Payne & Keller 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 Payne & Keller asbestos suit "triggers" at least one Payne & Keller Insurance policy as long as an asbestos plaintiff alleges injury during the period of the policy; iii. Payne & Keller may select the policy or policy years to which to assign or allocate in full each Payne & Keller asbestos loss; iv. In the case of a claimed ambiguity in any Payne & Keller Insurance policy, such ambiguity shall be construed in favor of the broadest coverage afforded under the defendants' policies, and defendants bear the burden of proof as to any such ambiguity; v. Defense costs for the Payne & Keller asbestos suits are supplemental, and the payment of defense costs does not erode or	Prayer for Relief ¶ 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 Payne & Keller Insurance policies; vi. If any allegation in a Payne & Keller Asbestos Suit is potentially covered under the Payne & Keller Insurance Policies, then the 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 Payne & Keller 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 Payne & Keller Asbestos Suits; viii. Each Payne & Keller Insurance Policy must indemnify covered Payne & Keller Asbestos Suits, in full, up to its “per occurrence” limits, regardless of whether a continuing injury spans multiple policy periods; ix. The Payne & Keller Asbestos Suits that allege exposure to asbestos during Payne & Keller’s work are subject only to the “per occurrence” limits of the Payne & Keller Insurance policies; x. Any aggregate limit on coverage in any of the Payne & Keller Insurance Policies is a limitation on coverage, and the insurers therefore have the burden to prove, based on the evidence, that a Payne & Keller Asbestos Suit is subject to the aggregate limit in the Payne & Keller Insurance Policies, if any; and xi. Each insurer and the Guaranty Association has the burden to prove, based on the evidence, that any particular Payne & Keller Asbestos Suit is either a “products” claim or a “completed operations” claim, as those terms are defined in the Payne & Keller Insurance	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 a Payne & Keller Asbestos Suit against Payne & Keller otherwise alleging injury during the Payne & Keller insurance policy period[.]	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.

Payne & Keller's third-party claims against Travelers here must be dismissed under SCRCP 12(b)(8), because they are substantially identical to Payne & Keller's claims against Travelers in the Federal Coverage Action. *See Condon*, 410 S.C. at 333 ("although the parties in this matter and the federal case are not identical, the principle underlying Rule 12(b)(8) of the South Carolina Rules of Civil Procedure that duplicative litigation should be avoided applies to this case.").

Dismissal is particularly appropriate here because the claims in the Federal Coverage Action were filed first. When considering whether to dismiss or stay a parallel action, courts often give deference to a first-filed suit over a second-filed competing action. *See, e.g., VRCompliance LLC v. HomeAway, Inc.*, 715 F.3d 570, 574 (4th Cir. 2013) ("where two parallel suits are pending in state and federal court, 'the first suit should have priority, absent the showing of balance of convenience in favor of the second action.'" (quotation omitted)); *United Prop. & Cas. Ins. v. D'Ambrosio*, No. 9:19-CV-547-BHH, 2020 WL 6434786, at *2-3 (D.S.C. Nov. 2, 2020) (agreeing "with the sound analysis of the State Court" ruling that, "pursuant to the first-to-file principal, the federal action shall have priority over the state action" where the "the parties to the [first-filed] federal action and state action are identical, and the claims are precisely or substantially the same"). The Receiver for Payne & Keller initiated insurance coverage litigation against its insurers many months ago; he only filed his Third-Party Complaint here when the insurance coverage litigation was removed to federal court and became the Federal Coverage Action. Thus, the Third Amended Complaint should be seen for what it is—pure jurisdictional

gamesmanship. This is an additional reason that counsels in favor of dismissing the Receiver's third-party claims here in favor of the first-filed Federal Coverage Action.

CONCLUSION

Accordingly, for the foregoing reasons and others appearing in the record, Travelers respectfully requests that the Court dismiss the third-party claims asserted against Travelers with prejudice and dissolve the Payne & Keller Receivership.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

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Attorneys for Third-Party Defendant Travelers
Casualty and Surety Company (improperly
named as Travelers Casualty & Surety
Company), formerly known as The Aetna
Casualty and Surety Company (improperly
named as Aetna Casualty & Surety Company)

August 24, 2022

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

**NOTICE OF MOTION AND JOINDER
TO THIRD-PARTY DEFENDANT
TRAVELERS CASUALTY AND
SURETY COMPANY'S MOTION TO
DISMISS THIRD-PARTY CLAIMS
AND DISSOLVE THE PAYNE &
KELLER RECEIVERSHIP**

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.

TO: BRIAN BARNWELL, ESQUIRE, ATTORNEY FOR THE THIRD-PARTY PLAINTIFF PAYNE & KELLER COMPANY, BY AND THROUGH PETER D. PROTOPAPAS, AND TO THE THIRD-PARTY PLAINTIFF ABOVE-NAMED:

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 Unnamed Underwriters at Lloyd's, London and Certain as yet Unnamed London Market Companies (hereinafter collectively referred to as "Joining Defendants"), hereby move for dismissal pursuant to Rule 12(b)(1) and move to dissolve the Payne & Keller Receivership.

On August 24, 2022, Third-Party Defendant Travelers Casualty and Surety Company (hereinafter "Travelers") filed a Motion to Dismiss Third-Party Claims and Dissolve the Payne & Keller Receivership (hereinafter "Travelers' Motion"). In the interest of judicial economy and to avoid unnecessary duplication of briefing, the Joining Defendants join in and adopt by reference the factual recitations and legal authorities in support of certain arguments raised in Travelers' Motion.¹ Specifically, the Joining Defendants hereby join in and adopt by reference the issues and arguments raised in Argument Section I of Travelers' Motion (included on pages 6-14) as well as the factual recitations supporting those arguments.

MURPHY & GRANTLAND, P.A.

By: s/Wesley B. Sawyer
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 4406-B Forest Drive (29206)
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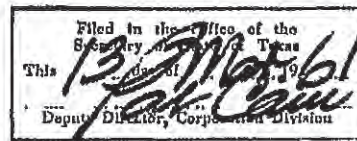
Counsel for Third-Party Defendants AIG Property Casualty Company, formerly known as Birmingham Fire Insurance Company; National Union Fire Insurance Company of Pittsburgh, PA; Berkshire

¹ The Joining Defendants previously raised certain arguments in Motions to Dismiss and/or Strike or in the Alternative to Sever and/or Stay. In an Order entered on August 9, 2022, the Court denied those motions and held that the arguments raised in those motions were preserved as to the Second Amended Third-Party Complaint. This Motion and Joinder does not raise those issues which have already been addressed and preserved.

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 Unnamed Underwriters at Lloyd's, London and Certain as yet Unnamed London Market Companies.

September 19, 2022
Columbia, South Carolina

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 §

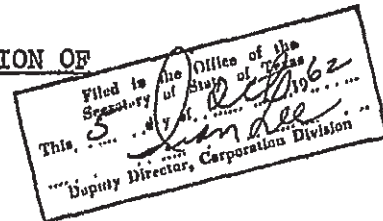
COUNTY OF HARRIS §

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

B-1

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

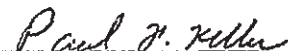
The holders of all the shares outstanding and entitled to vote on said amendment have signed a consent in writing adopting said amendment.

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

B-2

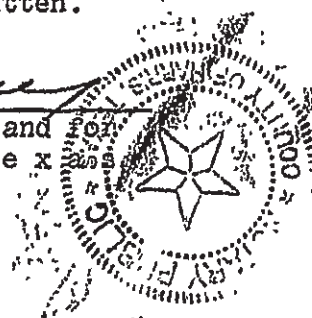
-6-

THE STATE OF TEXAS §
COUNTY OF HARRIS §

I, J. J. Seamer, 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 fore-
going document, and being first duly sworn, ac-
knowledgeed 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. Seamer
Notary Public in and for
Harris County, Texas



B-3

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. Siffert, 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. Siffert

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)

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)

Appx. 0206

Description	Date
Supplemental Initial Report	6/23/1971
Name Change	3/22/1972
Merger	12/30/1982

Print

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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.

DUM EZ, USA

By _____

By _____

PAYNE & KELLER CORPORATION

By _____

By _____

PAYNE & KELLER COMPANY

By _____

By _____

BAYOU-MAINTENANCE INC.

By _____

By _____

(Assignee)

By _____

By _____

4.

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 _____

(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 BE 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
VPR108	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	88,000	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	88,000	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	128,000	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	68,000	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
VPR119	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- BEMENT	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 F600V081340	08/08/74	6,276.76	0.00	NA	40,000	yard	NA	fair	no comment
F - 42	75 Ford F133 PU F19YLW42097	02/18/75	3,954.21	0.00	NA	204,850	yard	NA	poor	no comment
F - 45	Flatbed Dumptruck F600VY01508	08/24/77	8,835.29	0.00	NA	50,000	yard	NA	fair	no comment
F - 46	Flatbed Dumptruck F600Y081621	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 F6D1N704H051059	03/17/82	15,427.50	0.00	NA	40,000	6101	alcoa	good	no comment
F - 52	'82 Ford F250/1FTHF25F00N418190	05/18/82	9,197.60	0.00	NA	100,000	yard	NA	fair	no comment (see CF - 52)
F - 53	'82 Ford F250/1FTHF25Z3CRA26113	06/07/82	9,525.55	0.00	NA	60,524	yard	NA	good/fr	no comment
F - 54	1970 Dump Truck M50CUG61741	08/19/83	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	10,850.05	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 1FABF33F00N414598	03/81	8,439.65	0.00	NA	100,000	1000	G&A	fair	no comment
K - 91	'81 Ford LTD 1FABF33F00N4171935	06/25/81	8,885.92	0.00	NA	102,500	4459	exxon	fair	no comment
K - 93	'81 Ford LTD 1FABF33F00N4169432	07/07/81	10,977.14	0.00	NA	90,400	1000	G&A	poor	no comment
K - 96	'81 Ford LTD 1FA0P33F10N4179153	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/ 1FABF33F00N419075	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/ 1G6AY69Y00X3007731	10/29/82	12,564.71	0.00	NA	NA	NA	EATON ROUG	NA	no comment
K - 105	83 FORD LTD 1FABF33F00N4100000	01/85	9,610.41	0.00	NA	80,000	1000	G&A	fair	no comment
~~K - 107~~	~~84 OLDS 60 1G6AY69Y00X332970~~	~~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 F15GJ069655	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 F15GJ02113	03/29/79	6,260.00	0.00	NA	NA	NA	NA	SOLD	no comment
R - 179	'80 Ford F150 PU F15FL009947	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 F15ELH07000	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 F15E8BUA11611	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 F15E8BUA19797	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 F15E8BUA24976	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- GEMENT	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	2501	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	5502	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	1,338.00	443.38	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	2,678.00	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	682.56	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
VF001	X-Ray Film Viewer	03/24/81	558.00	62.38	NA	NA	5121	Liquid Air	good	no comment
WFB001	Farm Wagon	06/12/81	1,823.20	206.68	NA	NA	yard	NA	good	no comment
WFB002	Farm Wagon	06/12/81	1,823.20	206.68	NA	NA	yard	NA	poor	needs floor
WFB003	Farm Wagon	06/12/81	1,823.20	206.68	NA	NA	yard	NA	fair	no comment
WFB004	Farm Wagon	06/12/81	1,823.20	206.68	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	766.48	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	577.38	NA	NA	4459	Exxon	good	on trailer
WPM004	250 Amp Diesel Welder	04/22/81	5,094.60	577.38	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	5,483.38	1,700.80	NA	NA	yard	NA	good	on trailer
WPM010	250 Amp Diesel Welding Mach	12/16/82	5,483.38	1,700.80	NA	NA	6701	Marathon	good	on trailer
WPM011	250 Amp Diesel Welding Mach	12/16/82	5,483.38	1,700.80	NA	NA	6707	Boise	good	on trailer
WPM012	250 Amp Diesel Welding Mach	12/16/82	5,483.38	1,700.80	NA	NA	yard	NA	good	on trailer
WPM013	250 Amp Diesel Welding Mach	12/16/82	5,483.38	1,700.80	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	5815	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	Net	HOURS	MILEAGE	ASSI- GMENT	Client	General Condition	Comments
			Acquisition Cost	Book Value 12/31/85	15 JUNE 1986	15 JUNE 1986				
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	680.00	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	3101	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	3101	gatx	fair	needs painting and soon overhauled
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 1993
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	3101	gatx	fair	no comment
T33	Caterpillar Tractor	08/25/77	29,093.00	0.00	NA	NA	yard	NA	good	good engine rebuilt in 1993
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	3101	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 Acquisition Cost	Net Book Value 12/31/85	HOURS 15 JUNE 1986	MILEAGE 15 JUNE 1986	ASSI- GEMENT	Client	General Condition	Comments
	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 - 1000 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	1,059.37	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)
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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)

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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 RIDIG, 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

TOOL INVENTORY (BATON ROUGE)

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QTY	CODE	ITEM	UNIT PRICE	TOTAL
11	HPD	HOSE, PUMP DISCHARGE	61.00	671.00
11	HPS	HOSE, PUMP, SUCTION	53.00	583.00
81	HRH	HOIST, RATCHET, HAND (LESS 7 SCRAPPED)	170.00	13,770.00
53	HSB	HAMMER, SLEDGE, HAND	15.00	795.00
4	HTE	HEATER, ELEC.	450.00	1,800.00
41		HOSE, PURGE (3/8" X 50' UNIT)	20.00	820.00
8		HAMMER, CLAW, HAND	10.00	80.00
35		HAMMER, CHIPPING, HAND	10.00	350.00
23		HAMMER, BALL PEEN	5.00	115.00
12		HAMMER, PLASTIC TIP	11.00	132.00
3	JBH	JACK, BOTTLE, HYDRAULIC	80.00	240.00
1	JHD	JEEPER, HOLIDAY DETECTOR	1,620.00	1,620.00
28	JLV	JACKET, LIFE VEST	32.00	896.00
8	JPP	JACK, PORTA-POWER, HYDRAULIC	171.00	1,368.00
147	JSP	JACKSTAND, PIPE (LESS 18 SCRAPPED)	36.00	5,292.00
27	LCH	LEVEL, CARPENTER, HAND	20.00	540.00
18	LEA	LADDER, EXTENSION, ALUM (LESS 3 SCRAPPED)	200.00	3,600.00
21	LEW	LADDER, EXTENSION, WOOD	141.95	2,980.95
8	LLV	LOW LIGHT, VOLTAGE (3 TRANSFORMERS)	477.00	3,816.00
5	LSA	LADDER, STEP, ALUMINUM	87.00	435.00
4	LSW	LADDER, STEP, WOOD	66.00	264.00
89	LWG	LEAD, WELDING, GROUND (50 ft/unit)	50.00	4,450.00
148	LWW	LEAD, WELDING (100 ft/unit)	100.00	14,800.00
10		LIGHT DROP	15.00	150.00
4		LIFE RING	50.00	200.00
5	MAT	MAT, CRANE	400.00	2,000.00
4	MMD	METER, MULTI-DIGITAL	105.00	420.00
4	MME	METER, MEGGER, ELECTRIC	150.00	600.00
3	MOE	METER, OHM, ELECTRIC	216.00	648.00
2	MWE	METER, WIGGY, ELECTRIC	248.00	496.00
1	NBH	NUT BUSTER, HYDRAULIC	760.00	760.00
20	OEE	OVEN, ELECTRODE, ELEC. SMALL	105.00	2,100.00
8	OEE	OVEN, ELECTRODE, ELEC. LARGE	477.00	3,816.00
12	ORP	OILER, RIDGID, HAND PUMP W/RESERVIOR	97.00	1,164.00
6	PBF	PUMP, BARREL, FUEL	60.00	360.00
4		PUMP, FUEL, ELECTRIC 12V	163.00	652.00
1		PIPE SHAVER BONDSTRAN	2,174.00	2,174.00
5	PKH	PUNCH, KNOCKOUT, HYDRAULIC	520.00	2,600.00
3	PKS	PUNCH, KNOCKOUT, SCREW (WHITNEY)	240.00	720.00
12	PPA	PICK, PAINTER, ALUMINUM	413.33	4,960.00
2	PPC	PULLER, PIPE, CAST IRON	169.00	338.00
12	PPH	PUMP, PORTA-POWER, HYDRAULIC	171.00	2,052.00
29	PPP	PLUG, PLUMBER, PIPE	25.00	725.00
2	PSB	POT, SANDBLASTING, COMPLETE RIG	3,600.00	7,200.00
82	PTW	PIGTAIL, WELDING	30.00	2,460.00

Appx. 0278

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)

=====

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.

850:10 KI

ARTICLES OF AMENDMENT TO THE
ARTICLES OF INCORPORATION OF
PAYNE & KELLER COMPANY

FILED
In the Office of the
Secretary of State of Texas

OCT 20 1986

ARTICLE I

The name of the corporation is PAYNE & KELLER COMPANY, Inc.

ARTICLE II

The following amendment to the Articles of Incorporation was adopted on October 7, 1986.

Article I of the Articles of Incorporation is hereby amended so as to read as follows:

Company." "The name of the corporation is Frentex Enterprises

ARTICLE III

The number of shares of the corporation outstanding and entitled to vote at the time of such adoption was Eleven Thousand Fifty (11,050).

ARTICLE IV

The holders of all of the shares outstanding and entitled to vote on said amendment have signed a consent in writing adopting said amendment.

Dated: October 7, 1986.

Signature

Title

850:31

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]

in the Office of the
Secretary of State of Texas
OCT 2

OCT 24 1986

Clerk IX-G
Corporations Section

ARTICLE II

The following amendment to the Articles of Incorporation was adopted on October 7, 1986.

"The name of the corporation is Frentex Enterprises Company of Texas."

The number of shares of the corporation outstanding and entitled to vote at the time of such adoption was Eleven Thousand, Fifty (11,050).

The holders of all of the shares outstanding and entitled to vote on said amendment have signed a consent in writing adopting said amendment.

Dated: October 22, 1986.

Signature

Title

Appx. 0287

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]

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:

Title:





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

RECORDED

NOV 27 1986

CLERK

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

RECORDED

NOV 27 1986

CLERK

05-329-3(3-84)

Charter/COA No. 172882-0

TEXAS SECRETARY of STATE
JOHN B. SCOTT

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number:

17288200

Original Date of Filing:

March 13, 1961

Formation Date:

N/A

Tax ID:

17413853619

Duration:

Perpetual

Name:

FRENTEX ENTERPRISES COMPANY OF TEXAS

Address:

[ADDRESS NOT PROVIDED]

Entity Type:

Domestic For-Profit Corporation

Entity Status:

Voluntarily terminated

FEIN:

REGISTERED AGENT	FILING HISTORY	NAMES	MANAGEMENT	ASSUMED NAMES	ASSOCIATED ENTITIES
Name		Address		Inactive Date	
C T CORP SYSTEM		811 DALLAS AVE., Houston, TX 77002 USA			

Order

Return to Search

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TEXAS SECRETARY of STATE

JOHN B. SCOTT

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number: 17288200 **Entity Type:** Domestic For-Profit Corporation
Original Date of Filing: March 13, 1961 **Entity Status:** Voluntarily terminated
Formation Date: N/A
Tax ID: 17413853619 **FEIN:**
Duration: Perpetual

Name: FRENTEX ENTERPRISES COMPANY OF TEXAS
Address: [ADDRESS NOT PROVIDED]

REGISTERED AGENT		FILING HISTORY	NAMES	MANAGEMENT	ASSUMED NAMES	ASSOCIATED ENTITIES
View Image	Document Number	Filing Type	Filing Date	Effective Date	Eff. Cond	Page Count
	3579502	Articles of Incorporation	March 13, 1961	March 13, 1961	No	4
	36333530002	Articles of Amendment	October 5, 1962	October 5, 1962	No	3
	3579503	Change of Registered Agent/Office	February 6, 1978	February 6, 1978	No	1
	3579504	Change Of Registered Agent/Office	July 9, 1982	July 9, 1982	No	1
	3579505	Articles of Merger	December 30, 1982	December 30, 1982	No	13
	3579498	Change Of Registered Agent/Office	September 30, 1985	September 30, 1985	No	2
	3579500	Articles Of Amendment	October 20, 1986	October 20, 1986	No	2
	3579499	Articles Of Amendment	October 24, 1986	October 24, 1986	No	2
	3579501	Articles Of Dissolution	December 3, 1986	December 3, 1986	No	5

Instructions:

- To place an order for additional information about a filing press the 'Order' button.

TEXAS SECRETARY of STATE
JOHN B. SCOTT

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number:17288200

Original Date of Filing:March 13, 1961

Formation Date:N/A

Tax ID:17413853619

Duration:Perpetual

Entity Type:Domestic For-Profit Corporation

Entity Status:Voluntarily terminated

FEIN:

Name:FRENTEX ENTERPRISES COMPANY OF TEXAS

Address:[ADDRESS NOT PROVIDED]

REGISTERED AGENT	FILING HISTORY	NAMES	MANAGEMENT	ASSUMED NAMES	ASSOCIATED ENTITIES
Name	Name Status	Name Type	Name Inactive Date	Consent Filing #	
FRENTEX ENTERPRISES COMPANY OF TEXAS	Inactive	Legal	December 3, 1986		
PAYNE AND KELLER, INC.	Prior	Legal	December 30, 1982		
PAYNE & KELLER COMPANY	Prior	Legal	October 20, 1986		
FRENTEX ENTERPRISES COMPANY	Prior	Legal	October 24, 1986		

Order

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TEXAS SECRETARY of STATE

JOHN B. SCOTT

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number: 17288200 **Entity Type:** Domestic For-Profit Corporation
Original Date of Filing: March 13, 1961 **Entity Status:** Voluntarily terminated
Formation Date: N/A
Tax ID: 17413853619 **FEIN:**
Duration: Perpetual

Name: FRENTEX ENTERPRISES COMPANY OF TEXAS
Address: [ADDRESS NOT PROVIDED]

REGISTERED AGENT		FILING HISTORY	NAMES	MANAGEMENT	ASSUMED NAMES	ASSOCIATED ENTITIES
View Image	Document Number	Filing Type	Filing Date	Effective Date	Eff. Cond	Page Count
	3579502	Articles of Incorporation	March 13, 1961	March 13, 1961	No	4
	36333530002	Articles of Amendment	October 5, 1962	October 5, 1962	No	3
	3579503	Change of Registered Agent/Office	February 6, 1978	February 6, 1978	No	1
	3579504	Change Of Registered Agent/Office	July 9, 1982	July 9, 1982	No	1
	3579505	Articles of Merger	December 30, 1982	December 30, 1982	No	13
	3579498	Change Of Registered Agent/Office	September 30, 1985	September 30, 1985	No	2
	3579500	Articles Of Amendment	October 20, 1986	October 20, 1986	No	2
	3579499	Articles Of Amendment	October 24, 1986	October 24, 1986	No	2
	3579501	Articles Of Dissolution	December 3, 1986	December 3, 1986	No	5

Instructions:

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TEXAS SECRETARY of STATE
JOHN B. SCOTT

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number:17288200

Original Date of Filing:March 13, 1961

Formation Date:N/A

Tax ID:17413853619

Duration:Perpetual

Entity Type:Domestic For-Profit Corporation

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FEIN:

Name:FRENTEX ENTERPRISES COMPANY OF TEXAS

Address:[ADDRESS NOT PROVIDED]

REGISTERED AGENT	FILING HISTORY	NAMES	MANAGEMENT	ASSUMED NAMES	ASSOCIATED ENTITIES
Name	Name Status	Name Type	Name Inactive Date	Consent Filing #	
FRENTEX ENTERPRISES COMPANY OF TEXAS	Inactive	Legal	December 3, 1986		
PAYNE AND KELLER, INC.	Prior	Legal	December 30, 1982		
PAYNE & KELLER COMPANY	Prior	Legal	October 20, 1986		
FRENTEX ENTERPRISES COMPANY	Prior	Legal	October 24, 1986		

Order

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TEXAS SECRETARY of STATE
JOHN B. SCOTT

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number:

17288200

Original Date of Filing:

March 13, 1961

Formation Date:

N/A

Tax ID:

17413853619

Duration:

Perpetual

Name:

FRENTEX ENTERPRISES COMPANY OF TEXAS

Address:

[ADDRESS NOT PROVIDED]

Entity Type:

Domestic For-Profit Corporation

Entity Status:

Voluntarily terminated

FEIN:

REGISTERED AGENT		FILING HISTORY		NAMES		MANAGEMENT		ASSUMED NAMES		ASSOCIATED ENTITIES	
Last Update		Name		Title		Address					
No officers exist for this filing.											

Order

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Instructions:

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TEXAS SECRETARY of STATE
JOHN B. SCOTT

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number:

17288200

Original Date of Filing:

March 13, 1961

Formation Date:

N/A

Tax ID:

17413853619

Duration:

Perpetual

Name:

FRENTEX ENTERPRISES COMPANY OF TEXAS

Address:

[ADDRESS NOT PROVIDED]

Entity Type:

Domestic For-Profit Corporation

Entity Status:

Voluntarily terminated

FEIN:

REGISTERED AGENT						ASSOCIATED ENTITIES	
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TEXAS SECRETARY of STATE
JOHN B. SCOTT

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number:17288200

Original Date of Filing:March 13, 1961

Formation Date:N/A

Tax ID:17413853619

Duration:Perpetual

Entity Type:Domestic For-Profit Corporation

Entity Status:Voluntarily terminated

FEIN:

Name:FRENTEX ENTERPRISES COMPANY OF TEXAS

Address:[ADDRESS NOT PROVIDED]

REGISTERED AGENT

FILING HISTORY

NAMES

MANAGEMENT

ASSUMED NAMES

ASSOCIATED ENTITIES

Name	Entity Type	Document Description	Filing Date	Entity Filing Number	Jurisdiction	Capacity
There are no documents listed for this entity which match your inquiry.						

Order

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**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 - 2022 Aug 24 5:10 PM - RICHLAND - COMMON PLEAS - CASE#2021CP4003484

Name	Type	City	Status
FRENTEX ENTERPRISES COMPANY OF TEXAS	Business Corporation (Non-Louisiana)	HOUSTON	Inactive

Previous Names

FRENTEX ENTERPRISES COMPANY (Changed: 12/9/1986)

PAYNE & KELLER COMPANY (Changed: 10/28/1986)

PAYNE AND KELLER, INC. (Changed: 2/10/1983)

Business: FRENTEX ENTERPRISES COMPANY OF TEXAS

Charter Number: 25712370F

Registration Date: 3/26/1962

Domicile Address

811 DALLAS AVENUE

HOUSTON, TX 77002

Mailing Address

811 DALLAS AVENUE

HOUSTON, TX 77002

Principal Business Office

811 DALLAS AVENUE

HOUSTON, TX 77002

Registered Office in Louisiana

601 POYDRAS STREET

NEW ORLEANS, LA 70130

Principal Business Establishment in Louisiana

601 POYDRAS STREET

NEW ORLEANS, LA 70130

Status

Status: Inactive

Inactive Reason: Action by Secretary of State

Qualified: 3/26/1962

Last Report Filed: 10/1/1986

Type: Business Corporation (Non-Louisiana)

Registered Agent(s)

Agent: C T CORPORATION SYSTEM

Address 1: 3867 PLAZA TOWER DR.

City, State, Zip: BATON ROUGE, LA 70816

Appx. 0304

Appointment Date: 3/26/1962

Officer(s)

Additional Officers: Yes

Officer: JAMES LEAVESLEY
Title: President
Address 1: 9969 PROFESSIONAL BL
City, State, Zip: BATON ROUGE, LA 70809

Officer: A. HAUMECOURT
Title: Vice-President
Address 1: 9969 PROFESSIONAL BL
City, State, Zip: BATON ROUGE, LA 70809

Officer: JOHN J. KING
Title: Secretary
Address 1: 9969 PROFESSIONAL BL
City, State, Zip: BATON ROUGE, LA 70809

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 (8)

Description	Date
Amendment	11/19/1962
Merger	12/30/1982
Name Change	2/10/1983
Stmt of Chg or Chg Prin Bus Off	2/22/1985
Stmt of Chg or Chg Prin Bus Off	4/1/1986
Name Change	10/28/1986
Name Change	12/9/1986
Revoked	11/19/1990

Print

in the Office of the
Secretary of State of Texas
OCT 2

OCT 24 1986

Clerk IX-G
Corporations Section

ARTICLE II

The following amendment to the Articles of Incorporation was adopted on October 7, 1986.

"The name of the corporation is Frentex Enterprises Company of Texas."

The number of shares of the corporation outstanding and entitled to vote at the time of such adoption was Eleven Thousand, Fifty (11,050).

The holders of all of the shares outstanding and entitled to vote on said amendment have signed a consent in writing adopting said amendment.

Dated: October 22, 1986.

Signature

Title

Appx. 0306

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 Bantier, 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]

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

§
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§

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.

DATED: 10-27, 1986

FRENTEK ENTERPRISES CORPORATION
(formerly known as
"Payne & Keller Corporation"),
SOLE SHAREHOLDER

By:

Title:

850:33

RECEIVED

Jan 03 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2023-000727
Circuit Court Case No. 2021-CP-40-03484

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 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, formerly known as 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 the	Appellants.

PROOF OF SERVICE

I, the undersigned of the law offices of Murphy & Grantland PA, attorneys for Appellants 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, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specified below by emailing them to the addresses below:

Pleading(s): Appellants' Motion for Certification by the Supreme Court and Appendix

Parties Served:

Peter D. Protopapas (pdp@rplegalgroup.com)
Brian M. Barnwell (bb@rplegalgroup.com)
John B. White, Jr. (jwhite@johnbwhitelaw.com)
Marghretta H. Shisko (mshisko@johnbwhitelaw.com)
Christopher Jones (cjones@johnbwhitelaw.com)
Griffin Littlejohn Lynch (glynch@johnbwhitelaw.com)
Scott Shutte (scott.schutte@morganlewis.com)
Brady Edwards (brady.edwards@morganlewis.com)
G. Murrell Smith, Jr (murrell@smithrobinsonlaw.com)
Jonathan M. Robinson (jon@smithrobinsonlaw.com)
Shanon N. Peake (shanonp@smithrobinsonlaw.com)

Counsel for Respondent Payne & Keller Corp., through its Receiver Peter D. Protopapas

Theile B. McVey (tmcvey@kassellaw.com)
Jamie D. Rutkoski (jrutkoski@kassellaw.com)
Jonathan Marshall Holder (jholder@dobslegal.com)

Counsel for Plaintiff

M. Todd Carroll (todd.carroll@wbd-us.com)
M. Elizabeth O'Neill (Elizabeth.oneill@wbd-us.com)
Harry Lee (hlee@steptoe.com)

Counsel for Appellant Third-Party Defendant Travelers Casualty and Surety Company

Kevin K. Bell (kbell@robinsongray.com)

Counsel for Proposed Intervenor Zurich American Insurance Company

MURPHY & GRANTLAND, P.A.

By: s/Wesley B. Sawyer
Wesley B. Sawyer, Esquire (SC 100229)
4406-B Forest Drive (29206)
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100
wsawyer@murphygrantland.com

Counsel for Third-Party Defendants AIG Property Casualty Company, formerly known as Birmingham Fire 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.

January 3, 2024



Wesley B. Sawyer
Phone: (803) 454-1233
wsawyer@murphygrantland.com

January 3, 2024

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Jan 03 2024
SC Court of Appeals

Via Email

The Honorable Patricia A. Howard
Clerk of Court
South Carolina Supreme Court
Supreme Court Building
1231 Gervais Street
Columbia, SC 29211-1330

Re: Childers, Lenora, Individually and as PR of the Estate of Lewis C.
Civil Action No.: 2021-CP-40-03484
Appellate Case No.: 2023-000727
Our File No.: 1420-0002

Dear Ms. Howard:

Please find enclosed for filing with the Court Appellants' AIG Property Casualty Company, formerly known as Birmingham Fire Insurance Company, Lexington Insurance Company, National Union Fire Insurance Company of Pittsburg, 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's Motion for Certification by The Supreme Court and Appendix in the above-referenced matter. I would appreciate your filing the same and providing a clocked copy of each.

By copy of this letter, I am serving same on opposing parties by email only.

With warm personal regards, I am

Sincerely yours,
s/Wesley B. Sawyer
Wesley B. Sawyer

WBS/dlb
Attachments
CC: SC Court of Appeals
Counsel of Record (via email only)