THE STATE OF SOUTH CAROLINA

In the Supreme Court

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

The Honorable Alison R. Lee

Circuit Court Judge

Appellate Case Number: 2025-02536

South Carolina Workers' Compensation Commission, ...Petitioner,

v.

WestPoint Home, LLC, ...Respondent.

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THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Alison R. Lee

Circuit Court Judge

Opinion No. 1216 (S.C. Ct of Appeals filed September 17, 2025)
Petition for Rehearing denied November 21, 2025

South Carolina Workers' Compensation Commission, ...Petitioner,

v.

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PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

The Court of Appeals interpreted § 42-11-70 in a manner inconsistent with the Supreme Court's well-established case law laying out the rules of statutory construction. The Court of Appeals further decided the novel question of law whether § 42-11-70 is a statute of repose for occupational illness claimants, even though the case under review did not involve a dispute between an injured worker and their employer or the compensability of an occupational illness claim. This case involved a dispute between a private business and a government agency over money. The Court of Appeals did not need to decide whether § 42-11-70 is a statute of repose, and its decision affects the substantial rights of injured workers and employers who were not parties to this claim. The Court of Appeals rewrote the South Carolina Workers' Compensation Act and invalidated significant provisions of the Occupational Disease Act by finding that a coverage statute was a statute of repose. The Court of Appeals' decision changes the entire compensation scheme unnecessarily to resolve a dispute ancillary to an employee's right to compensation. It makes it all but impossible for an individual exposed to asbestos who contracts a respiratory cancer or disease related to that exposure to be able to initiate a valid claim, as there is a recognized latency period of decades between contracting one of these pulmonary diseases and the employee becoming disabled by or being diagnosed with the disease. The error is particularly egregious because it occurred in a case that did not involve an occupational injury claim but was brought by a successor to a self-insured employer seeking to recover funds held to protect employees who would have no other source of recovery were those funds released.

The gravamen of the action was Westpoint Home's desire to recover funds paid by NationsBank (now Bank of America) to the South Carolina Workers' Compensation Commission under a letter of credit negotiated in 2005. The action was filed in 2014. The trial court correctly

found that the Commission reasonably negotiated the letter of credit and, most importantly, that there were potential claims to be protected by holding the funds. The Court of Appeals' decision not only adversely affects WestPoint Stevens' employees, but also every employee in South Carolina who has an undiagnosed occupational illness that would have been compensable under the Workers' Compensation Act. The South Carolina Workers' Compensation Commission respectfully asks the Supreme Court to issue a Writ of Certiorari in this case, review the opinion below, and correct the abject errors in the Court of Appeals' decision.

QUESTIONS PRESENTED

The Court of Appeals' decision creates novel questions in South Carolina and misapplies prior precedent so as to make this matter proper for review under Rule 242(b)(1), SCACR. These include:

1. Does the express language enacted by the General Assembly in S.C. Code Ann. § 42-11-70 constitute a statute of response cutting off the ability of a worker exposed to asbestos fibers to file a claim for Compensation benefits two years after he or she leaves employment with the employer where he or she was exposed to the fibers?
2. Did the Court of Appeals misapply precedent from both the Supreme Court and the Workers' Compensation Commission in reaching its decision?
3. Is it appropriate for a Court to use a transitive analysis, substituting words within a statute with other words where the Statute is otherwise unambiguous to ascertain the legislature's intent?
4. Did the Court of Appeals err in determining that there was a question as to whether interest could be charged against the State under the general interest statute?
5. Did the Court of Appeals err in determining that a self-insured employer was not

required to provide funding to protect workers who may need treatment for a latent occupational illness?

STATEMENT OF THE CASE

WestPoint Home, LLC ("WestPoint Home", "Respondent") is the successor of an entity that purchased the assets, but not the liabilities, of WestPoint Stevens, Inc. ("WestPoint Stevens") in a bankruptcy sale in 2005. Westpoint Stevens, Inc., and Westpoint Home, LLC, are not the same entity. WestPoint Stevens was created by merger in 1988 when WestPoint Pepperell acquired J.P. Stevens's Abbeville, Calhoun Falls, Clemson, and Seneca plants. At that time, WestPoint Stevens became a self-insured employer under the Workers' Compensation Act. Self-insured employers are required to post security with the South Carolina Workers' Compensation Commission ("Commission") to fulfill the statutory requirement to maintain coverage for their employees. WestPoint Stevens used asbestos fibers in some of its processes. In 2003, WestPoint Stevens filed for Bankruptcy protection under Chapter 11 of the United States Bankruptcy Code. Shortly thereafter, it amended its existing letter of credit to 1.8 million dollars to continue operating as a self-insured employer in South Carolina. In 2005, after it was unable to confirm a reorganization plan, it liquidated its assets. A predecessor of WestPoint Home, LLC, an entity owned and controlled by American Real Estate Holding Limited Partnership, purchased some of those assets, including the Calhoun Falls, Clemson, and Seneca plants. WestPoint Home also collateralized West Point Stevens' various existing letters of credit, which included the 1.8-million-dollar letter of credit provided by WestPoint Stevens to the South Carolina Workers' Compensation Commission to cover its self-insured workers' compensation liability for its South Carolina employees.

On August 15, 2005, WestPoint Stevens notified the commission that "workers'

compensation liabilities asserted against WestPoint Stevens were not liabilities assumed by the Purchaser" and that "no further payments will be made with respect to workers' compensation claims asserted against WestPoint Stevens, Inc." Upon receipt of this notification, the Commission, following its regular procedure, drew down the security and deposited it with the State Treasurer.

More than seven years after the Commission drew down the security, WestPoint Home first inquired about the funds that had been drawn down. Thereafter, a dispute arose as to whether WestPoint Home was a proper successor to obtain information about or to have any interest in the funds.

After several rounds of communication with WestPoint Home, the Commission filed a declaratory judgment action on April 17, 2014, regarding its obligations to provide WestPoint Home with the requested information. West Point Home counterclaimed on May 22, 2014, seeking an accounting and an order that it was entitled to receive all monies retained by the State. It thereafter amended its Counterclaim to seek interest on the funds held by the State Treasurer for WestPoint Stevens' former employees' potential claims. Ultimately, the parties reached an agreement under which WestPoint Home was given access to certain information, and additional information was obtained from a third-party contractor of the Commission. Thereafter, the court conducted a bench trial regarding the disposition of the funds. The Trial Court, by Order of September 25, 2023, held that the Commission properly negotiated the letter of credit and that it was proper for the Commission to retain the funds so long as additional claims by former employees exposed to asbestos were actuarially possible. WestPoint Home did not file a Rule 59(e), SCRCP motion. It filed its appeal of the Circuit Court's Order on October 23, 2023.

West Point appealed Judge Lee's determination that the funds were negotiated correctly

and help to protect injured workers. A three-member panel of the court of appeals reversed and remanded, finding *inter alia*, that S.C. Code Ann. § 42-11-70 was a statue of repose barring all occupational injury claims before the statute of limitations even began to run; that the Commission improperly retained funds in its earnest attempt to protect workers with serious occupational medical conditions which had been contracted, but were not yet disabling, and that the court should consider an award of prejudgment interest, which the Commission asserts is barred by sovereign immunity except in limited circumstances that are not applicable here.

The Petition for Rehearing *en banc* was denied on November 21, 2025.

DISEASES ARISING FROM EXPOSURE TO ASBESTOS FIBERS

Mesothelioma is a pulmonary disease caused by inhaling or ingesting microscopic asbestos fibers. Generally, it takes 10 to 60 years from the time of asbestos exposure until symptoms appear or mesothelioma is diagnosed. Asbestosis is a non-cancerous pulmonary disease that, like mesothelioma, only becomes evident some considerable time after a worker exposed to asbestos has contracted the disease. This time is called the latency period. Authorities have recognized that occupational illnesses in general and asbestos-related diseases, in particular, have long latency periods. "The most obvious injustice in the requirement that disability occur within a specified time of exposure occurs in the long-latency cases. In some such cases including, but by no means confined to asbestos-related diseases, disability may not manifest itself until twenty or thirty years after exposure." Vol. IV Lex K. Larson, Larson's Workers' Compensation § 53.03 (Matthew Bender, Rev. Ed.). Larson further notes in South Carolina a "claim must be filed within two years of diagnosis [§ 42-15-40]. But the disease must also be "contracted" within a year of exposure, or two years if pulmonary [§ 42-11-70]. *Id.* at § 53.04[2]. Larson understood and correctly interpreted the requirements to file an occupational illness claim in South Carolina that were misunderstood

by the Court of Appeals: you must contract the disease within two years (for a pulmonary disease), and the employee must file a claim within two years of diagnosis. This interpretation works with our general requirement of notice to commence a statute of limitations. The additional coverage requirement addresses the need to demonstrate that the disease resulted from occupational exposure; hence, the requirement that medical evidence show it was contracted within the two years. That interpretation makes sense with the Code, comports with Workers' Compensation law in other states, and is consistent with South Carolina Tort Law. Even the Court of Appeals acknowledged that the uncontradicted testimony in the record was that there is a 96.8 percent chance that a twenty-year-old working for WestPoint Stevens who was exposed to asbestos in 2005 would be alive and undiagnosed and that the "lack of claims in recent years" had minuscule bearing on the likelihood of further claims. (Appx. 000090). The record before the Court of Appeals clearly showed that there was a likelihood that a Westpoint Stevens worker exposed before bankruptcy to asbestos fibers had contracted an occupational disease which would be undiagnosed for a considerable period of time. That is why the Circuit Court properly found that the funds were properly drawn down and noted Westpoint's laches for failing to contact the Commission regarding this issue for several years, (Appx. 000131) as well as finding that the Commission properly held the funds until the possibility of future claims is no longer actuarially possible. A single claim could exhaust all funds held, and if no funds are available, there is no source of compensation for the ill employee.

The court's interpretation recklessly undermines all of those practical and well-established precedents. This court should ultimately reverse the Court of Appeals erroneous decision.

ARGUMENT

I. THE COURT OF APPEALS DID NOT FOLLOW THIS COURT'S PRECEDENTS WHEN IT REINTERPRETED THE MEANING OF S.C. CODE § 42-11-70. THE OPINION CONFLICTS WITH THIS COURT'S DECISIONS

The Court of Appeals grievously misinterpreted the statutory scheme. An analysis of the decisions it cites and relied on reveals that those cases do not support the Court of Appeals' decision. A detailed review of the authority cited to support the "statute of repose" assertion reveals that the cited authority does not support the conclusions that the court derived from those decisions. Neither *Vespers v. Springs Mills, Inc.*, 276 S.C. 94 (1981), nor *Glenn v. Columbia Silica Sand Co.*, 236 S.C. 13 (1960), stands for the proposition that § 42-11-70 is a statute of repose. In *Vespers*, Justice Ness reversed the denial of a jurisdictional claim and held that the employee was entitled to compensation. Notably, the employee was disabled by byssinosis some nine months after the employer hired her. She worked for 18 years in the textile industry for other employers. The court's decision in *Vespers* was in line with the statutory scheme that the Court of Appeals abrogated in this case.

Glenn did not deal with the claim itself but rather with determining which carrier should pay it. The court recognized that "contracted" and "disabled" were different concepts. It held "Section 72-253 declares the event to be treated 'as an injury by accident' to be **not the contraction of the occupational disease, but 'disablement or death resulting from it'**". *Glenn, supra* at 236 S.C. 21. [Emphasis Added]. This finding illustrates the Court of Appeals' error in equating contracting the disease with 'death or disablement' resulting from the disease. These reported cases, as well as those cited by the Court of Appeals' opinion at footnote 4, do not treat contracted and disabled as synonyms for the purpose of the Act. The Court of Appeals' decision suggests that five of the Commission's decisions support its construction of § 42-11-70, and two do not.

However, a closer look at these prior decisions shows they do not support the court's conclusion that § 42-11-70 is a statute of repose that bars all occupational illness claims two years after the last date of injurious exposure and/or last date of employment, except claims for ionizing radiation injury brought under Chapter 13 of Title 42, S.C. Code of Laws. Instead, they support the Commission's position that § 42-11-70 is a coverage statute that articulates an element or prerequisite that must be met in order for a disease to become a compensable occupational illness, that the condition must have been "contracted" within one or two years of the last date of injurious exposure or employment. None holds that a claimant must become "dead or disabled" within one or two years from the last date of injurious exposure or employment to recover benefits under the Act. In *Rumsey v. Daniel Island Int'l*, 2003 WL 22380606, the Commission cited § 42-11-70 to support its finding that claimant did not prove his last injurious exposure to asbestos dust was during his employment with Defendants, and cited to *Vespers v. Springs Mills*, 276 S.C. 94, 275 S.E.2d 882 (1981), *Id.* at p. 7. The decision concluded that his disease had not been "contracted" within the time period under § 42-11-70. The Commission did not hold that his claim was barred because he had not been "disabled" within two years of his last date of injurious exposure with Defendants. The Commission noted that the term "contracted" for purposes of § 42-11-70 had never been definitively defined. The Commission noted that *Glenn* and *Vespers* defined "contracted" only in dicta and for the purposes of interpreting other provisions of the Workers' Compensation Act. *Id* at p. 8. The Commission noted *that Glenn referenced the predecessor to § 42-11-70 while determining when* compensability began for purposes of filing a claim under the predecessor to § 42-15-40. The Commission acknowledged "contracted" could not mean "last exposure" or "definitively diagnosed". The opinion illustrates that the Commission treated "last exposure," "contracted," "definitively diagnosed," and "disability" as distinct terms with separate

meanings. *See id at* p. 9-10. The Commission held "'contracted' must mean, at the very least, that some event or occurrence demonstrating the existence of an occupational disease must take place within one to two years of a claimant's last exposure to the hazard which caused the disease." *Id* at p. 9. The Commission never held that the claimant must show some event or occurrence demonstrating "disablement or death" from the occupational disease within one to two years of last exposure.

Rumsey cited *Meyer v. Iowa State Penitentiary,* 476 N.W.2d 48 (Iowa Sup. 1991) as persuasive authority. In *Meyer,* the Iowa Supreme Court interpreted a statute substantively similar to § 42-11-70 and found that it was neither a statute of limitations nor a statute of repose. Instead, it stated conditions that must exist before a right to compensation arises.[1] *Meyer* at 476 N.W.2d 60. The court explained, "[l]ike a statute of limitations the section is grounded in time. Unlike a statute of limitations, however, it has nothing to do with when actions must be brought." *Id.* at 476 N.W.2d 60.

This is consistent with the South Carolina Workers' Compensation Act. The Statute of limitations is codified at § 42-15-40. Section 42-15-40 also contains a statute of repose for repetitive trauma injuries.[2] Noticeably absent from § 42-15-40 is a statute of repose for injuries by accident or occupational illnesses. *Expressio unius est exclusion alterius.*

The court mentions, and the Appellant relies heavily on, both in its brief and oral argument, the premise that the Commission's then-current Executive Director conceded that the agency never needed the entire 1.8-million-dollar deposit in the first place and that the repose period for new

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[1] As the Commission has advised the Court, S.C. Code Ann. § 42-11-70 is a Coverage Statute setting out a pre-requisite for an employee to establish a covered claim.

[2] ". . . the right to compensation is barred unless a claim is filed with the commission within two years after the employee knew or should have known that his injury is compensable but no more than seven years after the date of last injurious exposure." S.C. Code Ann. § 42-15-40 (2008 Supp.).

claims closed in 2007. App. 000014. First, the claimed admission regarding the Statute of repose is a legal question, not one for the Executive Director to testify about. Second, a complete reading of the colloquy leading to that conclusion reveals a series of argumentative, leading questions that ended only when Mr. Cannon agreed with the questioner. (App. 000016-00018). It was an error to give any weight to that claimed admission. Notably, the Circuit Court, which had the opportunity to view the testimony and hear the arguments in person, did not. Second, WestPoint Home and the Court of Appeals further clouded the issue by trying to treat occupational injuries sustained due to asbestos exposure as if they were physical injuries like broken limbs, cuts, and burns, which are immediately identifiable, and concluding that, referring to the Commission, you haven't needed the funds drawn down. Mr. Cannon testified thereafter that:

> "Well, we have not, but we have examples of similar businesses that claims have been filed where the authorities were – since the '50s. So, we have to look at the businesses, we have to look at the potential claims coming in to ensure that money is available. If it's not available and a claim is filed 40, 50 years later, then the injured employee has no recourse to pay for their medical benefits or compensation.

(Appx. 00016). Mr. Cannon and the lower court both correctly interpreted the purpose of the Act, which is to provide for the needs of workers, who, in the case of asbestos-related injuries, may be sick shortly after exposure, but will not be diagnosed or disabled for many years thereafter. The Court of Appeals misapprehended the Statute to upend the entire system.

As the court held in *Glenn*, the provisions of the Workers' Compensation Act, including § 42-11-70 and § 42-15-40, must be interpreted conjunctively in order to effectuate the full purpose of the Act. To that end, § 42-11-70 sets forth an affirmative period of time during which compensability must accrue, and § 42-15-40 sets forth a statutory period of limitation on the period of time within which a claim for compensation, which is otherwise compensable under § 42-11-70, must be brought. *Rumsey*, at p. 14. Each of the other cases cited was decided on a basis other

than the theory that "contracted" and "disabled" are synonyms. In *Gibson v. Westinghouse Electric Corp*, 2007 WL 869985, the Commission found that Gibson did not contract his occupational disease within two years from his last date of employment under § 42-11-70. It noted that § 42-11-70 was a part of the burden of proof. The Commission found that Gibson's problems were related to his tobacco use and did not use the term "statute of repose."

In *Truax v. Daniel Construction*, 2009 WL 1433538, Truax sought coverage for asbestos-related occupational illness. He alleged he was exposed between 1969 and 1972 and became disabled in 2006. The Commission neither denied the claim on the grounds of the Statute of limitations nor on the grounds of Statute of repose. Instead, it found no medical evidence supporting the finding that asbestosis was "contracted" within two years of last exposure, and that the claimant had not met the burden of proof required by § 42-11-70. In *Bishop v. Westinghouse Electric Corp.*, 2007 WL 904837, the commission did not apply § 42-11-70, as it found that the claimant was totally and permanently disabled as a result of a non-work-related condition.

In *Bethea v. City of Myrtle Beach*, 2019 WL 742840, the Court of Appeals cited a single Commissioner's decision. The single Commissioner found § 42-11-70 precluded a finding of compensability because the medical evidence indicated the claimant likely did not contract lung cancer within two years of his last date of employment. *Id* at 12. As the Commission did in other cases, the single Commissioner did not find that § 42-11-70 was a statute of repose but instead found a failure of proof on coverage due to a lack of medical evidence.

Neither *Rumsey*, *Gibson*, *Truax*, *Bishop*, nor *Bethea* includes a holding that § 42-11-70 "creates a substantive right in those protected to be free from liability after a legislatively determined of time" or rules the "expiration of the time extinguishes not only the legal remedy but also all causes of action, including those which may later accrue as well as those already accrued."

See, e.g., Capco, supra 368 S.C. 137, 142 (2006). Instead, these cases support the Commission's position that § 42-11-70 is a condition precedent that must be met, an element that must be satisfied in order for a disease to be covered by the Act as an occupational illness.

The *Powell v. Yeargin Const. Co.*, 2008 WL 5066354 and *Bowers v. Sea Island Staffing*, 2009 WL 1425599 decisions further illuminate the court's misapprehension of § 42-11-70. In *Powell*, the Commission found this to be a compensable occupational illness claim despite the claimant's last date of employment. Thus, the last possible date of injurious exposure was in 1986, yet the claimant was not "definitively diagnosed" with mesothelioma until 2006. In *Bowers*, the claimant alleged he was exposed to asbestos fibers prior to his retirement in 1994. He was definitively diagnosed in October 2002. Claimant was awarded partial disability under § 42-9-30 and Reg. 67-1101 for loss and or loss of use of each lung and sinus. *Bowers, Id.* at p. 5. The Commission held that § 42-11-70 defines and discusses the time during which an occupational disease must have been contracted. The Commission noted "[a]sbestos-related lung disease often develops 20 years after exposure." *Bowers, Id* at p. 4. *Powell* and *Bowers* illustrate how the statutory scheme is correctly applied, showing that a disease can be contracted within one or two years of the last date of exposure but not definitively diagnosed until many years later. This is why the Commission believes, in good faith, that it needs to retain the security until all reasonable latency periods have passed.

The Court of Appeals misapplied the law in this matter, and the Supreme Court should grant Certiorari and correct the lower court's error.

II. THE COURT OF APPEALS' DECISION IS INCONSISTENT WITH PRIOR CASE LAW CONSTRUING THE ACT IN FAVOR OF COVERAGE.

In *Mauldin v. Dyna-color/ Jackrabbit*, the Supreme Court examined the two-year Statute

of limitations for an injury by accident contained in § 42-15-40 and found that the two-year Statute of limitations did not begin to run until the claimant discovered she had a meniscus tear. *Mauldin v. Dyna-color/ Jackrabbit*, 308 S.C. 18, 416 S.E.2d 639 (1992). The court reached this conclusion by reasoning that the Workers' Compensation Act should be construed in favor of coverage of an injury rather than exclusion. It favorably cited *Santee Portland Cement v. Daniel Int'l Corp.* as follows.

> One policy behind the Statute of limitations is the protection of a defendant from false or fraudulent claims that might be difficult to disprove if not brought until after relevant evidence has been lost or destroyed and witnesses have become unavailable ... It affords defendants an opportunity to gather evidence while facts are still fresh ... This concern must be balanced against a plaintiff's interest in prosecuting an action and pursuing his rights. **Plaintiffs should not suffer where circumstances prevent them from knowing they have been harmed** ... "[S]tatutes of limitation which are susceptible to judicial construction should not be applied mechanically but rather construed in the manner most consistent with both their underlying purposes and the requirements of substantial justice for all parties involved." [Quoting *Gattis v. Chavez*, 413 F.Supp. 33, 39 (D.S.C.1976).]

Mauldin 416 S.E.2d at 640 (Emphasis added).

"Any reasonable doubts as to construction of the Act should be resolved in favor of coverage." *Ost v. Integrated Products, Inc.*, 296 S.C. 241, 371 S.E.2d 796 (1988). The Court of Appeals should have construed § 42-11-70 broadly to cover as many potential occupational illness claims as possible, consistent with the benevolent purposes of the Act. Instead, it significantly narrowed the category of claimants who could bring an occupational illness claim to only those who experience disability or death within one or two years after exposure to the hazard. *See also Peay v. U.S. Silica Co.*, 313 S.C. 91, 93, 437 S.E.2d 64, 66 (1993) ("Workers' compensation laws were intended by the Legislature to relieve workers of the uncertainties of a trial for damages by providing sure, swift recovery for workplace injuries regardless of fault. To give effect to this legislative intent, workers' compensation statutes are construed liberally in favor of coverage. It

follows that any exception to workers' compensation coverage must be narrowly construed.") (Internal citations omitted).

When it determined that § 42-11-70 is a statute of repose, the Court of Appeals undermined the entire scheme of the Workers' Compensation Act. This court described a statute of repose in *Langley v. Pierce*, 313 S.C. 401, 404, 438 S.E.2d 242, 243 (1993) (stating "[a] statute of repose constitutes a substantive definition of rights," while a statute of limitations provides only "a procedural limitation" (citation omitted)). Here, the very premise of the Statute of limitations for occupational disease, which recognizes latent illness and the fact that contracting the illness is not equivalent to dying or being disabled, is thwarted by the court's improper interpretation of the Statute. No language in § 42-11-70 indicates the Legislature intended to substantively allow a self-insured employer (or any other employer) to be free from liability for an occupational disease two years after an employee's exposure ceased. In making that legal determination, the Court of Appeals failed to follow the well-established precedent set by this court.

III. THE COURT ERRONEOUSLY RECONSTRUCTED AN UNAMBIGUOUS STATUTORY SCHEME IN A MATTER THAT NEGATES CLEAR LEGISLATIVE MEANING, WHICH CONFLICTS WITH PRIOR DECISIONS OF THIS COURT.

"Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and the court has no right to impose another meaning." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Yet that is precisely what the Court of Appeals did in this case. It did not find that § 42-11-70 or any of its terms were ambiguous. Instead, it chose to change the Statute by inserting words with clearly

different meanings into its reading of the Statute[3]. The court appears not to have considered that disablement or death has a specific statutory definition. As used in Chapter 11 of the Workers' Compensation Act, "disablement" "means the event of an employee becoming actually incapacitated, partially or totally, because of an occupational disease, from performing his work in the last occupation in which injuriously exposed to the hazards of such disease". S.C. Code Ann., § 42-11-20 (1976, as amended). More generally, the Workers' Compensation Act defines "disability" as "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment." S.C. Code Ann. § 42-1-120 (1976, as amended). Both statutes focus on an inability to earn wages as the starting point for disability. Neither Statute limits when the condition leading to disablement must be "contracted". The court should not have modified the definition of "disablement" under § 42-11-20 to begin when the illness is "contracted," when the plain language of § 42-11-20 does not warrant modification.

IV. THE COURT'S INTERPRETATION OF SC CODE ANN. § 42-11-70 PRODUCES AN ABSURD RESULT THAT ELIMINATES VIRTUALLY EVERY POSSIBLE CLAIM FOR MESOTHELIOMA AND OTHER RESPIRATORY DISEASES UNDER THE OCCUPATIONAL DISEASE ACT. THE DECISION UPSETS THE "ECONOMIC BALANCE" STRUCK BY THE LEGISLATIVE BODY.

When it decided that S.C. Code Ann. § 42-11-70 is a statute of repose, the Court of Appeals all but eliminated the opportunity for a claimant to recover for this type of occupational injury. Now, a claimant must not only contract but must also become disabled by a disease that is recognized to have a latency period of decades in order to recover medical and disability care for a condition caused by their exposure during employment. Neither the historical treatment of

[3] No statute, dictionary, or thesaurus that we could find holds that contract or contracted is synonymous with death or disability.

asbestos-related illness in the Workers' Compensation Act nor the tort system supports such an interpretation. In so altering the plain language of the statutory scheme to require death or disability rather than merely medical evidence that the disease manifested within two years of exposure, the court has undermined the entire scheme and invalidated Chapter 11 of Title 42 of the South Carolina Code. The result of this decision is that any disease arising out of the course and scope of employment that is peculiar to the occupation in which the employee is engaged must now result in disability within one year after the last exposure or two years if the illness arises out of the inhalation of organic or inorganic dusts. The court has now defined "contracted" as to become disabled or deceased, when the clear definition of contracted is "to become affected with[4]" This invalidates the Statute of limitations in S.C. Code Ann. § 42-15-40 which expressly provides that **"the two-year period does not begin to run until the employee concerned has been diagnosed definitively as having an occupational disease and has been notified of the diagnosis."** [Emphasis added]. In doing so, the court has likely destroyed the protection the Workers' Compensation Act provides to both employers and employees regarding injuries and illnesses from exposure to asbestos fibers. The employees lose medical benefits and compensation from these horrible work-related diseases, and the employer may well be subject to liability outside of Workers' Compensation if the exclusive remedy is non-existent, unavailable, or illusory.

V. THE COMMISSION DOES NOT BENEFIT FROM HOLDING DEFUNCT SELF-INSURED EMPLOYERS' FUNDS. THE ONLY BENEFICIARIES OF THOSE FUNDS ARE THE WORKERS WHO HAVE CONTRACTED OCCUPATIONAL DISEASES AND HAVE NOT BEEN DIAGNOSED.

"A state workers' compensation commission or board is, in the first instance,

[4] Mirriam-Webster defines the transitive verb "contracted" as a. "to bring on oneself especially inadvertently" or b. "to become affected with". This is the basis for the proper interpretation of S.C. Code Ann. § 42-11-70. One must contract the disease within two years in the case of a pulmonary disease, but one does not have a workers' compensation claim until one becomes disabled.

> responsible for effectuating the purposes of the workers' compensation act by administering, enforcing, and construing its provisions in order to secure its humane objectives." 100 C.J.S. *Workers' Compensation* § 706 (2000). "Such commission, board, or bureau is vested with the authority to formulate policies and standards for administering the workers' compensation act."

James v. Anne's, Inc., 390 S.C. 188, 201-02, 701 S.E.2d 730, 737 (2010)

In 2005, the Commission's Self-Insurance Director determined that WestPoint Stevens' declaration that it would not pay further workers' compensation claims posed a hazard to its workers, with both existing and latent claims, and negotiated a letter of credit to secure its obligations. WestPoint Home waited almost eight years before making any inquiry about WestPoint Stevens' funds. Meanwhile, the funds were, according to applicable law, deposited with the office of the State Treasurer, where funds were required to be deposited. The funds have been retained in the Treasurer's accounts pursuant to applicable law, subject to claims that have been paid in the interim. Those funds should remain on deposit to protect those workers who, the record reflects, currently have a more than 98 percent chance of having contracted an asbestos-related occupational injury that may not present to disable or kill them until after 2040. They have this disease now – it simply has not caused them to be diagnosed with it or to suffer death or disability yet, although the record reflects a very high probability that it will. Were this an insured claim, the coverage would always be present. Only this unique circumstance brings the availability of coverage into question.

Notably, this issue coming to light has prompted the Commission to propose a change to its regulation to address the concern that there is no end date for retaining funds in this situation. An Amendment to Reg. 67-1507 is published in the December 2025 State Register. That amendment confirms an administrative process to review situations like this one and provides a

procedure for appeal within the commission.[5]

VI. SOVEREIGN IMMUNITY BARS CLAIMS FOR INTEREST AGAINST THE STATE. IT IS AN ERROR TO FIND OTHERWISE AND REMAND THE MATTER FOR A DETERMINATION.

The Court of Appeals further rejected this court's holdings regarding the entitlement of any party to collect pre- or post-judgment interest against the State. Our courts have repeatedly found that the general interest statute, S.C. Code Ann. § 34-31-20, is not applicable to the State. Neither the Court nor the Appellants have referenced any statute or case that specifically allows the recovery of interest against the State in this circumstance. Here, the Commission does not hold the funds in question; they are deposited in an account within the State Treasurer's office. In its Answer and Counterclaim, WestPoint Home requests "that Defendant be awarded all monies owed and improperly retained by the State, including all pre- and post-judgment interest allowed by South Carolina law, . . ." (Rec 060). The Respondents raised each of these defenses below (See Reply to Counterclaim, Thirteenth, Fourteenth, and Fifteenth Defense (Rec 076).

> Judgments, it is true, are by the law of South Carolina, as well as by Federal legislation, declared to bear interest. Such legislation, however, has no application to the government, and the interest is no part of the amount recovered.

Monarch Mills v. South Carolina Tax Commission, 149 S.C. 219, 146 S.E. 870, 871-72 (1929), overruled by *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), superseded by Statute, South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-20(b) ("All other immunities applicable to a governmental entity . . . are expressly preserved.") as recognized in *Murphy v. Richland Memorial*

[5] WestPoint Home should have filed a claim with the Commission even under current law, *see e.g., Martin v. Kentucky Individual Self-Insurance Guaranty Fund, et. al.*, 2018 WL 4050539 (unpublished, KY App. 2018) where a bankrupt self-insured employer was required to make a request for the a refund of self-insured security held by the Commission to the Commissioner. "All questions arising under this title, if not settled by agreement of the parties interested therein with the approval of the commission, shall be determined by the commission . . . ." S.C. Code Ann. § 42-3-180 (1976, as amended).

Hospital, 317 S.C. 560, 563, 455 S.E.2d 688, 690 (1995) ("The [Tort Claims] Act first completely restores sovereign immunity. S.C. Code Ann. § 15-78-20(b). The Act then provides specific waivers and limitations on actions against governmental entities.") and *Giannini v. S.C. Department of Transportation*, 378 S.C. 573, 664 S.E.2d 450 (2008) (citing *McCall v. Batson* as "superseded by statute").

Section 34-31-20 originally became law in the 19th Century. *See Gilliland v. Phillips*, 1 S.C. 152 (1869) (noting the enactment of the Act of 1866 (13 Stat. at Large, 429)). At that time and at least through the first three quarters of the Twentieth Century, sovereign immunity precluded any suit against the State not specifically authorized by Statute. *Unisys Corp. v. S.C. Budget & Control Board*, 346 S.C. 158, 551 S.E. 2d 263 (2001) ("At the time our constitution was adopted in 1868, the State was immune from suit on a contract. *Treasurers v. Cleary*, 37 S.C.L. (3 Rich. Law) 372 (1832) (action on debt against the State): *see also Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000) (observing that in 1924 the State was protected by total sovereign immunity and could be sued in tort or contract only when it consented.").

As a general principle, the doctrine of sovereign immunity "prevents the assessment of interest on debts of the state without the state's consent." 72 Am. Jur. 2d States, Territories, and Dependencies §93 (2007). Likewise, state government entities are not liable for interest on their debts "unless the constitution, a statute, or a contract calls for it." *Id.* *See also*, 81 C.J.S., States §§524 and 526 (2004) (with the latter section noting that a claim of prejudgment interest against the state cannot be implied). Because statutes granting such consent are in derogation of sovereign immunity, they must be narrowly construed. *Unisys Corporation v. South Carolina Budget & Control Board*, 346 S.C. 158, 551 S.E.2d 263 (2001) ("[A] statute waiving the State's immunity from suit, being in derogation of sovereignty, must be strictly construed.") In other words, unless

such statutes expressly apply to the government, they do not. *United States v. N.Y. Rayon Importing Co.*, 329 U.S. 654, 658-59, 67 S.Ct. 601, 91 L.Ed. 577 (1947) ("Nor can an intent on the part of the framers of a statute or contract to permit the recovery of interest suffice where the intent is not translated into affirmative statutory or contractual terms. The consent necessary to waive the traditional immunity must be express, and it must be strictly construed."). See also *Schortmann v. U.S.*, 82 Fed. Cl. 1 (2008). Because § 34-31-20 was enacted at a time when sovereign immunity prevented the assessment of interest on debts of the state without the state's express consent and because it does not expressly provide such consent, S.C. Code Ann. § 34-31-20 cannot be read to apply in this case, and the Court of Appeals erred in remanding the case for consideration of any prejudgment interest.

Since there is no express statute imposing an obligation for recovery of interest against the State in this situation and such recovery is otherwise barred by sovereign immunity, it was error for the Court of Appeals to remand the case for consideration of this issue.

CONCLUSION

The court should grant the petition, obtain briefing, and reverse the Court of Appeals' decision.

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December 22, 2025

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Alison R. Lee
Circuit Court Judge

Appellate Case No. 2025-002536
Court of Appeals Op. No. 6121 (Sept. 17, 2025)

South Carolina Workers' Compensation Commission, ... Petitioner,

v.

WestPoint Home, LLC ..... Respondent.

WESTPOINT HOME'S RETURN TO PETITION FOR A WRIT OF CERTIORARI

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January 21, 2026

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INTRODUCTION

This case involves the Workers' Compensation Commission's unlawful seizure in 2005 of $1.8 million that WestPoint Home deposited in a bank account to collateralize a letter of credit. That letter of credit secured payments for workers' compensation claims by former employees of WestPoint Stevens, a company that declared bankruptcy and ceased to exist as of 2005, and whose assets WestPoint Home purchased out of bankruptcy. The Court of Appeals held the time has come for the agency to give WestPoint Home its money back, and there are at least two fatal flaws to the Commission's request that this Court review the Court of Appeals' decision:

1. **Unappealed Predicate Issue:** The Court of Appeals held the agency was wrong to seize WestPoint Home's deposit in the first place, as that seizure violated the express terms of both the letter of credit itself and Regulation 67-1507, which restricts when the agency can draw on a letter of credit. (Op. at 6–7.) ***The Commission has not challenged this ruling in its Petition.*** But if the agency was wrong to seize WestPoint Home's money, the agency cannot possibly be entitled to keep that money forever, which is the outcome the agency seeks here. In short, by failing to appeal the predicate ruling by the Court of Appeals, the Commission has mooted its own Petition.

2. **Consistent with Settled Authority:** On the chief issue the Commission does raise in its Petition—whether it can keep WestPoint Home's money indefinitely—the agency loads its filing with inflammatory rhetoric designed to make this Court believe the ruling below finds no support in the law: "egregious," "abject," "reckless," "grievous," and "absurd" all appear in the Petition. What the agency leaves out, though, is the Court of Appeals' decision is fully consistent with long-settled authority, all of which is based on this Court's own precedents—***including decisions from the Commission's own appellate division***. The Court of Appeals correctly put an end to this agency overreach, and certiorari should be denied so this case can end without delay.

QUESTIONS PRESENTED

1. **Law of the Case:** The Court of Appeals correctly held the Commission erred as a matter of law when it withdrew the entirety of WestPoint Home's $1.8 million deposit in 2005. The agency has not challenged that ruling in its Petition. Is that ruling now the law of the case?

2. **Statute of Repose:** The Commission's Executive Director testified at trial that the statute of repose for claims by former WestPoint Stevens employees has expired. The Court of Appeals agreed. That ruling is consistent with every court that has analyzed the issue, including numerous decisions from the appellate division of the Commission itself. Did the Court of Appeals err in so holding?

3. **Sovereign Immunity:** After the Commission wrongfully seized WestPoint Home's money, the agency has collected hundreds of thousands of dollars in earnings on that money over the last two decades. The Court of Appeals held that WestPoint Home is entitled to recover interest on its wrongfully-seized money, but it made no determination as to how that interest should be calculated and remanded the case to the circuit court for such an analysis. The agency, however, argues that sovereign immunity bars it from paying WestPoint Home interest. Does the law allow the government to wrongly seize a private entity's money and then deprive that entity of the time value of its own money?

COUNTER-STATEMENT OF THE CASE

Both the factual background necessary to understand how this case came to be and this case's extensive procedural history are detailed on Pages 2 through 15 of WestPoint Home's opening brief to the Court of Appeals. To summarize:

In 2005, WestPoint Home purchased the assets of WestPoint Stevens, a company that was in Chapter 11 bankruptcy proceedings in the Southern District of New York. As part of that court-

approved Asset Purchase Agreement, WestPoint Home agreed to collateralize all of WestPoint Stevens's existing letters of credit. That included a $1.8 million letter of credit WestPoint Stevens posted with the South Carolina Workers' Compensation Commission to secure payments for potential claims by WestPoint Stevens employees, as WestPoint Stevens was self-insured for workers' compensation claims. The Asset Purchase Agreement provided that WestPoint Home would deposit its cash with the understanding that it retained the "right to receive back any portion" of its money that was not used. (R. p. 287; Asset Purchase Agreement § 3.1(a).)

WestPoint Stevens closed its business on August 8, 2005. (R. p. 98; Trial Tr. 20:2–3.) On August 17, 2005, the Commission withdrew the full amount of WestPoint Home's $1.8 million deposit. (R. p. 67; Commission Reply to Counterclaim ¶ 32.) However, unknown to WestPoint Home, there were not $1.8 million in claims from former WestPoint Stevens employees pending when the Commission withdrew the entire deposit. (R. pp. 101–102; Trial Tr. 23:23–24:8.)

Both Commission Regulation 67-1507(D) and the parties' letter of credit provided the Commission could only draw on the letter of credit if those funds were "needed" to pay a then-existing claim. S.C. Code Ann. Regs. 67-1507(D)(5); R. p. 225, Memorandum of Understanding ¶ 4. But those funds weren't "needed" at the time the agency withdrew that cash. In fact, the agency still hasn't "needed" that money even today, as there has been ***$1,164,512.39 in principal*** remaining untouched ***since 2008***. (R. p. 113, 115; Trial Tr. 35:17–22, 37:3–5.)[1]

[1] The last workers' compensation claim filed by a former WestPoint Stevens employee was on June 21, 2006. (R. p. 602, at Claim Ending 4475.) The last payment made with any of WestPoint Home deposit was on May 7, 2008, and it was a check for $45.41 to the Turner Padget Graham & Laney law firm for legal expenses. (R. p. 637, at Claim Ending 7445.) Meanwhile, as of February 28, 2023—the last time the parties reported to the circuit court—the balance in the account holding the remainder of WestPoint Home's deposit was $1,730,565.36, which included both (1) $1.16 million in principal remaining from WestPoint Home's initial deposit; and (2) over $600,000 in earnings that have accumulated on that principal while WestPoint Home's money has been in the Commission's custody.

WestPoint Home learned the above over the course of litigation, as the agency refused to provide WestPoint Home with any information whatsoever regarding how it had spent WestPoint Home's money. In response to WestPoint Home's inquiries regarding the status of its $1.8 million deposit and its efforts to recover any portion of the deposit that remained, the Commission sued WestPoint Home on April 17, 2014, and sought a declaration that WestPoint Home must remain in the dark regarding its own money. (R. pp. 46–50; Complaint.) WestPoint Home counterclaimed, seeking both information regarding how its money had been spent and a return of all money that had been improperly retained by the Commission. (R. p. 60; Answer & Amended Counterclaim.)

The case was referred to the Business Court. Judge Lee held a bench trial on August 31, 2022. At trial, Gary Cannon—the agency's Executive Director from 2009 to 2025—unequivocally conceded that the Commission did not "need" the entire deposit when it withdrew the money:

> Q: The agreement says that the time the agency can call the letter of credit is if the money is needed to pay claims, right?
>
> A: That's what it says.
>
> Q: That's right. And when the agency withdrew $1.8 million on August 17th of 2005 and moved it to an account w[ith] the State Treasurer's office, ***there was not $1.8 million in claims pending, were there?***
>
> A: ***No, sir, there was not.*** We weren't sure, though, because of the type of business they had and the potential asbestos claims that could have been filed.
>
> Q: Right. Claims could have been filed?
>
> A: That's right.
>
> Q: ***But they weren't filed?***
>
> A: ***They were not.***
>
> Q: There were not $1.8 million of claims pending at the time the money was taken from my client's bank account, were there?

A: ***No, sir, not any pending claims***, but it is the Commission's responsibility to ensure money is available for any claims to be fled in the future for employees of a self-insured company.

Q: And the way the agency ensures that that money is there is by having these letters of credit, right?

A: That's correct.

(R. pp. 101–102; Trial Tr. 23:19–24:18 (emphasis added).)

Director Cannon confirmed that, even today, the agency still does not "need" that money:

Q: The agency basically took it as a $1.8 million loan from WestPoint Home that you can use to pay claims if they ever come up, right?

A: We never considered it a loan. We considered it money that would be available to pay the claims if they came up, not a benefit to the Commission. We gained nothing by getting that money other than exercising our fiduciary responsibility to ensure the claims that would be paid for the employees of [WestPoint] Stevens.

Q: ***But you didn't need $1.8 million?***

A: ***Not the day we drew it down***, but we weren't sure what we would need in the future.

Q: ***And you haven't needed it today, have you?***

A: Well, ***we have not***, but we have examples of similar businesses that claims have been fled where the authorities were—since the '50s. So we have to look at the businesses, we have to look at the potential claims coming in to ensure that money is available. If it's not available and a claim is filed 40, 50 years later, then the injured employee has no recourse to pay for their medical benefits or compensation.

Q: Mr. Cannon, we'll get into that in just a minute, but my question is, again, very precise. ***As we stand here today in August of 2022, the agency has not needed $1.8 million to pay claims of former WestPoint Stevens employees, has it?***

A: ***That's correct.***

(R. pp. 106–107; Trial Tr. 28:2–29:3 (emphasis added).)

Director Cannon also conceded that the statute of repose for any potential new claims filed by former WestPoint Stevens employees closed on August 8, 2007:

Q: The company WestPoint Stevens went out of business on August 8th, 2005, right?

A: That's right.

Q: The statute of repose for any latent injury claim closed on August 8th, 2007, right?

A: Any latent claims is two years from the date of diagnosis.

Q: No, sir, that's the statute of limitations. I'm talking about the statute of repose.

A: Repose.

Q: ***The statute of repose is two years from the last exposure, correct?***

A: ***Yes.***

Q: ***So that would have been August 8th of 2007, correct?***

A: ***Right.***

(R. pp. 118–119; Trial Tr. 40:15–41:4 (emphasis added).)

Despite these concessions and the controlling law, Judge Lee held the Commission was right to take WestPoint Home's money in 2005 and that it is entitled to keep WestPoint Home's money indefinitely. WestPoint Home timely appealed.

The Court of Appeals reversed and held the Commission was wrong to withdraw the entirety of WestPoint Home's deposit in 2005. (Op. at 6–7.) ***The agency does not challenge this ruling in its Petition.***

The Court of Appeals also rightly held the Commission must relinquish the remaining principal, plus the earnings on that principal, to WestPoint Home because the statute of repose has

expired for any potential new claims by former WestPoint Stevens employees, just as Director Cannon conceded on the witness stand at trial. (*Id.* at 7–11.)

Finally, the Court of Appeals held that WestPoint Home was entitled to recover for the time value of its money, which the agency wrongly seized over 20 years ago. The Court of Appeals left the measure of that to be resolved by the circuit court in the first instance, as Judge Lee had not reached that question. It remanded the case to address this final point. (*Id.* at 11–12.)

As discussed below, these rulings fully align with well-developed, on-point authority, including decisions rendered by the Commission's own appellate division. Inexplicably, now that the Court of Appeals has ordered the Commission to give WestPoint Home its money back, the agency is asking this Court to disregard its own executive director's trial testimony, ignore the plain language of the statute of repose, and throw out an entire body of settled jurisprudence (again, including decisions from the agency's own appellate division), all with the goal of simply keeping WestPoint Home's money forever. This is remarkable overreach by an executive agency, and the Court should deny certiorari review to keep this case expeditiously moving towards final resolution.

STANDARD OF REVIEW

Certiorari review is reserved for cases "where there are special and important reasons" for this Court to review the work of a lower court. Rule 242(b), SCACR. The Appellate Court Rules illustrate when such "special and important reasons" may exist: "where there are novel questions of law," "where there is a dissent in the decision of the Court of Appeals," "where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court," "where substantial constitutional issues are directly involved," or when the case includes a federal question and the ruling below conflicts with a ruling by the U.S. Supreme Court. *Id.* 242(b)(1)–(5).

This case matches none of these illustrative criteria. The Court of Appeals' unanimous decision is fully supported by precedent from this Court and others—including from the Commission itself—and it addresses questions of law that are settled. Certiorari should be denied.

ARGUMENT

I. The Commission has not appealed the Court of Appeals' ruling that the agency wrongly seized WestPoint Home's $1.8 million deposit, thus mooting the issues raised in its Petition.

WestPoint Home presented three issues to the Court of Appeals: (1) whether the Commission wrongly seized the entirety of WestPoint Home's $1.8 million deposit in 2005, (2) whether the Commission must return the unused portion of that deposit, and (3) whether WestPoint Home is entitled to recover interest for the period while its money was improperly within the agency's custody. The Court of Appeals agreed with WestPoint Home on all three issues, though it did not announce a bottom-line number owed to WestPoint Home and remanded the case back to the circuit court to calculate the interest owed.

In its Petition to this Court, the agency does not challenge or address the Court of Appeals' ruling on the threshold point: whether the Commission rightly seized WestPoint Home's money in the first place. That ruling—which was undoubtedly correct—is now the law of the case. *See, e.g.*, *Moseley v. All Things Possible*, 395 S.C. 492, 495 n.4, 719 S.E.2d 656, 658 n.4 (2011) ("In its opinion, the court of appeals found the facts did not warrant relief against Hampton. That finding is the law of the case, for the Moseleys did not seek certiorari on that issue."); *Transp. Ins. Co. v. S.C. Second Injury Fund*, 389 S.C. 422, 431, 699 S.E.2d 687, 691 (2010) ("An unappealed ruling is the law of the case and requires affirmance.").

The Commission's failure to seek certiorari review of the Court of Appeals' ruling on this starting-point issue should be fatal to the Petition. Whether the Commission rightly took WestPoint

Home's money in 2005 controls the remainder of the analysis. If the agency wasn't entitled to seize the full deposit in the first place, it cannot logically be entitled to keep what's left from that deposit. And if the agency wasn't entitled to seize the full deposit in the first place, it cannot logically be entitled to keep earnings that have accrued on the deposit over the last 21 years.

South Carolina's appellate courts routinely dismiss appeals as moot when a party has abandoned an issue on which the remainder of an appeal turns. *E.g.*, *Hampton Building Supply, Inc. v. Wilson*, 285 S.C. 135, 138–39, 328 S.E.2d 635, 636–37 (1985); *M&T Bank v. Davis*, Op. No. 2022-UP-146, 2022 S.C. App. Unpub. LEXIS 176, at *2–3 (Ct. App. Mar. 23, 2022); *Morin v. Trippe*, Op. No. 2016-UP-492, 2016 S.C. App. Unpub. LEXIS 632, at *1–2 (Ct. App. Nov. 23, 2016); *Boyce v. Nelson*, Op. No. 2015-UP-420, 2015 S.C. App. Unpub. LEXIS 492, at *2 (Ct. App. Aug. 12, 2015). This case is no different, and the Petition should be denied accordingly.

II. The Court of Appeals' ruling regarding the statute of repose is consistent with every other court that has examined the issue, including numerous decisions issued by the Commission's appellate division.

The Commission dedicates over 11 pages of its Petition to arguing the Court of Appeals misconstrued South Carolina Code § 42-11-70 as a statute of repose for claims involving "pulmonary disease arising out of the inhalation of organic or inorganic dusts" that bars such claims unless the worker's injury manifested itself within two years following his or her last exposure to the hazard. (Pet. at 7–18.) In its Petition, the Commission bemoans what it perceives as adverse consequences of such a construction (arguing, in essence, that the workers' compensation system exists exclusively to pay workers, without any regard to protecting employers from stale or improper claims), and the agency heavily criticizes the Court of Appeals for relying on this Court's analysis in *Vespers v. Springs Mills, Inc.*, 276 S.C. 94, 97, 275 S.E.2d 882, 884 (1981), to support the ruling below.

The Commission's posturing before this Court is a startling about-face from a state agency. The Court of Appeals' analysis here matches ***exactly*** that of the Commission when it has previously addressed this issue. Consider this excerpt from ***a ruling by the Commission itself***, which fully tracks the Court of Appeals' decision, all the way down to relying on *Vespers*:

> A question arises as to whether the word "contracted" as used in the statute [*i.e.* S.C. Code Ann. § 42-11-70] may be construed [as] the acquisition of the disease at the time symptoms and disability occur, or at the time of exposure. The answer is settled by established case law in South Carolina.
>
> Our supreme court has previously issued a definition of the word "contracted" in workers' compensation cases in *Vespers v. Springs Mills, Inc.*, 275 S.E.2d 882, 276 S.C. 94 (S.C. 1981). Justice Ness wrote:
>
> > "The term 'contracted' is a term of art which has been defined for compensation purposes in occupational disease cases as "disablement or death."
>
> A straightforward reading of the statute supports the definition of "contracted" in *Vespers*. Our legislature could not have intended that the word "contracted" to be synonymous with "exposure." If it did so, there would be no logical purpose for enacting the statute in the first place. The language references two distinct events: (1) exposure and (2) contracting the occupational disease. Since exposure and contracting the disease are distinct, and not the same, an ordinary and unambiguous meaning should be assigned to the word contracting, *i.e.* when the disease manifests itself and/or disables the claimant. The legislature chose to make compensability dependent on their being less than one (or two) year(s) between exposure and contraction of the disease.
>
> The Appellate Review Panel finds that the purpose of 42-11-70 is to protect the employer against claims too old to be fairly investigated and defended. Accordingly this statute should be read to effectuate the legislative intent to reasonably limit an employer's period of potential liability for workers' compensation benefits. In determining the legislature's intent, consideration should be given to the necessity for the law, the evils sought to be remedied, and the purpose to be achieved. *Stewart v. The Industrial Comm'n,* 504 N.E.2d 84 (Ill. 1987) (finding that Illinois has a valid state interest in its statute of repose for occupational diseases).

Gibson v. Westinghouse Elec. Corp., No. 0319071, 2006 SC Wrk. Comp. LEXIS 895, at *19–21 (2007).

Gibson does not stand alone. The Commission's appellate division repeated the exact same excerpt quoted above in *Bishop v. Westinghouse Elec. Corp.*, No. 0318085, 2006 SC Wrk. Comp. LEXIS 1015, at *19–21 (2007). And in *Truax v. Daniel Const./Fluor Daniel*, No. 0411701, 2009 SC Wrk. Comp. LEXIS 30, at *5–6 (2009), the appellate division further explained its view of the controlling statute of repose:

> S.C. Code Ann. § 42-11-70 is abundantly clear in its intent to disallow compensation for disability or death for an occupational disease of a pulmonary nature that is not contracted within two years of the date of the last injurious exposure. Notwithstanding the latency period of asbestos related diseases such as asbestosis, the legislature has never amended this provision and its intent is abundantly explicit.

The *Truax* panel then enforced the statute precisely the same way the Court of Appeals held it should be enforced here: "Under the plain language of S.C. Code Ann. § 42-11-70, it is ***impossible*** to reconcile the thirty-two (32) year gap in this case between the Claimant's last date of employment (1972), and the date he 'contracted' his disease (*i.e.* became disabled) in 2006." *Id.* at *6–7 (emphasis added).

The uniformity of treatment of this issue doesn't end with the agency's own decisions. Other courts have examined whether South Carolina Code § 42-11-70 is a statute of repose that requires a worker to experience "disablement or death" within two years of his or her last exposure to the occupational hazard, and they have reached the exact same conclusion as the Court of Appeals here, using the exact same analysis as the Court of Appeals (and the exact same analysis as the Commission in, *inter alia*, its *Gibson*, *Bishop*, and *Truax* rulings). *See, e.g.*, *Matthews v. E.I. du Pont de Nemours & Co.*, Case No. 4:16-cv-2934-RBH, 2018 U.S. Dist. LEXIS 193735, at *26 (D.S.C. Nov. 13, 2018) ("Here, the plain reading of the statute of repose [*i.e.*, S.C. Code Ann. § 42-11-70] serves to clearly provide that claims for pulmonary disease arising out of the inhalation of organic or inorganic dusts ***must be brought within two years after the last exposure to the***

hazard. Mr. Matthews worked for DuPont throughout the 1960s. He developed his pulmonary disease decades later, well past the period provided for in the statute of repose. While this result may seem unfair, this Court is not tasked with legislating.") (emphasis added); *Parker v. Asbestos Processing, LLC*, Case No. 0:11-1800-JFA, 2015 U.S. Dist. LEXIS 115094, at *13–24 (D.S.C. June 30, 2015) (confirming that South Carolina Code § 42-11-70 is a statute of repose, citing *Vespers* for its enforcement of the statute, and holding that the plaintiffs could not bring malpractice claims against their counsel for failing to advise them of potential workers' compensation relief because none "became disabled within two years of their last exposure to asbestos at the Springs Mills plants" and thus had no potential workers' compensation claim), *aff'd sub nom. Southern v. Bishoff*, 675 F. App'x 239 (4th Cir. 2017).[2]

* * * * *

It is incredible that the Commission would devote page after page of a petition to this Court criticizing the Court of Appeals' reasoning regarding South Carolina Code § 42-11-70 when ***the agency itself*** has taken the ***exact same position*** based on the ***exact same reasoning*** for years. The agency's insistence that the Court of Appeals' order is "reckless" and "grievous" and "absurd" should be fully ignored by this Court.

Because the Court of Appeals' ruling regarding Section 42-11-70 aligns with a settled, thorough body of jurisprudence, the Court should deny certiorari review and remand this case so

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[2] On Page 16 of its Petition, the Commission opaquely suggests that if the Court of Appeals' construction of Section 42-11-70 is allowed to stand, then an employer may somehow become exposed to common law tort liability. This is patently false and is the exact argument Judge Harwell considered and rejected in *Matthews*. *See* 2018 U.S. Dist. LEXIS 193735, at *26 ("Accordingly, this Court agrees with Defendant DuPont that as to DuPont, Mr. Matthews's claim is governed by the Workers' Compensation Act and its exclusivity provisions. Any effect of the Act's statute of repose does not allow him to seek compensation through a civil lawsuit."). The agency does not mention *Matthews* (or Judge Anderson's decision in *Parker*) anywhere in its Petition, but those two federal decisions align exactly with the Court of Appeals' ruling.

WestPoint Home can promptly recover its money the Commission has wrongly withheld for over two decades, as any potential new claims by former WestPoint Stevens employees are barred by the statute of repose and have been since August 2007—just as Director Cannon correctly testified at trial.

III. An agency cannot wrongfully seize a private party's money, secret the money away for two decades, and then deprive the private party of the time value of that money.

The General Assembly specifically provides that litigants like WestPoint Home should not be deprived of the time value of their money. *See* S.C. Code Ann. § 34-31-20(A) ("In ***all cases*** of accounts stated and in ***all cases*** wherein any sum or sums of money shall be ascertained and, being due, ***shall draw interest according to law***, the legal interest shall be at the rate of eight and three-fourths percent per annum.") (emphasis added). "All cases" means exactly what it says, and the law does not exclude cases where an agency has misappropriated a private party's funds. As such, WestPoint Home is entitled to prejudgment interest, and the Court of Appeals rightly remanded this matter for a determination of the amount of interest that WestPoint Home can lawfully collect.

The Commission claims that sovereign immunity bars collecting prejudgment interest from a state agency. But the relevant statute says that such interest is available in "all cases," not "all cases except those involving the State." If the General Assembly intended to carve the government out of the prejudgment interest statute, it certainly could have—but it did not.

And that's how this Court has treated the issue. Consider *EllisDon Construction, Inc. v. Clemson University*, 391 S.C. 552, 707 S.E.2d 399 (2011). There, the plaintiff claimed it was entitled to prejudgment interest against Clemson based on a contract provision stating that "Clemson would pay interest to Appellant in accordance with the Prompt Payment Act found at section 29-6-50 of the South Carolina Code." *Id.* at 553, 707 S.E.2d at 400. The Procurement Review Panel held the plaintiff failed to comply with the statutory prerequisites to trigger interest

under that Code section, but that it could still collect interest against Clemson based on the general interest statute, South Carolina Code § 34-31-20. *Id.* at 554, 707 S.E.2d at 400. This Court reversed, but it held that the plaintiff could not access the general interest statute (S.C. Code Ann. § 34-31-20) because it had specifically contracted for a different interest statute to apply (S.C. Code Ann. § 29-6-50). *See id.* at 555, 707 S.E.2d at 401 ("Therefore, Appellant is not entitled to interest under section 34-31-20(A) because it contracted for a different rate of interest.").

Sovereign immunity had nothing to do with the Court's decision in *EllisDon Construction*, and the concept does not even appear anywhere in the four-justice majority opinion. Critically, Justice Pleicones wrote a concurring opinion in *EllisDon Construction* in which he expressly argued that sovereign immunity foreclosed recovery of interest against the State. *Id.* at 557, 707 S.E.2d at 402 (Pleicones, J., concurring in result).

If sovereign immunity truly controlled the issue, then Justice Pleicones's opinion would have carried the day. Yet, his concurrence did not draw support from any other justice, confirming that Section 34-31-20 applies in "all cases," just as the statute says. Certiorari review is therefore unwarranted for this final issue.

CONCLUSION

The Court of Appeals' ruling is fully consistent with and fully supported by all jurisprudence addressing the issues raised therein. The Court need look no further than the Commission's own appellate rulings in *Gibson*, *Bishop*, and *Truax* (among others) to reject the hyperbolic arguments in the agency's Petition. And the agency hasn't challenged the Court of Appeals' threshold ruling that the Commission should not have taken WestPoint Home's full deposit (and thus deprived WestPoint Home of decades worth of earnings and interest), an abandonment that moots the remainder of the Petition in any event.

Time is not neutral in this matter. WestPoint Home has been wrongfully deprived of over $1 million for more than 20 years. The Court should deny certiorari and remand this matter to the circuit court so that WestPoint Home can expeditiously recover its funds.

Respectfully submitted,

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PROOF OF SERVICE

I, the undersigned Attorney of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Respondent, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specified below via email at the address(es) below:

Pleading(s): WestPoint Home's Return to Petition for a Writ of Certiorari

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January 21, 2026

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Alison R. Lee

Circuit Court Judge

Opinion No. 1216 (S.C. Ct of Appeals filed September 17, 2025)
Petition for Rehearing denied November 21, 2025

South Carolina Workers' Compensation Commission, ...Petitioner,

v.

WestPoint Home, LLC, ...Respondent.

PETITIONER'S REPLY TO WESTPOINT HOME'S RETURN TO PETITION FOR WRIT OF CERTIORARI

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January 30, 2026

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ARGUMENT IN REPLY

OVERVIEW

The South Carolina Court of Appeals wrongly determined that S.C. Code Ann. §42-11-70 is a statute of repose. In making that finding, the Court of Appeals, which reversed the Trial Court's decision, created a circumstance where there were no possible claims that could be asserted against WestPoint Stevens, WestPoint Home's predecessor. As a result, WestPoint Home became entitled to the return of the balance of the funds that are presently unused.

A finding that WestPoint Home is entitled to a refund of the held funds is warranted only if S.C. Code Ann. § 42-11-70 operates as a statute of repose. If the statute is not a statute of repose, refunding the funds would be inconsistent with the record. The unrefuted evidence demonstrates an overwhelming likelihood that valid occupational-injury claims will arise against West Point Stevens. Those claims are likely to exceed the balance currently held by the State Treasurer, which exists to protect the employees of this now-defunct self-insured employer Holding otherwise would leave no source of payment for those claims.

This case did not arise out of and/or address any employee claim, which should be the appropriate circumstance for the Courts to interpret a statute that dramatically alters the judicial analysis of serious disabling and deadly illnesses that arise exclusively from exposure to asbestos-containing materials in the workplace. When it made this radical change to the interpretation of the statutory scheme in the Workers' Compensation Act in a case where no employee claims are involved, the Court of Appeals deprived former employees who have contracted these diseases and have yet to be diagnosed or disabled the right to benefits under the Act that they earned.

A proper finding that S.C. Code Ann. §42-11-70 is a coverage statute, not a statute of repose, requires that those funds be retained, or that WestPoint Home, as the successor of an

uninsured employer with substantially likely liability, be required to post the funds or some equal security to protect the workers whose claims will likely arise under the Act.

WestPoint Home's return to the Petition ignores the points and law made by the Commission's Petition and endeavors to misdirect this Court in an effort to obtain monies that were negotiated and held for one purpose only, to protect its predecessor's employees from occupational illnesses they are likely to experience as a direct result of their employment at WestPoint Stevens.

This Court should grant Certiorari in this case, allow briefing, hear the case, reverse the Court of Appeals, and reinstate the Order of the able Trial Court, which heard the witnesses, reviewed the evidence, and made the correct decision at trial.

I. In its Return, WestPoint Home Failed to Address the Most Important Error that the Court of Appeals Made, that the Court of Appeals failed to Apply this Court's Well-Settled Rules of Statutory Construction in Finding that §42-11-70 is a Statute of Repose.

The Primary issue in this Petition is the proper interpretation of S.C. Code §42-11-70 under the well-settled law of statutory construction. The Respondent never addressed this issue; it never explained why the statute is ambiguous and failed to explain why the Court of Appeals ignored *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Its order impliedly found that the statute was ambiguous and then reconstructed a statute put in place by the Legislative and Executive branches of our government. The plain language of the statute is that you must contract (get) the disease within two years of last exposure. The claim must be filed within 2 years of the diagnosis. Benefits are paid for death and disability. The correct interpretation is that §42-11-70 establishes a requirement that the disease be contracted within two years, creating a medical

question of proof.

Instead, WestPoint Home expresses incredulity that the Commission would argue against it (and the Court of Appeals) misconstruing prior decisions of this Court and the Commission itself and relying on dicta in U.S. District Court decisions to make a plain unambiguous statute something that it never was, and effectively eliminate important rights conveyed to workers in the Act the Commission is sworn to uphold.

WestPoint Home prefers to offer out-of-context arguments about other court and Commission rulings that are neither binding on this Court nor accurately presented instead of addressing the statutory construction analysis dictated by this Court but not followed by the Court of Appeals. The Commission thoroughly distinguished each of the holdings that WestPoint Home relies on in its reply and explained why those do not treat §42-11-70 as a statute of repose.

The plain language of the statute does not require interpretation, and the Court of Appeals erred when it replaced the word "contract" with the words "deceased or disabled" to turn §42-11-70 into a statute of repose. When it made this error, the Court of Appeals violated this Court's established precedent, misconstrued the legislative scheme, and failed to address the very reason for the statutory scheme: the long latency period in respiratory diseases arising from workplace exposure to asbestos. This court has repeatedly held that, when engaging in statutory construction, workers' compensation statutes are to be liberally construed in favor of coverage. *Peay v. U.S. Silica Co.*, 313 S.C. 91, 94, 437 S.E.2d 64, 65 (1993). In the instant case, the Court of Appeals has done the opposite, it has so narrowly construed the class of persons capable of bringing a claim for an occupational illness as to virtually eliminate any claimant with a disease with a latency period. The Court's decision all but eliminates the chance that any worker can maintain a claim after being diagnosed with mesothelioma or asbestosis from exposure in the workplace. The

failure to interpret the statute in accord with the established precedent in this court is a fatal flaw that overrides every point raised by WestPoint Home in its reply and should compel this Court to grant the Commission's Petition and reverse the Court of Appeals' decision.

Section 42-11-70 is not a statute of repose, and the record is compelling on the point that latent claims will arise for occupational injuries from WestPoint Stevens' employees. The unrefuted evidence in the record supports that fact. Employees must be protected from the consequences of their self-insured employer's bankruptcy. The Commission properly negotiated the letter of credit in good faith, as the Circuit Court determined.

It was an error for the Court of Appeals to reinterpret the statute into something it was not, and WestPoint's Return fails to address the appropriate application of this Court's rules of statutory construction and the Court of Appeals' failure to follow this Court's precedents in its decision.

II. The District Court Cases that the Return Relies on do not Hold That §42-11-70 is a Statute of Repose.

In addition to misconstruing this Court and the Commission's prior decisions, WestPoint Home cites two U.S. District Court opinions that it asserts hold that §42-11-70 is a statute of repose. Not only do those cases fail to make that finding, but, more importantly, the United States District Court lacks subject-matter jurisdiction to determine whether an employee has a compensable claim for an occupational illness under the South Carolina Workers' Compensation Act. (S.C. Code Ann. §42-3-180 (1976)), and is not the agency responsible for administering the Act.

In *Matthews,* the US District Court was charged with determining whether Plaintiff was a statutory employee of DuPont and thus barred from bringing tort litigation against certain defendants by the exclusive remedy in §42-1-540. *Matthews v. E.I. DU Pont*, Civil Action No.:4:16-cv-02934-RBH, 2018 WL 5978111 (D.S.C. Nov. 13th, 2018). Plaintiff asserted that §42-

11-70 was a statute of repose that deprived him of any benefits under the Act in an attempt to avoid his claim being barred by §42-1-540. Judge Hartwell granted summary judgment to Defendants on the grounds that the *tort* claim was barred by S.C. Code Ann. §42-1-540. Judge Harwell made no finding and did not have jurisdiction to find whether Plaintiff was or was not entitled to benefits under the South Carolina Workers' Compensation Act. Notably, Judge Harwell did not certify any question to this Court for an opinion on that issue.

Parker dealt with a motion for summary judgment in a legal malpractice claim. *Parker v. Asbestos Processing, LLC*, Case No. 0:11-1800-JFA, 2015 U.S. Dist. LEXIS 115094, (D.S.C. June 30, 2015). The legal malpractice claims depended on Plaintiffs proving they had a viable workers' compensation claim. Judge Anderson found Plaintiffs had failed to show the viability of their workers' compensation cases *for purposes of bringing legal malpractice claims*. Judge Anderson did not find and did not have jurisdiction to find whether Plaintiffs were or were not entitled to benefits under the South Carolina Workers' Compensation Act; again, no question was certified to this Court as to the meaning and effect of §42-11-70.

III. WestPoint Home's use and Overreliance on Gary Cannon's Testimony is Misplaced.

WestPoint Home's Return to the Commission's Petition spends almost three pages focusing on the testimony of Gary Cannon, who was the Commission's executive director when this case was heard, but not in 2005 when the decision to protect WestPoint Stevens' workers by negotiating the letter of credit was made. While ignoring Mr. Cannon's testimony that retaining the funds was necessary, which the trial court adopted in its Order, WestPoint Home's return relies almost exclusively on the legal conclusions that its Counsel led Mr. Cannon to agree with. As pointed out in the Commission's Petition, Mr. Cannon's concessions were opinions on the law

elicited by Counsel, which are neither binding on the Commission nor the Court. The trial court, which heard the testimony, correctly applied the law, and Mr. Cannon (or anyone else's, for that matter) accepting Counsel's assertion that "the statute of repose expired in 2007" signifies nothing and has no weight. This Court, not Mr. Cannon or WestPoint Home, is the arbiter of statutory construction and meaning.

WestPoint Home's Return relies on irrelevant and inadmissible testimony to support its money grab. The most relevant portion of Mr. Cannon's testimony included in the Return is on Page 5 where he states: "So we have to look at the businesses, we have to look at the potential claims coming in to ensure that money is available, If it's not available and a claim is filed 40, 50 years later, then the injured employee has no recourse to pay for their medical benefits or compensation." (Return p. 5). The Commission's Petition addressed the concessions and correctly characterizes them as a legal conclusion extracted under pressure, not an admission of fact or law. Whether 11 is a statute of repose is a question of law, not fact. The Trial judge recognized this and was in the best position to weigh the evidence presented to her. She correctly determined that the statute is not a statute of repose that absolved WestPoint Stevens of all further liability (although it was erroneously called a statute of repose on several occasions).

IV. The Commission Raised the Question that the Court Improperly Held that the Letter of Credit was Not Properly Negotiated in the Petition, and this Court Should Reverse the Court of Appeals and Reinstate the Trial Court's Correct Decision that the Commission Properly Negotiated the Letter of Credit in Good Faith Without Objection from WestPoint Home.

The Commission both expressly and impliedly raised the issue that the Court of Appeals erred in finding that its negotiation of the letter of credit was improper. The Commission's Petition acknowledges the trial court's finding that the Commission properly negotiated the letter of credit,

and it was proper for the Commission to retain the funds. It further notes that WestPoint Home appealed this specific ruling and that the Court of Appeals reversed, holding that the Commission improperly retained the funds. Petition, p. 8-9.

In its Argument V of the Petition, the Commission directly addressed finding as to properly retaining the funds and the negotiating of the letter of credit; moreover, the Commission addressed the fact that, in the absence of its administrative decision, there was no source of funds from which it could pay WestPoint Stevens' former employees' inevitable claims for the benefits that they were entitled to under the statute. The Commission also notes that the trial court was correct in holding that the Commission reasonably interpreted the August 15, 2005, letter as indicating that benefits would not be paid. WestPoint Home seeks to obtain a windfall in violation of the statute, which directly harms the former employees of WestPoint Stevens, whom the statute directs the Commission to protect. WestPoint Home has neither offered any reason why it did not inquire at the time the letter of credit was negotiated, nor why it waited many years beyond any applicable statute of limitations to make an inquiry and seek information regarding the funds. Moreover, it never filed any petition or sought relief from the Commission.

The Commission did not "seize" WestPoint Home's security. Both the Court of Appeals and WestPoint Home choose to ignore the facts and suggest that the Commission gained some benefit or had some reason to negotiate the letter of credit other than its good faith belief, based on WestPoint's correspondence that it was not responsible for any Workers' Compensation claims moving forward, as justification to move to protect South Carolina workers who worked for a defunct self-insured employer.

The Commission has made clear, from the very beginning of this litigation, this money does not belong to the Commission. Neither principal nor interest may be used to pay the

Commission's salaries or expenses. The Commission's only role with these funds is to function as trustee to ensure that the funds remain available for an injured worker who is found to have a compensable claim arising out of and in the course of their employment with WestPoint Stevens. The Commission has never intended to hold these funds in perpetuity. The Commission's position is, and has always been, there is substantial evidence to indicate this particular employer is at a heightened risk for exposure to occupational illness claims and, given the statute of limitations provided for under §42-15-40 and the well-documented reality that an employee can "contract" a slow developing disease like mesothelioma within one or two years of their employment but not show symptoms, much less be "diagnosed definitively" and "notified of the diagnosis" for many years, it is not yet ripe to determine if the funds should be returned to the remainderman. The Commission's good faith acts were neither a seizure nor a bad faith negotiation of the letter of credit. The only evidence in the record reflects this fact, and the trial judge held that this was the case,

"On August 15, 2005, WestPoint Stevens sent a letter to the Commission indicating that its assets had been purchased by . . . that "workers' compensation liabilities asserted against [WestPoint Stevens] were not liabilities assumed by the Purchaser," and "no further payments will be made with respect to workers' compensation claims asserted against WestPoint Stevens Inc." (ROA 005 ¶13)

The Court also significantly noted that "WestPoint Home lodged no contemporaneous objection to the Commission's decision to draw down the entire amount" (ROA 008); WestPoint home did not contact the Commission regarding this issue for several years (ROA 008) and most importantly that "the Commission appropriately drew down the full amount of the letter of credit because it was entitled to treat the August 2005 letter as a cancellation or revocation of the letter

of credit." (ROA 008). The Court reasoned, "While the August 2005 letter did not specifically cancel the letter of credit, it likewise did not specify that the letter of credit would remain in force." The pronouncement in the last sentence that 'no further payments will be made with respect to workers' compensation claims asserted against WestPoint Stevens Inc.' certainly indicated to the Commission that the letter of credit was ending. The testimony at trial also reiterated and supported the action. See. Tr. Trans. P. 57-58." (ROA 008), The trial judge, who had the opportunity to observe the witnesses and review the case, certainly determined that negotiating the entire letter of credit was reasonable and done in good faith. The Commission did not seize anything. It negotiated the letter of credit when it reasonably understood that the self-insured employer was refusing to pay future claims to protect workers, as required by law. The trial court also noted that "WestPoint Home offered no evidence to contradict the Commission's interpretation of this language." WestPoint Home's repeated assertions that the Commission seeks to retain the funds permanently are false and unsupported by any evidence in the record.

Moreover, the Commission cannot have improperly negotiated the letter of credit as a matter of law because, as the record reflects, it utilized funds from that event to pay more than $600,000.00 in claims[1]. (ROA p. 665-667). WestPoint Home wishes to attach some nefarious intent or action to the Commission's action. That argument is misplaced and unsupported by the record. Had the Commission not drawn on the letter of credit when it did, there is no evidence that these claims could have been paid. The record is clear that claims have been paid from the funds negotiated, and there is a high probability that employees have contracted occupational

[1] On August 26, 2005, $500,000 was drawn from the fund and remitted to Key Risk. On April 5, 2006, another $500,000 was remitted to Key Risk. $364,000 was returned to the fund by Key Risk in 2009. So at least $1,000,000.00 was determined to be "needed" from the fund contemporaneously and $836,000.00 has been paid on claims to date. An argument that the funds were seized is hyperbolic.

disease related to their exposure at WestPoint Stevens and will have claims that can easily exhaust all the funds being held.

The Commission's Petition challenged the Court of Appeals' determination that the funds were *improperly* retained (which is synonymous with the "unlawful seizure" terminology used by WestPoint Home) and asked the Supreme Court to overturn that specific finding.

V. WestPoint Home offers this Court no Authority to support its Claim that it is Entitled to Collect Pre-Judgment Interest Against the State Under the General Interest Statute.

Sovereign immunity insulates the State from exposure to claims for pre-judgment interest. WestPoint Home ignores the well-settled law raised in the Petition in the historical context that it is not entitled to pre-judgment interest under the general interest statute. WestPoint Home misconstrues *Ellis-Don Constr. Inc., v. Clemson Univ.*, 391 S.C. 552, 707 S.E.2d 399 (2011) as holding that the general interest statute permits charging pre-judgement interest against the State. Justice Pleicones' concurrence was illustrative that the long chain of legal precedent cited in the Petition (starting at Page 17) including authority of this Court beginning with *Gilliland v. Phillips*, 1 S.C. 152 (1869), addressing the express holding in *Monarch Mills v. South Carolina Tax Commission*, 149 S.C. 219, 146 S.E. 870, 871-72 (1929), overruled by *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), superseded by Statute, South Carolina Tort Claims Act, S.C. Code Ann. §15-78-20(b) ("All other immunities applicable to a governmental entity . . . are expressly preserved.") that "Judgments, it is true, are by the law of South Carolina, as well as by Federal legislation, declared to bear interest. **Such legislation, however, has no application to the government**, and the interest is no part of the amount recovered." [emphasis added]. We noted that the U.S. Supreme Court also held that a general-interest statute was not applicable against the government unless it was express and that such statutes must be strictly construed. *United States*

v. N.Y. Rayon Importing Co., 329 U.S. 654, 658-59, 67 S.Ct. 601, 91 L.Ed. 577 (1947). There is no express statute awarding pre-judgment interest against the State, and WestPoint Home has cited no legal authority for its interpretation that the general interest statute affords it a right to recover interest against the State in abrogation of both sovereign immunity and well-settled law articulated by Monarch Mills and reiterated by Justice Pleicones in his concurrence in *Ellis Don*.

The Commission did not secret away any funds, does not receive any benefit therefrom, and only holds those funds for the benefit of the employees until it can reasonably be determined that no claims will arise. The unrefuted evidence in the record establishes that the time period is sometime after 2040. As we mentioned in the Petition, the Commission has published a regulation to address this gap in the Act's administration.

CONCLUSION

For the foregoing reasons, as well as for the reasons set forth previously in the Petition for Writ of Certiorari, Petitioners respectfully request that this Court grant the Petition for Writ of Certiorari, obtain briefing, and reverse the Court of Appeals' decision.

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Columbia, SC

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Alison R. Lee, Circuit Court Judge

Appellate Case No. 2023-001663

South Carolina Workers' Compensation Commission, Respondent,

v.

WestPoint Home, LLC, Appellant.

BRIEF OF AMICUS CURIAE INJURED WORKERS' ADVOCATES

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INTEREST OF AMICUS CURIAE INJURED WORKERS' ADVOCATES

Injured Workers' Advocates (IWA) is a nonprofit association of attorneys dedicated to protecting and advancing the rights and legal remedies for South Carolina workers who are victims of occupational injury or disease. IWA moves for leave to appear as Amicus Curiae in this case pursuant to Rule 213, SCACR.

IWA's members represent workers across South Carolina who have been, or may be, exposed to occupational hazards with long latency periods—including asbestos, silica dust, and other substances common in the state's textile, chemical, and construction industries. No injured worker is a party to this litigation. The case arose as a dispute between a corporate successor and the Workers' Compensation Commission over the disposition of security deposits, yet the Court of Appeals used it as the vehicle for a sweeping reinterpretation of the occupational disease statute that affects the substantive rights of every worker in South Carolina with a latent occupational disease. IWA submits this brief to offer the perspective of the absent class—the workers whose rights are at stake—and to present analytical arguments that the parties' briefing does not develop.

STATEMENT OF THE CASE

IWA adopts the factual recitation in the Commission's Petition for Writ of Certiorari and highlights the following facts that bear on the interests of injured workers. WestPoint Stevens operated textile manufacturing facilities at multiple locations across South Carolina for decades. Six of those locations were on a list of jobsites where asbestos exposure was known to have occurred.[1] Asbestos-related diseases such as mesothelioma and asbestosis have latency periods

[1] The Commission's expert, Christopher Burkhalter, testified that six WestPoint Stevens locations were on a list of jobsites where asbestos exposure was known to have occurred, and that the average latency period for asbestos-related diseases ranged from 10 to 50 years. He stated that a twenty-year-old exposed in 2005 would have a 96.8 percent chance that mesothelioma would not have manifested by the time of trial. 446 S.C. at 631, 922 S.E.2d at 234.

ranging from 10 to 50 years—meaning that a worker exposed to asbestos at a WestPoint Stevens facility in 2005 may not develop symptoms, receive a diagnosis, or become disabled until 2015, 2025, 2040, or beyond.

WestPoint Stevens closed in August 2005. Its corporate successor, WestPoint Home, deposited $1.8 million in security for potential workers' compensation claims. In the litigation below, WestPoint Home sought return of those funds, arguing that section 42-11-70 of the South Carolina Code of Laws is a statute of repose that extinguished all possible occupational disease claims two years after the last exposure—that is by August 2007. S.C. Code Ann. § 42-11-70 (2015). The circuit court rejected that argument. The Court of Appeals reversed, holding that § 42-11-70 is a statute of repose. *S.C. Workers' Comp. Comm'n v. WestPoint Home, LLC*, 446 S.C. 625, 922 S.E.2d 231 (Ct. App. 2025).

The Court of Appeals construed § 42-15-40 in direct contradiction to the Legislature's express language that occupational disease claims do "not begin to run *until* the employee concerned *has been diagnosed definitively* as having an occupational disease and has been notified of the diagnosis." S.C. Code Ann. § 42-15-40 (emphasis added). Practically, this interpretation bars relief for the very diseases—asbestosis, mesothelioma, silicosis—that the Legislature intended to protect.

ARGUMENT

I. The Court of Appeals' Interpretation of § 42-11-70 Cannot Be Reconciled with This Court's Precedent.

This Court's precedents establish two settled propositions. First, in occupational disease cases, "disablement or death" is the event treated as the "injury by accident" for purposes of compensation. S.C. Code Ann. § 42-11-40 (2015). Second, the term "contracted" in Chapter 11 has been defined as a term of art meaning "disablement or death." *Vespers v. Springs Mills, Inc.*,

276 S.C. 94, 97, 275 S.E.2d 882, 884 (1981); *Glenn v. Columbia Silica Sand Co.*, 236 S.C. 13, 20–21, 112 S.E.2d 711, 714 (1960). The Court of Appeals accepted both propositions. 446 S.C. at 637, 922 S.E.2d at 237. It then held that § 42-11-70 is a statute of repose. That conclusion is logically incompatible with the premises on which it rests.

A statute of repose extinguishes liability after a fixed period measured from a specific event that is *unrelated to* the accrual of a cause of action. *Capco of Summerville, Inc. v. J.H. Gayle Const. Co.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006). In the construction-defect context, for example, the repose period runs from "substantial completion of the improvement"—an event that bears no necessary relationship to when the plaintiff's injury occurs or when the claim accrues. The defining feature of a repose provision is this disconnect between the triggering event and the accrual of the claim.

The Court of Appeals held that "contracted" in § 42-11-70 means "disablement or death." 446 S.C. at 637, 922 S.E.2d at 237. Under § 42-11-40, the cause of action in an occupational disease case accrues at "disablement or death." The triggering event for the purported repose period ("contracted" = disablement) and the event that triggers accrual of the claim (disablement under § 42-11-40) are *the same event*. They are not merely related; they are the same. A time limitation that runs from the same event as accrual is, as this Court has defined the distinction, a statute of limitations—not a statute of repose. *See Capco*, 368 S.C. at 142, 628 S.E.2d at 41 (distinguishing repose from limitation on precisely this ground).

The Court of Appeals sought to resolve this tension by treating "last exposure to the hazard" as the triggering event for its repose analysis, effectively reading "contracted" to mean "exposed." But this Court has expressly rejected such conflation. In *Vespers*, this Court reversed a circuit court that had required the claimant to have "contracted" byssinosis *during* her

employment and held instead that the claimant "contracted" the disease when she became disabled by it—nine months after her employer hired her. 276 S.C. at 98, 275 S.E.2d at 884. In *Glenn*, this Court explained that the date of disability is the most appropriate point at which liability attaches because it "has the one cardinal merit of being definite, while such other possible dates as that of the actual contraction of the disease are usually not susceptible to positive demonstration." 236 S.C. at 20, 112 S.E.2d at 714, *quoting* 2 Arthur Larson, *Larson's Workmen's Compensation Law*, § 95.21 (1961). And in *Drake v. Raybestos-Manhattan, Inc.*, 241 S.C. 116, 122, 127 S.E.2d 288, 291 (1962)—an asbestosis case in which the claimant was discharged in 1954 and not diagnosed until 1958—the Court held that "in occupational disease cases compensability accrues when disability . . . or death occurs."

The Court of Appeals thus faced an irreconcilable choice: It could follow this Court's definition of "contracted" (disablement or death), in which case the statute cannot be a repose provision because the triggering event is the same as the accrual event; or it could redefine "contracted" to mean "exposed," in which case it departs from *Vespers*, *Glenn*, and *Drake*. The analysis cannot sustain both propositions simultaneously, and the resulting construction conflicts with this Court's precedent. S.C. Const. art. V, § 9 ("The decisions of the Supreme Court shall bind the [c]ourt of [a]ppeals as precedents.").

The more natural reading is that § 42-11-70 establishes a compensability element—a condition that must be satisfied for a disease to be covered under Chapter 11—not a time-based bar that extinguishes rights irrespective of accrual. Read this way, the statute requires proof that the disease was "contracted" (*i.e.*, that disablement or death occurred) within two years of the last injurious exposure, providing an evidentiary bridge between exposure and disease. That reading is also consistent with the Commission's longstanding administrative practice, which for decades has

applied § 42-11-70 as a compensability requirement, an element of proof that the claimant must satisfy, rather than as a temporal bar extinguishing claims irrespective of disablement.

II. The Legislature Knew How to Enact a Statute of Repose in the Workers' Compensation Code and Chose Not to Do So for Occupational Disease.

When the General Assembly intends to impose a statute of repose, it does so in unmistakable terms. *See* S.C. Code Ann. § 15-3-640 (2005) (barring actions arising out of defective improvements to real property "more than eight years after substantial completion"); S.C. Code Ann. § 15-3-545(A) (2005) (imposing a six-year outer limit on medical malpractice claims regardless of discovery). These provisions use explicit language of absolute bar. Section 42-11-70 has no comparable language.

The contrast becomes decisive in light of the 2007 Workers' Compensation Reform Act. In that Act, the General Assembly amended § 42-15-40 to add an express statute of repose for one specific category of claim: "repetitive trauma injury" as defined in § 42-1-172. The statute now provides that such claims are barred unless filed within two years of knowledge "but no more than seven years after the last date of injurious exposure."[2] S.C. Code Ann. § 42-15-40 (emphasis added). That final clause is textbook repose language—an outer limit measured from last exposure, irrespective of accrual.

When the Legislature amended the Act in 2007, it expressly enacted a repose period for repetitive trauma injuries. It did not amend Chapter 11 to include similar language. The deliberate inclusion of repose language in one provision and its omission in another supports the conclusion

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[2] The amended statute provides:

> For a "repetitive trauma injury" as defined in Section 42-1-172, the right to compensation is barred unless a claim is filed with the commission within two years after the employee knew or should have known that his injury is compensable **but no more than seven years after the last date of injurious exposure.**

S.C. Code Ann. § 42-15-40 (2015) (emphasis added).

that the legislature did not intend to impose a repose period for occupational disease. *See Peay v. U.S. Silica Co.*, 313 S.C. 91, 93, 437 S.E.2d 64, 66 (1993) ("[A]ny exception to workers' compensation coverage must be narrowly construed."); *See also, e.g., Isaac v. Onions*, 445 S.C. 525, 915 S.E.2d 492 (2025) ("[t]he canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.'").[3]

The Court of Appeals' construction also produces structural conflict within the Act. Section 42-15-40 states that the limitations period for occupational disease claims does not begin to run until definitive diagnosis. Yet under the decision below, § 42-11-70 would extinguish claims years—often decades—before diagnosis and before the limitations period ever begins. A repose period that ends before the limitations period begins is not harmonious statutory design; it is statutory contradiction. Courts do not construe statutes to produce this incoherence. *See Kiriakides v. United Artists Commc'ns, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994) (courts will reject a statutory interpretation that leads to a result so plainly absurd it could not have been intended by the Legislature).

The ionizing-radiation exception within § 42-11-70 confirms that the provision was drafted as a compensability element, not as an absolute temporal bar. The statute exempts diseases "due to exposure to ionizing radiation" from the contraction-period requirement. If § 42-11-70 were truly a statute of repose, this exception would reflect a legislative choice to extinguish long-latency claims arising from asbestos or silica while preserving only radiation claims. Nothing in the Act

[3] Interestingly, the Court of Appeals quoted this maxim in its opinion for an entirely different reason, that is, to highlight the absence of any exceptions to application of a statute other than those expressed. *S.C. Workers' Comp. Comm'n v. WestPoint Home, LLC*, 446 S.C. 625, 633, 922 S.E.2d 231, 235 (Ct. App. 2025).

suggests this hierarchy of hazards. The more natural reading is that the Legislature recognized that certain diseases have latency periods inconsistent with a contraction requirement and adjusted that evidentiary element accordingly. The exception shows the legislature treated § 42-11-70 as a compensability element that can be adjusted for scientific reality—not as an absolute temporal bar.

This Court has consistently held that statutes addressing the same subject matter must be construed together to produce a harmonious result. *Beaufort County v. S.C. State Election Comm'n*, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011). The Court of Appeals' construction does the opposite: it converts a compensability element into a repose provision that the legislature never enacted, renders § 42-15-40's occupational disease limitations period superfluous for long-latency diseases and creates an irreconcilable conflict with the Legislature's express decision in 2007 to limit repose to repetitive trauma.

For more than six decades, this Court has construed Chapter 11 as centering compensability on disablement, and the General Assembly's decision to amend other portions of the Workers' Compensation Act without changing that framework reflects legislative acquiescence in this Court's interpretation. *See, e.g., Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 572, 743 S.E.2d 778, 784 (2013) ("There is a presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects.").

III. The Court of Appeals' Construction Undermines the Grand Bargain for Workers Exposed to Long-Latency Hazards.

The Workers' Compensation Act is premised on a reciprocal exchange: workers surrender their common-law right to sue in tort; in return, they receive guaranteed, no-fault compensation when workplace injury or disease causes disability. This exchange—the "Grand Bargain"—depends on the compensation remedy being available when disability occurs. *See Brooks v. Benore*

Logistics Sys., Inc., 442 S.C. 462, 470 n.1, 900 S.E.2d 436, 440 n.1 (2024) (describing the "Grand Bargain" under which employees relinquish tort remedies in exchange for guaranteed compensation for work-related injuries). If the workers' compensation remedy is extinguished before a worker can use it, the exchange becomes one-sided.

The Court of Appeals' construction of § 42-11-70 creates precisely that result for workers exposed to long-latency occupational hazards. Consider the worker at a WestPoint Stevens facility who was exposed to asbestos dust in 2005 and develops mesothelioma in 2030. Under the Court of Appeals' ruling, that worker's right to compensation was extinguished in August 2007, which was twenty-three years before the disease manifested. The exclusive remedy under § 42-1-540 of the South Carolina Code of Laws still applies and the injured worker has no claim in tort, and the workers' compensation benefit itself has been eliminated by a statute of repose that ended before the claim could ever arise.

Under that construction, the worker would have neither a compensation remedy nor arguably a possible tort remedy. The compensation remedy is gone because of the repose period. The worker who was exposed to a deadly substance in the course of employment and who developed a fatal disease as a result has no remedy at all. The bargain under which that worker's tort rights were extinguished has been rendered illusory.

This is not a theoretical concern. The uncontradicted record evidence establishes that a twenty-year-old worker exposed to asbestos at a WestPoint Stevens facility in 2005 would have a 96.8 percent chance of not yet manifesting mesothelioma by the time of trial. The latency period for mesothelioma ranges from 10 to 50 years, and in some cases as long as 60 years. *See* Vol. IV Lex K. Larson, Larson's Workers' Compensation § 53.03. Across South Carolina, workers in textile mills, chemical plants, construction sites, and other industries were exposed to asbestos,

silica dust, and other hazardous substances over decades of employment. Many have contracted occupational diseases that have not yet manifested as disabling conditions. Under the Court of Appeals' construction, their claims were retroactively extinguished—in many cases, years before they would have any reason to know they were ill. *Cf. Drake*, 241 S.C. at 122 (claimant exposed for 30 years, discharged in 1954, diagnosed with asbestosis in 1958); *Goff v. Mills*, 279 S.C. 382, 308 S.E.2d 778 (1983) (claimant did not learn his byssinosis was compensable until 18 years after onset). The Court of Appeals' construction does not merely narrow the pool of compensable claims. It would foreclose claims by workers exposed to the most dangerous long-latency occupational hazards from the protection of the Act. The Legislature did not intend this result.

The statutory definition of "disablement" underscores the point. Section 42-11-20 defines disablement as "the event of an employee becoming actually incapacitated, partially or totally, because of an occupational disease, from performing his work in the last occupation in which injuriously exposed to the hazards of such disease." That definition contemplates a future event — an employee *becoming* incapacitated. It does not limit when that event must occur relative to exposure.

The legislature defined the compensable injury as the onset of incapacity. The Court of Appeals has imposed a deadline on that onset that the legislature never enacted. Chapter 11 has no clear expression of intent to bar occupational disease claims before the injury the statute designates as the compensable event has even occurred.

The Court of Appeals' reinterpretation of § 42-11-70, read in conjunction with § 42-15-40, undermines the Grand Bargain in two further ways that merit this Court's attention.

First, this new interpretation of § 42-11-70 is either much harsher than South Carolina's recognized statutes of repose, or it would improperly inject 'fault' into the workers' compensation

system. South Carolina's recognized statutes of repose have a safety valve: they do not protect defendants guilty of fraud, gross negligence, recklessness, or concealment of a cause of action. *See* S.C. Code Ann. § 15-3-670(A) (Supp. 2024) ("The limitations provided by Sections 15-3-640 through 15-3-660 are not available as a defense to a person guilty of fraud, gross negligence, or recklessness...or to a person who conceals any such cause of action.") No such safety valve appears to exist for the reading of S.C. Code Ann. § 42-11-70 as a statute of repose. If there were, for example, exceptions to § 42-11-70, as a true statute of repose, for fraud, gross negligence, recklessness, or deceitful concealment by the employer, this would improperly inject "fault" into the system and create the type of litigation the Workers' Compensation Act of South Carolina was specifically meant to avoid. *See Machin v. Carus Corp.*, 419 S.C. 527, 534, 799 S.E.2d 468, 471 (2017) (describing workers' compensation "as founded upon recognition of the advisability, from the standpoint of society as well as of employer and employee, of discarding the common law idea of tort liability in the employer-employee relationship and of substituting therefor the principle of liability on the part of the employer, *regardless of fault*") (citation omitted; emphasis added).

The other alternative would be that no such exceptions existed to the very harsh bar of § 42-11-70 as interpreted by the Court of Appeals, even for fraud, recklessness, and willful concealment. In this alternative, every employee who worked in such environments would have every incentive to file a workers' compensation claim within two years of last injurious exposure in such workplace environments. This would be the case, no matter the full manifestation of symptoms – whether such diseases ultimately manifested or not. Such a construction could also perversely reduce the incentive for employers to invest in safety measures designed to protect against hazards whose health effects are known to manifest beyond two years since the employer's exposure to liability would end before the disease could present. The practical result would be a

flood of prophylactic claims in every industry involving hazardous exposure, filed by workers who may never develop a compensable condition, to preserve rights that would otherwise be extinguished before disease manifests. This alternative outcome would also be directly contrary to the purposes of the Act, which was meant to limit the amount of litigation between employers and employees, not increase it.

CONCLUSION

The Court of Appeals' construction cannot be reconciled with this Court's precedent or the structure of Chapter 11. Having accepted that "contracted" means disablement, the court cannot plausibly treat § 42-11-70 as a statute of repose; a limitation measured from the event that triggers accrual operates as a statute of limitations, not a statute of repose. The Legislature's actions confirm the point: when it enacted an express repose provision for repetitive-trauma injuries in 2007, it left Chapter 11 unchanged—foreclosing any basis to imply a repose period for occupational disease.

The consequences underscore the error. Because occupational diseases often involve long latency periods, the decision below would bar claims before disablement occurs, leaving workers without compensation and without a tort remedy. The Workers' Compensation Act does not contemplate that result.

IWA respectfully requests that this Court grant the petition for certiorari and reverse the decision of the Court of Appeals.[4]

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February 20, 2026

[4] The unusual procedural posture of this case—a declaratory judgment action in which no injured worker was a party—makes the Court of Appeals' sweeping statutory construction particularly troubling. The opinion reached out to resolve a major question of occupational disease law in a case that did not require it. At a minimum, the opinion should be depublished to prevent its application to actual occupational disease claims.

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Alison R. Lee
Circuit Court Judge

Appellate Case No. 2025-002536
Court of Appeals Op. No. 6121 (Sept. 17, 2025)

South Carolina Workers' Compensation Commission, ... Petitioner,

v.

WestPoint Home, LLC ..... Respondent.

WESTPOINT HOME'S RESPONSE TO AMICUS BRIEF

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RESPONSE TO THE INJURED WORKERS' ADVOCATES' AMICUS FILING

If the Court grants the Injured Workers' Advocates' motion and accepts its proposed amicus brief, the Court should disregard its position.

The Injured Workers' Advocates filed an 11-page brief arguing, in essence, that it would be unfair to enforce South Carolina Code § 42-11-70. But that amicus filing never addresses or even acknowledges that the Court of Appeals' ruling is fully aligned with a uniform body of case law enforcing the repose period in South Carolina Code § 42-11-70. *See, e.g., Matthews v. E.I. du Pont de Nemours & Co.*, Case No. 4:16-cv-2934-RBH, 2018 U.S. Dist. LEXIS 193735, at *26 (D.S.C. Nov. 13, 2018) ("Here, the plain reading of the statute of repose [*i.e.*, S.C. Code Ann. § 42-11-70] serves to clearly provide that claims for pulmonary disease arising out of the inhalation of organic or inorganic dusts ***must be brought within two years after the last exposure to the hazard.*** Mr. Matthews worked for DuPont throughout the 1960s. He developed his pulmonary disease decades later, well past the period provided for in the statute of repose. While this result may seem unfair, this Court is not tasked with legislating.") (emphasis added); *Parker v. Asbestos Processing, LLC*, Case No. 0:11-1800-JFA, 2015 U.S. Dist. LEXIS 115094, at *13–24 (D.S.C. June 30, 2015) (confirming that South Carolina Code § 42-11-70 is a statute of repose, citing *Vespers v. Springs Mills, Inc.*, 276 S.C. 94, 275 S.E.2d 882 (1981), for its enforcement of the statute, and holding that the plaintiffs could not bring malpractice claims against their counsel for failing to advise them of potential workers' compensation relief because none "became disabled within two years of their last exposure to asbestos at the Springs Mills plants" and thus had no potential workers' compensation claim), *aff'd sub nom. Southern v. Bishoff*, 675 F. App'x 239 (4th Cir. 2017).

That extensive jurisprudence includes numerous decisions from the Petitioner Workers' Compensation Commission's appellate division as well. *See, e.g., Truax v. Daniel Const./Fluor Daniel*, No. 0411701, 2009 SC Wrk. Comp. LEXIS 30, at *5–6 (2009) ("S.C. Code Ann. § 42-11-70 is abundantly clear in its intent to disallow compensation for disability or death for an occupational disease of a pulmonary nature that is not contracted within two years of the date of the last injurious exposure. Notwithstanding the latency period of asbestos related diseases such as asbestosis, the legislature has never amended this provision and its intent is abundantly explicit."); *Gibson v. Westinghouse Elec. Corp.*, No. 0319071, 2006 SC Wrk. Comp. LEXIS 895, at *19–21 (2007) ("The legislature chose to make compensability dependent on their being less than one (or two) year(s) between exposure and contraction of the disease. The Appellate Review Panel finds that the purpose of 42-11-70 is to protect the employer against claims too old to be fairly investigated and defended."); *Bishop v. Westinghouse Elec. Corp.*, No. 0318085, 2006 SC Wrk. Comp. LEXIS 1015, at *19–21 (2007) ("The legislature chose to make compensability dependent on their being less than one (or two) year(s) between exposure and contraction of the disease. The Appellate Review Panel finds that the purpose of 42-11-70 is to protect the employer against claims too old to be fairly investigated and defended.").

None of these decisions—*Matthews, Parker, Truax, Gibson, Bishop*—are even cited in the amicus brief, much less discussed or analyzed. The Court of Appeals' ruling matches this long-settled body of jurisprudence. At bottom, the amicus brief is more akin to a position paper that could be submitted to the General Assembly when lobbying for a legislative rewrite of South Carolina Code § 42-11-70. But that is not a proper request of a court. If the Court grants the motion, it should disregard the arguments contained in the proposed amicus brief, deny certiorari review, and remand this matter so that WestPoint Home can promptly recover its money.

Respectfully submitted,

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PROOF OF SERVICE

I, the undersigned Attorney of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Respondent, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specified below via email at the address(es) below:

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March 2, 2026

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Alison R. Lee
Circuit Court Judge

Appellate Case No. 2023-001663
Circuit Court Case No. 2014-CP-40-02496

South Carolina Workers' Compensation Commission, ... Respondent,

v.

WestPoint Home, LLC ..... Appellant.

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C. WestPoint Home deposited $1.8 million to collateralize a letter of credit, but the Commission improperly took the entire deposit. 4

D. The Commission hired a third-party administrator to process claims by former WestPoint Stevens employees, and the last claim was made in 2006. 5

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A. Over a decade ago, WestPoint Home began inquiring into the status of its deposit and requested a refund of the unused portion, but it was stonewalled by the Commission. .. 7

B. The Commission filed suit in 2014 seeking a declaration that it is entitled to keep information regarding WestPoint Home's deposit a secret, and WestPoint Home counterclaimed to recover its money with interest. 8

C. The Commission revealed that it still held over $1.1 million of the principal deposit; it had earned an additional $600,000 in investment returns off of WestPoint Home's deposit; and it had not paid a claim in over a decade. 9

D. At trial, the Commission's Executive Director conceded both that the agency never needed the entire $1.8 million deposit in the first place and that the repose period for new claims closed in 2007. 11

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STATEMENT OF ISSUES

This appeal presents three issues for the Court's review:

1. WestPoint Stevens was a company that declared bankruptcy and has not been in business since 2005. When buying WestPoint Stevens' assets out of bankruptcy, WestPoint Home deposited $1.8 million in a bank account to collateralize a letter of credit that provided security for workers' compensation claims made by former WestPoint Stevens employees. Despite there never being $1.8 million in workers' compensation claims pending, the Workers' Compensation Commission withdrew that entire deposit, secreted into an account with the State Treasurer, and has wrongfully been collecting interest on WestPoint Home's deposit since 2005. The circuit court held that the Commission was "fully justified" in sweeping all of WestPoint Home's deposit out of its private bank account and keeping the earnings on that deposit. Was that ruling in error?

2. Because WestPoint Stevens went out business in 2005, the statute of repose for workers' compensation claims by its former employees closed in 2007. The Commission's Executive Director testified to this point at trial, and it is how every court that has examined the issue has ruled. Notwithstanding the proof at trial and the authority construing the statute of repose, the circuit court held that the Commission could continue to retain the unused portion of WestPoint Home's deposit—nearly $1.2 million—indefinitely. Was that ruling in error?

3. Is WestPoint Home entitled to collect prejudgment interest on the amounts owed to it by the Commission?

STATEMENT OF THE CASE

This case involves a dispute about $1.8 million that WestPoint Home deposited over 18 years ago when purchasing assets of a company in bankruptcy that was self-insured for workers' compensation claims made by its South Carolina employees. That deposit was ordered by a Bankruptcy Court in New York in 2005 as security for potential claims by the bankrupt company's now-former employees, but it turned out to be far in excess of the security actually needed.

Despite not needing the entirety of that deposit, the Workers' Compensation Commission wrongfully seized all of WestPoint Home's deposit in 2005; it has wrongfully collected interest on that deposit ever since; and it now refuses to return the unused, and never-to-be-used, portion. The factual background necessary to understand how this case came to be is detailed below, along with this case's procedural history.

I. Factual Background

A. WestPoint Stevens operated textile plants in South Carolina, but it declared bankruptcy in 2003 and went out of business in 2005.

WestPoint Stevens was a textile manufacturer with facilities in South Carolina. It was initially known as WestPoint Pepperell. On May 6, 1988, WestPoint Pepperell acquired four plants from J.P. Stevens, the merger of which became WestPoint Stevens. (R. p. 211; Letter from WestPoint Pepperell to Commission, at 2 (Aug. 28, 1989).)

In 2003, WestPoint Stevens filed for Chapter 11 bankruptcy, Case No. 03-13532 (RDD) (Bankr. S.D.N.Y.). Although the typical goal of a Chapter 11 case is for the debtor to reorganize and confirm a plan of reorganization, when the debtor is unable to confirm a plan, it may have to liquidate its assets instead of reorganizing. That is what happened to WestPoint Stevens, as it was unable to propose a plan of reorganization that would obtain the requisite votes to confirm from its sophisticated, well-informed creditors. *See generally In re WestPoint Stevens, Inc.*, 600 F.3d

231, 236–37 (2d Cir. 2010) (describing the history of WestPoint Stevens' bankruptcy proceedings).

The entity that is now known as WestPoint Home was the successful bidder during the bankruptcy sale. (*See* R. pp. 868–873 (tracing the corporate history of WestPoint Home).) The parties entered into an Asset Purchase Agreement that outlined in specific detail that WestPoint Home was purchasing only WestPoint Stevens' assets out of the bankruptcy process. (R. p. 260; Asset Purchase Agreement with Attachments.)

WestPoint Stevens subsequently went out of business on August 8, 2005. (R. p. 98; Trial Tr. 20:2–3.)

B. At the time of the bankruptcy, WestPoint Stevens was self-insured for purposes of workers' compensation claims.

At time of the 1988 WestPoint Pepperell–J.P. Stevens merger, the employees at J.P. Stevens' South Carolina plants were insured for workers' compensation claims through private insurance, and injuries to J.P. Stevens employees that occurred prior to that acquisition continued to be covered by insurance. (R. p. 212; Commission Internal Database Screenshot.) WestPoint Pepperell, on the other hand, was self-insured for purposes of workers' compensation claims. As noted above, the combined company eventually became known as WestPoint Stevens, and WestPoint Stevens was a self-insured employer for workers' compensation purposes. (R. p. 210; Letter from WestPoint Pepperell to Commission, at 1 (Aug. 28, 1989).)

The South Carolina Workers' Compensation Commission requires companies that self-insure for workers' compensation claims to provide sufficient surety for potential claims. The Commission does not have any actuaries on staff. (R. p. 119; Trial Tr. 41:15–17 (testimony of Mr. Cannon).) Instead, the agency uses the following actuarial formula for calculating the surety requirement for self-insured employers:

- The average annual claims paid for the last three years,
- Multiplied by a factor of 1.5, and then
- Rounded to the next highest $50,000

(R. p. 216; Letter from Commission to WestPoint Stevens (July 14, 1997); R. pp. 119–120; Trial Tr. 41:21–42:13.)

The agency's actuarial formula for calculating the surety amount is the same for bankrupt and non-bankrupt companies. (R. p. 156; Trial Tr. 78:7–19.) The formula is specifically designed to set surety "at a level sufficient to pay all claims in the event of an insolvency." (R. p. 216; Letter from Commission to WestPoint Stevens, at 1 (July 14, 1997); R. p. 121; Trial Tr. 43:1–10.)

In 1997, the Commission's actuarial formula yielded a surety requirement of $1.4 million for WestPoint Stevens. (R. p. 218; Letter from Commission to WestPoint Stevens (July 14, 1997).) WestPoint Stevens and the Commission entered into a "Memorandum of Understanding" that allowed WestPoint Stevens to post a letter of credit in that amount with NationsBank to secure payment for potential workers' compensation claims. (R. p. 223; Letter of Credit; R. p. 225; Memorandum of Understanding.)

In 2003, after WestPoint Stevens filed for bankruptcy protection, the Commission sent a letter to WestPoint Stevens indicating that its surety for workers' compensation claims would increase to $1.8 million. (R. p. 226; Letter from Commission to WestPoint Stevens (July 15, 2003).) In response, WestPoint Stevens amended its existing letter of credit to increase the amount to $1.8. million. (R. p. 227; Amendment to Letter of Credit (Aug. 1, 2003).)

C. WestPoint Home deposited $1.8 million to collateralize a letter of credit, but the Commission improperly took the entire deposit.

As noted above, WestPoint Home was the successful bidder during the bankruptcy sale, and it entered into a court-supervised and court-approved Asset Purchase Agreement to acquire

certain of WestPoint Stevens' assets. As a condition of its purchase of assets out of bankruptcy, WestPoint Home agreed to deposit up to $35 million to collateralize WestPoint Stevens' various existing letters of credit. (R. p. 287; Asset Purchase Agreement § 3.1(a).) Included among those letters of credit was the $1.8 million letter of credit WestPoint Stevens had with the Commission to cover potential workers' compensation claims in South Carolina. (R. p. 577; Cash Collateral Control Letter Agreement, at WPH0009.)

The Asset Purchase Agreement provided that WestPoint Home was depositing its cash with the understanding that it retained the "right to receive back any portion" of that money that was not used. (R. p. 287; Asset Purchase Agreement § 3.1(a).)

On August 17, 2005, the Commission withdrew the full amount of WestPoint Home's $1.8 million deposit. (R. p. 67; Commission Reply to Counterclaim ¶ 32.) However, unknown to WestPoint Home, there were not $1.8 million in claims pending from former WestPoint Stevens employees at the time the Commission withdrew the entire deposit. (R. pp. 101–102; Trial Tr. 23:23–24:8.)

D. The Commission hired a third-party administrator to process claims by former WestPoint Stevens employees, and the last claim was made in 2006.

Through the discovery process, WestPoint Home learned that the Commission hired Key Risk to adjust and administer workers' compensation claims by former WestPoint Stevens employees. (R. p. 591; Contract for WestPoint Stevens South Carolina Run-Off.) The Commission transferred portions of WestPoint Home's deposit to Key Risk and authorized it to pay claims made by former WestPoint Stevens employees. The Commission transferred $500,000 of WestPoint Home's deposit to Key Risk in September 2005. (R. p. 107; Trial Tr. 29:10–13; R. p. 665; Email from Smith to Sanders (Aug. 26, 2005).) Once those funds were exhausted, the

Commission sent Key Risk another $500,000 in April 2006. (R. pp. 110–111; Trial Tr. 32:21–33:9; R. p. 666; Email from Smith to Sanders (Apr. 5, 2006).)

But Key Risk did not need all of the funds that the Commission sent in the second transfer. Therefore, once Key Risk completed its work administering claims by former WestPoint Stevens employees and all open claims were closed, Key Risk returned $364,512.49 of WestPoint Home's original deposit back to the Commission. (R. p. 113; Trial Tr. 35:17–22; R. p. 667; Table of Account Balance.)

Accordingly, the principal remaining from WestPoint Home's deposit is ***$1,164,512.39***. (R. p. 113; Trial Tr. 35:17–22.) The principal balance has not changed since 2008. (R. p. 115; Trial Tr. 37:3–5.)

There has not been a new claim made against the money deposited by WestPoint Home in ***over 17 years***. The last such claim was reported on June 21, 2006. (R. p. 602; Key Risk Loss Run Report, at Claim Ending 4475.) Tellingly, following WestPoint Stevens' bankruptcy, seven of its former employees filed workers' compensation claims based on alleged lung illnesses; the Commission denied all seven of those claims. (R. pp. 126–127; Trial Tr. 48:25–49:8; R. pp. 603–643; WestPoint Stevens Claims Data.)

There have not been any payments made from the money deposited by WestPoint Home in ***over 15 years***. The last such payment was made on May 7, 2008, and it was a check for $45.41 to the Turner Padget Graham & Laney law firm for legal expenses. (R. p. 637; Key Risk WestPoint Payments Spreadsheet, at Claim Ending 7445.)

As of February 28, 2023—the last time the parties reported to the circuit court—the balance on the account holding the remainder of WestPoint Home's deposit was $1,730,565.36, which included both (1) principal remaining from WestPoint Home's initial deposit and (2) interest that

has accumulated on that principal while WestPoint Home's money has been in the Commission's custody. The parties agree that there are no open claims, there is no money reserved to pay claims, and there have not been any new claims in over a decade and a half. (R. p. 117; Trial Tr. 39:6–14.)

II. Procedural History

This litigation is the saga of WestPoint Home's attempt to reclaim the unused portion of its deposit and the interest that has been wrongfully accumulated by the Commission with WestPoint Home's money.

As described below, those efforts have lasted more than a decade because of the Commission's refusal to provide any information at all about what happened to WestPoint Home's deposit. As discovery revealed and as trial confirmed, WestPoint Home is entitled to receive its money back plus interest, as the Commission never needed to sweep the full amount of the deposit out of the bank, and there is no chance of any new claims being made against that deposit as a matter of law.

A. Over a decade ago, WestPoint Home began inquiring into the status of its deposit and requested a refund of the unused portion, but it was stonewalled by the Commission.

The interactions between the parties regarding WestPoint Home's attempt to recover the unused portion of its deposit began with a phone call in 2012, and then with a follow-up letter on February 22, 2013, in which WestPoint Home's then-General Counsel wrote to the Commission seeking certain information as part of an overall goal for "a reduction in the Security Amount held by the State." (R. p. 578; Letter from Fundler to Commission (Feb. 22, 2013).)

It took the Commission seven months to respond to the letter. When it did, the Commission stated that it was "unable to release the information you have requested." (R. p. 579; Letter from Roberts to Fundler (Sept. 10, 2013).)

WestPoint Home responded by explaining that its money was being used to pay claims for former WestPoint Stevens employees, that it has a reversionary interest in the remainder of its deposit pursuant to an order of the Bankruptcy Court, and that the repose period for any additional claims has closed. (R. p. 581; Letter from Fundler to Roberts (Oct. 15, 2013).) The Commission wrote back that it still would not provide any of the requested information to WestPoint Home. (R. p. 583; Letter from Roberts to Fundler (Nov. 19, 2013).)

B. The Commission filed suit in 2014 seeking a declaration that it is entitled to keep information regarding WestPoint Home's deposit a secret, and WestPoint Home counterclaimed to recover its money with interest.

As the next step of its stonewalling, the Commission commenced this case on April 17, 2014, and sought a declaration that WestPoint Home was not entitled to receive the information it had requested, arguing that the information was strictly confidential and could not be disclosed outside of the agency. (R. pp. 46–50; Compl.) In other words, the Commission sought a ruling that it did not have to tell WestPoint Home anything about how the agency had spent WestPoint Home's money in the intervening nine years.

WestPoint Home responded with a counterclaim seeking an accounting and an order that it is entitled to receive both the requested information and "all monies owed and improperly retained by the State." (R. p. 60; Ans. & Am. Countercl.) It amended its counterclaim, with permission from the circuit court, to also seek interest. (R. p. 60; *id.*)

The parties jointly moved to have this case referred to the Business Court, where it was assigned to Judge Lee. They also agreed to bifurcate the case into two issues: (1) "Whether Defendant is entitled to access certain records and information maintained by Plaintiff," and (2) "Whether Defendant is entitled to recover certain monies that are currently in the custody of the State of South Carolina." (R. p. 17; Consent Scheduling Order (Dec. 11, 2014).)

The parties briefed Issue 1, and the circuit court initially granted summary judgment in the Commission's favor on that issue. (R. p. 19; Order (Apr. 26, 2019).) WestPoint Home timely sought reconsideration of that ruling, and after briefing and a status conference, the circuit court issued an order requiring the Commission to disclose two pieces of information to WestPoint Home: (1) "The number of open health care claims currently asserted against the above-described funds being held by the Treasurer [*i.e.*, WestPoint Home's deposit]"; and (2) "The amount of the funds that remain." (R. p. 29; Order (July 3, 2019).)

Those disclosures resulted in a sea-change in the litigation.

C. The Commission revealed that it still held over $1.1 million of the principal deposit; it had earned an additional $600,000 in investment returns off of WestPoint Home's deposit; and it had not paid a claim in over a decade.

The Commission complied with the circuit court's instruction to disclose these data points, and its disclosure was damning: Nearly 15 years after WestPoint Home made its deposit, the agency still held the bulk of that deposit, and there were no open claims.

Armed with this new information, WestPoint Home supplemented its arguments regarding reconsideration and asked the circuit court to require the Commission to produce a loss-run report showing how the agency has paid claims using WestPoint Home's money, and then to perform "an actuarial analysis to determine how much security, if any, would be needed for potential future claims." (R. p. 916; Supp. Mem. at 6 (Sept. 13, 2019).)

Consistent with its stonewalling, the Commission again opposed any additional disclosure, and again it argued that South Carolina law prohibited the Commission from disclosing any information to WestPoint Home about how WestPoint Home's deposit had been spent. (R. p. 925; Resp. Mem. (Oct. 10, 2019).)

The Court held a hearing on October 18, 2019, regarding the access-to-records issue. During that hearing, the Commission revealed for the first time—***after litigating the issue for over five years***—that the data sought by WestPoint Home was not truly confidential, but instead was in the custody of Key Risk, a third-party administrator that adjusted claims for the Commission.

Following that disclosure, WestPoint Home subpoenaed records from Key Risk, without objection by the Commission. Key Risk complied with the subpoena and produced records showing that the last payment made on any workers' compensation claim from a former WestPoint Stevens employee was a $45.41 payment to the Turner Padget Graham & Laney law firm on May 7, 2008. (R. p. 637; Key Risk WestPoint Payments Spreadsheet, at Claim Ending 7445.)

WestPoint Home then sought to depose the Commission through a Rule 30(b)(6) witness regarding the information it received from Key Risk. Consistent with its efforts to prevent WestPoint Home from learning anything about the deposit, the Commission moved for a protective order and sought to quash the deposition. (R. p. 935; Mot. for Protective Order (Mar. 8, 2021).) The circuit court denied that motion and noted that the disclosure of information from Key Risk without objection from the Commission effectively resulted in WestPoint Home's prior motion to reconsider being granted. (R. p. 32; Order Denying Mot. for Protective Order (Nov. 16, 2021).)

Following that order, the Commission produced records revealing the agency has its own actuarial formula for calculating the amount of surety it requires of self-insured employers. (R. p. 216; Letter from Commission to WestPoint Stevens (July 14, 1997).) Under that actuarial formula, which was detailed above in Section I.B, WestPoint Home should have recovered the full balance of its deposit in 2012—which is precisely when WestPoint Home first reached out to the Commission about recovering the remainder of the deposit.

The Commission's records also revealed that at the time of the production, the Commission held a balance of $1.7 million using WestPoint Home's deposit: principal of $1.16 million, and the remainder was interest earned off of the principal. (R. p. 668; Trust Fund Report.)

D. At trial, the Commission's Executive Director conceded both that the agency never needed the entire $1.8 million deposit in the first place and that the repose period for new claims closed in 2007.

Trial took place on August 31, 2022, in Richland County. At trial, Gary Cannon—the Commission's Executive Director—testified unequivocally that the Commission withdrew the entirety of WestPoint Home's $1.8 million deposit even though there never has been and never will be an actual need for the agency to use all of that money.

1. The Commission took all of WestPoint Home's deposit even though there has never been a need for the entire $1.8 million deposit.

Director Cannon began his testimony by confirming that the plain language of the letter of credit collateralized by WestPoint Home's deposit allowed the Commission to withdraw money only "if needed":

> Q: And item four [of the letter of credit] says that the Commission can draw on a letter of credit ***if needed*** to pay any Workers' Compensation claim or claims of administration expense; is that right?
>
> A: Yes, sir, that's what it says, ***if needed***.

(R. p. 100; Trial Tr. 22:2–:6 (emphasis added).)

He then conceded the Commission withdrew the entire letter of credit—all $1.8 million of WestPoint Home's money—in 2005 even though only a fraction of the deposit was "needed" to pay claims:

> Q: The agreement says that the time the agency can call the letter of credit is if the money is needed to pay claims, right?
>
> A: That's what it says.

Q: That's right. And when the agency withdrew $1.8 million on August 17th of 2005 and moved it to an account w[ith] the State Treasurer's office, ***there was not $1.8 million in claims pending, were there?***

A: ***No, sir, there was not.*** We weren't sure, though, because of the type of business they had and the potential asbestos claims that could have been filed.

Q: Right. Claims could have been filed?

A: That's right.

Q: ***But they weren't filed?***

A: ***They were not.***

Q: There were not $1.8 million of claims pending at the time the money was taken from my client's bank account, were there?

A: ***No, sir, not any pending claims***, but it is the Commission's responsibility to ensure money is available for any claims to be fled in the future for employees of a self-insured company.

Q: And the way the agency ensures that that money is there is by having these letters of credit, right?

A: That's correct.

(R. pp. 101–102; Trial Tr. 23:19–24:18 (emphasis added).)

And Director Cannon confirmed that the agency still does not "need" that money even today:

Q: The agency basically took it as a $1.8 million loan from WestPoint Home that you can use to pay claims if they ever come up, right?

A: We never considered it a loan. We considered it money that would be available to pay the claims if they came up, not a benefit to the Commission. We gained nothing by getting that money other than exercising our fiduciary responsibility to ensure the claims that would be paid for the employees of [WestPoint] Stevens.

Q: ***But you didn't need $1.8 million?***

A: ***Not the day we drew it down***, but we weren't sure what we would need in the future.

Q: ***And you haven't needed it today, have you?***

A: Well, ***we have not***, but we have examples of similar businesses that claims have been fled where the authorities were—since the '50s. So we have to look at the businesses, we have to look at the potential claims coming in to ensure that money is available. If it's not available and a claim is filed 40, 50 years later, then the injured employee has no recourse to pay for their medical benefits or compensation.

Q: Mr. Cannon, we'll get into that in just a minute, but my question is, again, very precise. ***As we stand here today in August of 2022, the agency has not needed $1.8 million to pay claims of former WestPoint Stevens employees, has it?***

A: ***That's correct.***

(R. pp. 106–107; Trial Tr. 28:2–29:3 (emphasis added).)

Stunningly, Director Cannon tried to explain away this obvious breach of the letter of credit and unlawful taking of WestPoint Home's money by saying that the Commission's behavior was consistent with an unwritten agency policy:

Q: So there's really no dispute that that money was going to be there [in the bank, collateralizing the letter of credit]. It was just a question of which account is it in. Is it in my client's account where it will collect interest or is it in the agency's account where it will collect interest not for my client?

A: And we were following policy of drawing down the letter of credit when the company [*i.e.*, WestPoint Stevens] went out of business.

Q: That policy is not published anywhere, is it?

A: No, sir.

(R. pp. 109–110; Trial Tr. 31:24–32:15.)

2. There is no reason for the Commission to retain any of WestPoint Home's deposit.

Not only did Director Cannon concede that the agency has never needed the entirety of WestPoint Home's deposit, he also conceded that the agency will never have a need for any of the remaining money in the future. First, Director Cannon confirmed the agency's own actuarial formula has required $0 as security for claims from former WestPoint Stevens employees since 2012, which is when WestPoint Home first contacted the agency about recovering its money:

> Q: So in 2012, the agency's formula for calculating the surety needed on deposit was zero dollars; is that right?
>
> A: Based on this formula.
>
> * * *
>
> Q: And it's been zero every year since 2012, right?
>
> A: That's correct.

(R. p. 124; Trial Tr. 46:3–:5, 46:16–:17.)

Not only did the agency's own actuarial formula reveal that the agency didn't need any of WestPoint Home's money since 2012, Director Cannon testified the statute of repose for any new claims filed by former WestPoint Stevens employees ***closed on August 8, 2007***:

> Q: The company WestPoint Stevens went out of business on August 8th, 2005, right?
>
> A: That's right.
>
> Q: The statute of repose for any latent injury claim closed on August 8th, 2007, right?
>
> A: Any latent claims is two years from the date of diagnosis.
>
> Q: No, sir, that's the statute of limitations. I'm talking about the statute of repose.
>
> A: Repose.
>
> Q: ***The statute of repose is two years from the last exposure, correct?***

A: ***Yes.***

Q: ***So that would have been August 8th of 2007, correct?***

A: ***Right.***

(R. pp. 118–119; Trial Tr. 40:15–41:4 (emphasis added).)

E. The circuit court denied WestPoint Home all relief.

After trial, the circuit court requested that the parties submit competing proposed orders resolving the issues in dispute. Thirteen months after trial, the circuit court denied WestPoint Home all relief, finding that the agency was "fully justified" in sweeping the entirety of WestPoint Home's deposit out of the bank and retaining it indefinitely. The circuit court entered final judgment in this matter fully resolving the disputed issues on September 25, 2023.

Respectfully, that order goes against all evidence presented at trial recited above and, as discussed below, South Carolina law addressing the issues in this case. It should be reversed.

STANDARD OF REVIEW

This appeal involves the interpretation of statutes and regulations, which is reviewed *de novo*. *Books-A-Million, Inc. v. S.C. DOR*, 437 S.C. 640, 642, 880 S.E.2d 476, 477 (2022).

WestPoint Home's claim is for an accounting and a return of monies owed. (R. p. 53; Ans. & Am. Countercl. at 3.) Actions for an accounting are equitable in nature. *Laughon v. O'Braitis*, 360 S.C. 520, 524, 602 S.E.2d 108, 110 (Ct. App. 2004). Accordingly, "this court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence," though it is not required to disregard the circuit court's findings. *Id.* at 524–25, 602 S.E.2d at 110.

ARGUMENT

I. The circuit court erred by finding the Commission rightly withdrew the entirety of WestPoint Home's deposit and kept the interest earned on that money, as the Commission itself conceded at trial that it has never needed the full deposit.

The Commission should not have withdrawn the entirety of WestPoint Home's deposit in the first place, and the circuit court erred when it excused the agency's unlawful taking.

As described above, WestPoint Home's $1.8 million deposit was made at the instruction of the Bankruptcy Court to collateralize a letter of credit that WestPoint Stevens provided the Commission as security for workers' compensation claims. (R. p. 228.) The Commission's regulations allow self-insured employers to provide a letter of credit as security for potential claims, and the regulations detail the limited circumstance under which the agency can withdraw money through a letter of credit:

> The Commission may exercise the letter of credit at any time ***if the proceeds are needed for payment of a claim that occurred during the self-insured period***.

S.C. Code Ann. Regs. 67-1507(D)(5) (emphasis added). This same "if needed" limitation on the Commission's ability to withdraw funds was included in a Memorandum of Understanding regarding the letter of credit for which WestPoint Home's deposit provided collateral:

> The Commission may, at any time, draw on the Letter of Credit ***if needed*** to pay any workers' compensation claim and claims administration expense which are the responsibility of the Employer.

(R. p. 225; Memorandum of Understanding ¶ 4 (emphasis added).)

There is no dispute that the Commission withdrew all $1.8 million of WestPoint Home's deposit even though there were not $1.8 million of "claims that occurred during the self-insured period." For one, nearly $1.2 million of the principal remains untouched and is still within the agency's custody more than 18 years after it was withdrawn. (R. p. 113; Trial Tr. 35:17–22.)

Likewise, Director Cannon testified repeatedly at trial that there were not $1.8 million of claims pending when the agency withdrew the entirety of the deposit, and that there haven't been $1.8 million of claims made by former WestPoint Stevens employees against that deposit. (R. pp. 101–102, 106–107; Trial Tr. 23:19–24:18, 28:2–29:3.) As he conceded:

> Q: As we stand here today in August of 2022, the agency has not needed $1.8 million to pay claims of former WestPoint Stevens employees, has it?
>
> A: That's correct.

(R. pp. 106–107; Trial Tr. 28:24–29:3.)

It is unavoidable that the agency wrongfully withdrew the entirety of WestPoint Home's $1.8 million deposit in August 2005. There were not then, and there never have been, $1.8 million of workers' compensation "claims that occurred during the self-insurance period" for former WestPoint Stevens employees. S.C. Code Ann. Regs. 67-1507(D)(5).

An agency's regulations are construed using the familiar tools of statutory construction. *See Murphy v. S.C. DHEC*, 396 S.C. 633, 639, 723 S.E.2d 191, 195 (2012) ("Regulations are interpreted using the same rules of construction as statutes."). The plain language controls, and courts routinely reject an agency's interpretation of a regulation that goes against the plain language or that leads to absurd results. *See, e.g., Media Gen. Commc'ns, Inc. v. S.C. DOR*, 388 S.C. 138, 149–50, 694 S.E.2d 525, 530–31 (2010) ("We find the ALC was not required to defer to the Department's interpretation in this instance because it was contrary to the plain language of the statute."); *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003) ("[W]here, as here, the plain language of the statute is contrary to the agency's interpretation, the Court will reject the agency's interpretation."); *Blackmon v. S.C. DHEC*, 436 S.C. 529, 539, 873 S.E.2d 774, 780 (Ct. App. 2022) ("When the language of a regulation is plain, unambiguous, and conveys a clear and definite meaning, interpretation of the regulation is unnecessary and improper." (quoting

Kiawah Dev. Partners II v. S.C. DHEC, 411 S.C. 16, 39, 766 S.E.2d 707, 720–21 (2014))) (cleaned up).

Here, the governing regulation is clear on its face: the Commission is permitted to draw on a letter of credit only when the money withdrawn is "needed for payment of a claim that occurred during the self-insured period." S.C. Code Ann. Regs. 67-1507(D)(5). There is no provision for the agency to prospectively withdraw funds in anticipation of potential, future, unknown, may-never-occur claims.

And there is an obvious reason for this withdraw-as-claims-occur system: The money in the bank that collateralizes a letter of credit belongs to the private company that posts the funds, and that company is entitled to earn interest on its money while in the bank. (*See, e.g.*, R. p. 570; Cash Collateral Control Letter Agreement (Aug. 8, 2005) ("Interest, if any, earned on the Cash Collateral Account [from which the Commission withdrew the funds] shall be deposited in the Cash Collateral Account.").) By withdrawing the entirety of WestPoint Home's deposit, the Commission has wrongfully deprived WestPoint Home of the benefit of nearly 20 years of interest on its money.

Despite the regulation's plain language and the undisputed fact that the agency never "needed" the entire deposit because barely $600,000 of claims actually "occurred during the self-insured period," the circuit court excused the Commission's decision to withdraw the entirety of the deposit for two reasons.

First, the circuit court justified the agency's conduct by stating that the Commission did not "kn[o]w how much money was needed to satisfy these claims" that were pending at the time of the withdrawal. (R. p. 8; Order at 8.) But this does not impact the analysis of the regulation at all.

Regulation 67-1507(D)(5) allows the agency to withdraw money only on an as-needed basis when claims occur. If a payment was owed to an injured worker, the Commission could have and should have drawn down only that amount from WestPoint Home's deposit; after all, this is exactly how a letter of credit is designed to function. In fact, Director Cannon acknowledged that the agency could have administered claims that way, but it chose not to. (R. p. 105; Trial Tr. 27:9–17.) The law simply does not allow the Commission to indiscriminately take a private company's money unless and until those funds are actually needed to pay a claim that has occurred.

The circuit court reiterated its erroneous reading of the regulation by stating that "even after the pending claims were fully paid, the Commission exercised reasonable judgment in retaining the balance of the funds." (R. p. 8; Order at 8.) But once the claims "were fully paid," there were no longer any unpaid "claims that occurred during the self-insured period." S.C. Code Ann. Regs. 67-1507(D)(5). The regulation does not leave any room for the agency to exercise its subjective judgment in seizing and then keeping a private company's money—it wasn't authorized to take WestPoint Home's entire deposit in the first place, and it certainly wasn't authorized to keep any of that deposit "after the pending claims were fully paid." The circuit court's interpretation of Regulation 67-1507(D)(5) is wrong as a matter of law.

Second, the circuit court justified the Commission's decision to withdraw the entire deposit because, as part of its winding up process, WestPoint Stevens notified the Commission in August 2005 that it would no longer be making payments on workers' compensation claims. According to the circuit court, the Commission "was entitled to treat the August 2005 letter as a cancellation or revocation of the letter of credit" even though that correspondence "did not specifically cancel the letter of credit." (R. pp. 8–9; Order at 8–9.) This fundamentally misreads that correspondence and ignores undisputed evidence from trial.

On August 15, 2005, WestPoint Stevens sent a letter to the Workers' Compensation Commission notifying the agency of the Asset Purchase Agreement through which WestPoint Home purchased WestPoint Stevens' assets under the Bankruptcy Court's supervision. (R. p. 586; Letter from Sears to Smith (Aug. 15, 2005).) The Asset Purchase Agreement required WestPoint Home to deposit funds sufficient to collateralize WestPoint Stevens's various existing letters of credit, which included the $1.8 million letter of credit that WestPoint Stevens had with the Commission. (R. p. 287; Asset Purchase Agreement § 3.1(a).) Moreover, the Asset Purchase Agreement specifically provided that WestPoint Home retained the "right to receive back any portion" of its deposit that was not used. (*Id.*)

The August 15, 2005 letter did not somehow put the letter of credit in jeopardy. To the contrary, it specifically notified the Commission that funds would be available to support the letter of credit despite WestPoint Stevens' bankruptcy and dissolution. And at trial, Director Cannon confirmed that the agency never believed the letter of credit had been canceled:

> Q: But you knew that WestPoint Home had stepped into the shoes of WestPoint Stevens and had assumed that letter of credit?
>
> A: We did.

(R. p. 105; Trial Tr. 27:5–:8.) He reiterated the agency was aware of the Cash Collateral Control Letter Agreement, which provided that WestPoint Home was entitled to retain all interest earned on its deposit:

> Q: How did you come to know that WestPoint Home had assumed the obligations of WestPoint Stevens' letter of credit?
>
> A: We received a copy of this letter of credit. Now, the copy that I have here, it only has one signature on it. One is from WestPoint Stevens. It's not for the agency.
>
> Q: If you turn the page, I'll bet you'll see more signatures as you go?

A: Oh, I got you.

Q: But you understand my point, this document is the document that makes it clear that WestPoint Home is standing in the shoes of WestPoint Stevens for WestPoint letters of credit, right?

A: Right. We were aware of it, but we're not a party to it.

(R. p. 147; Trial Tr. 69:6–:21.) And he confirmed that at no point "did the agency ever think that letter of credit was no longer in existence." (R. p. 148; Trial Tr. 70:6–:8.)

At bottom, the circuit court's treatment of the August 2005 letter finds no support in the evidentiary record and, in fact, is contradicted by both the plain language of that correspondence and the agency's own testimony about that letter at trial.

The circuit court's erroneous construction of the Commission's authority to withdraw the entirety of WestPoint Home's deposit has had a tremendous adverse impact on WestPoint Home. That withdrawal in August 2005 has deprived WestPoint Home of the benefit of 18 years of interest (and counting). As of February 28, 2023, the Commission had earned over $560,000 in interest on WestPoint Home's money:

$1,730,565.36	balance of account (as of 2.28.23)
– $1,164,512.39	unused principal from WestPoint Home's deposit
$566,052.97	interest earned on WestPoint Home's deposit (as of 2.28.23)

There is no basis in law or equity for the Commission to retain interest earned on WestPoint Home's money, and the circuit court erred in ruling that the agency rightly took and kept WestPoint Home's entire deposit. Doing so violated the plain language of the regulation governing when the Commission can draw on a letter of credit, and the circuit court's ruling should be reversed and the Commission ordered to return to WestPoint Home all interest the agency has earned on WestPoint Home's money.

II. The circuit court erred by finding the Commission can indefinitely retain the unused portion of WestPoint Home's deposit, as the repose period for any new claims has closed.

In addition to wrongfully taking the entire deposit in 2005, the Commission has wrongfully retained the unused principal from that deposit, which is nearly $1.2 million. The circuit court held that the agency is entitled to retain those funds even though there is not a single open or unpaid claim because "[i]t is entirely possible that the Commission will be required to utilize the funds held by the State Treasurer to satisfy claims brought by the former workers of WestPoint Stevens" due to, in its view, "the possibility of latent future claims" involving asbestos exposure. (R. pp. 12–13; Order at 12–13.) This is incorrect as a matter of law.

First, this ruling runs contrary to Regulation 67-1507(D)(5), as discussed in the preceding section. If the Commission is not authorized to take a private company's money unless and until an actual claim "occurred," it certainly cannot hold the private company's money indefinitely because of "the possibility" of "future claims."

This ruling is also wrong as a matter of law because the statute of repose that governs new workers' compensation claims expired in 2007—a point that Director Cannon even conceded at trial. (R. pp. 118–119; Trial Tr. 40:10–41:4 (emphasis added).)

"Statutes of repose serve to relieve potential defendants from liability for acts committed long ago and reflect a ***legislative judgment*** that after a period of time, a defendant should be free from liability. Where a statute of repose is enacted limiting the time for filing a claim, it has the effect of creating a substantive right created by law. Thus, ***statutes of repose can have the effect of extinguishing a claim even prior to discovery of the claim***." *Matthews v. E.I. du Pont de Nemours & Co.*, Case No. 4:16-cv-2934-RBH, 2018 U.S. Dist. LEXIS 193735, at *24–26 (D.S.C. Nov. 14, 2018) (emphasis added); *see Capco of Summerville, Inc. v. J.H. Gayle Constr. Co.*, 368

S.C. 137, 142–43, 628 S.E.2d 38, 41 (2006) ("A statute of repose is typically an absolute time limit beyond which liability no longer exists and is not tolled for any reason because to do so would upset the economic balance struck by the legislative body.").

Because they create substantive rights—rather than only procedural rights, like a statute of limitations—statutes of repose are not subject to equitable defenses like "waiver, tolling, and estoppel." *G&P Trucking v. Parks Auto Sales Serv. & Salvage, Inc.*, 357 S.C. 82, 89, 591 S.E.2d 42, 45 (Ct. App. 2003).

The statute of repose for pulmonary diseases in the South Carolina Workers' Compensation Act is South Carolina Code § 42-11-70, which provides:

> Time in which disease must have been contracted.
>
> Neither an employee nor his dependents shall be entitled to compensation for disability or death from an occupational disease, except that due to exposure to ionizing radiation, unless such disease was contracted within one year after the last exposure to the hazard peculiar to his employment which caused the disease, save that in the case of a pulmonary disease arising out of the inhalation of organic or inorganic dusts the period shall be two years.

This statute has been repeatedly examined by the courts and by the Commission itself, and they have resoundingly rejected the circuit court's reading of the law.

Federal Courts. For instance, in *Parker v. Asbestos Processing, LLC*, Case No. 0:11-1800-JFA, 2015 U.S. Dist. LEXIS 115094 (D.S.C. June 30, 2015), *aff'd sub nom. Southern v. Bishoff*, 675 F. App'x 239 (4th Cir. 2017), a series of plaintiffs claimed to have been injured from exposure to asbestos during their employment at Springs Mills, a textile plant in South Carolina. At the direction of their then-counsel, they filed suit in Mississippi state court asserting common law claims against asbestos manufacturers, but the plaintiffs never provided notice of their claims to

Springs Mills, as required by the South Carolina Workers' Compensation Act to preserve claims under that statute.

In *Parker*, the plaintiffs were suing their former counsel for legal malpractice, arguing that the attorneys failed "to advise their clients that, by going forward solely with asbestos tort claims, the Plaintiffs were forever waiving the right to assert any South Carolina workers' compensation claims they might have had at the time." *Id.* at *6. In response, the defendant-attorneys argued that the plaintiffs did not have any workers' compensation claims to waive because, by the time the defendant-attorneys were engaged to file a tort suit in Mississippi, the statute of repose for such claims had already expired because the plaintiffs had not "contracted" their injuries within two years of their last exposure at Springs Mills. *Id.* at *11–12.

Judge Anderson agreed with the defendant-attorneys. He began his analysis by acknowledging that "there are no decisions from the South Carolina Supreme Court construing § 42-11-70 [the statute of repose]. Thus, this Court must predict how the South Carolina Supreme Court would rule if squarely presented with the issue." *Id.* at *13.

From there, Judge Anderson identified two cases from the South Carolina Supreme Court where it had "interpreted the same term ['contracted'] when construing a statute in the same chapter and title." *Id.* at *14. In *Vespers v. Springs Mills*, 276 S.C. 94, 97, 275 S.E.2d 882, 884 (1981), and *Glenn v. Columbia Silica Sand Co.*, 236 S.C. 13, 21, 112 S.E.2d 711, 715 (1960), the Supreme Court construed the word "contracted" in South Carolina Code § 42-11-40 to mean "disablement or death."

Because South Carolina follows the rule of statutory construction that the same word should be given the same meaning when it appears throughout a single statutory scheme, Judge Anderson concluded that the statute of repose must mean that a latent injury claim is barred unless

a worker becomes disabled by or dies from a pulmonary disease within two years after his or her last exposure. 2015 U.S. Dist. LEXIS 115094, at *16. As Judge Anderson put it: "[I]n order to demonstrate that they had a viable workers' compensation claim, the Plaintiffs must be able to show that they became disabled within two years of their last exposure to asbestos as the Springs Mills plants." *Id.* at *21–22.

Judge Anderson also surveyed decisions from the South Carolina Workers' Compensation Commission that dealt with the issue. By his count, three decisions from the Commission used the exact same analysis he did—namely, relying on how *Vespers* construed the term "contracted" within the same statutory scheme—to conclude that South Carolina Code § 42-11-70 was a statute of repose that barred longtail claims: *Gibson v. Westinghouse Elec. Corp.*, No. 0319071, 2006 SC Wrk. Comp. LEXIS 895 (S.C. Work Comp. Comm'n 2007); *Bishop v. Westinghouse Elec. Corp.*, No. 0318085, 2006 SC Wrk. Comp. LEXIS 1015 (S.C. Work Comp. Comm'n 2007); and *Truax v. Daniel Constr./Fluor Daniel*, No. 0411701, 2009 SC Wrk. Comp. LEXIS 30 (S.C. Work Comp. Comm'n 2009).

Because the statute of repose had lapsed on all of the plaintiffs' potential workers' compensation claims before they engaged tort counsel in Mississippi, Judge Anderson granted summary judgment in the defendant-attorneys' favor and dismissed the legal malpractice claims. *Id.* at *29.

Nor does *Parker* stand alone. Consider *Matthews v. E.I. du Pont de Nemours & Co.*, Case No. 4:16-cv-2934-RBH, 2018 U.S. Dist. LEXIS 193735 (D.S.C. Nov. 13, 2018), which is a standard asbestos tort case. There, the plaintiff filed suit against 29 defendants, with DuPont as the only remaining defendant when this order was entered. *Id.* at *1. DuPoint moved for summary judgment, arguing that the plaintiff was its statutory employee and, therefore, the Workers'

Compensation Act provided the exclusive remedy. *Id.* at *8. The plaintiff opposed by arguing he was not a statutory employee (which the court rejected), and that "the Workers' Compensation Act is not Mr. Matthews's exclusive remedy because he does not have a right to compensation under the Act based on the statute of repose." *Id.* at *22. Judge Harwell framed this aspect of the plaintiff's opposition as follows:

> It is Plaintiff's position that because the Act includes a statute of repose for Mr. Matthews's asbestos-related lung cancer, which by its nature has a long latency period, his occupational disease is not compensable under the Act. Therefore, Plaintiff argues that unless there is a right to compensation under the Act, the exclusive remedy provision is inapplicable.

Id. at *9.

Judge Harwell rejected the plaintiff's argument. He began his analysis by explaining that "[s]tatutes of repose serve to relieve potential defendants from liability for acts committed long ago and reflect a legislative judgment that after a period of time, a defendant should be free from liability." *Id.* at *24. Because statutes of repose create a "substantive right created by law," they "can have the effect of extinguishing a claim even prior to discovery of the claim." *Id.*

Like Judge Anderson in *Parker*, Judge Harwell noted that the South Carolina Supreme Court had not addressed the issue, but that "the Workers' Compensation Commission has routinely barred employees from receiving benefits under the Act pursuant to Section 42-11-70 where the two-year time period has expired." *Id.* at *24–25 (citing *Truax*, *Bishop*, and *Gibson*). In his view, "[t]hese administrative decisions acknowledge that the purpose of the statute of repose is to protect the employer against claims which, due to the passage of time, can no longer properly be investigated and defended." *Id.* at *25.

Judge Harwell does not appear to think this was a close call. He acknowledged that neither party asked him to certify the question to the South Carolina Supreme Court, *id.* at *24 n.7, and he

affirmatively held that his decision was compelled by "the legislature's intent in its decision to limit the time period for employees with asbestos-related injuries to recover under the Act, despite its harsh application in this case," *id.* at *25. He confirmed his ruling by looking to cases from other jurisdictions that reached similar conclusions. *Id.* (citing *Hendrix v. Alcoa*, 506 S.W.3d 230 (Ark. 2016), and *Folta v. Ferro Eng'g*, 43 N.E.3d 108 (Ill. 2015)). And Judge Harwell summarized his ruling as follows:

> Here, the plain reading of the statute of repose serves to clearly provide that claims for pulmonary disease arising out of the inhalation of organic or inorganic dusts ***must be brought within two years after the last exposure to the hazard***. Mr. Matthews worked for DuPont throughout the 1960s. He developed his pulmonary disease decades later, well past the period provided for in the statute of repose. While this result may seem unfair, this Court is not tasked with legislating. Accordingly, this Court agrees with Defendant DuPont that as to DuPont, Mr. Matthews's claim is governed by the Workers' Compensation Act and its exclusivity provisions. Any effect of the Act's statute of repose does not allow him to seek compensation through a civil lawsuit.

Id. at *26 (emphasis added).

State Courts. This construction of the statute of repose is reinforced by *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999). In *Muir*, this Court held that the claimant complied with the one-year statute of repose for non-pulmonary illnesses because he was diagnosed with an illness and brought a claim in March 1993, and his last exposure to the occupational hazard was in August 1992. 336 S.C. at 294–95, 519 S.E.2d at 597–98. This Court's analysis in *Muir* is fully consistent with the straightforward analysis of both *Parker* and *Matthews*.

The Commission Itself. As noted in both *Parker* and *Matthews*, the Workers' Compensation Commission—sitting in its appellate capacity, meaning that at least three commissioners agreed on this result in each case cited below—has repeatedly denied lung cancer claims based on the statute of repose:

Table of Commission Decisions Denying Longtail Claims Due to Repose Period

Case Denying Claim Due to Statute of Repose	**Last Date of Employment**	**Date Injury Diagnosed**
Bethea v. City of Myrtle Beach, No. 1802724, 2019 SC Wrk. Comp. LEXIS 208 (2019).	2005	2018
Truax v. Daniel Const./Fluor Daniel, No. 0411701, 2009 SC Wrk. Comp. LEXIS 30 (2009).	1972	2006
Gibson v. Westinghouse Elec. Corp., No. 0319071, 2006 SC Wrk. Comp. LEXIS 895 (2007).	1995	2003
Bishop v. Westinghouse Elec. Corp., No. 0318085, 2006 SC Wrk. Comp. LEXIS 1015 (2007).	1995	2003

Truax is the agency's most fulsome treatment of the issue. There, the agency used strong language to make the point that longtail claims are barred by the statute of repose:

> Under the "plain meaning" rule, it is not the court's place to change the meaning of a clear and unambiguous statute. S.C. Code Ann. § 42-11-70 is abundantly clear in its intent to disallow compensation for disability or death for an occupational disease of a pulmonary nature that is not contracted within two years of the date of the last injurious exposure. Notwithstanding the latency period of asbestos related diseases, such as asbestosis, the legislature has never amended this provision and its intent is abundantly explicit. Any doubt as to the intent of the legislature to exclude any pulmonary related diseases from compensation unless contracted within two years of the claimant's last exposure is removed when looking at the lone exception to this rule, that being for ionizing radiation.

2009 SC Wrk. Comp. LEXIS 30, at *5–6 (internal citations omitted).

The Commission further explained that enforcing the law in this manner protects employers from liability when "employer representatives are no longer available" and "the personnel records and any pertinent test results are likewise unavailable." *Id.* at *7. And in denying Mr. Truax's claim, the Commission held that "it is ***impossible*** to reconcile the thirty-two year gap in this case between the Claimant's last date of employment (1972), and the date he 'contracted' his disease (*i.e.* became disabled) in 2006." *Id.* (emphasis added).

The same theme appears in the Commission's other decisions cited above:

> Since exposure and contracting the disease are distinct, and not the same, an ordinary and unambiguous meaning should be assigned to the word contracting, *i.e.* when the disease manifests itself and/or disables the claimant. The legislature chose to make compensability dependent on their being less than one (or two) year(s) between exposure and contraction of the disease.
>
> The Appellate Review Panel finds that the purpose of 42-11-70 is to protect the employer against claims too old to be fairly investigated and defended. Accordingly this statute should be read to effectuate the legislative intent to reasonably limit an employer's period of potential liability for workers' compensation benefits.

Gibson, 2006 SC Wrk. Comp. LEXIS 895, at *21–22; *Bishop*, 2006 SC Wrk. Comp. LEXIS 1015, at *20–21 (same language in both cases, and the opinions were issued on same day as both workers were claiming benefits from the same employer and the same time period).

* * * * *

The circuit court's order is impossible to reconcile with this long line of forceful, reasoned decisions. The lone authority it identified that runs contrary to these decisions is another decision by the Commission, *Powell v. Yeargin Constr. Co.*, No. 0617676, 2008 WL 5066354 (S.C. Work Comp. Comm'n 2008). (R. p. 11; Order at 11.) But not only have more recent decisions by the Commission rejected the outcome suggested by *Powell*, that decision lacks any precedential value because it contains no analysis supporting its outcome. In fact, *Parker* specifically rejected *Powell* and criticized it as being "inexplicabl[e]," as "provid[ing] no analysis," and for stating its decision "cryptically." 2015 U.S. Dist. LEXIS 115094, at *16, 19.

At bottom, every case that actually analyzed South Carolina Code § 42-11-70 has held that the repose period for a workers' compensation claim for "a pulmonary disease arising out of the inhalation of organic or inorganic dusts the period shall be two years" from the worker's final exposure to the hazard. For former WestPoint Stevens employees, the repose period for any new

claims closed no later than August 8, 2007, as WestPoint Stevens stopped conducting business on that same day in 2005. Director Cannon even conceded this exact point at trial:

Q: The statute of repose is two years from the last exposure, correct?

A: Yes.

Q: So that would have been August 8th of 2007, correct?

A: Right.

(R. pp. 118–119; Trial Tr. 40:25–41:4.)

In light of this crush of legal authority and unambiguous testimony at trial, the circuit court's ruling that former WestPoint Stevens employees may still be able to bring workers' compensation claims for not-yet-diagnosed asbestos-related injuries is wrong as a matter of law. This outcome is an unavoidable function of "the legislature's intent in its decision to limit the time period for employees with asbestos-related injuries to recover under" the Workers' Compensation Code. *Matthews*, 2018 U.S. Dist. LEXIS 193735, at *25. And "[w]hile this result may seem unfair, this Court is not tasked with legislating." *Id.* at *26.

Accordingly, the Court should reverse the circuit court's ruling on this point and direct the Commission to return the unused principal from WestPoint Home's deposit without further delay. Not only would that align this case with South Carolina law and general notions of equity—there is no legitimate reason for the government to sweep money from a private company's bank account and hold it indefinitely—it is compelled by an order of the Bankruptcy Court.[1] The Court should direct the Commission to return to WestPoint the remaining $1.16 million of its initial deposit.

[1] The Bankruptcy Court approved the Asset Purchase Agreement and its provision that WestPoint Home retained a "right to receive back any portion of the Letter of Credit Purchase Price in excess of any amounts not drawn under any such letters of credit." (R. p. 287; Asset Purchase Agreement § 3.1(a); R. p. 228; Order in *In re WestPoint Stevens Inc.*, Case No. 03-13532

III. WestPoint Home is entitled to prejudgment interest.

WestPoint Home seeks prejudgment interest associated with the Commission's wrongful seizure of WestPoint Home's deposit. Because the circuit court ruled against WestPoint Home on the other issues related to it receiving a return of its deposit and interest earned on its deposit, the circuit court did not reach the issue of whether WestPoint Home is entitled to prejudgment interest. It undoubtedly is.

Prejudgment interest is controlled by statute and is not discretionary with the Court. South Carolina Code § 34-3-20(A) directs that prejudgment interest "shall" be drawn at 8.75% per annum. Prejudgment interest begins accruing when the sum owed is "certain or capable of being reduced to certainty." *Wayne Smith Constr. Co. v. Wolman, Duberstein & Thompson*, 294 S.C. 140, 147, 363 S.E.2d 115, 119 (Ct. App. 1987).

Here, WestPoint Home's actuarial expert presented a report concluding that the surety needed under the Commission's actuarial formula showed that the agency no longer needed any of WestPoint Home's deposit starting in 2012, the same year WestPoint Home began contacting the agency about the status of the deposit and whether it could receive any of the money back. (R. p. 895; Johnson Report.) Director Cannon agreed with this conclusion:

> Q: So in 2012, the agency's formula for calculating the surety needed on deposit was zero dollars; is that right?
>
> A: Based on this formula.
>
> * * * * *
>
> Q: And it's been zero every year since 2012, right?
>
> A: That's correct.

(R. p. 124; Trial Tr. 46:3–5, 16–17.)

(RDD) (Bankr. S.D.N.Y. July 8, 2005). That order is entitled to full faith and credit. *McNaughton-McKay Elec. Co. v. Andrich*, 324 S.C. 275, 280–81, 482 S.E.2d 564, 567 (Ct. App. 1997).

By 2012, there hadn't been a new claim filed by a former WestPoint Stevens employee since 2006; the repose period had closed in 2007; there hadn't been any payments made on any claim since 2008; and the Commission's own actuarial formula for any security that it could possibly have requested revealed that it did not need any money remaining in reserves. Accordingly, WestPoint Home was entitled to recover its deposit in full no later 2012, and the sum it is owed—the principal balance of $1,164,512.39—has been "certain or capable of being reduced to certainty" since at least that point. WestPoint Home is therefore entitled to recover prejudgment interest on the sum-certain principal balance each year since 2012.

8.75% of $1,164,512.39 is $101,894.83 annually in prejudgment interest. Accordingly, South Carolina law directs that WestPoint Home should recover $101,894.83 in prejudgment interest for each year between August 2012 and the date on which the Commission returns WestPoint Home's deposit, and the Court should so order.

CONCLUSION

WestPoint Home has been wrongfully deprived of its money for over a decade and a half. There was no lawful basis for the Commission to sweep the entirety of WestPoint Home's $1.8 million deposit out of its bank account in 2005. There was no lawful basis for the Commission to collect and keep interest on WestPoint Home's money in the meantime. And there is no lawful basis for the Commission to retain the remainder of that deposit, as the window for any new claim that could be made against that deposit closed long ago—as the Commission concedes.

Accordingly, the Court should reverse the circuit court's ruling and direct the Commission to return to WestPoint Home the remainder of its deposit, the interest earned on that deposit, and prejudgment interest to which WestPoint Home is entitled as a matter of South Carolina law.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

The Honorable Alison R. Lee

Circuit Court Judge

Appellate Case No. 2023-001663

Circuit Court Case No. 2014-CP-40-02496

South Carolina Workers' Compensation Commission, ...Respondent,

v.

WestPoint Home, LLC, ...Appellant.

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STATEMENT OF ISSUES ON APPEAL

1. Did the Circuit Court correctly find that the Commission properly drew down the letter of Credit to protect the former employees of WestPoint Stevens in 2005?
2. Is there a reasonable likelihood of future Workers' Compensation claims that may require some or all of the funds being held to protect former workers of the uninsured, bankrupt employer?
3. Did the Circuit Court correctly determine that claims for asbestos-related illnesses may continue to arise against WestPoint Stevens for years to come?
4. Because WestPoint failed to object contemporaneously to the Commission negotiating the letter of credit, is it estopped from making that assertion more than seven years after the fact?
5. Is WestPoint Home, LLC entitled to pre-judgment interest?
6. Did WestPoint Home LLC abandon its appeal of the Circuit Court's 2019 Order?

INTRODUCTION

This is a simple case. There are two fundamental questions. First, did the Commission act appropriately in negotiating security given by WestPoint Stevens after that company went bankrupt and advised the Commission that it was not going to make any further payment on its self-insured workers' compensation claims? Second, is the Commission properly holding those funds for the benefit of WestPoint Stevens's former employees, given the significant likelihood that some of them will present with a latent occupational disease that will require medical and disability payments in the future, in light of the fact that this security is the only money available to protect all of WestPoint Stevens former employees?

The Circuit Court answered these two questions in the affirmative, as should this Court.

STATEMENT OF THE CASE

WestPoint Home, LLC ("WestPoint Home") is the successor of an entity that purchased the assets, but not the liabilities, of WestPoint Stevens, Inc. ("WestPoint Stevens") in a bankruptcy sale in 2005. WestPoint Stevens was created by merger in 1988 when WestPoint Pepperell acquired J.P. Stevens's Abbeville, Calhoun Falls, Clemson, and Seneca plants. At that time, WestPoint Stevens became a self-insured employer under the Workers' Compensation Act. Uninsured employers are required to post security with the South Carolina Workers' Compensation Commission ("Commission") to fulfill the statutory requirement to maintain coverage for their employees. In 2003, WestPoint Stevens filed for Bankruptcy protection under Chapter 11 of the United States Bankruptcy Code. Shortly thereafter, it amended its existing letter of credit to 1.8 million dollars to continue operating as a self-insured employer in South Carolina.

In 2005, after it was unable to confirm a reorganization plan, it liquidated its assets. A predecessor of WestPoint Home, LLC, an entity owned and controlled by American Real Estate Holding Limited Partnership, purchased some of those assets, including the Calhoun Falls, Clemson, and Seneca plants. WestPoint Home also collateralized West Point Stevens' various existing letters of credit, which included the 1.8-million-dollar letter of credit provided by WestPoint Stevens to the South Carolina Workers' Compensation Commission to cover its uninsured employer workers' comp liability for its South Carolina employees.

On August 15, 2005, WestPoint Stevens it notified the commission that "workers' compensation liabilities asserted against WestPoint Stevens were not liabilities assumed by the Purchaser" and that "no further payments will be made with respect to workers' compensation claims asserted against WestPoint Stevens, Inc." Upon receipt of this notification, the Commission, following its regular procedure, drew down the security and deposited it with the State Treasurer.

More than seven years after the Commission drew down the security, WestPoint Home first inquired about the funds that had been drawn down. Thereafter, a dispute arose as to whether WestPoint Home was a proper successor to obtain information about or to have any interest in the funds.

After several rounds of communication with WestPoint Home, the Commission filed a declaratory judgment action on April 17, 2014, regarding its obligations to provide WestPoint Home with the requested information. West Point Home counterclaimed on May 22, 2024, seeking an accounting and an order that it was entitled to receive all monies retained by the State. It thereafter amended its Counterclaim to seek interest on the funds held by the State Treasurer for WestPoint Stevens's former employees' potential claims. Ultimately, the parties reached an

agreement where WestPoint Home was given access to certain information and additional information was obtained from a third-party contractor of the Commission[1]. Thereafter, the Court conducted a bench trial regarding the disposition of the funds. The Trial Court, by Order of September 25, 2023, held that the funds were properly negotiated by the Commission and that it was proper for them to be retained so long as additional claims by former employees exposed to asbestos were actuarily possible. WestPoint Home did not file a Rule 59(e), SCRCP motion. It filed its appeal of the Circuit Court's Order on October 23, 2023. WestPoint Home's appeal also purports to appeal the Circuit Court's April 26, 2019, Order granting the Workers' Compensation Commission Summary Judgment on WestPoint's request to examine non-public records of the Commission.

FACTS

WestPoint Stevens was a textile manufacturer that utilized natural and asbestos fibers in its manufacturing processes in textile mills that operated in South Carolina and employed South Carolina Workers. WestPoint Stevens was a self-insured employer pursuant to *S.C. Code Ann.* §42-5-20.

The South Carolina Workers' Compensation Commission was created to ensure that an employee injured on the job in South Carolina receives the proper medical care and compensation for his or her injuries. (R. p.128, lines 15-18). The Commission also ensures that employers have proper coverage to pay for claims. (R. p.128, line 20-p. 129, line 1.1). Self-insured employers are required to post security for their claims with the commission. Acceptable forms of security

[1] This was after the Court entered Summary Judgment on this claim in favor of the Workers' Compensation Commission on April 26, 2019.

include either a surety bond or letter of credit. (R. p.130, lines 13-19). The Commission utilizes a formula to ascertain the required amount of surety, but that formula operates for an ongoing business. (R. p.120, line 11-p. 131, line 16). Occupational illnesses are treated differently. Once an occupational illness is diagnosed, there is a two-year window to file a claim. (R. p. 132, lines 5-8).

In the event that an insolvent company has claims in excess of their surety amount, then the injured worker has no funds from which he or she can be compensated (R. p. 134, lines 7-9). When a self-insured goes bankrupt, the Commission draws down the letter of credit to calculate potential future claims based on the type of business that the industry or manufacturing plant is. (R. p.134, lines 17-20).

The Commission drew down WestPoint Stevens' letter of credit because they notified the Commission that they were not going to be responsible for payment of further Workers' Compensation Claims. (R. p.135, line 22-p. 136, line 1.1). The Memorandum of Understanding that the Commission relied upon expressly provides that "The Commission may, at any time, draw on the Letter of Credit if needed to pay any workers' compensation claim and claims administration expenses which are the responsibility of the Employer." (R. p. 225). The Exhibit also provides that "If the Commission is notified that the Letter of Credit is being canceled or will not be renewed and a new letter of credit or surety bond acceptable to the Commission is not filed with the Commission, the Commission may, at its discretion, draw on the Letter of Credit" (R. p.225).

The Commission was familiar with the type of business conducted by WestPoint Stevens and knew that it had potential claims for exposure to respiratory claims for inhaled organic or inorganic fibers. (R. p.136, lines 16-19). The Commission interpreted the correspondence from

WestPoint Home that said " no further payments will be made with respect to the Workers' Compensation claims asserted against WestPoint Stevens, Inc. as meaning that the letter of credit would not be renewed and that the Commission had to draw down the letter of credit to ensure that the funds would be set aside for any future claims to be paid. (R. p.137, lines 18-19).

Currently, the Commission has 450 claims filed for occupational diseases with dates of exposure dating back to the 1950s. Those cases are currently pending before the Commission. (R. p.138, lines 18-22). The Commission gets no benefit from holding the funds from the Letter of Credit – only the potential claimants who may suffer from these occupational diseases. (R. p.140, lines 10-11).

WestPoint did not object to the drawdown of the Letter of Credit in 2005 and first inquired about it in 2013. (R. p.141, line 15-p. 64, line 13, p. 579). The Commission is bound by statute and regulations to ensure that funds are available to pay for claims by employees, including claims for occupational illnesses like byssinosis and asbestosis. (R. p.143, lines 7-23).

The respondent's Actuary, Mr. Burkhalter, explained how there is a substantial likelihood of future latent claims to be assessed against WestPoint Stevens by its former employees. His testimony is uncontroverted[2]. He testified that the average latency period of work-exposed mesothelioma is 43.4 years. (R. p.180, lines 22-24) (R. p.185, lines 14-17). To a reasonable degree of actuarial certainty, there are a minimum of 1,929 employees covered by the WestPoint Stevens Workers Compensation liability who are still living and who were exposed to asbestos at the plants in question. (R. p.184, lines 12-13). Mr. Burkhalter testified that there is a 98.6% chance that a 20-year-old employee in one of those plants in 2005 who was exposed to asbestos could have mesothelioma and not know about it. Going forward to 2030, there is still a 90.8% chance that the

[2] Mr. Burkhalter's complete report is included in the record as Trial Exhibit 50.(R. p. 879-886)

disease will remain latent. Even going to the year 2045 there is still about a 50% chance that employees may have the disease, but that it is still latent. (R. p.186, line 6-p. 187, line 6). He concludes that there are "thousands of workers that worked at these plants that were exposed to asbestos and are still alive. And that just the fact they might not have had claims in 16 years that's not an indication that they're not out there. Our statistics show that's to be expected. So, we can't quantify the chance of one of these claims popping up. We can only say that there are a lot of people out there that were exposed. And if they were to contract it, it is very, very likely that sitting here today, we wouldn't know about it." (R. p.187, lines 7-21). He also notes that there is little credibility that with the latency that mesothelioma has, that past experience over a number of years has any actuarial credibility. (R. p.188, lines 2-6).

There are several undisputed facts. The Commission drew down on the Letter of Credit after receiving notice from WestPoint Stevens that it was not paying for any additional Workers' Compensation Claims (R. p.569). The letter of credit was issued originally by NationsBank, which was succeeded by Bank of America. The letter was amended on August 1, 2003 (Trial Exhibit 15)(R. p.227), to increase the aggregate amount to $1,800,000.00. On August 15, 2005, WestPoint Stevens wrote the South Carolina Workers' Compensation Commission a letter that stated, "Please be advised that pursuant to the Sale Order and APA[3], workers' compensation liabilities asserted against the Debtors were not liabilities assumed by the Purchaser. Therefore, no further payments will be made with respect to workers' compensation claims asserted against WestPoint Stevens, Inc.". (R. p.586) The Commission drew down the entire letter of credit after receiving this notice. Funds were placed in a WestPoint Stevens Trust Fund Account 41F170000 in the office of the South Carolina State Treasurer. on August 17, 2005.

[3] "APA" i.e. Asset Purchase Agreement (R. p.260-334)

Between 2005 and 2013, claims totaling over one million seven hundred thousand dollars were paid for WestPoint Stevens employees. (R. p.607). Four claims were made for Asbestosis in 2011[4]. (R. p.638, p.640, p.642, p.643). There have been no other claims since 2011. With interest, the balance in the fund held by the treasurer was $1,698,630.50 at the end of FY2022 (R. p.668). Claims amounting to $1,709,438.31 were incurred on the claims run provided by the independent administrator[5]. After the drawdown, the first contact from WestPoint home was alleged to be a telephone call in 2012. (R. p.943). The first written inquiry from WestPoint Home was dated February 22, 2013. (R. p.578).

STANDARD OF REVIEW

"A suit for declaratory judgment is neither legal nor equitable but is determined by the nature of the underlying issue." *Felts v. Richland Cnty.*, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991) Here, the Appellant seeks a declaration of rights under statute and regulation as well as an accounting. As to questions of law, this court's standard of review is de novo." *Citizens for Quality Rural Living, Inc. v. Greenville Cnty. Plan. Comm'n,* 426 S.C. 97, 102, 825 S.E.2d 721, 724 (Ct. App. 2019). Our standard of review extends to correct errors of law, but we will not disturb the trial court's factual findings as long as they have reasonable support in the record. *Seago v. Horry Cnty.*, 378 S.C. 414, 422, 663 S.E.2d 38, 42 (2008). "In an action at law, tried without a jury, the appellate court's standard of review extends only to the correction of errors of law." *Smith v. Auto-Owners Ins. Co.*, 377 S.C. 512, 515, 660 S.E.2d 271, 272 (Ct. App. 2008) "We will not disturb the trial court's findings of fact unless those findings are wholly unsupported by the evidence or

[4] While demonstrating that latent claims are likely to arise, none of these claims were charged against the self-insured WestPoint Stevens, because it was determined that they originated in the Whitmire Plant, which was not a part of the self-insured group.

[5] This report includes claims that predate the drawdown. (R. p. 601-607)

controlled by an erroneous conception or application of the law." *Id.* "However, an appellate court may make its own determination on questions of law and need not defer to the trial court's rulings in this regard." *Auto-Owners Ins. Co. v. Rhodes,* 405 S.C. 584, 593, 748 S.E.2d 781, 785 (2013).

ARGUMENT

I. The Commission properly negotiated the Letter of Credit

More than seven years after the Commission drew the funds from the Bank of America letter of credit to protect former South Carolina employees of a bankrupt WestPoint Stevens entity, its successor WestPoint Home first inquired about the use of the funds. The Commission's Executive Director explained the decision during the trial that the Commission "drew down the credit because there was no guarantee there would be any money in the future because the company was nonexistent anymore" [sic]. (R. p.109, lines 16-18). Mr. Cannon goes on to indicate that the Commission's policy is to draw down the letter of credit when the company went out of business. (R. p.110, lines 4-5). The Commission's internal policy is rational, consistent with the Commission's statutory and regulatory authority, and acts to fulfill the Commission's obligations relating to uninsured employers because there is no source of funds beyond that security to pay all future claims. Regulation 67-1505 A gives the Commission wide latitude in determining the amount of a reserve and the basis enumerated by the Commission here of the actuarial likelihood of a substantial number of potential claim surely demonstrates that the present amount held, as Mr. Cannon testified is proper considering that the regulation provides that "The amount of the bond is determined by the commission based on an analysis of the total self-insurance program including but not limited to an analysis of the applicant's excess insurance, loss history and financial condition." WestPoint Stevens has many potential claims and a limited pot of money to service claims that can go many years in the future.

Two sections of Regulation 67-1507 D further illustrate the propriety of the Commission's decision to negotiate the letter of credit. First, the Commission, as Mr. Cannon testified, interpreted the letter stating that WestPoint Stevens was no longer going to pay for any claims as an indication that the self-insurer was not going to continue to comply with its obligations. Moreover, that was the only information provided contemporaneously. Additionally, Regulation 67-1507 D(5) allows the Commission to exercise the letter of credit at any time "if the proceeds are needed for payment of a claim that occurred during the self-insured period." Here, the Commission made that determination based on the nature of WestPoint Stevens business, the exposure of its plant employees to organic and inorganic dusts and the substantial likelihood that such exposure, in the Commission's experience, would lead to substantial latent claims in outlying years. The undisputed actuarial testimony at the trial affirms the wisdom of this judgment and the fact that more funds than were then available might be needed for claims that might arise as late as 2045. (R. p.186, line 25-p187, line 6).

Here, WestPoint Home does not dispute that the Commission properly drew down a part of the security to pay claims. However, it questions the Commission's right to draw down all of the security upon bankruptcy to ensure that potential claimants' interests are protected—its very purpose in managing the insolvent employer's funds and claims. Based on the facts and law in this record, the Commission acted within its rights and pursuant to its legal obligations in negotiating the Letter of Credit and holding the proceeds.

II. WestPoint Home's claims are untimely.

The Commission never asserted that WestPoint Home, LLC is liable for any claims made by WestPoint Stevens employees. Instead, the reason for negotiating the letter of credit is that

WestPoint Home is not a successor employer to WestPoint Stevens. In attempting to recover the funds negotiated, WestPoint Home seeks the benefits of being a self-insured employer without any of the responsibilities that attach to that role.

At the time that the money was drawn down, WestPoint Stevens did not object nor did WestPoint Home, LLC. It waited for seven plus years and then sought to reverse WestPoint Stevens (and its other predecessor's) acquiescence to the negotiation of the letter of credit by the Commission.

At best, its argument is that the Commission breached an implied contract created by the MOU. Notably, the MOU was not assigned to WestPoint Home. The document was not under seal and its rights to make that claim expired three years after the letter of credit was negotiated.

The alleged breach stems on the meaning of Section 4 of the MOU (R. p.225) which provides "The Commission may, at any time, draw on the Letter of Credit if needed to pay any workers' compensation clam and claims administration expense which are the responsibility of the Employer.". Appellant argues that this language should be interpreted not to apply to future claims – the clear language does not state that. Moreover, the statute of limitations in this matter would be three years. "An action for breach of contract must be brought within three years from the date an action accrues." *S.C. Code Ann.* §15-3-530(1) "The limitations period begins to run when a party knows or should know, through the exercise of due diligence, that a cause of action might exist." *Anonymous Taxpayer v. S.C. Dep't of Revenue*, 377 S.C. 425, 439, 661 S.E.2d 73, 80 (2008). Thus, any claim that the letter of credit was improperly negotiated is time-barred.

III. The Commission's retention of the funds in the State Treasurer's custody is proper because there is a substantial likelihood of latent occupational injury claims against WestPoint Stevens.

A. WestPoint Home, LLC misinterprets the Workers' Compensation Act.

There are two relevant sections in the Act applicable to filing claims for an occupational disease such as byssinosis or mesothelioma. *S. C. Code Ann. §42-15-40* provides that " ... . however, for occupational disease claims the two-year period does not begin to run until the employee concerned has been diagnosed definitively as having an occupational disease and has been notified of the diagnosis. This statute recognizes the latent nature of certain occupational diseases and the fact that they can take many years to appear after an employee is infected[6]. WestPoint Home suggests that this time is limited by *S.C. Code Ann.* §42-11-70, which it incorrectly characterizes as a "statute of repose." That section reads:

> § 42-11-70 Time in which disease must have been contracted.
>
> Neither an employee nor his dependents shall be entitled to compensation for disability or death from an occupational disease, except that due to exposure to ionizing radiation, unless such disease was contracted within one year after the last exposure to the hazard peculiar to his employment which caused the disease, save that in the case of a pulmonary disease arising out of the inhalation of organic or inorganic dusts the period shall be two years.

WestPoint Home attempts to conflate the time for contracting the disease enumerated in *S.C. Code Ann.* §42-11-70 with the time for making a claim; those dates are not the same. The statutory framework provides that the evidence must show that an employee contracted a pulmonary disease arising out of the inhalation of organic or inorganic dusts within two years after the last exposure.

---

[6] The uncontroverted testimony in the record before the court is that Mesothelioma (an occupational disease related to asbestos exposure, has an average latency period of 43.4 years – meaning that an employee can contract the disease and be unaware that he or she has it for more than four decades.

However, since that is an occupational disease, the statute of limitations does not run until two years after he or she is definitively diagnosed with the disease, presumably with that diagnosis dating the onset of the disease to have been within two years of the last exposure to the dusts.

The plain reading of the statutes coupled with the uncontroverted actuarial information in the record demonstrate the profound need for the Commission to retain the funds on deposit to cover potentially serious occupational disease claims until actuarial data demonstrates that no such claims are likely to arise. Our Courts have ruled consistently with this interpretation. In *McCraw v. Mary Black Hosp.* 350 SC 229 565 S.E 2d 286 (2002 our Supreme Court affirmed the Court of Appeals in noting that the Statute of limitations requires that the employee be: (1) "diagnosed definitively as having an occupational disease," and (2) "notified of the diagnosis," *McCraw, supra,* at 350 S.C. 235-236 The cases interpreting Section 42-11-70 all relate to when the employee allegedly contracted the disease – not when it was diagnosed and further support the Commission's and the Lower Court's interpretation of the statutes. *See. e.g. Spires v. Mt. Vernon Mills, Columbia, Div.*, 277 S.C. 300, 286 S.E.2d 379 (1982) finding that the employee contracted the disease within two years but waited six years after diagnosis to file a claim, that he was barred by the normal statute of limitations and *Parker v. Asbestos Processing, LLC*, 201 U.S.Dist. LEXIS 115094 (D.S.C. June 30, 2015 *aff'd sub. Nom, Southern v. Sishoff*, 675 Fed Appx. 239 (4th Cir. 2017) where in a legal malpractice case, the court held that the plaintiffs did not contract asbestosis within two years after the last date of exposure. Notably, that case is distinguishable, because the Court's holding was dicta, and the issue was one of legal malpractice rather than the administration of the Workers' Compensation Act. There the Fourth Circuit acknowledged that there was no South Carolina law on the statute and substituted its judgment. Notably, that decision is neither

correct nor persuasive. The only reasonable construction of the statutes is that *S.C. Code §42-11-70* is not a statute of repose.

B. Constructing 42-11-70, as WestPoint suggests, is antipathetic to the Statutory Scheme of Workers' Compensation.

The Workers' Compensation Act is a comprehensive scheme created to provide compensation to employees injured by accidents arising out of and in the course of their employment. *Parker v. Williams & Madjanik, Inc.*, 275 S.C. 65, 69-70, 267 S.E.2d 524, 526 (1980). "The Workers' Compensation Act was designed to supplant tort law by providing a no-fault system focusing on quick recovery, relatively ascertainable awards, and limited litigation." *Nicholson v. S.C. Dep't of Soc. Servs.*, 411 S.C. 381, 389, 769 S.E.2d 1, 5 (2015). (citing *Wigfall v. Tideland Utils., Inc.*, 354 S.C. 100, 115, 580 S.E.2d 100, 107 (2003)).

The concept of workers' compensation is "founded upon recognition of the advisability, from the standpoint of society as well as of employer and employee, of discarding the common law idea of tort liability in the employer—employee relationship and of substituting therefor the principle of liability on the part of the employer, regardless of fault, to compensate the employee, in predetermined amounts based upon his wages, for loss of earnings resulting from accidental injury arising out of and in the course of employment." *Parker*, *id* at 275 S.C. 69-70, 267 S.E.2d 526 (quoting *Case v. Hermitage Cotton Mills*, 236 S.C. 515, 530-31, 115 S.E.2d 57, 66 (1960)) (internal quotation marks omitted). "The employee receives the right to swift and sure compensation; the employer receives immunity from tort actions by the employee." *Id.* "This quid pro quo approach to [workers'] compensation has worked to the advantage of society as well as the employee and the employer." *Id.*

It would be an anathema to the statutory scheme of workers' compensation to interpret *S.C. Code Ann.* §42-11-70 as a statute of repose barring an occupational claim for a respiratory disease like mesothelioma two years after the employee ceased work – because the disease would likely never manifest itself in that time. The Court has held that "A standard principle of statutory construction provides that identical words and phrases within the same statute should normally be given the same meaning."; *Eagle Container Co. v. Cnty. of Newberry*, 379 S.C. 564, 570, 666 S.E.2d 892, 895-96 (2008) (HN8 "'Words in a statute must be construed in context,' and 'the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute.'" (*quoting S. Mut. Church Ins. Co. v. S.C. Windstorm & Hail Underwriting Ass'n*, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991))).

Moreover, Where the terms of the statute are clear, the court must apply those terms according to their literal meaning. *Paschal v. State Election Comm'n*, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995). An appellate court cannot construe a statute without regard to its plain meaning and may not resort to a forced interpretation in an attempt to expand or limit the scope of a statute. *Berkebile v. Outen*, 311 S.C. 50, 426 S.E.2d 760 (1993)

The plain reading of the statute means that it should be interpreted as follows. An employee must file a claim for an occupational disease affecting the employee's respiratory system as a result of exposure to dusts withing two years after diagnosis. That diagnosis must include a finding that he or she contracted the latent disease within two years of exposure. Such an interpretation addresses the realities of these diseases and the nature of the Workers' Compensation act. It provides a cogent test and a reasonable basis for interpretation. The scheme proposed by the Appellant does neither. Adopting the interpretation advocated by appellant violates the basis rules of statutory construction.

C. *Because WestPoint Stevens is a self-insured employer, if the Commission does not hold the funds, there is no source for an employee diagnosed with one of these conditions to obtain benefits.*

S.C. Code Ann. §42-5-10 requires "[e]very employer who accepts the compensation provisions of this title shall secure the payment of compensation to his employees in the manner provided in this chapter." *S.C. Code Ann.* § 42-5-10 (1976, as amended). Section 42-5-20(A)(1) provides two methods to secure the payment of compensation. First, an employer may purchase an insurance policy from an authorized insurance company.[7] Second, it permits an employer to furnish proof of their financial ability to pay directly by qualifying as a self-insurer. Individual employers may self-insure, or a group of employers in businesses of a similar nature may pool together to create a self-insurer fund. The third way an employer may secure compensation payment is limited to government entities that can participate in the State Accident Fund. *S.C. Code Ann.* § 42-7-10.

Self-insurers are governed by Article 15 of the Regulations of the South Carolina Workers' Compensation Commission. In order to comply with the requirement under § 42-5-10 to secure the payment of compensation, the regulations give self-insurers several options. They may establish a reserve account[8], post a security bond[9], pledge securities[10], or secure an irrevocable letter of credit[11]. Each of these methods ensures that there is security available from some third entity in the event the employer becomes unable to pay, such as when it becomes bankrupt.

---

[7] Employer may purchase insurance on the open market from a licensed agent. Employers who are unable to purchase a policy on the open market can qualify to obtain coverage through the SC Department of Insurance's Assigned Risk Program.
[8] S.C. Code Ann. Regs 67-1504 (2023)
[9] Reg. 67-1505
[10] Reg. 67-1506
[11] Reg. 67-1507

Self-insurers have no sovereign-backed guarantee. In the event that a self-insurer goes bankrupt or is otherwise unable to meet its payment obligations, the security under Regs. 67-1504-1507 is the only means to pay claimants their benefits. There is no Guaranty Association for self-insurers. *See* § 42-5-20(C). Once the application to become self-insured has been approved, each self-insured individual employer and fund is required to meet specific annual obligations to remain active in the self-insured program.

- File a Form 10 (§ 42-5-190)
- Submit their GAAP financial statements for analysis of the self-insureds financial condition 90-120 days after the close of their FY (R.67-1510)
- Subject to an audit for all self-insured documents submitted for the past 2 years (R.67-1511)
- Maintain a letter of credit or surety bond (R.67-1505 or R.67-1507)
- Maintain excess insurance (R.67-1503)

A bankrupt self-insured employer does not fulfill these annual requirements, which is why the Commission negotiates the surety to protect the former employees.

The Commission has followed its policy, and the funds are properly maintained by the Treasurer's Office.

D. WestPoint Home failed to demonstrate that the funds held by the Commission are not necessary to satisfy future workers' compensation claims filed by Employees of WestPoint Stevens.

WestPoint Home's argument is premised on its theory that the Commission should treat a bankrupt self-insurer in the same manner that it treats a continuous self-insurer, which is liable for every claim presented. Here, the Commission must determine what claims may be filed in the future and protect the interests of the former employees of the bankrupt entity, which has no liability for any claims moving forward beyond the fund created by the security. The record before the court is bereft of evidence to support the claim that there will be no future claims.

WestPoint Home's argument is an example of an *Ad Ignorantiam* fallacy. The entire basis of its argument is that because there have been no new claims in the last sixteen years, there will be no new claims in the future. The latency period of these types of illnesses suggests an actuarial probability that claims will arise. On the date of trial, the expert testified that this likelihood is almost a certainty. "If we go forward in time to 2030, there's a 96.8 percent chance that if he were here today, we would not know [that he had mesothelioma]. (R. p.186, line 25-p. 187, line 1). The only evidence in the record is that there are likely to be claims, and the Commission needs to hold the funds until that likelihood becomes statistically insignificant.

IV. Sovereign Immunity Bars WestPoint Home from any entitlement to pre-judgment interest.

Chief Justice Costa Pleicones noted in a concurring opinion in *EllisDon Contsr., Inc. v. Clemson University* 391 S.C. 552, 556,557, 707 S.E.2d 399, 402 (2011) disposed of the issue of pre-judgment interest against the State which is applicable to the Workers' Compensation Commission here. He wrote:

> It is well settled that the doctrine [of sovereign immunity] bars recovery of interest against the State "unless [the State has been] bound by an act of the Legislature or by a lawful contract of its executive officers . . . *Monarch Mills v. S.C. Tax C'n.*, 149 S.C. 219, 146 S.E. 870 (1929) *see also, e.g. Div. of Gen. Serv. v. Ulmer*, 256 S.C. 523, 183 S.E.2d 315 (1971).
>
> In 1985, this Court prospectively abrogated the doctrine of sovereign immunity insofar as that doctrine had insulated state and local governments from tort liability. *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). *McCall* included Appendix A, a list of 122 cases, and provided that these cases were "overruled to the extent that they hold that an action may not be maintained against the State without its consent." Although *Monarch Mills* and *Ulmer* are on that list, their holdings that the State is not liable for prejudgment interest except when bound by statute or by contract remain unaffected as the right to this interest is not a matter of tort liability.

Notably, no subsequent case has challenged this opinion, so as a matter of law and precedent, WestPoint Home cannot recover prejudgment interest against the Commission.

V. WestPoint Home has abandoned any appeal of the Circuit Court's 2019 Order

WestPoint Home purported to appeal the Circuit Court's grant of summary judgment to the Commission in its request for documents[12]. That appeal was not argued in its brief. Our courts have long held that "[a]n issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court." *Wright v. Craft*, 372 S.C. 1, 20, 640 S.E.2d 486, 497 (Ct. App. 2006) . Since WestPoint Home failed to brief or even mention the issue in its brief, it has abandoned this appeal.

CONCLUSION

Based on the foregoing, this Court should affirm the Circuit Court's order.

Respectfully submitted:

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[12] In its Notice of Appeal, WestPoint Home, LLC purports to appeal "the interlocutory order dated April 26, 2019." See Notice of Appeal, (ROA P.). The interlocutory order is not mentioned in WestPoint's brief.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

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VIA E-FILING
The Honorable Jenny Abbott Kitchings
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RE: WestPoint Home, LLC, Appellant v. South Carolina Workers' Compensation Commission, Respondents.
Appellate Case No. 2023-001663
Our File No. 2246971

Dear Ms. Kitchings,

Enclosed herewith please find the electronic copy of the Final Brief of the Respondent for the above matter. The bound and unbound copies are being delivered to the Court today. Kindly advise if you require anything else to complete our timely filing in this matter.

Thank you for your attention to this matter.

Sincerely,

MONTGOMERY WILLARD, LLC

Michael H. Montgomery

Enclosures: Final Brief Respondent

Cc: Todd Carroll,Esq. (via E-mail)
Herbert Beigel, Esq. (via E-mail)
Keith Roberts, Esq. (via E-mail)

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Alison R. Lee
Circuit Court Judge

Appellate Case No. 2023-001663
Circuit Court Case No. 2014-CP-40-02496

South Carolina Workers' Compensation Commission, ... Respondent,

v.

WestPoint Home, LLC..... Appellant.

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July 17, 2024

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INTRODUCTION

The Workers' Compensation Commission wrongly took WestPoint Home's money and spent years hiding what it did with those funds. Now, it is trying to sidestep accountability for its behavior by making empty legal arguments and misleading factual assertions, all while remaining silent about the dispositive points of this appeal.

The Court need not look any further to resolve this case than the agency's Executive Director's testimony at trial, where he ***conceded*** that the statute of repose has now expired for all potential claims that could arise from former WestPoint Stevens employees. (R. pp. 118–119; Trial Tr. 40:15–41:4.) This dispositive concession is never addressed, explained, or even acknowledged in the agency's return brief. That concession—and the crush of case law that supports it, including numerous panel decisions from the Commission itself—fully reveals why the agency must immediately divest itself of WestPoint Home's money as a matter of law, and nothing in the agency's brief overcomes it.

ARGUMENT

I. The statute of repose blocks all potential claims by former WestPoint Stevens employees, a restriction imposed by law that the agency ignores in its brief.

In its opening brief, WestPoint Home argued that it is entitled to a full return of the remainder of its deposit because the statute of repose for workers' compensation claims expired in 2007. If there are no potential new claims by former WestPoint Stevens employees as a matter of law, there is no reason at all for WestPoint Home to post any security against such claims, much less for the Commission to retain any of WestPoint Home's funds.

The law on this point is well-settled and clear. A worker's compensation claim for a latent "pulmonary disease arising out of the inhalation of organic or inorganic dusts" is barred unless the

disease "was contracted within [two years] after the last exposure to the hazard peculiar to his employment which caused the disease." S.C. Code Ann. § 42-11-70 (cleaned up).

WestPoint Home cited over a half-dozen cases from the federal court, this Court, and ***even the Workers' Compensation Commission itself*** holding that this statute bars a claim unless the injury manifests itself and the worker brings the claim within two years of his or her last exposure at the worksite. *See generally Matthews v. E.I. du Pont de Nemours & Co.*, Case No. 4:16-cv-2934-RBH, 2018 U.S. Dist. LEXIS 193735 (D.S.C. Nov. 13, 2018); *Parker v. Asbestos Processing, LLC*, Case No. 0:11-1800-JFA, 2015 U.S. Dist. LEXIS 115094 (D.S.C. June 30, 2015), *aff'd sub nom. Southern v. Bishoff*, 675 F. App'x 239 (4th Cir. 2017); *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999); *Bethea v. City of Myrtle Beach*, No. 1802724, 2019 SC Wrk. Comp. LEXIS 208 (2019); *Truax v. Daniel Const./Fluor Daniel*, No. 0411701, 2009 SC Wrk. Comp. LEXIS 30 (2009); *Gibson v. Westinghouse Elec. Corp.*, No. 0319071, 2006 SC Wrk. Comp. LEXIS 895 (2007); *Bishop v. Westinghouse Elec. Corp.*, No. 0318085, 2006 SC Wrk. Comp. LEXIS 1015 (2007) (all enforcing South Carolina Code § 42-11-70 exactly as WestPoint Home argues here).

The agency has no response to this argument. Instead, it tries to distract the Court from the statute of repose and its dispositive effect on this case by presenting arguments on unrelated points or by taking positions contrary to its own prior rulings. The Court should not be misled.

Irrelevant Actuarial Testimony: First, the agency devotes numerous pages of its return to citing its actuarial expert's opinion that former WestPoint Stevens employees may eventually contract an occupational disease several years in the future. (Op. Br. at 7, 12–19.) It repeatedly argues that this testimony is "uncontroverted," but that boast should fall on deaf ears, as that "uncontroverted" testimony is irrelevant to whether the statute of repose bars those claims.

The legal effect of the statute of repose controls whether there is any lawful basis for the Commission to retain a single penny of WestPoint Home's money, but the agency's expert conceded he did not account for it in his analysis:

Q: Mr. Burkhalter, you don't have an opinion on whether any future claims are barred by the statute of repose, do you?

A: I do not.

(R. pp. 190–191; Trial Tr. 112:25–113:2.)

The lack of an opinion from the Commission's expert stands in stark contrast to the testimony from its Executive Director, who conclusively (and correctly) testified that the statute of repose for claims by former WestPoint Stevens employees has already closed:

Q: The company WestPoint Stevens went out of business on August 8th, 2005, right?

A: That's right.

Q: The statute of repose for any latent injury claim closed on August 8th, 2007, right?

A: Any latent claims is two years from the date of diagnosis.

Q: No, sir, that's the statute of limitations. I'm talking about the statute of repose.

A: Repose.

Q: ***The statute of repose is two years from the last exposure, correct?***

A: ***Yes.***

Q: ***So that would have been August 8th of 2007, correct?***

A: ***Right.***

(R. pp. 118–119; Trial Tr. 40:15–41:4 (emphasis added).)

Director Cannon's concession of this dispositive point moots the entirety of the agency's appellate argument regarding its actuary's testimony. The Court should disregard the Commission's repeated reliance on irrelevant testimony accordingly.

Consistent with the Workers' Compensation Act: Next, the Commission argues that enforcing the statute of repose here would be "antipathetic" to the agency's view of the overall "scheme" of the workers' compensation law. (Op. Br. at 14–19.) But rather than indefinitely providing a blank check for workers, as the agency's brief suggests, the Workers' Compensation Act contains procedural safeguards for employers as well, including the statute of repose.

In fact, the agency's argument to this Court is exactly the opposite of how the Commission itself has repeatedly enforced the statute of repose to block claims. When enforcing the statute of repose precisely as WestPoint Home argues here, the Commission has recognized that "the purpose of [South Carolina Code §] 42-11-70 is to protect the employer against claims too old to be fairly investigated and defended." *E.g.*, *Gibson*, 2006 SC Wkr. Comp. LEXIS 895, at *20–21; *Bishop*, 2006 SC Wrk. Comp. LEXIS 1015, at *20–21.

It has recognized that Section 42-11-70 requires a disease to "manifest itself and/or disable[] the claimant" within two years of the last exposure in order for the injury to be compensable. *Gibson*, 2006 SC Wkr. Comp. LEXIS 895, at *20–21; *Bishop*, 2006 SC Wrk. Comp. LEXIS 1015, at *20–21.

And it has recognized that it would be "impossible to reconcile" an argument that a claimant is entitled to compensation for a pulmonary disease decades after he or she last worked for an employer with the plain language of Section 42-11-70 barring such claims unless the injury manifests itself or the worker becomes disabled within two years of the last exposure. *Truax*, 2009 SC Wrk. Comp. LEXIS 30, at *7.

In short, the Commission itself has already considered and rejected the very arguments it is making here. The Court should likewise reject the agency's about-face appellate arguments, as enforcing the statute of repose is fully consistent with the Workers' Compensation Act and with how the agency has repeatedly enforced the repose period to block expired claims.

Policy Arguments are for the Legislature, Not the Court: The Commission also argues that the agency should not be required to return the remainder of WestPoint Home's deposit because there will be no funding source for future claims by former WestPoint Stevens employees. (Op. Br. at 16–18.) This is a policy argument, not a legal one, and it fails from the outset because there will be no future claims due to the expiration of the statute of repose. Not only has the Commission itself previously acknowledged that the statute of repose blocks such claims, it has held that any perceived injustice of the law is for the General Assembly alone to fix:

> Under the "plain meaning" rule, it is not the court's place to change the meaning of a clear and unambiguous statute. S.C. Code Ann. § 42-11-70 is abundantly clear in its intent to disallow compensation for disability or death for an occupational disease of a pulmonary nature that is not contracted within two years of the date of the last injurious exposure. ***Notwithstanding the latency period of asbestos related diseases, such as asbestosis, the legislature has never amended this provision and its intent is abundantly explicit.*** Any doubt as to the intent of the legislature to exclude pulmonary related diseases from compensation unless contracted within two years of the Claimant's last exposure is removed when looking at the lone exception to this rule, that being for ionizing radiation.

Truax, 2009 SC Wrk. Comp. LEXIS 30, at *5–6 (internal citations omitted and emphasis added).[1]

[1] WestPoint Home strongly disputes whether following the law as written would even be considered unjust here. In fact, Director Cannon testified in both his deposition and at trial that there have never been any asbestos-based claims from any former WestPoint Stevens employees that would implicate the deposit at issue in this case. (R. p. 144; Trial Tr. 66:10–24; R. pp. 892, 895; Johnson Report at 2, 5 (reciting Director Cannon's deposition testimony).) It is illusory to argue to this Court that it would be unfair to former WestPoint Stevens workers if the agency isn't allowed to keep WestPoint Home's money when there has never been an asbestos-based claim and the statute of repose has closed on any such claims going forward.

The agency's *Truax* ruling echoes a similar observation from the District of South Carolina when it, too, enforced the statute of repose exactly as the Commission has in the past and exactly as WestPoint Home argues here. The federal court's analysis is on all-fours and deserves to be reproduced in full so that the Court can see how far afield the agency's appellate arguments are:

> Statutes of repose serve to relieve potential defendants from liability for acts committed long ago and ***reflect a legislative judgment*** that after a period of time, a defendant should be free from liability. Where a statute of repose is enacted limiting the time for filing a claim, it has the effect of creating a substantive right created by law. Thus, ***statutes of repose can have the effect of extinguishing a claim even prior to discovery of the claim***. While South Carolina Courts have not expressly considered what effect the statute of repose has on the exclusivity provision in the context of worker's compensation claims, the Workers' Compensation Commission has routinely barred employees from receiving benefits under the Act pursuant to Section 42-11-70 where the two-year time period has expired. These administrative decisions acknowledge that the purpose of the statute of repose is to protect the employer against such claims which, due to the passing of time, can no longer properly be investigated and defended. Further, this Court must give due consideration to ***the legislature's intent*** in its decision to limit the time period for employees with asbestos-related injuries to recover under the Act despite harsh application in this case.
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> * * * * *
>
> Here, the plain reading of the statute of repose serves to clearly provide that claims for pulmonary disease arising out of the inhalation of organic or inorganic dusts must be brought within two years after the last exposure to the hazard. Mr. Matthews worked for DuPont throughout the 1960s. He developed his pulmonary disease decades later, well past the period provided for in the statute of repose. ***While this result may seem unfair, this Court is not tasked with legislating.***

Matthews, 2018 U.S. Dist. LEXIS 193735, at *24–26 (citing the Commission's decisions in *Truax*, *Gibson*, and *Bishop*, among numerous other authorities) (emphasis added and cleaned up).

What's more, the Commission's argument that the law should be ignored so the agency always has money to pay claims is not even supported by its own actions. As described on Pages 3 and 4 of WestPoint Home's opening brief, the agency uses an actuarial formula to set the amount of security needed for self-insured employers. That formula takes (1) the average annual claims

actually paid for the prior three years; (2) multiplied by a factor of 1.5; and then (3) rounded to the next highest $50,000. (R. p. 216; Letter from Commission to WestPoint Stevens (July 14, 1997); R. pp. 119–120; Trial Tr. 41:21–42:13.) Based on this actuarial formula, a company that has not paid anything in claims for three consecutive years need not post security.

It cannot be true that the agency was entitled to take all of WestPoint Home's deposit to ensure that there were reserves to pay future claims when the agency's own method for setting security does not require such reserves if the employer's actual claims paid dwindles to nothing. In addition to being contrary to the actual law governing this issue and the General Assembly's inclusion of a statute of repose to provide employers with a knowable end date for potential claims, the agency's "policy" argument is contrary to how the Commission actually sets security for self-insured employers.

All Case Law Supports WestPoint Home's Argument: Finally, and tellingly, the Commission never mentions *Matthews*, *Truax*, *Gibson*, or *Bishop* in its return brief. The only time it even dips its toe in the water to acknowledge adverse precedent, the agency cites Judge Anderson's opinion in *Parker* and dismissively states that *Parker*'s "holding was dicta" and that its ruling "is neither correct nor persuasive." (Op. Br. at 14.) This is wrong for several reasons.

First, by definition, a "holding" cannot be "dicta." *See generally Nash v. Tindall Corp.*, 375 S.C. 36, 40, 650 S.E.2d 81, 83 (Ct. App. 2007) ("Judicial dicta is 'not essential to the decision.'" (quoting *Black's Law Dictionary* 465 (7th ed. 1999))).

Second, Judge Anderson based his summary judgment decision on the Commission's own prior rulings enforcing Section 42-11-70 in *Truax*, *Gibson*, and *Bishop*, as well as decisions from the South Carolina Supreme Court construing the word "contract," to conclude that the statute of repose bars a claim unless the worker actually "became disabled" within two years of his or her

last exposure to the occupational hazard. 2015 U.S. Dist. LEXIS 115094, at *12–22. His analysis of the statute of repose and reliance on the agency's consistent treatment of the issue was the basis of a summary judgment ruling.

Third, the Commission does not even try to explain or defend its statement that *Parker* is somehow "incorrect." The agency's silence in its brief is not surprising, since *Parker* is based on numerous prior decisions from the Commission itself; is consistent with South Carolina Supreme Court precedent and this Court's ruling in *Muir*; was affirmed by the Fourth Circuit; and has subsequently been reinforced by *Matthews*. The Court should not credit the Commission's dismissive treatment of *Parker*, which is fully on-point here.

Puzzlingly, while arguing that the Court should ignore *Parker*, the Commission's brief states "[o]ur courts have ruled consistently with th[e] interpretation" of South Carolina Code § 42-11-70 that would allow the agency to keep WestPoint Home's deposit. (Op. Br. at 13.) In support of this statement, the Commission cites *McCraw v. Mary Black Hospital*, 350 S.C. 229, 565 S.E.2d 286 (2002). But *McCraw* doesn't involve Section 42-11-70 at all. There, the claimant filed her worker's compensation claim less than two years after she last worked at the hospital, so the statute of repose was not a part of that case in any way. *Id.* at 232, 565 S.E.2d at 287. *McCraw* has nothing to do with this case, and the Court should reject the agency's misplaced reliance on it.

* * * * *

At bottom, South Carolina Code § 42-11-70 required former WestPoint Stevens employees to bring any claim for a latent occupational lung disease no later than August 2007, which was two years after WestPoint Stevens ceased operations. Every case construing the statute of repose agrees with this outcome, and the Commission's Executive Director confirmed this dispositive point through his testimony at trial. The agency has not presented any relevant argument in opposition

to this inescapable conclusion. Accordingly, the Court should reverse the circuit court's decision below and direct the Commission to return the remainder of WestPoint Home's deposit.

II. The law only allows the Commission to withdraw funds secured by a letter of credit when "needed," another restriction imposed by law the agency ignores in its brief.

In its opening brief, WestPoint Home detailed how the law prohibits the Commission from withdrawing money secured by a letter of credit unless and until that money is actually "needed for payment of a claim that occurred during the self-insured period." S.C. Code Ann. Regs. 67-1507(D)(5). This same "if needed" limitation on the Commission's ability to withdraw funds was included in a Memorandum of Understanding regarding the letter of credit for which WestPoint Home's deposit provided collateral. (R. p. 225; Memorandum of Understanding ¶ 4.)

In its return, the Commission never engages this legal argument. Instead, it trumpets an "internal policy" that the agency claims allows it to "draw down the letter of credit when the company went out of business," irrespective of whether any claims actually "occurred" for which the money is actually "needed." (Op. Br. at 10.) Nevertheless, the agency spends two pages praising that policy as "rational" and its own "wisdom" in adhering to that policy here. (*Id.* at 10–11.)

The agency's self-serving argument—which, again, ignores the law controlling the analysis and forbidding the agency's conduct here—is precisely the type of overreach by the "so-called Fourth Branch of government" that cannot withstand judicial scrutiny:

> "[S]urely one thing no agency can do is apply the wrong law to the citizens who come before it, especially when the right law would appear to support the citizen and not the agency. . . . An agency decision . . . that loses track of its own controlling regulations and applies the wrong rules in order to penalize private citizens can never stand."
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> * * *
>
> In South Carolina, to preserve some semblance of the separation of powers we once held sacred, an administrative agency may not make law without legislative oversight and approval.

Joseph v. S.C. LLR, 417 S.C. 436, 461, 465, 790 S.E.2d 763, 776–78 (2016) (quoting *Caring Hearts Pers. Home Servs., Inc. v. Burwell*, 824 F.3d 968, 977 (10th Cir. 2016)) (cleaned up) (Kittredge, J., concurring).

To enforce the basic separation-of-powers norm that an administrative agency only enforces the law as passed by the legislative branch, the General Assembly expressly forbids agencies from relying on such "internal policies" as a substitute for law. *See* S.C. Code Ann. § 1-23-10(4) ("Policy or guidance issued by an agency other than in a regulation does not have the force or effect of law.").

The Supreme Court agrees. *See, e.g.*, *Joseph*, 417 S.C. at 455, 790 S.E.2d at 773 (striking as contrary to the Administrative Procedures Act a "position statement" that the LLR was attempting to enforce without first promulgating it as a regulation subject to legislative oversight).

Here, Regulation 67-1507(D)(5) prohibits the Commission from drawing down the entirety of a letter of credit when the proceeds were not then and never have been "needed for payment of a claim that occurred during the self-insured period." The agency has no answer to this legal argument beyond citing its own "internal policy," which flies in the face of the regulation itself.

That "internal policy" to withdraw money when the agency believes a company may be going out of business—irrespective of whether any "claim that occurred during the self-insured period" even exists—cannot overcome the plain language of the governing regulation, and it certainly cannot justify the agency's unlawful conduct here.[2] Accordingly, the Court should

[2] Further undercutting its position, the agency concedes that its purported "internal policy" isn't published anywhere. (R. pp. 109–110; Trial Tr. 31:24–32:15.) It cannot be the law that an agency can override a promulgated regulation and a Memorandum of Understanding by relying on an unwritten "internal policy" about which the public has no notice and cannot even look up to read for itself.

reverse the circuit court's approval of the agency unlawfully drawing down the entirety of WestPoint Home's $1.8 million deposit.

III. The Court should disregard the Commission's numerous misstatements of fact.

In addition to these obvious legal errors, the Commission's brief is loaded with incorrect statements of fact, and it attempts to insulate those misstatements from scrutiny by arguing that the Court is bound by the circuit court's factual findings. (Op. Br. at 9.) Not so.

WestPoint's claim here is for "an accounting and award of excess cash collateral," along with pre- and post-judgment interest based on what the accounting revealed. (R. p. 53; Ans. & Am. Countercl. at 3.) Actions for an accounting are equitable in nature, meaning that this Court may review the evidence and find facts for itself. *Laughon v. O'Braitis*, 360 S.C. 520, 524–25, 602 S.E.2d 108, 110 (Ct. App. 2004). And the evidence fully rebuts the agency's appellate spin.

First, the Commission acknowledges in its brief that it utilizes its own actuarial formula for establishing how much security is required for self-insured employers. In its brief, though, the Commission states "that formula operates for an ongoing business" and implies that it would be inapplicable here, where WestPoint Stevens went bankrupt. (Op. Br. at 5.) But Director Cannon expressly testified that the agency's actuarial formula for calculating the surety amount is the same for bankrupt and non-bankrupt companies. (R. p. 156; Trial Tr. 78:7–19.) In fact, the formula is specifically designed to set surety "at a level sufficient to pay all claims in the event of an insolvency"—exactly the opposite of what the Commission claims in its brief. (R. p. 216; Letter from Commission to WestPoint Stevens, at 1 (July 14, 1997); R. p. 121; Trial Tr. 43:1–10.)

Second, the Commission argues that it was entitled to withdraw the entirety of WestPoint Home's $1.8 million deposit despite not having $1.8 million in claims pending because the agency was concerned that "no further payments" would be made for claims by former WestPoint Stevens

employees. (Op. Br. at 6.) This is not true. Director Cannon expressly testified the agency knew the letter of credit had not been canceled and that WestPoint Home had assumed that obligation:

> Q: But you knew that WestPoint Home had stepped into the shoes of WestPoint Stevens and had assumed that letter of credit?
>
> A: We did.

(R. p. 105; Trial Tr. 27:5–:8.) Director Cannon further confirmed that at no point "did the agency ever think that letter of credit was no longer in existence"—again, exactly the opposite of what the Commission states in its brief. (R. p. 148; Trial Tr. 70:6–:8.)

Third, and perhaps most surprisingly, the Commission tries to imply that it "needed" the entire $1.8 million deposit at the time it withdrew the money because "[b]etween 2005 and 2013, claims totaling over one million seven hundred thousand dollars were paid for WestPoint Stevens employees." (Op. Br. at 8.) This is incredibly misleading.

In support of this statement, the Commission cites Exhibit 31, which are spreadsheets showing workers' compensation claims payments made to various former WestPoint Stevens employees by Key Risk, a third-party administrator hired by the Commission to process claims.

Those spreadsheets show payments made both ***before and after*** WestPoint Home made its $1.8 million deposit in 2005. Virtually every entry has a row that says "Previously PD" as the Payee, and "Adjustment" as the Transaction Type. All of those "Previously PD" payments predate WestPoint Home's deposit and have nothing to do with WestPoint Home's deposit, and the Commission knows it. There weren't $1.7 million in claims paid with WestPoint Home's money; the total amount of WestPoint Home's funds that were spent paying claims by former WestPoint Stevens employees was only $635,488—barely one-third of the total deposit that was wrongfully withdrawn. (R. pp. 113, 115; Trial Tr. 35:17–22, 37:3–5.) And the last claim was closed and last payment made in May 2008: $45.41 in legal expenses. (R. p. 637; Spreadsheet, at Claim 7445.)

It is telling that the agency would go to such lengths to obscure the actual facts of this case. The truth is that the agency had no lawful basis to withdraw WestPoint Home's money when it did, and it has no lawful basis to withhold that money one moment longer.

IV. The Court should reject the remainder of the agency's makeweight arguments.

In addition to dodging the fundamental legal points of WestPoint Home's arguments and misstating the evidence at trial, the Commission peppers its opposition brief with additional arguments that the Court should readily reject.

Statute of Limitations: On Pages 11 and 12 of its brief, the Commission argues for the first time that WestPoint Home's claim is barred by the statute of limitations. But the agency never pled the statute of limitations as a defense. (R. pp. 68–76; Reply to Am. Countercl. ¶¶ 38–98.) The agency therefore waived this argument as a matter of law. *See* Rule 8(c), SCRCP (requiring a party to affirmatively plead "statute of limitations" in order to preserve this affirmative defenses); *Collins Entm't, Inc. v. White*, 363 S.C. 546, 563, 611 S.E.2d 262, 270 (Ct. App. 2005) ("The failure to plead an affirmative defense is deemed a waiver of the right to assert it.").

Nor can a statute of limitations even apply to WestPoint Home's claim for an accounting, as that claim sounds in equity. *See Dixon v. Dixon*, 362 S.C. 388, 400, 608 S.E.2d 849, 855 (2005) ("This Court has held that the statute of limitations does not apply to actions in equity.").

Accordingly, the Court should disregard the agency's belated statute-of-limitations argument.

Sovereign Immunity: On Page 19 of its brief, the Commission argues that "sovereign immunity" bars collecting prejudgment interest from a state agency. But all it cites for this position is a concurring opinion from Justice Pleicones in *EllisDon Construction, Inc. v. Clemson University*, 391 S.C. 552, 707 S.E.2d 399 (2011). The Commission says that this concurring

opinion "disposed of the issue" and settles the question "as a matter of law and precedent." (Op. Br. at 19.) Hardly.

In *EllisDon Construction*, the plaintiff claimed it was entitled to prejudgment interest against Clemson based on a contract provision stating that "Clemson would pay interest to Appellant in accordance with the Prompt Payment Act found at section 29-6-50 of the South Carolina Code." 391 S.C. at 553, 707 S.E.2d at 400. The Procurement Review Panel held that the plaintiff failed to comply with the statutory prerequisites to trigger interest under that Code section, but that it could still collect interest against Clemson based on the general interest statute, South Carolina Code § 34-31-20. *Id.* at 554, 707 S.E.2d at 400. The Supreme Court ultimately held that the plaintiff could not access the general interest statute (S.C. Code Ann. § 34-31-20) because it had specifically contracted for a different interest statute to apply (S.C. Code Ann. § 29-6-50). *See id.* at 555, 707 S.E.2d at 401 ("Therefore, Appellant is not entitled to interest under section 34-31-20(A) because it contracted for a different rate of interest.").

Sovereign immunity had nothing to do with the Supreme Court's decision in *EllisDon Construction*, and the concept does not even appear anywhere in the majority's opinion. If anything, *EllisDon Construction* indicated that the plaintiff would have been entitled to recover interest from Clemson under the general interest statute if it hadn't specifically contracted for interest under a different statute. That directly rebuts the Commission's argument.

The General Assembly specifically provides that litigants like WestPoint Home should not be deprived of the time value of their money. *See* S.C. Code Ann. § 34-31-20(A) ("In ***all cases*** of accounts stated and in ***all cases*** wherein any sum or sums of money shall be ascertained and, being due, ***shall draw interest according to law***, the legal interest shall be at the rate of eight and three-fourths percent per annum.") (emphasis added). "All cases" means exactly what it says, and the

law does not exclude cases where an agency has misappropriated a private entity's funds. As such, WestPoint Home is entitled to prejudgment interest as detailed in its opening brief.

2019 Order: The circuit court initially entered an order holding that WestPoint Home was not entitled to learn information about how its deposit had been used by the agency. WestPoint Home timely sought reconsideration of that order, which the circuit court effectively granted over a series of partial rulings requiring the Commission to disclose information to WestPoint Home. (R. p. 34; Order Denying Mot. for Protective Order at 3 n.1 (Nov. 16, 2021).)

Nevertheless, to the limited extent there is some stray remark or statement by the circuit court in the 2019 order that is inconsistent with the arguments and authorities presented in WestPoint Home's opening brief, WestPoint Home included the 2019 order as part of this appeal so that it could not be accused of failing to preserve an issue or an argument. It is simply untrue to say that WestPoint Home has "abandoned any appeal" of that order, as the Commission argues in its return brief. (Op. Br. at 19–20.) The Court should disregard that final argument accordingly.

CONCLUSION

The Commission's opposition brief provides no true opposition to this appeal at all. Instead, it is loaded with incorrect statements of fact, citations to irrelevant case law, and policy arguments that are better suited for a legislative white paper than for a merits brief to this Court.

But what's missing from the Commission's brief is more telling than what's in it.

The Commission's brief does not address the crush of case law cited in WestPoint Home's brief (including decisions from the agency itself) holding that the statute of repose has closed on all potential claims by former WestPoint Stevens employees—nor does the Commission's brief address the fact that its Executive Director confirmed this exact point through testimony at trial. Silence.

The Commission's brief does not address WestPoint Home's argument that both the governing regulation and the Memorandum of Understanding regarding the letter of credit prohibited the agency from withdrawing the entirety of WestPoint Home's deposit without there being any claims actually incurred for which that money was needed. Silence.

And the Commission's brief does not address the actual statute that entitles WestPoint Home to recover prejudgment interest here. Silence.

The Commission's silence on every dispositive point is deafening and leaves no doubt that the circuit court's decision cannot stand. Accordingly, WestPoint Home respectfully requests that the Court reverse the decision below and remand the matter with instructions for the circuit court to direct the Commission to return to WestPoint Home the remainder of its deposit, the interest earned on that deposit, and prejudgment interest to which WestPoint Home is entitled as a matter of South Carolina law.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certify that this Brief complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, the undersigned Attorney of the law offices of Womble Bond Dickinson (US) LLP, attorneys for Appellant, do hereby certify that I have served all parties to this appeal with a copy of the pleading(s) specified below via email at the address(es) below:

Pleading(s): Appellant's Reply Brief

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The South Carolina Court of Appeals

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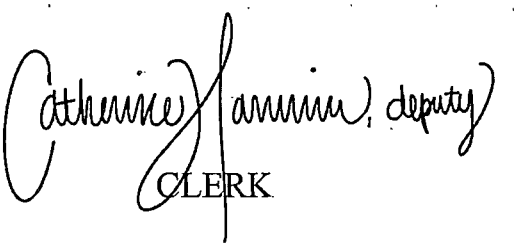
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Re: South Carolina Workers' Compensation Commission v. WestPoint Home, LLC
Appellate Case No. 2023-001663

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,



CLERK

cc: The Honorable Alison Renee Lee

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

South Carolina Workers' Compensation Commission,
Respondent,

v.

WestPoint Home, LLC, Appellant.

Appellate Case No. 2023-001663

Appeal From Richland County
Alison Renee Lee, Circuit Court Judge

Opinion No. 6121
Heard March 13, 2025 – Filed September 17, 2025

REVERSED AND REMANDED

Matthew Todd Carroll, of Womble Bond Dickinson (US) LLP, of Columbia, and Herbert Beigel, of Tucson, Arizona, both for Appellant.

Michael H. Montgomery, of Montgomery Willard, LLC, and James Keith Roberts, of the South Carolina Workers' Compensation Commission, both of Columbia, for Respondent.

TURNER, J.: WestPoint Home (WestPoint) appeals an order of the circuit court finding the South Carolina Workers' Compensation Commission (the Commission) could indefinitely retain the $1.8 million WestPoint deposited as security for potential workers' compensation claims filed by former employees after its predecessor corporation entered bankruptcy. On appeal, WestPoint argues the

circuit court erred in finding (1) the Commission was justified in withdrawing the entire deposit and transferring it to an account with the State Treasurer even though the pending claims never equaled the total deposit amount and (2) the Commission could continue to retain the unused portion of the deposit indefinitely even though the statute of repose for new claims had expired. WestPoint also contends it was entitled to collect prejudgment interest. We reverse as to the first two issues and remand for further proceedings regarding the prejudgment interest issue.

FACTS

WestPoint is the corporate entity that ultimately emerged out of the dissolution of WestPoint Stevens, a South Carolina textile manufacturer that went into bankruptcy and closed in August 2005. WestPoint Stevens was a self-insured employer for purposes of its workers' compensation liabilities in South Carolina. In conjunction with the purchase of WestPoint Stevens's assets, WestPoint deposited $1.8 million in a private account to fund an irrevocable letter of credit as security for potential workers' compensation claims against WestPoint Stevens.

In 2013, WestPoint sought to reduce the security amount held by the Commission. Eventually, in April 2014, the Commission filed a declaratory judgment action seeking clarification as to whether WestPoint was entitled to receive certain information—specifically, how much of its $1.8 million deposit had been disbursed and any actuarial reports projecting how much should remain in reserve—arguing that the information was confidential and could not be disclosed outside the agency. WestPoint filed a counterclaim seeking an accounting and a declaration that it was entitled to the information as well as "all monies owed and improperly retained" by the Commission.

The parties filed various motions, and the circuit court eventually ordered the Commission to disclose the number of open claims asserted against WestPoint's funds and the balance of the funds remaining on deposit. The Commission responded that it still held approximately $1.16 million of WestPoint's initial deposit and there were no open claims. WestPoint then sought a "loss-run report" to show how many claims had been paid plus "an actuarial analysis to determine how much security, if any, would be needed for potential future claims." WestPoint subpoenaed records from Key Risk, the third-party administrator that had handled and adjusted WestPoint Stevens's claims, which showed the last payment on a claim had been made on May 7, 2008. The Commission also disclosed its actuarial formula used to calculate the amount of surety required from self-insurers, as well as records showing the Commission held a balance of $1.7

million from the drawdown of the letter of credit—$1.16 million in principal plus interest.

At trial, Gary Cannon, the Commission's executive director, testified regarding the Memorandum of Understanding (MOU) governing the letter of credit between WestPoint Stevens and the Commission. The MOU stated, "[T]he Commission may at any time draw on the letter of credit, if needed, to pay any Workers' Compensation claim or claims of administration expense which are the responsibility of the employer." The MOU also stated that "if the Commission is notified that the letter of credit is being cancelled or will not be renewed and a new letter of credit . . . is not filed with the Commission, the Commission may at its discretion draw on the letter credit." Cannon testified the Commission drew down the entire $1.8 million balance of the letter of credit on August 17, 2005. He acknowledged that, at the time of the withdrawal, the pending claims did not total $1.8 million, and, as of the date of trial, the Commission had "not needed $1.8 million to pay claims of former WestPoint Stevens employees."

However, Cannon explained that the Commission nonetheless drew on the letter of credit because WestPoint Stevens had notified the Commission that "no further payments [would] be made with respect to workers' compensation claims asserted" against it. Cannon stated the Commission was aware that WestPoint had assumed the obligations of WestPoint Stevens regarding the letter of credit and clarified that he was not asserting that the letter of credit had ever been cancelled or terminated. Rather, he asserted WestPoint had not truly "step[ped] into the shoes of WestPoint Stevens because they disclaimed liability."[1] Therefore, the Commission felt it "had to draw down on the letter of credit to ensure that the funds would be set aside for any future claims to be paid." Cannon agreed, however, that no WestPoint Stevens claim had been filed or paid in more than a decade, and based on the Commission's own actuarial formula used to calculate the reserve funds needed from a self-insured employer, WestPoint's surety amount dropped to $0 starting in 2012.

Cannon explained the Commission was specifically concerned about "the potential asbestos claims that could have been filed." He asserted that the Commission had a duty to "look at the potential claims coming in . . . 40, 50 years later" and to ensure that money is available to pay those potential claims. He testified that

[1] This appears to be a reference to a line in the August 15, 2005 letter stating that "workers' compensation liabilities asserted against [WestPoint Stevens] were not liabilities assumed by" the purchase of WestPoint Stevens's assets in the bankruptcy case.

although the statute of repose is two years from the last exposure, "[a]ny latent claim" is governed by the statute of limitations which allows claims to be filed "two years from the date of diagnosis."

Christopher Burkhalter, the Commission's expert witness, testified six WestPoint Stevens locations were "included on a list of jobsites where asbestos exposure was known to have occurred." Burkhalter further explained the average latency period for asbestos-related diseases range[d] from 10 to 50 years." He stated that if a twenty-year-old working for WestPoint Stevens was exposed in 2005, there "would be a 96.8 percent chance that [mesothelioma] would not have manifested" at the time of trial. Burkhalter testified it was "certainly" possible that former WestPoint Stevens employees were "alive and undiagnosed," and that the "lack of claims in recent years" had "miniscule" bearing on the likelihood of future claims.

The circuit court found the Commission "did not act improperly when it drew down the entire letter of credit in 2005" because WestPoint stated that no further payments would be made regarding claims asserted against it, and, at that time, there were dozens of active claims pending. Thus, the circuit court reasoned, the Commission "was unquestionably entitled to draw down funds to pay those claims," and was entitled to draw down the entire amount because there was "no evidence the Commission knew how much money was needed to satisfy those claims." Additionally, the circuit court found that the interplay of the statute of limitations and the statute of repose "may narrow the pool of potential successful claims, [but did] not eliminate it," and thus, the Commission was justified in continuing to retain WestPoint's funds due to the possibility of future claims. This appeal followed.

ISSUES ON APPEAL

1. Did the circuit court err in determining the Commission was justified in withdrawing WestPoint's deposit and transferring it to an account with the State Treasurer even though there were no claims pending up to the full deposit amount?

2. Did the circuit court err in finding the Commission could continue to retain the unused portion of WestPoint's deposit even though the statute of repose for new claims had expired?

3. Is WestPoint entitled to collect prejudgment interest on the amount owed to it by the Commission?

STANDARD OF REVIEW

"In order to determine the standard of review to apply, we must look to the kind of action in which the issue involved would have been decided if there were no declaratory judgment procedure." *Barnacle Broad., Inc. v. Baker Broad., Inc.*, 343 S.C. 140, 146, 538 S.E.2d 672, 675 (Ct. App. 2000). "We review questions of statutory interpretation de novo." *Books-A-Million, Inc. v. S.C. Dep't of Revenue*, 437 S.C. 640, 642, 880 S.E.2d 476, 477 (2022).

LAW/ANALYSIS

"The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible." *Mitchell v. City of Greenville*, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015). "With any question regarding statutory construction and application, the court must always look to legislative intent as determined from the plain language of the statute." *Peake v. S.C. Dep't of Motor Vehicles*, 375 S.C. 589, 597-98, 654 S.E.2d 284, 289 (Ct. App. 2007). "The text of a statute is considered the best evidence of the legislative intent or will." *Id.* at 598, 654 S.E.2d at 289. "In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose." *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). "[S]tatutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if it can be done by any reasonable construction." *Hudson ex rel. Hudson v. Lancaster Convalescent Ctr.*, 407 S.C. 112, 124-25, 754 S.E.2d 486, 492-93 (2014); *see also Hodges v. Rainey*, 341 S.C. 79, 88, 533 S.E.2d 578, 583 (2000) ("Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative.").

"The canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.'" *Riverwoods, LLC v. County of Charleston*, 349 S.C. 378, 384, 563 S.E.2d 651, 655 (2002) (quoting *Hodges*, 341 S.C. at 86, 533 S.E.2d at 582). "Where there is an express exception in a statute, all other exceptions which are not expressly set forth are e[x]cluded." *Vernon v. Harleysville Mut. Cas. Co.*, 244 S.C. 152, 157, 135 S.E.2d 841, 844 (1964). "The inclusion of one exception amounts to an affirmation of the applicability of the statute's provision to all other cases which are not excepted." *Id.*

Withdrawal of Deposit

We hold the Commission improperly drew down the letter of credit because the funds were not needed for the payment of any pending claims.[2]

The South Carolina Workers' Compensation Act allows corporations to "self-insure" their workers' compensation liability. *See* S.C. Code Ann. § 42-5-20(A)(1) (2015 & Supp. 2024) ("Every employer who accepts the provisions of this title relative to the payment of compensation shall insure and keep insured his liability thereunder . . . or shall furnish to the [C]ommission satisfactory proof of his financial ability to pay directly the compensation in the amount and manner and when due . . . ."). One of the ways the Commission permits a self-insurer to prove its ability to pay potential claims against it is through an MOU and irrevocable letter of credit. *See* S.C. Code Ann. Regs. 67-1507(A) (2006). "Once an irrevocable letter of credit is established, it may be revoked only with the consent of the Commission." S.C. Code Ann. Regs. 67-1507(D) (2006). "The Commission may exercise the letter of credit at any time if the proceeds are needed for payment of a claim that occurred during the self-insured period." S.C. Code Ann. Regs. 67-1507(D)(5) (2006).

Here, the regulation at issue plainly states that the Commission may draw down the letter of credit "*if the proceeds are needed for payment of a claim*" or if "the self-insurer *fails to replace the letter with another accepted proof of compliance* [with the surety requirement]." S.C. Code Ann. Regs. 67-1507(D)(4)-(5) (2006) (emphases added). The MOU contained similar language stating that the Commission could "draw on the letter of credit, *if needed, to pay any Workers' Compensation claim* or claims of administration expense which are the responsibility of the employer." It also stated that if the Commission "is notified that the [l]etter of [c]redit is being cancelled or will not be renewed and a new letter of credit or surety bond . . . is not filed . . ., the Commission may, at its discretion, draw on the [l]etter."

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[2] We decline to consider the Commission's argument that WestPoint is essentially asserting that it "breached an implied contract created by the MOU" and breach of contract actions have a three-year statute of limitations. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 421, 526 S.E.2d 716, 724 (2000) (explaining that a respondent is not required "to present an issue to the lower court in order to raise it as an additional sustaining ground," but an appellate court is unlikely to rely on such a ground); *id.* ("Stated another way, the respondent may raise an additional sustaining ground that was not even presented to the lower court, but the appellate court is likely to ignore it.").

However, on the date the Commission drew down the letter, it did not need the full $1.8 million balance to pay pending claims, and in fact, WestPoint has never had $1.8 million in claims pending against it. Moreover, the Commission was aware that WestPoint had secured WestPoint Stevens's obligations under the letter of credit, and at no time did the Commission believe the letter had been revoked or cancelled. Further, pursuant to the applicable regulations, the Commission's permission would have been required for the *irrevocable* letter of credit to be cancelled. *See* S.C. Code Ann. Regs. 65-1507(D) (2006).

Accordingly, we hold the circuit court erred in determining the Commission was justified in drawing down the entire $1.8 million letter of credit, and we reverse the circuit court as to this issue. *See Peake*, 375 S.C. at 597-98, 654 S.E.2d at 289 ("With any question regarding statutory construction and application, the court must always look to legislative intent as determined from the plain language of the statute."); *Murphy v. S.C. Dep't of Health & Envtl. Control*, 396 S.C. 633, 639, 723 S.E.2d 191, 195 (2012) ("Regulations are interpreted using the same rules of construction as statutes."); *Brown v. Bi–Lo, Inc.*, 354 S.C. 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003) (explaining that an agency's interpretation of its own regulation is usually entitled to deference, but if "the plain language of the statute is contrary to the agency's interpretation, the [c]ourt will reject the agency's interpretation").

Return of Deposit

WestPoint asserts that the Commission has wrongfully retained the unused principal of $1.16 million because "the repose period for any new claims has closed." The Commission argues there is no statute of repose that would prohibit new claims against WestPoint Stevens, and it needs to retain the funds because of the possibility that "latent" claims involving asbestos exposure and/or pulmonary disease could arise in the future. We hold WestPoint is entitled to the return of its unused funds.

"A statute of limitations is a procedural device that operates as a defense to limit the remedy available from an existing cause of action." *Capco of Summerville, Inc. v. J.H. Gayle Const. Co.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006). A statute of repose, on the other hand, "creates a substantive right in those protected to be free from liability after a legislatively determined period of time." *Id.* "A statute of repose differs from a statute of limitations" because the "expiration of the time extinguishes not only the legal remedy but also all causes of action, including those which may later accrue as well as those already accrued." *Id.* (quoting

School Bd. of the City of Norfolk v. U.S. Gypsum, 360 S.E.2d 325, 327-28 (Va. 1987)). Thus, a statute of repose "bar[s] any suit that is brought after a specified time since the defendant acted . . . even if this period ends before the plaintiff has suffered a resulting injury." *Id.* (alteration in original) (quoting *Black's Law Dictionary* 1451 (8th Ed. 2004)).

Section 42-15-40 of the South Carolina Code (2015) is the statute of limitations in workers' compensation cases. *See Rogers v. Spartanburg Reg'l. Med. Ctr.*, 328 S.C. 415, 418, 491 S.E.2d 708, 710 (Ct. App. 1997) (characterizing section 42-15-40 as a statute of limitation requiring any claim "to be filed within two years after an accident"). It states,

> The right to compensation under this title is barred unless a claim is filed with the commission within two years after an accident, or if death resulted from the accident, within two years of the date of death. However, for occupational disease claims the two-year period does not begin to run until the employee concerned has been diagnosed definitively as having an occupational disease and has been notified of the diagnosis.

§ 42-15-40. Section 42-11-70 of the South Carolina Code (2015) states,

> Neither an employee nor his dependents shall be entitled to compensation for disability or death from an occupational disease, except that due to exposure to ionizing radiation, unless such disease was contracted within one year after the last exposure to the hazard peculiar to his employment which caused the disease, save that in the case of a pulmonary disease arising out of the inhalation of organic or inorganic dusts the period shall be two years.

In workers' compensation cases, "[t]he term 'contracted' is a term of art which has been defined for compensation purposes in occupational disease cases as 'disablement or death.'" *Vespers v. Springs Mills, Inc.*, 276 S.C. 94, 97, 275 S.E.2d 882, 884 (1981). Accordingly, "in occupational disease cases[,] compensability accrues when disability or death occurs." *Id.* (quoting *Drake v. Raybestos-Manhattan, Inc.*, 241 S.C. 116, 121, 127 S.E.2d 288, 291 (1962)); *see*

also Glenn v. Columbia Silica Sand Co., 236 S.C. 13, 21, 112 S.E.2d 711, 715 (1960) ("[T]he event to be treated 'as an injury by accident' [is] not contraction of the occupational disease, but 'disablement or death' resulting from it.").

When the term "disablement or death" is substituted for "contracted," section 42-11-70 reads as follows:

> Neither an employee nor his dependents shall be entitled to compensation for disability or death from an occupational disease, except that due to exposure to ionizing radiation, unless such disease [*caused disablement or death*] within one year after the last exposure to the hazard peculiar to his employment which caused the disease, save that in the case of a pulmonary disease arising out of the inhalation of organic or inorganic dusts the period shall be two years.

Thus, we hold section 42-11-70 is a statue of repose because it sets a time limitation on an event—i.e., the employee's last exposure to the hazard—separate from the event which triggers the accrual of the cause of action—i.e., diagnosis and notification.[3] *See School Bd.*, 360 S.E.2d at 327 ("The time limitation in [a statute of repose] begins to run from the occurrence of an event unrelated to the accrual of a cause of action . . . ."); *Hodges*, 341 S.C. at 85, 533 S.E.3d at 581 ("Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning."); *id.* at 88, 533 S.E.2d at 583 ("Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative.").

Moreover, section 42-11-70 contains an exception to its general rule—those diseases caused by exposure to ionizing radiation. *See* § 42-11-70 ("Neither an employee nor his dependents shall be entitled to compensation for disability or death from an occupational disease, *except that due to exposure to ionizing radiation*, unless such disease was within one year after the last exposure to the hazard peculiar to his employment which caused the disease . . . ." (emphasis added)). Pursuant to the rules of statutory construction, "[w]here there is an

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[3] Interestingly, the circuit court repeatedly referred to section 42-11-70 as a statute of repose in its written order, although it ultimately determined it did not bar recovery for occupational disease claims.

express exception in a statute, all other exceptions which are not expressly set forth are e[x]cluded." *Vernon*, 244 S.C. at 157, 135 S.E.2d at 844. Here, the legislature carved out one exception to the time limitation between exposure and contraction for diseases caused by exposure to ionizing radiation. That they chose not to do so for pulmonary diseases evinces the legislature's intent to preclude compensation in such cases unless the disablement or death occurs within two years from the last exposure. *See id.* ("The inclusion of one exception amounts to an affirmation of the applicability of the statute's provision to all other cases which are not excepted.").[4]

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[4] Although not binding authority, we find it persuasive that the Appellate Panel of the Commission has interpreted section 42-11-70 similarly in other cases. *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 149, 694 S.E.2d 525, 530 (2010) ("An agency's long-standing interpretation of a statute is usually entitled to be given deference and should not be overruled by a reviewing court in the absence of cogent reasons . . . ."); *see also, e.g.*, *Bethea v. City of Myrtle Beach*, No. 1802724, 2019 WL 7424840, at *12 (S.C. Work. Comp. Comm. June 13, 2019) (denying benefits because the medical evidence showed Bethea did not contract lung cancer within two years of his last exposure to the hazards peculiar to his employment); *Truax v. Daniel Constr.*, No. 0411701, 2009 WL 1433538, at *3 (S.C. Work. Comp. Comm. Mar. 27, 2009) (denying compensation for asbestosis when there was a thirty-two year gap between Truax's last exposure and the date he became disabled because section 42-11-70 "is abundantly clear in its intent to disallow compensation for disability or death for an occupational disease of a pulmonary nature that is not contracted within two years of the date of the last injurious exposure"); *Bishop v. Westinghouse Elec. Corp.*, No. 0318085, 2007 WL 904837, at *9 (S.C. Work. Comp. Comm. Jan. 26, 2007) ("The language references two distinct events: (1) exposure and (2) contracting the occupational disease. Since exposure and contracting the disease are distinct, and not the same, an ordinary and unambiguous meaning should be assigned to the word contracting, i.e.[,] when the disease manifests itself and/or disables the claimant. The legislature chose to make compensability dependent on [there] being less than one (or two) year(s) between exposure and contraction of the disease."); *Gibson v. Westinghouse Elec. Corp.*, No. 0319071, 2007 WL 869985, at *8 (S.C. Work. Comp. Comm. Jan. 24, 2007) ("The Appellate Review Panel finds that the purpose of [section] 42-11-70 is to protect the employer against claims too old to be fairly investigated and defended. Accordingly[,] this statute should be read to effectuate the legislative intent to reasonably limit an employer's period of potential liability for workers' compensation benefits."); *Rumsey v. Daniel Int'l. Corp.*, No. 0011205, 2003 WL 22380606, at *10 (S.C. Work. Comp. Comm. Feb. 12, 2003)

We recognize that this holding may "impose on some plaintiffs the hardship of having a claim extinguished before it is discovered, or perhaps before it even exists." *Capco*, 368 S.C. at 142, 628 S.E.2d at 41 (quoting *Camacho v. Todd and Leiser Homes*, 706 N.W.2d 49, 54 n.6 (Minn. 2005)). However, to hold otherwise "would upset the economic balance struck by the legislative body." *Id.* "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." *Hodges*, 341 S.C. at 85, 533 S.E.2d at 581. Accordingly, we agree with WestPoint that the time period for any new claims has run because the two-year exposure period expired on August 8, 2007. We therefore reverse the circuit court's finding that the Commission could continue to hold WestPoint's funds and hold WestPoint is entitled to the return of its initial deposit plus any interest the funds have earned in the Treasury account up to the date the Commission returns the money.

Prejudgment Interest

WestPoint argues that it is statutorily entitled to prejudgment interest; the Commission asserts sovereign immunity bars the recovery of prejudgment interest. However, because the circuit court found against WestPoint regarding the propriety of the Commission's drawdown of the letter of credit and determined the Commission was entitled to retain those funds, it did not rule on WestPoint's request for prejudgment interest. Accordingly, we remand this issue to the circuit court for consideration of each party's arguments. *See TransSouth Fin. Corp. v. Cochran*, 324 S.C. 290, 297, 478 S.E.2d 63, 66-67 (Ct. App. 1996) (declining to enter judgment in favor of appellant and remanding for "an additional evidentiary hearing to determine the amount of the judgment," because although the principal

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("'[C]ontracted' cannot mean when the disease is 'definitively diagnosed' because that definition would render meaningless the distinction between [section] 42-11-70 and the statute of limitations provision in [section] 42-15-40, such that the time for filing a claim under [section] 42-15-40 would immediately begin to run in *every* situation upon the instant the disease was 'contracted' under [section] 42-11-70 . . . ."). *But see Bowers v. Sea Island Staffing*, No. 0226915, 2009 WL 1425599, at *4-5 (S.C. Work. Comp. Comm. Feb. 26, 2009) (awarding compensation to claimant who retired in 1994 and was diagnosed with asbestosis in 2002, after "an exposure in the 1980's or 1970's"); *Powell v. Yeargin Constr. Co.*, No. 0617676, 2008 WL 5066354, at *2 (S.C. Work. Comp. Comm. Oct. 29, 2008) (awarding total disability to employee who was diagnosed with mesothelioma in 2006 and whose last exposure occurred in 1983).

amount was undisputed, the respondent challenged the judgment rate of interest). In the event the circuit court finds WestPoint is entitled to prejudgment interest, the amount to be awarded should take into consideration the interest already returned to WestPoint along with its initial deposit to prevent double recovery. *See Gipson v. Coffey & McKenzie, P.A.*, 445 S.C. 395, 399, 914 S.E.2d 842, 844 (2025) ("The law's refusal to allow a double recovery is fundamental . . . . A trial judge may invoke this basic common law rule to ensure the verdict amount comports with the plaintiff's actual loss." (citations omitted)); *The Winthrop Univ. Trs. for the State v. Pickens Roofing & Sheet Metals, Inc.*, 418 S.C. 142, 168, 791 S.E.2d 152, 166 (Ct. App. 2016) ("It is a fundamental rule of law in this state that there can be no double recovery for a single wrong." (quoting *Inman v. Imperial Chrysler-Plymouth, Inc.*, 303 S.C. 10, 13, 397 S.E.2d 774, 776 (Ct. App. 1990))); *see also First S. Bank v. Fifth Third Bank NA*, 631 F. App'x 121, 126 (4th Cir. 2015) (per curiam) (holding that because the parties stipulated to an amount owed that included prejudgment interest, "any award of additional prejudgment interest would amount to a windfall").

CONCLUSION

The order of the circuit court is therefore **REVERSED**, and this matter is **REMANDED** to the circuit court for further proceedings consistent with this opinion.

WILLIAMS, C.J., and GEATHERS, J., concur.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

The Honorable Alison R. Lee

Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2023-001663

Circuit Court Case No. 2014-CP-40-02496

South Carolina Workers' Compensation Commission, ...Respondent,

v.

WestPoint Home, LLC, ...Appellant.

RESPONDENT'S PETITION FOR REHEARING WITH A SUGGESTION FOR REHEARING EN BANC

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October 1, 2025

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STATEMENT OF PURPOSE

Respondent, South Carolina Workers' Compensation Commission, files this Petition for Rehearing and Rehearing En Banc of the Court's Opinion No. 6121, filed September 17, 2025. In counsels' judgment, rehearing or rehearing en banc are warranted to:

1. *Resolve the conflict created by the Court's determination that S.C. Code Ann. §42-11-70 is a "statute of repose" and, in so deciding, inexplicably altering the legislative intent and direct wording of the statute in a manner that upends the entire Occupational Disease Act and renders the Statute of Limitations for occupational injuries meaningless.*

As the record here reflects, the Commission is currently dealing with 450 claims filed for occupational diseases with dates of exposure dating back to the 1950s. This decision will wreak havoc on the lives of those claimants and undermine the entire administration of claims for care of South Carolinians disabled by devastating occupational diseases. The court's interpretation additionally fails to recognize the uncontradicted testimony in the record that the average latency period of work-exposed mesothelioma is 43.4 years. This latency period is the time when the employee has contracted the disease but has not yet been diagnosed with it. Latency is a unique characteristic of mesothelioma and other occupational diseases. The application of the statute as written takes latency into account. The Court's ruling here guts the entire process for no reason other than to create a basis to return funds that are likely to be required to treat victims of this disease who were exposed to asbestos in WestPoint Stevens plants. Mr. Burkhalter, the Commission's expert, gave uncontroverted testimony that there is a 98.6 percent chance that an employee in one of the Appellant's predecessor's plants currently has contracted mesothelioma and that there is a 50 % chance that the disease would still be latent in 2045. Because the Panel's decision misinterprets the unambiguous statute, thereby threatening benefits for hundreds or even

thousands of victims and potential victims of an occupational disease in South Carolina who were not parties to the case, rehearing or rehearing en banc is warranted to resolve this issue.

2. *Address the fact that the Order relies upon non-persuasive cases and interprets them so that they declare that the word "Contracted" means "Death or Disability" which reflects neither the plain meaning of those words or an accurate interpretation of the Legislative intent inherent in the Occupational Disease Act.*

In holding that South Carolina Courts and the Commission itself recognized or treated S.C. Code Ann. §42-11-70 as a statute of repose and did so to deny benefits, the Court relied on cases that are both inapplicable to and distinguishable from the case before the Court. Because this authority does not provide a justifiable precedent for the Court to interpret S.C. Code Ann. §42-11-70 as a statute of repose rather than the coverage statute that it is, rehearing or rehearing en banc is warranted to resolve this misapprehension.

3. *Address the fact that the Order ignores the latency inherent in a mesothelioma diagnosis such that it effectively eliminates mesothelioma as an occupational disease in contravention of the Occupational Disease Act.*

Both the record and the history of the treatment of occupational diseases arising from the inhalation of fibers establish that a worker can contract the disease long before she becomes disabled by it. That is the basis for the interaction between the coverage statute, S.C. Code Ann. §42-11-70, and the Statute of Limitations in S.C. Code Ann. §42-15-40, which does not begin to run until the worker has been diagnosed with the occupational disease and notified of the diagnosis. Rehearing or rehearing en banc is warranted to address the effective rewriting of the statute to void the Statute of Limitations enacted by the General Assembly.

BACKGROUND

Mesothelioma is a pulmonary disease that results from inhaling or ingesting microscopic asbestos fibers. Generally, it takes 10 to 60 years from the time of asbestos exposure until symptoms appear or mesothelioma is diagnosed. Asbestosis is a non-cancerous pulmonary disease that, like mesothelioma, only becomes evident some considerable time after a worker exposed to asbestos has contracted the disease. This time is called the latency period. Authorities have recognized that occupational illnesses in general and asbestos-related diseases, in particular, have long latency periods. "The most obvious injustice in the requirement that disability occur within a specified time of exposure occurs in the long-latency cases. In some such cases including, but by no means confined to asbestos-related diseases, disability may not manifest itself until twenty or thirty years after exposure." Vol. IV Lex K. Larson, Larson's Workers' Compensation §53.03 (Matthew Bender, Rev. Ed.) Larson further notes in South Carolina "claim must be filed within two years of diagnosis [§ 42-15-40]. But the disease must also be "contracted" within a year of exposure, or two years if pulmonary [§ 42-11-70]. *Id.* at §53.04[2].

WestPoint Home, LLC ("WestPoint") is the successor of an entity that purchased the assets, but not the liabilities, of WestPoint Stevens, Inc. ("WestPoint Stevens") in a bankruptcy sale in 2005. WestPoint Stevens was created by merger in 1988 when WestPoint Pepperell acquired J.P. Stevens's Abbeville, Calhoun Falls, Clemson, and Seneca plants. At that time, WestPoint Stevens became a self-insured employer under the Workers' Compensation Act. Uninsured employers are required to post security with the South Carolina Workers' Compensation Commission ("Commission") to fulfill the statutory requirement to maintain coverage for their employees. In 2003, WestPoint Stevens filed for Bankruptcy protection under Chapter 11 of the United States Bankruptcy Code. Shortly thereafter, it amended its existing letter

of credit to $1.8 million to continue operating as a self-insured employer in South Carolina. In 2005, after it was unable to confirm a reorganization plan, it liquidated its assets. A predecessor of WestPoint, an entity owned and controlled by American Real Estate Holding Limited Partnership, purchased some of those assets, including the Calhoun Falls, Clemson, and Seneca plants. WestPoint also collateralized West Point Stevens' various existing letters of credit, which included the 1.8-million-dollar letter of credit provided by WestPoint Stevens to the South Carolina Workers' Compensation Commission to cover its uninsured employer workers' comp liability for its South Carolina employees.

On August 15, 2005, WestPoint Stevens notified the commission that "workers' compensation liabilities asserted against WestPoint Stevens were not liabilities assumed by the Purchaser" and that "no further payments will be made with respect to workers' compensation claims asserted against WestPoint Stevens, Inc." Upon receipt of this notification, the Commission, following its regular procedure, drew down the security and deposited it with the State Treasurer.

After a non-jury trial on the matter the Circuit Court Judge ruled in the Commission's favor. West Point appealed Judge Lee's determination that the funds were negotiated correctly and held to protect injured workers. A three-member panel of this court reversed and remanded, finding inter alia, that S.C. Code Ann. §42-11-70 was a statute of repose which for all intents and purposes barred all occupational injury claims before the statute of limitations even began to run; that the Commission improperly retained funds in its earnest attempt to protect workers with serious occupational medical conditions which had been contracted, but were not yet disabling; and that the court should consider an award of pre-judgment interest, which the Commission

asserts is barred by sovereign immunity except in limited circumstances that are not applicable here.

The Commission believes that each of these conclusions misapprehended or misapplied the statutory scheme created by the General Assembly and thereby moves that the court reconsider its Order with a suggestion that the entire Court of Appeals hear the matter, en banc.

ARGUMENT

I. The Court's Interpretation of S.C. Code Ann. §42-11-70 Produces an Absurd Result that Eliminates Virtually Every Possible Claim for Mesothelioma and Other Respiratory Diseases Under the Occupational Disease Act.

S. C. Code Ann. §42-11-20 defines "Disablement" and "Disability." it provides "As used in this chapter, "disablement" means the event of an employee's becoming actually incapacitated..., because of an occupational disease, from performing his work in the last occupation in which he was exposed to the hazards of such disease. . . . The disablement and disability of an employee from an occupational disease shall be determined as provided in this chapter." This definition is consistent with the definition of disability in S.C. Code Ann. §42-11-20. S.C. Code Ann. §42-15-40 is the statute of limitations for workers' compensation claims. It provides that "for occupational disease claims, the two-year period does not begin to run **until the employee has been diagnosed definitively as having an occupational disease and has been notified of the diagnosis.**" [emphasis added]

The framework of the Code, articulated by the General Assembly, is logical and has been adopted by the Commission since the Occupational Disease Act was incorporated into the Workers' Compensation laws in 1949. First, a worker must be exposed to a substance that creates an additional risk of occupational injury. Second, the worker must contract the disease within two

years of exposure. Finally, the worker must be disabled by the disease and file a claim within two years after being definitively diagnosed and having been notified of the diagnosis. The statute recognizes that long-duration diseases have a latency period (the record here reflects that mesothelioma can have a latency period of more than forty years). That practice makes logical sense because otherwise, the Legislature included a meaningless statute of limitations in the Act. The Court's interpretation protects neither employers[1] nor employees under the Workers' Compensation scheme.

The General Assembly understands how to write a statute of repose. In §42-15-40 it did just that. "For a 'repetitive trauma injury" as defined in §42-1-172, the right to compensation is barred unless a claim is filed with the commission within two years after the employee knew or should have known that his injury is compensable **but no more than seven years after the last date of injurious exposure.** This section applies regardless of whether the employee was aware that his repetitive trauma injury was the result of his employment." S.C. Code Ann. §42-15-40 (2024 Supp.) [emphasis added].

The test for a statute of repose that the clause creates a substantive right in those protected [i.e. the employer] to be free from liability after a legislatively determined period of time". *See Capco of Summerville, Inc. v. JH Gayle Const. Co.*, 368 S.C. 137, 142 (2006); *see also* §42-15-40. The Legislature chose to include such explicit language, creating a statute of repose for repetitive trauma injuries, and did not include such language for occupational illnesses. This evinces a legislative intent that no statute of repose applies to occupational illness claims.

II. The Court Erroneously Reconstructed an Unambiguous Statutory Scheme in a Matter that Negates Clear Legislative Intent.

[1] It stands to reason that if the Workers' Compensation Act makes recovery impossible for a defined group of injured workers, its exclusivity will come into play as a matter of public policy.

"Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Yet that is exactly what the Court of Appeals did in this case. It did not find that §42-11-70 or any of its terms were ambiguous. Instead, it chose to change the statute by inserting words with clearly different meanings into its reading of the statute[2]. The Court appears not to have considered that disablement or death has a specific statutory definition. As used in Chapter 11 of the Workers' Compensation Act, "disablement" "means the event of an employee becoming actually incapacitated, partially or totally, because of an occupational disease, from performing his work in the last occupation in which injuriously exposed to the hazards of such disease". S.C. Code Ann. §42-11-20 (1976, as amended). More generally, the Workers' Compensation Act defines "disability" as "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment." S.C. Code Ann. §42-1-120 (1976, as amended). Both statutes focus on an incapacity to earn wages as the starting point for disability. Neither statute limits when the condition leading to disablement must be "contracted". The court should not have modified the definition of "disablement" under §42-11-20 to begin when the illness is "contracted" when the plain language of §42-11-20 does not warrant modification.

III. The Authorities the Court Relied On To Reinterpret the Meaning of S.C. Code §42-11-70, Do Not Support The Court's Reinterpretation of the Statute.

A detailed review of the authority cited to support the "statute of repose" assertion reveals that the cited authority does not support the conclusions that the Court derived from those

[2] No statute, dictionary, or thesaurus that we could find holds that contract or contracted is synonymous with death or disability.

decisions. Neither *Vespers v. Springs Mills, Inc.*, 276 S.C. 94 (1981), nor *Glenn v. Columbia Silica Sand Co.*, 236 S.C. 13 (1960) stands for the proposition that §42-11-70 is a statute of repose. In *Vespers,* Justice Ness reversed denial of a jurisdictional claim and held that the employee was entitled to compensation. Notably, the employee, was disabled from byssinosis some nine months after the employer hired her. She had worked 18 years in the textile industry for other employees. The court's decision there was in line with the statutory scheme abrogated by the Panel here.

Glenn did not deal with the claim itself, but rather with determining which carrier should pay the claim. The Court recognized that contracted and disabled were different concepts. It held "Section 72-253 declares the event to be treated 'as an injury by accident' to be not the contraction of the occupational disease, but 'disablement or death resulting from it'". *Glenn, supra* at 236 S.C. 21. These reported cases, as well as those cited by the Court's opinion at footnote 4 do not treat contracted and disabled as synonyms for the purpose of the Act. The panel implies that five of the Commission's decisions support its construction of §42-11-70, and two do not. However, a closer look at these prior decisions shows they do not support the court's conclusion that §42-11-70 is a statute of repose that bars all occupational illness claims two years after the last date of injurious exposure and/or last date of employment, except claims brought under Chapter 13 of Title 42, S.C. Code of Laws. Instead, they support the Commission's position that §42-11-70 is a coverage statute that articulates an element that must be met for a disease to become a compensable occupational illness, that the condition must have been "contracted" within one or two years of the last date of injurious exposure or employment. None holds that a claimant must become "dead or disabled" within one or two years from the last date of injurious exposure or employment to recover benefits under the Act. In *Rumsey v. Daniel Island Int'l*, 2003 WL 22380606, the Commission cited §42-11-70 to support its finding Claimant did not prove his last injurious

exposure to asbestos dust was during his employment with Defendants, and cited to *Vespers v. Springs Mills*, 276 S.C. 94, 275 S.E.2d 882 (1981). *Id.* at p. 7. The decision concluded that his disease had not been "contracted" within the time period under §42-11-70. The Commission did not hold that his claim was barred because he had not been "disabled" within two years of his last date of injurious exposure with Defendants. The Commission noted that the term "contracted" for purposes of §42-11-70 had never been definitively defined. The Commission noted that *Glenn* and *Vespers* defined "contracted" only in dicta and for the purposes of interpreting other provisions of the Workers' Compensation Act. *Id* at p. 8. The Commission noted *Glenn* referenced the predecessor of §42-11-70 while determining the time compensability began for purposes of filing a claim under the predecessor to §42-15-40. The Commission acknowledged "contracted" could not mean "last exposure" or "definitively diagnosed". The opinion illustrates that the Commission treated "last exposure," "contracted," "definitively diagnosed," and "disability" as distinct terms with separate meanings. *See id at* p. 9-10. The Commission held "'contracted' must mean, at the very least, that some event or occurrence demonstrating the existence of an occupational disease must take place within one to two years of a claimant's last exposure to the hazard which caused the disease." *Id* at p. 9. The Commission never held that the claimant must show some event or occurrence demonstrating "disablement or death" from the occupational disease within one to two years of last exposure.

Rumsey cited *Meyer v. Iowa State Penitentiary*, 476 N.W.2d 48 (Iowa Sup. 1991) as persuasive authority. In *Meyer* the Iowa Supreme Court interpreted a statute substantively similar to §42-11-70 and found that it was neither a statute of limitations or repose. Instead, it stated conditions that must exist before a right to compensation arises.[3] *Meyer* at 476 N.W.2d 60. The

[3] As the Commission has advised the Court, S.C. Code Ann. § 42-11-70 is a Coverage Statute

court explained "[l]ike a statute of limitations the section is grounded in time. Unlike a statute of limitations, however, it has nothing to do with when actions must be brought." *Id.* at 476 N.W.2d 60.

This is consistent with the South Carolina Workers' Compensation Act. The statute of limitations is codified at §42-15-40. Section 42-15-40 also contains a statute of repose for repetitive trauma injuries.[4] Noticeably absent from §42-15-40 is a statute of repose for injuries by accident or occupational illnesses. *Expressio unius est exclusion alterius.*

As the Court held in *Glenn*, the provisions of the Workers' Compensation Act, including §42-11-70 and §42-15-40, must be interpreted conjunctively in order to effectuate the full purpose of the Act. To that end, §42-11-70 sets forth an affirmative period of time during which compensability must accrue, and §42-15-40 sets forth a statutory period of limitation on the period of time within which a claim for compensation, which is otherwise compensable under §42-11-70, must be brought. *Rumsey,* at p. 14. Each of the other cases cited, were decided on a basis other than the theory that "contracted" and "disabled" are synonyms. In *Gibson v. Westinghouse Electric Corp*, 2007 WL 869985, the Commission found that Gibson did not contract his occupational disease within two years from his last date of employment under §42-11-70. It noted that §42-11-70 was a part of the burden of proof. The Commission found that Gibson's problems were related to his tobacco use and did not use the term "statute of repose".

In *Truax v. Daniel Construction*, 2009 WL 1433538, Truax sought coverage for asbestos-related occupational illness. He alleged he was exposed between 1969 and 1972 and became

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setting out a pre-requisite for an employee to establish a covered claim.

[4] ". . . the right to compensation is barred unless a claim is filed with the commission within two years after the employee knew or should have known that his injury is compensable but no more than seven years after the date of last injurious exposure." S.C. Code Ann. § 42-15-40 (2008 Supp.).

disabled in 2006. The Commission neither denied the claim on the grounds of statute of limitations nor on the grounds of statute of repose. Instead, it found no medical evidence supporting the finding that asbestosis was "contracted" within two years of last exposure, and that the claimant had not met the burden of proof required by §42-11-70. In *Bishop v. Westinghouse Electric Corp., 2007 WL 904837,* the commission did not apply §42-11-70, as it found that the claimant was totally and permanently disabled as a result of a non-work-related condition.

In *Bethea v. City of Myrtle Beach,* 2019 WL 742840 the Court of Appeals cited a single Commissioner's decision. The single Commissioner found §42-11-70 precluded a finding of compensability because the medical evidence indicated Claimant likely did not contract lung cancer within two years of his last date of employment. *Id* at 12. As the Commission did in other cases, the single Commissioner did not find §42-11-70 was a statute of repose, but rather that there was a failure of proof in coverage due to a lack of medical evidence.

Neither *Rumsey, Gibson, Truax, Bishop,* nor *Bethea* includes a holding that §42-11-70 "creates a substantive right in those protected to be free from liability after a legislatively determined of time" or rules the "expiration of the time extinguishes not only the legal remedy but also all causes of action, including those which may later accrue as well as those already accrued." *See, e.g., Capco,* supra 368 S.C. 137, 142 (2006). Instead, these cases support the Commission's position that §42-11-70 is a condition precedent that must be met, an element that must be satisfied in order for a disease to be covered by the Act as an occupational illness.

The *Powell v. Yeargin Const. Co.,* 2008 WL 5066354 and *Bowers v. Sea Island Staffing,* 2009 WL 1425599decisions further illuminate the Court's misapprehension of §42-11-70. In *Powell,* the Commission found this to be a compensable occupational illness claim despite the claimant's last date of employment, and thus last possible date of injurious exposure, was in 1986,

yet the Claimant was not "definitively diagnosed" with mesothelioma until 2006. In *Bowers*, the Claimant alleged he was exposed to asbestos fibers prior to his retirement in 1994. He was definitively diagnosed in October 2002. Claimant was awarded partial disability under §42-9-30 and Reg. 67-1101 for loss and or loss of use of each lung and sinus. *Bowers, Id. at p. 5.* The Commission held that §42-11-70 defines and discusses the time in which an occupational disease must have been contracted. The Commission noted "[a]sbestos-related lung disease often develops 20 years after exposure." *Bowers, Id at p. 4. Powell* and *Bowers* illustrate how the statutory scheme is correctly applied, showing that a disease can be contracted within one or two years of the last date of exposure but not definitively diagnosed until many years later. This is why the Commission believes, in good faith, that it needs to retain the security until all reasonable latency periods have passed.

IV. The Commission Does Not Benefit From Holding Defunct Self-Insured Employer's Funds. The Only Beneficiaries of those Funds are Workers who have Contracted Occupational Diseases and have Not Been Diagnosed.

The Workmen's Compensation Act should be given a liberal interpretation because the purpose of the Act is remedial and humanitarian. *Hines v. Hendricks Canning Co., et al.*, 263 S.C. 399, 211 S.E. (2d) 220 (1975); *Simpkins v. Lumbermens Mutual Casualty Co.*, 200 S.C. 228, 20 S. E. (2d) 733 (1942). The right to compensation under the Act is wholly statutory and subject to the restrictions contained therein. *Owens v. Herndon*, 252 S.C. 166, 165 S.E. (2d) 696 (1969). *Vespers v. Springs Mills, Inc.*, 276 S.C. 94, 96, (1981). This Court should interpret the statutes and acts of the Commission in accordance with that notion.

While the Panel's incorrect construction of the Workers' Compensation statutes would eliminate the possibility of any claim against WestPoint Stevens or its successor, a correct statutory interpretation leaves open the possibility of potentially numerous future claims. Since there is no

backup for a shortage of funds from a self-insured employer, such claims could not be paid, and the employees, who the Act is designed to protect, will suffer. The Court should reconsider any decision that would allow WestPoint to avoid being responsible for claims arising against it as a self-insured employer. Notably, WestPoint never objected to the negotiation of the letter of credit until almost eight years after it was drawn down. Had it not been negotiated, since it cannot be cancelled without the Commission's approval, the letter of credit would remain in place, thereby protecting West Point's employees. The decision ignores the plight of the employees that the statute was enacted to protect. As long as there is liability for potential claims, WestPoint is responsible for those claims. "All employers conducting business in South Carolina must secure the payment of compensation to their injured employees." S.C. Code Ann. §42-5-10 (2015). This may be accomplished either by purchasing workers' compensation liability insurance or by qualifying as a "self-insured" employer. To become self-insured, an employer must demonstrate to the Commission that it has the "financial ability to pay directly the compensation in the amount and manner and when due as provided" by the Act. S.C. Code Ann. §42-5-20 (2015)." *Patterson v. Witter*, 425 S.C. 213, 219 (2018).

Thus, in the event that the Court determines, as it should, that the possibility of claims remains from WestPoint's exposing its employees to microscopic asbestos fibers, it must either allow the Commission to retain the disputed funds or require WestPoint to post security according to its status as a self-insured employer under the Act.

V. The Court Misapprehended any Right to Prejudgment Interest and its Determination to Remand was Improper and Unnecessary

The Workers' Compensation Commission is an Agency of the State.

> It is well settled that the doctrine [of sovereign immunity] bars recovery of interest against the State "unless [the State has been] bound by an act of the Legislature or by a lawful contract of its executive officers ... Monarch Mills v. S.C. Tax C'n., 149 S.C. 219, 146 S.E. 870 (1929); see also, e.g., Div. of Gen. Serv. v. Ulmer, 256 S.C. 523, 183 S.E.2d 315 (1971)."
>
> In 1985, this Court prospectively abrogated the doctrine of sovereign immunity insofar as that doctrine had insulated state and local governments from tort liability. *McCall v. Batson*, 285 S.C. 243, 329 (1985). *McCall* included Appendix A, a list of 122 cases, and provided that these cases were "overruled to the extent that they hold that an action may not be maintained against the State without its consent." Although *Monarch Mills* and *Ulmer* are on that list, their holdings that the State is not liable for prejudgment interest except when bound by statute or by contract remain unaffected as the right to this interest is not a matter of tort liability.

C.J. Pleicones, concurring in *EllisDon Contsr., Inc. v. Clemson University,* 391 S.C. 552, 556, 557 (2011).

Since there is no lawful contract or act of the legislature which would afford WestPoint Home pre-judgment interest in this matter, the Court misapprehended the law in remanding the case for such a determination.

CONCLUSION

Based on the foregoing, this Court should grant Respondent's Petition, rehear the matter and substitute a new opinion affirming the Circuit Court's Order.

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IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Alison R. Lee
Circuit Court Judge

RECEIVED
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SC Court of Appeals

Appellate Case No. 2023-001663
Circuit Court Case No. 2014-CP-40-02496

South Carolina Workers' Compensation Commission, ... Respondent,

v.

WestPoint Home, LLC, ... Appellant.

PROOF OF SERVICE

I certify that I have served the Respondent's Petition for Rehearing with a Suggestion for Rehearing En Banc on WestPoint Home, LLC by deposition a copy of it in the mail in the United States Mail, postage prepaid, on October 1, 2025, addressed to their attorneys of record, Matthew Todd Carroll, 1221 Main Street, Suite 1600, Columbia, South Carolina and Herbert Beigel, 5641 N. Chieftan Trail, Tuscon, AZ 85750

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October 1, 2025

The South Carolina Court of Appeals

South Carolina Workers' Compensation Commission,
Respondent,

v.

WestPoint Home, LLC, Appellant.

Appellate Case No. 2023-001663

ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

C.J.

J.

J.

Columbia, South Carolina

cc:
Matthew Todd Carroll, Esquire
Herbert Beigel, Esquire
James Keith Roberts, Esquire

FILED
Nov 21 2025

Michael H. Montgomery, Esquire
The Honorable Alison Renee Lee

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Alison R. Lee
Circuit Court Judge

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South Carolina Workers' Compensation Commission, ... Respondent,

v.

WestPoint Home, LLC ..... Appellant.

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
South Carolina Workers' Compensation Commission, Plaintiff, vs. WestPoint Home, LLC, Defendant.	)	Docket No. 2014-CP-40-2496 **ORDER**

This matter came before this Court on Defendant WestPoint Home, LLC's ("WestPoint Home") Counterclaim for an accounting and award of excess cash collateral with interest. A bench trial was held on August 31, 2022. Appearing at the trial on behalf of the Plaintiff South Carolina Workers' Compensation Commission ("the Commission") were Carly Davis, Esq., Harley Kirkland, Esq., David Leggett, Esq., and Jared Libet, Esq. all from the South Carolina Attorney General's Office. Appearing on behalf of WestPoint Home were Todd Carroll, Esq. of Womble Bond Dickinson and Herbert Biegel, Esq. admitted *pro hac vice*. Based on the testimony and evidence presented during trial, and considering the law governing this dispute, the Court finds and orders as follows:

BACKGROUND

This case involves a dispute about entitlement to funds that WestPoint Home deposited in conjunction with its purchase of certain assets of the former WestPoint Stevens, Inc. ("WestPoint Stevens") out of bankruptcy proceedings in the Southern District of New York. WestPoint Stevens was a self-insured employer for purposes of workers' compensation liabilities in South Carolina. At the time WestPoint Home purchased the assets out of bankruptcy in 2005, it deposited $1.8 million with Bank of America to fund a letter of credit to secure payment of potential workers' compensation liabilities of WestPoint Stevens in South Carolina. The Commission withdrew the entirety of the $1.8 million deposit and transferred it to an account with the South Carolina Treasurer's Office.

HISTORICAL BACKGROUND

The interactions between the parties regarding WestPoint Home's deposit began with contact by WestPoint Home's then-General Counsel to the Commission seeking certain

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information as part of an overall goal for "a reduction in the Security Amount held by the State." Ex. 20, Letter from Fundler to Commission (Feb. 22, 2013).[1] The Commission responded that it was "unable to release the information you have requested." Ex. 21.

WestPoint Home, in turn, responded by explaining that the money was being used to pay claims for former WestPoint Stevens employees, it has a reversionary interest in the remainder of its deposit pursuant to an order of the bankruptcy court, and the repose period for any additional claims has closed. Ex. 22. The Commission responded that it still would not provide any of the requested information to WestPoint Home. Ex. 23.

To resolve the impasse, the Commission filed this Declaratory Judgment on April 17, 2014, seeking adjudication regarding whether WestPoint Home was entitled to receive the information it requested, arguing that the information was strictly confidential and could not be disclosed outside of the agency. WestPoint Home filed a counterclaim seeking a declaration that it is entitled to receive both the requested information and "all monies owed and improperly retained by the State." WestPoint Homes also seeks pre- and post-judgment interest.

The parties jointly moved to have this case referred to the Business Court, and agreed to bifurcate the case into two issues: (1) is Defendant entitled to access certain records and information maintained by Plaintiff, and (2) is Defendant entitled to recover certain monies that are currently in the custody of the State Treasurer. The parties briefed Issue 1, and the Court initially granted summary judgment in the Commission's favor on that issue. WestPoint Home sought reconsideration of that ruling. The Court issued an order requiring the Commission to disclose two pieces of information to WestPoint Home: (1) the number of open health care claims currently asserted against the funds being held by the Treasurer; and (2) the balance of the funds that remain on deposit. Order (July 3, 2019). The Commission complied and disclosed the information. The Commission still holds the bulk of WestPoint Home's deposit, and currently, there are no open claims.

WestPoint Home then sought additional information from the Commission, which it opposed. The Commission ultimately revealed that the data sought by WestPoint Home was in the custody of Key Risk, a third-party administrator that handled and adjusted claims for the Commission. Following that disclosure, WestPoint Home subpoenaed records from Key Risk,

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[1] All references are to the exhibits the parties jointly admitted at trial.

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without objection by the Commission. Key Risk produced records showing that the last payment made on any workers' compensation claim from a former WestPoint Stevens employee was May 7, 2008. Thereafter, discovery was conducted by the parties regarding any claims and payment as well as actuarial information calculating the amount of surety required of self-insured employers to pay claims.

Upon review of the full record and the relevant law, the Court finds as follows:

FINDINGS OF FACT[2]

1. WestPoint Stevens was a textile manufacturer with facilities in South Carolina, initially known as WestPoint Pepperell. On May 6, 1988, WestPoint Pepperell acquired four plants from J.P. Stevens, the merger of which became WestPoint Stevens: Abbeville, Calhoun Falls, Clemson, and Seneca.

2. Prior to that acquisition, the employees at the J.P. Stevens plants were insured for workers' compensation claims through private insurance, and injuries to J.P. Stevens employees that occurred prior to the acquisition continued to be covered by insurance. WestPoint Pepperell, on the other hand, was self-insured for purposes of workers' compensation claims. The combined company, WestPoint Stevens, was a self-insured employer for workers' compensation purposes.

3. The Commission requires companies that self-insure for workers' compensation claims to provide sufficient surety for potential claims. The Commission does not have any actuaries on staff and therefore, uses the following actuarial formula for calculating the surety requirement: The average annual claims paid for the last three years, multiplied by a factor of 1.5, and then rounded to the next highest $50,000.

4. According to Gary Cannon, the Commission's Executive Director, the actuarial formula for calculating the surety amount is the same for bankrupt and non-bankrupt companies. The Commission's actuarial formula is specifically designed to set a surety "at a level sufficient to pay all claims in the event of an insolvency." Ex. 9.

5. In 1997, the Commission's actuarial formula yielded a surety requirement of $1.4 million for WestPoint Stevens. Ex. 9. WestPoint Stevens and the Commission entered into a

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[2] To the extent any finding of fact listed herein indicates it is a conclusion of law, it shall be treated as such. And to the extent any conclusion of law indicates it is a finding of fact, it shall be treated as such.

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"Memorandum of Understanding" that allowed WestPoint Stevens to post a letter of credit with NationsBank to secure payment for potential workers' compensation claims. See Ex. 13.

6. The Memorandum of Understanding provided, in pertinent part:

> . . .
>
> 3. If the Commission is notified that the Letter of Credit is being cancelled or will not be renewed and a new letter of credit or surety bond acceptable to the Commission is not filed with the Commission, the Commission may, at its discretion, draw on the Letter of Credit.
>
> 4. The Commission may, at any time, draw on the Letter of Credit if needed to pay any workers' compensation claim and claims administration expenses which are the responsibility of the Employer.
>
> 5. All proceeds drawn on the Letter of Credit shall be deposited with the State Treasurer.
>
> . . .

Ex. 13.

7. The letter of credit was issued by NationsBank (now Bank of America) in the amount of $1.4 million. Ex. 12.

8. In 2003, WestPoint Stevens filed for Chapter 11 bankruptcy, Case No. 03-13532 (RDD) (Bankr. S.D.N.Y.). Following that filing, the Commission sent a letter to WestPoint Stevens indicating that its surety for workers' compensation claims would increase to $1.8 million. WestPoint Stevens amended its existing letter of credit to increase the amount to $1.8. million. Exs. 14, 15.

9. WestPoint Stevens was unable to confirm a reorganization plan and liquidated its assets instead of reorganizing. *See generally In re WestPoint Stevens, Inc.*, 600 F.3d 231, 236–37 (2d Cir. 2010) (describing the history of WestPoint Stevens's bankruptcy proceedings).

10. WestPoint Home was the successful bidder during the bankruptcy sale. The parties entered into an Asset Purchase Agreement in which WestPoint Home purchased only the assets of WestPoint Stevens's out of the bankruptcy process. Ex. 17. In South Carolina, WestPoint Home purchased the Calhoun Falls, Clemson, and Seneca plants, all of which were former J.P. Stevens facilities.

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11. WestPoint Stevens ceased business on August 8, 2005.[3]

12. As a condition of its purchase of assets out of bankruptcy, WestPoint Home agreed to deposit up to $35 million to collateralize WestPoint Stevens's various existing letters of credit which included the $1.8 million letter of credit WestPoint Stevens provided to the Commission to cover potential workers' compensation claims in South Carolina.

13. On August 15, 2005, WestPoint Stevens sent a letter to the Commission indicating that its assets had been purchased by "an entity owned and controlled by American Real Estate Holding Limited Partnership (the 'Purchaser')," that "workers' compensation liabilities asserted against [WestPoint Stevens] were not liabilities assumed by the Purchaser," and "no further payments will be made with respect to workers' compensation claims asserted against WestPoint Stevens Inc." Ex. 25.

14. The Asset Purchase Agreement provided that WestPoint Home was depositing its cash with the understanding that it retained the "right to receive back any portion" of that money that was not used. Ex. 17, p. 22. On August 17, 2005, the Commission withdrew the entire $1.8 million deposit to cover any potential claims because WestPoint Stevens was a self-insured entity with no ability to pay any claims made by its employees after the bankruptcy. See Ex. 37.

15. At the time the Commission withdrew the letter of credit, approximately 45 claims against WestPoint Stevens were open and pending. Exs. 36, 37. WestPoint Home had disclaimed liability for workers' compensation claims brought by the former employees of WestPoint Stevens. The funds withdrawn by the Commission are the only funds available to the Commission for the ongoing claims and any future claims.

16. The Commission hired Key Risk to adjust and administer workers' compensation claims by former WestPoint Stevens employees. The Commission followed the same procedure utilized when bankruptcies occurred with other employers. The Commission transferred $500,000 to Key Risk to pay claims of former WestPoint Stevens employees in September 2005 and an additional $500,000 in April 2006.

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[3] From the record, it does not appear that WestPoint Home retained a list of employees of WestPoint Stevens.

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17. Key Risk did not need all of the funds sent in the April 2006 transfer. Once it completed administering claims by former WestPoint Stevens employees, Key Risk returned $364,512.49 to the Commission.

18. The principal remaining from WestPoint Home's deposit is $1,164,512.39 which has not changed since 2008.

19. Since the last ongoing claims against WestPoint Stevens were closed by Key Risk, no additional funds have been spent. Four claims of asbestosis were brought by former WestPoint Stevens workers in 2011; however, these workers all alleged exposure from working at a manufacturing plant in Whitmire, and this plant was not covered by these self-insured funds. Exs. 32-35.

20. At least three lawsuits were filed against WestPoint Home seeking compensation for asbestos-related illnesses, but none of these plaintiffs asserted claims for workers' compensation. Exs. 41, 42, 44. WestPoint Home was dismissed without prejudice from two of these lawsuits. Exs. 43, 45. The Commission continues to hold the money because it is concerned that claims for asbestos-related illnesses may be asserted in the future.

21. There has not been a new claim since June 21, 2006. The last payment from the money deposited was May 7, 2008, in the amount of $45.41.

22. As of August 12, 2022, the balance on the account was $1,711,617.08, which includes the principal remaining from the letter of credit deposited by WestPoint Home as well as earnings accumulated while held by the State Treasurer. There are no open claims.

23. Christopher Burkhalter, testified on behalf of the Commission, and opined that the likelihood that a former WestPoint Stevens employee may contract an illness due to asbestos exposure "will not be known for many years to come" because of the latency period associated with asbestos-related illnesses. Ex. 50.

24. Brian Johnson, an actuary retained by WestPoint Home, prepared a report that applied the Commission's own actuarial formula to the historical data associated with claims from former WestPoint Stevens employees. Utilizing the Commission's actuarial formula, Johnson's opinion is no surety had been needed since 2012, because there has been no payment on a claim since 2008. Ex. 51.

25. The last year in which the Commission's actuarial formula reflects that any surety is needed for potential claims by former WestPoint Stevens employees was 2011. Using the

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Commission's actuarial formula for calculating any surety based upon the historical claims data, the surety needed for potential claims was $50,000. See Ex. 31. Beginning in 2012, the surety amount decreased to $0.00, as there were no claims paid in the previous three years, and thus, a three-year average is zero. The actuarial calculations are undisputed by both parties.

26. The funds held by the Commission have earned interest every year since 2005, and continue to earn interest. These funds may only be used to pay future workers' compensation claims by former employees of WestPoint Stevens, and not any administrative uses by the Commission. If these funds are exhausted, no other funds are available to pay eligible workers' compensation claims.

CONCLUSIONS OF LAW

WestPoint Home has advanced two primary arguments in support of its request that this Court order the Commission to return the remaining funds. First, WestPoint Home argues that the Commission improperly withdrew the entire amount secured by the letter of credit, as opposed to only those funds needed to pay actual, ongoing claims. Second, WestPoint Home argues that the statute of repose has run on any future claims for asbestos-related illnesses by former WestPoint Stevens workers; and therefore, the Commission has no justification to continue to hold these funds.

1. DRAW DOWN OF THE LETTER OF CREDIT

The Commission did not act improperly when it drew down the entire letter of credit in 2005. The Commission's actions were consistent with the Memorandum of Understanding between the Commission and WestPoint Stevens as well as its governing regulations. Irrevocable letters of credit are one way in which a prospective self-insured may comply with the Commission's requirements. Regulation 67-1507 governs such letters of credit. This regulation states: "When the self-insurer fails to replace the letter of credit with another accepted proof of compliance, the Commission may demand payment of the letter of credit and deposit the proceeds in the South Carolina State Treasurer's Office to guarantee payment of any claim occurring during the self-insured period." S.C. Code Regs. § 67-1507(D)(4). Further, "[t]he Commission may exercise the letter of credit at any time if the proceeds are needed for payment of a claim that occurred during the self-insured period." S.C. Code Regs. § 67-1507(D)(5). "Regulations authored by the legislature have the force of law." *Goodman v. City of Columbia*, 318 S.C. 488, 490, 458 S.E.2d 531, 532 (1995)(citing *Faile v. S.C. Employment Security Commission*, 267 S.C.

536, 230 S.E.2d 219 (1976)). As noted above, the Memorandum of Understanding between WestPoint Stevens and the Commission contains similar language and permits the Commission to draw down the letter of credit in response to a cancellation or a non-renewal or if needed to pay workers' compensation claims. *See* Ex. 13.

In this case, provisions in the Memorandum of Understanding and state regulations were triggered. In August 2005, WestPoint Stevens informed the Commission that no further payments would be made with regard to workers' compensation claims asserted against it. At that time, there were several dozen active claims. The Commission was unquestionably entitled to draw down funds to pay those claims. While WestPoint Home takes issue with the Commission's decision to draw down the entirety of the letter of credit, WestPoint Home provided no evidence that the Commission knew how much money was needed to satisfy these claims. In fact, the evidence demonstrated that the Commission's initial estimate of $500,000 was insufficient.

Furthermore, WestPoint Home lodged no contemporaneous objection to the Commission's decision to draw down the entire amount, even though by that point WestPoint Home had taken ownership of the assets of WestPoint Stevens. WestPoint Home did not contact the Commission regarding this issue for several years. As noted earlier, even after the pending claims were fully paid, the Commission exercised reasonable judgment in retaining the balance of the funds. The Commission reasonably believed that future claims for asbestos-related illnesses were quite possible and such claims have an exceptionally long latency period. Further, these funds were the only remaining money from which to pay workers' compensation claims once the Commission was notified that no further payments would be forthcoming.

Additionally, the Commission appropriately drew down the full amount of the letter of credit because it was entitled to treat the August 2005 letter as a cancellation or revocation of the letter of credit. While the August 2005 letter did not specifically cancel the letter of credit, it likewise not did not specify that the letter of credit would remain in force. The pronouncement in the last sentence that "no further payments will be made with respect to workers' compensation claims asserted against WestPoint Stevens Inc." certainly indicated to the Commission that the letter of credit was ending. The testimony at trial also reiterated and supported the action. *See* Tr. Trans. p. 57-58 ("... [W]e were notified that they were not going to be responsible for their payment of Workers' Compensation claims anymore, and they were not going to renew the letter of credit; and so, therefore, we drew down on the letter of credit.") WestPoint Home offered no

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evidence to contradict the Commission's interpretation of this language. Because both the Memorandum of Understanding and Regulation 67-1507(D)(4) authorized the Commission to draw down the entire letter of credit upon notice of non-renewal, this action was fully justified.

2. RETENTION OF THE BALANCE OF THE LETTER OF CREDIT

WestPoint Home also argues that the Commission has no justification to keep these funds, as any claims for asbestos-related illnesses brought by a former WestPoint Stevens worker would be barred now by the statute of repose found in the South Carolina Workers' Compensation law:

> Neither an employee nor his dependents shall be entitled to compensation for disability or death from an occupational disease, except that due to exposure to ionizing radiation, unless such disease was contracted within one year after the last exposure to the hazard peculiar to his employment which caused the disease, save that in the case of a pulmonary disease arising out of the inhalation of organic or inorganic dusts the period shall be two years.

S.C. Code Ann. § 42-11-70. The term "contracted" has been defined in occupational diseases cases as "disablement or death." *Vespers v. Springs Mills, Inc.*, 276 S.C. 94, 97, 275 S.E.2d 882, 884 (1981) (citing *Glenn v. Columbia Silica Sand Co.*, 236 S.C. 13, 112 S.E.2d 711 (1960)). To accept WestPoint Home's argument would render this statute meaningless, as any occupational disease claims would already be excluded by the statute of repose. WestPoint Home's argument misapprehends the difference between the statute of repose and the statute of limitations. The relevant statute of limitations provides:

> The right to compensation under this title is barred unless a claim is filed with the commission within two years after an accident, or if death resulted from the accident, within two years of the date of death. However, *for occupational disease claims the two-year period does not begin to run until the employee concerned has been diagnosed definitively as having an occupational disease and has been notified of the diagnosis.*

S.C. Code Ann. § 42-15-40. Emphasis added.

"[T]he purpose of … statutes of repose 'is to protect the employer against claims which, due to the passing of time, can no longer properly be investigated and defended.'" *Matthews v. E.I. du Pont de Nemours & Co.*, 2018 WL 5978111 (D.S.C. Nov. 13, 2018). However, "Workers' Compensation laws were intended by the legislature to relieve workers of the uncertainties of a trial for damages by providing sure, swift recovery for workplace injuries regardless of fault. To

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give effect to this legislative intent, workers' compensation statutes are construed liberally in favor of coverage." *Peay v. U.S. Silica Co.*, 313 S.C. 91, 94, 437 S.E.2d 64, 65 (1993) (internal citations omitted). "Code provisions relating to occupational diseases should be construed together and in relation to the other provisions of this title." *Vespers*, 276 S.C. at 97, 275 S.E.2d at 884. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. . . . What a legislature says in the text of the statute is considered the best evidence of the legislative intent or will." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (internal citations omitted).

In addition to the aforementioned legal authority, the Commission itself has interpreted, in a number of cases, the application of both Sections 42-11-70 (statute of repose) and 42-15-40 (statute of limitation). In *Truax v. Daniel Construction*, the Appellate Panel reversed the Single Commissioner's determination that Claimant met his burden to prove that he sustained a compensable occupational disease. The Single Commissioner determined that Claimant "contracted" the occupational disease within two years of his last exposure in 1972 pursuant to Section 42-11-70. On appeal, the Appellant Panel determined there was no medical evidence to support that Claimant, pursuant to the statute, "contracted" the disease within two years. The evidence demonstrated that Claimant contracted the disease 32 years after his last exposure not within the two years as required by Section 42-11-70. The Appellate Panel held that in the absence of medical evidence supporting the Single Commissioner's conclusion that Claimant contracted the occupational disease within two years of his last exposure in 1972, the occupational disease claim was not compensable. *Truax v. Daniel Construction, et. al*, 2009 WL 1433538 (S.C. Work. Comp. Comm., Mar. 27, 2009); *see also Bishop v. Westinghouse Elec. Corp.*, 2007 WL 904837 (S.C. Work. Comp. Comm., Jan. 24, 2007) (finding that Claimant's lung disease was not caused by exposure during his tenure at Westinghouse and that he contracted the disease outside the statutory two-year period in Section 42-11-70); *Gibson v. Westinghouse Elec. Corp.*, 2007 WL 869985 (S.C. Work. Comp. Comm., Jan. 24, 2007) (companion case to *Bishop*); *Bethea v. City of Myrtle Beach*, 2019 WL 7424839 (S.C. Work. Comp. Comm., Dec. 13, 2019) (finding that Claimant did not contract lung cancer within two years of his last exposure because of a lack of supporting medical evidence). In these cases, the determination was based on when the disease was contracted, not when the claimant became aware of the diagnosis.

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In *Powell v. Yeargin Construction*, the Appellate Panel affirmed the Single Commissioner's determination that Claimant's mesothelioma was caused by his exposure to asbestos during his employment and that the medical evidence supported the conclusion that he contracted the disease within two years of last exposure. Powell's last exposure to asbestos occurred in 1983; however, he was not notified of his diagnosis until 2006. Medical testimony established that an increase in cell division and other changes occur within weeks of exposure. Therefore, his claim was ***not*** barred under Section 42-11-70. *Powell v. Yeargin Construction*, 2008 WL 5066354 (S.C. Work. Comp. Comm., Oct. 29, 2008). Under WestPoint Home's theory, Powell would have no right to any workers' compensation benefits.

Similarly, in *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999), the South Carolina Court of Appeals affirmed the Commission's determination that the claimant's hepatitis C and aplastic anemia were compensable occupational diseases holding, *inter alia*, that the claimant satisfied both the statute of repose and the statute of limitations for occupational diseases. In *Muir*, the claimant was diagnosed with Hepatitis C on April 21, 1992 and filed his claim with the Commission less than one year later, on March 30, 1993. He therefore satisfied the two-year statute of limitations under Section 42-15-40. *See* 366 S.C. at 296, 519 S.E.2d at 598. The claimant also satisfied the statute of repose in Section 42-11-70 because his last exposure occurred in August of 1992. *See* 366 S.C. at 294-95, 519 S.E.2d at 597-98. In its analysis, the Court of Appeals utilizes the term "exposure" and seems to equate it with the term "contracted." However, the facts indicate that the claimant tested positive for the hepatitis C antibodies in April 1992. The best reading of the Court's language is that, in its opinion, the laboratory results were sufficient medical evidence indicating that the claimant contracted the disease around the date the test results were available, which was within two years of the claimant's last exposure. *Powell* and *Muir* both demonstrate the flaws in WestPoint Home's argument and demonstrate it is perfectly conceivable that a claimant suffering from a latent injury will satisfy both the statute of repose and the statute of limitations and ultimately recover benefits under the Workers' Compensation Act.

The legislative intent behind both Section 42-15-40 (the statute of limitations) and Section 42-11-70 (the statute of repose) is clear and unambiguous. In order to bring a claim for occupational disease, a claimant must file a claim within two years of a definitive diagnosis and notification of that diagnosis of an occupational disease. Under the statute of repose, a claimant

must also prove that the disease was "contracted" within two years of last exposure to the hazardous condition. While this may narrow the pool of potential successful claims, it does not eliminate it.

The import of cases, like *Truax*, *Bishop*, *Gibson*, and *Powell*, is that a judicial determination must be made by a Workers' Compensation Commissioner, based upon medical evidence at a hearing, as to whether a claim is brought within the statute of limitations and the statute of repose periods. These cases are evidence that a quasi-judicial body is exercising its authority to determine facts and law as presented in varying individual cases. While the Commission is bound by the decisions made by the courts, it is not bound by its own precedent. Potential future cases may present different outcomes. It is entirely possible that the Commission will be required to utilize the funds held by the State Treasurer to satisfy claims brought by the former workers of WestPoint Stevens.

Neither the trial testimony nor WestPoint Home's expert report support WestPoint Home's contention that there is no possibility of *future* claims. WestPoint's expert, Brian Johnson, ACAS, MAA, ARM with Risk International Actuarial Consulting, provided a report opining that based upon the documents from Key Risk and the actuarial formula calculating the surety requirements for self-insurers, the "required surety for this self-insured entity is $0.00, and that it has been $0.00 since 2012." Ex. 51, p. 5.[4] Mr. Johnson bases his report on documents from Key Risk that show no claims have been made in the past three years and currently there are no open prior claims. Exs. 30, 31. The Commission and WestPoint Home do not dispute that the last payment from the fund occurred in 2008. Ex. 31. Johnson's report fails to address predictions for the likelihood of future claims, especially potential claims arising from asbestos considering its latency period after exposure.

The report and testimony from the Commission's expert, Mr. Christopher J. Burkhalter, FCAS, MAA with The Burkhalter Group Consulting Actuaries, addresses these deficiencies. Mr. Burkhalter's report cites statistical evidence from the American Academy of Actuaries indicating that "asbestos exposure is conclusively linked to several medical conditions." The average latency periods for these diseases range from 10 to 50 years." Ex. 50, p. 2. According to his report, six South Carolina WestPoint Stevens locations were "included on a list of jobsites where asbestos

[4] Mr. Johnson did not testify at trial.

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exposure was known to have occurred" and according to Commission records, 24 workers' compensation claims have been filed citing lung damage or asbestos exposure as the cause of injury. Ex. 50, p. 3. Mr. Burkhalter testified that the average latency period of work exposed mesothelioma is 43.4 years. Trans. p. 102, 107. For example, if a 20-year-old, working for WestPoint Stevens at the time of its bankruptcy in 2005 contracted mesothelioma, "there would only be a 96.8% chance that the disease *would not* have manifested" as of the day of the trial. Trans. p. 108. While Burkhalter was unable to quantify the probability of a claim being filed, his report indicates that many people were exposed and that it "is very, very likely that sitting here today, we wouldn't know about it." Trans. p. 109. In his opinion, the lack of claims in recent years has little bearing on the potential for future claims. Trans. p. 109, 110.

The Commission's expert report and testimony presents the possibility of latent future claims with varying degrees of success depending on when a claimant is found to have contracted the disease, when they were notified of their diagnosis, and when a claim is filed. WestPoint Home does not refute this evidence. Though "[t]he court is not required to accept undisputed evidence as establishing the truth where there is reason for disbelief," there is little reason to doubt the statistics presented by the Commission's expert because they are consistent with a general understanding of the latency period for asbestos claims. *See Johnson v. Painter*, 279 S.C. 390, 392, 307 S.E.2d 860, 861 (1983). The testimony regarding the status of latent injury claims filed in the past and the date that the statute of limitations and statute of repose have run is not evidence of the probability of future claims, only evidence that some claims will not qualify for payment. *See* Trans. p. 40, 41, 48, 49. Whether a claim is brought within the statute of limitation and/or the statute of repose period is a determination for the Commission's hearing officers and the courts.

WestPoint Home has not met its burden to prove that the funds held in trust by the State Treasurer, conclusively, will not be needed to satisfy future claims. At this point, determining there is no possibility of a successful future claim is against the weight of the evidence presented at trial. The inability to determine the identity of the employees at the time of the merger only exacerbates the uncertainty of claims. In the absence of statistical evidence quantifying the likelihood of future claims, it would be improper to speculate or determine whether all or even part of the funds should be returned.

Although the Commission is entitled to retain the funds at issue for workers' compensation claims involving those employees of WestPoint Stevens, the Court and the parties here recognize

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that these funds will not be needed forever. Unfortunately, neither WestPoint Home nor the Commission possess a list of potentially eligible WestPoint Stevens' employees; therefore, there is no certainty regarding when the last possible claim expires.

The issues presented in this case may arise again. Primarily, the worker will have to establish that his or her claim meets the requirements of both the statute of repose and the statute of limitations. The Commission may need to develop and establish policies and procedures to govern the ultimate disposition of the money held in the account. Further, although WestPoint Home only purchased the assets of WestPoint Stevens, it continued to transact business. Thus, the parties collectively must establish some policy or procedure to determine the identity of the former employees of the WestPoint Stevens plants who were employed at the time WestPoint Stevens ceased to exist.

ORDER

Based on the evidence presented at trial, the arguments of the parties, and the applicable law, this Court **DECLARES AND ORDERS** that the Commission is entitled to hold and administer the funds held by the State Treasurer for the purpose of paying any future claims arising out of exposure to asbestos as a result of employment with WestPoint Stevens. Any claims for payment related to such exposure must establish that the disease or medical condition was contracted within two years of last exposure as required by the applicable statute of repose. Further, after such revelation, any claims must also be filed within the statute of limitations as set forth in the South Carolina Code.

To the extent there are any remaining outstanding motions regarding procedural or substantive issues in this case, they are **DENIED**.

AND IT IS SO ORDERED.

Electronic signature to follow

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Richland Common Pleas

Case Caption: South Carolina Workers Compensation vs Westpoint Home LLC

Case Number: 2014CP4002496

Type: Order/Other

IT IS SO ORDERED!

s/ Alison Renee Lee

Electronically signed on 2023-09-25 09:11:56 page 15 of 15

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGM T IN A CIVIL CASE

CASE NUMBER: 2014CP4002496

South Carolina Workers Compensation
PLAINTIFF(S)

Westpoint Home LLC
DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ **Judge Code** _____ **Date** _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ **day of** _____, **20** _____ and a copy mailed first class or placed in the appropriate attorney's box on this 17 December 2014 to attorneys of record or to parties (when appearing pro se) as follows:

T. Parkin C. Hunter

Matthew Todd Carroll

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

SCANNED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
South Carolina Workers' Compensation Commission,	)	Civil Action No. 2014-CP-40-2496
Plaintiff,	)	
vs.	)	CONSENT SCHEDULING ORDER
WestPoint Home, LLC,	)	
Defendant.	)	

RICHLAND COUNTY FILED
2014 DEC 17 AM 9:30
JANETTE W. HARRIET C.C.P. & G.S.

The parties agree that there are two key issues in this matter:

(1) Whether Defendant is entitled to access certain records and information maintained by Plaintiff; and

(2) Whether Defendant is entitled to recover certain monies that are currently in the custody of the State of South Carolina.

Pursuant to Rule 16 of the South Carolina Rules of Civil Procedure, the parties move, and the Court so orders, that the following deadlines shall govern discovery and dispositive motions regarding Issue 1:

1. Discovery shall be completed no later than March 1, 2015. All discovery requests related to this issue shall be served in time for the responses thereto to be served by this date.

2. All motions, except those to complete discovery, those nonwaivable motions made pursuant to Rule 12 of the South Carolina Rules of Civil Procedure, and those relating to the admissibility of evidence at trial, shall be filed on or before April 1, 2015.

SCANNED

The parties agree, and the Court so orders, that discovery and dispositive motions regarding Issue 2 shall be governed by a subsequent scheduling order, which shall be entered after consultation of the parties.

The Court may amend the above-stated deadlines upon motion of either party for good cause shown, or on its own.

And it is so ordered.

The Honorable Alison R. Lee
Circuit Court Judge
Judge of the Business Court Pilot Program

December 11, 2014
Columbia, South Carolina

ELECTRONICALLY FILED - 2019 Apr 26 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2014CP4002496

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	)	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
South Carolina Workers' Compensation Commission, **Plaintiff** **v.** **WestPoint Home, LLC.,** **Defendant.**	)	**DOCKET NO. 2014-CP-40-02496** **ORDER**

This matter comes before the Court on a motion for summary judgment filed on April 1, 2015 by the South Carolina Workers' Compensation Commission (the "Commission") on the first stage of this bifurcated case. A hearing was conducted on November 23, 2015. Present at the hearing were Parkin Hunter, Esq. and Jared Libet, Esq. on behalf of the Commission and Todd Carroll, Esq. and Herbert Beigel, Esq. on behalf of WestPoint Home, LLC. ("WestPoint" or "Defendant").

PROCEDURAL BACKGROUND

The Commission filed its Complaint on April 17, 2014, pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10 through § 15-53-140 and Rule 57, SCRCP. The Complaint was filed in response to ongoing requests made to the Commission by WestPoint for certain records ("Records") of WestPoint Stevens, Inc. ("WPS"). WestPoint filed its Answer and Counterclaim on May 22, 2014, wherein WestPoint asked this Court to give it access to the following which constitute the Records at issue:

(1) the last five years of loss runs for open claims;
(2) the 2011 actuarial report undertaken for the State;
(3) the developed discounted loss reserves and confidence level projections for the WPS component of the 2011 actuarial report; and
(4) an accounting of the use of the $1,800,000 and any balance remaining on a letter of credit posted by WPS as a self-insurer under the Workers' Compensation Laws of South Carolina.

A Consent Scheduling Order filed on December 17, 2014 (the "Scheduling Order"). In compliance with the Scheduling Order, all discovery with regard to the first issue below has been timely completed and the Commission hereby is timely filing this Motion. As set forth in the Scheduling Order, the two key issues in this matter are: (1) Whether WestPoint is entitled to the

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Records and (2) Whether WestPoint is entitled to recover certain monies that are currently in the custody of the State of South Carolina.

The parties agreed to bifurcate the issues; first, to resolve the issue of WestPoint's entitlement to the Records and. then to determine any issue relating to money. At this point in this litigation, the dispute is a purely legal issue regarding whether WestPoint is entitled under South Carolina law to receive the Records. If WestPoint is entitled to the Records, then this case will move to the second stage after the parties engage in further discovery to determine the actuarial and compensation issues in this case. The Commission, in proceedings before this Court, states that there is no 2011 actuarial report. Thus, the records requested in items 2 and 3 are moot. WestPoint is seeking information from the Commission to enable it to determine whether any portion of the $1.8 million ("$1.8M") described hereafter and posted as security for worker compensation claims should be returned based upon its claim that any residual funds are an asset of WPS. The question of whether any money is refundable or whether substitute security for any potential claims may be posted would be determined in Stage 2.

This Order addresses the Records and WestPoint access to those records. After hearing the arguments and reviewing the files, legal memoranda, and exhibits, summary judgment is granted in favor of the Commission denying WestPoint access to the records (as currently requested). It is premature to determine any issues relating to Stage 2.

FACTUAL BACKGROUND

In 1998, several years before filing for bankruptcy protection, WPS entered into an agreement with the Commission under which WPS agreed to be a self-insured business with respect to workers' compensation claims by posting a letter of credit in the amount of $1.4 million. See Memorandum of Understanding. NationsBank, N.A. (now known as Bank of America) issued the letter of credit. See Standby Letter of Credit. In August 2003 approximately two months after WPS commenced bankruptcy proceedings, the Commission directed WPS to increase its credit amount by $400,000, resulting in an amended letter of credit for $1.8 million. See Amendment to Standby Letter of Credit.

Because Bank of America was responsible for this $1.8M, among other obligations, in the event of a default by WPS, and because WPS was already in bankruptcy proceedings, the Bank sought security for this letter of credit as part of the bankruptcy sale. Accordingly, on

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August 8, 2005, WPH, WPS, and Bank of America entered into a Cash Collateral Control Letter Agreement.

Through that agreement, WPH agreed to deposit cash into an account with Bank of America to be used to cover certain of WPS's obligations, including its letter of credit with the Commission. In so doing, the parties expressly acknowledged that WPH "has assumed the Obligations from Borrowers, and agrees that it shall be liable to Bank of America for all of the Obligations." See Cash Collateral Control Letter Agreement at 1. Shortly thereafter, the Commission drew the entire $1.8 million of WPH's cash collateral. Workers' Compensation Commission Reply to Counterclaim ¶32.

In February 2013, WPH's General Counsel and Corporate Secretary wrote to the Commission to request information associated with the Commission's use of the $1.8M it drew, including an accounting of how much had been disbursed and actuarial reports that would project how much of those monies should remain in reserves. Letter from Yevgeny Fundler to W.C. Smith (Feb. 22, 2013).

The Commission responded by refusing to provide any of the requested information, taking the position that only WPS could access the requested information. Letter from J. Keith Roberts to Yevgeny Fundler (Sept. 10, 2013). WPH wrote the Commission a second letter, this time providing additional background and materials. Letter from Yevgeny Fundler to J. Keith Roberts (Oct. 15, 2013). The agency again refused to disclose any materials or information. Letter from J. Keith Roberts to Yevgeny Fundler (Nov. 19, 2013).

WPS was self-insured under the South Carolina Workers' Compensation Act (the "Act"). As a self-insurer, WPS provided irrevocable letters of credit issued by Bank of America as security for its obligations to cover claims for employee injuries compensable under the Act. On or about June 1, 2003, WPS and certain affiliates filed a Chapter 11 bankruptcy proceeding in the Southern District of New York: In re WestPoint Stevens Inc., et al., Chapter 11 Case No. 03-13532 (RDD). On or about June 23, 2005, WPS and associated entities entered into an Asset Purchase Agreement wherein Textile Co., Inc., WestPoint's predecessor, purchased the enumerated assets of WPS and its affiliated entities. Ultimately, these assets became the property of WestPoint.

As part of the Asset Purchase Agreement, WestPoint cash collateralized all outstanding letters of credit, including those related to workers' compensation. By agreement, WestPoint

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posted a $1.8M irrevocable letter of credit with Bank of America listing the Commission as beneficiary. After approval of the bankruptcy plan by the court and subsequent communication from WestPoint confirming that WestPoint would not be responsible for any future claims, the Commission drew the entire amount of the letter of credit on August 17, 2005, to secure any claims and potential claims for workers' compensation. The money was transferred to the South Carolina State Treasurer.

WestPoint notified the Commission that it would not be responsible for any workers' compensation claims arising from any employment related to WPS and that it had purchased appropriate insurance to cover any worker employed by WestPoint effective with the transition. Thus, according to WestPoint, it had no liability or responsibility for any claims arising out of a person's employment with WPS. This includes any claims for occupational illnesses or diseases suffered by WPS employees that manifest at a later point. WestPoint bases its claim of entitlement to the Records, not as an employer seeking the confidential records of its employees, to which it would be entitled under South Carolina law, but as a successor in interest as an asset purchaser of WPS having disclaimed obligations to pay future claims.

STANDARD OF REVIEW

To prevail on a motion for summary judgment, the moving party must show that there are no genuine issues of material fact and that it is, therefore, entitled to summary judgment as a matter of law. Rule 56(c), SCRCP. Thereafter, the non-moving party may not rely simply on allegations or its own pleadings, but must instead identify specific facts that demonstrate that a genuine issue remains for trial. *Id.* Rule 56(e). Courts agree that "[t]he purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Sides v. Greenville Hosp. System,* 362 S.C. 250, 254, 607 S.E.2d 362, 364 (S.C. App. 2004) citing *Lanham v. Blue Cross & Blue Shield of S.C., Inc.,* 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002).

DISCUSSION

This Court agrees that access to the information WestPoint seeks at this point is prohibited by S.C. Code Ann. § 42-19-40. Section 42-19-10 provides:

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> The records of the commission, in so far as they refer to accidents, injuries and settlements, shall not be open to the public, but only to parties satisfying the commission of their interest in such records and of the right to inspect them.

This section prohibits access by the public to records of the Commission "in so far as they refer to accidents, injuries and settlements." *Id.* The statute allows access "only to parties satisfying the commission of their interest in such records and of the right to inspect them." *Id.* The information sought by WestPoint on loss runs for all open claims of WPS fall within this category. Under the statute, the term "parties" has been interpreted to allow only employers and employees to obtain such information. *Blue Cross and Blue Shield v. South Carolina Indus. Commission*, 74 S.C. 204, 262 S.E.2d 35 (1980). "Nowhere is the Act is there a provision to allow any party, other than the employee and the employer to participate, except in the case of death or direct involvement of the employer's Workmen's Compensation carrier." *Id.*

WestPoint does not fit this narrow definition of a "party" to the workers' compensation claims covered by WPS. On August 15, 2005, WPS informed Mr. W.C. Smith, III, Director, Self-Insurance, by letter from Lester D. Sears, Responsible Officer, dated August 15, 2005, of the bankruptcies filed on June 1, 2003, and:

> Please be advised that pursuant to the Sale Order and the APA [Asset Purchase Agreement], **workers' compensation liabilities asserted against the Debtors were not liabilities assumed by the Purchaser. Therefore, no further payments will be made with respect to workers' compensation claims** asserted against WestPoint Stevens Inc. (emphasis added).

WestPoint was not the employer of these employees at the time they worked for WPS and, importantly, WestPoint has specifically denied that an employee of WPS could now assert a claim against WestPoint for injury or occupational illness suffered while employed by WPS. Since WestPoint is not a "party" to any claim asserted by an employee against WPS, under the precedent set by *Blue Cross,* it cannot be entitled to records excluded from the public by S.C. Code Ann. § 42-19-40.

Additionally, WestPoint is not the successor corporation to WPS. While WestPoint may have purchased assets, including the employee files of WPS, that information does not make WestPoint a successor to WPS under the Act, especially in light of WestPoint's denial of any liability arising from employees' claims against WPS. The Asset Purchase Agreement and the

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Bankruptcy Court's Order appear to support WestPoint's position that it is not liable for any such claims; and therefore would not be entitled to review records of the Commission. The personnel files of the WPS employees that WestPoint obtained through the asset purchase agreement would not contain the same type of information as the records of the Commission relating to specific injuries, accidents, and claims of those employees who pursued any workers compensation benefits. The Commission informed WestPoint, during this proceeding, that there are no claims pending from former WPS employees that would affect the money deposited by WPH in the letter of credit.[1]

It is clear from the Asset Purchase Agreement dated June 23, 2005 (with the exclusion of capital stock and equity interests) that WestPoint is not the corporate successor and did not step into the shoes of WPS. The records show that WPS was dissolved on May 15, 2006. There was no corporate successor interest transferred from WPS to WestPoint. Furthermore, in the Memorandum of Understanding ("MOU") between WPS and the Commission, the terms of the draws under the Letter of Credit state that the Commission may "draw on the Letter of Credit if needed to pay any workers' compensation claim and claims administration expense which are the responsibility of the Employer [WPS]." Memorandum of Understanding between WestPoint Stevens, Inc. and the Commission, Paragraph 4. WestPoint has denied responsibility for the claims and is not the successor by merger, and therefore is estopped from claiming that it is the employer in this context. WestPoint, through its acts and representations and the nature of the asset sale, waived any claim it may have had, if any, to any access to the Records. The MOU defines WPS as the employer and further states in Paragraph 7 that "'Employer' means the following entities which have been approved to self-insure in South Carolina (parent and subsidiaries)" and then lists WPS. There is no reference to successors in interest of any type. WestPoint, the purchaser of an asset, having disclaimed any responsibility cannot now seek access to confidential records to try to reduce funds provided by a self-insurer to protect workers with regard to health claims.[2]

WestPoint argues that the decision of the Maine Department of Professional and Financial Regulation, Bureau of Insurance supports its position that it has standing to the

[1] It is unclear to this Court whether "no pending claims" mean no claims at all, no open claims pending disposition or no claims since August 2005 when the Commission drew the proceeds under the Letter of Credit.

[2] WestPoint seeks to explore alternative methods of providing security for any potential claims other than the $1.8M held by the Commission. It has failed to demonstrate that it has reviewed any of the WPS personnel files it received to identify former WPS employees now employed with WestPoint who may be potential claimants.

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information requested. The Bureau of Insurance issued a Decision and Order on a request for reconsideration by WestPoint and WPS that terminated their workers' compensation self-insurance authority based upon the cessation of business operations, administrative insolvency, among other things. WPS was a self-insurer to provide workers' compensation coverage in the State of Maine through its self-insurance program. That authority was terminated by Maine upon the bankruptcy of WPS. As in this case, Maine was notified that WestPoint had secured commercial workers' compensation insurance and also that worker compensation liabilities against WPS were not being assumed by WestPoint. WPS workers' compensation liabilities were secured by a surety bond issued in favor of the Treasurer of the State of Maine in the amount of $1.6M. The Maine Workers' Compensation Board demanded payment of the entire sum to the Treasurer of Maine, received in August 2005, and held is a trust account to be used to "discharge any and all legitimate, outstanding workers' compensation claims incurred during the periods of WestPoint's self-insurance authority." Unlike South Carolina, Maine contracted with a third party administrator to "administer, pay and settle outstanding claims related to [WPS's] self-insured periods". The moneys would be held for a fix period of time that could be extended. At the end of the applicable period any remaining fund balances could be given to "persons with a legitimate reversionary interest in the funds or revert to the general fund as unclaimed property".

The question arose whether WestPoint had standing to claim a "possible 'return of excess security'" under the bond. The Bureau of Insurance analyzed the applicable documents including the WPS termination plan, the asset purchase agreement, and the bond. The Bureau of Insurance stated "it remains an open question what interests in the bond proceeds the WPS estate did or did not hold at the time of the asset sale." Further, it ruled that "any determination ... of rights to possible 'excess security' in the form of remaining fund balances ... shall be by adjudication conducted at some undetermined future point in time following the period of repose as defined above." Thus, the Bureau of Insurance specifically stated that any determination of rights to funds would be determined at a later date.

WestPoint may have standing to receive any residual funds from the letter of credit proceeds. At this point however, any rights to "excess security" are premature. As set forth by the Commission in this case, the two year statute of limitations on claims relating to occupational illnesses or diseases begins to run when the employee receives notice of a definitive diagnosis of

an occupational disease. S.C. Code Ann. § 42-15-40. This statute acts as the period of repose until the time period for the filing of any such claim has been extinguished, WestPoint is not entitled to any "excess security". WestPoint may have an interest, to be determined, at a later time. This Court understands that WestPoint is not seeking access to any funds at this point.

WestPoint may have an interest in obtaining some information from the Commission to explore an alternative method to secure payment for any future claims filed by WPS employees. West Point may be able to establish, to the satisfaction of this Court, of its interest to access or inspect certain records. However, based upon the information as requested by WestPoint, it has not established its right to inspect the records under Section 42-19-40.[3]

ORDER

Based upon the foregoing, **IT IS ORDERED** that the Commission's Motion for Summary Judgment is **GRANTED** and WestPoint's request to examine the non-public records of the Commission is currently **DENIED**.

AND IT IS SO ORDERED.

[3] Despite numerous conference calls with the attorneys on behalf of the parties, there have been no discussions with the Court about alternative methods to reach the objectives sought by the parties. This Court remains open to any such discussions.

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Richland Common Pleas

Case Caption: South Carolina Workers Compensation vs Westpoint Home LLC

Case Number: 2014CP4002496

Type: Order/Summary Judgment

IT IS SO ORDERED!

s/ Alison Renee Lee

ELECTRONICALLY FILED - 2019 Jul 03 11:18 AM - RICHLAND - COMMON PLEAS - CASE#2014CP4002496

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
South Carolina Workers' Compensation Commission, Plaintiff, vs. WestPoint Home, LLC, Defendant.	)	Civil Action No. 2014-CP-40-02496 ORDER (Disclosure of Existence of Open Claims, Account Balance, and Confidentiality)

A conference call was held at my request on June 26, 2019, in response to a Motion to Alter or Amend Order filed by WestPoint Home, LLC, on May 6, 2019. Attorneys M. Todd Carroll and Herbert Beigel, for WestPoint Home, LLC. and T. Parkin Hunter and Jared Q. Libet, for S.C. Workers' Compensation Commission participated. The issues discussed concerned requested information by Defendant and whether Plaintiff could disclose certain information over its objection. In the Order, it was suggested that the parties work towards a compromise regarding disclosure of some information.

The parties were asked to work out a compromise regarding disclosure of certain information relating to account balances and outstanding claims against funds held by the South Carolina Treasurer that were sourced from a letter of credit issued by Bank of America and collateralized by WestPoint Home, LLC ("WestPoint Home"). The letter of credit was initially posted to provide a source of funds for possible health care claims of former workers for WestPoint Stevens, Inc. ("Stevens") when Stevens became a self-insured under the South Carolina Workers' Compensation Act. Stevens ultimately declared bankruptcy, and WestPoint Home ultimately purchased Stevens's assets from the bankruptcy proceedings through a court-

approved Asset Purchase Agreement. As part of that transaction, WestPoint Home posted $1.8 million to collateralize the letter of credit. The Commission drew down the letter of credit from NationsBank (now Bank of America) in its entirety on August 17, 2005.

By letter dated June 27, 2019, WestPoint Home requested disclosure of the following at this time: the number of open claims that are being drawn against the $1.8 million that WestPoint Home deposited to collateralize the letter of credit at issue in this case; and the amount of $1.8 million that remains. The Commission believes that the applicable South Carolina statutes and regulations prohibit such disclosure to anyone other than an employer. I do not read the cited statutes and regulations as strictly as the Commission.

Therefore, I find that disclosing the requested information is appropriate, is in accordance with applicable law and regulations, and should be confidential and used solely for purposes of this litigation.

Further, I find that the Commission has diligently proceeded to protect this information; however, I disagree with its reading of the applicable statutes and regulations and order the disclosures set forth herein.

NOW THEREFORE, IT IS HEREBY ORDERED that the Commission, pursuant to S.C. Code Regulation 67-1515 and S.C. Code Ann § 42-19-40, shall disclose the following to WestPoint Home within 20 days following entry of this Order:

1. The number of open health care claims currently asserted against the above-described funds being held by the Treasurer.

2. The amount of the funds that remain.

IT IS FURTHER ORDERED that these disclosures and this Order are not dispositive of any ownership claims by WestPoint Home and may not be argued as such.

ELECTRONICALLY FILED - 2019 Jul 03 11:18 AM - RICHLAND - COMMON PLEAS - CASE#2014CP4002496

IT IS FURTHER ORDERED that WestPoint Home will maintain the confidentiality of these disclosures from the general public. The parties shall execute appropriate Confidentiality Agreements governing disclosures to third parties necessary for this litigation, to restrict the use of the information solely for this litigation, and require the execution of the Agreement by such third parties before disclosure of the information to them.

AND IT IS SO ORDERED.

Signature page to follow

ELECTRONICALLY FILED - 2019 Jul 03 11:18 AM - RICHLAND - COMMON PLEAS - CASE#2014CP4002496

ELECTRONICALLY FILED - 2019 Jul 03 11:18 AM - RICHLAND - COMMON PLEAS - CASE#2014CP4002496



Richland Common Pleas

Case Caption: South Carolina Workers Compensation vs Westpoint Home LLC

Case Number: 2014CP4002496

Type: Order/Other

IT IS SO ORDERED!

s/ Alison Renee Lee, Chief Administrative Judge

ELECTRONICALLY FILED - 2021 Nov 16 9:33 AM - RICHLAND - COMMON PLEAS - CASE#2014CP4002496

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
South Carolina Workers' Compensation Commission,	)	Civil Action No. 2014-CP-40-2496
Plaintiff,	)	
	)	ORDER DENYING MOTION FOR PROTECTIVE ORDER
vs.	)	
WestPoint Home, LLC,	)	
Defendant.	)	

Before the Court is the Commission's motion for a protective order, which seeks to quash a Rule 30(b)(6) deposition notice served by WestPoint Home. That notice directed the Commission to provide a witness or witnesses to testify about the following topics:

1. The Commission's process(es) for permitting WestPoint Stevens to be a self-insured business and for establishing the various letters of credit WestPoint Stevens was required to post as a self-insured business.

2. The Commission's decision to withdraw the entirety of funds that WestPoint Home deposited to collateralize WestPoint Stevens's final letter of credit with the Commission.

3. The Commission's relationship and communications with Key Risk.

4. How the funds that WestPoint Home deposited have been utilized, including, but not limited to, how much has been spent, how it was spent, when it was spent, who determined how much would be paid on each claim, how the amount paid for each claim was determined, how much of the deposit remains, and how much interest has been collected on that deposit while it has been in the State's custody.

5. Any workers' compensation claims for latent illnesses that have been made by former WestPoint Stevens employees since January 1, 2006.

6. Any actuarial reports or studies that the Commission has investigated, prepared, conducted, or drafted regarding WestPoint Stevens or WestPoint Home.

7. Any allegations in any pleading filed by the Commission.

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The Commission filed a motion that asks the Court to prevent any additional discovery from taking place due to the pendency of a dispositive motion. Alternatively, the Commission seeks an order barring testimony on Topics 1, 2, 4, and 5 because, in the Commission's view, the information related to these topics is protected from disclosure pursuant to Regulation 67-1515. The Court respectfully rejects both of these arguments.

As to the first argument, the filing of a dispositive motion does not automatically result in a stay of all discovery. Here, WestPoint Home has persuasively argued that it needs information from the Commission in order to rebut the agency's argument that at least some of the remaining deposit should stay within the state's custody. Because there is a need for additional discovery, the pendency of the Commission's motion for summary judgment will not preclude WestPoint Home from continuing to discover facts relevant to the claims in dispute.

Regarding the agency's reliance on Regulation 67-1515, the Court does not read the regulation as broadly as the Commission suggests. In its entirety, that regulation provides as follows:

> 67-1515. Confidentiality of Information.
>
> A. Commission records and information relating to the solvency and financial condition of an employer under the authority granted by this Chapter and the Act shall not be subject to inspection; nor shall any information be directly or indirectly divulged by the Commission except by order of a Court of competent jurisdiction.
>
> B. The Commission shall not release to the public any information concerning a self-insured or a self-insurance fund other than (1) confirmation that an employer is individually self-insured or is a member of a specific self-insurance fund, (2) the self-insured's or self-insurance fund's address, (3) the effective date of such insurance program, and (4) the name of the claims administrator.

Assuming without deciding that information covered by WestPoint Home's deposition notice falls within the scope of this regulation, this regulation expressly contemplates the

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Commission disclosing this information when ordered to do so by a court. The information that WestPoint Home seeks to discover through a deposition of the Commission is relevant to the merits of this case, and the agency does not argue otherwise. Accordingly, there is good cause for the Commission to disclose the information sought by WestPoint Home's deposition notice, and the Court instructs the Commission to present for deposition a witness or witnesses who are prepared to provide full and complete responses to the topics identified in WestPoint Home's Rule 30(b)(6) notice.

Similarly, at the October 20, 2021 hearing of this motion, the Commission cited South Carolina Code § 42-19-40 as an additional reason to protect the agency from appearing for a deposition. That statute provides as follows: "The records of the commission, in so far as they refer to accidents, injuries and settlements, shall not be open to the public, but only to parties satisfying the commission of their interest in such records and of the right to inspect them." However, this statute only refers to "records," not testimony, making it facially inapplicable here.

In any event, WestPoint Home has already secured "records" regarding "accidents, injuries and settlement" of WestPoint Stevens employees who have had their workers' compensation claims paid with the $1.8 million deposit. It received those records in response to a subpoena to Key Risk, a third party that the Commission has contracted to administer workers' compensation claims on the agency's behalf. The Commission did not object to that subpoena.[1] Given that

---

[1] In light of the fact that WestPoint Home has secured these records from Key Risk, the Court finds that the remainder of WestPoint Home's motion to reconsider the earlier summary judgment order is effectively moot. That summary judgment ruling held that the Commission did not have to provide records regarding how the $1.8 million deposit had been spent on claims of WestPoint Stevens employees. The Court previously reconsidered that ruling in part by instructing the agency to disclose (1) whether there remain any open claims of WestPoint Stevens employees and (2) how much of the initial deposit remains in the state's custody. Now that WestPoint Home has gotten those records from a third party and will have an opportunity to depose the agency regarding those

WestPoint Home has these materials, the Court finds that WestPoint Home must be given an opportunity to inquire about information contained in these materials through a deposition of the Commission. South Carolina Code § 42-19-40 does not suggest otherwise.

For the reasons stated above, the Court denies the Commission's motion for a protective order. The parties shall work cooperatively to complete the Rule 30(b)(6) deposition of the agency and any remaining discovery, and shall consult with one another to propose a date for the Court to conduct trial of this matter.

AND IT IS SO ORDERED.

SIGNATURE PAGE TO FOLLOW

records, the Court finds that the parties have jointly moved this case beyond Phase I of this matter, thus mooting the discovery issues previously presented in that phase and the remaining portion of WestPoint Home's reconsideration motion that sought access to these records.

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Richland Common Pleas

Case Caption: South Carolina Workers Compensation vs Westpoint Home LLC

Case Number: 2014CP4002496

Type: Order/Protective Order

IT IS SO ORDERED!

s/ Alison Renee Lee

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2014CP4002496

South Carolina Workers Compensation
PLAINTIFF(S)

Westpoint Home LLC
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Defendant WestPoint Home LLC's motion to amend its Answer and Counterclaim to add a prayer for pre- and post-judgment interest is GRANTED.
AND IT IS SO ORDERED.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/20/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2022 Aug 22 8:54 AM - RICHLAND - COMMON PLEAS - CASE#2014CP4002496

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2022 Aug 22 8:54 AM - RICHLAND - COMMON PLEAS - CASE#2014CP4002496

ELECTRONICALLY FILED - 2022 Aug 22 8:54 AM - RICHLAND - COMMON PLEAS - CASE#2014CP4002496

Richland Common Pleas

Case Caption: South Carolina Workers Compensation vs Westpoint Home LLC

Case Number: 2014CP4002496

Type: Order/Electronic Form 4

IT IS SO ORDERED!

s/ Alison Renee Lee

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

South Carolina Workers' Compensation Commission)
Plaintiff(s)) CIVIL ACTION COVERSHEET

vs.) 2014-CP - 40-2496

WestPoint Home, LLC)
Defendant(s))

Submitted By: T. Parkin Hunter
Address: PO Box 11549
Columbia, SC 29211-1549

SC Bar #: 2827
Telephone #: (803)7343680
Fax #: (803)734-3677
Other:
E-mail: phunter@scag.gov

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

2014 APR 17 AM 9:35

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

☐ JURY TRIAL demanded in complaint. ☑ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-CP-____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☒ Other (699)

Declaratory Relief

- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: T. Parkin Hunter **Date:** 4/17/2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous

Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	)	**FIFTH JUDICIAL CIRCUIT**
	)	
	)	
	)	**CASE NO.: 2013-CP-40-**
STATE OF SOUTH CAROLINA,	)	
	)	
PLAINTIFF,	)	
	)	**CERTIFICATION OF ADR**
vs.	)	**EXEMPTION**
	)	
	)	
WESTPOINT HOME, LLC,	)	
	)	
DEFENDANT.	)	
	)	

JEANETTE W. WALKER
C.C.P. & G.S.
2014 APR 17 AM 9:35
FILED

PURSUANT to the Court's Standing Order for Alternative Dispute Resolution dated September 7, 2000, we certify that this case is exempt from ADR for the following reason and the Plaintiff wishes to exercise that exemption:

This case falls under the exemption for special proceedings. The relief requested is whether the Defendant is entitled or not entitled to receive certain records from the South Carolina Workers' Compensation Commission.

~~Plaintiff~~/Attorney for Plaintiff

T. Parkin Hunter
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
SC Bar. No. 2827
phunter@scag.gov
Attorney for Plainitiff

Phone: (803) 734-3680
Fax: (803) 734-3677

Date: April 17, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

South Carolina Workers' Compensation Commission,

Plaintiff,

vs

WestPoint Home, LLC.

Defendant.

SUMMONS

RICHLAND COUNTY
FILED
2014 APR 17 AM 9:35
JEANETTE W. McBRIDE
C.C.P. & G.S.

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you and to serve a copy of your Answer to said Complaint on counsel for Plaintiff at their offices, the Office of the Attorney General, State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549, or to otherwise appear and defend, within thirty (30) days after the service of the Complaint, exclusive of the day of such service, and if you fail to answer the Complaint, or otherwise fail to appear and defend within thirty (30) days after service of the Complaint, the Plaintiff in this action will obtain a judgment by default against you for the relief demanded in the Complaint.

Respectfully Submitted,

Alan Wilson
Attorney General

John McIntosh
Chief Deputy Attorney General

Jared Q. Libet
Assistant Attorney General

T. Parkin Hunter
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211
(803)734-3680

By: _____
T. Parkin Hunter

J. Keith Roberts
General Counsel
South Carolina Workers' Compensation Commission
1333 Main Street - Suite 500
Columbia, South Carolina 29201

Attorneys for Plaintiff South Carolina Workers' Compensation Commission

April 17, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
South Carolina Workers' Compensation)
Commission,)
)
Plaintiff,)
)
vs)
)
WestPoint Home, LLC.)
)
Defendant.)
)

COMPLAINT

DECLARATORY JUDGMENT

RICHLAND COUNTY
FILED
2014 APR 17 AM 9:35
JEANETTE W. WALKER
C.P. & G.S.

The South Carolina Workers' Compensation Commission (the "Commission") by and through its undersigned counsel, complaining against WestPoint Home, LLC ("WestPoint Home") above-named, alleges as follows:

1. This action is brought pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10 through § 15-53-140 and South Carolina Rule of Civil Procedure 57.

2. The Commission is an agency of the sovereign State of South Carolina.

3. WestPoint Home is a Delaware limited liability company with its headquarters located in New York, New York.

4. WestPoint Home has one or more offices located in the State of South Carolina and is conducting business in the State of South Carolina.

5. Yevgeny Fundler, General Counsel and Corporate Secretary of WestPoint Home, by letter dated February 22, 2013 (the "February Letter"), addressed to the Worker's [sic] Compensation Commission, Self-Insurance Division, asserted that WestPoint Home is entitled to certain records (the "Records") related to WestPoint Stevens, Inc. ("WestPoint Stevens") as

successor to WestPoint Stevens by virtue of an asset purchase from the bankruptcy estate of WestPoint Stevens. A true and correct copy of the February Letter is attached hereto as Exhibit A.

6. Herbert Beigel, counsel for WestPoint Home, by letter dated April, 9, 2014 (the "April Letter"), to T. Parkin Hunter, Assistant Attorney General, asserted that WestPoint Home "by law is the successor in interest to WestPoint Stevens" and refers to "all of the assets [of WestPoint Stevens] which had been acquired by WestPoint Home." He further asserts that WestPoint Home is entitled to the Records. A true and correct copy of the April Letter is attached hereto as Exhibit B.

7. Attached as Exhibit C is a true copy of the Order Authorizing Sale of Substantially all of the Sellers' [WestPoint Stevens] Assets Free and Clear of Liens, Claims, Encumbrances and Interests, the Assumption of Certain Liabilities, Approval of Successful Bidder and Certain Related Matters issued by the United States Bankruptcy Court for the Southern District of New York, Chapter 11 Case No. 03-13532 (RDD) (the "Order"). The Order is dated July 8, 2005.

8. The Order refers to "substantially all of Seller's [WestPoint Stevens] assets.

9. The Order describes a sale of assets, with some assumption of liabilities, but does not set forth a transaction where the purchaser is the corporate successor to WestPoint Stevens other than as title holder to certain assets.

10. WestPoint Home is not the purchaser under the Order. The Purchasing Entities under the Order are Textile Co., Inc., New Textile One, Inc., New Textile Two, Inc., and WS Textile Co. Inc. (jointly the "Purchasing Entities").

11. WestPoint Home has demanded, pursuant to the February Letter, the Records which contain certain information relating to compensation losses and expected losses for WestPoint Stevens.

12. Pursuant to S.C. Code Section 42-19-40, "The records of the Commission, in so far as they refer to accidents, injuries and settlements shall not be open to the public, but only to parties satisfying the Commission of their interest in such records and of the right to inspect them." Furthermore, the Commission's Regulations speak to confidentiality of information regarding records held by the Commission concerning self-insurers. 25A S.C. Code Regs. 67-1515(B) (2014) provides "The Commission shall not release to the public any information concerning a self-insured or a self-insurance fund other than confirmation that an employer is individually self-insured or is a member of a specific self-insurance fund, its address, the effective date of the such [sic] insurance program, and the name of the claims administrator."

13. The term "parties" under S.C. Code Section 42-19-40 has been interpreted by the South Carolina Supreme Court as "as referring to employees and employers." *Blue Cross and Blue Shield v. South Carolina Indus. Commission*, 74 S.C. 204, 208, 262 S.E.2d 35, 38 (1980).

14. It is not evident from the documents provided that WestPoint Home acquired any right as successor to WestPoint Stevens to review the confidential records of the Commission with regard to WestPoint Stevens.

15. No chain of title or asset transfers have been presented that show which assets were transferred through the successive entities from the Purchasing Entities to WestPoint Home.

16. Pursuant to the April Letter, WestPoint Home, through its counsel, threatened the Commission with litigation if the Commission does not provide the information requested on or before April 21, 2014.

17. For the reasons set forth herein and the requirements of S.C. Code § 42-19-40, the Commission is not able to provide the requested Records to WestPoint Home until and unless WestPoint Home is able to establish itself as qualified to receive the Records within the standards required by S.C. Code § 42-19-40 and the Commission.

FOR A FIRST CAUSE OF ACTION

18. The allegations of paragraph 1 through paragraph 17 are realleged as fully as if repeated verbatim herein.

19. This matter is ripe for determination and there is a case and controversy at this time.

20. The Commission asks this Court to issue an order declaring whether WestPoint Home is entitled to receive the requested Records.

21. The Commission asks for such other relief as may be just and proper.

WHEREFORE, the Commission prays as follows:

As to the First Cause of Action:

a. For a declaratory judgment declaring whether WestPoint Home is entitled to receive the requested records.

b. For costs and attorney's fees.

c. For such other relief as may be just and proper.

Alan Wilson
Attorney General

John McIntosh
Chief Deputy Attorney General

Jared Q. Libet
Assistant Attorney General

T. Parkin Hunter
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211
(803)734-3680

By: _____
T. Parkin Hunter

SC Bar No. 2827

J. Keith Roberts
General Counsel
South Carolina Workers' Compensation
Commission
1333 Main Street - Suite 500
Columbia, South Carolina 29201

Attorneys for Plaintiff South Carolina Workers'
Compensation Commission

April 17, 2014

ELECTRONICALLY FILED - 2022 Aug 22 2:58 PM - RICHLAND - COMMON PLEAS - CASE#2014CP4002496

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
South Carolina Workers' Compensation Commission,	)	Civil Action No. 2014-CP-40-2496
Plaintiff,	)	
vs.	)	ANSWER AND AMENDED COUNTERCLAIM
WestPoint Home, LLC,	)	
Defendant.	)	

Defendant WestPoint Home, LLC, reserving all rights and defenses and waiving none of them, hereby answers Plaintiff's Complaint as follows and asserts its own counterclaims:

FOR A FIRST DEFENSE
(General Denial)

1. Each allegation not specifically admitted is hereby denied.

2. Defendant admits that this action is brought as stated in Paragraph 1 of the Complaint.

3. Defendant admits the allegations of Paragraph 2 of the Complaint.

4. Defendant denies the allegations of Paragraph 3 of the Complaint to the extent that they allege that Defendant's headquarters are located in New York, New York.

5. Defendant admits the allegations of Paragraph 4 of the Complaint.

6. Defendant admits the allegations of Paragraph 5 of the Complaint. In so responding, Defendant further states that Mr. Fundler is no longer Defendant's General Counsel and Corporate Secretary.

7. Defendant admits the allegations of Paragraph 6 of the Complaint.

8. Defendant admits the allegations of Paragraph 7 of the Complaint.

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9. Defendant admits the allegations of Paragraph 8 of the Complaint, though it rejects any potential mischaracterization of the Bankruptcy Court's Order to suggest that Defendant is not entitled to the requested materials.

10. Defendant denies the allegations of Paragraph 9 of the Complaint in that this Paragraph misleadingly characterizes the terms of the Order and otherwise the Order speaks for itself.

11. Defendant admits the allegations of Paragraph 10 of the Complaint, though it rejects any potential mischaracterization of the Order or the purchaser under the Order to suggest that Defendant is not entitled to the requested materials.

12. Defendant admits the allegations of Paragraph 11 of the Complaint.

13. Defendant admits the allegations of Paragraph 12 of the Complaint in so far as portions of the cited statute and regulation appear to be accurately quoted.

14. Defendant makes no answer to the allegations of Paragraph 13 of the Complaint as they state legal conclusions.

15. Defendant denies the allegations of Paragraph 14 of the Complaint.

16. Defendant denies the allegations of Paragraph 15 of the Complaint.

17. Defendant denies the allegations of Paragraph 16 of the Complaint to the extent that West Point Home "threatened the Commission" and otherwise states that the April letter speaks for itself.

18. Defendant denies the allegations of Paragraph 17 of the Complaint.

19. Responding to Paragraph 18 of the Complaint, Defendant restates and incorporates by reference its answers to Paragraphs 1-17 of the Complaint.

20. Defendant admits the allegations of Paragraph 19 of the Complaint.

ELECTRONICALLY FILED - 2022 Aug 22 2:58 PM - RICHLAND - COMMON PLEAS - CASE#2014CP4002496

21. Responding to Paragraph 20 of the Complaint, Defendant acknowledges that Plaintiff is seeking an order.

22. Responding to Paragraph 21 of the Complaint, Defendant acknowledges that Plaintiff asks for such other relief as may be just and proper.

23. Responding to the allegations in the paragraph beginning with the word "Wherefore," Defendant denies any allegation that Plaintiff is entitled to recover any costs or attorneys' fees.

FOR A SECOND DEFENSE
(Res Judicata and Collateral Estoppel)

24. Defendant would show that one or more issues presented in the Complaint have been previously resolved by a court of competent jurisdiction and, therefore, res judicata and collateral estoppel should attach to those issues.

FOR A FIRST COUNTERCLAIM
(Accounting and Award of Excess Cash Collateral)

FACTUAL BACKGROUND

1. On June 1, 2003, WestPoint Stevens, Inc. ("WPS") and its subsidiaries and affiliates WestPoint Stevens, Inc. I, J.P. Stevens & Co., Inc., J.P. Stevens Enterprises, Inc., and WestPoint Stevens Stores Inc. (collectively, the "Debtors"), commenced voluntary bankruptcy cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York, case number 03-13532 (RDD).

2. At the time of the bankruptcy filing, the Debtors were the leading manufacturer, marketer and distributor of a wide range of home textile products such as bath rugs, bed sheets, bath towels, comforters and decorative pillows. The Debtors had 14,600 employees and net

sales for the fiscal year ended December 31, 2002 of $1.8 billion. Given the size of the Debtors' operations and revenues their cases were designated a "mega case".

3. As is the usual practice in mega cases where several affiliated entities file petitions, the Debtors requested an order approving the joint administration of the cases. Joint administration is merely an administrative tool used by the bankruptcy court to prevent duplication of filings and ease the administrative burden. Thus, for example, rather than file pleadings in each of the individual cases, the Debtors are authorized to assign one case as the lead case under which all filings, including court orders, are made. Thus, the record of these cases is set forth under the Case No. 03-13532 (RDD).

4. An official committee of unsecured creditors was appointed in the Debtors cases pursuant to section 1102 of the Bankruptcy Code on June 11, 2003. (Notice of Appointment of Official Committee of Unsecured Creditors, Docket No. 72). An official committee is a fiduciary that acts as the representative for all unsecured creditors and is authorized by the Bankruptcy Code to, among other things, obtain information from and consult with the debtor, investigate the acts, conduct, assets, liabilities, financial condition of the debtor, and consider the desirability of the continuance of the debtor's business. 11 U.S.C. § 1103. Additionally, the committee provides access to information for creditors who hold claims of the kind represented by the committee. 11 U.S.C. § 1102. The official committee also selected, and the Bankruptcy Court approved, the retention of experienced bankruptcy counsel, Stroock & Stroock & Lavan, LLP, to aid and advise the official committee in the performance of its statutory duties. (Order Approving Retention of Stroock & Stroock & Lavan, Docket No. 199).

5. The official committee of unsecured creditors had unfettered access to the Debtors and the Debtors financial advisors to "achieve two principal goals: (i) to formulate a

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plan of reorganization; and (ii) to maximize recoveries for all creditors." (Seventh and Final Application of Stroock & Stroock & Lavan LLP for Final Allowance of Compensation, at p. 6 ¶10, Docket No. 1194). In connection with pursuing these goals, the official committee monitored the daily status of the bankruptcy cases, discussed pending matters and issues with, among others, the Debtors' professionals, and reviewed each pleading filed in the cases and analyzed its impact on unsecured creditors. (*Id.* at p. 9 ¶17). The committee also reviewed the Debtors' monthly business operations results and analyzed reports with respect to a wealth of financial information both historical and projected. (*Id.* at p. 10 ¶22).

6. The official committee also selected, and the Bankruptcy Court approved, the retention of a sophisticated investment bank, Lehman Brothers, Inc., as its financial advisor to review, analyze, and understand the Debtors' historical and projected financial information to properly advise the official committee. (Order Approving the Retention of Lehman Brothers, Inc., and Seventh and Final Application of Lehman Brothers, Inc., for Allowance of Compensation, at p. 9 ¶11, Docket No. 1196).

7. Given the existence of an official statutorily appointed fiduciary charged with investigating and understanding the Debtors' assets and reorganization options, and the retention by such fiduciary of experienced and sophisticated advisors, it is inconceivable that either creditors or the Bankruptcy Court were misled or lacked adequate information with which to determine and assess the Debtors' assets.

8. Consistent with Federal Rule of Bankruptcy Rule 1007(b), on August 18, 2003, each of the Debtors filed schedules of assets and liabilities and statements of financial affairs. Rule 1007(b) requires that the appropriate Official Form be used to file such schedules and

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statements as the Official Forms indicate what information must be provided. The Debtors used the Official Forms.

9. In mega cases, it is common for certain types of assets to be listed using general terms or descriptions. Thus, by way of example, WestPoint Stevens, Inc. also listed as an asset "Various antitrust claims for price fixing" with a value "Unknown" and "Patents and Foreign Trademarks" with a value "Unknown." (*See id.*). Such general descriptions are not prejudicial as the official committee and secured creditors are on notice that such assets exist and may probe the particulars, if they deem it necessary, as the case proceeds.

10. The goal of a chapter 11 case is for the debtor to reorganize and confirm a plan of reorganization. However, in instances where the debtor is unable to confirm a plan it may have to liquidate its assets instead of reorganize. This is what happened to the Debtors.

11. Faced with a stalemate between its sophisticated, organized, and well-informed creditors, the Debtors were unable to propose a plan of reorganization that would obtain the requisite votes to be confirmed. *In re WestPoint Stevens, Inc.*, 600 F.3d 231, 236 (2d Cir. 2010). Thus, the Debtors opted to sell substantially all of their assets, using the proceeds of the sale to pay creditors in the order of their priority.

12. First, the Debtors had to obtain bankruptcy court approval to hold a public sale process through which prospective bidders would be identified and bids would be solicited, establish sale procedures and notice procedure to inform all creditors and parties in interest of the sale.

13. On April 22, 2005, the bankruptcy court entered an order approving bidding procedures and the publication of the sale process. (Order Approving Bidding Procedures, Docket No. 923). With authorization to sell substantially all of their assets, the Debtors

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contacted 111 prospective bidders and published notices of the sale process in The New York Times and the Wall Street Journal. (*See* Certification of Publication, Docket No. 955); *see also In re WestPoint Stevens, Inc.*, 600 F.3d 231 at 240.

14. As part of the sale process, the Debtors established an electronic data room of the Debtors books and records and information regarding all of the Debtors' assets. Parties interested in accessing such data were required, pursuant to the bidding procedures, to be qualified as a bidder and to sign a confidentiality agreement.

15. On June 23, 2005, the Debtors held an auction for the sale of substantially all of their assets. (Sale Order, at p. 1, Docket No. 1082). Textile Co., Inc., now known as WestPoint Home, LLC (through a series of related inter-corporate transactions) was declared the highest and best bid and was selected as the winner of the auction.[1] The Bankruptcy Court held hearings to approve the auction results and the sale of substantially all of the Debtors' assets to the Purchasers and authorized the sale. (*Id.* at p. 2).

16. All creditors and parties in interest, including the State of South Carolina, had notice of and the opportunity to object to the sale prior to or during the sale approval hearing.

17. The Bankruptcy Court determined that Purchasers' bid provided the highest and best price for the Debtors' assets, yielding $703.5 million of consideration to the Debtors' estates for distribution to creditors. (Sale Order, at p. 13 ¶T).

18. The Bankruptcy Court also determined that WestPoint Stevens, Inc., WestPoint Stevens, Inc. I, and WestPoint Stevens Stores, Inc. could transfer substantially all of their assets to Purchasers free and clear of liens and encumbrances, and that J.P. Stevens Enterprises Inc. could transfer its trademark assets to Purchasers free and clear of liens and encumbrances

[1] Textile Co., Inc. has undergone several name changes and is now known as WestPoint Home LLC. Textile Co., Inc. is party to the Asset Purchase Agreement, along with its affiliates New Textile One, Inc., New Textile Two, Inc., and WS Textile Co., Inc. (collectively referred to as the "Purchasers").

(WestPoint Stevens, Inc., WestPoint Stevens, Inc. I, and WestPoint Stevens Stores, Inc. and J.P. Stevens Enterprises, Inc. collectively, the "Sellers"). (Sale Order, at p. 6 ¶H, p. 7 ¶O, p. 10 ¶Q, and p. 17 ¶4).

19. Purchasers and the Sellers entered into an Asset Purchase Agreement that defined "Purchased Assets" to mean ***--all property and assets of the Sellers existing as of the Closing,*** other than Excluded Assets, whether or not related to the Business. Such Purchased Assets shall include the following: "any rights and claims, offsets, or causes of action of the Sellers (other than Avoidance Actions) against third parties arising out of events occurring on or prior to the Closing Date." (emphasis added) (Asset Purchase Agreement at 2.1(b), 2.1(b)(xvi), Docket No. 1050).

20. The Asset Purchase Agreement is clear that the Purchasers were acquiring ***everything*** unless it was specifically excluded. Section 2.1(b)(xvi) clearly conveys the Sellers' right to pursue all claims, including claims for funds deposited with the South Carolina Workers' Compensation Commission (the "Commission") to cover existing and future claims.

21. The sale was closed and consummated on August 8, 2005 and, as of that date, all property and assets of the Sellers (except for those assets that were specifically excluded) were transferred out of the estate, free and clear of liens to and vested in the Purchasers. (Sale Order, at p. 7 ¶0, p. 17 ¶5, p. 19 ¶7, and p. 21 ¶11); *see also In re WestPoint Stevens, Inc.* 600 F.3d at 243 ("on August 8, 2005, the Debtor and [Purchasers] closed the sale. Accordingly, the Debtor's assets were transferred, free and clear of liens, to [Purchasers]....).

22. The sale was made in a noncollusive, fair, and good faith manner with proper notice to all creditors and parties in interest. (Sale Order, at p. 3 ¶E and p. 7 ¶¶K - N); *see also In re WestPoint Stevens, Inc.* 600 F.3d at 247.

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23. The Sale Order and the free and clear transfer of substantially all of the Debtors' assets are final, non-appealable, and enforceable; moreover, the Sale Order has been affirmed by the United States Court of Appeals for the Second Circuit. *In re WestPoint Stevens, Inc.* 600 F.3d at 251.

24. As a result of the sale and transfer of substantially all of the assets of the Debtors, there was virtually nothing left to administer in the bankruptcy estate and no means to obtain any additional recovery for creditors, so the Debtors bankruptcy cases were dismissed on December 24, 2012. (Order Dismissing the Debtors' Chapter 11 Cases, Docket No. 1607). This order dismissing the case specifically notes that all prior orders, including the Sale Order, remain in full force and effect and enforceable.

FACTS MATERIAL TO THE DEPOSITED FUNDS

25. WPS was a long-standing self-insured employer in South Carolina.

26. WestPoint Home, LLC ("WestPoint Home"), is the legal successor in interest to WPS.

27. In connection with the aforesaid sale of assets, the initial purchaser of the assets of WPS was required to secure obligations for workers' compensation claims with a letter of credit in the amount of $1.8 million.

28. Upon the purchase of the assets of WPS, the Commission drew upon the letter of credit in the full amount on August 17, 2005.

29. By letter of February 22, 2013, WestPoint Home requested the Commission to provide it with certain information, specifically: (a) the last five years of loss runs for open claims; (b) the 2011 actuarial report undertaken for the State; (c) the developed discounted loss

reserves and confidence level projections for the WPS component of the 2011 actuarial report; and (d) an accounting of the use of the $1,800,000 and any balance remaining.

30. Since February 22, 2013, the Commission has repeatedly refused to provide WestPoint Home with requested information so that WestPoint Home can determine if the Commission is required under the law to return to WestPoint Home any excess funds no longer required to fund present and future workers' compensation claims.

31. WestPoint Home is entitled to receive the aforesaid information together with an accounting of all funds paid and any future liabilities for workers' compensation claims.

32. WestPoint Home is also entitled to receive all moneys held by the Commission that is not needed or required to fund any future liabilities for workers' compensation claims, including all pre- and post-judgment interest allowed by South Carolina law.

Wherefore, having fully answered the Complaint, Defendant prays that this Court enter a Declaratory Judgment in its favor with respect to Plaintiff's Complaint and further order the Commission to provide Defendant with the requested accounting, together with its attorneys' fees, costs, and expenses; and further, that Defendant be awarded all monies owed and improperly retained by the State, including all pre- and post-judgment interest allowed by South Carolina law, and for such other and further relief as the Court may deem just and proper.

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Respectfully submitted,

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August 22, 2022

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
South Carolina Workers' Compensation Commission,	)	Civil Action No. 2014-CP-40-02496
Plaintiff,	)	
vs.	)	REPLY TO AMENDED COUNTERCLAIM
WestPoint Home, LLC,	)	
Defendant.	)	

Plaintiff, South Carolina Workers' Compensation Commission (the "Commission"), replies to the Amended Counterclaim set forth by Defendant, WestPoint Home, LLC ("WestPoint Home") as set forth herein.

1. Each allegation that is not specifically admitted, denied, or otherwise explained is denied.

2. None of the responses herein concede the relevance of any of the legal analysis set forth by WestPoint Home or to the relevance of any court documents, statutory or other law or purported legal principles, all of which objections are reserved for the trial of this matter.

3. The allegations of paragraph 1 through paragraph 23 are WestPoint's answer to the Commission's complaint filed in this action and no response is necessary.

4. Paragraph 24 of Westpoint's Second Defense is an affirmative defense raised in response to the Complaint in this matter and no further response is necessary. However, the Commission does not concede Westpoint's allegations of *res judicata* and collateral estoppel for reasons that include but are not limited to the lack of identity of the parties, the issues, and the Commission not being a party to or participant in the referenced actions.

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REPLYING TO WESTPOINT HOME'S FIRST COUNTERCLAIM

5. Responding to the allegations of Paragraph 1, the Commission craves reference to the court records of the Bankruptcy Court for the Southern District of New York, case number 01-13532 (RDD) (the "Court Records"), and denies any allegations that are inconsistent therewith.

6. Responding to the allegations of Paragraph 2, the Commission is without knowledge or information sufficient to form a belief as to the truth of the allegations therein and therefore denies those allegations.

7. Responding to the allegations of Paragraph 3, the Commission craves reference to the Court Records and denies any allegations that are inconsistent therewith. As to matters set forth in this paragraph that may not be ascertained from the Court Records, the Commission is without knowledge or information sufficient to form a belief as to the truth of the allegations therein and therefore denies those allegations.

8. Responding to the allegations of Paragraph 4, the Commission craves reference to the Court Records and the statutes referenced in Paragraph 4. The Commission denies any allegations that are inconsistent therewith. As to matters set forth in this paragraph that may not be ascertained from the Court Records or the referenced statutes, the Commission is without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore denies those allegations.

9. Responding to the allegations of Paragraph 5, the Commission is without knowledge or information sufficient to form a belief as to the truth of the allegations therein and therefore denies those allegations.

10. Responding to the allegations of Paragraph 6, the Commission craves reference to the Order referenced and denies any allegations that are inconsistent therewith.

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11. Responding to the allegations of Paragraph 7, the Commission is without knowledge or information sufficient to form a belief as to the truth of the allegations therein and therefore denies those allegations.

12. Responding to the allegations of Paragraph 8, the Commission craves reference to the Bankruptcy Rule referenced there and denies any allegations that are inconsistent therewith. As to the remaining allegations of Paragraph 8, the Commission is without knowledge or information sufficient to form a belief as to the truth of those allegations and therefore denies those allegations.

13. Responding to the allegations of Paragraph 9, the Commission is without knowledge or information sufficient to form a belief as to the truth of the allegations therein and therefore denies those allegations.

14. Responding to the allegations of Paragraph 10, no response is necessary to purported legal principles set forth therein. As to the other allegations, the Commission is without knowledge or information sufficient to form a belief as to the truth of the allegations therein and therefore denies those allegations.

15. Responding to the allegations of Paragraph 11, the Commission craves reference to the Records and the referenced reported case and denies all allegations inconsistent therewith. As to any other allegations, the Commission is without knowledge or information sufficient to form a belief as to the truth of the allegations therein and therefore denies those allegations.

16. Responding to the allegations of Paragraph 12, the Commission craves reference to the Records and denies all allegations inconsistent therewith. As to any other allegations, the Commission is without knowledge or information sufficient to form a belief as to the truth of the allegations therein and therefore denies those allegations.

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17. Responding to the allegations of Paragraph 13, the Commission craves reference to the Records, the cited publications and the reported case and denies all allegations inconsistent therewith. As to any other allegations, the Commission is without knowledge or information sufficient to form a belief as to the truth of the allegations therein and therefore denies those allegations.

18. Responding to the allegations of Paragraph 14, the Commission is without knowledge or information sufficient to form a belief as to the truth of the allegations therein and therefore denies those allegations.

19. Responding to the allegations of Paragraph 15 and the footnote contained therein, the Commission craves reference to the Records and any official corporate filings and denies all allegations inconsistent therewith. As to any other allegations, the Commission is without knowledge or information sufficient to form a belief as to the truth of the allegations therein and therefore denies those allegations.

20. Responding to the allegations of Paragraph 16, the Commission is without knowledge or information sufficient to form a belief as to the truth of the allegations therein and therefore denies those allegations The funds at issue here were posted by WPS to meet its self-insurance obligations pursuant to the laws of the State of South Carolina and are being held pursuant to such laws. Neither the State of South Carolina nor the Commission had any duty to object to the sale or otherwise participate in the bankruptcy to protect or otherwise protect its interest in the self-insurance funds.

21. Responding to Paragraph 17, the Commission craves reference to the Sale Order referenced therein and denies all allegations inconsistent therewith.

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22. Responding to Paragraph 18, the Commission craves reference to the Sale Order referenced therein and denies all allegations inconsistent therewith.

23. Responding to Paragraph 19, the Commission craves reference to the documents referenced therein and denies any allegations that are inconsistent therewith.

24. The Commission denies the allegations of Paragraph 20.

25. Responding to Paragraph 21, the Commission craves reference to the documents referenced therein and the referenced case and denies any allegations that are inconsistent therewith.

26. Responding to Paragraph 22, the Commission craves reference to the documents referenced therein and the referenced case and denies any allegations that are inconsistent therewith.

27. Responding to Paragraph 23, much of Paragraph 23 consists of legal conclusions to which no response is necessary. As to other allegations, the Commission craves reference to the Sale Order and the referenced case and denies any allegations inconsistent therewith. As to any remaining allegations to which a response may be required, the Commission is without knowledge or information sufficient to form a belief as to the truth of the allegations therein and therefore denies those allegations.

28. Responding to Paragraph 24, the Commission craves reference to the documents referenced therein and denies any allegations that are inconsistent therewith. As to the remaining allegations of Paragraph 24, the Commission is without knowledge or information sufficient to form a belief as to the truth of the allegations therein and therefore denies those allegations.

29. Responding to Paragraph 25, the Commission admits only that WestPoint Stevens, Inc. was a self-insured employer in South Carolina.

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30. Responding to Paragraph 26, the Commission asserts that this allegation is a legal conclusion that is part and parcel of the core of the litigation herein and no response is required. Further, the Commission craves reference to all applicable corporate and court documents, now extant and that may be issued by this court in the future and denies any allegations that are inconsistent therewith.

31. Responding to Paragraph 27, the Commission craves reference to all documents that back up the claims asserted, including the relevant letter of credit documents and denies all allegations that are inconsistent therewith.

32. Responding to Paragraph 28, the Commission admits that it drew upon the letter of credit in the full amount on August 17, 2005.

33. Responding to Paragraph 29, the Commission admits that such a letter request was made by WestPoint Home. The Commission craves reference to the letter referenced therein and denies any allegations inconsistent therewith.

34. Responding to Paragraph 30, the Commission admits that it has not provided the referenced information. The Commission avers that, pursuant to S.C. Code § 42-19-40 and 25A S.C. Code Regs. 67-1515(B), the Commission cannot release this information to the public. As to the remaining allegations of Paragraph 30, these are the core matters at issue in this lawsuit and WestPoint Home's rights to the information described are subject to the findings by the court in this matter. The Commission further avers that, pursuant to the Order of this Court on July 3, 2019, the Commission provided WestPoint Home with 1) the number of open health care claims currently asserted against the funds held by the Treasurer, and 2) the amount of funds that remain.

35. The Commission denies the allegations of Paragraph 31.

36. The Commission denies the allegations of Paragraph 32.

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37. Responding to the Prayer for Relief, the Commission denies that WestPoint Home is entitled to the requested relief or any relief whatsoever.

FOR A FIRST DEFENSE
(Ripeness)

38. The allegations of Paragraph 1 through Paragraph 37 are realleged as fully as if repeated verbatim herein.

39. Before WestPoint Home can assert a claim for "all moneys held by the Commission that is not needed or required to fund any future liabilities for workers' compensation claims," it must first prevail on its claim to the records of WestPoint Stevens, Inc. and demonstrate that the money held by the Commission is not necessary to satisfy any future workers' compensation claims which may be filed by the former employees of WestPoint Stevens, Inc.

40. As there is no evidence currently that the money held by the Commission is not necessary for these possible future claims, WestPoint Home's claim for any money is not yet ripe and therefore should be dismissed.

FOR A SECOND DEFENSE
(S.C. Code Section 42-19-40)

41. The allegations of Paragraph 1 through Paragraph 40 are realleged as fully as if repeated verbatim herein.

42. Pursuant to S.C. Code Section 42-19-40, "The records of the Commission, in so far as they refer to accidents, injuries and settlements shall not be open to the public, but only to parties satisfying the Commission of their interest in such records and of the right to inspect them."

43. WestPoint Home has not satisfied the Commission that its status is not other than a member of the public and therefore is not entitled to the requested records.

FOR A THIRD DEFENSE

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(25A S.C. Code Regs. 67-1515(B) (2014))

44. The allegations of Paragraph 1 through Paragraph 43 are realleged as fully as if repeated verbatim herein.

45. Pursuant to 25A S.C. Code Regs. 67-1515(B) (2014), "The Commission shall not release to the public any information concerning a self-insured or a self-insurance fund other than confirmation that an employer is individually self-insured or is a member of a specific self-insurance fund, its address, the effective date of the such [sic] insurance program, and the name of the claims administrator."

46. WestPoint Home has not satisfied the Commission that it is entitled to receive the requested records other than such records as may be released to a member of the public.

FOR A FOURTH DEFENSE
(Definition of Parties)

47. The allegations of Paragraph 1 through Paragraph 46 are realleged as fully as if repeated verbatim herein.

48. The term "parties" under S.C. Code Section 42-19-40 has been interpreted by the South Carolina Supreme Court as "as referring to employees and employers." *Blue Cross and Blue Shield v. South Carolina Indus. Commission*, 74 S.C. 204, 208, 262 S.E.2d 35, 38 (1980).

49. WestPoint Home has not shown to the satisfaction of the Commission that it meets the definition of a party as an employer under S.C. Code Section 42-19-40.

FOR A FIFTH DEFENSE
(Chain of Succession)

50. The allegations of Paragraph 1 through Paragraph 49 are realleged as fully as if repeated verbatim herein.

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51. The documents referenced by WestPoint Home and those provided by WestPoint Home to the Commission do not unambiguously set forth that WestPoint Home acquired the claims at issue in this lawsuit from its asset purchase in the bankruptcy proceeding in the Southern District of New York.

FOR A SIXTH DEFENSE
(Asset Transfer)

52. The allegations of Paragraph 1 through Paragraph 51 are realleged as fully as if repeated verbatim herein.

53. The bankruptcy orders and asset purchase documents provided by WestPoint Home to the Commission do not separately delineate the claim asserted by WestPoint Home as an asset transferred from WestPoint Stevens, Inc. to WestPoint Home with sufficient clarity for the Commission to rely on these documents in determining whether WestPoint Home is entitled to the requested records.

FOR A SEVENTH DEFENSE
(Asset Title)

54. The allegations of Paragraph 1 through Paragraph 53 are realleged as fully as if repeated verbatim herein.

55. Pursuant to the bankruptcy documents provided by WestPoint Home, WestPoint Home was not the direct purchaser of the alleged claim that is the subject matter of this litigation.

56. Assuming the direct purchaser at the bankruptcy sale did acquire the alleged claim, and that WestPoint Home is the corporate successor to the direct purchaser of the claim, there is no satisfactory proof upon which the Commission can rely that there was not an intermediate transfer to a third party of the claim prior to WestPoint Home succeeding to the direct purchaser from the bankruptcy sale.

57. There is also insufficient information for the Commission to rely upon that, if WestPoint Home received the claim asserted here, that WestPoint Home has not transferred this claim prior to seeking recovery here.

FOR AN EIGHTH DEFENSE
(Unascertainable Relief)

58. The allegations of Paragraph 1 through Paragraph 57 are realleged as fully as if repeated verbatim herein.

59. WestPoint Home claims entitlement to an accounting and a possible refund based on an actuarial analysis of what is a sufficient residual amount for the Commission to retain for possible workers' compensation claims.

60. By its very nature, any such actuarial analysis will be speculative.

61. As a self-insured fund provided by WestPoint Stevens, Inc., the only funds from which former employees of WestPoint Stevens, Inc. can recover for workplace diseases are the funds held on behalf of the Commission for the benefit of these former employees.

62. If the actuarial analysis demonstrates that too little money is available to the Commission, then future workers' compensation claimants may not receive funds to which they are entitled.

63. Potential claims eligible for compensation from the self-insurance funds include claims for asbestos-related health claims.

64. The statute of limitations for filing a claim for an occupational disease is two years after the employee has been definitively diagnosed with having the occupational disease and the diagnosis has been communicated to the employee. S.C. Code Ann Section 42-15-40.

65. Therefore, the monetary relief sought by WestPoint Home is merely speculative and unascertainable until all possible claims have been extinguished.

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66. To avoid withholding too little money as the result of a speculative actuarial analysis as WestPoint Home would have the Commission do, the proper result is for the Commission to retain control of the requested funds until all possible claims have been extinguished.

67. Should any funds be remaining after all possible claims have been extinguished, and assuming that WestPoint Home is the proper successor entity to WestPoint Stevens, Inc., WestPoint Home would be able to assert a claim to any residual funds at that time.

FOR A NINTH DEFENSE
(Equity)

68. The allegations of Paragraph 1 through Paragraph 67 are realleged as fully as if repeated verbatim herein.

69. Documents provided to the Commission by WestPoint Home in pursuit of its claim of entitlement of access to WestPoint Stevens, Inc. documents and an accounting have asserted that the purchaser of the assets from the WestPoint Stevens, Inc. bankruptcy bears no ongoing responsibility for potential health related claims by former employees of WestPoint Stevens, Inc.. See letter dated August 15, 2005, from Lester D. Sears, Responsible Officer for WestPoint Stevens, Inc., which states:

> Please be advised that pursuant to the Sale Order and the APA, workers' compensation liabilities asserted against the debtors were not liabilities assumed by the Purchaser. Therefore, no further payments will be made with respect to workers' compensation claims asserted against WestPoint Stevens, Inc.

In addition, the letter dated October 15, 2013, from Yevgeny Fundler, General Counsel and Corporate Secretary of WestPoint Home, to J. Keith Roberts, General Counsel of the South Carolina Workers' Compensation Commission, stated:

> As you referenced in your letter, this was an asset only purchase and [WestPoint Home] did not accept liability for any workers' compensation claims against

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> [WestPoint Stevens, Inc.], instead purchasing workers' compensation insurance for any claims against the new entity. After the purchase of all of its assets, [WestPoint Stevens, Inc.] ceased all business operations and subsequently its liquidation was approved by the Bankruptcy Court.

70. While not taking responsibility for any potential claims, WestPoint Home is claiming entitlement to at least a portion of the self-insurance funds that are the sole source of recovery by the former employees of WestPoint Stevens, Inc. for health related claims.

71. WestPoint Home would leave these former employees with no remedy, through no fault of theirs, should a speculative, actuarial analysis prove to have been inaccurate with the passage of time.

72. Fairness and equity demand that the unnecessary risk of refunding money based on a speculative, actuarial analysis not occur. Particularly since, at the proper time, after all potential claims are barred, WestPoint Home can then make a claim for any remaining funds assuming that WestPoint Home has shown an entitlement to do so.

73. Holding the funds until all claims are extinguished will protect the workers as fully as possible, and WestPoint Home would still be entitled to a refund of any remaining funds at that time if it can prove its entitlement to those funds.

FOR A TENTH DEFENSE
(S.C. Code Section 42-5-20)

74. The allegations of Paragraph 1 through Paragraph 73 are realleged as fully as if repeated verbatim herein.

75. S.C. Code Section 42-5-20 provides in part as follows:

> Every employer who accepts the provisions of this title relative to the payment of compensation shall insure and keep insured his liability thereunder in any authorized corporation, association, organization, or mutual insurance association

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> formed by a group of employers so authorized or shall furnish to the commission satisfactory proof of his financial ability to pay directly the compensation in the amount and manner and when due as provided for in this title.

76. WestPoint Home has asserted that it has no ongoing liability for the payment of compensation claims filed by former workers of WestPoint Stevens, Inc.

77. As WestPoint Home as asserted that it has no ongoing liability, it is not in a position to "furnish to the commission satisfactory proof of his financial ability to pay directly the compensation in the amount and manner and when due as provided for in this title."

78. As WestPoint Home is not in a position by its own admission to satisfy these terms of the law regarding self-insurance, it is not entitled to a speculative return of portions of the security previously provided.

79. S.C. Code Section 42-5-20 further provides in part that:

> In the case of self-insurers the commission shall require the deposit of an acceptable security, indemnity, or bond to secure the payment of the compensation liabilities as they are incurred.

80. Since WestPoint Home asserts that it is not obligated to deposit security for the payment of the compensation liabilities as they are incurred, it has no basis to receive a refund of any portion of the only security in place so long as the possibility of employee claims remain.

FOR AN ELEVENTH DEFENSE
(Constructive Trust)

81. The allegations of Paragraph 1 through Paragraph 80 are realleged as fully as if repeated verbatim herein.

82. The funds being held by the South Carolina State Treasurer that resulted from the draw-down of the letter of credit at issue here are being held for the benefit of any WestPoint Stevens, Inc. workers that may incur lifetime illnesses from working for WestPoint Stevens, Inc.

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83. These funds are being held in a constructive trust for these workers and as long as any possibility remains that these funds may be needed to compensate eligible former WestPoint Stevens, Inc. workers, no portion of these funds may be released to WestPoint Home.

FOR A TWELFTH DEFENSE
(Failure to Exhaust Administrative Remedies)

84. The allegations of Paragraph 1 through Paragraph 83 are realleged as fully as if repeated verbatim herein.

85. WestPoint Home's counterclaim is barred due to its failure to exhaust administrative remedies.

86. Under S.C. Code Section 42-3-180, any questions arising under the Workers' Compensation Law shall be determined by the Commission.

87. This includes motions relating to "self-insurance privileges," pursuant to S.C. Code of Regulations Section 67-215(A)(6).

88. WestPoint Home was required to file a motion with the Commission seeking return of these funds and, if unsuccessful, appeal the Commission's ruling to the Court of Appeals. *See* S.C. Code Section 1-23-600(D); S.C. Code Section 42-17-60.

89. Because WestPoint Home failed to do so, its counterclaim must be dismissed. *See Stanton v. Town of Pawley's Island*, 309 S.C. 126, 420 S.E.2d 502 (1992) (plaintiff is generally required to exhaust administrative remedies before seeking relief from the courts, and dismissal for failure to do so is in the sound discretion of the trial judge).

FOR A THIRTEENTH DEFENSE
(No Entitlement to Interest—Funds Held in Trust)

90. The allegations of Paragraph 1 through Paragraph 89 are realleged as fully as if repeated verbatim herein.

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91. If WestPoint Home is awarded some or all of the funds in dispute by the Court, WestPoint Home is not entitled to any pre- or post-judgment interest.

92. The Commission is holding these funds in trust for the benefit of potential future claims by eligible workers; therefore, a claim for interest could only be properly asserted against those workers.

FOR A FOURTEENTH DEFENSE
(No Entitlement to Interest—Recovery Not Fixed)

93. The allegations of Paragraph 1 through Paragraph 92 are realleged as fully as if repeated verbatim herein.

94. The Commission used a portion of the funds it drew down from the letter of credit to pay outstanding claims made by workers of the former WestPoint Stevens, and the Commission continues to hold funds for future claims.

95. Consequently, the measure of recovery cannot be fixed by conditions existing at the time WestPoint Home's claim arose and WestPoint Home is not entitled to interest.

FOR A FIFTEENTH DEFENSE
(No Entitlement to Interest—Sovereign Immunity)

96. The allegations of Paragraph 1 through Paragraph 92 are realleged as fully as if repeated verbatim herein.

97. WestPoint Home is barred from recovering pre- or post-judgment interest by the doctrine of sovereign immunity.

98. S.C. Code Section 34-31-20 does not allow for recovery of interest against the State.

WHEREFORE, having fully replied to the counterclaims asserted by WestPoint Home, the Commission prays as follows:

a. That the counterclaim allegations be dismissed with prejudice.

b. For costs and attorney's fees.

c. For such other relief as may be just and proper.

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Respectfully submitted,

s/ L. David Leggett

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August 25, 2022

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Richland	)	2014-CP-40-2496
	)	
	)	
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
WESTPOINT HOME, LLC,	)	
	)	
DEFENDANT,	)	

August 31, 2022
Columbia, South Carolina

BEFORE:

THE HONORABLE ALISON RENEE LEE, JUDGE.

APPEARANCES:

DAVID LEGETTE, ASSISTANT ATTORNEY GENERAL
CARLY DAVIS, ASSISTANT ATTORNEY GENERAL
JARRETT LIBET, ASSISTANT ATTORNEY GENERAL
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KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

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THE COURT: First thing I need to do is get on WebEx.

(WHEREUPON, Joint Exhibits Nos. 1 - 52 were marked for identification only.)

THE COURT: Good morning again everyone. We're here on docket number 2014-CP-40-02416.

MR. CARROLL: Your Honor, I think if we turn the volume on that TV off for now, it will kill the echo in the room.

THE COURT: It will, but I don't know what it will do to everything else that you have done in terms of everybody else being able to hear. What I did is I turned mine off, and I'm speaking into the microphone. Hopefully, everyone should be able to hear that.

This is South Carolina Worker's Compensation Commission versus WestPoint Home. The Plaintiffs are represented by members of the Attorney General's Office, Jarrett Libet, Harley Kirkland, David Leggete, Carly Davis. And on behalf of the Defendants -- the defendant is Todd Carroll and Herbert Beigel.

Is Mr. Beigel going to attend or is he on?

MR. CARROLL: Your Honor, he is one of the attendees. I don't believe he's planning on speaking today. I have been texting him to see if he can hear us, but I don't believe we'll need his mic.

THE COURT: As long as he can hear, that's fine.

MR. CARROLL: Yes, ma'am.

THE COURT: We can make him a panelist if he needs to speak, just let me know and we'll go from there.

Counsel, I received an email yesterday from Mr. Carroll in reference to an issue relating to the Commission's expert report. Is that something we need to take up so we can figure out --

MR. CARROLL: No, ma'am. We were able to resolve it.

THE COURT: Okay.

MR. CARROLL: Yes. So the only -- we have two really quick pretrial things, and then I think we'll be ready to --

THE COURT: I'm going to ask you to make sure that you pull that microphone closer to you. No, not that one; the one on your desk. With all the glass, it's sometimes difficult to hear.

MR. CARROLL: Yes, ma'am.

THE COURT: And just want to make sure everyone picks it up.

MR. CARROLL: Sure, thank you.

THE COURT: Anything we need to take up before we get started?

MR. CARROLL: Just two briefly, Your Honor. The parties have a stipulation regarding the amount of money that is in the account that's in dispute. So if I may

just state on the record, it is as of August 12th of 2022, there are $1,711,617.08 in the account as of August 12th, 2022.

And then the second item of business is the parties have jointly agreed on the exhibits. Your Honor, we sent a link to the Court last week, I believe, that had the exhibits, and so we want to formally move, jointly move, those into evidence.

THE COURT: And I understand that there was another exhibit added this morning?

MR. CARROLL: Yes, ma'am. It was one of the materials that came as a result of yesterday's email thread.

Your Honor, we have provided the court reporter with a hard copy of all of the exhibits, including the new one. The court reporter's set of exhibits is redacted. The names of the claimants have been taken out of the various exhibits. We have unredacted hard copies of all the exhibits for Your Honor and Ms. Reed. If I can approach, Your Honor?

THE COURT: Yes, sir.

MR. CARROLL: I'll pass those up.

THE COURT: And there are 52 exhibits?

MR. CARROLL: Yes, ma'am.

THE COURT: And you're considering them to be Joint

Exhibits?

MR. CARROLL: Yes, ma'am. Your Honor, Exhibit 52 is just slipped into the front pocket. And with that, that's all our pretrial business.

(WHEREUPON, Plaintiff's Exhibits No. 1 - 52 were admitted into evidence.)

THE COURT: Mr. Libet, anything you want to add?

MR. LIBET: No, ma'am.

THE COURT: Are there opening statements?

MR. CARROLL: Yes, ma'am, if that suits the Court.

THE COURT: As we discussed in the e-mails, WestPoint Home is going first?

MR. CARROLL: Yes, ma'am.

THE COURT: And that's why you're doing most of the talking.

MR. CARROLL: That's right. I'm not used to sitting in this seat. May it please the court, Your Honor. My name is Todd Carroll. I represent WestPoint Home, LLC, which is the defendant in this lawsuit, but the plaintiff's claim has been resolved so all that remains for the Court's resolution is my client's counterclaim. So that's what today's trial is about.

Your Honor, I will try to be brief. I know Your Honor is familiar with the general background of the case, but I want to begin with two points, Your Honor.

Number one, my client's money was improperly taken on August the 17th of 2005. Point number two, my client's money has been wrongfully withheld from being returned to my client for the last 17-plus years.

At the end of this case, at the end of the trial, we're going to ask Your Honor to enter a judgment that declares that my client is entitled to a return of its money with interest. That money has been sitting in an account with the State Treasurer's office for 17 years, and it is time for it to be returned to its rightful owner, which is WestPoint Home, LLC.

The facts of this case, I know Your Honor is familiar with them. Candidly, my client was unfamiliar with them until very recently. We spent many years litigating whether or not my client could know anything about how its money was spent, but the general background of this case I'll kind of breeze through is as follows: WestPoint Stevens was a textile manufacturer that had facilities here in South Carolina as well as elsewhere. And for Workers' Compensation purposes in South Carolina, WestPoint Stevens was self-insured. It declared bankruptcy in 2003.

In July of 2005, it entered into a tentative purchase agreement with my client for my client to buy WestPoint Stevens' assets out of bankruptcy and that sale

closed on August 8th, 2005. That's the day that WestPoint Stevens officially went out of business, and that's the day that my client took over its assets.

As consideration for the asset purchase, my client agreed to post money in an account with Bank of America that would collateralize all of WestPoint Stevens' various letters of credit. And that includes the one that they had on file with the Workers' Compensation Commission.

But they had many letters of credit in all kinds of places, so part of the consideration of the purchase was my client would post no more than 35 million, it ended up being about 33 million in an account with Bank of America to collateralize letters of credit.

But the asset purchase agreement was clear -- this is in section 3.1 of the asset purchase agreement. It says, we're posting that money with the understanding that we have a right to receive back unused portions of that collateral, so we're going to collateralize your letters of credit.

The letters of credit will be used as they should be, and if there's any money left over when the time is up for those letters of credit to be called on, we get our money back. I mean, it just makes sense.

I mean, we bought their assets. We didn't buy their liabilities. Part of their -- WestPoint Stevens' going

concern was they had these outstanding obligations, such as Workers' Compensation Claims. And we said, okay, we'll post the money. We'll pay the claims that have arisen. But when the day comes that that money is no longer needed, we get it back.

So we posted the money to an account at Bank of America on August 8th, 2005. August 17th of 2005 Workers' Compensation Commission called the letter of credit in its entirety, 1.8 million dollars.

It swept my client's money out of its Bank of America account and deposited it into the account with the State Treasurer and that's where it's sat ever since, 17 years, almost 17 years to the day, August 17th of '05 was when that money was moved from my client's account into an account with the State.

In the intervening time, the agency refused to tell my client anything at all about how that money had been used. They wouldn't tell my client if there was any money left. They wouldn't tell my client if there were any claims that remained opened. They wouldn't tell my client anything at all.

Now that we've gone through discovery after Your Honor has put them to their proof and has made them tell us what in the world is happening here, now we know why they wouldn't tell us. There have been no claims opened

since 2006.

There has not been one penny paid out to a claimant since 2008. It's been 14 years since the last nickel went out the door to pay a claim for former WestPoint Stevens' employee. All the claims that were filed have been closed and they've been closed since 2008, 14 years.

Using the agency's own formula for how it calculates security needed for it to be self-insured employer, the agency's own formula tells us they have not needed any of our money since 2012, a full decade where using their own math they don't need our money and yet, it has stayed in the State's custody.

This case was filed in 2014. This is not the first time we've had a hearing with Your Honor. And every time we've had a hearing to this point, we've been told well, gee, Judge, what about these latent injuries? You never know, we may have to pay a claim. There's not been one penny paid to a former WestPoint Stevens' employee using my client's money for any latent injury. 17 years, zero dollars paid for any latent injury.

In the meantime, our principal has sat in an account with the State Treasurer and the Workers' Compensation Commission has been able to reap the benefits of our money. And they've collected over $500,000 in interest and investment earnings using our money over these 17

years.

Respectfully, Your Honor, that needs to stop. We need to get our money back. We need to get the interest that we're entitled to have under South Carolina law associated with that money.

So with that, Your Honor, we look forward to going through the proof today. Thank you.

THE COURT: Thank you.

Mr. Libet.

MR. LIBET: May it please the Court?

THE COURT: Yes, sir.

MR. LIBET: Good morning again. It's Jarrett Libet on behalf of the Workers' Compensation Commission joined today by Carly Kirkland, Carly Davis and David Leggete. I'd also like to introduce Keith Roberts and Kristen McCray, who are here with the Worker's Compensation Commission. We also have Danny Robinson and Brett Spradley, two of our law clerks sitting in, as well.

I will endeavor to be brief, as well. Mr. Carroll mentioned the WestPoint Stevens operations, several textile manufacturing plants in South Carolina that employed several thousand South Carolinians and workers at those plants were exposed to asbestos.

They are at risk of developing serious and debilitating medical conditions, including lung cancer,

pleural disease, mesothelioma, asbestosis. And these conditions can take literally decades to manifest symptoms and the cost associated with treatment can easily be in the tens or hundreds of thousands of dollars. And the statute of limitations for those claim does not begin to run until diagnosis.

The money the Commission is holding in trust is the only source of funds for those workers other than possibly their own insurance now currently or their own pockets. WestPoint Stevens is bankrupt.

There are no corporate insurance policies or guaranteed funds or anything like that in which these workers could recover. And because South Carolina follows the last injury exposure rule, any previous employers these workers may have worked for are not liable either even if they were also exposed to asbestos while at their facilities.

This is not the Commission's money. The Commission does not view it as its money. There is no benefit to the commission from the interest that is accumulating other than there is more money available for future claims. It has never been or will never be used for Commission's operational expenses, salaries, computers, anything like that. It's only for the workers.

As a self-insurer, WestPoint Stevens posted the

security commission in lieu of carrying Workers' Compensation insurance coverage, which would have been their other option. The Commission conducted financial audits and tracked claims paid to employees and the security required changed over time.

In 1997, after an analysis of recent claims, the commission lowered the security required from 1.55 million to 1.4 million. WestPoint Stevens obtained an irrevocable letter of credit with NationsBank and executed a memorandum of understanding with the Commission pledging this letter of security. That memorandum authorized the commission to draw down a letter of credit if it was ever canceled or non-renewed or if needed to pay claims and expenses.

In 2003, following WestPoint Stevens bankruptcy filing, the Commission increased the security required from 1.4 million to 1.8 million. Within a couple of weeks, WestPoint Stevens obtained a large letter of credit from Bank of America.

In August 2005, WestPoint Home contacted Commission. It asserted it purchased the assets of the former WestPoint Stevens but not its Workers' Compensation liabilities. That letter stated: "No further payments will be made with request to Workers' Compensation claims asserted against WestPoint Stevens, Inc."

But at that time, dozens of claims from injured workers were already pending and open. The Commission drew down the letter of credit from Bank of America with no objections raised at that time by WestPoint Company. And had the Commission not acted, these claims would not have been paid.

Over the next two years, a company called Key Risk, which we're asserting as a third party administrator, paid more than $600,000 to these injured workers out of these funds.

Even after these open claims were paid, the Commission retained the balance. Why? Because the need for the money remained. The Commission, as you'll hear, as a lot of experience with occupational illness claims being brought 20, 30, 40, 50 years after exposure.

Asbestos is a truly nasty product in terms of the harm it reaks on a set of lungs and the medical costs it can impose are substantial. So the funds have waited safely.

In 2011, four claims were filed with the Commission alleging illnesses developed from exposure to asbestos at WestPoint Stevens plants. And the Commission has also learned that WestPoint Home has been sued three times in South Carolina in 2014, and then twice just last year in 2021 by individuals alleging damages from asbestos

exposure.

While none of those claims have been ultimately eligible for payment from these funds, the types of claims with which the Commission is concerned are absolutely being made.

Seven-and-a-half years after the Commission drew down the funds from the bank, WestPoint Home's general counsel first contacted us to seek information regarding the funds, which started us on the path that led us before Your Honor today.

At bottom, the decision for the Court is simply this, has WestPoint Home met its burden of proving these funds will not be needed to assist with future Workers' Compensation claims by the former workers of WestPoint Stevens?

This is not to say the money will be needed forever, and the Commission does not seek to hold it in perpetuity. But without information regarding the identity of the workers of the former WestPoint Stevens, which is something WestPoint Home has been unable to provide, all we can do is make reasoned judgments regarding the likelihood of future claims, drawing on what we know about life expectancies, the latency between exposure to asbestos and diagnosis and decide for now where this money should reside.

In doing so, we recognize WestPoint Home has fully disclaimed any responsibility for these workers should an occupational illness develop. After listening to the testimony today and reviewing the documents that are in evidence, we believe you'll find in favor of the Commission and allow us to keep the money safe for these workers. Thank you.

THE COURT: You may call your first witness.

MS. DAVIS: I think the people on WebEx are having trouble hearing.

MR. CARROLL: I'm getting a text saying there's no sound.

THE COURT: That's probably because I've turned off my microphone. There's a microphone -- you can unmute that one.

MR. CARROLL: Where was that volume thing?

(Whereupon, there was an off-the-record discussion).

THE COURT: The question is can they still hear?

MR. CARROLL: Ma'am?

THE COURT: If they can tell us whether they can hear?

MS. DAVIS: Okay. We can be heard, but we need to speak loudly.

MR. CARROLL: I'll carry my microphone with me.

THE COURT: Either that or that microphone in front

of the clerk here you can pull over towards you, if it reaches.

Do you want to test that one to make sure they can hear you?

MR. CARROLL: Sure.

Can y'all hear me?

Yes, it looks like the sounds of success.

All right. Your Honor, are you ready to proceed?

THE COURT: Yes. You may proceed.

MR. CARROLL: Your Honor, WestPoint Home calls Gary Cannon as its first witness.

THE CLERK: Place your left hand on the Bible, raise your right.

GARY CANNON, after being duly sworn, testified as follows:

THE COURT: Please state your full name.

THE WITNESS: Gary Cannon.

DIRECT EXAMINATION:

BY MR. CARROLL:

Q Good morning, Mr. Cannon.

A Good morning.

Q It's nice to meet you in person. The first time we met, it was one of these WebEx things, so it's nice to see you in person. I don't have very many questions for you, but I do want to go through some of the main points that I

don't believe are in dispute.

Mr. Cannon, do we agree that WestPoint Stevens went out of business on August 8th of 2005?

A Yes.

Q And when WestPoint Stevens went out of business, they were a self-insured employee for Workers' Compensation purposes in South Carolina; is that correct?

A Yes.

Q And as part of that process of becoming a self-insured employer, they had to post security to make sure that there was something to pay claims in the event that they didn't pay out of pocket; is that correct?

A That's correct. We require any self-insured company to post, collateralize to ensure that they have the financial resources to pay the claims for while they're in business and then once they go out of business, in this case, they went solvent. We had to ensure that there would be plenty of money available to pay any future claims.

Q Sure. And for WestPoint Stevens, there was a memorandum of understanding between the agency and WestPoint Stevens that established that letter of credit; is that right?

A That's correct.

Q I'm going to attempt to share my screen, and I want

to show you Exhibit 13.

Mr. Cannon, this is Exhibit No. 13. It's title there is the Memorandum of Understanding. This is the agreement that WestPoint Stevens and the Workers' Compensation Commission had for WestPoint Stevens letter of credit, right?

A Yes.

Q And this one was entered in 1998; is that right?

A That's correct.

MS. DAVIS: Todd, will you hand him a copy? It's hard to read.

THE COURT: To the extent that the originals are here, you can also pass them to the witness so the witness can look at them, as well.

MR. CARROLL: Very good. May I approach, Your Honor?

THE COURT: Yes. And you all don't have to ask me to approach. We can dispense of that formality.

MR. CARROLL: Yes, ma'am.

THE COURT: It will save time.

BY MR. CARROLL:

Q Mr. Cannon, this is dated 1990, right?

A That's correct.

Q And this was the memo that allowed WestPoint Stevens to start using a letter of credit with the agency; is that correct?

A Yes.
Q And item four says that the Commission can draw on a letter of credit if needed to pay any Workers' Compensation claim or claims of administration expense; is that right?
A Yes, sir, that's what it says, if needed.
Q And there was no subsequent memorandum of understanding between WestPoint Stevens and the Commission, was there?
A Not to my knowledge.
Q So this memo talks about $1.4 million letter of credit; is that right?
A That's correct.
Q And then that security amount was eventually increased to $1.8 million; is that right?
A That's correct.
Q And the $1.8 million letter of credit was the one that was on file with the agency when my client bought the assets, WestPoint Stevens' assets out of bankruptcy; is that right?
A That's correct.
Q And the agency took that $1.8 million out of my client's account with Bank of America and moved it to an account with the treasurer's office?
A Well, the agency drew down the letter of credit

because your client went bankrupt and we needed the funds to --

Q Hang on, Mr. Cannon, let's be precise. My client did not go bankrupt.

A Okay. We drew down on a letter of credit to ensure that since there was no company still in existence that would have the assets or the financial resources to pay claims, it becomes the Commission's responsibility to ensure there are assets available, and that's why we drew down on that letter of credit.

Q I understand your explanation, but the agreement that you had that said when you could draw down said if the money was needed to pay claims, right?

A That's what the agreement says, but we didn't know. Even if the business was still in existence, you wouldn't know if a claim was going to be filed, but you had to have the assets available to pay those claims.

Q Mr. Cannon, I appreciate your explanations, but my questions are very precise. The agreement says that the time the agency can call the letter of credit is if the money is needed to pay claims, right?

A That's what it says.

Q That's right. And when the agency withdrew $1.8 million on August 17th of 2005 and moved it to an account where the State Treasurer's office, there was not

$1.8 million in claims pending, were there?
A No, sir, there was not. We weren't sure, though, because of the type of business they had and the potential asbestos claims that could have been filed.
Q Right. Claims could have been filed?
A That's right.
Q But they weren't filed?
A They were not.
Q There were not $1.8 million of claims pending at the time the money was taken from my client's bank account, were there?
A No, sir, not any pending claims, but it is the Commission's responsibility to ensure money is available for any claims to be filed in the future for employees of a self-insured company.
Q And the way the agency ensures that that money is there is by having these letters of credit, right?
A That's correct.
Q And the letter of credit was still there, wasn't it?
A The letter of credit was still -- we drew down on it as we were authorized to do.
Q Well, I, of course, strongly dispute that you were authorized to, but my question was, the letter of credit was still in place, right?
A Yes.

Q Yes. So the agency had the security that it needed with the letter of credit, correct?
A It had the letter of credit, correct, but it also said that we would draw down to ensure that liquid funds, cash would be available to pay any claims that would be filed.
Q Claims that would --
A Well, and we had Key Risk that we paid -- I think the Key Risk was $600,000 in claims.
Q I understand. They didn't pay $600,000 in claims on August 17th of 2005, did they?
A No.
Q They did not. Now, when -- you would agree with me instead of taking all the money out of the account and moving it to an account at the Treasurer's Office, you would agree with me that the agency could have simply called on the letter of credit as claims arose and payments needed to be made, right?
A No, sir, I wouldn't. We did not know the extent of potential claims that could be filed, so it was our practice to draw down on a letter of credit as needed. There was no subsequent funds available from the employer to pay any claims that would have been filed. And we didn't know that extent, so we withdrew a good bit on a letter of credit.

Q Mr. Cannon, I have -- look, I understand that your position is it's more expedient for the agency to just take all the money and see where the chips fall, but I'm asking you questions about what you were authored to do under the Memorandum of Understanding. And the Memorandum of Understanding says that you can call on the letter of credit only when needed to pay claims, right?

A It didn't say only if needed, it said if needed. And our determination that if -- our determination that it may be needed in the future because of the future claims.

Mr. Todd -- Mr. Carroll, we require for existing self-insurers to post financial resources to pay the claims to have excess insurance because -- and that excess insurance and the resources available could be more. There could be no claims have been filed if a company goes -- or becomes self-insured. So we withdrew on the letter of credit because we were unsure as to how many claims or if any claims would be filed.

Q I understand. And I have grave concerns about that policy for the State. The agency doesn't go into the world and say well, you're a self-insured employer. I don't know if a claim is ever going to be filed against you, but I've got this letter of credit on file, so I'm just going to take your money out of the bank and just call a letter of credit, in general, does it?

A No, sir. We don't call the letter of credit in general, but we do call the letter of credit if funds are not available from the company under the control of the company to pay for the claims.

Q But you knew that WestPoint Home had stepped into the shoes of WestPoint Stevens and had assumed that letter of credit?

A We did.

Q Yes. So the letter of credit was still in place and you could have simply called on the letter of credit in the amounts needed to pay the claims if they arose, couldn't you?

A We could have, but --

Q But you didn't, right?

A That's correct.

Q Right. You just took all the money right up front?

A We did.

Q And it was basically?

MS. DAVIS: Your Honor, I object. Can he let the witness finish his answer, please? He keeps interrupting him.

THE COURT: Please don't interrupt him and then we give him the opportunity to be able to ask the question.

MS. DAVIS: Thank you.

BY MR. CARROLL:

Q The agency basically took it as a $1.8 million loan from WestPoint Home that you can use to pay claims if they ever come up, right?

A We never considered it a loan. We considered it money that would be available to pay the claims if they came up, not a benefit to the Commission. We gained nothing by getting that money other than exercising our fiduciary responsibility to ensure the claims would be paid for the employees of J. P. Stevens.

Q But you didn't need $1.8 million?

A Not the day we drew it down, but we weren't sure what we would need in the future.

Q And you haven't needed it today, have you?

A Well, we have not, but we have examples of similar businesses that claims have been filed where the authorities were -- since the '50s. So we have to look at the businesses, we have to look at the potential claims coming in to ensure that money is available. If it's not available and a claim is filed 40, 50 years later, then the injured employee has no recourse to pay for their medical benefits or compensation.

Q Mr. Cannon, we'll get into that in just a minute, but my question is, again, very precise. As we stand here today in August of 2022, the agency has not needed

$1.8 million to pay claims of former WestPoint Stevens' employees, has it?

A That's correct.

Q And let's talk about how -- let's talk about when the money was actually needed, okay. The agency moved the money from my client's account to the agency's account with the Treasurer's Office on August 17th of 2005, correct?

A That's correct.

Q And then the agency sent $500,000 from the treasurer's office to Key Risk on August 26th of 2005 to start paying claims, right?

A That's correct.

Q So your first --

MR. CARROLL: And, Your Honor, this is Exhibit 37. I'll put it up on the screen.

MS. DAVIS: Give him a hard copy of that.

MR. CARROLL: Sorry. I gave away all my hard copies.

MS. DAVIS: Thirty-seven?

BY MR. CARROLL:

Q Yes.

Mr. Cannon, here's a hard copy of 37. Mr. Cannon, this is an e-mail from W.C. Smith, who used to run -- he used to run the self-insured program at the agency, correct?

A That's correct, he was the manager of the self-insured program.
Q This is on e-mail from him to one of your colleagues asking her -- about two-thirds of the way down, there's a sentence that says, please have a check for $500,000. You see where I'm highlighting?
A Yes.
Q Have a check for $500,000 from WestPoint Stevens account sent to Key Risk Management. This will leave 1.3 million in the WestPoint account in the Treasurer's Office. Did I read that right?
A That's correct.
Q Okay. So the agency knew that not only did it not have $1.8 million in claims pending when it took the money, it didn't even have $1 million in claims pending, did it?
A Well, we had 45 open claims, as this memo says.
Q I see that. And Mr. Smith's position was that you could probably pay those with $500,000, right?
A That was the projected amount for the incurred, which is the potential losses and the actual claims expenses. Again, our process is that we insured that $500,000 for these 45 claims that were owed and that was Mr. Smith's analysis of the potential claims based on the injury. But, again, we weren't sure what was coming in the future.

Q I understand. Mr. Smith could have left all of my client's money in my client's account and simply called on the letter of credit for $500,000, right?
A No. I mean, we had --
Q Why couldn't he have done that?
A Well, the letter of credit -- the money was in the WestPoint Stevens call -- the letter of credit was called and it was in the WestPoint Stevens account.
Q I understand. But the scenario I'm saying is, if the agency had left my client's money where it was supposed to be at Bank of America, Mr. Smith could have called $500,000 from that letter of credit and sent that to Key Risk, right?
A He could have, but, again, the policy is --
Q But he had already taken the money?
A Well, he had taken the money. We had drew down the credit because there was no guarantee there would be money in the future because the company was nonexistent anymore.
Q You keep saying there was no guarantee of money in the future, but we agreed that my client assumed that letter of credit and the agency knew that my client assumed that letter of credit, right?
A Right.
Q So there's really no dispute that that money was going to be there. It was just a question of which

account is it in. Is it in my client's account where it will collect interest or is it in the agency's account where it will collect interest not for my client?

A And we were following policy of drawing down the letter of credit when the company went out of business.

Q That policy is not published anywhere, is it?

A No, sir.

Q And that policy is not written on that Memorandum of Understanding that we looked at a moment ago, is it?

A Well, the Memorandum of Understanding says we may draw down on the letter of credit.

Q When needed?

A If needed.

Q If needed to pay claims, right?

A That's what it says.

Q All right. So that was in August of '05 the agency believed that it needed $500,000 to pay the existing claims. And then it wasn't -- that $500,000 lasted until the following April, didn't it?

A Yes.

Q And this is Exhibit 38. Mr. Cannon, April 5th of 2006, we have Mr. Smith again e-mailing Ms. Sanders saying the first $500,000 has been exhausted, so we need to replenish it. You see where my cursor is that starts, Please send. Please send another check for another

$500,000 to Key Risk. Do you see that?
A Yes, I do.
Q So as of April 5th, 2006, the agency still knew that it didn't have $1.8 million of claims pending. It believed that it may have another $500,000; is that right?
A Based on the information on the type of injuries that we had that were reporting, the amount set aside or incurred for each of those injuries, this was the amount of money that was projected potentially needed.
Q But not needed, potentially?
A Potentially.
Q Yeah, potentially.
A That's why you have insurance policy is the potential need.
Q Or that's why you have the letter of credit that sits there that can be called upon when needed, right?
A That's correct.
Q Okay. But Key Risk did not spend all that $500,000, did it?
A I don't recall exactly how much they spend on those claims, about 500,000.
Q Well, we can do some of that math. This is Exhibit 39.

Mr. Cannon, this is a table that the agency produced that shows what's in the account, in the WestPoint Stevens

former employee's account, right?
A That's on file with the State Treasurer?
Q That's right.
A That's correct.
Q And there's a line FY 2009, there's a number under the insurance claims column, right?
A That's correct.
Q And I think you told me in your deposition that that was money the Key Risk had sent back to the commission because it didn't need money to pay the claims?
A Yes, that's correct.
Q So you sent them $500,000. They sent you back $364,512.39. I mean, they only spent $135,000 paying claims?
A That's right.
Q So as it stands, the principal balance -- the principal balance for this account starting in 2009 was $1,164,512, right?
MS. DAVIS: Your Honor, I object. This might be a little bit off.
MR. CARROLL: Well, here.
MS. DAVIS: From the initial 500,000 --
THE COURT: I'm sorry. You need to speak up. I'm sure they can't hear you, and I can't hear you.
MS. DAVIS: I think the math might be a little bit

confusing, or maybe it is for me. Can we just clarify that again?

BY MR. CARROLL:

Q Sure.

So there was -- let me go back to Exhibit 38. This is from Mr. Smith to Ms. Sanders saying, we'll have $800,000 in the account. That's the principal, right? Do we agree, Mr. Cannon?

A I'm sorry, I didn't understand your question.

Q So the account started with 1.8 million, and in August of '05, 500,000 was taken leave, leaving us with 1.3 million?

A Right.

Q And in April of '06, another $500,000 went out leaving us with $800,000 in principal?

A That's right.

Q But Key Risk sent us back $364,000 of money that it didn't need. So 800,000 remaining principal, plus $364,512.49 leaves us with $1,164,512.39 of my client's original principal that has never been used to pay a claim. Is that right?

A If your math is right.

Q I'm sorry. I thought -- look --

A Okay.

Q I thought I had a calculator showing up on my share

screen.
A This exhibit reflects the initial balance of $874,000 starting 2008, but the interest earning of 44,000, balance of 900,000, 919,000.
Q I agree, I agree that's what it says.
A And then the next year, it was $43,596 in interest that was earned in that amount. And then in 2009, a $364,000 insurance claims.
Q Yes, sir. So the 874 right here?
A Yes.
Q Is $800,000 of my client's principal. My client deposited 1.8 million, and one million had been withdrawn at that point to go to Key Risk, right?
A That's correct.
Q So of this initial balance of 874, $74,623 would be in the investment earnings column from prior years?
A Right.
Q So we have $800,000 of our principal still in the pot and added to that was $364,000 that Key Risk didn't need to pay claims, right?
A That's right.
Q So the principal from what my client deposited starting in fiscal year 2009 was $800,000 plus 364,512.
A Okay.
Q I had a calculator going on my screen, and I thought

it would show up there. I thought I was Clarence Darrow, but no such luck.

Mr. Cannon, that principal has not changed since 2008, has it?

A It has not. It's earned interest with the State Treasurer.

Q I see that. It has earned a lot of interest. But the last payment that was made was in May, May 7th of 2008; is that right?

A I'm not sure of the exact date but I know in 2008, we made some payments and this is what resulted, the balance that was returned to us.

Q The last payment -- here I'll -- I'll show you exactly which one I'm talking about. This is Exhibit 31. We have a payment here -- is this highlighting showing up on the screen?

Mr. Cannon, we have a payment here dated May 7th, 2008 for $45.41 and it's a check to the Turner Padget Law Firm?

THE COURT: I'm sorry, I don't believe I have that exhibit.

MR. CARROLL: Your Honor, that's --

THE COURT: 31?

MR. CARROLL: Yes, ma'am, 31. And it's --

THE COURT: Which page?

MR. CARROLL: It's the last page. Yes, ma'am, very last page.

MS. DAVIS: What date was that?

MR. CARROLL: This is -- well, the check was written May 21st, 2008. I guess the invoice was submitted May 7th, 2008.

BY MR. CARROLL:

Q Mr. Cannon --

THE COURT: I'm so sorry.

MR. CARROLL: Yes, ma'am.

THE COURT: I'm not seeing that. Is it check number 307877? Is that the one you're referring to?

MR. CARROLL: Yes, ma'am.

THE COURT: Okay.

MR. CARROLL: I'm sorry that the hard copy is so tiny, Your Honor. We tried -- when printing spread sheets, it's always a trick to get it to where it's not unwieldy. Did you find what you needed? I know it's microscopic printing.

THE COURT: I'm sorry, I thought you were --

MR. CARROLL: No, ma'am. I thought you were looking for the needle in the haystack up there.

THE COURT: No, I found it.

BY MR. CARROLL:

Q So Mr. Cannon, the last payment on any of these

claims was on May 21st of 2008 to the Turner Padget Law Firm; is that correct?
A That's right.
Q And it was only for $45.41?
A Yes.
Q So in the last claim that was opened, was opened in 2006, correct?
A That's correct.
Q So there hasn't been any new claims opened in 16 years, correct?
A That's correct.
Q There hasn't been any open claims period since 2008, so 14 years, right?
A Not for J. P. Stevens for this employer.
Q Right. For this employer, there's been no open claims since 2008. The agency hasn't needed to borrow -- the language of the Memorandum of Understanding, the agency hasn't needed that money on deposit since 2008?
A There have been no claims to my knowledge filed to draw down on this money that we have held in escrow for any future claims.
Q So that's it, that's a yes, this money has not been needed since 2008?
MS. DAVIS: Your Honor, I object to the form of that question. That calls for speculation. The answer to that

question is the reason we're here today, whether the money is needed or not.

THE COURT: Rephrase the question.

MR. CARROLL: Well, Your Honor, I don't believe it calls for any speculation. They haven't had to pay one red cent in the last 14 years.

THE COURT: Rephrase the question.

MR. CARROLL: Yes, ma'am.

BY MR. CARROLL:

Q Mr. Cannon, there has not been a claim filed in 16 years, correct?

A That's correct.

Q There's not been a claim paid in 14 years, correct?

A That's correct.

Q The company WestPoint Stevens went out of business on August 8th, 2005, right?

A That's right.

Q The statute of repose for any latent injury claim closed on August 8th, 2007, right?

A Any latent claims is two years from the date of diagnosis.

Q No, sir, that's the statute of limitations. I'm talking about the statute of repose.

A Repose.

Q The statute of repose is two years from the last

exposure, correct?
A Yes.
Q So that would have been August 8th of 2007, correct?
A Right.
MR. CARROLL: So, Your Honor, there is no speculation. There is no open claim, and there's no potential for an open claim.
THE COURT: You need to ask your question to the witness. You can make your argument to me later.
MR. CARROLL: Understood, Your Honor.
BY MR. CARROLL:
Q Mr. Cannon, let's talk about the security, about how the agency establishes its security, okay. We've talked about the security. That's talk about how it came into being in the first place. The agency has no actuaries on staff, correct?
A That's correct.
Q But it does have its own formula for how to calculate security needed for self-insured employers, correct?
A That's correct.
Q And that formula has a couple of different components. The first component is it looks at the actual claims paid for the last three years of the employer, right?
A That's correct.

Q Not claims that are pending. It looks at actual money out the door, right?
A Claims, but not incurred.
Q Right. You take the last three years of claims paid and the agency averages that out divided by three, right?
A We've taken the annual average, that's right.
Q Right. And then the agency took into account for inflation and potential insolvency, it multiplies that number by 1.5, right?
A That's correct.
Q And then for additional security, it rounds that number up to the next highest $50,000?
A That's correct.
Q And that's the formula that the agency used to set the WestPoint Stevens letter of credit, right?
A That's correct.
Q And that was -- just to put some actual numbers with the theory we're talking about...

Your Honor, this is Exhibit No. 9.

Mr. Cannon, this is Exhibit 9. It is a letter from the agency to WestPoint Stevens from July of 1997, right?
A That's right.
Q And the subject line is self-insurance program surety required?
A That's correct.

Q And then the second paragraph starts the description of how the security amount is set. It says, the amount of security requirement is dependent primarily on claims history. For individual self-insured firms, the surety amount must be set at a level sufficient to pay all claims in the event of an insolvency; is that right?
A Yes, sir.
Q And this is the formula that the agency still uses, correct?
A Yes, sir.
Q So as we scroll down, the final paragraph on that pages tell us -- gives a narrative form of the formula that we were discussing; is that right?
A That's right.
Q And then the last page, the third page of this exhibit shows how that formula worked for WestPoint Stevens in 1997. Can you turn to that last page with me?
A The beginning of the last page, it says because it's not on liability already that has been incurred for future payments.
Q Do you not have a third page up there?
A I have a third page is -- oh, the second page -- I'm sorry, I thought you said --
Q I'm sorry, I want you to look at --
A I'm sorry.

Q Thanks. Whatever you want to call that. So this is the last page of Exhibit 9. Mr. Cannon, I want to walk through this so that Your Honor understands what the agency's formula is for calculating that surety amount.

The column on the far left just has the company WestPoint Stevens, right?

A That's right.

Q Then the next three columns in, that's WestPoint Stevens' claims paid over each of the previous three years, right?

A That's correct.

Q That's not claims incurred, but not paid?

A Claims paid.

Q Yeah, not claims incurred?

A That's correct.

Q And it's not -- well, we may have -- it's not a guess about a future claim, is it?

A It's the amount that has been paid on the claim. The claim is not closed to any future costs to that particular claim.

Q But these numbers are hard data of money that went out the door?

A Money that was paid on these claims.

Q Okay. So the first column under the headings last three years are three years and then the column under --

the number under the word average is the average of those three years, right?
A That's correct.
Q And then the next column over, that's where you multiply the average paid by one-and-a-half, right?
A That's correct.
Q So that yielded a surety amount of $1,380,432?
A That's correct.
Q And then the agency's formula then says we round up to the next highest $50,000, right?
A Right.
Q So that's how in 1997 WestPoint Stevens ended up with a surety amount of $1.4 millions?
A That's correct.
Q And that amount was secured by the letter of credit and memorandum of understanding that we looked at earlier?
A That's correct.
Q And Mr. Cannon, since we've agreed that the last dollar went out the door in 2008, so that $45.41 entry to Turner Padget was in 2008. So if we use the agency's formula here starting in 2009, we have zero, 2010, we have zero claims paid and in 2011, we have zero. The average of three years of zero is zero, right?
A That's correct.
Q And zero times one-and-a-half is still zero, right?

And the next highest 50,000 is still zero, right?
A That's correct.
Q So in 2012, the agency's formula for calculating the surety needed on deposit was zero dollars; is that right?
A Based on this formula.
Q That's my question, based on the agency's formula starting in 2012, the surety needed was zero dollars?
A The surety needed was the amount that we anticipated and that's what we drew on the letter of credit. Because with the letter of credit in hand, it gave us the opportunity to pay those claims, potential claims that would have been paid -- could have been paid and could have been filed 20 or 30 years later. But to your point, there were no claims paid and using that formula, yes, it was zero.
Q And it's been zero every year since 2012, right?
A That's correct.
Q Mr. Cannon, so using your formula of the surety amount of zero in 2012, and WestPoint Home actually started reaching out to the agency in 2013 about its deposit, didn't it?
A Yes.
Q And at the time, the agency refused to tell WestPoint Home anything about its deposit, didn't it?
A Yes, we did.

Q And then --
A The statute calls for that information to be confidential and that's why we were not obligated, the fact we weren't obligated to provide the information.
Q Right. You've had my client's money and felt you weren't obligated to tell them anything about how it had been spent?
A Well, your client's money, I guess, that's the part in dispute, too. We drew down that money, which it became the state's money to take care of any future claims.
Q Well, you drew it down under an agreement that said you wouldn't draw it down unless it was needed, right?
A We didn't know that it was needed. It was our policy to determine when it was needed and we drew it down so we would have it.
Q I understand and I appreciate your testimony on that point. My client offered to enter into some kind of confidentiality agreement with the agency to find out how its money had been spent, didn't it?
A Yes, I think so.
Q And the agency again said, no, we won't tell you anything, right?
A That's right.
Q And then the agency filed this lawsuit in 2014?
A Because we didn't believe your client had standing in

the case.
Q I understand. When the agency filed this lawsuit in 2014, there had not been a new claim opened in eight years, correct?
A Not to my knowledge.
Q There had not been a payment to anybody for anything for six years, right?
A That's correct.
Q The surety amount according to the agency's formula was zero dollars at the time the agency filed this lawsuit; isn't that right?
A Using that formula, that's correct.
Q It wasn't until Judge Lee ordered the agency to tell us whether there were any open claims and how much of the deposit was left in July of 2019 that my client first learned that oh, there actually is some money left; isn't that right?
A That's correct.
Q It took five years of litigating this case for my client to find out whether any of its money was actually needed to pay claims; is that right?
A That's correct.
Q Mr. Cannon, the -- I have one -- you've talked a lot about well, gee, there may be these latent claims, we don't know. There have been seven different claims filed

following WestPoint Stevens' bankruptcy that have claimed some type of lung illness, correct?

A Those are the claims from J.B. Stevens, WestPoint Stevens?

Q Yes, sir.

A Right, seven of them.

Q And all seven of those have been denied, correct?

A That's correct.

MR. CARROLL: Your Honor, I have nothing further at this time. Thank you.

THE COURT: Ms. Davis.

MS. DAVIS: Your Honor, can we take a short break before I cross-examine?

THE COURT: Yes, ma'am.

Let's take about a five-minute break. We'll come back.

During this break, you should not discuss your testimony with anyone. It's inappropriate for you to do so since you have not completed it.

THE WITNESS: Yes, Your Honor.

THE COURT: Let's take about a five-minute break and come back.

(WHEREUPON, a short break was taken.)

THE COURT: Yes, ma'am, Ms. Davis.

MS. DAVIS: Thank you, Your Honor. I really

appreciate that break.

THE COURT: No problem.

CROSS-EXAMINATION:

BY MS. DAVIS:

Q Good morning, Mr. Cannon.

A Good morning.

THE COURT: You're going to need to speak a little bit louder than that.

MS. DAVIS: Okay. If that ever becomes a problem, let me know.

BY MS. DAVIS:

Q I'd like to back up for a few minutes and just have you give us a more general version and some background on the Commission and what they do.

A Okay. The Commission was created in 1935 to -- and it is to ensure that an injured employee receives the proper care, medical care and compensation for on-the-job injuries.

We're a fiduciary. We ensure that carriers, employers have the proper coverage, be it commercial coverage or the self-insured. And being self-insured, you can be an individual company that's self-insured or it can be a fund.

We require employers to have coverage to make sure that each employee that's injured has the -- the employer

has the capability of paying compensation and medical for that.

We require self-insureds to have certain financial assets and financial resources to make sure the claims can be paid for their injured workers for the self-insured. And we have the -- I think the regulation requirements looking at the assets, physical assets of the company, looking at their cash, looking at any type of financial -- and their liabilities to ensure that we can establish for them what that should be, that level should be.

You must have -- to be self-insured in South Carolina, you must have to have been in business at least three years and have $10 million worth of assets for the individual employer. But it's the Commission's responsibility if an employee is injured on the job and there's a dispute -- first of all, we determine if there's coverage.

And if there's a dispute, there's a process by which they go before a commissioner for a hearing. But in most cases, those claims are settled, either accepted or denied. If it's accepted, medical is paid, compensation is paid. Any dispute goes before the commissioner.

Q What kind of documentation is required to become a self-insured company?

A Must have -- we have forms that must be completed and

copies of the assets and excess insurance, copies of excess insurance, memorandum of understanding to show that they have collateralized or have letter of credit to ensure that funds are available.

They must have $10 million worth of assets, whether it be fixed assets or other, and they have to prove that to us. We also -- the self-insurance director if they can't provide or do not provide -- they must provide an audit report for us with regard to their financial status. And then we also check Dunn and Bradstreet, other information on the employers to determine their financial status.

Q Are self-insureds required to post a security with the commission?

A Yes, they are.

Q What types of security are those?

A It can either be a bond or a letter of credit. And we found most recently most places want a letter of credit.

Q Okay. And the amount of those sureties is calculated using that formula that you discussed earlier?

A Yes, we look at the three years of claims paid and they have to provided that information to us. If they were previously commercially insured, then they have to provide that information to us from the previous carrier,

the number of claims paid per year. That's three years worth of claims paid.

Q But that formula assumes that it's for an ongoing business; is that correct?

A That's correct. We look at the claims paid and the formula is a reduction of 40 percent, 30 percent, 15 and ten for a three-year period, but looking at a decreasing amount of percentage because that's assuming that they -- when a claim is filed, a certain dollar amount is incurred based upon the type of injury, the nature of the injury. So the actuary, I guess, the insurance companies will determine that this injury should be -- it should be a certain amount of money set aside for it. Over the course of the claim, if it's multiyear, then that amount paid goes against that incurred, the amount incurred is reduced based upon the amount paid.

Q What types of injuries were you mentioning a minute ago?

A I'm sorry, I didn't...

Q What types of injuries occurred that the claims cover?

A They're -- I guess, the injuries could be sort of the natural injuries or whether there are cuts and breaks and those types of injuries and then the occupational illness injuries.

Each one of those, if you have, I guess, a standard illness or standard injury, there's a two-year requirement that you must report that claim for it to be eligible for compensation, subject to the act, within two years.

Occupational illnesses are different, and you have a two-year window -- once the occupational illness is diagnosed, you have a two-year window to file a claim.

In some cases, we have claims that we are considering now that have been filed with us that employees since 1951 and, you know, it could be 40 or 50 years later that they file a claim.

Q Okay. Jumping back to the formula and the security amount, is there a type of review process for those sureties?

A A review process?

Q Uh-huh.

A That information must come to the Director of Self-insurance. The Director of Self-insurance ensures that information is correct. It verifies the information. And then it goes before the Commission to approve that employer to be self-insured.

Q Are the surety amounts reviewed annually?

A Yes. The employers are required -- the self-insured employer is required to submit annual audit reports to us to -- so that their financial status is unchanged in the

business, as well as the amount of claims paid for the previous year, number of claims they've had and number of employees that they've had for that previous year.

We receive that information and then every two years, every employee is audited, one 50 percent one year and 50 percent the next year. We try every two years to have every employer of self-insured audited where the self-insurance director goes out and looks at the data that they have submitted to us to verify the data is correct.

Q Are insolvent companies audited every two years?

A Once they're insolvent, they are not. Up until the point that they become insolvent, they're no longer -- either they -- if they go insolvent, they have two options. One, they can do a loss portfolio transfer. They can take all the claims and they can transfer those to a commercial carrier.

They certify to us that they have done that. And so then once that certification comes in, there's no requirement or need for us to draw down on security because the future claims will be taken care of.

If a company does go insolvent, then we look at the types of claims, business and the letter of credit that they have and the potential for any future claims being paid or being filed on -- from that company of those

employees.
Q What happens if there's a claim in excess of the security posted with the Workers' Compensation Commission?
A If there's a claim in excess, there is no ability -- there's no guarantee fund. If there's no -- the self-insureds do not have a guarantee fund or uninsured employer's fund. So if the money runs out, then that claim is left without any financial resources to take care of their injury, medical claims and compensation.
Q And that's for an insolvent company?
A Yes.
Q Once the company notifies you -- a self-insured company notifies you that they're going bankrupt, what is the process taken?
A We look at the outstanding claims. We look at whatever determination, what's going to happen to those existing claims that are current, and then we draw down the letter of credit to calculate potential future claims based on the type of business that the industry or manufacturing plant is.
Q In regards to this case and WestPoint, you testified earlier about a memorandum of understanding. If I could put that in front of you again?
A Yes.
Q Exhibit 13.

MS. DAVIS: Your Honor, do you have Exhibit 13?
THE COURT: Yes.
MS. DAVIS: Okay.
BY MS. DAVIS:
Q Could you read for me paragraphs three, four and five?
A Number three says that if the Commission is notified that the letter of credit is being canceled or will not be renewed and a new letter of credit or surety bond acceptable to the Commission is not filed with the Commission, the Commission may at its discretion draw on the letter of credit.
Number four says, the Commission may at any time draw on the letter of credit, if needed, to pay any Workers' Compensation claim or claims of administration expense which are the responsibility of the employer.
And number five says, all proceeds drawn on the letter of credit shall be deposited with the State Treasurer.
Q Is that what the Commission did? They drew on the letter of credit for claims that may come up?
A That's correct. As in under number three, we were notified that they were not going to be responsible for their payment of Workers' Compensation claims anymore, and they were not going to renew the letter of credit; and so,

therefore, we drew down on letter of credit.

Q And then number four, correct me if I'm reading this wrong, it says if needed to pay any Workers' Compensation claim. That does not say pending, does it?

A No, it does not. It says any Workers' Compensation claims.

Q Thank you. Now, what information did we have about the former employees of WestPoint Stevens?

A We had the number of employees that were provided to us in their annual report, but we did not -- when the company went insolvent, we did not have the list of employee's names, addresses, ages, so we did not have the ability to -- I mean, that's all. We did not have that information.

Q What kind of issues did that raise?

A The fact is that we knew the type of business the company had. We knew that there's a potential asbestosis and mesothelioma and -- because of other similar type businesses in the textile industry.

So we had to make -- and that's why the original letter of credit was established and that's why we drew down on it because of the potential claims that could have been filed against that.

If those claims had been -- were filed and we paid out all of that money, any future claims, there would be

no resources for that employee, injured employee to get benefits from.

Q Okay. Now, I'd like to draw your attention to Exhibit 25. This is a letter to Mr. Smith regarding WestPoint Stevens on August 15th, 2005.

Mr. Cannon, if you could, could you scroll to the last paragraph and read that for the court?

A The last paragraph says, please be advised that pursuant to the state sale order and the APA Workers Compensation liabilities asserted against the debtors were not liabilities assumed by the purchaser. Therefore, no further payments will be made with respect to the Workers' Compensation claims asserted against WestPoint Stevens, Inc.

Q What does that mean to you?

A It meant that that would not be -- no further would be paid if any claims were filed. It means that we had to draw down on the letter of credit to ensure that the funds would be set aside for any future claims to be paid.

Q So WestPoint Homes didn't really step into the shoes of WestPoint Stevens because they disclaimed liability?

A That's what their letter says, yes.

Q So the Commission then drew down on letter of credit. What happened after that, were claims paid?

A Yes, claims were paid. We contracted with Key Risk,

who is the third party administrator, for any outstanding claims at that point in time. So they processed the claims and managed the claims, they paid the claims. And that's when we transferred the funds into their account so they could do that.

Q Do you remember how much was paid?

A I seem to recall about $600,000 was paid total that Key Risk managed for us.

Q And that would have been after the bankruptcy and after the Commission drew down on the letter of credit?

A That's correct.

Q Have there been any asbestos-related claims that you know of?

A There have been some lung-related claims. There were some lung-related claims filed for WestPoint, on J. P. Stevens filed after -- that were on the record, but the commission has other claims, other industries.

Currently, I've had 450 claims filed from other industries for occupational diseases that -- I think I mentioned earlier that could date back to the 1950s, at that point in time. They are filed and currently pending before the commission.

Q Can you ensure that there won't be any claims in the future?

A I cannot. I mean, that's why we have -- we consider

the letter of credit an insurance for the people of South Carolina, the workers of South Carolina, that money would be available.

We ensure coverage is available for employers, that their claim is filed, whether it be commercial or self-insurance. It's our duty and responsibility to ensure that. Our duty and responsibility to ensure these letters of credit as insurance for any future claims could be paid.

Q Does the Commission intend to keep the money forever?

A We do not. As a result of this question, this is the first time we've ever had this situation faced to us, come to us about requesting to have the money returned. I think that it would be my recommendation the Commission would look at some -- developing some policy in the program to establish that as that money is not determined needed in the future, that we can then return it back to whatever is available or authorized by the statute or regulation at that point in time.

It may require legislative action, either statutorily or regulatory for us to do that. But our intent was not to keep this money in perpetuity, but it was to just ensure money was there for claims to be paid.

Q What benefit does the Commission receive by holding this money from these people?

A The Commission gets no benefit for the commission itself. This money is not used for administrative purposes. We get our funds from two sources otherwise to operate the Commission, general fund appropriations and earmarked funds.

Funds going into these earmarked -- I mean, these -- the funds established for insolvent companies are held in escrow by the state Treasurer's Department, invested by the State Treasurer's Department. And that money goes back specifically for that account that assigned to that insolvent company.

We only manage that money based on the claims that are filed with us. If we get a claim filed with us from J. P. Stevens employee tomorrow, we would use those funds to manage that claim, pay those claims -- either pay a claims administrator to manage that claim and pay the claims that come in on that.

Q Did you say that at the Commission y'all had claims from back in the '50s that were just identified?

A We have pending before the Commission right now -- commissioners are considering claims from Westinghouse for occupational claims, occupational illness claims. These employees were employed back in the '50s, mid-'50s.

They claims were filed maybe in 2011, something like that, but because it was occupational illness, they were

accepted. Some were denied, but some were accepted and currently pending before the commission.

Q Could WestPoint Home petition the Commission for the money back or a partial reduction?

A We just got a letter saying they wanted to know how much it was. We didn't believe it had standing, but they did not petition the Commission for the money back.

Q Now, if the Court deems it proper to return all the money to WestPoint wow, what happens if a claim is filed?

A The claim would have no basis or the Commission could not accept the claim because there's no money to pay the benefits.

Q Your Honor, if I could have just a minute.

(Pause.)

Now, when the Commission decided to draw down the letter of credit in 2005, did WestPoint Home contact them and object to that?

A We did not have any communication from WestPoint once we drew down the letter of credit.

Q When the Commission deemed it appropriate to increase the surety amount to $1.8 million, did anyone object to that?

A They did not.

Q And did the commission hear anything after this from WestPoint at all until 2013?

A That's correct. We had no communication with them until 2013. They contacted just regarding about how much money was available.

Q What was the primary purpose of the letter of credit at issue today?

A The letter of credit is -- again, the primary purpose is to pay medical and compensation benefits to injured employees or families of injured employees because there is a death benefit, and sometimes they have a claim at stake. But it is to take care of any injured employee from that employer.

And it's the responsibility of the Commission to ensure that those funds were properly handled, properly expended for a claim that is filed and that it is in existence in case a claim is filed.

Again, we have two different types of injuries. If it's an occupational illness where the latency period, that could be 30 or 40 years, and we have to ensure to protect the citizens of South Carolina and the employees of South Carolina that those funds are available in case they're either injured on the job or an injury, occupational illness occurs as a result of them being employed some years earlier.

Q So could you say that the only benefit the Workers' Comp. Commission gets from this money is to be able to

care for people who file claims in this state?

MR. CARROLL: Objection, leading.

THE COURT: Rephrase the question.

BY MS. DAVIS:

Q What benefit does the Workers' Comp. Commission get from remaining this money?

A As I mentioned earlier, the Commission receives no direct benefit from the money that is in escrow for injured workers from insolvent and self-insureds. The benefit that we receive is the obligation that we're bound to by statutory and regulatory authority to ensure that funds are available, coverage is available for workers in South Carolina if an employer is required to have Workers' Compensation insurance, whether it be commercial or self-insurance.

If you're required to meet the standards of insurance, Workers' Comp. insurance, our responsibility is to ensure that that happens. Our responsibility is to ensure that your claim that is filed is processed timely, the benefits are awarded timely and a resolution is done timely and quickly because any pending claim is costing money to the employer and the lack of benefits to the employee, who is injured and not at work possibly.

Q And if this letter of credit is returned, what happens when an employee files a claim?

A If we have no -- if these funds are returned, we have no funds available to pay any claims that are filed from a former employee of J. P. Stevens.

MS. DAVIS: Thank you. Please answer any questions Mr. Carroll has.

THE COURT: You may redirect.

MR. CARROLL: Yes, ma'am. Thank you, Your Honor.

REDIRECT EXAMINATION:

BY MR. CARROLL:

Q Mr. Cannon, I want to clarify something you just testified to about the agency looking at claims for people from the '50s. Those aren't WestPoint Stevens employees. You weren't talking about WestPoint Stevens?

A No.

Q So all that line of questioning actually has nothing to do with our account that we're talking about today?

A It does not.

Q Okay.

A The point I was trying to make is there are latent claims out there and that's why the statute allows for occupational diseases, and we are currently involved with claims of employees from the '50s.

Q But not WestPoint Stevens?

A Not WestPoint Stevens, that's correct.

Q In response to questioning from counsel, you

suggested that -- I thought I heard you suggest that you thought the letter of credit had been canceled, and that's why the agency thought it could draw it down. Is that what you testified to?

A No, I don't recall testifying --

Q Okay.

A -- that the letter of credit had been canceled. We were advised in one of the exhibits shown to me by counsel --

Q Sure.

A -- that they were no longer going to pay any claims. And that's when we drew down on it.

Q WestPoint Stevens told you that it was out of business and that it would not be paying claims, right?

A The letter was from WestPoint Stevens, that's correct.

Q They didn't say a letter of credit is terminated, did they?

A Did not.

Q They didn't say the letter of credit is revoked, did they?

A Did not.

Q And --

THE COURT: Which exhibit are you referring to?

MR. CARROLL: Your Honor, this is Exhibit 19.

BY MR. CARROLL:

Q Mr. Cannon, Exhibit 19 is a document that a lawyer clearly wrote. There's a lot of defined terms. But this document is dated August 8th, 2005, the very same day as that WestPoint Stevens letter that you referred to a moment ago, correct?

A That's correct.

Q And this letter is an agreement between WestPoint Stevens -- I'm on page four, an agreement between WestPoint Stevens, WestPoint Home and Bank of America. If you can turn to pages four, five and six, you'll see all the signature blocks. This letter says WestPoint Home, my client, is assuming the obligations of those letters of credit that WestPoint Stevens had on file with Bank of America; is that right?

MS. DAVIS: Your Honor, I object to the questioning. The Commission is not a party to this agreement.

MR. CARROLL: Your Honor, he testified when I examined him that the agency was aware that my client had stepped in the shoes of WestPoint Stevens for the letter of credit.

THE COURT: You may --

MR. CARROLL: It sounds like he may have gotten confused when his own counsel was examining him on it. I'm just showing him the document that makes that obvious.

THE COURT: And you can also ask him how he came to know that, whatever information, where he got it from.

MR. CARROLL: Yes, ma'am.

BY MR. CARROLL:

Q Mr. Cannon, the Judge has done a much better job of posing a question than I have. How did you come to know that WestPoint Home had assumed the obligations of WestPoint Stevens letter of credit?

A We received a copy of this letter of credit. Now, the copy that I have here, it only has one signature on it. One is from WestPoint Stevens. It's not for the agency.

Q If you turn the page, I'll bet you'll see more signature as you go?

A Oh, I got you.

Q But you understand my point, this document is the document that makes it clear that WestPoint Home is standing in the shoes of WestPoint Stevens for WestPoint letters of credit, right?

A Right. We were aware of it, but we're not a party to it.

Q Right. I understand. But there was never a doubt in the Commission's mind that the letter of credit was still in place?

MS. DAVIS: Object to the question, Your Honor,

speculation about what the mindset of the Commission was at the time.

THE COURT: He can testify to what he knows.

THE WITNESS: I didn't understand.

BY MR. CARROLL:

Q At any point in time, did the agency ever think that letter of credit was no longer in existence?

A No, because we drew down on it.

Q That's right. And the agency doesn't draw down on letters of credit of employers that are paying your claims, right?

A That's correct.

Q If there had been zero claims to be paid, what would you have done with this letter of credit?

MS. DAVIS: Objection, Your Honor, speculation.

THE COURT: I think you need to rephrase the question.

BY MR. CARROLL:

Q Mr. Cannon, the agency doesn't draw letters of credit normally, does it?

A Only when there is a need and a potential that a claim filed by an injured employee is not going to be paid.

Q So -- yes, you said -- you just said potential claims. You said that -- you used that same phrase in

response to questioning from your counsel. And you also said that we may need a law to tell you what to do at this point, right? But the answer is the agency doesn't call letters of credit unless that money is needed to pay claims, right?

A If it is -- it may call -- that's correct. If it's needed or we don't know based on our fiduciary responsibility. If we're not aware of any future claims, we have to make sure that funds are available to protect any claims that come in.

Q But that's the point of a letter of credit, it is there to ensure money is there to pay claims, isn't it? That's why you have a letter of credit?

A That's why we may draw down on it to have funds available.

Q No, sir. The point of the letter of credit is to ensure that those funds will be there if you need them, right?

A It's available for us and the process is we draw down on it to make sure the funds are available. The letter of credit may be there, but the funds are not available for us until we draw down on it.

Q Right. And you don't draw down on it until the funds are needed to pay claims?

A May be needed.

Q Not may be, until they are needed to pay claims, right?

MS. DAVIS: Your Honor --

BY MR. CARROLL:

Q Well, Mr. Cannon, we don't have to quibble about the language. I'm showing you on the screen, this is your agency's regulation 67-1507. This is the regulation that allows the agency to take letters of credit for self-insured employers, right?

A Right, that's correct.

Q And section D tells you, D-5 says when the agency can draw on the letter of credit, doesn't it? Can you read that?

A I can't, I'm sorry.

Q That's fine.

MS. DAVIS: Your Honor --

THE COURT: Is it an exhibit?

MR. CARROLL: It's not an exhibit. It's just the law, Your Honor.

MS. DAVIS: I believe the law is for the court to interpret, not Mr. Cannon.

THE COURT: It may be for me to interpret, but you can certainly ask about how the agency is responsible for -- these are regulations of the agency and how the agency interprets them.

BY MR. CARROLL:

Q So Mr. Cannon, you've told me a few times now that you can the money if they may be needed to pay claims or if the claims may occur, but your regulation says the commission may exercise the letter of credit at any time if the proceeds are needed for payment of a claim that occurred, not that might occur or that may occur, but claim that occurred during the self-insured period, right?

A Yes, that's what it says.

Q Okay. And at the time the agency withdrew the entirety of the letter of credit, $1.8 million of claims had not occurred; is that right?

A That's correct.

Q As we stand here today, only $634,000 in claims have occurred?

A That's correct.

Q Is that right? One last thing I wanted to clean up, the last couple of questions that were asked were whether or not WestPoint Home actually approached the agency about getting any of its money back. And your answer was no, we didn't do that, right?

A Not that I recall, no, sir.

Q Let me show you Exhibit No. 20.

Mr. Cannon, do you recognize this document?

A I do.

Q This is the letter -- this is the first correspondence that WestPoint Homes sent the agency about this whole situation, isn't it?
A I think so, yes.
Q And the -- you see the four bullet points?
A Yes.
Q The sentence right above that says, prefatory requesting a reduction in the security amount, please provide us with the following?
A Yes.
Q WestPoint Home had reached out to try to cooperatively reduce the security amount, right?
A That's what the letter says.
Q Yes. And the agency's response was, we won't tell you?
A Right. We were of the opinion that WestPoint Home wasn't part of it. Not in standing for this information, not running.
Q Who did you think did have standing?
A The employees, injured employees have standing for this money. If they were injured on the job, it's our responsibility to ensure that -- so we believe the injured employees have standing.
Q You thought an injured employee had standing to ask you how much of the security is left?

A No, for the money that we had drawn down for the security.
Q Who did you think had standing to say how much of this money is left on deposit?
A That would have to be determined, I guess, legally, that's why we have legal action to question that.
Q Is it still your position that my client is not entitled to know any of the information we've talked about today?
A I think it's been determined that they have a right to the information. The question is whether they have the right to the money.
Q And that money was taken from their account in 2005?
A I think it was taken from the letter of credit that we did not -- the cash and collateral agreement, we weren't a party to. We only drew down the letter of credit because we felt like we needed it to pay for future claims.
Q Right. And that was my client's money that you took when you withdrew it, correct?
A It was the letter of credit that was posted by originally J. P. Stevens, then taken over by WestPoint Home through the collateralized agreement.
Q That's right.
A Okay.

Q You and I are in full agreement.
A Okay.
Q My client put up the money and the agency took it out of my client's account.
One final housekeeping question. You were asked if anybody objected when the agency raised the letter of credit amount from 1.4 million to 1.8 million. Do you remember that question?
A I do.
Q That happened before my client bought the assets out of bankruptcy, didn't it?
A It did.
Q So my client would not even known hand that and they weren't even around to object; isn't that true?
A I don't recall exactly, but I think it was before your client took over.
Q That was -- I'll show you next. This is Exhibit No. 14. This is the letter from the agency to WestPoint Stevens. It's Exhibit 14, and it's the agency's letter to WestPoint Stevens telling it it's increasing the security amount from 1.4 million up to 1.8?
A That's correct.
Q Okay.
A Originally, I think Mr. Smith -- the letter says that he put 2.3 million in here, but he crossed that out and

reduced it to 1.8.

Q I see that. And that was in 2003, correct?

A That's right.

Q And my client didn't buy the assets until 2005?

A Right, that's correct.

Q Thank you.

MR. CARROLL: Your Honor, may I have just a moment to confer with my co-counsel?

THE COURT: Yes, sir.

MS. DAVIS: Thank you.

(Pause.)

MR. CARROLL: Your Honor, I'm sorry. I'm trying to talk with counsel. May we take a five-minute recess?

THE COURT: Sure.

MR. CARROLL: Thank you.

THE COURT: They do have a breakout room, which is supposed to be for attorneys which you all can have conversations in which nobody else is able to hear it, but I guess you have to be on it outside of the courtroom.

MR. CARROLL: Sure.

THE COURT: So we'll take a break.

MR. CARROLL: Thank you, Your Honor.

THE COURT: You're certainly able to step off the witness stand if you like. Just don't discuss your testimony with anyone.

THE WITNESS: Okay.

(There was a short recess.)

THE COURT: Yes, sir.

MR. CARROLL: Your Honor, I just have one final question, and I appreciate the Court's indulgence.

BY MR. CARROLL:

Q Mr. Cannon, I asked you some questions and your counsel asked you some questions about the formula for calculating the surety that the agency uses. That formula doesn't change just because a company is in bankruptcy, does it?

A I'm -- well, that formula -- I'm not sure I understand the question. We use that formula for existing companies to -- for existing companies. We've used the calculation for -- I guess to -- the question is when someone goes insolvent, do we use that formula to determine the amount of credit that we need. Yes, we use that same formula.

Q Same formula. Thank you.

MR. CARROLL: Nothing further, Your Honor.

MS. DAVIS: Your Honor, I just have a couple more if I may.

THE COURT: Yes, ma'am.

RECROSS-EXAMINATION:

BY MS. DAVIS:

Q Mr. Cannon, could you look at Exhibit 20 again? When did the commission draw down initially, what year was that?

A 2005, yeah.

Q And what's the date of this letter?

A This letter is 2013.

Q Do you know if there's any other attempt by WestPoint Home to contact the Commission prior to this letter?

A Not to my knowledge.

Q I'm not good with math, but is that about eight years in between 2005 and 2013?

A That's correct.

MS. DAVIS: No further questions, Your Honor.

MR. CARROLL: Nothing further from WestPoint. Thank you, Your Honor.

THE COURT: You may step down. Thank you.

MR. CARROLL: Your Honor, at this point WestPoint Home rests its case in chief. We would respectively reserve an opportunity for rebuttal or reply.

THE COURT: You do not intend to call your expert at this particular point?

MR. CARROLL: That's correct, Your Honor. His report is in the exhibits that are already in front of Your Honor. So at this point, we don't intend to call him, but

we reserve the right to call him in rebuttal or reply if it becomes necessary.

THE COURT: Tell me again which number his report is.

MR. CARROLL: He is No. 51. It's the one with the gold paper.

THE COURT: So are you telling me that this report is self-explanatory, and I don't need any testimony to hear about any of it?

MR. CARROLL: At this point, Your Honor, that is what I'm telling you, but Your Honor, if -- Your Honor, if you -- respectfully, if you compare that report to what Mr. Cannon just testified to, they are the same.

THE COURT: Okay. Thank you.

MR. CARROLL: Thank you.

THE COURT: Mr. Libet.

MR. LIBET: Thank you, Judge. Before the Commission would proceed further, we'd like to move under Rule 41(b) for an involuntary dismissal on the basis that WestPoint Home is not -- based on the facts in the law, WestPoint Home has not shown a right to relief. This is a rule I've not used very commonly. If it's helpful, I actually have a case I'd like to hand up for Your Honor.

THE COURT: Yes, sir.

MR. LIBET: Somewhat interestingly enough, not any more than a coincidence, this is a Supreme Court South

Carolina case involving J. P. Stevens. But, basically, under Rule 41(b), unlike potentially a motion for directed verdict where the evidence is viewed in the light most favorable to the nonmoving party, here because Your Honor is the fact finder, you simply view the evidence as you sigh it.

At the top of the second page of the case I've handed you, the Supreme Court has stated under Rule 41, a nonjury trial, the trial judge may dismiss the action even though the plaintiff may establish the prima facie case.

Rule 41(b) allows the judge, the trier of the facts to weigh the evidence, determine the facts and render a judgment against the plaintiff at the close of this case as justified.

The reason the Commission contends it's justified here is that the question before the Court is not whether the money is needed. The question is has WestPoint Home shown that it's not.

We would contend there has been no evidence presented at all that would say there is no need for this money in the future. Consequently, we think that based on that voluntarily dismissal is appropriate under this rule.

THE COURT: Mr. Carroll.

MR. CARROLL: Yes, ma'am?

THE COURT: Any response?

MR. CARROLL: Of course. Your Honor, this is more akin to a closing argument, but I am delighted to walk through all of the evidence that's before you to show you exactly why we are entitled to every penny of this money back, as well as interest.

Section 3.1 of the asset purchase agreement says my client is putting the collateral in the bank to collateralize those letters of credit and that it has a right to a return of that money, any unused part of that money. That asset purchase agreement was endorsed by the United States Bankruptcy Court in the southern district of New York, so it has the effect of law. And that order is also in the exhibit pile, as well.

The Workers' Compensation Commission's regulations say that they are on 67-1507(d)(5). We just read it off the screen with Mr. Cannon. It says that the agency is only to draw on letters of credit, quote, if needed to pay claims that occurred with the deed, past tense.

The claim occurs, call on the letter of credit, pay the claim. You're done. By law, the agency was not allowed to just hijack the money out of my client's bank account.

The cash collateral agreement that we had up on the screen towards the close of the testimony specifically says that that money stays in the Bank of America account

and it collects interest in that account. My client has been deprived of the interest from the moment the agency withdrew that money wrongfully in August of 2005.

And here's the additional testimony, here's the additional testimony that we've been told. There's not been a new claim opened since 2006. There's not been a claim paid since 2008. By the agency's own formula, the surety required went to zero dollars in 2012. That is a full decade where their methodology for calculating the surety says that not one nickel is needed in that account.

The agency concedes the statute of limitations has run on all non-latent injuries claims. And here's the kicker, Judge: The statute of repose blocks any future latent injury claims.

The code section, South Carolina Code 42-11-70, and it says -- I'll put it up on the screen for Your Honor so we're not arguing about this in the abstract. It says that you can't bring a claim from an occupational disease except for exposure to ionizing radiation.

So if you worked at a nuclear facility, this doesn't count. But that's not the industry that WestPoint is. You can't bring a claim unless the disease was contracted within one year after the last exposure, except in the case of pulmonary disease arising out of the inhalation of -- for inorganic dust, the period is two years.

There's a two-year statute of repose on the exact claim -- the claim Mr. Cannon was on the stand saying well, gee, we've got to keep that money because you never know, somebody may come knock on our door. We have people bringing these claims from the '50s.

Your Honor, the repose period closed in 2007 for these employees and this employer for these types of claims, and I've got a chart that's also on the screen there.

You don't have to take my word for it. There are four incidences right there on the screen of decisions from the Appellant review panel of the Workers' Comp. Commission. These are the commissioners themselves deciding --

THE COURT: I'm sorry to interrupt. Is this an exhibit?

MR. CARROLL: It's not an exhibit. This was going to be my closing argument. You're just getting it early.

MR. LIBET: Do you have a copy for me?

MR. CARROLL: I do not. I have copies of the cases.

Your Honor, may I approach? I have copies of these cases for you and Ms. Reed.

I'm not making an idle argument, Your Honor. This is an argument to my -- quite literally, the opposing party in this case has adopted. I've got a chart there on your

screen showing four instances where the Workers' Compensation Commission has denied these kinds of occupational illnesses based on the expiration of the statute of repose. And it's not a close call.

Here's what the agency has had to say in this cases: The code is abundantly clear in its intent to disallow compensation for disability or death of an occupational disease of a pulmonary nature that is not contracted within two years of the date of last injurious exposure.

In the Truetzschler case, the one that I'm quoting from there, the agency said it would be impossible to bring a claim under those circumstances, where the exposure happened in the '70s and they brought the claim in 2009.

And down below in the Gibson case and the Bishop case, these cases were issued on the same day in 2007. I don't know why Lexis gave it a 2006 citation date, but they were both from 2007.

The Commission said the agency -- pardon me, the appellate review panel finds that the purpose of the statute of repose is to protect the employer against claims too old to be fairly investigated and defended.

That's this case, Judge. WestPoint Stevens has been out of business since August of 2005. Mr. Cannon agreed with me when I said the repose period closed in 2007,

right, and he said yes.

I mean, frankly, Judge, based on that testimony, this is now a summary judgment case for my client. It's not one to be dismissed. It's one for judgment to be entered in. That's why Your Honor saw me have a little outburst when you told me to just ask questions.

His testimony means my client wins, period. There can be no more claims because the statute of repose has closed for the exact claim that he's telling you well, gee, Judge, you never know. You do. I'm not saying nobody will ever get sick. Somebody might get sick. That's the nature of asbestos, somebody might get sick, but they won't have a claim. And my client's money is used only to pay claims. They can't have a claim as a matter of law because of the statute of repose. The repose period is closed. Mr. Cannon told you so on the witness stand.

THE COURT: So it's your position that an employee who stopped working and ends up with an ailment such as the ones we're discussing here, that it has to occur within a certain time period?

MR. CARROLL: Absolutely. And, Your Honor, on my last slide, the same question was presented to Judge Harwell in the Federal District Court. And there, the issue was -- that was a standard asbestos case, where, you

know, the plaintiff filed a lawsuit against 30 or 40 defendants. And one of them was his former employer. And the question in that case was well, the Workers' Compensation Code has this exclusivity provision that says you can't bring a tort claim against your employer. That's Hornbook South Carolina. You can't bring a tort claim for on-the-job injuries against your employer.

In that case, the plaintiff says well, that's just unfair because the latency period -- you can't block my claim because of the statute of repose because the latency period is just so long. That's just not fair.

I didn't even know I would be sued because of this long-term latency. And Judge Harwell, I've highlighted the language, said hey, look, I'm sorry. He actually surveyed the very same cases I handed up to you there, as well.

Judge Harwell looked to the agency's decisions, and said hey, this is the norm in the Workers' Compensation world.

And he says while this result may seem unfair, this Court is not tasked with legislative. The statute of repose is closed. There can be no more claims. And without anymore claims, this money is not, quote needed. It hasn't been needed and it is not needed.

So, Your Honor, I think that the motion to dismiss my

client's case under Rule 41 should be denied.

MR. LIBET: May I respond, Your Honor?

THE COURT: Yes, sir.

MR. LIBET: Respectfully, Mr. Carroll is misapprehending 42-11-70 and its import on this case. That statute draws a distinction between the case that we're talking about here by prohibiting claims that are more than two after exposure to asbestos, not diagnosis.

Section 42-15-40 unequivocally provides that the two-year period for occupational disease claims statute of limitations does not run until the employee concerned has been diagnosed definitively as having an occupational disease and been notified of the diagnosis.

What Mr. Carroll is confused about is cases where someone waited or claims an illness that results from exposure more than two years after they were actually exposed to asbestos. But there is a fundamental difference between exposure, which is what 42-11-70 covers, and diagnosis of an occupational disease, which is very clearly covered by 42-15-40.

Were an employee of WestPoint Stevens today to assert a claim based on exposure during the time of their employment not more than two years afterward, but during the time of their employment, plus the two statute of repose that Mr. Carroll references, they are perfectly

valid to do so as long as that claim is brought within two years of diagnosis.

They could be diagnosed today based on exposure in 2002 and they have two years from today to bring that claim. And if that claim is proven to be accurate, then that is money that would be eligible for payment out of funds that are available to the commission to pay.

And to back up earlier, I, of course, strongly dispute any characterization the commission highjacked any money. We operated pursuant to a memorandum of understanding with WestPoint Stevens, we drew down the funds in 2006.

We did not hear anything, nary a peep until 2013 that this was potentially a concern for anyone. But again, we're not dealing with a breach of contract case here. Mr. Carroll has bought a case in equity for accounting and the return of funds.

And under that, he has not demonstrated to us or to this court that these funds are no longer needed. Again, his argument about the statutes misapprehends the difference between the exposure, contracting the disease and diagnosis.

There is myriad evidence that demonstrates that someone is exposed to asbestos and is not diagnosed with an illness for decades. Mr. Cannon testified the

Commission is dealing with those cases currently for other employers.

Reasonable to assume this may come up here, as well. But again, the burden is on him and under the facts of the law of this case, we don't believe they've presented a claim. We think an involuntary dismissal at this age is appropriate.

THE COURT: So, in essence, what I hear you saying is that depending on clarification as to whether they worked with them, WestPoint Stevens, or just the fact that they did, in fact, work there and there was exposure to asbestos?

MR. LIBET: Were they exposed to asbestos -- was WestPoint Stevens their last employer? Because if they went to work somewhere else where they were exposed to asbestos, South Carolina law says we look to that employer because that's their last injury exposure.

Were they exposed to asbestos within a two-year time period of actually asbestos being there, for example. If they had stopped using asbestos, let's say, in 2001, hypothetically, then you could not bring a claim saying well, I was -- I'm ill because I was exposed to asbestos in 2004 because that's outside of that two-year statute of repose. But the exposure is a completely different question than the diagnosis.

THE COURT: So is the exposure based upon the time period that you were actually employed with them in a facility in which -- and in a job position that you were exposed and that could be determined by looking at the records of the either the employment or when the work may have been performed.

MR. LIBET: Yes, ma'am. And the Commission engages in that all the time when these claims are filed, to look at those questions.

THE COURT: Anything further?

MR. CARROLL: I'm sorry, Your Honor, I just want to briefly respond to the idea that I don't understand the argument I'm making here. There's a fundamental difference between the statute of limitation and statute of repose. Statute of limitations are procedural. They can be waived. The court can -- you know, there's this whole motion of discovery rule.

Meanwhile, the statute of repose is fundamentally different. It is when the general assembly has said there will be plenty of time after which there shall be no claim, period.

If you didn't know about it, well, we're very sorry, but we have -- as legislatures, we have the responsibility of kind of balancing a lot of competing interests. Some of those interests are workers being injured. Some of

those interests are employers having to pay claims in perpetuity. And for this kind of claim, the general assembly has drawn a hard line and said here's the statute of repose, two years from the date of your last exposure, you can't bring a claim after that.

And you don't have to take my word for it. I've just handed you a stack of decisions from the agency itself saying that exact thing. Judge Harwell sums up the whole issue in his opinion -- after he surveyed the agency's own work.

Judge Harwell says the plain reading of the statute of repose serves to clearly provide that claims for pulmonary disease arising out of inhalation of organic or inorganic dust must be brought within two years after the last exposure to the hazard.

Judge, that's clear. That's what a statute of repose does. There's a difference between a statute of repose. You can't respond to a statute of repose argument by saying oh, yeah, but what about the statute of limitations. They're different. They serve different purposes.

The General Assembly has a different thing in mind when it passes each. And on this question, the repose period is closed. There can be no dispute about that as a matter of fact or law.

MR. LIBET: So Mr. Carroll is correct that the statute of limitations and statute of repose are different, but the diagram of what each of these two statutes are looking at are just two different questions.

If we were to be the Commission today and reviewing the case of somebody who had filed a claim for occupational exposure, we would have to look at the effects. We would have to look at when were you diagnosed? Okay. Is it within two years of your diagnosis date? If so, you're fine under 42-15-40.

Mr. Carroll is correct, we also have to look at their exposure date to ensure that is within one year, two years after exposure to asbestos. For example, if they last worked at WestPoint Stevens in 2004, but their physician testified the mesothelioma they have was contracted in 2008, they would be within the statute of limitations but outside the statute of repose, in which case, Mr. Carroll is correct, that claim would not be allowed to go forward. But instead, if the physician testified that was contracted in 2004, 42-11-70 is perfectly met and the diagnosis statute is perfectly met and that claim is filed.

THE COURT: So there's --

MR. CARROLL: Your Honor, in the Truetzschler case, the Commission itself said it would be impossible to prove

what Mr. Libet has just -- the hypothetical.

THE COURT: So my question is, basically, there would have to be testimony that I was only exposed to asbestos in this particular year working for this particular company.

When I left that employment, I was not exposed to any other circumstances, employment or anything else that would have -- that could have led to my medical condition?

MR. LIBET: Yes, ma'am.

THE COURT: And then when they seek to receive payment for the injury, they've got to establish both of those things, that I was last -- I was exposed to asbestos causing this particular disease on this date, which was within one year of my employment or before I left employment and I developed this particular condition, mesothelioma or whatever it may be because of that exposure?

MR. LIBET: That's right. And to Mr. Carroll's point, if someone were to bring a claim now, the commission would need to look at both exposure date and diagnosis date and they do need to meet both. But assuming that the evidence shows they did contract the disease from their exposure within the statute of repose and they brought the claim within two years of their diagnosis, that claim can absolutely be paid.

THE COURT: So, basically, that requires more than medical expertise in some form or fashion?

MR. LIBET: You were rapidly straying beyond what I know about Commission proceedings, but I believe that evidence of the exposure can be met through testimony of what their job was, where they worked, what compounds they interacted with and, certainly, the company would have the opportunity to present its own evidence that they believe that they were exposed either later or weren't exposed at all.

Again, I've not dealt with these cases personally, but my strong assumption would be that evidence can be shown in a myriad of different ways. Because with these illnesses, it's understood we might be having to look back a couple of decades. It's not going to be the same kind of evidence that if we had to look at something today.

MR. CARROLL: Your Honor, this whole conversation is proving my point. This is -- if you read these cases. I understand I just handed you these cases. You haven't had a chance to look at them.

THE COURT: Yeah.

MR. CARROLL: If you read these cases, you'll see the agency, my adversary in this case, goes to great lengths to say this is here to protect the lawyers from having to deal with this exact kind of stuff. In the agency's

words, it's impossible to prove what they're now telling you well, yeah, sure, that could be the case.

The repose period is closed. Mr. Cannon testified to that this morning in this courtroom. It closed in 2007. And, you know, not for nothing but Exhibit 52 shows a handful of claims that former WestPoint Stevens employees tried to bring in 2011 and each one of them was denied. I don't know why.

It's not listed on this form. I've not seen any of those files. But every single person that has come out of the woodwork from WestPoint Stevens to the agency saying, oh, I've got a pulmonary disease, the agency has said claim denied.

In the Truetzschler case, the 2009 case that I handed up, the agency says it would be impossible to reconcile the statute of repose with this -- this circus of proof that would be required to thread this impossible needle.

THE COURT: Let me ask this on a separate point.

MR. CARROLL: Yes, ma'am.

THE COURT: Maybe I'll save that for a little bit.

MR. CARROLL: Pardon me?

THE COURT: I'll save my question for later. I think -- at this particular point, I'm going to -- I'm not going to rule on it at this particular point. I'm just going to go ahead and save time and energy and hear

everything. And then I will keep your arguments in mind as it relates to these particular statutes because these are statutory provisions and not factual issues.

MR. CARROLL: Yes, ma'am.

THE COURT: Do we want to start now or do we need to take a lunch break?

MR. LIBET: May I have a moment to ask around? Thank you, Judge.

(Pause.)

Thank you, Your Honor. The Commission would like to call Christopher Burkhalter, who is hearing remotely. So we might need to make him a panelist so he can be seen by the court.

THE COURT: Okay.

MR. LIBET: Chris, if you can hear me, please turn on your video so we can all see you.

MS. DAVIS: Your Honor, how would you like me to question him? Should I be up here? Should I be there?

THE COURT: You need to be near a microphone, whatever microphone works.

No, we cannot hear you. I think you'll need to turn up the volume on the screen.

THE WITNESS: Okay. I've got output level at maximum.

THE COURT: Thank you.

THE WITNESS: Is that better?

THE COURT: Yes, sir. If you would raise your right hand, please, for the administration of the oath.

THE WITNESS: Okay.

(There was no response.)

THE COURT: Did you hear her?

THE WITNESS: I did not hear her.

CHRISTOPHER BURKHALTER, after being duly sworn, testified as follows:

THE COURT: You need to talk into the microphone.

DIRECT EXAMINATION:

BY MS. DAVIS:

Q Can you hear me, Mr. Burkhalter?

A Am I under direct testimony now?

Q Can you hear me, Mr. Burkhalter?

A I can barely hear you.

THE COURT: You need to either speak up.

MS. DAVIS: Hello?

THE WITNESS: Yes, I mean, I can barely hear her.

MS. DAVIS: Can you hear me now?

THE WITNESS: Yes, much better, thank you.

MS. DAVIS: Am I going to echo?

THE COURT: Probably. The screen is muted.

MS. DAVIS: Can you hear me now?

THE WITNESS: Yes, I can.

THE COURT: So everybody else needs -- on their computers needs to turn off the volume.

If you will state your full name, please.

THE WITNESS: Christopher John Burkhalter.

MS. DAVIS: Did he take the oath?

THE COURT: Yes.

BY MS. DAVIS:

Q Good afternoon, Mr. Burkhalter.

A Good afternoon.

Q Could you tell us a little bit about your educational background, please?

A Certainly. Began my undergraduate career at the University of Mississippi. I graduated with a Bachelor of Science degree with a major in physics, minors in mathematics and German. My graduate work was done at the University of Virginia and the University of New Orleans, and I obtained a Master of Science in hydro-physics at UNO. That would be the extent of my educational background besides actuarial education.

Q What did you do after that?

A Okay. I worked for about three years as a research physicist with the Naval Research Laboratory at Stennis Center in Mississippi. Then in 1993, I began my actuarial career as an entry level analyst at Southern Farm Bureau Casualty in Richland, Mississippi. That's where I

obtained the designations of Associate of Casualty Actuary Society, a fellow of the Casualty Actuarial Society and a member of the American Academy of Actuaries.

I was with Farm Bureau about five years. After that, I worked briefly at St. Paul Fire and Marine during the merger. Then in 1999, I established my consulting business and I've been doing that for the past 23 years. So my consulting firm, I've worked with over 120 clients and approximately half of those, I have worked with including Workers' Compensation.

Q Have you earned any professional designations?

A The ones I just mentioned. You could say the Fellow of Casualty Actuarial Society, FCAS, and I'm a member of the American Academy of Actuaries, an MAAA.

Q Are you involved in any other professional organizations?

A I'm not. No, I'm not.

Q Have you testified as an expert before?

A I have.

Q Approximately how many times would you say?

A Probably -- well, a couple of trials, I've had experience in about nine trials. Four of those are pending. I've done two testimonies in depositions under oath. Other testimony includes extensive rate hearings, show cause hearings and legislative committee hearings.

MS. DAVIS: Your Honor, given his specialized knowledge, skill, experience, training and education, I'd like to proffer Mr. Burkhalter as an expert, an actuary expert at this time?

THE COURT: Any voir dire?

MR. CARROLL: No, ma'am. We agree that he's an actuary.

THE COURT: Then I'll find him so qualified. Thank you.

MS. DAVIS: Thank you, Your Honor.

BY MS. DAVIS:

Q Mr. Burkhalter, did you prepare a report in this case?

A Yes, I did.

Q Can you put that in front of yourself?

A Can I what?

Q Can you look at that report, please?

A Absolutely.

MS. DAVIS: Your Honor, this is Exhibit 50 in your notebook.

THE COURT: Yes, ma'am, go ahead.

MS. DAVIS: We're going to share a screen, but it might be easier if you have a hard copy in front of you.

THE COURT: I do.

THE WITNESS: Okay.

BY MS. DAVIS:

Q Mr. Burkhalter, could you tell us what materials you relied in preparing your report?

A Okay. We relied primarily on external data. And I can go into that in a little more detail later, but we did rely on self-insurance tax forms for the companies in question from the years 1978 to 2004.

We relied on external data insofar as we used mortality tables from the Social Security Administration. Used age breakdowns from the U.S. Bureau of Labor Statistics. And then we used some -- concerning mesothelioma specifically, we used a European study from the European Journal of Cancer. So most of it was external. We really didn't have a lot from the company at all.

Q What problems did you run into in creating your report, if any?

A Well, when we were approached, the first thing we really wanted to know was what would an actuary say is out there in claimed losses. The first problem is the nature of the exposure itself because of the long latency period. The part of our analysis where we modeled that, what we found was an average latency period of work exposed mesothelioma of 43.4 years.

So a long tail, a tail so long that actuarial

analysis is almost impossible. So we were unable to determine the probability of contraction of the disease.

And there are several -- a couple of reasons for that. One, we do not give any datasets of claims that really matched up with the exposures. If we were able to do that, it probably would have had actuarial credibility anyway to decide.

The main concern is the extremely long latency. So if we had had actuarial data that we could have relied on from the industry, it wouldn't even be fully developed because that latency period means we don't know yet, even the industry doesn't know yet, you know, what we're dealing with when all of the dollars are paid. There's still a long time for that, you know, industry-wide.

No one ever sold asbestos insurance, so we don't have actuarial analyses for the claim frequency and probability. When this nation found out about asbestos, they just banned it. So there was really no coverage of it.

Immediately, we were all in kind of a run-off position where we've been for decades now trying to get our heads around what we've got.

So that was the real hangup is that we really couldn't do what we wanted with it, so what we could do is quantify some other things that might give the Court an

idea the potential exposure that may still be out there.

Q Could you look at your report and walk us through it in laymen's terms where I can understand it, too?

A Okay. Well, most of it is in narrative form so I won't read it into the record. I won't have to do that or anything. I'm going to give you an idea of what we did do, and there were two main focuses of it. I'll point you to certain tables and I'll give you the page number when appropriate.

There were a couple of things that we were to do. The first one was figure out, okay, all we have from the company is employee counts. That's it. We didn't have -- we couldn't get gender right now. We couldn't get age breakdown.

We couldn't get hire dates or termination dates, all the things that would have made this a little more precise. So the best we could there was take those employee counts, assume a male/female split, assign those workers to different ages and then run mortality tables to say how many of those workers do we expect are alive today? Because each one represents a possible claim, a possible contraction and diagnosis. So those were the numbers we first tried to do.

So we used these employee counts from self-insurance tax forms, so those are just, basically, snapshots from

each year from 1978 to 2004. First, we assumed an equal male/female split.

We did look at various splits to see the sensitivity of our model. It really didn't make much depth. We feel like an equal split is valid. We assumed a median age of worker of 39.3, and that was from the 2000 civilian labor force, U.S. Bureau of Labor statistics. And then we used the most recent mortality table that we could find for the country as a whole, and that was from 2002 -- I'm sorry, 2022 trustees report from the Social Security Administration.

So what we did was apply that mortality to the claim -- to the employee counts that we saw. And what we get from that is what you would see in table one and that is on page -- you may have -- there you go. You have it before I do.

All right. So the first thing to point out here is that each of these rows needs to be looked at independently. And what I mean by that is if you look at -- let's look at the last one, 2004, the self-insurance tax forms showed an employee individual count of 2,302. We estimate from those mortality tables that of that number, today, there's still 2060 of those employees that are alive.

Now, if you go back to 2003, 2002, we do the same

calculation. Now, we understand that some people -- there would be individuals that would be in each of these cohorts going back in time, so each of these needs to be looked at individually.

You see there was a drop off of employment from 1992 on. If you just look at that 4,082 at the top, it comes down into the mid to low 3,000s, and then as they went towards bankruptcy, it was in the low 2,000s. But under any individual scenario that we run with the mortality tables, you'll find the lowest number we would estimate of those employees that were exposed to asbestos at those plants, the lowest we see is the 2002 group. There's still 1,929.

So for all these scenarios, we can say that there are a lot of people, thousands of people that worked at those plant that were exposed to asbestos and are alive today. And each one of those represents a potential for a claim, a diagnosis and a need for benefits. So that was the first part.

Q So that --

A The second part -- I'm sorry.

Q Just to clarify, in 2004, there's approximately 2,060 former employees alive?

A Right. So we estimate there are 2,060 employees that were employed at those plants in 2004 that still remain

alive today.

Q Okay.

A Okay. So the second part of this was really to give the court an idea of the extreme latency of these diseases. Now, there are -- the latency of asbestos-induced illnesses, it various by disease and by source.

What we're looking at -- because we want to give you an idea of just how long it will take before you can say there are no claims left. So we concentrated on one of the most severe diseases and that is mesothelioma.

We found a study published in the European Journal of Cancer in 2007. It's primarily Italian academics and medical academics and statisticians. And in that report, we found an average latency period for that disease of, and it's pretty standard, 43.4 years for cases from occupational exposure.

So that was the basis for our more -- that latency actually has gone up over time, so the later you look at the latency, it's actually getting longer, which is unfortunate. It makes it hard to project. But we used that model of latency along with an age distribution.

And if you'll go then, as you already have, you're really good at that, to table three. What you're seeing here -- and we're going to pick one age here. There's

another table that's a little more messy because it shows a lot of different ages.

But what we calculated in this example to boil it down as much as possible is that if you had a 20-year-old that was exposed in one of these plants in 2005 that today -- I'm sorry, let me stress, again, we're not calculating the probability of exposure -- or contraction.

If you had a 20 year old exposed in 2005 that contracted disease, we estimate that today, there would be a 96.8 percent chance that it would not have manifested itself. In other words, there's only a 3.2 percent chance that that individual would already have...

(Audio dropped).

That's how long this takes --

Q Mr. Burkhalter, I'm sorry to interrupt, but you cut out for just a minute. Could you repeat that?

A Okay. How long ago was that? You just want me to go over that table three again?

Q Yes. We're at table three and you had just mentioned 96.8 percent?

A Right. So what we're looking at here, we calculated if a 20 year old were exposed in one of those plants in 2005 that there's a 96.8 percent chance that if he were here today, we wouldn't know it.

If we go forward in time to 2030, there's still a

90.8 percent chance that we won't know. And that percentage drops off slowly and it accelerates, but it's still about 50 percent all the way out at 2045. That is the difficulty of this disease and asbestos diseases in general, is that you just don't know for decades and decades.

So in summary, the two thing that we can say with virtual certainty about this, even though we don't know the percentage likelihood of any individual contracting the disease, the two things we can say pretty confidently are that there are thousands of workers that worked at these plants that were exposed to asbestos and are still alive. And that just the fact they might not have had claims in 16 years, that's not an indication that they're not out there.

Our statistics show that's to be expected. So we can't quantify the chance of one of these claims popping up. We can only say that there are a lot of people out there that were exposed. And if they were to contract it, it is very, very likely that sitting here today, we wouldn't know about it.

Q Mr. Burkhalter, is it possible there are former employees alive and undiagnosed today?

A Certainly.

Q Does the lack of claims in recent years have any

bearing on the likelihood of future claims?
A Miniscule. There's very little credibility that in a long tail line like this, a long tail exposure like this, with latency like that, the past experience over a few number of years has very little actuarial credibility at all.
Q So just because there haven't been any claims made more recently doesn't mean there won't be in the future?
A Correct.
MS. DAVIS: Mr. Burkhalter, if you'll answer any questions Mr. Carroll has for you.
THE WITNESS: Certainly.

CROSS-EXAMINATION:

BY MR. CARROLL:
Q Good morning, Mr. Burkhalter -- or good afternoon, rather.
A Good afternoon.
Q Mr. Burkhalter, you have no opinion whether or not Workers' Compensation unlawfully withdrew my client's money deposit to collateralize...
(Audio duplicated and echoed).
THE COURT: Hold on. I'm keeping my eye on the court reporter. When her eyes squinch up, that tells me there's too much feedback. So we need to figure out a way --
THE COURT REPORTER: I'm wondering if he can move his

microphone away because he speaks louder. Maybe it's picking up on his microphone and WebEx. That would be my guess, but I don't know.

MR. CARROLL: I only have a couple of questions.

THE COURT: If everybody else would mute their computers.

Can you hear me?

MR. CARROLL: Can you hear me, Mr. Burkhalter?

THE WITNESS: I can hear you, yes.

BY MR. CARROLL:

Q All right. Mr. Burkhalter --

THE COURT: You're going to have to speak slowly so she can hear the right voice.

BY MR. CARROLL:

Q Mr. Burkhalter, you have no opinion on whether or not Workers' Compensation Commission unlawfully withdrew money that was on deposit for the WestPoint Stevens letter of credit, do you?

A That is correct.

THE COURT: Can -- can we go back and turn the volume down on that one?

Go ahead and speak and see if he can hear you.

MR. CARROLL: Mr. Burkhalter?

(Pause).

He can hear me.

THE COURT: Okay. So let's switch it because he's speaking through the computer. I'll put up and then the microphone volume down. No, no, I'll put up -- turn that one up and then reduce that one.

Can you still hear us?

It's got to go up a little bit.

Can you hear us?

THE WITNESS: Are you asking me, Your Honor?

THE COURT: Yes.

THE WITNESS: I can hear you.

THE COURT: Can you turn it up just a wee bit more, one or two, please? Not that far. Say testing one, two, three. Can you say that?

THE WITNESS: Me?

THE COURT: Yes.

THE WITNESS: Testing one, two, three.

THE COURT: Let's try it that way.

THE WITNESS: Okay. Nobody move.

MR. LEGGETE: I'm going to stay here so that if it does.

THE COURT: Do you want to pull up a chair?

MR. LEGGETE: I'm fine.

THE COURT: There's one right there or there.

BY MR. CARROLL:

Q Mr. Burkhalter, you don't have an opinion on whether

any future claims are barred by the statute of repose, do you?

A I do not.

MR. CARROLL: Your Honor, can I take a moment to contact my co-counsel before concluding this exam?

THE COURT: Yes.

MR. CARROLL: Thank you.

(Pause.)

Your Honor, we have nothing -- Your Honor, we have nothing further for Mr. Burkhalter.

THE COURT: No further questions?

MS. DAVIS: No further questions, Your Honor.

THE COURT: All right. And I don't have any questions.

Thank you very much for your testimony.

MS. DAVIS: Thank you, Mr. Burkhalter. We don't have anything further for you.

THE WITNESS: Thank you. I'm sorry for the technical difficulties and having to put my face so close to the camera. I know that could not have been pleasant for anyone. Thank you.

MS. DAVIS: We're glad you brushed your teeth.

THE COURT: Anything further from Workers' Comp.?

MR. LIBET: Your Honor, at this time, the Commission rests.

THE COURT: Mr. Carroll, do you have anything further that you wish to -- any rebuttal?

MR. CARROLL: Nothing further from WestPoint Home, Your Honor.

THE COURT: So I need to hear your closing arguments again?

MR. LIBET: Your Honor, if I might.

MR. CARROLL: You may see the same one twice.

MR. LIBET: If I may make a suggestion. I assume Mr. Carroll has other grounds to cover, but it might be to the benefit of all of us if you would permit the parties a week or ten days or something to submit a legal memorandum on the statute of repose, statute of limitations issue, our understanding and the court's understanding.

THE COURT: I'll tell you what, it would be even better if you could incorporate all your closing arguments into a proposed order and cover the statute of repose and the other statute, there are two statutes, as well as the 642 -- I had to find it. 42-11 --

MR. LIBET: 42-11-70 and 42-15-40.

THE COURT: Yes. And that way, you can incorporate it all and you have time to think about it. How much time do you need?

MR. CARROLL: Your Honor, we can --

MR. LIBET: Ten days would be lovely.

MR. CARROLL: Yes, ma'am. We're glad -- I do think we would need, at least, a rough transcript to be able to propose findings -- since this is in equity and have to have findings of fact, I do think we would want to be able to cite the record. I think the question is not for Jarrett or I, it's for Madam Court Reporter.

THE COURT REPORTER: It would take me the standard turn-around time to get it back, especially with all the numbers and --

THE COURT: I don't know what the turn-around is.

THE COURT REPORTER: It's the 60 days.

MR. LIBET: Ten days from whenever we receive the transcript.

MR. CARROLL: Well, the agency can pay to have it expedited, just not with my client's money.

MR. LIBET: You anticipated my next question.

THE COURT: So, basically, you have until October 31st, right?

THE COURT REPORTER: If they ordered it today, yes. I mean, it might be out before then, it just depends if I'm in other trials.

THE COURT: So let's say -- because it was a relatively short hearing, so let's say ten days from receipt of the transcript, is that good?

MR. LIBET: Yes, ma'am.

MR. CARROLL: That's fine.

THE COURT: Whatever you need to do to order the transcript. She needs it in writing.

THE COURT REPORTER: Yes. Yes. Court administration requires that.

THE COURT: Okay. So we'll leave it at that.

MR. LIBET: Thank you.

THE COURT: And in the interim, if I have any questions -- I do have a couple of questions. They may or may not be relevant. I presume that -- and I know we probably discussed this once before.

There were no records relating to the employees at the time that WestPoint Home took over the assets because they didn't take the employees necessarily?

MR. CARROLL: Any -- so my client -- this is all in Exhibit maybe 17, but the Asset Purchase Agreement says what we bought.

THE COURT: Okay.

MR. CARROLL: And my client bought whatever records were there, but as far as claims data specific to WestPoint Stevens, that all lives with the agency. My client didn't have any of that.

THE COURT: No, what I'm referring to is knowing who the employees were at the time -- either at the time that the bankruptcy occurred or at the time that the bankruptcy

was concluded and -- I assume, that those employees went to other places.

MR. CARROLL: Your Honor --

THE COURT: But I don't and I'm --

MR. CARROLL: Yes, ma'am, Your Honor.

THE COURT: I'm just trying to determine is there -- the reason that you don't have information about the people is because the people scattered or they went someplace else that was not connected, so there's no -- there are no records left from WestPoint Stevens to indicate who were employees at the time that the bankruptcy occurred, what their positions were and if someone were to try to make a claim, they would be able to identify those people.

MR. CARROLL: Your Honor, I have no idea. That's not -- in all candor, that's never been an issue in the case. They've never asked for anything like that in discovery.

THE COURT: I understand that --

MR. CARROLL: I'm sorry.

THE COURT: Go ahead.

MR. LIBET: I'll just say the Commission has never been provided with that information. It's not something the Commission asked for as part of the self-insurance process for individual employee names. It's simply a count.

THE COURT: And so the idea -- so if there is a claim made that employee has to provide some information to the commission for the commission to be able to determine whether, in fact, this person was employed, was employed in this area and all of that?

MR. LIBET: Yes, ma'am.

THE COURT: And I also gathered that WestPoint Stevens -- I'm sorry, WestPoint Home based upon its letters that it wrote would not have provided any further letters of credit as it relates to being able to cover any of those claims because they were saying that we were only purchasers of the assets and we are not going to make any payments related to any claims that the employees may have had or any other issues?

MR. CARROLL: Well, Your Honor, the first of those letters -- the first of those letters started -- tried to start a conversation saying exactly what you're suggesting, but my client didn't know if there were any open claims.

I mean, it's possible for somebody to have a Workers' Compensation claim where they break a leg or they have ongoing medical bills for years and the claim just stays open while they keep getting rehabilitation money paid or whatever.

So when my client reached out in 2013 -- actually,

the letter says that they had a conversation in 2012, but then the letter followed in 2013 to say hey, we want to talk to you about reducing the surety needed and here's the information we need to figure out if the surety can be reduced. And the agency's response to that is we're not -- we will not tell you anything.

So I don't know what my client would have tried to do in 2013. What they would have learned is that there were no open claims and the repose period had closed. My client actually cited the repose statute in one of its letters and said it seems like everything should be done by now, would you please let us know where things stand. We got a complete stonewall in response.

So to answer Your Honor's question, what would they have done back then, I don't know. I know what they were saying they were trying to do but, Judge, that was nine years ago.

THE COURT: Well, I guess my question is, at the time before the letter of credit was drawn by Workers' Comp.?

MR. CARROLL: That was like that. That happened -- that letter of credit was taken -- my client put the money in the bank on August 8th and it was gone on August 17th.

THE COURT: Yeah, but my question -- the premise I have is that they posted letters of credit to be able to cover those things that were existing. And so to the

extent that there was, at least, a portion of it drawn down that actually paid claims.

MR. CARROLL: That's right.

THE COURT: But once those claims were paid, it's my understanding and my interpretation of kind of what's been said or interpreted is that there would not have been a subsequent letter of credit to cover those claims -- to cover any of the claims because you were not -- your client was not, in fact, going to pay for any claims related to previous --

MR. CARROLL: Well, our maximum exposure to WestPoint Stevens Workers' Compensation liabilities was $1.8 million.

THE COURT: Based upon what had been said to them before?

MR. CARROLL: That was the letter of credit that we inherited, that we told the Bankruptcy Court we'll do this, but we're doing it as long as we get our money back if it's not needed.

Bankruptcy Court says go get them. We put the money in the bank. We didn't negotiate a new letter of credit with the agency. That was a cash collateral letter that says we're jumping in for WestPoint Stevens.

So we adopted their letter of credit. And then in 2013 when we reached out to the agency to say hey, just

tell us what's going on because maybe we can -- maybe -- maybe you don't need anything or maybe we can get a lower letter of credit or something and we got stonewalled.

THE COURT: Let me ask it another way, the letter of credit was posted, so from your client's standpoint, there would have been a time period which there would be a refund or there would no longer be a need for that letter of credit.

So I presume that that letter of credit would have stayed there, stayed in place for X number of years until 2013, your client what's happening with the remainder of the funds.

MR. CARROLL: That's right.

THE COURT: Or with the letter of credit. So I assume that there would not have been an issue about at some the letter of credit expires and then you have to renew it or there was a renewal or needed to be a renewal. And I understand what happens that they took all the money, so they didn't have that. So I'm just asking.

MR. CARROLL: The letter of credit says -- it's either the letter of credit or the memorandum of understanding or the agency's regulations or some combination of the three, something says that it can be canceled on 60-days notice.

MR. LIBET: But also letters of credit have to be

renewed annually. They have a one-year term. That is standard.

MR. CARROLL: It's an evergreen. It automatically renews every year, but it can be canceled on 60 days notice. So I'm sure -- if the agency's response was hey, we still got $1.8 million dollars. We don't have any claims.

We don't need it anymore. We would have said dynamite, cancel it and we'll take our money. And that's what the bankruptcy court -- that's what the asset purchase agreement contemplates.

THE COURT: My questions are answered. That's all I need.

MR. LIBET: If I can just make one very small point on that. From the Commission's perspective at that time, something had to fundamentally change. In that intervening time, we received this letter from WestPoint Stevens which said no more payments for Workers' Compensation claims. And the key difference here is that the letter of credit was a security for WestPoint Stevens' obligation.

WestPoint Stevens was not only liable for $1.8 million, WestPoint Stevens was fully liable for all valid Workers' Compensation claims, whether that be two million, 10 million, 50 million.

What changed in 2005 is that now that letter of credit became a hard cap on the amount of money available because WestPoint Home did not assume the liabilities for WestPoint Stevens' workers, which meant the letter of credit was it.

There was no full liability such as at WestPoint Stevens that every self-insured has. The letter of credit is simply security. It's not an account.

THE COURT: So I'm looking at Exhibit No. 25, which is the September -- I'm sorry, August 15th, 2005 letter to Mr. Smith from Buster Sears with WestPoint Stevens. And the last paragraph that you all talked about through the testimony was please be advised that pursuant to the sale order an APA Workers' Compensation liability to certain debtors were not liability assumed by the purchaser. Therefore, no further payments will be made with respect to Workers' Compensation claims asserted against WestPoint Stevens.

MR. LIBET: Yes, ma'am.

THE COURT: And Workers' Comp., basically, interprets that as saying the 1.8 is it. We're never going to get any more. And I'm filling in the rest of the blank, it will get renewed every year as long as it's needed. And what I hear -- what I think I'm hearing from WestPoint Stevens --

MR. CARROLL: Home.

THE COURT: WestPoint Home, I'm sorry.

MR. CARROLL: Too many WestPoints.

THE COURT: Okay. Two different things, got you. So -- and there is the letter that you're referring -- there's one from WestPoint Home that says something similar or not? There's no letter --

MR. LIBET: There's no contact from WestPoint Home until 2013.

MR. CARROLL: Well, actually, 2012. Your Honor, I don't want this point to be lost. This is a letter from this August 8th -- Exhibit 25.

THE COURT: Thank you.

MR. CARROLL: Is a letter from a gentleman who was appointed by the Bankruptcy Court to wind down WestPoint Stevens' affairs.

THE COURT: Right.

MR. CARROLL: He used to work at WestPoint Stevens. WestPoint Stevens no longer exist. The Bankruptcy Court says Mr. Sears, you go tie up all the loose ends. So that's his letter to the commission.

THE COURT: Right.

MR. CARROLL: The Commission knew that we had stepped into the shoes on the letter of credit, that's what Mr. Cannon testified to, and they knew what bank account to

get our money out of. It's not like they had no idea that our letter of credit was there. They knew that.

THE COURT: And I'm just trying to understand, the letter of credit that was there from WestPoint Home's perspective, it was there as long as it was needed and if it needed to be reissued or renewed every year until the claims were made, it would have done that.

MR. CARROLL: Yes, ma'am. So -- that's right. We said -- we put the money in the bank for all these letters of credit. I mean, there's one for Egypt and one for Maine, but of that -- of the many letters of credit that were on the portfolio of WestPoint Stevens, one of those was the letter of credit with South Carolina Workers' Compensation Commission, and that was in the amount of $1.8 million.

We told the Bankruptcy Court we'll put $1.8 million in the bank to collateralize that letter of credit with the understanding that we get back what's not needed.

THE COURT: Right, I got you.

MR. CARROLL: And our -- I'm sure you gathered this from our questions with Mr. Cannon, but our position is under the State regulations, they don't touch that letter of credit until they actually need to pay a claim. And that's what the regulations say. And that was what a lot of my questioning of Mr. Cannon was, was you leave our

money in the bank because that same agreement that says we'll step into WestPoint Stevens's shoes for those letters of credit also says we get the interest on that pile of money in the bank. But we've been deprived of that and we think we've been unlawfully deprived of that. And we now know that they didn't need but $635,000 of that 1.8 million.

I understand it sounds -- in the abstract, it sounds kind of far to say well, gee, here's the cap, 1.8 million. Better not come ask for 1.9 million because we're not paying anything over that, but the reality of this situation is they only needed a third of that. But the balance, the original balance -- the balance of the original deposit hasn't changed in 14 years and there can be no more claims.

So in our view of this case, there's a lot of nuance and a lot of WestPoints, but the case is fairly simple. We have an order from a Bankruptcy Court saying your Asset Purchase Agreement is approved.

A condition of the Asset Purchase Agreement says we'll put up that money, but we get back what's not needed. And here, there are no open claims and there can be no more open claims. Just give us back our money. You shouldn't have taken it in the first place, but give it back now.

MR. LIBET: So, Judge, of course, we strongly dispute that there absolutely can be claims in the future. There is no bar that would prevent a claim from being filed. And Mr. Carroll's client is not asking for this money to be returned so that they can then turn around and put the remainder in a letter of credit for the commission, right.

If that's what they wanted to do, the Commission would be totally fine with that. We just want the amount available that we have for the workers. They're not asking for that.

They're asking just to take the money and whatever is gone is gone and if there is a claim in the future, there is nothing. So I want to be clear, they're not asking for a new letter of credit to be posted. I think we might be getting a little bit lost on whether that letter of credit was going to continue or not because they're not interested in having that letter of credit around anymore regardless of any amounts.

THE COURT: I got it. Hopefully, I understand.

MR. CARROLL: Thank you, Your Honor.

THE COURT: Make your request to the court reporter for the transcript and just send me copies to let me know where you are, at least, when you make the request and I'll go from there. When you receive it, of course, just let me know. I'm sure the court reporter will let me know

when she sends it to you.

MR. CARROLL: Very good. We appreciate your help today, Judge.

MR. LIBET: It's nice to be in person.

THE COURT: It is nice to be in person. We'll work with this technology. I've got a lot to do before I leave. Thank you.

(Whereupon, the proceedings were concluded.)

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the 5th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 31st day of August, 2022.

October 26, 2022

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter



WestPoint Pepperell

718
Name Change
Called 12-28
to send Amendments
to surety + Excess.
D-1-17

December 15, 1993

Mr. W. C. Smith, III, CPCU
Self-Insurance Administrator
State of South Carolina
Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

Re: Self-Insurance Program

Mr. Smith - As reported in the attached Company Bulletin, please be advised that West Point - Pepperell, Inc. and Valley Fashions Corp. through merger on December 10, 1993, now operates under a new name, WestPoint Stevens Inc.

Details of this change will of course be discussed in the Company's 10-K, a copy of which will be forwarded to your office as soon as it is released - - probably mid April 1994.

We sincerely appreciate the co-operation of your office.

Yours truly,

ONeal

O'Neal Oliver
Risk Manager

slf

Attachment

RECEIVED
DEC 17 1993
S.C. WORKERS' COMP. COMM.
SELF INSURANCE



West Point-Pepperell, Inc.

BULLETIN

WESTPOINT STEVENS INC. FORMED; REFINANCING COMPLETED

We are very pleased to report to you that West Point - Pepperell, Inc., and Valley Fashions Corp. were today merged into one --- WestPoint Stevens Inc. Our new name reflects the proud heritage of the two great companies --- WestPoint Pepperell and J.P. Stevens. This is an historic moment for our Company and one of which we can all be proud. There is no doubt that WESTPOINT STEVENS is the worldwide leader in our industry and represents the best in highest quality products for the home fashions and knitted apparel markets.

We are also pleased to announce that we have today successfully refinanced the entire indebtedness of our Company --- ending four long years of financial turbulence. Our Company issued $950 million in long-term bonds at very favorable rates. Indeed, the demand for our bonds was so high that we were able to issue more bonds at much lower rates than had been expected. We are proud that WESTPOINT STEVENS is recognized as a premier manufacturing company in America by the institutional investors who bought our bonds. We also refinanced our short-term debt on favorable terms.

The result is a sound and secure financial future for our Company. While we still owe more debt than we would like, we have the rest of this century before we have to repay or refinance any debt. This means that we can do all that is necessary to provide outstanding service to our customers; keep our plants modern; and grow WESTPOINT STEVENS as opportunities present themselves.

All of us should take great pride in our accomplishments this year. We have worked together to restore our Company's strength. We are stronger in the marketplace --- with record sales over the past five months; we are stronger in our competitiveness --- with newer and more modern manufacturing facilities; we are stronger financially --- with a sound and safe capital base; and we are stronger as a team --- because we have worked together to make all of these things happen.

Thanks to each and every one of you who work for our wonderful Company. We are proud to be a part of the WESTPOINT STEVENS team. We extend our best wishes to all of you and your families for an enjoyable, safe holiday season. Happy Holidays!

Holcome T. Green, Jr.
Chairman of the Board and
Chief Executive Officer

Joseph L. Jennings, Jr.
President and Chief Operating Officer

RECEIVED
DEC 17 1993
SEC. BROKERS' COMM.
Rec. 209

December 10, 1993

WP-54851 A

WestPoint Pepperell

WORKERS' COMPENSATION DEPARTMENT

Per Conversation with 7/8
Mr. Oliver on 8-28-90
Keep address same (To George)
They will dispense necessary
documents to Travelers
(Constitution State Service)
Wendy Mewborn
8-28-90

August 28, 1989

State of South Carolina
Workers' Compensation Commission
Mr. W. C. Smith
P. O. Box 1715
Columbia, S.C. 29202-1715

Mr. Smith - This letter is to confirm your phone call and our conversation on August 21, 1989, concerning Administration of the Company's Workers' Compensation Claims.

Regarding your specific question about the Stevens operations, the operations were acquired by WestPoint Pepperell, Inc. on May 6, 1988 and under direct management of the Company on or about December 15, 1988.

Effective July 1, 1989, injuries occurring on or after July 1, 1989 (including the Stevens operations) are being administered under the Company's self-insured program by Constitution State Service Company.

For injuries occurring prior to July 1, 1989, Stevens claims are being handled by the respective insurance carrier -- and, the self-insured claims will continue to be handled by this office.

Yours truly,

ONeal

O'Neal Oliver
Manager, Workers' Compensation Claims

OO/br

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AUG 31 1989
S.C. WORKERS' COMP. COMM.
SELF INSURANCE

RECEIVED
AUG 2 5 1989
S.C. WORKERS' ...
COVERAGE & COMPLIANCE

The Breakup Of J.P. Stevens

J.P. Stevens

BIBB GETS:

Towel Plants
- Roanoke 1&2, Roanoke Rapids, N.C.
- Patterson plant, Roanoke Rapids
- Rosemary plant, Roanoke Rapids
- Delta Finishing plant #4, Roanoke Rapids
- White Horse plant #1 & 2
- Sheet gray mill manufacturing in Greenville, S.C.
- Brookneal Finishing & sheeting finishing plant, Brookneal, Va.

ODYSSEY GETS:

Carpet
- Aberdeen, N.C.
- Wagram, N.C.
- Turnersburg, N.C.
- Tifton, Ga.

Automotive
- Otanta, S.C.
- Taylors, S.C.
- Parker in Greenville, S.C.
- Port Huron, Mich.
- Woolwine in Woolwine, Va.
- Hillcrest in Simpsonville, S.C.
- Cramerton in Cramerton, N.C.

Industrial
- Duncan in Greenville.
- Slater in Slater, S.C.
- Walterboro in Walterboro, S.C.

Converter & Yarn Division
- Borden plant in Kingsport, Tenn.
- Watts plant in Laurens, S.C.
- Monaghan plant in Greenville
- Boger City in Lincolnton, N.C.
- Stanley in Stanley, N.C.
- Angle in Rocky Mount, Va.
- South Boston in South Boston, Va.

Elastomerics *(roofing products & rubberized thread)*
- Hampshire plant in East-Hampton, Mass.
- Patrick plant in Stuart, Va.
- Carolina plant in Westfield, N.C.

WEST POINT GETS:

Sheets
- Abbeville, S.C.
- Tuxedo plant in Tuxedo, N.C.
- Whitmire plant in Whitmire, S.C.
- Calhoun plant in Calhoun Falls, S.C.
- Clemson plant in Clemson, S.C.
- Seneca plant in Seneca, S.C.
- Hannah Pickett in Rockingham, N.C.
- Alamance plant in Burlington, N.C.
- Longview plant in Hickory, N.C.

Towels
- Drakes Branch in in Drakes Branch, Va.
- Scotland plant in Wagram, N.C.
- Bob Stevens plant in Wagram, N.C.
- Goldsboro plant in Goldsboro, N.C.
- Scottsboro plant in Scottsboro, Ala.

Sold to Bibb

Purchase date May 6, 1988

12-30-88

12-30-88
12-31-88 - 1989 Employers Casualty
Self insured 7-1-89

SCCV1000-S1 *** BASIC COVERAGE DATA *** 08/21/89
14:16:27

CART: 001038 FRAME: 0935 SERIAL: 459832

EMP CODE (PRI) : 00320190
F.E.I. : 000000000 EMP CODE (SEC) : 00000000

NAME : J P STEVENS & CO INC

ADDRESS : P O BOX 71

WEST POINT GA 31833

CAR# : 000283 ADJ# : 000000 CAR NAME : EMPLOYERS CASUALTY COMPANY

POL #: WC577048 POL DATE: 01/01/89 EFF DATE: 01/01/89 RCPT DATE: 02/21/89

TYPE REPORT: A REPORT OF COVERAGE DIARY DATE: 03/06/89

COMMENT :

COMMAND: --- ENTER S - STOP, 'C4' - RETURN TO INQUIRY, 'C3' - MICROFILM
MESSAGE:

Brown, Christy L

From: Bridgeforth, Timothy <TBridgeforth@mecasualty.com>
Sent: Friday, January 28, 2022 12:44 PM
To: Brown, Christy L
Subject: [External] WestPoint Stevens

Hi Christy,

Per our conversation, Midwest Employers wrote an excess work comp policy that did include South Carolina for a few years back in the early 2000's (for WestPoint Stevens). In searching our records, it does not appear that we ever paid an excess claim in South Carolina for this insured. Thanks!



Tim Bridgeforth
Director, Underwriting and Client Services - IST
P: 636.449.7093
Making a Difference
Visit Our Website

CONFIDENTIALITY NOTICE: This e-mail and the transmitted documents contain private, privileged and confidential information belonging to the sender. The information therein is solely for the use of the addressee. If your receipt of this transmission has occurred as the result of an error, please immediately notify us so we can arrange for the return of the documents. In such circumstances, you are advised that you may not disclose, copy, distribute or take any other action in reliance on the information transmitted.

South Carolina
Secretary of State
Mark Hammond

WESTPOINT STEVENS INC.

Note:This online database was last updated on 4/1/2015 3:05:50 AM.
See our Disclaimer.

DOMESTIC / FOREIGN:	Foreign
STATUS:	Dissolved
STATE OF INCORPORATION / ORGANIZATION:	DELAWARE Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:	CORPORATION SERVICE CO
ADDRESS:	5000 THURMOND MALL BLVD
CITY:	COLUMBIA
STATE:	SC
ZIP:	29201
SECOND ADDRESS:	

FILE DATE:	11/09/1993
EFFECTIVE DATE:	11/09/1993
DISSOLVED DATE:	05/15/2006

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Withdrawal	05/15/2006	ADDRESS FOR SERVICE-P O BOX 71, WEST POINT, GA 31833	
Agent	09/03/2002	CHANGE AGENT ADDRESS	Image
Agent	06/11/1999	Agent Change of Address	Image
Agent	04/10/1996	CH AGT/ADD FR-C T CORP SYSTEM	Image
Foreign Amendment	01/14/1994	CH FR/VALLEY FASHIONS CORP.	Image
Authority	11/09/1993	AUTHORITY	Image

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Physical Address: Edgar Brown Building - 1205 Pendleton Street Suite 525 Columbia, SC 29201
Mailing Address: SC Secretary of State's Office 1205 Pendleton Street Suite 525 Columbia, SC 29201

State of South Carolina

1612 Marion Street
P.O. Box 1715
Columbia, S.C. 29202-1715

(803) 737-5700

Workers' Compensation Commission

July 14, 1997

Mr. Oneal Oliver
WestPoint Stevens, Inc.
Post Office Box 71
West Point, Georgia 31833

Re: Self-Insurance Program, Surety Requirement

Dear Mr. Oliver:

The South Carolina Workers' Compensation Commission is required to monitor and review all self-insurance programs in the state. Individual program requirements established by the Commission, such as the amount of the surety and excess insurance, are based on statutory and regulatory requirements and are reviewed to ensure their sufficiency as circumstances change.

The amount of surety requirement is dependent primarily on claims history. For individual self-insured firms, the surety amount must be set at a level sufficient to pay all claims in the event of an insolvency. Because an individual company is not likely to go insolvent due to workers' compensation expenses, since these costs are a relatively small percentage of the total expenses for a firm, excess insurance is not likely to play a role in an insolvency. Thus the surety must be sufficient to pay all remaining claims. Similarly, while the financial condition of a self-insured is very important and closely monitored, no adjustment to a surety amount has been made based on this factor.

Central to the Commission's analysis is claims paid. It is important to note that claims paid are not claims incurred, and the Commission does not require that individual self-insurers establish reserves for claims incurred but not paid, although this has no effect on any requirements the firm may have to account for outstanding workers' compensation liabilities in their financial statements. All data the Commission receives from individual self-insurers, including the self-insurance tax return, is based on claims paid.

The Commission's analysis was based on the following claims payout schedule: first year: 40%, second year: 30%, third year: 15%, fourth year: 10% and fifth year: 5%. For example, of all claims incurred in any given year, only 40% of those claims would be paid in the year that they were incurred, 30% of those claims would be paid the following year, 15% paid the following year, and so on. In any given year after the fifth year of operation, 100% of the average yearly claims would be due and payable. Other factors considered which reflect outstanding liability were: liability for prior years claims and the timing of payment of claims. Based on this scenario, at the time of insolvency, approximately 140% of average yearly claims would be incurred but not paid. Because we used claims data that was at least one year old, this was adjusted for inflation and rounded to 1.5. The amount of the surety was calculated by multiplying the adjustment factor of 1.5 by the three years claims average. Because claims paid can show considerable variance from year to year for an individual company, the average of the last three years, unadjusted, was used in determining the recommended surety amount. All surety amounts were rounded to the next highest $50,000.

Because it is not known what liability already has been incurred for which future payments must be made, this method provides further guidance on the setting of the amount of the surety. It also provides for a more systematic approach which accounts for variations in claims paid and greater equity among all firms in the amount of the surety required.

Based on the claims history which your firm has reported to the Commission, the surety requirement is being reduced to $1,400,000. This reduction can be implemented at a time convenient to your firm and you may elect to keep your surety at its current level. However, you must forward to the Commission the appropriate documentation of this change.

If you would like to explore any aspect of this process, or if you have any questions concerning your firms surety requirement, please call me.

Sincerely,

W.C. Smith, III, CPCU, ARM
Director, Self-Insurance

WCS:wm
Attachment

NAME	CLAIMS PAID					SURETY	
	LAST	THREE	YEARS	AVERAGE	AVG * 1.50	PRESENT	REQUIRED
718 WEST POINT STEVENS	$947,714	$998,413	$814,737	$920,288	$1,380,432	$1,550,000	$1,400,000

South Carolina Workers' Compensation Commission
SELF-INSURANCE DIVISION
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5704

APPLICATION TO INDIVIDUALLY SELF-INSURE

1. Name: _____
2. Address: _____
3. Telephone Number: ( ) _____
4. Employer's Federal Identification Number: _____
5. Applicant is a (check one): Applicant's SIC Code: _____

   ☐ (A) Corporation
   ☐ (B) Partnership
   ☐ (C) Sole Proprietorship
   ☐ (D) Subsidiary Corporation (whose parent is self-insured or applying to self-insure in this state)
   ☐ (E) Other (Attach Explanation)

6. Are you now self-insured for workers' compensation in other states? ☐ Yes ☐ No
   If yes, list states and effective dates: _____
7. Do you have applications to self-insure pending in other states? ☐ Yes ☐ No
   If yes, list states: _____
8. In the most recent fiscal year what was your workers' compensation premium and experience modification for South Carolina?

Premium Amount: _____ Name of Present Carrier: _____

Experience Modification: _____ _____

9. Provide employment information for the current year for each business location in South Carolina (provide attachment if necessary):

Locations in South Carolina	Number of employees in South Carolina	Estimated Payroll for South Carolina
Total:	0	$0.00

10. Total number of employees company-wide: _____

For further information, refer to Article 15 of the South Carolina Workers' Compensation Commission's Regulations.

South Carolina Workers' Compensation Commission
SELF-INSURANCE DIVISION
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5704

11. If a corporation or limited partnership list the names of officers, directors, and residence of each. If a partnership, list the names of members and residence of each.

12. If a corporation: Date of charter _____ and State charter was obtained _____

13. Provide the following information for workers' compensation claims information for South Carolina for the three most recent years.

Year	Number of Claims	Amount Paid			Amount Incurred		
		Medical	Indemnity	Total	Medical	Indemnity	Total
				$0.00			$0.00
				$0.00			$0.00
				$0.00			$0.00
				$0.00			$0.00

14. Name, title, address and telephone number for contact person for claims administration:

15. Name, title, address and telephone number for contact person for self-insurance tax and financial issues:

The undersigned, an employer subject to the provisions of the South Carolina Workers' Compensation Law, hereby applies for the privilege of being exempt from the necessity of insuring the payment of compensation provided in that Law, and submits the following facts under oath to the South Carolina Workers' Compensation Commission to enable it to determine if sufficient financial ability exists to render certain payment of such compensation:

Reserved for Commission Use Only

Approved: _____ Effective Date: _____ SI No. _____

South Carolina Workers' Compensation Commission
SELF-INSURANCE DIVISION
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5704

By: Applicant's Name: _____

Signature: _____

Sworn and subscribed before me this _____ day of _____ year _____

Notary Public for: _____

My commission expires: _____

Attach the following:

1. $250 application fee, $100 for each subsidiary.
2. Description of the business, including operations and articles manufactured or services performed.
3. Description of your safety program.
4. Three years audited financial statements or Form 10K's and most recent quarterly report.
5. Excess insurance quotes for South Carolina.
6. Name of carrier or bank providing the required surety bond or irrevocable letter of credit.
7. Statement describing proposed claims administration. Include a copy of claims service agreement. If handling claims in-house provide resumes of claims staff and licensed adjuster(s).

When the applicant is a subsidiary company or a partnership, the Commission requires that the parent company, or any other company or person holding stock in the applicant company, or a partner or partners in the partnership, shall give satisfactory guarantee that the applicant will full and promptly pay all sums which are or may become payable under the provisions of the South Carolina Workers' Compensation Law and under the terms of the agreement contained in this application.

For further information, refer to Article 15 of the South Carolina Workers' Compensation Commission's Regulations.

WESTPOINT STEVENS

718

July 21, 1997

Mr. W. C. Smith, III, CPCU, ARM
Director, Self- Insurance
State of South Carolina,
Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

Re: Self-Insurance Program, Surety Requirement

Mr. Smith--Thank you for your 7-14-97 letter, advising that the surety requirement can be reduced from $1,550,000 to $1,400,000.

Accordingly, the Company is proceeding to request the change and will provide documentation of the change to your office.

Yours truly,

O'Neal

O'Neal Oliver
Risk Manager

cc: Mr. Tyrone Newton

RECEIVED
JUL 23 1997
S.C. WORKERS' COMP. COMM.
SELF INSURANCE

NationsBank

ISSUING BANK:
NATIONSBANK, N.A.

718

ISSUED DATE: 16 JANUARY 1998

EFFECTIVE DATE 15 JANUARY 1998

BENEFICIARY:
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
SELF-INSURANCE ADMINISTRATOR
1612 MARION STREET
POST OFFICE BOX 1715
COLUMBIA, SOUTH CAROLINA 29202-1715

RECEIVED
S.C. WORKERS' COMP. COMM.
SELF INSURANCE

COPY

APPLICANT/SELF INSURER:
WESTPOINT STEVENS INC.
507 WEST 10TH STREET
WEST POINT, GA 31833

IRREVOCABLE STANDBY LETTER OF CREDIT NO. 970572

AMOUNT: USD 1,400,000.00 (ONE MILLION FOUR HUNDRED THOUSAND U.S. DOLLARS AND NO/100)

EXPIRY: 15 JANUARY 1999

DEAR SIR:

WE HAVE ESTABLISHED THIS IRREVOCABLE LETTER OF CREDIT SOLELY IN YOUR FAVOR FOR DRAWINGS UP TO USD 1,400,000.00 (ONE MILLION FOUR HUNDRED THOUSAND U.S. DOLLARS AND NO/100) EFFECTIVE IMMEDIATELY AND EXPIRING AT OUR OFFICE LOCATED AT 121 W. TRADE ST., 21ST FLOOR, CHARLOTTE, NC 28255 WITH OUR CLOSE OF BUSINESS ON 15 JANUARY 1999.

WE HEREBY UNDERTAKE TO PROMPTLY HONOR YOUR SIGHT DRAFT(S) DRAWN ON US, INDICATING OUR LETTER OF CREDIT NUMBER 970572, FOR ALL OR ANY PART OF THIS LETTER OF CREDIT IF PRESENTED AT NATIONSBANK, N.A., ATTN: LETTER OF CREDIT DEPT., NC1-005-21-01, 121 W. TRADE ST., 21ST. FL., CHARLOTTE, NC 28255 ON OR BEFORE THE EXPIRY DATE OR ANY AUTOMATICALLY EXTENDED DATE.

EXCEPT AS STATED HEREIN, THIS UNDERTAKING IS NOT SUBJECT TO ANY CONDITIONS OR QUALIFICATIONS. THE OBLIGATION OF THE BANK UNDER THIS LETTER OF CREDIT SHALL BE THE INDIVIDUAL OBLIGATION OF THE BANK, IN NO WAY CONTINGENT UPON REIMBURSEMENT WITH RESPECT THERETO.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ONE YEAR FROM THE EXPIRY DATE HEREOF, OR ANY FUTURE EXPIRY DATE, UNLESS SIXTY (60) DAYS PRIOR TO ANY EXPIRY DATE WE SHALL NOTIFY YOU IN WRITING THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR

NationsBank

ANY SUCH ADDITIONAL PERIOD.

IT IS FURTHER CONDITION OF THIS LETTER OF CREDIT THAT ANY INTERRUPTION OF THE BANK'S CONDUCT OF BUSINESS WITHIN THIRTY DAYS OF THE EXPIRY DATE CAUSED BY AN ACT OF GOD, RIOT, CIVIL COMMOTION, INSURRECTION, WAR OR OTHER CAUSE BEYOND THE BANK'S CONTROL, OR BY ANY STRIKE OR LOCKOUT, WILL AUTOMATICALLY EXTEND THE EXPIRY DATE HEREOF, AS WELL AS FUTURE EXPIRY DATE, BY THE PERIOD OF THE INTERRUPTION BEGINNING ON THE FIRST DAY AFTER THE INTERRURTION ON WHICH THE BANK IS OPEN.

THIS LETTER OF CREDIT SHALL BE GOVERNED BY THE LAWS OF SOUTH CAROLINA AND SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, 1993 REVISION, ICC PUBLICATION NUMBER 500. IF ANY LEGAL PROCEEDINGS ARE INITIATED WITH RESPECT TO PAYMENT OF THIS LETTER OF CREDIT IT IS AGREED THAT SUCH PROCEEDINGS SHALL BE SUBJECT TO SOUTH CAROLINA COURTS AND LAW.

NATIONSBANK, N.A.

Ginger Downs

COPY

GINGER DOWNS
VICE PRESIDENT

FOR ASSISTANCE PLEASE CALL CRISTINA RUSSELL AT 214-508-3606.

ORIGINAL
Rec. 224

Memorandum of Understanding

This is a Memorandum of Understanding between WESTPOINT STEVENS INC. (Employer) and the South Carolina Workers' Compensation Commission (Commission). The Employer has applied for the privilege of self-insuring its obligations under the South Carolina Workers' Compensation Law and the Commission has approved the application contingent upon the Employer posting security in the amount of $ 1,400,000. The Employer wishes to meet this security requirement by posting an Irrevocable Letter of Credit (Letter of Credit) issued or confirmed by NATIONSBANK (Bank), which is a South Carolina chartered bank or federally chartered bank with a South Carolina office. The Commission and the Employer agree to the following:

1. The Letter of Credit is being furnished to the Commission in lieu of a surety bond or other security to meet one of the conditions established by the Commission for the Employer to self-insure.

2. Expiration or cancellation of the Letter of Credit is effective sixty (60) days after the Commission has received written notice of the cancellation.

3. If the Commission is notified that the Letter of Credit is being cancelled or will not be renewed and a new letter of credit or surety bond acceptable to the Commission is not filed with the Commission, the Commission may, at its discretion, draw on the Letter of Credit.

4. The Commission may, at any time, draw on the Letter of Credit if needed to pay any workers' compensation claim and claims administration expense which are the responsibility of the Employer.

5. All proceeds drawn on the Letter of Credit shall be deposited with the State Treasurer.

6. The Letter of Credit and this Memorandum of Understanding shall be governed by the laws of South Carolina and subject to the Uniform Customs & Practice for Documentary Credits, 1993 Revision, ICC Publication Number 500. Any action with respect to the Letter of Credit shall be brought in South Carolina and the Employer shall consent to the court's personal jurisdiction over the Employer.

7. In this Memorandum of Understanding "Employer" means the following entities which have been approved to self-insure in South Carolina (parent and subsidiaries):

   WESTPOINT STEVENS INC.

8. This Memorandum of Understanding is effective on: _____ (month/day/year).

Signed: Duncan M. Johnson V.P. FINANCE & CFO 1/26/98

Representative of Employer — Title — Date

W.C. Smith DIRECTOR S.I. 1-29-98

Representative of Commission — Title — Date JAN 29 1998

Form SI: Memorandum of Understanding. Attach this form to the Irrevocable Letter of Credit and file with the Self-Insurable Division of the Commission within sixty-days of the Commission's contingent approval of the application to self-insure. See R. 67-1501 through R. 67-1516 for further information.

State of South Carolina

1612 Marion Street
P.O Box 1715
Columbia, S C. 29202-1715

TEL: (803) 737 5700
FAX: (803) 737-5768

Workers' Compensation Commission

July 15, 2003

Mr. Oneal Oliver
WestPoint Stevens, Inc.
Post Office Box 71
West Point, Georgia 31833

Re: 718
WestPoint Stevens, Inc.

Dear Mr. Oliver:

I am writing in regards to the current surety requirement for self-insured workers' compensation for WestPoint Stevens, Inc., in the state of South Carolina. In light of the companies recent chapter 11 bankruptcy and financial reversals as indicated in the company's 2002 10K financial report, it has become necessary to increase the self-insured surety requirement in order for the company to continue to maintain its self-insurance privileges in this state. The current surety requirement of $1.4 million has been increased to ~~$2.3~~ $2.8 million. A rider to your current surety amending the amount is required within 30 days from the date of this letter.

If there are any questions or any comments please feel free to direct them to my attention.

Sincerely,

W.C. Smith, III, CPCU, ARM
Director, Self-Insurance

WCS/wm

Bank of America

DATE: AUGUST 1, 2003

AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 970572

AMENDMENT NUMBER 1

BENEFICIARY
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION
SELF-INSURANCE ADMINISTRATOR
1612 MARION STREET
POST OFFICE BOX 1715
COLUMBIA, SOUTH CAROLINA 29202-1715

APPLICANT
WESTPOINT STEVENS, INC.
507 WEST 10TH STREET
WEST POINT, GA 31833

THIS AMENDMENT IS TO BE CONSIDERED AN INTEGRAL PART OF THE ABOVE CREDIT AND MUST BE ATTACHED THERETO.

THE ABOVE MENTIONED CREDIT IS AMENDED AS FOLLOWS:

THE AMOUNT OF THIS CREDIT HAS BEEN INCREASED BY USD 400,000.00
THE AGGREGATE AMOUNT OF THE CREDIT IS NOW USD 1,800,000.00

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS AMENDMENT, PLEASE CALL 213-345-0128.

AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

THELMA CHAN

THIS DOCUMENT CONSISTS OF 1 PAGE(S).

ROBERTO BUENABAD

SCWCC
AUG 04 '03
INSURANCE & MEDICAL SERVICES

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	Chapter 11 Case No.
WESTPOINT STEVENS INC., et al.,	:	03-13532 (RDD)
	:	(Jointly Administered)
	:	
Debtors.	:	

ORDER AUTHORIZING SALE OF SUBSTANTIALLY ALL OF THE SELLERS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS, THE ASSUMPTION OF CERTAIN LIABILITIES, APPROVAL OF SUCCESSFUL BIDDER AND CERTAIN RELATED MATTERS

This matter having come before the Court to consider the sale of substantially all of the assets of WestPoint Stevens Inc. ("WestPoint"), Westpoint Stevens Inc. I and Westpoint Stevens Stores, Inc. and certain trademarks of J.P. Stevens Enterprises, Inc. (collectively, the "Sellers"), as debtors and debtors in possession (J.P. Stevens & Co. Inc. ("J.P. Stevens") is also a debtor and debtor-in-possession but is not a seller (Sellers and J.P. Stevens are referred to herein collectively as the "Debtors")), free and clear of all liens, claims, encumbrances, and other interests pursuant to sections 105, 363, 365, and 1146 of title 11 of the United States Code (11 U.S.C. § 101 *et seq*, the "Bankruptcy Code") and in accordance with the terms of that certain Order, dated April 22, 2005 (the "Bidding Procedures Order"), establishing bidding procedures (the "Bidding Procedures") in connection with the Debtors' proposed sale of substantially all of the Sellers' assets to the highest or best bidder (the "Sale") and to consider certain related issues briefed and/or argued by the parties; and an auction for the assets (the "Auction") having been conducted on June 23, 2005; and the Debtors having filed with the Court an auction report (the "Auction Report") stating that the highest or best bid at the Auction was the bid of Textile Co., Inc., pursuant to and in accordance with the terms of that certain Asset Purchase Agreement (the

"Agreement"),[1] a copy of which is attached as Exhibit A hereto, between the Sellers and Textile Co., Inc. (the "Purchaser" and together with New Textile One, Inc., New Textile Two, Inc., and WS Textile Co. Inc., the "Purchasing Entities"), dated as of June 23, 2005 (the "Successful Bid"); and the Debtors having properly filed and served the Auction Report, dated June 23, 2005, notifying all parties in interest of the outcome of the Auction; and the hearing on approval of the Debtors' selection of the Purchaser at the Auction and the Sale having been held before this Court beginning on June 24, 2005 at 10:00 a.m. (Eastern Time) and concluding on June 29, 2005 (the "Purchaser Selection Hearing"); and the Debtors having served notice of the Auction and the Purchaser Selection Hearing upon all known creditors (including former employees, retirees, tort claimants, and adjacent and nearby landowners for sites with potential environmental liabilities) and equity security holders of the Debtors; and the Debtors having published notice of the Auction and the Purchaser Selection Hearing in the national editions of *The New York Times* and *Wall Street Journal* on May 6, 2005; and the Court having considered each of the objections filed to the relief herein; and the Court having reviewed and considered the Auction transcript, the testimony and the exhibits admitted into evidence at the Purchaser Selection Hearing and the proceedings had before the Court in connection with this matter and throughout these cases; and good and sufficient cause appearing therefor, including for the reasons stated on the record in the Court's bench ruling at the conclusion of the Purchaser Selection Hearing, which is incorporated herein,

THE COURT HEREBY FINDS AND DETERMINES THAT:

[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052, made applicable to this proceeding pursuant to Fed. R. Bankr. P. 9014.

B. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. This Court has jurisdiction over the transactions contemplated by the Agreement pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (N). The members of the Steering Committee, the First Lien Agent and the Collateral Trustee for the First Lien Debt have each consented to the jurisdiction of this Court, including with respect to issues regarding the Credit Agreement, the Collateral Trust Agreement and the Intercreditor Agreement that were determined by the Court at the Purchaser Selection Hearing and herein. Venue of these cases in this district is proper under 28 U.S.C. §§ 1408 and 1409.

D. The statutory predicates for the relief provided herein are sections 105(a), 363, 365, and 1146(c) of the Bankruptcy Code as supplemented by Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

E. As evidenced by the affidavits of service and publication previously filed with the Court, and based on the representations of counsel at the Purchaser Selection Hearing, (i) proper, timely, adequate and sufficient notice of the Auction, the Sale, and the Purchaser Selection Hearing has been provided in accordance with Bankruptcy Rules 2002(a), 6004(a) and 6006(c) and in compliance with the Bidding Procedures Order, (ii) such notice was good and sufficient, and appropriate under the particular circumstances, and reasonably calculated to reach and

apprise all holders of Interests (as hereinafter defined) about the Bidding Procedures, the Auction, and the Sale, and (iii) no other or further notice of the Auction, the Sale, or the Purchaser Selection Hearing is necessary. Further notice, as set forth herein, shall be provided to non-Debtor parties to pre-petition or post-petition contracts, leases or licenses which the Purchaser requests be assumed and assigned to it at Closing under the Agreement, which notice shall provide such counterparties an opportunity to object to the proposed assumption and assignment, including the proposed Cure Amount, in writing within 10 days of the date of mailing of such notice to such counterparty. Any such contracts, leases or licenses as to which the Purchaser has not changed the direction to assign to Purchaser prior to the Closing (or if the hearing to approve assumption and assignment of a particular contract, lease or licenses is held after the Closing, such later hearing date as to such contract, lease or license) is referred to herein as an "Acquired Contract" and are collectively referred to as "Acquired Contracts".

F. No further bids or offers for the Purchased Assets shall be considered or accepted after the date hereof unless the Successful Bid shall be terminated in accordance with its terms. No chapter 11 plan or further order is necessary to approve or implement the transactions contemplated in the Agreement; however, if the Purchaser requests the Debtors to proceed with a chapter 11 Plan to implement such transaction, the Debtors shall so proceed unless the Purchaser later revokes such request, in which case the Debtors shall cease proceeding with such a plan. The Debtors may nevertheless choose to proceed to confirm a liquidating chapter 11 plan after the Closing.

G. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Purchaser Selection Hearing, and (ii) the representations of counsel made on the record at the Purchaser Selection Hearing, the Debtors and their financial advisor, Rothschild Inc.

("Rothschild"), diligently and in good faith marketed the Sellers' assets to secure the highest or best offer therefor in compliance with the Bidding Procedures Order by, *inter alia*, delivering offering materials to potential purchasers (and in addition, delivering the Bidding Procedures Order to each of the entities that had previously expressed an interest in the Debtors' assets), inviting potential purchasers to meet with the Debtors' management, Rothschild, and other professionals of the Debtors, providing each potential purchaser with the opportunity to conduct extensive due diligence, and otherwise conducting an open and fair sale process culminating in an Auction in which each potential purchaser had an opportunity to bid for the Debtors' assets in accordance with the Bidding Procedures previously approved by the Court. The terms and conditions set forth in the Successful Bid, and the transactions contemplated thereby, including the amount of the purchase price, represent fair and reasonable terms and conditions, constitute the highest and best offer obtainable for the Seller's assets and are fair and adequate. The Rothschild methodology for valuing the Auction bids, including the Successful Bid and the prior two non-credit bids of the WL Ross/Steering Committee group, was reasonable and appropriate, and the Rothschild methodology was applied consistently and fairly to the bids of the Purchasing Entities and the affiliates of the WL Ross/Steering Committee group. The Debtors' marketing efforts, the Rothschild methodology, and the Auction resulted in a market test and a fair valuation of the Purchased Assets. Further, the Auction was duly noticed and conducted in a noncollusive, fair, and good faith manner, and a reasonable opportunity has been given to any interested party to make a higher and better offer. Without limiting the foregoing, the facts that an affiliate of the Successful Bidder holds First Lien Debt and Second Lien Debt, or that the Steering Committee holds First Lien Debt, did not unfairly skew the Auction or the valuation of the bids. The bids were made by sophisticated parties who are experienced with bankruptcy

auctions and distressed companies, and they were not made under duress. Without limiting the foregoing, Wilbur Ross and his affiliates were not at the time of the Auction, creditors of the Debtors. The last two non-credit bids of the WL Ross/Steering Committee group were made on a comparable format to the Successful Bid, including a substantial and material cash portion of the proposed purchase price, and were not provisional, which further confirms the fairness of the Auction and the valuation of the Purchased Assets established by the Auction.

H. Each Debtor has full corporate power and authority to execute the Agreement and all other documents contemplated thereby, and the sale of the Purchased Assets in accordance with the Agreement by the Sellers and related matters have been duly and validly authorized by all necessary corporate action of each of the Debtors. Each Debtor has all of the corporate power and authority necessary to consummate the transactions contemplated by the Agreement and has taken all corporate action necessary to authorize and approve the Agreement and the consummation by such Debtor of the transactions contemplated thereby. No consents or approvals, other those expressly provided for in the Agreement, are required for the Debtors to consummate such transactions.

I. The Successful Bid is the highest and best bid at the Auction, and the Debtors' decision to accept the Successful Bid, approval of the Agreement, and consummation of the transactions contemplated in the Agreement and the exhibits thereto are appropriate under the circumstances of these cases and are in the best interests of the Debtors, their creditors, their estates and other parties in interest. The Purchaser Selection Hearing constituted the hearing to approve entry of the Sale Order under the Agreement, no further Sale hearing is needed, and this Order constitutes both the Selection Order and the Sale Order under the Agreement.

J. The Debtors have demonstrated compelling circumstances and a good, sufficient and sound business purpose and justification for the Sale under the Agreement, under section 363(b) and (f) of the Bankruptcy Code, prior to, and outside of, a chapter 11 plan.

K. The Agreement and the transactions it contemplates were negotiated, proposed and entered into by the Debtors and the Purchasing Entities without collusion, in good faith, and from arm's-length bargaining positions. Neither the Debtors nor the Purchasing Entities have engaged in any conduct that would cause or permit the Agreement to be avoided under 11 U.S.C. § 363(n).

L. The Purchasing Entities are good faith purchasers under section 363(m) of the Bankruptcy Code and, as such, are entitled to all of the protections afforded thereby.

M. The Purchasing Entities are not "insiders" of any of the Debtors, as that term is defined in section 101 of the Bankruptcy Code.

N. The consideration provided by the Purchasing Entities pursuant to the Agreement (i) is fair and reasonable, (ii) is the highest and best offer for the Purchased Assets and constitutes the Successful Bid pursuant to the Bidding Procedures Order, and (iii) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

O. The transfer of the Purchased Assets to the Purchaser will be a legal, valid, and effective transfer of the Purchased Assets and will vest, effective as of the Closing, (i) the Purchaser with all right, title, and interest of the Sellers to the Purchased Assets free and clear (with the exception of the Assumed Liabilities) of Liens, claims, encumbrances, and other interests (collectively, the "Interests"), including, but not limited to, (1) those that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or

termination of the Purchaser's interest in the Purchased Assets, or any similar rights, (2) those relating to Taxes arising under or out of, in connection with, or in any way relating to the operation of the Debtors' assets prior to the Closing, and (3) (a) those arising under all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, Liens, judgments, demands, encumbrances, rights of first refusal or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, and (b) all debts arising in any way in connection with any agreements, acts, or failures to act, of any of the Debtors or any of the Debtors' predecessors or affiliates, Claims (as that term is defined in the Bankruptcy Code), obligations, liabilities, demands, guaranties, options, rights, contractual or other commitments, restrictions, interests and matters of any kind and nature, whether known or unknown, contingent or otherwise, whether arising prior to or subsequent to the commencement of these bankruptcy cases, and whether imposed by agreement, understanding, law, equity or otherwise, including, but not limited to, Claims otherwise arising under doctrines of successor liability and related theories, any employment or labor agreements; any pension, welfare, compensation, or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plan of a Debtor, any other employee, worker's compensation, occupational disease, or unemployment or temporary disability related Claim, any products liability or similar Claims, whether pursuant to any state or federal laws or otherwise, including, without limitation, asbestos Claims; Environmental Liabilities; any bulk sales or similar law, any brokerage commissions or similar claims relating to any of the Debtors' assets; tort Liabilities, including all Liabilities relating to personal injury and other tort claims of any nature and related matters, of Debtors and their Affiliates, or relating to the Business or any assets or properties of Debtors and their

Affiliates, and any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, in each case, to the fullest extent permitted by law, to the extent permitted by law; and (ii) Aretex, the other First Lien Lenders, and, to the extent applicable, the other Second Lien Lenders with their proportionate share of the Parent Shares and/or Subscription Rights (or shares received upon exercise of the Subscription Rights) pursuant to Section 3.3(c) of the Agreement and Paragraphs R, 6, and 12 of this Order in satisfaction of their replacement lien on the Sale proceeds under Paragraph 6 of this Order. With the exception of the right of the First Lien Lenders and Second Lien Lenders to receive such Sale proceeds under this Order and the Agreement at Closing in satisfaction of their replacement liens therein as provided for under Paragraphs R, 6, and 12 of this Order, the consideration to be received under the Equity Commitment Agreement and the Rights Offering Sponsor Agreement and the Parent Common Stock acquired pursuant thereto is also free and clear of all such Interests. The Parent Shares, the Subscription Rights, the shares received upon exercise of the Subscription Rights (including in connection with the backstop of such Subscription Rights) and/or under the Equity Commitment Agreement and the Rights Offering Sponsor Agreement are collectively referred to herein as the "Securities".

P. The Purchasing Entities would not have entered into the Agreement and would not consummate the transactions contemplated thereby, thus adversely affecting the Debtors, their estates, and their creditors, if the sale of the Purchased Assets to the Purchaser, the assignment of the Acquired Contracts to the Purchaser, the assumption of the Assumed Liabilities by the Purchaser and the Securities were not free and clear of all Interests, as described above, or if the Purchasing Entities would, or in the future could, be liable for any of

the Interests, other than Assumed Liabilities. The Purchasing Entities shall not be required or deemed to purchase any Excluded Assets or assume any Excluded Liabilities.

Q. The Debtors have satisfied the standard set forth in section 363(f) of the Bankruptcy Code for selling the Purchased Assets free and clear of all Interests, inasmuch as (i) the First Lien Debt will be satisfied in full at Closing by the release of the Parent Shares and the portion of the Subscription Rights as set forth Paragraphs R, 6, and 12 of this Order (subject to any reallocation by further order of this Court prior to Closing as provided in Paragraphs R and 6 hereof) and (ii) the Second Lien Lenders shall receive at Closing such portion of the Subscription Rights as set forth in Paragraphs R, 6, and 12 of this Order hereof (subject to any reallocation by further order of this Court prior to Closing as provided in Paragraphs R and 6 hereof). Without prejudice to any rights of the First Lien Agent and the First Lien Collateral Trustee therein on behalf of the First Lien Lenders, the Second Lien Agent shall also retain on behalf of the Second Lien Lenders their Interests and superpriority administrative claims against Excluded Assets, including the escrow under the Adequate Protection Order, the European Proceeds, and any cash proceeds held by the Debtors. Any valid miscellaneous secured claims related to the Purchased Assets with priority over the liens of the First Lien Agent, the Collateral Trustee, and the Second Lien Agent are being assumed by Purchaser pursuant to the Section 2.3(a)(x) of the Agreement or paid to the applicable Seller's estate to satisfy such claims pursuant to Section 3.1(a) of the Agreement. As to all parties other than the First Lien Agent, the Collateral Trustee, and the Steering Committee, section 363(f)(2) of the Bankruptcy Code is satisfied. As to the First Lien Agent, the Collateral Trustee, and the Steering Committee, the standards of both section 363(f)(3) and 363(f)(5) of the Bankruptcy Code are satisfied for the reasons stated by the Court on the record of the Purchaser Selection Hearing, either of which sections are sufficient to

authorize the Sale to be free and clear. The Sale under the Agreement also satisfies section 363(e) of the Bankruptcy Code. Based on the Auction price and the replacement lien provided under Paragraph 6 of this Order, the Sellers are receiving at least $95 million of value in excess of the claims of the First Lien Lenders, or more (based on the testimony of Arthur Newman of Blackstone), which for purposes of section 363(e) of the Bankruptcy Code adequately protects the First Lien Lenders prior to Closing, and the release of the replacement collateral to the First Lien Lenders pursuant to Paragraphs R, 6, and 12 of this Order hereof shall adequately protect them and satisfy their secured claim as of Closing.

R. As more fully set forth in the record at the Purchaser Selection Hearing, the Sale and the release of the Subscription Rights to the Second Lien Lenders are permitted under the terms of section 2.13 of the Intercreditor Agreement pursuant to (i) the mandatory prepayment and (ii) adequate protection exceptions thereunder, and (iii) if a chapter 11 plan were to be confirmed, the chapter 11 plan exception such section would also be applicable. Aretex, the Second Lien Agent and the other Second Lien Lenders are not proposing a "plan" within the meaning of section 2.4 of the Intercreditor Agreement. Unless any First Lien Lender, Second Lien Lender, or any other party with an Interest in such Sale proceeds requests a hearing (on no less than five (5) business days notice) for the Court to determine that, due to changed circumstances which materially affect the value of the Successful Bid, the Subscription Rights as allocated below, together with release of any other Sale consideration to the First Lien Lenders, will not satisfy the claim of the First Lien Lenders (in which case such Subscription Rights shall be reallocated among the First Lien Lenders (including Aretex)) and the Second Lien Lenders (including Aretex), the Purchasing Entities shall issue Subscription Rights to purchase 9,349,185 shares of Parent Common Stock (constituting approximately 65.608% of the Subscription

Rights) directly to the First Lien Lenders, pro rata, and Subscription Rights to purchase 4,900,815 shares of Parent Common Stock (constituting approximately 34.392% of the Subscription Rights) directly to the Second Lien Lenders, pro rata, pursuant to Section 3.3(c) of the Agreement, subject to an adjustment for any change in the unpaid balance of the First Lien Debt between June 30, 2005 and the Closing Date. Any such hearing shall occur before the Closing. Subject to the adjustment, if any, specified in this Paragraph, the release of such replacement collateral shall satisfy the Claims of the First Lien Lenders against the Debtors in full and shall partially satisfy the Claims of the Second Lien Lenders against the Debtors. In determining the unpaid balance of the First Lien Debt as of the Closing, any cash paid to the Collateral Trustee or the First Lien Agent prior to or at the Closing but not distributed to the First Lien Lenders as of the Closing Date shall be deemed to have been paid to reduce such balance due on the First Lien Debt. To provide adequate time for the First Lien Lenders and/or the Second Lien Lenders to file a motion and schedule a hearing prior to the Closing as provided in this paragraph, the Debtors and Purchaser shall provide the First Lien Agent, the Second Lien Agent and counsel to the Steering Committee no less than twenty (20) business days notice of the date scheduled for the Closing.

S. As of June 30, 2005, prior to the application of the adequate protection payment made by the Debtors on that date and prior to the application of funds presently held by the First Lien Agent, the aggregate amount owed to the First Lien Lenders, including accrued interest, is $488,371,841.20. As of June 30, 2005, the aggregate amount owed to the Second Lien Lenders, including accrued interest, is $167,508,904.11. Exhibits B and C hereto set forth the percentage holdings of the First Lien Lenders and the Second Lien Lenders, respectively, as of the date of the applicable exhibit. The First Lien Agent and Second Lien Agent shall advise the Debtors and

the Purchasing Entities in writing as of the Closing Date of (i) any changes to the percentage holdings, as applicable and (ii) the amount owed, including any unpaid accrued interest and costs, as of the Closing Date on their applicable facility, and shall provide a draft of such advice to the Debtors and the Purchasing Entities with the then current information ten (10) days prior to the scheduled Closing.

T. As of the date hereof, the overall value of the Successful Bid and the Purchased Assets is $703.5 million. As of the date hereof, the value of the Parent Shares is $297.3 million. As of the date hereof, the net value of the Subscription Rights is $278.5 million. Such values shall be used at Closing, unless otherwise ordered by the Court pursuant to the procedure in Paragraph R of this Order prior to Closing. After the Closing, there will be no further adjustment to the value of the Successful Bid or reallocation of the Subscription Rights or shares acquired thereunder between the First Lien Lenders and Second Lien Lenders.

U. J.P. Stevens (i) has full corporate power and authority to execute the Indemnity Agreement attached as Exhibit S to the Agreement (the "Indemnity Agreement") and all other documents contemplated thereby, which Indemnity Agreement has been duly and validly authorized by all necessary corporate action of J.P. Stevens, (ii) has all of the corporate power and authority necessary to consummate the transactions contemplated by the Indemnity Agreement, and (iii) has taken all corporate action necessary to authorize and approve the Indemnity Agreement and the consummation by J.P. Stevens of the transactions contemplated thereby. No consents or approvals, other than those expressly provided for in the Indemnity Agreement, are required for J.P. Stevens to consummate such transactions.

V. The Sale is a prerequisite to the Debtors' ability to confirm and consummate any chapter 11 plan or plans, and is a transfer pursuant to section 1146(c) of the Bankruptcy Code,

which shall not be taxed under any law imposing a stamp, transfer, or any other similar tax in the event that a chapter 11 plan for the Debtors is confirmed. The applicable amount of transfer taxes shall be placed in an interest bearing escrow with First American Title Company or another mutually acceptable party pending confirmation of a chapter 11 plan for the Debtors and shall be released together with accrued interest less any applicable escrow fees to (i) the Purchaser upon confirmation of any such chapter 11 plan or (ii) the applicable transfer taxing authority in the event that the applicable chapter 11 case is dismissed or converted to a case under chapter 7 of the Bankruptcy Code. Any requirement to pay such transfer taxes at the Closing shall be satisfied by payment into the foregoing escrow.

W. The Agreement provides for the assumption and assignment of the Acquired Contracts, which is an integral part of the Purchased Assets being purchased by the Purchaser. In accordance with the Bidding Procedures Order, the Debtors will file with the Court one or more schedules (the "Cure Schedule") setting forth the proposed list of Acquired Contracts and the amounts, if any, that the Debtors believe are required to be paid to the non-Debtor party of each proposed Acquired Contract in accordance with section 365(b) of the Bankruptcy Code (the "Cure Costs"). The Cure Schedule will be served upon all non-Debtor parties to such proposed Acquired Contracts not less than ten (10) days prior to the deadline to object to the assumption and assignment of the Acquired Contracts and the Cure Costs associated therewith (the "Cure Objection Deadline"). Nothing herein shall prejudice the ability of the Purchaser to exclude assets, including, without limitation, any contract, lease or license, prior to the Closing under the Agreement.

X. In accordance with the terms of the Agreement, the Purchaser shall satisfy all Cure Costs solely as such costs are determined in a Final Order of this Court for each Acquired

Contract as of the Closing or promptly after such later date as an Order determining such Cure Costs for a particular Acquired Contract shall be entered. In the absence of a timely objection after proper service of the Cure Schedule, the Cure Cost for any such Acquired Contract is deemed to be accurate, and the fact that the Purchaser is acquiring the Purchased Assets and hiring certain of the Debtors' personnel and is adding additional capital to the business constitutes adequate assurance of future performance under such Acquired Contract within the meaning of section 365(b)(1)(C) of the Bankruptcy Code.

Y. Aretex as a First Lien Lender has an allowed claim in the face amount of $193,503,839.26, plus accrued and accruing interest and costs (reduced by any payments made after the date hereof) and is entitled, based on its present holdings, to not less than 39.989% of any securities or other property delivered to and allocated among the First Lien Lenders.

Z. Aretex as a Second Lien Lender has an allowed claim in the face amount of $84,500,000, plus accrued and any accruing interest and costs (reduced by any payments made after the date hereof) and is entitled, based on its present holdings, to not less than 51.212% of any securities or other property or assets delivered to and allocated among the Second Lien Lenders.

AA. Purchaser is entitled to operate the facilities being acquired after Closing under the current Permits held by the applicable Seller until such time as such Permits are assigned to Purchaser or Purchaser obtains similar Permits in its own name.

BB. The Debtors have demonstrated that the assumption and assignment of the Acquired Contracts to the Purchaser at Closing is an exercise of their sound business judgment, and the assumption and assignment of the Acquired Contracts is in the best interests of the Debtors, their estates, and their creditors. The Acquired Contracts being assigned to, and the

post-Closing liabilities and Cure Costs being assumed by, the Purchaser are an integral part of the Purchased Assets being purchased and the consideration paid by the Purchaser.

NOW THEREFORE, THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:

1. The Agreement, and all of the terms and conditions thereof and exhibits thereto, is hereby approved.

2. All objections filed or otherwise lodged with respect to the Agreement or the entry of the Sale Order that have not been withdrawn, waived or resolved as set forth herein and all other reservations of rights included therein, are overruled on their merits with prejudice and may not be reasserted. Except as otherwise provided in this Order, including the Court's bench ruling, the objections of the Steering Committee to the findings of fact and conclusions of law and the ruling granted herein are overruled. The following objections were hereby resolved or withdrawn with prejudice as follows:

(a) Alamance County's Limited Objection with Respect to § 1146(c) Relief. Resolved by Paragraphs V and 38 of this Order.

(b) Wal-Mart Stores, Inc. Limited Objection. Notwithstanding any other provision of this Order, Wal-Mart's rights and defenses, if any, with respect to accounts and receivable sold to Purchasing Entities by Sellers, including but not limited to any right of setoff or recoupment, are not impaired by this Order.

(c) Fuller Sales, Inc. and Ful-Dye, Inc.'s Limited Objection. Agreed stipulation being finalized.

(d) Objection of Counties of Comal, Denton and Hays, Texas. The appropriate taxes due to the extent that they are determined in a further order of this Court to be secured claims with priority over First and Second Lien Debt, shall be paid by Purchaser as Assumed Liabilities.

(e) Objection of City of San Marcos, San Marcos C.I.S.D. and City of Denton, Texas. The appropriate taxes due, to the extent that they are determined in a further order of this Court to be secured claims with priority over First and Second Lien Debt, shall be paid by Purchaser as Assumed Liabilities.

(f) Objection of Leaseplan USA, Inc. Previously withdrawn.

(g) Limited Objection to Silver Sands Joint Venture Partners II. Previously withdrawn.

(h) Limited Objection of D.A. Moore Corporation. To the extent that the mechanics lien is valid, the amount is owed and the mechanics lien primes the First and Second Lien Debt positions on the asserted collateral, it shall be assumed by Purchaser as an Assumed Liability.

(i) Response of Pension Benefit Guaranty Corporation. Previously withdrawn.

3. The Purchasing Entities are hereby found to be the Successful Bidder and the Agreement and the transactions contemplated thereby the highest and best bid at the Auction under the Bidding Procedures Order. Pursuant to 11 U.S.C. § 363(b), the Debtors are authorized to perform their obligations under and comply with the terms of the Agreement, and the Sellers are authorized to consummate the Sale, pursuant to and in accordance with the terms and conditions of this Order and the Agreement.

4. The Debtors are authorized and directed to execute and deliver and empowered to perform under, consummate and implement the Agreement, together with all additional instruments and documents that a Debtor or the Purchaser deem necessary or appropriate to implement the Agreement and effectuate the transactions contemplated by the Agreement, and to take all further actions as may be requested by the Purchaser for the purpose of assigning, transferring, granting, conveying and conferring to the Purchaser or reducing to possession, the Purchased Assets, or as may be necessary or appropriate to the performance of the obligations as contemplated by the Agreement.

5. This Order and the Agreement shall be binding in all respects upon all creditors of and holders of equity interests in any Debtor (whether known or unknown), agents,

trustees and collateral trustees, any holders of Interests, all non-Debtor parties to the Acquired Contracts (subject to the timely filing of objections to the assumption and assignment of such Contracts), all successors and assigns of the Purchaser, each Debtor and their Affiliates and subsidiaries, the Purchased Assets, and any subsequent trustees appointed in the Debtors' chapter 11 cases or upon a conversion of any such case to chapter 7 under the Bankruptcy Code, and shall not be subject to rejection. Nothing contained in any chapter 11 plan confirmed in these bankruptcy cases, the confirmation order confirming any such chapter 11 plan, any order approving the winddown or dismissal of the Debtors' chapter 11 cases or any subsequent chapter 7 case for a Debtor, any order entered upon the conversion of these cases to chapter 7 of the Bankruptcy Code or any other order entered in these cases shall conflict with or derogate from the provisions of the Agreement or this Order.

6. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, at the Closing the Purchased Assets shall be transferred to the Purchaser free and clear of all Interests of any kind or nature whatsoever (including those specifically described in Paragraph P of this Order), with the exception of the Assumed Liabilities, with the Interests of the First Lien Lenders and Second Lien Lenders attaching to the Sale proceeds, including the Parent Shares and the Subscription Rights, to the same extent, validity, and priority that they attached to the Purchased Assets immediately prior to the Closing. All such Interests of any kind or nature whatsoever shall be and shall be deemed to be satisfied at the Closing upon the release (or tender of release) of such replacement collateral provided for in Section 3.3(c) of the Agreement and Paragraphs R and 12 of this Order (and, without prejudice to any rights of the First Lien Agent and the First Lien Collateral Trustee therein on behalf of the First Lien Lenders, in the case of the Second Lien Lenders of their Interest in and suprerpriority administrative claims against the Excluded

Assets, including the escrow under the Adequate Protection Order), or in the case of miscellaneous secured claims with priority over the First Lien Debt and Second Lien Debt by either (i) assumption thereof by Purchaser pursuant to Section 2.3(a)(x) of the Agreement or (ii) payment thereof by the Debtors pursuant to Section 3.1(a) of the Agreement. The Securities purchased, retained by or released, or deemed released, to Aretex or its Affiliates, the other First Lien Lenders and the other Second Lien Lenders are, upon such release, hereby found to be purchased, received, and retained, as the case may be, by each of them, free and clear of all Interests of any kind or nature whatsoever (including those set forth in the findings and conclusions of this Order and those attaching to the Parent Shares and Subscription Rights as referred to in the first sentence of this Paragraph 6). Nothing in this Paragraph 6 shall affect the Purchaser's obligations with respect to Assumed Liabilities under the Agreement.

7. All persons and entities including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade and other creditors, collateral trustee, agent, or lender, holding Interests of any kind or nature whatsoever against or in a Debtor, or the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtors, the Purchased Assets, the operation of the Debtors' assets prior to the Closing or the Sale, are forever barred, estopped, and permanently enjoined from asserting such persons' or entities' Interests after the Closing against the Purchasing Entities, their successors or assigns, their property, the Purchased Assets, or the Securities or any Person that holds the Securities. Nothing in this Paragraph 7 shall affect the Purchaser's obligations with respect to Assumed Liabilities under the Agreement.

8. Except for the Assumed Liabilities specifically assumed in the Agreement, the Purchasing Entities shall have no liability or responsibility for any liability or other obligation of the Debtors arising under or related to the Debtors or their assets, in each case to the extent permitted by applicable law. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein and in the Agreement, the Purchaser shall not be liable for any Claims against the Debtors or any of their predecessors or Affiliates, and the Purchaser shall have no successor or vicarious liability of any kind or character including, but not limited to, any theory of antitrust, environmental, successor or transferee liability, labor law, *de facto* merger, substantial continuity or product line, whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors arising prior to the Closing, including, but not limited to, liabilities on account of any of the Excluded Liabilities, in each case to the extent permitted by applicable law.

9. The sale, transfer, assignment and delivery of the Purchased Assets shall not be subject to any Interests, and Interests of any kind or nature whatsoever shall remain with, and continue to be obligations of, the Debtors, with the exception of the Assumed Liabilities. Upon the Closing, all Persons holding Interests against or in the Debtors or the Purchased Assets of any kind or nature whatsoever (including, but not limited to, the Debtors and/or their respective successors, including any trustees thereof, creditors, collateral trustees, agents, lenders, employees, unions, former employees and shareholders, adjacent and nearby landowners, administrative agencies, governmental units, secretaries of state, federal, state and local officials, maintaining any authority relating to any environmental, health and safety laws, and their respective successors or assigns) shall be, and hereby are, forever barred, estopped, and

permanently enjoined from asserting, prosecuting, or otherwise pursuing such Interests of any kind or nature whatsoever against the Purchasing Entities, their property, their successors and assigns, or the Purchased Assets, the Securities or any Person that holds the Securities, as an alleged successor or otherwise, with respect to any Interest of any kind or nature whatsoever such Person or entity had, has, or may have against or in a Debtor, a Debtor's estate, their respective officers, directors, shareholders, the Purchased Assets or the Securities, other than the right to enforce Assumed Liabilities under the Agreement. Upon the Closing, no holder of an Interest in the Debtors shall interfere with the Purchaser's title to or use and enjoyment of the Purchased Assets or any Person's title to or use of the Securities based on or related to such Interest or otherwise.

10. The transactions set forth herein are exempt from any bulk sales or similar laws, each of which is expressly overridden.

11. The transfer of the Purchased Assets to the Purchaser pursuant to the Agreement constitutes a legal, valid, and effective transfer of the Purchased Assets, and shall vest the Purchaser with all right, title, and interest of the Sellers in and to the Purchased Assets free and clear of all Interests other than the Assumed Liabilities.

12. In furtherance of Paragraph 6 hereof, the Purchasing Entities and the Debtors shall cause the release and distribution of the Parent Shares, pro rata, directly to the First Lien Lenders (including Aretex) and the Subscription Rights, pro rata, directly to the First Lien Lenders (including Aretex) and, to the extent applicable, the Second Lien Lenders (including Aretex) in accordance with Section 3.3(c) of the Agreement and Paragraphs R and 6 above. In connection with the release, distribution, purchase, and receipt of such Securities, all parties, including the First Lien Lenders and Second Lien Lenders, shall comply with applicable law.

The Purchasing Entities shall be entitled to conclusively rely on the accuracy of the updated debt balances and the updated Exhibits B and C to be delivered by the First Lien Agent and Second Lien Agent immediately prior to Closing pursuant to Paragraph S of this Order, which the First Lien Agent and Second Lien Agent shall timely provide.

13. Except with respect to Assumed Liabilities, if any Person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents or agreements evidencing Interests in the Debtors or the Purchased Assets shall not have delivered to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Interests which the Person or entity has with respect to the Debtors or the Purchased Assets or otherwise, then, effective upon the Closing, (a) the Debtors are hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the Person or entity with respect to the Debtors or the Purchased Assets and (b) the Purchaser is hereby authorized to file, register, or otherwise record a certified copy of this Order, which shall constitute conclusive evidence of the release of all Interests in the Debtors or the Purchased Assets of any kind or nature whatsoever. The foregoing provision notwithstanding, the provisions of this Sale Order authorizing the sale and assignment free and clear shall be self-executing, and notwithstanding the failure of Debtors, Purchaser or any other party to execute, file or obtain release, termination statements, assignments or other instruments to effectuate, consummate, and/or implement the provisions hereof or the Agreement with respect to the sale and assignment of the Purchased Assets, all Claims and Liens against and Interests in the Purchased Assets shall be deemed released as provided herein.

14. Except with respect to the Assumed Liabilities, on the Closing of the Sale, each of the Sellers' creditors and any other holder of an Interest is authorized and directed to execute such documents and take such other actions as may be necessary to release its Interests in the Purchased Assets, if any, as such Interests may have been recorded or may otherwise exist.

15. It is a condition to the Closing of the Sale that, on the Closing, the Purchaser shall: (a) pay $5,000,000 in cash at Closing to the Debtors towards the professional fee carveout pursuant to Section 3.1(a)(f) of the Agreement, (b) pay the Cash Purchase Price (less the Deposit Amount) to the administrative agent under the DIP Credit Agreement on behalf of Sellers, by wire transfer of immediately available funds into an account or accounts designated in writing by the administrative agent pursuant to Section 3.3 (a)(i) of the Agreement (provided nothing in this Order waives or modifies Purchaser's closing condition under Section 10.1(m) of the Agreement or other closing conditions); (c) deliver to the administrative agent under the DIP Credit Agreement, on behalf of Sellers the Letter of Credit Purchase Price to satisfy obligations under the DIP Credit Agreement pursuant to Section 3.3 (a)(ii) of the Agreement, and (d) to the extent provided in the Agreement, assume and pay all Cure Costs associated with assignment of the Acquired Contracts at Closing, or if the Cure Costs hearing with respect to a particular Acquired Contract is not held until after the Closing, promptly after an Order determining the Cure Costs for the applicable Acquired Contract is entered; provided, no Cure Costs shall be due with respect to a contract, lease or license which Purchaser initially designates for assignment but changes that direction prior to Closing, or if later, the date of the final hearing to approve assignment of the applicable contract, lease or license. On the Closing, the Deposit Amount shall be applied to the Cash Purchase Price and shall be delivered by the Escrow Agent to the administrative agent under the DIP Credit Agreement pursuant to Section 3.2 (a) of the

Agreement. The administrative agent under the DIP Credit Agreement shall advise the Debtors and the Purchaser of the Obligations (as defined in the DIP Credit Agreement) due under the DIP Credit Agreement as of the date of the Closing, and it is a further condition to the Closing (and to the sale free and clear of the administrative agent's liens) that the administrative agent shall have received at the Closing Full Payment (as defined in the DIP Credit Agreement) with respect to such Obligations.

16. The Debtors will file the Cure Schedule with the Court setting forth the proposed Acquired Contracts and the Cure Costs required to be paid to each non-Debtor party thereto in accordance with section 365 of the Bankruptcy Code. The Cure Schedule will be served upon all non-Debtor parties to the proposed Acquired Contracts not less than ten (10) days prior to the Cure Objection Deadline. To the extent objections, if any, to (i) the Cure Costs set forth on the Cure Schedule or (ii) the Debtors' ability to assume and assign an Acquired Contract pursuant to section 365 of the Bankruptcy Code (each a "Cure Objection") are timely filed and not resolved consensually, a hearing will be conducted before the Court to consider such objections. If no such objection is timely filed with respect to an Acquired Contract, that Contract shall be deemed assumed and assigned under section 365 of the Bankruptcy Code pursuant to the terms of the Agreement.

17. Aretex as a First Lien Lender is hereby found to have an allowed claim in the face amount of $193,503,839.26 of principal plus $1,789,247.83 of unpaid interest as of June 30, 2005 (prior to receipt of its pro-rata share of the adequate protection payment made by the Debtors on that date and prior to receipt of its pro rata share of funds presently held by the First Lien Agent) and is entitled based on its present holdings of First Lien Debt to not less than 39.989% of any securities or other property released or delivered to and allocated among the

First Lien Lenders. Such amount shall be adjusted for any payments or unpaid accruals between June 30, 2005 and the Closing Date.

18. Aretex as a Second Lien Lender is hereby found to have an allowed claim in the face amount of $84,500,000 and is entitled based on its present holdings of Second Lien Debt to not less than 51.212% of any securities or other properties or assets release or delivered to and allocated among the Second Lien Lenders. Such amount shall be adjusted for any payments and unpaid accruals (if any) between June 30, 2005 and the Closing Date.

19. Subject to the resolution of any Cure Objections, the Debtors' assumption and assignment to the Purchaser of the Acquired Contracts, pursuant to section 365 of the Bankruptcy Code and subject to and conditioned upon the Closing, and the Purchaser's assumption of such contracts on the terms set forth in the Agreement, is hereby approved, and the requirements of section 365(b)(1) of the Bankruptcy Code with respect thereto are hereby deemed satisfied.

20. Subject to the resolution of any Cure Objections, the Debtors are hereby authorized and directed in accordance with sections 105(a), 363(b) and 365 of the Bankruptcy Code and the terms of the Agreement to (a) assume and assign to the Purchaser, effective upon the Closing, the Acquired Contracts free and clear of all Interests of any kind or nature whatsoever other than the Assumed Liabilities, and (b) execute and deliver to the Purchaser such documents or other instruments as the Purchaser deems may be necessary to assign and transfer the Acquired Contracts and Assumed Liabilities to the Purchaser.

21. Subject to the resolution of any Cure Objections, (a) the Debtors may assume each of their respective Acquired Contracts in accordance with section 365 of the Bankruptcy Code; (b) the Sellers may assign each Acquired Contract in accordance with sections

363(b) and 365 of the Bankruptcy Code; and any provisions in any Acquired Contract that prohibit or condition the assignment of such Acquired Contract or allow the non-debtor party to such Acquired Contract to terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such Acquired Contract, constitute unenforceable anti-assignment provisions which are void and of no force and effect; and (c) upon Closing, in accordance with sections 363(b) and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested in all right, title and interest of each Acquired Contract. Subject to the resolution of any Cure Objections, any portions of the property leases with respect to any of the Leased Real Property which purport to permit the landlords thereunder to cancel the remaining term of any of such leases if Sellers discontinue their use or operation of the Leased Real Property are void and of no force and effect, and shall not be enforceable against the Purchaser, its assignees and sublessees, and the landlords under such leases shall not have the right to cancel or otherwise modify such leases or increase the rent, assert any Claim, or impose any penalty by reason of such discontinuation, Sellers' cessation of operations, the assignment of such leases to the Purchaser, or the interruption of business activities at any of the leased premises.

22. Subject to the resolution of any Cure Objections, all defaults or other obligations of the Sellers under the Acquired Contracts arising or accruing prior to the Closing (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code) shall be cured at the Closing or as soon thereafter as practicable by payment of the Cure Costs by the Purchaser, and the Purchaser shall have no liability or obligation arising or accruing prior to the date of the Closing, except as otherwise expressly provided in the Agreement.

23. Subject to the resolution of any Cure Objections, following the Closing, each non-Debtor party to an Acquired Contract will be forever barred, estopped, and permanently enjoined from (i) asserting against the Debtors or the Purchaser, or the property of any of them, any default arising prior to or existing as of the Closing or, against the Purchaser, any counterclaim, defense, setoff or any other Claim asserted or assertable against the Debtors; and (ii) imposing or charging against the Purchaser or its Affiliates any rent accelerations, assignment fees, increases or any other fees as a result of the Sellers' assumption and assignments to the Purchaser of the Acquired Contracts. The validity of such assumption and assignments of Acquired Contracts shall not be affected by any dispute between Debtors and any non-Debtor party to an Acquired Contract.

24. The failure of the Debtors or the Purchaser to enforce at any time one or more terms or conditions of any Acquired Contract shall not be a waiver of such terms or conditions, or of the Debtors' and the Purchaser's rights to enforce every term and condition of the Acquired Contracts.

25. Except as provided in the Agreement or this Order, after the Closing, the Sellers and their estates shall have no further liabilities or obligations with respect to any Assumed Liabilities and all holders of such Claims are forever barred and estopped from asserting such Claims against the Debtors, their successors or assigns, their property or their assets or estates. Purchaser shall only be liable for such liabilities to the extent set forth in the Agreement. All holders of Claims are forever barred and estopped from asserting Claims against the Purchasing Entities and the Purchased Assets and the Securities related to the Excluded Assets and the Excluded Liabilities.

26. Applicable permitting authorities shall allow the Purchaser to operate the facilities being acquired after Closing under the current Permits held by the applicable Seller until such time as such Permits are assigned to Purchaser or Purchaser obtains similar Permits in its own name.

27. The consideration provided by the Purchaser for the Purchased Assets under the Agreement constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

28. The consideration provided by the Purchaser for the Purchased Assets under the Agreement is fair and reasonable, and the Sale may not be avoided under section 363(n) of the Bankruptcy Code.

29. This Order (a) shall be effective as a determination that, except for the Assumed Liabilities, at Closing all Interests of any kind or nature whatsoever existing as to the Purchased Assets prior to the Closing have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other Persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Assets.

30. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement.

31. The Purchasing Entities shall have no obligation to pay wages, bonuses, severance pay, benefits (including, without limitation, contributions or payments on account of any under-funding with respect to any and all pension plans) or any other payment with respect to employees or former employees of the Debtors. Purchaser shall have the Assumed Liabilities specifically set forth in Sections 2.3 (a)(ii), (iii), (iv), (v), or (xiii) of the Agreement to the extent set forth therein. The Purchasing Entities shall have no liability with respect to any collective bargaining agreement, employee pension plan, employee welfare or retention, benefit and/or incentive plan to which any Debtor is a party and relating to the Debtors' assets (including, without limitation, arising from or related to the rejection or other termination of any such agreement), and the Purchasing Entities shall in no way be deemed a party to or assignee of any such agreement, and no employee of the Purchasing Entities shall be deemed in any way covered by or a party to any such agreement, and all parties to any such agreement are hereby enjoined from asserting against the Purchasing Entities, the Purchased Assets, the Securities or any Person that holds the Securities any and all Claims arising from or relating to such agreement. The Purchaser is assuming the Maine CBA subject to the Agreement.

32. All entities who are in possession of some or all of the Purchased Assets on the Closing are hereby directed to surrender possession of the Purchased Assets to the Purchaser at Closing.

33. This Court retains jurisdiction to enforce and implement the terms and provisions of this Order, the Agreement, all amendments thereto, any waivers and consents

thereunder, and of each of the agreements executed in connection therewith in all respects including, but not limited to, retaining jurisdiction to (a) compel delivery of the Purchased Assets to the Purchaser, (b) compel delivery of the Parent Shares and Subscription Rights in accordance with the Agreement and this Order and any subsequent order, if any, pursuant to Paragraph R of this Order; (c) compel delivery of the purchase price or performance of other obligations owed by or to the Debtors, (d) resolve any Cure Objections, (e) resolve any disputes arising under or related to the Agreement, including, without limitation, as provided in Article XII of the Agreement, except as otherwise provided therein, (f) interpret, implement, and enforce the provisions of this Order, and (f) protect the Purchaser against (i) any of the Excluded Liabilities or (ii) the assertion of any Interests against the Purchased Assets, of any kind or nature whatsoever.

34. The transactions contemplated by the Agreement are undertaken by the Purchasing Entities without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale (including the assumption and assignment of any of the Acquired Contracts), unless such authorization is duly stayed prior to Closing pending such appeal. The Purchasing Entities are entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

35. The terms and provisions of the Agreement and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, and their creditors, the Purchaser and its respective affiliates, successors, and assigns, and any affected third parties including, but not limited to, all Persons asserting an Interest in the Purchased

Assets, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding.

36. The failure specifically to include any particular provisions of the Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Agreement be authorized and approved in its entirety.

37. The Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates or creditors or result in a material, substantive modification of the Agreement. Any such modification, amendment, or supplement shall promptly be filed with the Court, and shall be marked to indicate any such change unless such change is obvious.

38. The transfer of the Purchased Assets pursuant to the Sale is a transfer pursuant to section 1146(c) of the Bankruptcy Code, and, accordingly, shall not be taxed under any law imposing a stamp tax or a sale, transfer, or any other similar tax. Each and every federal, state and local government agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transfer of any of the Acquired Assets, all without imposition or payment of any stamp tax, transfer tax, or similar tax. The applicable amount of transfer taxes shall be placed in an interest bearing escrow with First American Title Company or other mutually acceptable party pending confirmation of a chapter 11 plan and shall be released together with accrued interest less any applicable escrow fees to (i) the Purchaser upon confirmation of any chapter 11 plan for the Debtors or (ii) the applicable

transfer taxing authority in the event that the applicable chapter 11 case is dismissed or converted to a case under chapter 7 of the Bankruptcy Code.

39. Any fees, expenses and costs of the First Lien Agent, the Collateral Trustee and the Second Lien Agent that remain unpaid shall be paid at Closing, or as soon thereafter as approved by Order of the Court after notice and hearing. Debtors and Purchaser reserve the right to object to such fees, expenses and costs.

40. Nothing herein shall be deemed to prejudice or alter the Purchasing Entities' rights under the Agreement, including, without limitation, the conditions to Closing; provided, that to the extent there is any conflict between this Order and the Agreement, this Order shall govern.

41. The provisions of this Order are non-severable and mutually dependent.

Dated: New York, New York
July 8, 2005

/s/ Robert D. Drain
HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

ASSET PURCHASE AGREEMENT

by and among

WS TEXTILE CO., INC.,

NEW TEXTILE ONE, INC.,

NEW TEXTILE TWO, INC.,

TEXTILE CO., INC.,

WESTPOINT STEVENS INC.,

WESTPOINT STEVENS INC. I,

WESTPOINT STEVENS STORES INC.,

AND

J.P. STEVENS ENTERPRISES, INC.

Dated as of June 23, 2005

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ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT, dated as of June 23, 2005 (this "Agreement"), by and among WS Textile Co., Inc., a Delaware corporation ("Parent"), New Textile One, Inc., a Delaware corporation and wholly-owned direct subsidiary of Parent ("Holdco One"), New Textile Two, Inc., a Delaware corporation and wholly-owned direct subsidiary of Parent ("Holdco Two"), Textile Co., Inc., a Delaware corporation and indirect subsidiary of Parent and direct subsidiary of Holdco One and Holdco Two ("Purchaser"), WestPoint Stevens Inc., a Delaware corporation (the "Company"), and WestPoint Stevens Inc. I, a Delaware corporation, WestPoint Stevens Stores Inc., a Delaware corporation, and J.P. Stevens Enterprises, Inc., a Delaware corporation (each individually a "Subsidiary" and, together with the Company, each a "Seller" and, collectively, "Sellers").

WITNESSETH:

WHEREAS, Sellers and J.P. Stevens & Co., who is not a Seller hereunder ("J.P. Stevens") are debtors and debtors in possession under title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"), and filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on June 1, 2003 (the "Petition Date") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") (Case No. 03-13532) (the "Bankruptcy Case");

WHEREAS, certain terms used in this Agreement are defined in Section 1.1;

WHEREAS, Sellers are engaged in the business of manufacturing, marketing and distributing bed and bath home fashions products (such business and all other business conducted by Sellers, the "Business");

WHEREAS, subject to the terms and conditions set forth herein, Sellers are agreeing to sell the Purchased Assets either pursuant to a plan of reorganization or liquidation under Chapter 11 of the Bankruptcy Code or in accordance with sections 363 and 365 of the Bankruptcy Code; and

WHEREAS, Purchaser has agreed to acquire the Purchased Assets in exchange for which Purchaser will pay consideration consisting of a combination of cash, shares of Parent Common Stock, rights to acquire additional shares of Parent Common Stock and the assumption of specific liabilities, all as more specifically provided herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, and intending to be bound hereby, the parties hereby agree as follows:

ARTICLE I.

DEFINITIONS

1.1. Certain Definitions. For purposes of this Agreement, the following terms shall have the meanings specified in this Section 1.1 or in other Sections of this Agreement, as identified in Section 1.2:

"Adequate Protection Order" means that certain Final Order Pursuant to Sections 361, 363, and 364(d)(1) of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure Providing the Pre-Petition Secured Lenders Adequate Protection, dated as of June 18, 2003, and includes the Stipulation and Order (i) Providing for Deposit into Escrow of Second Lien Adequate Protection Payments, (ii) Withdrawal of Adequate Protection Motion and (iii) Reservation of Subscription Rights and Remedies dated as of August 18, 2004 and approved by the Bankruptcy Court on August 23, 2004.

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

"Ancillary Documents" means the Escrow Agreement and the documents delivered pursuant to Section 4.2 hereof.

"AREH" means American Real Estate Holding Limited Partnership.

"Aretex" means Aretex LLC.

"Bidding Procedures Order" means the order of the Bankruptcy Court, dated April 22, 2005, approving bidding procedures for the sale of all or substantially all of the Seller's assets.

"Business Day" means any day of the year on which national banking institutions in New York are open to the public for conducting business and are not required or authorized to close.

"Chapter 11 Plan" means a plan of reorganization or liquidation under Chapter 11 of the Bankruptcy Code which incorporates and implements the terms of this Agreement and is otherwise acceptable to Sellers, Purchaser and Aretex in their reasonable discretion.

"Charisma Agreement" means that certain license agreement between Official Pillowtex LLC and WestPoint Stevens, Inc., dated as of October 1, 2004 and amended as of December, 2004.

"Confirmation Order" means an Order confirming a Chapter 11 Plan and which makes the findings of fact and conclusions of law set forth in the defined term Sale Order plus such other findings and conclusions as Purchaser and Aretex may reasonably request, and is otherwise in form and substance acceptable to Sellers, Purchaser and Aretex in their reasonable discretion. An Order shall only be a "Confirmation Order", and the defined term "Confirmation Order" shall only be applicable under this Agreement, if, as contemplated by Section 7.3 hereof, the Bankruptcy Court determines by Order entered at the hearing to approve the Sale Order that the transactions contemplated by this Agreement shall be pursued through a Chapter 11 plan of reorganization or liquidation.

"Continuing Employees" means such current Employees of Sellers designated by Purchaser in a written notice to Sellers prior to the Closing Date as individuals to whom Purchaser intends to extend an offer of employment, and that have accepted Purchaser's offer of employment.

"Contract" means any written contract, indenture, note, bond, lease, license, or other agreement, whether entered into prior to or after the Petition Date.

"Cure Costs" shall mean the cure amounts, as determined by the Bankruptcy Court, if any, necessary to cure all defaults, if any, and to pay all actual or pecuniary losses that have resulted from such defaults, under those Accepted Contracts, Accepted Intellectual Property Licenses and Accepted Real Property Leases which Purchaser has directed Sellers to accept pursuant to Section 8.12(a) hereof.

"Current" means an obligation incurred or accrued after the Petition Date of the type indicated in the Ordinary Course of Business by one or more Sellers which is incurred or accrued in the Ordinary Course of Business and which is not yet due and payable as of the Closing Date.

"December Financial Statements" means the unaudited consolidated balance sheet as of December 31, 2004 and unaudited consolidated statements of income and cash flows for the year then ended of the Company and its subsidiaries previously delivered to the Purchaser.

"Debtors" means the Sellers and J.P. Stevens.

"DIP Credit Agreement" means that certain debtor in possession financing agreement, dated as of June 5, 2003, as amended, among Sellers, Bank of America, N.A. as Administrative Agent, Wachovia Bank, National Association as Syndication Agent and the other lenders parties thereto.

"Distributable Value" means the value of the Parent Shares and the Subscription Rights.

"Documents" means all files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, ledgers, journals, title policies, customer lists, regulatory filings, operating data and plans, technical documentation.

(design specifications, functional requirements, operating instructions, logic manuals, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.), and other similar materials, in each case whether or not in electronic form.

"Employee" means any current or former employee, officer, independent contractor, agent, consultant, leased employee or other contingent worker of any Seller.

"Employee Plan" means each (i) "employee benefit plan", as defined in Section 3(3) of ERISA, (ii) each employment, consulting, severance or other individual compensation agreement between a Seller and any Employee, and (iii) each plan, program, agreement or other arrangement providing bonus or other incentive, equity or equity-based compensation, deferred compensation, severance pay, sick leave, vacation pay, salary continuation, disability, hospitalization, medical, life insurance, scholarship, or fringe benefits, which is now, or ever has been, maintained, contributed to, or required to be contributed to, for the benefit of any Employee.

"Environmental Law" means any foreign, federal, state or local statute, regulation, ordinance, order, decision or rule of common law currently in effect relating to the protection of human health and safety or the environment or natural resources including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. App. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Clean Water Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.) the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.); the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.) and the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), and the regulations promulgated pursuant thereto.

"Environmental Liabilities" means the Liabilities resulting from (i) the failure to comply with or any violation of any requirement of an Environmental Law, (ii) the failure to obtain or comply with any required Environmental Permit, and/or (iii) Liabilities arising out of or relating to Hazardous Materials at, on, under, or emanating from Sellers' Properties or the business conducted thereupon.

"Environmental Permit" shall mean any Permit issued pursuant to an Environmental Law.

"Environmental Release" means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, or leaching into the indoor or outdoor environment, or into or out of any property.

"Equity Commitment Agreement" means the agreement between AREH, Textile Holding, LLC and Parent in the form of Exhibit Q hereto.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and regulations promulgated thereunder.

"Escrow Agreement" means an Escrow Agreement executed by Purchaser, Sellers and Escrow Agent in substantially the same form and substance as Exhibit A attached hereto.

"Excluded Subsidiary" means any subsidiary of the Company listed on Schedule 1.1(a).

"Final Order" means an Order, the operation or effect of which has not been stayed, reversed, modified, or amended and as to which the time to appeal, petition for certiorari, or seek reargument, review or rehearing has expired and as to which no appeal, petition for certiorari or motion for reargument, review or rehearing was timely filed or, if timely filed, the Order has been affirmed by the highest court to which the Order was appealed or from which the reargument or rehearing was sought, or certiorari has been denied, and the time to file any further appeal or petition for certiorari or to seek further reargument or rehearing has expired.

"First Lien Lender Agreement" means that certain Second Amended and Restated Credit Agreement dated as of June 9, 1998 among the Company as Borrower, WestPoint Stevens (U.K.) Limited and WestPoint Stevens (Europe) Limited, as Foreign Borrowers, Bank of America, N.A., as Issuing Lender, Swingline Lender and Administrative Agent and the banks and other financial institutions at any time parties thereto, as amended to the date hereof.

"First Lien Lenders" means the financial institutions from time to time party to the First Lien Lender Agreement, together with their successors and assigns permitted by the First Lien Lender Agreement.

"Furniture and Equipment" means all furniture, fixtures, furnishings, equipment, vehicles, leasehold improvements, and other tangible personal property owned or used by any Seller, including all such artwork, desks, chairs, tables, Hardware, copiers, telephone lines and numbers, telecopy machines and other telecommunication equipment, cubicles and miscellaneous office furnishings and supplies.

"GAAP" means generally accepted accounting principles in the United States as of the date hereof.

"Governmental Body" means any government, governmental, quasi-governmental or regulatory body thereof, or political subdivision thereof, whether foreign, federal, state, or local, or any agency, instrumentality or authority thereof, or any court or arbitrator (public or private).

"Hardware" means any and all computer and computer-related hardware, including computers, file servers, facsimile servers, scanners, color printers, laser printers and networks.

"Hazardous Material" means any substance, material or waste which is regulated by any Governmental Body including petroleum and its by-products, asbestos, and any material or substance which is defined as a "hazardous waste," "hazardous substance," "hazardous material," "restricted hazardous waste," "industrial waste," "solid waste," "contaminant," "pollutant," "toxic waste" or "toxic substance" under any provision of Environmental Law.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Immaterial Owned Real Property" means each parcel of real property owned by the respective Sellers that is not a Material Owned Real Property.

"Indebtedness" of any Person means, without duplication, (i) the principal of and premium (if any) in respect of (a) indebtedness of such Person for money borrowed and (b) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (ii) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable and other accrued current liabilities arising in the Ordinary Course of Business); (iii) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction; (v) all obligations of the type referred to in clauses (i) through (iv) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations; and (vi) all obligations of the type referred to in clauses (i) through (v) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person).

"Intellectual Property" means all intellectual property rights used (including all Intellectual Property Licenses) or owned by any Seller, including: (i) all patents, patent applications, patent rights, patent disclosures and improvements thereto and all continuations, divisionals, continuations-in-part, or reissues of patent applications and patents issuing thereon, (ii) all trademarks, service marks, trade names, service names, brand names, all trade dress rights, logos, Internet domain names and corporate names and assumed business names and general intangibles of a like nature, together with the goodwill associated with any of the foregoing, and all applications therefor and all registrations and renewals thereof, (iii) all copyrights (including moral rights and rights in all Internet web sites), and mask work rights and all registrations thereof and applications therefor, (iv) all Software and Technology, (v) all trade secrets, and (vi) all other intellectual property rights in whatever form or medium.

"Intellectual Property Licenses" means (i) any grant to a third Person of any right to use any of the Intellectual Property owned by any Seller, and (ii) any grant to any Seller of a right to use a third Person's intellectual property rights which is used by Seller.

"IRS" means the Internal Revenue Service.

"KERP Order" means collectively the October 23, 2003 and August 12, 2004 orders referenced in the definition of KERP Program below.

"KERP Program" means the key employee retention and severance program (including the severance program and the existing separation plan for salaried employees) as set forth in the Motion of Debtors for Order Pursuant to 11 U.S.C. §§ 105(a) and 363(b)(1) Authorizing the Establishment of a Key Employee Retention Plan and the Motion of Debtors pursuant to 11 U.S.C. §§ 105(a) and 363(b)(1) Approving the Extension of the Debtors' Key Employee Retention Plan, as modified, both of which were approved by separate order of the Bankruptcy Court on October 23, 2003 and August 12, 2004, respectively.

"Knowledge of Sellers" means the actual knowledge of those officers of Sellers identified on Schedule 1.1(b), and, in addition, as to the provisions set forth opposite their names, certain employees of Sellers as set forth on Schedule 1.1(b).

"Law" means any federal, state, local or foreign law, statute, code, ordinance, rule or regulation.

"Legal Proceeding" means any judicial, administrative or arbitral actions, suits, proceedings (public or private), claims, investigations or any other proceedings by or before a Governmental Body.

"Liability" means any duty, debt, liability, claim or obligation (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due), and including all costs and expenses relating thereto.

"Lien" means any lien, encumbrance, pledge, mortgage, deed of trust, security interest, claim, lease, charge, option, right of first refusal, easement, servitude, proxy, voting trust or agreement, transfer restriction under any shareholder or similar agreement or encumbrance.

"Maine CBA" means that certain Collective Bargaining Agreement between the Company and the Union of Needletrades, Industrial and Textile Employees (AFL-CIO-CLC) dated April 11, 2004.

"Material Intellectual Property Licenses" means collectively all of the Intellectual Property Licenses listed on Schedule 5.8(b).

"Order" means any order, injunction, judgment, decree, ruling, writ, assessment or award of a Governmental Body.

"Ordinary Course of Business" means the ordinary and usual course of normal day to day operations of the Business through the date hereof consistent with past practice.

"Owned Real Properties" means collectively, the Immaterial Owned Real Properties and the Material Owned Real Properties.

"Parent Common Stock" means the common stock of Parent, par value $.01 per share.

"Permits" means any approvals, authorizations, consents, licenses, permits or certificates issued by a Governmental Body.

"Permitted Exceptions" means (i) all covenants, conditions, restrictions, easements, rights of way and encumbrances of record as disclosed in policies of title insurance which have been delivered to Purchaser by Sellers prior to the date hereof; provided same are not being violated (or if violated, will not result in a forfeiture of the property or result in monetary liability in excess of $100,000 as to any individual property), do not unreasonably interfere with the continued operation of the Business as presently operated at the respective Owned Real Properties, and any such easements do not underlie the improvements at the respective Owned Real Properties unless servicing such improvements; (ii) statutory liens for (a) Current Taxes, (b) Taxes incurred after the Petition Date in the Ordinary Course of Business which are delinquent but with respect to which the amount or validity of which is being contested in good faith by appropriate proceedings provided an appropriate reserve is established therefor and provided further that withholding payment during a valid contest is otherwise permitted by applicable Law and (c) Taxes incurred before the Petition Date and specifically assumed pursuant to Section 2.3(a)(x); (iii) mechanics', carriers', workers', repairers' and similar Liens arising or incurred in the Ordinary Course of Business after the Petition Date that individually or in the aggregate do not exceed $100,000; provided, however, that such Liens shall not include any Liens that are junior to the Lien of the First Lien Lenders and the Second Lien Lenders or any other Liens that Purchaser takes free and clear of under the Sale Order and, if applicable, the Confirmation Order, or other applicable Law; (iv) zoning, entitlement and other land use and environmental regulations by any Governmental Body provided that such regulations are not being violated and do not unreasonably interfere with the present operation of the Business at the respective Owned Real Properties; and (v) security interest of a lessor of equipment or other personal property under a capital lease.

"Person" means any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Body or other entity.

"Products" means any and all products developed, manufactured, marketed or sold by any Seller at any time.

"Purchaser Material Adverse Effect" means a material adverse effect on the ability of Parent or Purchaser to consummate the transactions contemplated by this Agreement or perform its respective obligations under this Agreement.

"Purchaser Selection Hearing" means the hearing before the Bankruptcy Court held pursuant to the Bidding Procedures Order to determine the highest or best bid for substantially all of the assets of Sellers.

"Registration Rights Agreement" means the Registration Rights Agreement substantially in the form and substance attached hereto as Exhibit B.

"Remedial Action" means all actions to (i) clean up, remove, treat or in any other way address any Hazardous Material; (ii) prevent the Environmental Release of any Hazardous Material so it does not endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; (iii) perform pre-remedial studies and investigations or post-remedial monitoring and care; or (iv) to correct a condition of noncompliance with Environmental Laws.

"Representative" means, as to a specified Person, any officer, director, agent, employee, member, manager, attorney, accountant, consultant, investment banker, broker or other representative of the Person specified.

"Rights Offering" means the delivery and exercise of Subscription Rights to acquire Parent Common Stock as described in Exhibit C hereto.

"Rights Offering Sponsor Agreement" means the agreement between AREH and Parent in the form of Exhibit R hereto.

"Sale Motion" means the motion or motions of Sellers seeking approval and entry of the Sale Order.

"Sale Order" means an order or orders of the Bankruptcy Court in form and substance reasonably acceptable to Purchaser and Sellers approving this Agreement and all of the terms and conditions hereof, and approving and authorizing Sellers to consummate the transactions contemplated hereby pursuant to Section 363 and 365 of the Bankruptcy Code. Without limiting the generality of the foregoing, such order shall find and provide, among other things, unless the Purchaser agrees otherwise in its sole and absolute discretion, that (i) the Purchased Assets sold to Purchaser pursuant to this Agreement shall be transferred to Purchaser free and clear of all Liens (other than Liens created by Purchaser and Permitted Exceptions relating to real property), with any other Liens attaching to the Purchase Price (which Liens are and shall be deemed to be fully satisfied and discharged as a result of the Closing and distributions contemplated by the Agreement); (ii) the Parent and Purchaser have acted in "good faith" within the meaning of section 363(m) of the Bankruptcy Code; (iii) this Agreement was negotiated, proposed and entered into by the parties without collusion, in good faith and from arm's-length bargaining positions; (iv) the Bankruptcy Court shall retain jurisdiction to resolve any controversy or claim arising out of or relating to this Agreement, or the breach hereof as provided in Section 12.5 hereof; (v) due and adequate notice of the sale was provided; (vi) the transfer of the Purchased Assets pursuant to this Agreement shall not be subject to "bulk-transfer" Laws; (viii) Purchaser shall have no successor liability as a result of its purchase of the Purchased Assets pursuant to this Agreement; (ix) this Agreement and the transactions contemplated hereby may be statutorily or similarly specifically enforced against and are binding upon, and not subject to rejection or avoidance by, Sellers or any trustee of Sellers under Chapter 7 or Chapter 11 of the Bankruptcy Code; (x) a release by Sellers of all causes of action, including Avoidance Actions, against Parent, Purchaser, Holdco One, Holdco Two, Aretex, AREH, and

Representatives; (xi) Purchaser shall not be required or deemed to purchase any Excluded Assets or assume any Excluded Liabilities, including any Liabilities under or relating to any pension plans or termination of any pension plan; (xii) Purchaser shall have no liability for tort Liabilities, including all Liabilities relating to personal injury and other tort claims of any nature and related matters, of Debtors and their Affiliates, or relating to the Business or any assets or properties of Debtors and their Affiliates; and (xiii) that the Parent Common Stock and Subscription Rights purchased, retained by and/or distributed to AREH or its affiliates, the First Lien Lenders and the Second Lien Lenders shall be received and retained by each of them free and clear of all Liens, claims and encumbrances of any nature. The Purchaser may, in its sole and absolute discretion and without any obligation to do so, agree to requested modifications to provisions which are primarily for Purchaser's benefit in the proposed form of sale order prior to its entry and if Purchaser agrees to such modifications, Sellers agree to submit the form of such modified sale order to the Bankruptcy Court as being reasonably acceptable to Sellers unless such modification materially and adversely effects Sellers. If any such modification is in fact made pursuant to the preceding sentence, the definition of Sale Order set forth herein shall be deemed modified to incorporate any such modification.

"Second Lien Lender Agreement" means that certain $165 million Second-Lien Credit Facility, dated as of June 29, 2001, among the Company, as Borrower, the banks and other financial institutions from time to time parties thereto, and Deutsche Bank Trust Company Americas (f/k/a Bankers Trust Company), as Administrative Agent, as amended to the date hereof.

"Second Lien Lenders" means the financial institutions from time to time party to the Second Lien Lender Agreement, together with their successors and assigns permitted by the Second Lien Lender Agreement.

"Selection Order" means the order of the Bankruptcy Court to be entered following the Purchaser Selection Hearing approving this Agreement and the transactions contemplated by this Agreement and otherwise in form and substance reasonably acceptable to Purchaser and Seller.

"Seller Material Adverse Effect" means (i) a material adverse effect on the business, assets, properties, results of operations or financial condition of Sellers (taken as a whole), or (ii) a material adverse effect on the ability of Sellers to consummate the transactions contemplated by this Agreement or perform their obligations under this Agreement, other than an effect resulting from an Excluded Matter. "Excluded Matter" means any one or more of the following: (i) the effect of any change in the United States or foreign economies or securities or financial markets in general; (ii) the effect of any change that generally affects any industry in which Sellers operate; (iii) the effect of any change arising in connection with hostilities, acts of war, sabotage or terrorism or military actions or any escalation or material worsening of any such hostilities, acts of war, sabotage or terrorism or military actions existing or underway as of the date hereof; or (iv) the effect of any changes in applicable Laws or accounting rules.

"Sellers' Properties" means collectively all of the Owned Real Properties and Leased Real Properties.

"Software" means any and all (i) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source code or object code, (ii) databases and compilations, including any and all data and collections of data, whether machine readable or otherwise, (iii) descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing, screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons and icons, and (iv) all documentation including user manuals and other training documentation related to any of the foregoing.

"Subscription Rights" means the rights to acquire, for an aggregate consideration of $125,000,000, 14,250,000 shares of Parent Common Stock.

"Tax Authority" means any Governmental Body or employee thereof, charged with the administration of any law or regulation relating to Taxes.

"Tax Code" means the Internal Revenue Code of 1986, as amended.

"Taxes" means (i) all federal, state, local or foreign taxes, charges or other assessments, including, all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes, and (ii) all interest, penalties, fines, additions to tax or additional amounts imposed by any taxing authority in connection with any item described in clause (i).

"Tax Return" means all returns, declarations, reports, estimates, information returns and statements required to be filed in respect of any Taxes.

"Technology" means, collectively, the following intangibles owned or used by Sellers: all designs, formulae, algorithms, procedures, methods, techniques, ideas, know-how, research and development, technical data, programs, subroutines, tools, materials, specifications, processes, inventions (whether patentable or unpatentable and whether or not reduced to practice), creations, improvements, works of authorship and other similar materials, and all recordings, graphs, drawings, reports, analyses, and other writings and other tangible embodiments of the foregoing in any form whether or not specifically listed herein, and all related similar intangibles that are used in, incorporated in, embodied in, displayed by, relates to, or is used or useful in the design, development, reproduction, maintenance or modification of, any of the Products.

"Trade Payables" means accounts payable to vendors or suppliers for goods or services delivered in connection with the Business; in no event will "Trade Payables" include any accounts payable to any employees or any royalties payable to any Person.

"WARN Act" means the Worker Adjustment and Retraining Notification Act.

"Winddown Costs" means professional fees of the Debtors or a Trustee and other costs incurred by the estate after the Closing Date in connection with the winddown of the Debtors.

1.2. Terms Defined Elsewhere in this Agreement. For purposes of this Agreement, the following terms have meanings set forth in the sections indicated:

Term	Section
Accepted Contracts	8.12(a)
Accepted Intellectual Property Licenses	8.12(a)
Accepted Real Property Leases	8.12(b)
Agreement	Preamble
Antitrust Division	8.4(a)
Antitrust Laws	8.4(b)
Asset Acquisition Statement	11.2
Assumed Liabilities	2.3
Avoidance Actions	2.2(c)
Bankruptcy Case	Recitals
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Bill of Sale	4.2(a)
Business	Recitals
Cash Purchase Price	3.1
Closing	4.1
Closing Date	4.1
COBRA	9.1(e)
Collective Bargaining Agreements	5.30(a)
Company	Preamble
Company SEC Documents	5.4
Deposit Amount	3.2
ERISA Affiliate	5.10(b)
Escrow Agent	3.2
Exchange Act	5.4(a)
Excluded Assets	2.2
Excluded Liabilities	2.4
Excluded Matter	1.1 (in Seller Material Adverse Effect definition)
Expense Reimbursement	7.2
FIRPTA	4.2(d)
FTC	8.4(a)
Indemnified Persons	11.1
J.P. Stevens	Preamble
Leased Real Properties	5.7(b)
Leased Real Property	5.7(b)

Term	Section
Letter of Credit Purchase Price	3.1
Listed Employee Plan	5.10(a)
Loss	10.5
Lost Profits	10.5
Material Contracts	5.9
Material Intellectual Property License	5.8
Material Owned Real Properties	5.7(a)
Material Property Loss	10.5
Parent	Preamble
Parent Shares	3.1
Personal Property Leases	5.7(g)
Petition Date	Recitals
Purchased Assets	2.1(b)
Purchase Price	3.1
Purchaser	Preamble
Real Property Lease	5.7(b)
Real Property Leases	5.7(b)
Referee	11.3
Rejected Contracts	8.12(a)
Subscription Rights	3.1
SEC	5.4
Securities Act	5.4(a)
Seller	Preamble
Sellers	Preamble
Subsidiary	Preamble
Transfer Taxes	11.1

1.3. Other Definitional and Interpretive Matters.

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

Dollars. Any reference in this Agreement to $ shall mean U.S. dollars.

Exhibits/Schedules. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement. Any capitalized terms used

in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

Gender and Number. Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

Headings. The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any "Section" are to the corresponding Section of this Agreement unless otherwise specified.

Herein. The words such as "herein," "hereinafter," "hereof," and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

Including. The word "including" or any variation thereof means "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

Confirmation Order. Whenever the phrase "and, if applicable, the Confirmation Order", or words to that effect are used herein, such phrase shall be applicable only to a Confirmation Order that has become a Final Order prior to September 15, 2005.

(b). The parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

ARTICLE II.

PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

2.1. Purchase and Sale of Assets.

(a) On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall purchase, acquire and accept from Sellers, and Sellers shall sell, transfer, convey and deliver to Purchaser, all of Sellers' right, title and interest in, to and under the Purchased Assets.

(b) For all purposes of and under this Agreement, the term "Purchased Assets" shall mean all of the properties and assets of Sellers existing as of the Closing other than the Excluded Assets, whether or not related to the Business. Such Purchased Assets shall include the following:

(i) all cash and cash equivalents of Sellers and all marketable securities owned by Sellers other than the securities specified in Section 2.2(a);

(ii) all bank accounts, lockbox accounts, securities accounts and other accounts of Sellers and all phone numbers of Sellers plus all deposits, securities and other amounts or assets held in such accounts;

(iii) all inventory of Sellers;

(iv) all deposits (including customer deposits and security deposits for rent, electricity, telephone or otherwise) and prepaid charges and expenses of Sellers other than any deposits or prepaid charges and expenses paid in connection with and specifically allocable to any Excluded Assets;

(v) all accounts receivable including the rights to all checks and other payments in transit, delivered or made in respect thereof and not yet deposited or credited and the right to endorse any such checks or payments;

(vi) all of the Owned Real Properties designated by Purchaser as Purchased Assets pursuant to Section 2.1(c) and all rights of Sellers under all of the Real Property Leases designated by Purchaser as Purchased Assets pursuant to Section 2.1(c), together with all right, title and interest of Sellers, if any, in and to all improvements, fixtures and other appurtenances thereto and rights in respect thereof;

(vii) the Furniture and Equipment and all vehicles owned by Sellers;

(viii) confidential and proprietary business information owned or used by Sellers;

(ix) all rights of Sellers under or relating to the Charisma Agreement and all rights of Sellers under or relating to the Intellectual Property Licenses (other than any containing the "J.P. Stevens" name) designated by Purchaser as Purchased Assets pursuant to Section 2.1(c), in each case to the extent assignable under the terms of the respective license, pursuant to applicable Law or order of the Bankruptcy Court, or as a result of any consents obtained from other parties to such license pursuant to Section 8.3, and all other Intellectual Property (other than Intellectual Property Licenses) (other than any containing the "J.P. Stevens" name);

(x) all rights of Sellers under or relating to the Contracts (other than Contracts referred to in Section 2.1(a)(vi), 2.1(a)(ix), and 2.1(a)(xiv), respectively, as to which such Sections shall apply) designated by Purchaser as Purchased Assets pursuant to Section 2.1(c) to the extent assignable under the terms of the respective Contract, pursuant to applicable Law or order of the Bankruptcy Court, or as a result of any consents obtained from other parties to such Contract pursuant to Section 8.3;

(xi) all Documents that are used in, held for use in or intended to be used in, or that relate to, the Business or the assets or the properties of the Sellers, including Documents

relating to Products, services, marketing, advertising, promotional materials, Intellectual Property, personnel files for Continuing Employees and all files, customer files and documents (including credit information), supplier lists, records, literature and correspondence, whether or not physically located on any of the premises assumed by the Purchaser (other than the Documents specified in Section 2.2(b));

(xii) all Permits owned or used by Sellers to the extent assignable under the terms of the respective Permits, pursuant to applicable Law or order of the Bankruptcy Court, or as a result of any consents obtained from the issuer of such Permits pursuant to Section 8.3;

(xiii) all supplies owned or used by Sellers;

(xiv) all rights of Sellers under non-disclosure or confidentiality, non-compete, or non-solicitation agreements with Employees (other than any such agreements included in any employment agreement with any such Employee) or with third parties to the extent relating to the Business or to the marketing process for the sale of assets of or reorganization of the Sellers or the Purchased Assets (or any portion thereof) to the extent assignable under the terms of the respective agreements or pursuant to applicable Law or order of the Bankruptcy Court or as a result of any consents obtained from such Employee or third party pursuant to Section 8.3;

(xv) all rights and claims of Sellers under all insurance policies to the extent assignable under the terms of the respective insurance policies or pursuant to applicable Law or order of the Bankruptcy Court and the Sellers' rights to the proceeds thereof except those proceeds specifically relating to the Excluded Assets;

(xvi) any rights, claims, offsets or causes of action of Sellers (other than Avoidance Actions) against third parties arising out of events occurring on or prior to the Closing Date;

(xvii) all rights of Sellers under or pursuant to all warranties, representations and guarantees including those made by suppliers, manufacturers and contractors to the extent relating to products sold, or services provided, to Sellers or to the extent affecting any Purchased Assets, other than any warranties, representations and guarantees to the extent pertaining to any Excluded Assets;

(xviii) all goodwill and other intangible assets associated with the Business, including the goodwill associated with the Intellectual Property;

(xix) all rights of J.P. Stevens Enterprises, Inc. in and to the trademarks "Utica", "Cottoncale" and "Pipeline", which rights will be purchased by a newly created subsidiary of Purchaser; and

(xx) all rights of Sellers under or relating to the Maine CBA.

(c) At any time and from time to time prior to the date that is 7 days prior to the Closing Date, Purchaser shall have the right to designate in its sole and absolute discretion

any of the properties or assets of Sellers (other than assets described in Section 2.2(a), (b), (c), (d), (l) and (m)) as Purchased Assets and any properties or assets of Sellers, other than the Charisma Agreement, as Excluded Assets, in each case by giving written notice signed by an executive officer of Purchaser specifically referring to this Section 2.1(c) to Sellers setting forth by category or specific reference the properties or assets of Sellers so designated. There shall be no increase or reduction in the Purchase Price if Purchaser elects to treat any properties or assets of Sellers as Purchased Assets or Excluded Assets.

2.2. Excluded Assets. Nothing herein contained shall be deemed to sell, transfer, assign or convey the Excluded Assets to Purchaser, and Sellers shall retain all right, title and interest to, in and under the Excluded Assets. For all purposes of and under this Agreement, the term "Excluded Assets" shall mean the following assets:

(a) all shares of capital stock or other equity interest issued by any Seller or any Excluded Subsidiary and all securities convertible into, exchangeable or exercisable for, shares of capital stock or other equity interests issued by any Seller or any Excluded Subsidiary;

(b) any minute books, stock ledgers, corporate seals and stock certificates of Sellers, Tax Returns and financial statements of Sellers, and corporate or other entity filings made by Sellers; provided, however, that Purchaser shall have the right to make copies of any portions of such retained books and records that relate to the Business or any of the Purchased Assets and Sellers agree to preserve such records in accordance with Section 8.8 hereof;

(c) all avoidance actions or similar causes of action of Sellers arising under sections 544 through 553 of the Bankruptcy Code, including any proceeds thereof (collectively, the "Avoidance Actions");

(d) all amounts held in escrow pursuant to the Adequate Protection Order and all amounts held in escrow pursuant to the KERP Order (unless the amounts held in escrow pursuant to the KERP Order are to be returned to the Company pursuant to the terms of the KERP Order, in which case such amounts shall be paid to Purchaser in lieu of the Company);

(e) all properties and assets of Sellers designated by Purchaser as Excluded Assets pursuant to Section 2.1(c) hereof;

(f) (i) all Contracts other than Contracts designated as Purchased Assets pursuant to Section 2.1(c) and (ii) all rights of Sellers under or relating to all oral agreements to which any Seller is a party;

(g) all Employee Plans, and all trust funds and contracts relating thereto, including pension plans;

(h) all Permits, non-disclosure or confidentiality, non-compete or non-solicitation agreements other than those included as Purchased Assets pursuant to Section 2.1(b)(xii) and 2.1(b)(xiv);

(i) all rights and claims of Sellers under all insurance policies other than the rights and claims under the insurance policies included as Purchased Assets to Section 2.1(b)(xv);

(j) all of the Owned Real Properties and Real Property Leases, in each case other than those specifically designated as Purchased Assets pursuant to Section 2.1(c) ;

(k) all rights of Sellers under Intellectual Property Licenses and other Contracts other than those designated by Purchaser as Purchased Assets pursuant to Section 2.1(c);

(l) all intercompany receivables of Sellers;

(m) any Tax refunds, credits and rebates to the extent applied to Taxes of Sellers that are Excluded Liabilities;

(n) all assets and properties of J.P. Stevens Enterprises, Inc., other than the assets referred to in Section 21(b)(xix);

(o) rights of Sellers under or pursuant to warranties, representations and guaranties to the extent pertaining to Excluded Assets; and

(p) all proceeds resulting from the liquidation of WestPoint Stevens (UK) Ltd.

2.3. Assumption of Liabilities.

(a) On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall assume, effective as of the Closing, and shall timely perform and discharge in accordance with their respective terms, only the specific liabilities of Sellers set forth below (collectively, the "Assumed Liabilities"):

(i) Current accruals and related Cure Costs for those Accepted Contracts (including Accepted Real Property Leases and Accepted Intellectual Property Licenses) which Purchaser directed Sellers to accept pursuant to Section 8.12 for which Purchaser has not changed its direction prior to the Closing, or as to any Accepted Contract which Purchaser directed Sellers to accept pursuant to Section 8.12 where the hearing to determine the amount of Cure Costs is not held until after the Closing Date, current accruals and Cure Costs for such Accepted Contracts will be paid by Purchaser to the applicable counterparty promptly after an Order determining the amount of such Cure Costs is entered by the Bankruptcy Court (unless Purchaser has changed its direction to assume prior to entry of such Order);

(ii) Current wages, salary and commissions for Employees payable by Sellers (provided, however, Assumed Liabilities shall be deemed to not include any other obligation to, or benefits for, Employees including any severance, continuation, bonuses or benefits payable in connection with change of control provisions or otherwise, except to the extent specifically assumed pursuant to Sections 2.3(a)(iii), 2.3(a)(iv), and 2.3(a)(v));

(iii) Up to $438,000 in Current bonuses payable pursuant to incentive plans for sales employees and retail store employees existing as of the date hereof;

(iv) accrued vacation costs for the Continuing Employees to the extent accrued on Seller's books and records as of the Closing;

(v) costs for reimbursement claims of Continuing Employees submitted after the Closing and related to medical and dental costs incurred by the Continuing Employees prior to Closing;

(vi) Current premiums under insurance policies that are Purchased Assets;

(vii) Current payroll Taxes payable by the Sellers in connection with the operation of its Business on or prior to the Closing Date;

(viii) Current Trade Payables existing on the Closing Date (including accrued but unbilled Trade Payables);

(ix) quarterly U.S. Trustee fees accrued and unpaid through the Closing Date;

(x) real and personal property taxes and any miscellaneous secured claims related to Purchased Assets allowed in the Bankruptcy Case with priority over the liens of the First Lien Lenders and the Second Lien Lenders;

(xi) Transfer Taxes applicable to the transfer of the Purchased Assets pursuant to this Agreement to the extent not exempt under Section 1146(c) of the Bankruptcy Code or otherwise;

(xii) Current sales and use Taxes and similar Taxes including gross receipts Taxes plus up to an additional $645,000 of sales and use Taxes and similar Taxes including gross receipts Taxes (including, solely for this purpose, the Michigan Single Business Tax) whether incurred before or after the Petition Date;

(xiii) any other accrued and unpaid expenses or obligations incurred by the Sellers prior to the Closing Date that Purchaser expressly agrees to assume in a writing signed by an executive officer of Purchaser that specifically refers to this Section 2.3(a)(xiii) delivered to the Company prior to the Closing Date;

(xiv) up to $25,000,000 of Liabilities arising after the Petition Date in the Ordinary Course of Business that would have been recorded as "Customer Accommodations" in the line item "Accrued Liabilities" in a consolidated balance sheet of the Business prepared in accordance with GAAP and using the same accounting principles, policies and practices used in the preparation of the December Financial Statements; and

(xv) up to an aggregate of $3,000,000 in Winddown Costs, to be paid by Purchaser upon presentation by Debtors of invoices reflecting the payee, the amounts due and other reasonable documentation.

(b) Nothing in this Section 2.3 shall prohibit Purchaser from asserting or pursuing any claims or offsets it may have against any Person related to any Assumed Liability or contesting any Assumed Liability, whether pursuant to any agreement or contract, under Law or in equity.

(c) To the extent that any Liability under any clause of Section 2.3(a) exceeds the aggregate amount of such Liability specifically assumed by Purchaser pursuant to such clause, Purchaser shall, in its sole and absolute discretion, select which of such Liabilities it shall assume pursuant to such clause. Any such Liability under any such clause shall be deemed selected to be assumed by Purchaser under such clause if Purchaser makes payment or otherwise satisfied such Liability. In no event will Purchaser be required to or deemed to assume any Liability under any clause of Section 2.3(a) to the extent it exceeds any dollar limitation in such clause or is otherwise outside any other limitation in such clause.

2.4. Excluded Liabilities. Purchaser shall not assume, and shall be deemed not to have assumed, any Liabilities of the Debtors and their Affiliates or any other Liabilities related to or arising out of the Business or the Purchased Assets other than the Assumed Liabilities (all such Liabilities other than the Assumed Liabilities, collectively, the "Excluded Liabilities"). Debtors and their Affiliates, as applicable, shall be solely and exclusively liable for the Excluded Liabilities. Such Excluded Liabilities shall include the following:

(a) all Liabilities existing prior to the Petition Date, other than priority claims assumed by Purchaser pursuant to Section 2.3(a)(x) or any claim assumed by Purchaser pursuant to Section 2.3(a)(xii);

(b) all Liabilities of Debtors and their Affiliates under the DIP Credit Agreement;

(c) except to the extent set forth in Sections 2.3(a)(ii), 2.3(a)(iii), 2.3(a)(iv), and 2.3(a)(v), all Liabilities of Debtors and their Affiliates to Employees including under or related to any Employee Plan including, but not limited to, any plan or arrangement providing pension benefits, bonus or incentive compensation, or any plan or arrangement providing retirement benefits or post retirement medical, life or other welfare benefits;

(d) all Liabilities relating to amounts required to be paid by Debtors and their Affiliates hereunder;

(e) all Environmental Liabilities of the Debtors and their Affiliates, including all Liabilities of Debtors and their Affiliates relating to or arising from any Environmental Release (and including all Liabilities relating to real properties owned or leased or formerly owned or leased by Debtors and their Affiliates including, but not limited, the formerly owned

Piedmont Chemical Plant located at 410 Old Pelzer Road, Piedmont, SC) except Environmental Liabilities relating to the Purchased Assets that Purchaser would have liability for under any applicable Environmental Laws solely as a result of Purchaser owning or operating the Purchased Assets after Closing;

(f) all Liabilities under or related to the KERP Program;

(g) all Liabilities of Debtors and their Affiliates relating to Taxes accrued through or imposed on the Closing Date, except the Liabilities for Taxes to the extent set forth in Sections 2.3(a)(vii), 2.3(a)(x), 2.3(a)(xi) and 2.3(a)(xii) or Taxes otherwise expressly assumed herein;

(h) all obligations under or in connection with the WARN Act or any state counterpart;

(i) all intercompany Liabilities of Debtors and their Affiliates;

(j) all tort Liabilities, including all Liabilities relating to personal injury and other tort claims of any nature and related matters, of Debtors and their Affiliates, or relating to the Business or any assets or properties of Sellers;

(k) all Liabilities dischargeable in the Bankruptcy Case or of a type that would be dischargeable if a reorganization plan were confirmed under Chapter 11 of the Bankruptcy Code; (other than any such Liabilities specifically included in Assumed Liabilities pursuant to Section 2.3);

(l) all Liabilities arising out of or relating to Excluded Assets;

(m) all Liabilities of the Debtors and their Affiliates for legal fees and expenses, and fees and expenses of brokers, finders and financial advisors but without prejudice to the Purchaser's obligation to pay $5 million cash at closing pursuant to Section 3.1(a)(f) hereof; and

(n) all Liabilities that the Sale Order, and, if applicable, the Confirmation Order, provides will not be assumed by Purchaser.

2.5. Further Conveyances and Assumptions. From time to time at or following the Closing, Sellers and Purchaser shall, and shall cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases and acquittances and such other instruments, and shall take such further actions, as may be reasonably necessary or appropriate to assure fully to Purchaser and its respective successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Purchaser under this Agreement and to assure fully to each Seller and its respective successors and assigns, the assumption of the liabilities and obligations expressly intended to be assumed by Purchaser under Section 2.3(a) of this Agreement, and to otherwise make effective the transactions contemplated hereby.

ARTICLE III.

CONSIDERATION

3.1. Consideration.

(a) The aggregate consideration for the Purchased Assets (the "Purchase Price") shall be (a) cash in an amount equal to the lesser of (i) $120,000,000 and (ii) an amount necessary to pay indebtedness outstanding under the DIP Credit Agreement, including all outstanding principal, accrued and unpaid interest, fees, expenses or other amounts owing thereunder at the time of Closing (the "Cash Purchase Price"), (b) 10,500,000 shares of Parent Common Stock (the "Parent Shares"), (c) the Subscription Rights, (d) the assumption of the Assumed Liabilities, (e) tender of a back-to-back standby letter of credit or cash, not to exceed, in the aggregate $35,000,000, delivered or payable to the administrative agent under the DIP Credit Agreement (the "Letter of Credit Purchase Price"), backing up any trade payables and workers' compensation obligations, issued pursuant to Article 1.3 of the DIP Credit Agreement, together with documentation reflecting Purchaser's right to receive back any portion of the Letter of Credit Purchase Price in excess of any amounts not drawn under any such letters of credit; and (f) $5,000,000 in cash at Closing for payment of professional fees within the carveout set forth in Paragraph 8(a) of that certain Order, captioned Final Order (1) Authorizing Debtors-in-Possession to Obtain Financing, Grant Security Interests and Accord Priority Status Pursuant to 11 U.S.C. Sections 361, 364(c) and 364(d); (2) Authorizing Debtors to Use Cash Collateral Pursuant to 11 U.S.C. sections 361 and 363; and (3) Modifying Automatic Stay, approved by the United States Bankruptcy Court, dated June 18, 2003.

(b) The recipients of the Parent Shares and Subscription Rights that are part of the Purchase Price will be given the opportunity to become parties to the Registration Rights Agreement and thereby be entitled to registration rights pursuant to the Registration Rights Agreement.

3.2. Purchase Price Deposit. Pursuant to the terms of the Escrow Agreement, Purchaser shall deposit with Citibank, N.A., in its capacity as escrow agent (the "Escrow Agent"), the sum of $12,500,000 ("Deposit Amount"), by wire transfer of immediately available funds, to be released by the Escrow Agent and delivered to either Purchaser or the Company in accordance with the provisions of the Escrow Agreement. The Deposit Amount (together with all interest thereon) shall be distributed as follows:

(a) if the Closing shall occur, the Deposit Amount shall be applied toward the Cash Purchase Price payable by Purchaser to Sellers under Section 3.3 hereof, with all interest thereon and any amount in excess of the Cash Purchase Price delivered to Purchaser;

(b) if this Agreement is terminated by Sellers pursuant to Section 4.4(f), the Deposit Amount, together with all interest thereon, shall be delivered to the Sellers; or

(c) if this Agreement is terminated for any reason other than by Sellers pursuant to Section 4.4(f), the Deposit Amount, together with all interest thereon, shall be delivered to Purchaser.

3.3. Payment of Purchase Price. (a) On the Closing Date, Purchaser shall, and Parent shall cause Purchaser to, (i) pay the Cash Purchase Price (less the Deposit Amount) to the administrative agent under the DIP Credit Agreement on behalf of Sellers, by wire transfer of immediately available funds into an account or accounts designated in writing by the administrative agent under the DIP Credit Agreement, (ii) deliver to the administrative agent under the DIP Credit Agreement on behalf of Sellers the Letter of Credit Purchase Price to satisfy obligations under the DIP Credit Agreement, and (iii) deliver the Parent Shares and the Subscription Rights on behalf of Sellers in accordance with the provisions of Section 3.3(c) hereof. On the Closing Date the Company and Purchaser shall cause the Escrow Agent to deliver the Deposit Amount and all accrued interest thereon as provided in Section 3.2(a) hereof.

(b) The Parent Shares and Subscription Rights shall only be required to be delivered in reliance upon an exemption afforded by the Securities Act, Regulation D promulgated under the Securities Act, any applicable state and foreign securities laws and any rules and regulations promulgated pursuant thereto. As a condition of any issuance of Parent Shares and Subscription Rights to any particular Person, the Parent and Purchaser will require the execution of a definitive subscription agreement and an investor questionnaire and certification in the form of Exhibit D hereto and which will be completed by each such Person in a manner reasonably acceptable to Parent to evidence compliance with applicable exemptions.

(c) The Parent Shares and the Subscription Rights shall be delivered as set forth in this Section 3.3(c). Parent shall issue at the Closing or as soon thereafter as practicable (i) 4,198,845 Parent Shares to Aretex, in its capacity as a First Lien Lender, and (ii) 6,301,155 Parent Shares to the other First Lien Lenders on a pro rata basis pursuant to the instructions of the First Lien Agent. If the Distributable Value of the Parent Shares as determined by the Bankruptcy Court is less than the amount due to the First Lien Lenders under the First Lien Lender Agreement (such difference referred to as the "Shortfall"), then Parent shall allocate to the First Lien Lenders all or such portion of the Subscription Rights as necessary (based on the Bankruptcy Court's determination of Distributable Value of the Subscription Rights) up to an amount equal to the Shortfall, and the balance of the Subscription Rights, if any, shall be allocated to the Second Lien Lenders. Parent shall issue at the Closing or as soon thereafter as practicable (i) 39.989% of the Subscription Rights allocated as set forth above to the First Lien Lenders to Aretex, in its capacity as a First Lien Lender, (ii) the balance of the Subscription Rights allocated to the First Lien Lenders as set forth above to the other First Lien Lenders on a pro rata basis pursuant to the instructions of the First Lien Agent, (iii) 51.212% of the Subscription Rights allocated as set forth above to the Second Lien Lenders to Aretex, in its capacity as a Second Lien Lender, and (iv) the balance of the Subscription Rights allocated as set forth above to the Second Lien Lenders to the other Second Lien Lenders on a pro rata basis pursuant to the instructions of the Second Lien Agent. To the extent Aretex acquires any additional First Lien Debt or Second Lien Debt, it shall receive its pro rata share of Parent Shores and Subscription Rights in addition to the amounts specified above as a First Lien Lender or

Second Lien Lender as the case may be. An example of the method distribution is set forth at Exhibit E.

ARTICLE IV.

CLOSING AND TERMINATION

4.1. Closing Date. Subject to the satisfaction of the conditions set forth in Sections 10.1 10.2 and 10.3 hereof (or the waiver thereof by the party entitled to waive that condition), the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities provided for in Article II hereof (the "Closing") shall take place at the offices of Weil, Gotshal & Manges LLP located at 767 Fifth Avenue, New York, New York (or at such other place as the parties may designate in writing) at 10:00 a.m. (New York City time) on the date that is two (2) Business Days following the satisfaction or waiver of the conditions set forth in Article X (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), unless another time or date, or both, are agreed to in writing by the parties hereto; provided, that if such date occurs prior to forty-five (45) days after the later of the date of the entry of the Selection Order or the date of this Agreement the Closing shall take place on such forty-fifth day after such later date (or, if such day is not a Business Day, then on the next Business Day) unless Purchaser selects an earlier date by giving Sellers not less than two (2) Business Days notice of such date. The date on which the Closing shall be held is referred to in this Agreement as the "Closing Date."

4.2. Deliveries by Sellers. At the Closing, Sellers shall deliver to Purchaser with respect to the Purchased Assets:

(a) a duly executed bill of sale in the form of Exhibit F hereto (the "Bill of Sale");

(b) a duly executed general assignment and assumption agreement in the form of Exhibit G hereto;

(c) duly executed assignments of the trademark registrations and applications, patent registrations and applications, copyrights and domain names, in the form suitable for recording in the U.S. Patent and Trademark Office, substantially in the forms annexed as Exhibits H, I, J and K hereto, respectively, and general assignments of all other Intellectual Property;

(d) duly executed special warranty deeds, as that term is commonly understood in the respective jurisdictions (subject only to Permitted Exceptions), substantially in the form of Exhibit L for each of the Material Owned Real Properties, quit claim deeds, as that term is commonly understood in the respective jurisdictions, substantially in the form of Exhibit M for each of the Immaterial Owned Real Properties, a certificate in compliance with the Foreign Investment in Real Property Tax Act ("FIRPTA") certifying that the respective Seller is

not a person or entity subject to withholding under FIRPTA, a "No Mechanic's Lien" affidavit, GAP Undertaking, and all other customary title clearance documents required by the title insurance company issuing the policies with respect to each of the Owned Real Properties and each of the Leased Real Properties for which title insurance policies are being obtained by Purchaser, including, without limitation, a survey affidavit, executed by the appropriate Seller, together with any necessary state, county or municipal transfer declarations as required by Law.

(e) a duly executed assignment and assumption of Contracts and Real Property Leases in the form of Exhibit N hereto;

(f) the officer's certificate required to be delivered pursuant to Section 10.1(c);

(g) all assignments and transfer instruments necessary to transfer control, ownership and signature authority of all bank accounts, lockbox accounts, securities accounts, and other accounts under the name of any Seller as of the Closing Date along with a schedule of all such bank accounts, lockbox accounts, securities accounts, and other accounts with account numbers, bank name and address and other information reasonably requested by Purchaser with respect thereto;

(h) UCC-3 termination Statements, control agreement terminations and other release documents releasing all Liens of the agents and lenders under the DIP Credit Agreement;

(i) all assignments and transfers of certificates of title and registrations for all vehicles owned by Sellers as of the Closing Date along with a schedule of all such vehicles and information reasonably requested by Purchaser with respect thereto;

(j) a written notice to the Escrow Agent, executed by the Company, of the Closing pursuant to Section 3(e) of the Escrow Agreement;

(k) the indemnity agreement executed by J.P. Stevens & Co., Inc. in the form of Exhibit S hereto, and the executed notice to its insurance company that it is entering into the indemnity agreement.

(l) all other instruments of conveyance and transfer, in form and substance reasonably acceptable to Purchaser, as may be necessary to convey the Purchased Assets to Purchaser or any of its Affiliates designated by Purchaser pursuant to Section 12.11.

4.3. Deliveries by Purchaser. At the Closing, Purchaser shall, and Parent shall cause Purchaser to, deliver pursuant to Section 3.3, as applicable:

(a) the Cash Purchase Price (less the Deposit Amount), in immediately available funds, as set forth in Section 3.3 hereof;

(b) the Parent Shares and the Subscription Rights in accordance with Section 3.3;

(c) a duly executed general assignment and assumption agreement in the form attached hereto as Exhibit G;

(d) the officer's certificate required to be delivered pursuant to Section 10.2(e);

(e) a duly executed assignment and assumption of Contracts and Real Property Leases in the form of Exhibit N attached hereto;

(f) the Registration Rights Agreement executed by Parent; and

(g) a written notice to the Escrow Agent, executed by Purchaser, of the Closing pursuant to Section 3(e) of the Escrow Agreement.

4.4. Termination of Agreement. This Agreement may be terminated prior to the Closing as follows:

(a) (i) by Purchaser, if the Closing shall not have occurred by the close of business on September 30, 2005, time being of the essence for the Closing, provided, that if the Closing shall not have occurred on or before September 30, 2005 due to a material breach of any representations, warrants, covenants or agreements contained in this Agreement by Purchaser, then Purchaser may not terminate this Agreement pursuant to this Section 4.4(a), or (ii) by Sellers, if the Closing shall not have occurred by the close of business on October 31, 2005; provided, however, that if the Closing shall not have occurred on or before October 31, 2005 due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by any Seller, or due to the failure of the condition to Closing set forth in Section 10.1(l) relating to Section 8.9(d) to be satisfied, then Sellers may not terminate this Agreement pursuant to this Section 4.4(a);

(b) by mutual written consent of Sellers and Purchaser;

(c) by Purchaser, if any of the conditions to the obligations of Purchaser set forth in Sections 10.1 (other than Sections 10.1(a) and (b)) and 10.3 shall have become incapable of fulfillment other than as a result of a breach by Purchaser of any covenant or agreement contained in this Agreement, and such condition is not waived by Purchaser;

(d) by Sellers, if any condition to the obligations of Sellers set forth in Sections 10.2 (other than Sections 10.2(a) and (b))and 10.3) shall have become incapable of fulfillment other than as a result of a breach by any Seller of any covenant or agreement contained in this Agreement, and such condition is not waived by any Seller;

(e) by Purchaser, if there shall be a breach by any Seller of any representation or warranty, or any covenant or agreement contained in this Agreement which results in a failure of a condition set forth in Sections 10.1(a) or (b) and such breach has not been cured by the earlier of (i) twenty (20) Business Days after the giving of written notice by Purchaser to Sellers of such breach and (ii) September 30, 2005, time being of the essence for the Closing;

(f) by Sellers, if there shall be a breach by Purchaser of any representation or warranty, or any covenant or agreement contained in this Agreement which results in a failure of a condition set forth in Sections 10.2(a) or (b) and such breach has not been cured by twenty (20) Business Days after the giving of written notice by Sellers to Purchaser of such breach; provided, that Seller shall not have the right to terminate this Agreement if Purchaser has a right to terminate this Agreement at such time or would have the right to terminate with the passage of time;

(g) by Sellers or Purchaser, if there shall be in effect a Final Order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby;

(h) by Purchaser or Sellers, if the Bankruptcy Court shall enter an order approving any sale or other disposition of the assets and properties of Sellers to a Person other than Purchaser or its Affiliates and Subsidiaries, or Sellers select, or announce a selection of, a Person other than Purchaser as the Successful Bidder (as defined in the Bidding Procedures Order) in the auction conducted pursuant to the Bidding Procedures Order;

(i) by Purchaser, pursuant to the provisions of Section 10.5;

(j) by Purchaser, if the Selection Order is not entered by July 13, 2005, time being of the essence for entry of such Order;

(k) by Purchaser, if Sellers file a motion seeking to revoke or modify the Bidding Procedures Order without the prior written consent of Purchaser;

(l) by Purchaser, pursuant to Section 7.3(b)(i) or 7.3(b)(ii); and

(m) by Sellers, pursuant to Section 7.3(b)(i).

4.5. Procedure Upon Termination. In the event of an election to terminate by Purchaser or Sellers, or both, pursuant to Section 4.4 hereof, written notice thereof shall forthwith be given to the other party or parties, and this Agreement shall terminate, without further action by Purchaser or Sellers. If this Agreement is terminated as provided herein each party shall return to the other party all documents, work papers and other material of such other party furnished to it by such other party and in its possession and relating to the transactions contemplated hereby, whether so obtained before or after the date hereof.

4.6. Effect of Termination. In the event that this Agreement is terminated as provided herein, then each of the parties shall be relieved of its duties and obligations arising under this Agreement after the date of such termination and such termination shall be without liability to Parent, Purchaser or Sellers; provided, however, that the obligations and rights of the parties set forth in Section 3.2 and under the Escrow Agreement, Section 7.2 and Article XII hereof shall survive any such termination and shall be enforceable hereunder and Sellers shall remain liable to Parent and Purchaser for any breach occurring prior to termination.

The sole and exclusive remedy of Sellers upon any such termination shall be as described in Section 12.4.

ARTICLE V.

REPRESENTATIONS AND WARRANTIES OF SELLERS

Each Seller hereby jointly and severally represents and warrants to Parent and Purchaser that:

5.1. Organization and Good Standing. Each Seller is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and, subject to the limitations imposed on such Seller as a result of having filed a petition for relief under the Bankruptcy Code, has the requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted and is qualified to do business in every jurisdiction where the conduct of its business requires it to be so qualified except where failure to so qualify would not reasonably be expected to have a Seller Material Adverse Effect. Each Subsidiary is wholly owned directly or indirectly by the Company. No Seller, other than J.P. Stevens Enterprises, Inc., is a subsidiary of J.P. Stevens & Co., Inc.

5.2. Authorization of Agreement. Subject to entry of the Selection Order, the Sale Order and, if applicable, the Confirmation Order and such other authorization as is required by the Bankruptcy Court, each Seller has the requisite power and authority to execute and deliver this Agreement and the Ancillary Documents and to perform its respective obligations hereunder and thereunder. The execution and delivery of this Agreement has and upon execution and delivery of all Ancillary Documents, such Ancillary Documents will be and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of each Seller and no other corporate action is necessary to authorize such agreements and such transactions. This Agreement has been, and upon execution and delivery thereof all Ancillary Documents will be, duly and validly executed and delivered by each Seller party thereto and (assuming the due authorization, execution and delivery by the other parties hereto, the entry of the Selection Order, the Sale Order and, if applicable, the Confirmation Order) constitutes and will constitute the legal, valid and binding obligations of each Seller enforceable against such Seller in accordance with its respective terms, subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

5.3. Conflicts; Consents of Third Parties.

(a) Except as set forth on Schedule 5.3(a), the execution and delivery by each Seller of this Agreement and the Ancillary Documents, the consummation of the transactions contemplated hereby, or compliance by such Seller with any of the provisions hereof or thereof do not and will not (A) conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or (B) give rise to, (x) the creation of a Lien upon any

Seller's properties or assets or (y) a right of termination, cancellation or acceleration of any obligation or (z) a loss of a benefit under any provision of:

(i) the certificate of incorporation and by-laws or comparable organizational documents of such Seller;

(ii) subject to entry of the Sale Order and, if applicable, the Confirmation Order, any Contract or Permit to which such Seller is a party or by which any of the properties or assets of such Seller are bound other than such conflicts, violations, defaults, terminations or cancellations as would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect;

(iii) subject to entry of the Sale Order and, if applicable, the Confirmation Order, any Order of any Governmental Body applicable to such Seller or any of the properties or assets of such Seller; or

(iv) subject to entry of the Sale Order and, if applicable, the Confirmation Order, any applicable Law.

(b) Except as set forth on Schedule 5.3(b), and except to the extent not required if the Sale Order and, if applicable, the Confirmation Order, is entered, no consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of Sellers in connection with the execution and delivery of this Agreement and the Ancillary Documents, the assignment of the Material Contracts, the assignment of the Real Property Leases, the assignment of Permits, the assignment of Material Intellectual Property Licenses, the compliance by Sellers with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby or the taking by Sellers of any other action contemplated hereby or thereby, except for:

(i) compliance with the applicable requirements of the HSR Act;

(ii) the entry of the Selection Order and the Sale Order or, if applicable, the Confirmation Order; and

(iii) such other consents, waivers, approvals, Orders, permits, authorizations, declarations, filings and notifications, the failure of which to obtain or make would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect. The parties acknowledge and agree that Schedule 5.3(b) is not an admission that any consent to assignment or any contractual clause forbidding assignment that is listed on Schedule 5.3(b) is enforceable under or is overridden by Section 365 of the Bankruptcy Code or any other applicable Law.

5.4. Reports; Financial Statements.

(a) Except as set forth on Schedule 5.4, since January 1, 2004, the Company has filed all reports, schedules, forms, statements and other documents (including exhibits and

other information incorporated therein) with the Securities and Exchange Commission (the "SEC") required to be filed by the Company (such documents, the "Company SEC Documents"). Except as set forth on Schedule 5.4, as of their respective dates, the Company SEC Documents complied in all material respects with the requirements of the Securities Act of 1933, as amended, (the "Securities Act") or the Securities Exchange Act of 1934, as amended, (the Exchange Act") as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to such Company SEC Documents, and, as of their respective dates, none of the Company SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Except as set forth on Schedule 5.4, the financial statements of the Company included in the Company SEC Documents complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto as of their respective dates, were prepared in accordance with GAAP (except, in the case of unaudited statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and present fairly in all material respects the financial position of the Company and its consolidated Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments).

(b) The December Financial Statements were prepared in accordance with GAAP applied on a consistent basis during the period involved (except as indicated in the notes thereto) and present fairly in all material respects the financial position of the Company and its consolidated Subsidiaries as of December 31, 2004 and the consolidated results of their operations and cash flows for the period then ended (subject to normal year-end audit adjustments).

5.5. Title to Purchased Assets. Except as set forth in Schedule 5.5, and other than the real property subject to the Real Property Leases, Intellectual Property licensed to Sellers and the personal property subject to the Personal Property Leases, Sellers own the Purchased Assets, and, subject to the entry of the Sale Order and, if applicable, the Confirmation Order, and consummation of the Closing, Purchaser will be vested with good title to the Purchased Assets, free and clear of all Liens other than Permitted Exceptions and Intellectual Property Licenses.

5.6. Taxes.

(a) Except as set forth on Schedule 5.6(a), and except for matters that would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect, (i) Sellers have timely filed all Tax Returns required to be filed with the appropriate Tax Authorities in all jurisdictions in which such Tax Returns are required to be filed (taking into account any extension of time to file granted or to be obtained on behalf of Sellers); (ii) except as to Taxes of Sellers the payment of which is prohibited or stayed by the Bankruptcy Code, all Taxes shown to be due and payable on such Tax Returns have been paid; (iii) the amounts set up as a provision for Taxes on the unaudited consolidated statement of Sellers' financial position as

of December 31, 2004 are sufficient for the payment of all accrued and unpaid Taxes of Sellers, as of such date whether or not disputed; (iv) the statute of limitations with respect to all Tax Returns for Tax periods of the Sellers ending on or prior to December 31, 2000 (in the case of Tax Returns that have a four year statute of limitations, December 31, 1999) have expired; (v) no Tax Authority has asserted any additions to Tax to the Sellers; (vi) none of Sellers (a) during the last seven years has been a member of a consolidated, combined or unitary group (an "Affiliated Group") for federal, state or local income tax purposes other than an Affiliated Group of which the Company is the common parent and (b) has any transferee or successor liability in respect of Taxes (whether by contract or otherwise); and (vii) based on Sellers' best estimate, the amount of Transfer Taxes applicable to the transfer of the Purchased Assets pursuant to this Agreement to the extent not exempt under Section 1146(c) of the Bankruptcy Code or otherwise shall not exceed $500,000.

(b) None of Sellers is a foreign person within the meaning of Section 1445 of the Tax Code.

5.7. Real and Personal Properties.

(a) Schedule 5.7(a) sets forth the street addresses and legal descriptions (which will be delivered no later than fifteen (15) days after the date of this Agreement pursuant to Section 8.10) of each parcel of real property owned by the respective Sellers that is necessary for or utilized in the operation of the Business, as well as each parcel of real property owned by the respective Sellers that contains a closed facility that has not otherwise been sold as of the date of this Agreement (each a "Material Owned Real Property" and, collectively, the "Material Owned Real Properties"). Each of the Sellers listed on Schedule 5.7(a) holds fee simple title to their respective Material Owned Real Properties, subject only to Permitted Exceptions. Except as set forth on Schedule 5.7(a), and except for recorded leases with railroads or utility providers shown on surveys previously provided to Purchaser, the Material Owned Real Properties are not subject to any leases or tenancies or other rights of occupancy. None of the Sellers has received notice that any of the improvements comprising the Material Owned Real Properties or the business conducted by the respective Sellers thereon is in violation of any building line, use or occupancy restriction, limitation, easement, condition or covenant of record. There are no physical defects in the buildings or other facilities or machinery or equipment located at any of the Material Owned Real Properties which individually or in the aggregate would reasonably be expected to have a Seller Material Adverse Effect.

(b) Schedule 5.7(b) sets forth the street addresses of each parcel of real property that is leased by the respective Sellers (each a "Leased Real Property" and, collectively, the "Leased Real Properties"). The Leased Real Properties are leased to the respective Sellers listed on Schedule 5.7(b) pursuant to written leases (each a "Real Property Lease" and collectively, the "Real Property Leases"). With respect to each Leased Real Property, (i) the Seller that is the tenant under such Real Property Lease has not received any notice of default under the Real Property Lease in the twelve (12) month period prior to the date hereof. None of the Sellers has received notice that any of the improvements comprising the Leased Real Properties or the business conducted by the respective Sellers thereon is in material violation of

any building line, use or occupancy restriction, limitation, easement, condition or covenant of record. There are no physical defects in the buildings or other facilities or machinery or equipment located at any of the Leased Real Properties which individually or in the aggregate would reasonably be expected to have a Seller Material Adverse Effect.

(c) Each facility located on the Material Owned Real Properties and Leased Real Properties is served by such utilities as are adequate to operate such facility at its current rate of production. Such utilities either enter the Material Owned Real Properties or Leased Real Properties through adjoining public streets or, if they pass through adjoining private land, do so in accordance with valid, permanent public or private easements which, following the Closing, will inure to the benefit of Purchaser, its successors and assigns (except that no representation is made herein with respect to any utility lines owned by Sellers or any of Seller's predecessors in interest that serve the Material Owned Real Properties located in Valley, Alabama and Opelika, Alabama for which easements, rights-of-way or other rights to retain, operate, use or maintain such utility lines were reserved or intended to have been reserved when the land(s) upon which such lines are located were sold or otherwise conveyed to third parties and, no representation is made herein as to utility lines owned by public or private third party utility providers which may cross private lands owned by third parties). All of said utilities are installed and operating (except with respect to any closed facilities where the utility service has been cancelled) and all installation and connection charges have been paid for in full.

(d) Except as set forth on Schedule 5.7(d), the continued maintenance and operation of the Material Owned Real Properties as currently maintained and operated is not dependent on facilities located at any other property, and the continued maintenance and operation of any other property is not dependent on facilities located on any of the Material Owned Real Properties; no building or other improvement not part of an Owned Real Property relies on an Material Owned Real Property or any part thereof or any interest therein to fulfill any governmental requirement; and no building or other improvement on an Material Owned Real Property relies on any property not included within the Material Owned Real Property to fulfill any governmental requirement.

(e) Except as disclosed in Schedule 5.7(e), there are no challenges or appeals pending regarding the amount of the Taxes on, or the assessed valuation of, any of the Material Owned Real Properties or, to the Knowledge of Sellers, the Leased Real Properties, and no special arrangements or agreements exist with any governmental authority with respect thereto. Except as set forth on Schedule 5.7(e), there are no Tax abatements with respect to Taxes on any of the Owned Real Properties or any of the Leased Real Properties. None of the Sellers has received notice of any new Tax assessment for any of the Material Owned Real Properties or, to the extent any Seller is liable for payment therefor, the Leased Real Properties, not otherwise included in any previous real estate Tax bill, requiring payments in excess of $100,000.

(f) There is no pending or, to the Knowledge of Sellers, threatened condemnation proceeding, administrative action or judicial proceeding of any type relating to any of the Material Owned Real Properties or the Leased Real Properties, or other proceedings

adversely affecting the current use, occupancy or value of the Material Owned Real Properties or the Leased Real Properties.

(g) None of the Material Owned Real Properties is located within any flood plain or subject to any similar type of restriction for which any permits or licenses necessary for the use thereof have not been obtained.

(h) With respect to leases of personal property involving annual payments in excess of $100,000 relating to personal property used by a Seller in the Business and to which a Seller is a party or by which its properties or assets are bound (collectively, the "Personal Property Leases"), to the Knowledge of Sellers, no Seller has received any written notice of any default or event that with notice or lapse of time or both would constitute a default by Sellers under any of the Personal Property Leases, in each case with such exceptions as would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect and except as a result of the Bankruptcy Cases.

5.8. Intellectual Property. Schedule 5.8(a) sets forth a complete list of all material Intellectual Property (other than Intellectual Property Licenses) owned by Sellers which are either (a) subject to registrations and applications for registration or (b) to the Knowledge of Sellers, material unregistered trademarks, service marks, trade names and service names (whether or not any material unregistered trademark, service mark, trade name and service name was the subject of a registration or application which has expired or been abandoned). The Sellers own all right, title and interest in the items set forth on Schedule 5.8(a) except as set forth otherwise on such Schedule and any Intellectual Property Licenses relating thereto. Schedule 5.8(b) sets forth a complete list of all (i) written Intellectual Property Licenses and (ii) to the Knowledge of Sellers, oral Intellectual Property Licenses, except for in the case of both of the foregoing (i) and (ii) such Intellectual Property Licenses that do not involve annual payments by or to a Seller of more than $100,000. Notwithstanding the foregoing, Schedule 5.8(b) shall also include (i) all material written Intellectual Property Licenses and (ii) to the Knowledge of Sellers, material oral Intellectual Property Licenses, that in the case of both of the foregoing (i) and (ii) grant any right to use any trademark, service mark, trade name or service name, regardless of whether such Intellectual Property Licenses involve annual payments by or to a Seller of more than $100,000. Except as set forth on Schedule 5.8(c), to the Knowledge of the Sellers, the Sellers own the right, title and interest in, or have licenses or all other rights necessary to use all material Intellectual Property free and clear of all liens other than Permitted Exceptions and Intellectual Property Licenses. Except as set forth on Schedule 5.8(d), (i) there are no claims, investigations or Legal Proceedings that were asserted after the Petition Date that are pending as of the date hereof or, to the Knowledge of Sellers, threatened as of the date hereof against any Seller before any Governmental Body with regard to the ownership by Sellers of any of the Intellectual Property, (ii) Sellers have not received any written notice alleging that they have misappropriated any material Intellectual Property, or that any of the material Intellectual Property or the exercise of any material Intellectual Property right has infringed upon any intellectual property rights of third parties and to the Knowledge of Sellers, Sellers have a reasonable basis to believe no such claim may be successfully asserted by any third party, (iii) to the Knowledge of Sellers, no third party has infringed upon or

misappropriated any of the Intellectual Property, (iv) there are no claims, investigations or Legal Proceedings that were asserted after the Petition Date that are pending as of the date hereof or, to the Knowledge of Sellers, threatened as of the date hereof against any Seller before any Governmental Body which challenge the legality, validity, enforceability, use or ownership of any Intellectual Property. Except as set forth on Schedule 5.8(e), to the Knowledge of Sellers, the Sellers have taken commercially reasonable efforts to pay all maintenance and renewal fees and take other maintenance actions that are required to be paid or taken as of the date hereof in connection with the registrations and applications set forth on Schedule 5.8(a). No Seller is in violation or default under any Intellectual Property License set forth on Schedule 5.8(b), except for violations or defaults disclosed on Schedule 5.8(b) or violations or defaults that are not material. To the Knowledge of Sellers, no other party is in violation or default that could be the basis of termination under any material Intellectual Property License granting any right to use any trademark, service mark, trade name or service name. None of the Sellers is subject to any agreement (other than Intellectual Property Licenses), or Order which restricts or impairs the use of any Intellectual Property except for Orders entered into in connection with the Bankruptcy Case as would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect. Except as set forth on Schedule 5.8(f), Sellers have taken such efforts that are commercially reasonable in accordance with applicable industry standards to protect the confidentiality of any material trade secrets and other material confidential and proprietary business information included in the Purchased Assets. Sellers have used commercially reasonable efforts to cause each of their employees, consultants and independent contractors to enter into a written invention assignment agreement with the Sellers, where, in Seller's reasonable business judgment, such employees, consultants and independent contractors require such agreements. Notwithstanding anything to the contrary contained in this Section 5.8, none of the representations in Section 5.8 shall apply to off the shelf or shrink wrap Software that is generally available for purchase or license from a third Person and the term Intellectual Property License as used in this Section 5.8 shall be deemed to exclude such off the shelf or shrink wrap Software.

5.9. Contracts. Schedule 5.9 is a complete listing of all Contracts (other than purchase and sale orders entered into by Sellers in the Ordinary Course of Business and Real Property Leases) to which any Seller is a party or by which it or any of its properties or other assets is bound except for such Contracts that (i) do not restrict Seller from freely engaging in business and (ii) do not involve annual payments by or to any Seller of more than $250,000 (collectively, the "Material Contracts"). No Seller is in violation of or in default under any Material Contract to which it is a party or by which it or any of its properties or other assets is bound, except for violations or defaults disclosed on Schedule 5.9 or that would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect. Sellers have made available to Purchaser true, correct and complete copies of all Material Contracts.

5.10. Employee Benefits.

(a) Generally. Schedule 5.10(a) contains a true and complete list of each Employee Plan with respect to which Sellers have any obligation or liability, contingent or otherwise, for Employees (each such Employee Plan a "Listed Employee Plan"). The Sellers

will make available to the Purchaser true and complete copies of all documents, if any, embodying each Listed Employee Plan, including all amendments thereto; the three most recent annual reports filed (Form 5500 Series with applicable schedules) with respect to each Listed Employee Plan required under ERISA; the most recent summary plan description, if any, with respect to each Listed Employee Plan required under ERISA; the most recent favorable determination letter from the IRS, if applicable, with respect to each Employee Plan; and all material communications; if any, provided after January 1, 2003 to the Employees generally relating to each Employee Plan.

(b) Multiemployer Plans. None of Sellers nor any other trade or business that together with any Seller would be deemed a "single employer" within the meaning of Section 4001(b) of ERISA (an "ERISA Affiliate") has contributed to any Employee Plan that is a multiemployer plan as defined in Section 3(37) of ERISA.

(c) Effect of Transaction. Schedule 5.10(c) contains a list of all compensation and benefits which will or may be made by the Sellers, or any of their respective Affiliates, to any Employee which is contingent upon a change of control within the meaning of Section 280G of the Tax Code.

5.11. Employment Matters. Each Seller: (1) is in compliance with all applicable federal and state laws and regulations respecting employment, employment practices, terms and conditions of employment and wages and hours, in each case, with respect to its Employees, except where the failure to be in compliance would not reasonably be expected to have individually or in the aggregate, a Seller Material Adverse Effect; (2) has withheld all amounts required by law or by agreement to be withheld from the wages, salaries and other payments to Employees and has remitted such withholding to the appropriate authorities and is not subject to any pending audit regarding the same; (3) is not liable for any arrears of wages, including vacation pay, overtime pay or pay equity adjustments or any taxes or any penalty for failure to comply with any of the foregoing; and (4) is not liable for any payment to any trust or other fund or to any governmental or administrative authority, with respect to unemployment compensation benefits, Social Security, or other benefits for Employees (other than routine payments to be made in the normal course of business and consistent with past practice). Schedule 5.11 contains a true and accurate list of accrued vacation pay for Employees as of June 17, 2005.

5.12. Litigation. Except as set forth on Schedule 5.12, there are no Legal Proceedings that were asserted after the Petition Date and pending as of the date hereof or to the Knowledge of Sellers, threatened as of the date hereof, against any Seller before any Governmental Body that (i) seeks to restrain, materially modify, prevent, or materially delay the consummation of the transactions contemplated by this Agreement or the Ancillary Documents, or (ii) questions the validity of this Agreement or any of the Ancillary Documents, or any action taken or to be taken by a Seller in connection with this Agreement or any of the Ancillary Documents. Other than the Bankruptcy Case or obligations that will be discharged in the Bankruptcy Case, there is no Legal Proceeding that was asserted after the Petition Date and is

pending as of the date hereof that involves a dispute of more than $250,000 or seeks to obtain injunctive relief against any Seller.

5.13. Compliance with Laws; Permits. Except with respect to Environmental Laws (which are addressed in Section 5.14), each Seller (i) is in compliance with all Laws applicable to its respective operations or assets or the Business, except where the failure to be in compliance would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect and (ii) currently has all Permits which are required for the operation of the Business as presently conducted, except where the absence of which would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect. Schedule 5.13 sets forth a list of all Permits owned or used by any Seller.

5.14. Environmental Matters. Except as set forth on Schedule 5.14 and except for facts, circumstances or conditions that would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect, (a) the operations of Sellers are in compliance with all applicable Environmental Laws and Environmental Permits, (b) none of Sellers is the subject of any outstanding Order with any Governmental Body respecting (i) Environmental Laws, (ii) a Remedial Action, or (iii) Environmental Permits, (c) there is no investigation, action or proceeding pending, or, to the Knowledge of Sellers, threatened that could reasonably be expected to result in Sellers incurring any material liability pursuant to any applicable Environmental Law, (d) the Sellers have not received any notice, report or other communication regarding (x) any violation of any Environmental Laws or any Environmental Permits, or (y) any Environmental Liabilities, including any investigatory, remedial or corrective obligations, relating to the Sellers, or that it is responsible (or partly responsible) for the removal, remediation, or other clean-up of any Hazardous Materials at, on, under, or emanating from the Sellers' Properties or properties used in connection with the Business, (e) the Sellers possess all Environmental Permits necessary for their respective operation, and all such Environmental Permits are valid and in good standing, and there is no pending, or to the knowledge of the Sellers, threatened action to revoke, modify, terminate or otherwise materially change the terms or conditions of any such Environmental Permits, and (f) there is (i) no friable asbestos contained in or forming a part of any building, building component, structure or office space included in the Sellers' Properties, (ii) no polychlorinated biphenyls are used, stored, or released on any of the Sellers' Properties, or (iii) there are no underground storage tanks or surface impoundments containing Hazardous Materials located on, under or at any of the Sellers' Properties.

5.15. Financial Advisors. Except as set forth on Schedule 5.15, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Sellers in connection with the transactions contemplated by this Agreement. No Person is entitled to any fee or commission or like payment from Purchaser in respect thereof.

5.16. Representations/Warranties; Schedules. Sellers makes no representations or warranties to Purchaser regarding the probable success or profitability of the Business. The disclosure of any matter or item in any schedule hereto shall not be deemed to constitute an acknowledgment that any such matter is required to be disclosed or is material or that such matter would result in a Seller Material Adverse Effect. The representations of Sellers

shall be unaffected by any investigation made heretofore or hereafter by or on behalf of Purchaser.

5.17. Sufficiency of Assets. The Purchased Assets and other assets and property owned or used by Sellers and which will be owned or used by Purchaser upon Closing together with the Excluded Assets, taken as a whole, are sufficient for the continued conduct of the business of Sellers as currently conducted.

5.18. Equipment. Schedule 5.18 lists all machinery, equipment, vehicles or furniture owned by a Seller with a depreciated book value of $100,000 or more and sets forth the original cost and current depreciated value of each such item listed by location.

5.19. No Casualty. Except as set forth on Schedule 5.19, as of the date hereof to the Seller's Knowledge, none of the assets of the Sellers has been affected by any fire, explosion, accident, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that has not been repaired or restored and that would reasonably be expected to have a Seller Material Adverse Effect.

5.20. Insurance. The Sellers have in place insurance policies listed on Schedule 5.20. Except as set forth on Schedule 5.20, all such policies are, and until Closing will remain, in full force and effect except for those policies, the failure to maintain which individually or in the aggregate, would not be reasonably expected to have a Seller Material Adverse Effect. The Sellers have made available to Purchaser a description of such policies and any applicable self-insurance programs.

5.21. Customers. The attached Schedule 5.21 lists Sellers' ten (10) largest customers for the period beginning July 1, 2004 and ending on the date hereof. As of the date hereof (except as set forth in such Schedule 5.21), Sellers have not received any notice that any such customer, and to the Knowledge of Sellers, no such customer, intends to terminate or materially reduce its business with Sellers and no such customer has terminated or materially reduced its business with Sellers from July 1, 2004 to the date hereof.

5.22. Suppliers. The attached Schedule 5.22 lists Sellers' twenty (20) largest vendors for the period beginning July 1, 2004 and ending on the date hereof. As of the date hereof (except as set forth in such Schedule 5.22), Sellers have not received any notice that any such vendor, and to the Knowledge of Sellers, no such vendor, intends to terminate or materially reduce its business with Sellers and no such vendor has terminated or materially reduced its business with Sellers from July 1, 2004 to the date hereof.

5.23. Affiliate Transactions. Except as set forth on Schedule 5.23, no officer, manager, member or Affiliate (including any of the shareholders) of any Seller or any individual related by blood, marriage or adoption to any such individual or any entity in which any such Person or individual owns any beneficial interest, is a party to any agreement, contract, commitment or transaction with any Seller or has any interest in any property used by any Seller.

5.24. Product Warranty. Except as set forth on Schedule 5.24, to the Knowledge of Sellers, all products manufactured, merchandised, serviced, distributed, sold or delivered by Sellers in connection with the Business during the six year period prior to the Closing Date have been in conformity with all applicable contractual commitments and all express or implied warranties. No liability exists for replacement thereof or other damages in connection with such sales or deliveries during the six year period prior to the Closing Date except for liabilities which would not reasonably be expected to have a Seller Material Adverse Effect. No products heretofore sold by Sellers in connection with the Business are now subject to any guarantee or warranty other than Sellers' standard terms and conditions of sale, except to the extent described on the attached Schedule 5.24.

5.25. Inventories. The inventory of Sellers is properly reflected, and appropriate reserves exist therefor, on the books and records of Sellers in accordance with GAAP. All of the inventories of Sellers (other than inventory in transit, inventory at public warehouses and inventory held at other locations for finishing, which warehouses and other locations are listed on Schedule 5.25) are located at either the Owned Real Properties or the Leased Real Properties subject to the Real Property Leases.

5.26. Notes and Accounts Receivable. All notes and accounts receivable of Sellers (a) are valid receivables incurred in the ordinary course of business and (b) are properly reflected on Sellers' books and records and properly reserved for with respect to doubtful accounts, all in accordance with GAAP.

5.27. Bank Accounts. Schedule 5.27 hereto sets forth a complete and accurate list of all bank accounts, lockbox accounts, securities accounts, and other accounts maintained by the Sellers with any bank or other financial institution, as of the date hereof, which Schedule shall be updated as of the Closing Date.

5.28. Signatories. All of the domestic Subsidiaries of the Company, other than J.P. Stevens & Co., Inc., are signatories to this Agreement except those that have no assets (other than insignificant assets not used in the Business).

5.29. Foreign and Non-Debtor Affiliates. Except as set forth on Schedule 5.29, (i) none of the assets of the Sellers' foreign Affiliates are used in operation of the Business, (ii) none of the assets of the Business are used in the operation of any of Sellers' foreign Affiliates, and (iii) none of Sellers' foreign Affiliates have the right to use the name "WestPoint" or any rights to use any Intellectual Property of Sellers. None of the Sellers' foreign Affiliates are signatories to this Agreement. Sellers are all debtors in the Bankruptcy Case and have no domestic non-debtor Affiliates except for those Affiliates with insignificant assets.

5.30. Labor Matters.

(a) Schedule 5.30 identifies all collective bargaining agreements covering Employees of Sellers (collectively, the "Collective Bargaining Agreements"). The Company

made available to Purchaser correct and complete copies of all such Collective Bargaining Agreements including any amendments or supplements thereto or related agreements(including any side letter, supplemental agreement or memorandum of understanding that would materially alter a Collective Bargaining Agreement). The Company has informed Purchaser of all material communications and current written proposals of the Sellers, or any union in all ongoing negotiations with representatives of any unions representing any organized employee groups and all material matters on which any tentative agreements have been reached in the course of such negotiations.

(b) The Company has made available to Purchaser a true, correct and complete list of all employees (including inactive employees and employees on leave) and independent contractors of the Sellers who are members of an organized labor unit or union covered by any of the Collective Bargaining Agreements, their current respective positions or job classifications and their current respective wage scales or salaries, as the case may be.

(c) Except as set forth in Schedule 5.30(c):

(i) None of the Sellers has breached or otherwise failed to comply in any material respect with any provision of any Collective Bargaining Agreement or other labor union contract applicable to persons employed by Sellers (because of the transactions contemplated by this Agreement or otherwise), and there are no material grievances outstanding against any Seller under any such agreement or contract;

(ii) As of the date hereof, to the Knowledge of Sellers, there is no union organizing activity, petition or application pending before the National Labor Relations Board or other labor relations boards or tribunals seeking certification or any change in certification of a labor union with respect to any employees of any Seller;

(iii) As of the date hereof, there is no strike, slowdown, work stoppage, labor action or lockout, or, to the Knowledge of Sellers, express threat thereof, by or with respect to any employees of Sellers; and

(iv) As of the date hereof, no Sellers have received any written notice of any, and to the Knowledge of Sellers, there is no unfair labor practice or analogous complaint, application or claim against any Seller pending before the National Labor Relations Board or any similar board or agency or before any court of competent jurisdiction or any other forum.

5.31. Employee Matters. Schedule 5.31 contains a true, correct and complete list of all the unrepresented, non-unionized Employees (including inactive Employees and Employees on leave) employed on June 17, 2005, and any officer of Sellers or any Employee in a supervisory or managerial role employed on June 17, 2005, their respective (i) positions or job classifications, (ii) wage scales or salaries, as the case may be, (iii) annual target bonus and/or annual target sales commissions, and (iv) target long-term incentive payments, in each case as of such date. With respect to the foregoing clauses (ii) through (iv), disclosure may be in the form of either a written description or copies of any applicable plan,

policy or program with regard to employees subject to company-wide policies; provided, however, that disclosure shall be on an individual basis with regard to all exceptions from such company-wide policies or from any other individual arrangements.

5.32. Certain Payments. Except as set forth on Schedule 5.32, from the date which is 30 days prior to the date hereof through the date hereof, Sellers have not made any payments in excess of $25,000 under, in respect of or pursuant to the KERP Program or fees and expenses of any broker, finder or financial advisor of Sellers.

ARTICLE VI.

REPRESENTATIONS AND WARRANTIES OF PARENT, HOLDCO ONE, HOLDCO TWO AND PURCHASER

Parent, Holdco One, Holdco Two and Purchaser each hereby jointly and severally represents and warrants to Sellers that:

6.1. Organization and Good Standing. Each of Parent and Purchaser is an entity duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite corporate power and authority to own, lease and operate its properties and to carry on is business as now conducted.

6.2. Authorization of Agreement. Each of Parent and Purchaser has the requisite corporate power and authority to execute and deliver this Agreement and the Ancillary Documents and to perform its obligations hereunder and thereunder. The execution and delivery of this Agreement has, and upon execution and delivery of all Ancillary Documents, such Ancillary Documents will be, and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of each of Parent and Purchaser. This Agreement has been, and upon execution and delivery thereof all Ancillary Documents will be, duly and validly executed and delivered by each of Parent and Purchaser and (assuming the due authorization, execution and delivery by the other parties hereto) this Agreement constitutes legal, valid and binding obligations of each of Parent and Purchaser enforceable against each such entity in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

6.3. Authorized Capital.

(a) As of and after giving effect to the Closing, (i) the authorized capital of Parent shall consist of 200,000,000 shares of common stock and 10,000,000 shares of preferred stock, (ii) 15,750,000 shares of Parent Common Stock will be issued and outstanding, and (iii) 14,250,000 shares of Parent Common Stock will be reserved for issuance pursuant to the

Subscription Rights. As of the Closing, the authorized capital of Purchaser shall consist of 10,000 shares of common stock and 1,000 shares of preferred stock, of which 200 shares will be issued and outstanding and held equally by Holdco One and Holdco Two. Except as set forth in the Equity Commitment Letter, as of the Closing, no other shares of capital stock of Parent or Purchaser will be issued or issuable pursuant to outstanding options, agreements, exchangeable securities or otherwise.

(b) The shares of Parent Common Stock to be issued pursuant to the terms hereof and upon exercise of the Subscription Rights will, as of the Closing, be duly authorized and, upon issuance pursuant to the terms hereof or upon payment of the purchase price therefor pursuant to the Rights Offering, validly issued, fully paid and non-assessable.

6.4. Conflicts; Consents of Third Parties.

(a) Except as set forth on Schedule 6.4(a), the execution and delivery by Parent and Purchaser of this Agreement and the Ancillary Documents, the consummation of the transactions contemplated hereby or thereby, or compliance by Parent and Purchaser with any of the provisions hereof or thereof do not and will not (A) conflict with, or result in any violation or default (with or without notice or lapse of time or both) under, or (B) give rise to a right of termination or cancellation under any provision of:

(i) the certificate of incorporation and by-laws or comparable organizational documents of Parent and Purchaser;

(ii) any Contract or Permit to which Parent or Purchaser is a party or by which any of the properties or assets of Parent or Purchaser are bound, other than such conflicts, violations, defaults, terminations or cancellations that would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect;

(iii) any Order of any Governmental Body applicable to Parent or Purchaser or any of the properties or assets of Parent or Purchaser as of the date hereof; or

(iv) any applicable Law.

(b) Except as set forth on Schedule 6.4(b), no consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of Parent or Purchaser in connection with the execution and delivery of this Agreement and the Ancillary Documents, the compliance by Parent or Purchaser with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby or the taking by Purchaser of any other action contemplated hereby or thereby, except for (i) compliance with the applicable requirements of the HSR Act, and (ii) such other consents, waivers, approvals, Orders, Permits, authorizations, declarations, filings and notifications, the failure of which to obtain or make, would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect.

6.5. Litigation. As of the date hereof, there are no Legal Proceedings pending or, to the knowledge of Purchaser, threatened against Parent or Purchaser, or to which Parent or Purchaser is otherwise a party before any Governmental Body, which, if adversely determined, would reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect. As of the date hereof, Parent or Purchaser is not subject to any Order of any Governmental Body except to the extent the same would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect.

6.6. Financial Advisors. No Person has acted, directly or indirectly, as a broker, finder or financial advisor for Parent or Purchaser in connection with the transactions contemplated by this Agreement and no Person is entitled to any fee or commission or like payment in respect thereof.

6.7. Financial Capability. Purchaser will have, and Parent will cause Purchaser to have, at the Closing sufficient funds available to pay the Cash Purchase Price. Purchaser has delivered to the Company copies of the fully executed Equity Commitment Agreement and the Rights Offering Sponsor Agreement, pursuant to which it will obtain such funds.

6.8. Condition of the Business. Notwithstanding anything contained in this Agreement to the contrary, Purchaser acknowledges and agrees that Sellers are not making any representations or warranties whatsoever, express or implied, beyond those expressly given by Sellers in Article V hereof and each of Parent and Purchaser acknowledges and agrees that, except for the representations and warranties contained herein, the Purchased Assets are being transferred on a "where is" and, as to condition, "as is" basis. Each of Parent and Purchaser acknowledges that it has conducted to its satisfaction, its own independent investigation of the Business and, in making the determination to proceed with the transactions contemplated by this Agreement, each of Parent and Purchaser has relied on the results of its own independent investigation and the representations, warranties, covenants and agreements of Sellers set forth herein.

6.9 Aretex's Holdings. Aretex (i) as a First Lien Lender, holds a claim as of June 17, 2005 in the approximate face amount of $193,503,839.26, plus interest, (reduced by any payments made after the date hereof) representing not less than 39.989% of the amount due to all First Lien Lenders; and (ii) as a Second Lien Lender, holds an allowed claim in the approximate face amount of $84,500,000, plus interest, and representing not less than 51.212% of the amount due to all Second Lien Lenders.

ARTICLE VII.

POST EXECUTION MATTERS

7.1. Conduct After Execution of Agreement. Each Seller agrees that neither it nor its Affiliates nor its Representatives will, after execution of this Agreement (a) solicit, initiate, encourage, enter into, conduct or continue any discussions (other than with

other Qualified Bidders (as defined in the Bidding Procedures) prior to the Purchaser Selection Hearing), or enter into any agreement or understanding, with any Person other than the Purchaser, regarding the transfer, directly or indirectly, of any capital stock of, or any other interest in, any Seller or any material portion of any Seller's assets or business (including by way of license), or (b) disclose any non-public information relating to any Seller or afford access to the properties, books or records of any Seller to any Person other than the Purchaser, that may be considering acquiring an interest in any Seller or any material portion of any Seller's assets unless such Person first enters into an appropriate confidentiality agreement with the Sellers. If any Seller receives any request for information or indication of interest from any Person regarding a possible acquisition, such Seller shall promptly disclose to the Purchaser the identity of such Person, such receipt of such request or indication of interest and shall provide the Purchaser with copies of any correspondence or other written material received by such Seller setting forth any material terms or conditions of such possible acquisition.

7.2. Expense Reimbursement. In the event that this Agreement is terminated by Purchaser pursuant to Section 4.4(a), 4.4(c), 4.4)(d), 4.4(e), 4.4(g), 4.4(h), 4.4(i), 4.4(j), 4.4(k) or 4.4(l), Sellers agree to pay to Purchaser, upon such termination, reimbursement of up to $1,000,000 of the out of pocket expenses, including, without limitation, reasonable attorneys' fees and costs, consultant fees and costs, travel costs, title, survey and search costs and other out-of-pocket costs incurred by Purchaser from and after the date hereof to such date of termination (the "Expense Reimbursement"), as a super priority administrative expense and Debtors will promptly seek any further authority needed in connection with the same.

7.3. Bankruptcy Court Filings.

(a) Pursuant to the Bidding Procedures Order, Sellers have sought authority to sell their assets and take actions related thereto and shall seek entry of the Selection Order and the Sale Order by the Bankruptcy Court. The Sellers shall seek to cause the Sale Order to be entered simultaneously with, or within three (3) Business Days following, the entry of the Selection Order. Unless the Bankruptcy Court determines by Order entered at the hearing to approve the Sale Order that the transactions contemplated by this Agreement shall be pursued through a Chapter 11 plan of reorganization or liquidation, the transactions shall proceed in accordance with this Agreement and pursuant and subject to the Sale Order. If the Bankruptcy Court: (i) determines by Order entered at the hearing to approve Sale Order that the transactions contemplated by this Agreement shall be pursued through a Chapter 11 plan of reorganization or liquidation; and (ii), prior to September 15, 2005, the Confirmation Order shall have been entered and shall have become a Final Order, then the transaction set forth herein shall proceed based on the Chapter 11 Plan and the Confirmation Order. The September 15, 2005 date is of the essence. In the event that clause (ii) above is not satisfied, the transactions contemplated by this Agreement shall proceed in accordance with the terms of this Agreement and pursuant and subject to the Sale Order.

(b) (i) If the Bankruptcy Court in a statement on the record at the Purchaser Selection Hearing indicates that it is prepared to enter the Sale Order within two (2) Business Days after the Purchaser Selection Hearing (the "Initial Sale Order Entry Period") except for the

omission of either clause (viii) and/or (xii) of the definition of "Sale Order", then within two (2) Business Days of the end of the Initial Sale Order Entry Period, Purchaser shall either (x) waive in writing clause (viii) and/or (xii) to the extent not acceptable to the Bankruptcy Court, (y) terminate this Agreement, which right may be exercised by Purchaser only within two (2) Business Days following the Initial Sale Order Entry Period, or (z) not waive those conditions and not terminate this Agreement, provided, that if Purchaser does not waive in writing the requirement that the Sale Order contain those provisions or terminate this Agreement within such time period, then Sellers may terminate this Agreement within two (2) Business Days after the expiration of the period within which Purchaser may terminate this Agreement pursuant to this Section 7.3(b)(i), which right may be exercised by Sellers only within such two (2) Business Days.

(ii) If the Bankruptcy Court (x) in a statement on the record at the Purchaser Selection Hearing indicates that is not prepared to enter, within the Initial Sale Order Entry Period (A) any sale order with respect to the transactions contemplated by this Agreement or (B) the Sale Order except for the omission of either clause (viii) and/or (xii) of the definition of "Sale Order", or (y) fails to enter the Sale Order during the Initial Sale Order Entry Period, then the Purchaser may terminate this Agreement within two (2) Business Days following the Initial Sale Order Entry Period, which right may be exercised by Purchaser only within such two (2) Business Days.

(c) Purchaser and Sellers agree that they will assist in obtaining entry of the Selection Order, the Sale Order and if necessary, the Confirmation Order, and a finding of adequate assurance of future performance by Purchaser, by taking the following actions: furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary written assurance of performance by Purchaser under this Agreement and demonstrating that Purchaser is a "good faith" purchaser under Section 363(m) and if applicable, Section 1129(a)(3) of the Bankruptcy Code. In the event the entry of the Selection Order, the Sale Order or the Confirmation Order shall be appealed, Sellers and Purchaser shall use their respective reasonable efforts to defend such appeal. Sellers shall seek approval of the Selection Order, the Sale Order and the Confirmation Order, if any, only in accordance with the terms and conditions thereof.

(d) Sellers agree that they will comply in all respects with the terms and conditions of the Bidding Procedures Order, the Selection Order, the Sale Order and, if applicable, the Confirmation Order, and will not file a motion seeking to revoke, modify or amend any such order after it is entered without Purchaser's prior written consent.

ARTICLE VIII.

COVENANTS

8.1. Access to Information. (a) Sellers agree that, prior to the Closing Date, Purchaser shall be entitled and Sellers shall afford Purchaser the opportunity, through the respective Representatives of Purchaser or its Affiliates, to make such investigation of the assets,

properties, employees, businesses and operations of the Business and such examination of the books and records of the Business, the Purchased Assets and the Assumed Liabilities as Purchaser determines and to make extracts and copies of such books and records. Any such investigation and examination shall be conducted upon reasonable advance notice. Sellers shall cause their Representatives to cooperate with Purchaser and Purchaser's or its Affiliates' Representatives in connection with such investigation and examination, and Purchaser, its Affiliates and their Representatives shall use their reasonable efforts to minimize any disruption to the Business.

(b) The Sellers shall promptly deliver to Purchaser all financial, management or operational reports delivered to any agent and/or the lenders under the DIP Credit Agreement or consultants for the same. The Sellers shall promptly deliver to Purchaser such copies of all pleadings, motions, notices, statements, schedules, applications, reports and other papers filed by the Sellers, or by any Person in connection with or related to the Sellers, the Business, the Purchased Assets or the Assumed Liabilities. The Sellers shall promptly deliver to Purchaser all pleadings, motions, notices, statements, schedules, applications, reports and other papers filed in any other judicial or administrative proceeding as Purchaser may reasonably request. Without limiting the generality of this Section 8.1, if requested by Purchaser, Sellers, upon reasonable notice, shall provide access to the Sellers' Properties to Purchaser, its Affiliates and their respective Representatives for purposes of conducting such building inspections and environmental assessments as Purchaser determines. Purchaser agrees that, in the event that an inspection or environmental assessment results in a determination that invasive sampling may be necessary, Purchaser will not conduct such invasive sampling without first obtaining Seller's consent, provided that such consent will not be unreasonably withheld. To the extent that any applicable lease or sublease (whether any Seller is a lessor/sublessor or lessee/sublessee) restricts the ability of any Seller to grant access to any property, the Seller shall use commercially reasonable efforts to provide for such access to Purchaser, its Affiliates and their respective Representatives. Notwithstanding anything herein to the contrary, no such investigation or examination shall be permitted to the extent that it would require Sellers to disclose information subject to any confidentiality obligations to which Sellers are bound as of the date of this Agreement; provided Sellers shall take commercially reasonable efforts to obtain waivers of such confidentially obligations.

(c) From and after the date hereof, Parent may designate up to two individuals as Parent's and Purchaser's representatives to monitor the conduct and operations business of the Sellers on a day-to-day basis. Such persons shall be given full access by Sellers to all of the books, records and premises of the Business as they may reasonably request. From and after the date hereof:

(i) Sellers shall, not later than 7:00 a.m. on each Thursday and simultaneously with delivery to the Company's controller, deliver to such representatives the "accounts payable register" setting forth all payments proposed to be made by Sellers, including the name of the proposed payee and the amount. If, prior to 2:00 p.m. on such date any of such representatives notifies Sellers that any such payment in excess of $1,000 (other than payroll for hourly employees) would be in violation of the terms and provisions of this Agreement, Sellers shall not

make such payment unless and until resolved as set forth in clause (v) below. If Sellers fail to deliver such register by 7:00 a.m. on any such Thursday, then the 2:00 p.m. deadline referred to above shall be extended for each hour that delivery of such schedule is late so that such representatives have two consecutive hours on a Business Day to review such schedule, provided, that if such two hour period extends past 5:00 p.m. Eastern Time, such representatives shall have such time at the commencement of the next Business Day (beginning at 8:00 a.m. Eastern) to complete their review.

(ii) Sellers shall advise Purchaser of all applicable information pertaining to any proposed wire transfer not less than two hours on a Business Day prior to the time such wire is proposed to be sent. If prior to the expiration of such two hours any of such representatives notifies Sellers that any such payment by wire would be in violation of the terms and provisions of this Agreement, Sellers shall not make such payment unless and until resolved as set forth in clause (v) below;

(iii) Sellers shall provide Purchaser with a schedule of all proposed "manual checks" (i.e, checks not on the accounts payable register) not less than two hours on a Business Day prior to any such checks being issued. If prior to the expiration of such two hours any of such representatives notifies Sellers that any such payment would be in violation of the terms and provisions of this Agreement, Sellers shall not make such payment unless and until resolved as set forth in clause (v) below;

(iv) Sellers shall provide Purchaser with a schedule of letters of credit proposed to be issued not less than two hours on a Business Day prior to any such letter of credit being issued. If prior to the expiration of such two hours any of such representatives notifies Sellers that any such issuance of letter of credit would be in violation of the terms and provisions of this Agreement, Sellers shall not issue such letter of credit unless and until resolved as set forth in clause (v) below;

(v) Any disputed payments or issuance of a letter of credit hereunder shall not be made by Sellers unless and until resolved by agreement of Purchaser, Parent and Sellers or a determination by the Bankruptcy Court is made that such payment or issuance of a letter of credit does not violate the terms and provisions of this Agreement. Purchaser and Parent agree to cooperate with Sellers to resolve any such issue and, if not so resolved, to obtain an expedited determination by the Bankruptcy Court with respect to any such payment or payments;

(vi) Failure of Sellers to make any payment or issuance of a letter of credit disputed by any representative prior to resolution of the issue shall not constitute a breach of any representation, warranty, covenant or agreement by Sellers under this Agreement. Representatives may give notice hereunder by telephone communication, confirmed by email, to the General Counsel of the Company at the email address set forth in Section 12.9, or such other Person as the Company shall designate to Purchaser pursuant to Section 12.9. Sellers shall notify the representatives by telephone communication and email at the numbers and email addresses provided by such representatives from time to time.

(d) Sellers shall use commercially reasonable efforts to identify on Schedule 8.1, (i) each parcel of Immaterial Owned Real Property by street address (or no street address exists, by city and state), together with a legal description or tax identification number, which Schedule 8.1 shall be delivered to Purchaser not later than ten days following the entry of the Sale Order, together with copies of relevant deeds and other title and survey documents in the respective Sellers' possession and (ii) all Permits necessary to operate the retail stores operated by Sellers.

8.2. Conduct of the Business Pending the Closing.

(a) Except (1) as set forth on Schedule 8.2(a), (2) as required by applicable Law, or (3) with the prior written consent of Purchaser in its sole and absolute discretion, during the period from the date of this Agreement to and through the Closing Date, Sellers shall:

(i) conduct the Business only in the Ordinary Course of Business, including, without limitation, with respect to (a) the pricing and terms of sale of inventory, (b) the timing, discounting and other practices in connection with the collection of accounts receivable, (c) the timing and other practices for payment of account payables and (d) compensation, bonuses, benefits and severance payable to Employees, subject to and in accordance with the further limitations set forth in Section 9.1(a);

(ii) use their commercially reasonable efforts to (a) keep their assets intact and maintain their assets in at least as good a condition as their current condition (reasonable wear and tear excepted), (b) preserve the present business operations, organization and goodwill of the Business, and (c) preserve the present relationships with customers and suppliers of the Business;

(iii) perform in all material respects its obligations arising after the Petition Date under any Contract (including Real Property Leases);

(iv) comply in all material respects with all applicable Laws that relate to or affect its assets and business or such Person's ownership and/or use or operation thereof, including the timely, complete and correct filing of all reports and maintenance of all records required by any Governmental Authority to be filed or maintained;

(v) continue to use and operate all assets and all aspects of its business used or operated by the Sellers as of the date hereof in a manner consistent with prior practice and in accordance in all material respects with all applicable Laws, and not enter into any contract nor otherwise act, nor suffer or permit any other Person to act, to restrict, interfere with or prevent the use or operation of such assets or business;

(vi) promptly notify Purchaser in writing of any incidents or accidents occurring on or after the date hereof involving any assets or property owned or operated by the Sellers that resulted or could reasonably be expected to result in damages or losses to any portion of the business of the Sellers or damages in excess of $100,000;

(vii) promptly notify Purchaser in writing of the existence of any adverse business conditions arising on or after the date hereof threatening the continued, normal business operations of the Sellers or of any agreement, consent or order of any Governmental Authority involving any of the Sellers;

(viii) promptly notify Purchaser of any Legal Proceeding of the type described in Section 5.12 commenced after the date hereof and/or, to the Knowledge of Sellers, threatened after the date hereof against the Sellers;

(ix) provide prompt written notice to Purchaser (i) of any change in any of the information contained in the representations and warranties made by the Sellers in Article V hereof or any exhibits or schedules referred to herein or attached hereto, including any Schedules and shall promptly furnish any information that Purchaser may reasonably request in relation to such change; provided, however, that such notice shall not operate to cure any breach of the representations and warranties made by the Company herein or any exhibits or schedules referred to herein or attached hereto, including any Schedules; and

(x) provide prompt written notice to Purchaser of the occurrence of any event that results in or would reasonably be expected to result in a failure to satisfy any of the conditions set forth in Article X.

(b) Except (1) as set forth on Schedule 8.2(b), (2) as required by applicable Law, or (3) with the prior written consent of Purchaser in its sole and absolute discretion, during the period from the date of this Agreement to and through the Closing Date, Sellers shall not:

(i) take any action as a result of which any representation or warranty of the Sellers made in Article V would be rendered untrue or incorrect if such representation or warranty were made immediately following the taking or failure to take such action;

(ii) make or rescind any material election relating to Taxes, settle or compromise any material claim, action, suit, litigation, proceeding, arbitration, investigation, audit or controversy relating to Taxes, or except as may be required by applicable Law or GAAP, make any material change to any of its methods of accounting or methods of reporting income or deductions for Tax or accounting practice or policy from those employed in the preparation of its most recent Tax Returns;

(iii) subject any of the Purchased Assets to any Lien, except for Liens existing as of the date hereof;

(iv) acquire any material properties or assets other than in the Ordinary Course of Business, or enter into any partnership, joint venture or similar arrangement (including, but not limited to, the contemplated joint venture with a Pakistani company for the formation and operation of a manufacturing facility near Lahore, Pakistan), or sell, assign, license, transfer, convey, lease or otherwise dispose of any of the Seller's assets other than inventory in the Ordinary Course of Business and obsolete or worthless equipment permitted to be sold pursuant to the DIP Credit Agreement;

(v) cancel, compromise or settle any debt or claim or waive or release any right in excess of $20,000 individually and $250,000 in the aggregate or, in connection with Trade Payables, accounts payable to employees for travel and entertainment expense, workers' compensation payments, or trade receivables, other than in the Ordinary Course of Business;

(vi) enter into any commitment for capital expenditures in excess of $250,000 for all commitments in the aggregate except for capital expenditure projects described by project and amount as line items as set forth on Schedule 8.2(b) hereof not to exceed the amount for each such category as described and set forth in such schedule;

(vii) enter into, modify or terminate any labor or Collective Bargaining Agreement or, through negotiation or otherwise, make any commitment or incur any liability to any labor organization;

(viii) incur any Indebtedness other than in the Ordinary Course of its Business;

(ix) assign, modify, cancel, otherwise impair or permit to lapse any Material Contract (other than expiration in accordance with the terms thereof as a result of the passage of time and other than Real Property Leases as to which Section 8.2(b)(x) applies) involving annual expenditures, purchases or revenues in excess of $100,000 annually;

(x) assign, sublease, amend in any material respect, terminate, exercise (or waive) or permit to lapse any options to renew, options to expand or options to purchase pursuant to any Real Property Leases involving expenditures in excess of $100,000 annually (other than expiration in accordance with the terms thereof as a result of the passage of time);

(xi) make any payments (a) in respect of professional fees for attorneys and accountants except to the extent and on the timing permitted under existing interim compensation and fee application procedures (other than professional fees payable to ordinary course professionals to the extent authorized to be paid under the existing Order of the Bankruptcy Court signed on 6/3/03 Authorizing Retention and Compensation of Professionals Utilized in the Ordinary Course of Business), (b) under, in respect of or pursuant to the KERP Program (other than the existing scheduled payment for the second quarter of 2005 pursuant to the KERP Order), or fees and expenses of any financial advisor of Sellers (other than monthly fees in currently approved amounts pursuant to existing procedures) or (c) in respect of fees and expenses of any broker or finder of Sellers except as consented to by Purchaser and except for such fees and expenses of a broker or finder relating to the sale of real property by Sellers which are approved by the Bankruptcy Court prior to June 30, 2005; or

(xii) agree to do anything prohibited by this Section 8.2.

(c) During the period from the date of this Agreement to and through the Closing Date, Sellers shall not declare, authorize, make or enter into a commitment to make (x) any dividend, distribution or other payment in respect of any Seller's capital stock or other equity or rights to acquire the same or engage in any similar payment or distribution or (y) any payment, prepayment or distribution with respect to any Indebtedness of the Sellers other than

payments in respect of the DIP Credit Agreement as required or permitted pursuant to the terms of the DIP Credit Agreement or payment pursuant to the Adequate Protection Order.

8.3. Consents, Lien Releases and Notices. Sellers shall use their commercially reasonable efforts, and Purchaser shall, and Parent shall cause Purchaser to, reasonably cooperate with Sellers, to obtain at the earliest practicable date all consents and approvals required to consummate the transactions contemplated by this Agreement, including, the consents and approvals listed in Schedule 5.3(b) hereof; provided, however, that neither Sellers nor Purchaser shall be obligated to pay any consideration therefor to any third party from whom consent or approval is requested; provided, further, however, that Sellers shall be obligated to initiate any Legal Proceedings necessary, at the Purchaser's expense, to obtain any such consent or approval, unless Seller's counsel reasonably believes that Sellers have no good faith basis to initiate any such proceeding, in which event Purchaser may seek authority from the Bankruptcy Court to do so on the Sellers' behalf and Sellers will not object to such application by Purchaser. Sellers shall provide Parent and Purchaser, for their approval, a proposed form of request for consent not later than five (5) days following the date of the Sale Order. Sellers shall send initial requests for such consents in the form approved by the Purchaser not later than two (2) Business Days following the date Purchaser designates any applicable asset as a Purchased Asset. Sellers shall use their commercially reasonable efforts to obtain, prior to the Closing, and deliver to Purchaser releases of all Liens on all of the Purchased Assets. Sellers shall, at the request of Purchaser and at Purchaser's expense if so requested after the Purchaser Selection Hearing, provide additional actual or publication notice of the "free and clear sale" to those Persons, and in the manner, requested by Purchaser.

8.4. Regulatory Approvals.

(a) If necessary, Parent, Purchaser and Sellers shall (i) make or cause to be made all filings required of each of them or any of their respective Affiliates under the HSR Act or other Antitrust Laws with respect to the transactions contemplated hereby as promptly as practicable and, in any event, within ten (10) Business Days after the later of the date of the entry of the Selection Order and the date of this Agreement in the case of all filings required under the HSR Act and within four weeks in the case of all other filings required by other Antitrust Laws, (ii) comply at the earliest practicable date with any request under the HSR Act or other Antitrust Laws for additional information, documents, or other materials received by each of them or any of their respective Subsidiaries from the Federal Trade Commission (the "FTC"), the Antitrust Division of the United States Department of Justice (the "Antitrust Division") or any other Governmental Body in respect of such filings or such transactions and (iii) cooperate with each other in connection with any such filing. Subject to applicable Law, the parties hereto will consult and cooperate with one another in connection with any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any party hereto relating to proceedings under the HSR Act or other Antitrust Laws. Sellers and Purchaser may, as each deems advisable and necessary, reasonably designate any competitively sensitive material provided to the other under this Section 8.4 as "outside counsel only." Such materials and the information contained therein shall be given only to the outside legal counsel of the recipient and will not be disclosed by such outside counsel to employees,

officers, or directors of the recipient, unless express written permission is obtained in advance from the source of the materials (Parent, Sellers or Purchaser, as the case may be). Parent or Purchaser shall not be obligated to share a copy of their HSR Act filing or drafts thereof with Sellers.

(b) Sellers shall use commercially reasonable efforts to initiate the transfer of all Permits included in the Purchased Assets owned or used by any Seller into the name of Purchaser effective as of the Closing Date. Each such party shall use commercially reasonable efforts to furnish to each other all information required for any application or other filing to be made pursuant to any applicable Law in connection with the transactions contemplated by this Agreement. Each such party shall promptly inform the other parties hereto of any oral communication with, and provide copies of written communications with, any Governmental Body regarding any such filings or any such transaction. No party hereto shall independently participate in any formal meeting with any Governmental Body in respect of any such filings, investigation, or other inquiry without giving the other parties hereto prior notice of the meeting and, to the extent permitted by such Governmental Body, the opportunity to attend and/or participate.

(c) Each of Parent, Purchaser and Sellers shall use its commercially reasonable efforts to resolve such objections, if any, as may be asserted by any Governmental Body with respect to the transactions contemplated by this Agreement under the HSR Act, the Sherman Act, as amended, the Clayton Act, as amended, the Federal Trade Commission Act, as amended, and any other United States federal or state or foreign statutes, rules, regulations, orders, decrees, administrative or judicial doctrines or other laws that are designed to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade (collectively, the "Antitrust Laws"). In connection therewith, if any Legal Proceeding is instituted (or threatened to be instituted) asserting that any transaction contemplated by this Agreement is in violation of any Antitrust Law, each of Purchaser and Sellers shall cooperate and use its commercially reasonable efforts to contest and resist any such Legal Proceeding. Each of Purchaser and Sellers shall use its commercially reasonable efforts to take such action as may be required to cause the expiration of the notice periods under the HSR Act or other Antitrust Laws with respect to such transactions as promptly as possible after the execution of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, in complying with this Section 8.4, neither Purchaser nor any of its Affiliates shall be required to (i) divest any assets or discontinue or modify any of its operations or (ii) accept or become subject to any condition or requirement unacceptable to Purchaser in its sole and absolute discretion. No party shall withdraw any such filing or submission prior to the termination of this Agreement without the written consent of the other party.

8.5. Further Assurances. Each of Parent, Purchaser and Sellers shall use its commercially reasonable efforts to take all actions necessary or appropriate to consummate the transactions contemplated by this Agreement. Parent and Purchaser shall use their commercially reasonable efforts to cause the fulfillment at the earliest practicable date of all of the conditions to the obligations to consummate the transactions contemplated by this Agreement set forth in Sections 10.2 and 10.3. Sellers shall use their commercially reasonable

efforts to cause the fulfillment at the earliest practicable date of all of the conditions to the obligations to consummate the transactions contemplated by this Agreement set forth in Sections 10.1 and 10.3. At the Purchaser's sole cost and direction, Sellers shall have prepared and duly executed assignments of any non-U.S. trademark registrations and applications and non-U.S. patent registrations and applications in a form suitable for recording in the applicable foreign intellectual property offices. For U.S. trademark registrations and applications and U.S. patent registrations and applications, Sellers shall ensure that the owner of each trademark and patent registration and application, as set forth on Schedule 5.8(a), is also listed as the current owner as shown in the U.S. Patent and Trademark Office's records for each such trademark and patent registration and application.

8.6. Confidentiality Following the Closing. Sellers acknowledge that from and after the Closing, all non-public information relating to the Business, including, but not limited to the Purchased Assets and the Assumed Liabilities, will be valuable and proprietary to Purchaser and its Affiliates. Sellers agree that, from and after the Closing, neither the Sellers nor any of their Affiliates or Representatives will disclose to any Person any non-public information relating to the Purchaser and its Affiliates, or the Business, including but not limited to the Purchased Assets and the Assumed Liabilities, except as required by law. The provisions of this Section 8.6 shall survive the Closing.

8.7. Equity Commitment and Rights Offering. Simultaneously with the execution of this Agreement, Purchaser has delivered to Sellers an executed copy of each of the Equity Commitment Agreement and the Rights Offering Sponsor Agreement. It is expressly understood by the parties hereto that the aggregate net proceeds to be received by Purchaser in connection with the exercise of the Subscription Rights, the Rights Offering Sponsor Agreement and the Equity Commitment Agreement shall be $312,000,000. Each of Parent and Purchaser hereby agrees to take all actions that are necessary to consummate the Rights Offering, including, if necessary, enforcing its rights under the Equity Commitment Agreement and the Rights Offering Sponsor Agreement, to cause the other parties thereto to perform their respective duties, obligations and covenants thereunder. Each of Parent and Purchaser agrees that it will not release any party to the Equity Commitment Agreement and the Rights Offering Sponsor Agreement from any of its duties, obligations and covenants under such agreements without the Company's prior written consent.

8.8. Preservation of Records. Sellers, Parent and Purchaser agree that each of them shall preserve and keep the records held by it or their Affiliates relating to the Business for a period of seven (7) years from the Closing Date (except as provided below) and shall make such records and personnel available to the other as may be reasonably required by such party in connection with, among other things, any insurance claims by, Legal Proceedings or tax audits against Sellers or Purchaser or any of their Affiliates or in order to enable Sellers or Purchaser to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby. In the event Sellers or Purchaser wishes to destroy such records before or after that time, such party shall first give ninety (90) days prior written notice to the other and such other party shall have the right at its option and

expense, upon prior written notice given to such party within such ninety (90) day period, to take possession of the records within one hundred and eighty (180) days after the date of such notice.

8.9. Financial Statements

(a) Sellers shall provide AREH and its representatives with such access to and copies of the books and records of Sellers and their subsidiaries as may be required in order for AREH and its Affiliates and subsidiaries to prepare any financial statements, including historical or pro forma financial statements, for inclusion or incorporation by reference by AREH or its Affiliates and subsidiaries in filings by any of them with the SEC, including, without limitation, any registration, proxy or information statement or any periodic or current report under the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC (each a "Report" and collectively "Reports"). Sellers shall use commercially reasonable efforts to provide to AREH unaudited consolidating balance sheets and income statements covering the periods covered by each consolidated financial statement required to be delivered by the Sellers pursuant to Section 8.9(d) below.

(b) Sellers shall use their best efforts to cause their finance and accounting personnel, including, but not limited to, their Chief Financial Officer, to provide AREH, its subsidiaries and their respective representatives with such assistance as AREH shall reasonably request in order to permit AREH and its subsidiaries to prepare any Report and comply with any requirement pursuant to the Sarbanes-Oxley Act of 2002 and the rules and regulations of the SEC thereunder with respect to Sellers. Sellers shall continue to maintain their books and records, so as to enable the preparation and review or audit, as applicable, by an independent public accounting firm of financial statements meeting the requirements of Regulation S-X of the SEC and in accordance with GAAP.

(c) Sellers shall use their best efforts to cause and permit the independent registered public accounting firm or firms that have audited, or will audit pursuant to paragraph (d), their consolidated financial statements as of December 31, 2003 and 2004 and for each of the years during the three year period ended December 31, 2004 (and if the financial statements for any subsidiaries included in such consolidated financial statements or which otherwise are required to be presented separately have been audited by any independent registered public accounting firm other than the firm auditing the consolidated financial statements of the Company, such firm or firms as well) to provide AREH, its Affiliates and subsidiaries and their respective representatives with such assistance as AREH shall reasonably request in order to permit AREH and its Affiliates and subsidiaries to prepare and file any Report, including, without limitation, by issuing or providing an original executed copy of any required audit report or consent to the inclusion of such report and the identification of such audit firm or firms as experts.

(d) In furtherance of the covenants contained in paragraphs (a) – (c), Sellers shall prepare and deliver to Purchaser prior to the Closing, consolidated financial statements of the Company meeting the requirements of Regulation S-X of the SEC applicable to an Annual Report on Form 10-K as of December 31, 2003 and 2004 and for each of the three years during

the three year period ended December 31, 2004. Such financial statements shall be prepared in accordance with GAAP consistently applied throughout the periods involved (except as maybe indicated in the notes thereto) and shall be audited by Ernst & Young LLP or another independent registered public accounting firm reasonably acceptable to AREH, and shall be accompanied by a signed currently dated report covering all three years by Ernst & Young LLP or such other independent registered accounting firm reasonably acceptable to AREH. Sellers also shall prepare and deliver to Purchaser prior to the Closing consolidated financial statements of the Company for each of its fiscal quarters (including the corresponding period for the preceding fiscal year) for which a Quarterly Report on Form 10-Q is required to have been filed during the fiscal year ending December 31, 2005 through and including the Closing Date, meeting the requirements of Regulation S-X of the SEC applicable to Quarterly Reports on Form 10-Q. Such quarterly financial statements shall be prepared in accordance with GAAP (except as permitted by Form 10-Q of the SEC).

8.10. Schedules. Sellers may, at their option, include in the Schedules items that are not material in order to avoid any misunderstanding, and such inclusion, or any references to dollar amounts, shall not be deemed to be an acknowledgement or representation that such items are material, to establish any standard of materiality or to define further the meaning of such terms for purposes of this Agreement. No later than fifteen (15) days after the date of this agreement, Sellers will deliver legal descriptions for each of the Material Owned Real Properties.

8.11. No Inconsistent Action. No Seller shall take any action that is inconsistent with the Sellers' obligations under this Agreement.

8.12. Accepted or Rejected Contracts.

(a) For each Material Contract (other than Real Property Leases) listed on Schedule 5.9 and each Material Intellectual Property License listed on Schedule 5.8(b), the Sellers shall timely indicate to Purchaser whether or not, in connection with the Bankruptcy Cases, the Company or any of its Subsidiaries, as the case may be, desires to accept or reject or prior to the date hereof has accepted or rejected such Material Contract or Material Intellectual Property License. From and after the date hereof, the Purchaser, in its sole and absolute discretion, may direct the Sellers to cause each such Material Contract or Material Intellectual Property License not accepted or rejected prior to the date hereof, to be either accepted or rejected, and the Sellers shall accept or reject each such Material Contract or Material Intellectual Property License in accordance with the Purchaser's direction effective as of the Closing (any Material Contracts and Material Intellectual Property Licenses so accepted hereby at the direction of Purchaser are referred to herein as the "Accepted Contracts" and "Accepted Intellectual Property Licenses," as applicable). Purchaser shall provide Sellers with at least 14 days notice prior to a hearing to determine Cure Costs of the Accepted Contracts and Accepted Intellectual Property Licenses.

(b) For each Real Property Lease listed on Schedule 5.7(b), the Sellers shall timely indicate to Purchaser whether or not, in connection with the Bankruptcy Cases, the

Company or any of it Subsidiaries, as the case may be, desires to accept or reject or prior to the date hereof has accepted or rejected, such Real Property Lease. From and after the date hereof, the Purchaser, in its sole and absolute discretion, may direct the Sellers to cause each such Real Property Lease not accepted or rejected prior to the date hereof, to be either accepted or rejected, and the Sellers shall accept or reject each such Real Property Lease in accordance with the Purchaser's direction effective as of Closing (any Real Property Leases so accepted hereby at the direction of the Purchaser are referred to herein as the "Accepted Real Property Leases").

(c) Any motions filed with, and the proposed orders submitted to, the Bankruptcy Court seeking authorization to, or any proceedings undertaken to, accept or reject any one or more of the Material Contracts, Material Intellectual Property Licenses or Real Property Leases shall be satisfactory in form and substance to the Purchaser in its reasonable discretion. The Purchaser's written consent shall be required prior to the Sellers (i) compromising or commencing litigation with respect to any Material Contract, Material Intellectual Property Licenses or Real Property Lease, or (ii) making material payments required to be made under the Bankruptcy Code in connection therewith.

8.13. Specific Enforcement of Covenants. The Sellers acknowledge that irreparable damage may occur in the event that any of the covenants and agreements of the Sellers set forth in this Section 8.13 or in any other part of this Agreement were not timely performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that Purchaser and Parent shall be entitled to an injunction or injunctions, without the posting of any bond, to prevent or cure any breach of this Section 8.13 or any breach of such other covenants or agreements of the Sellers, and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which it may be entitled at law or in equity. In the event the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction with respect to any matter provided for in this sentence or is without jurisdiction with respect to any matter provided for in this sentence or is otherwise without jurisdiction, such abstention, refusal or lack of jurisdiction shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter.

8.14. Form of Transaction. The Sellers, Parent and Purchaser hereby agree that the acquisition of the Purchased Assets pursuant to this Agreement is intended to be treated as a taxable transaction for U.S. federal income tax purposes. The Sellers, Parent and Purchaser hereby further agree to continue to review the relevant information of the Sellers and to discuss the acquisition structure. If the Parent and Purchaser desire to modify the structure of the acquisition of the Purchased Assets pursuant to this Agreement, the structure of such acquisition and this Agreement shall be accordingly modified subject to the consent of the Sellers, which consent shall not be unreasonably withheld or delayed.

8.15. Permits. Following the date hereof, Sellers shall from time to time, at the request of Purchaser use their commercially reasonable efforts to assist Purchaser with preparing such applications or other documents necessary or desirable in connection with applications for or transfers of Permits to Purchaser. Until any necessary Permits are transferred

or issued to Purchaser, and to the extent not prohibited by Law or the terms of such Permits except where such prohibitions are overridden by order of the Bankruptcy Court or by other applicable Law, Sellers hereby grant to Purchaser effective at the Closing, and Purchaser shall have, the right and license to use such Permits of Sellers as Purchaser shall determine. The provisions of this Section 8.15 shall survive the Closing.

8.16. Indemnity Agreement. The Company shall cause its subsidiary, J.P. Stevens & Co., Inc. to execute and deliver to Purchaser and Parent at the Closing, the indemnity agreement in the form of Exhibit S and a notice to its insurance company that it is entering into the indemnity agreement.

ARTICLE IX.

EMPLOYEES AND EMPLOYEE BENEFITS

9.1. Employment.

(a) No Material Employment Changes. Without Purchaser's prior written consent, no increase shall be made in the compensation, bonuses or commissions payable, or to become payable, by it to any Employees except as required by Employment Agreements existing as of the date hereof and except for such increases in annual salary as are made in the Ordinary Course of Business and are reflected in the budget for Sellers for calendar year 2005 delivered to Purchaser prior to the date hereof. Sellers shall make no arrangement for any new Employee Plan relating to Employees, and no material change shall be effected in management, personnel policies or employee benefits.

(b) Employee Hirings. On or before the Closing Date, the Purchaser shall extend offers of employment to such Employees as it determines on such terms as it considers to be competitive in the marketplace.

(c) Terms of Employment. Sellers hereby expressly acknowledge and agree that the Purchaser shall have the right to fix the level of compensation and benefits and other terms and conditions of employment to be provided to Continuing Employees, and that the Purchaser may modify the terms and conditions of employment of any Continuing Employee from time to time and may terminate the employment of any Continuing Employee at any time.

(d) No Rights to Employment. Nothing expressed or implied in this Agreement is intended to confer upon any Employee or his or her legal representatives any rights or remedies, including, without limitation, any rights of employment for any specified period, of any nature or kind whatsoever under or by reason of this Agreement.

(e) Benefits. As of the Closing Date, the Purchaser or an ERISA Affiliate thereof will offer continuation coverage for the duration of the coverage period required under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), as set forth in Section 4980B(f)(2)(B) of the Tax Code (and the regulations thereunder), under the health care plans covering the Continuing Employees after the Closing to the M&A Qualified

Beneficiaries (as defined below). An "M&A Qualified Beneficiary" is (i) any Employee who incurred a "qualifying event" (within the meaning of Section 4980B(f)(3) of the Tax Code and the regulations thereunder) prior to, or in connection with, the Closing if his or her last employment with the Sellers prior to incurring such qualifying event was associated with the Purchased Assets or (ii) any eligible dependent of an Employee described in clause (i) above. For purposes of clause (i) of the preceding sentence, an Employee's last employment will be deemed to be associated with the Purchased Assets unless the Employee's last employment was associated with Sellers' Cluett or Virginia Craft operations. In addition, any Employee who is actively employed by the Sellers immediately prior to the Closing Date and who continues in employment with the Sellers after the Closing Date for the purpose of winding down the affairs of the Debtor shall be treated as having incurred a qualifying event on the closing date. Notwithstanding the foregoing, a person will not be considered an M&A Qualified Beneficiary if (i) such person's COBRA continuation coverage expired or was terminated prior to the Closing or (ii) such person had not made a COBRA continuation coverage election and the period of time for making a COBRA continuation coverage election (as set forth in Section 4980B(f)(5) of the Tax Code and regulations thereunder) has expired. Schedule 9.1(e) states the name and address of each M&A Qualified Beneficiary, the date on which the qualifying event occurred, the date on which COBRA continuation coverage expires, the reason the M&A Qualified Beneficiary is entitled to COBRA continuation coverage, and the offices, facilities or plants at which the Employee worked.

(f) Credit for Past Service. As of the Closing Date, the Purchaser or an ERISA Affiliate thereof will offer health plan coverage to Continuing Employees. The Purchaser shall either continue the health plan offered by the Sellers prior to the Closing Date or establish another health plan as the Purchaser determines in its sole discretion. Purchaser and its Affiliates shall be under no obligation to grant Continuing Employees credit in any of its employee benefit plans for any past service with the Sellers, for eligibility and vesting purposes or otherwise. It is understood and agreed that the Purchaser shall have the right, in its sole discretion, to amend, modify, or terminate such plans at any time. Nothing herein shall entitle any Continuing Employees to any coverage or benefits under any employee benefit plans of any Affiliate of Purchaser.

(g) Cooperation. Purchaser shall cooperate with Sellers in providing reasonable access to Continuing Employees so that such Employees may assist on an incidental basis only in the winddown of the Sellers' operation following the Closing Date, provided Sellers furnish reasonable advance notice to Purchaser of the reason and extent of such access. Sellers will cooperate with Purchaser as is reasonably requested by Purchaser in connection with extending any offers of employment to Employees. Sellers will exercise their commercially reasonable efforts to cause Persons who are to become Continuing Employees to provide Purchaser with such information as may be requested by Purchaser to enroll such Person in any benefit plan of Purchaser and to execute Purchaser's form of confidentiality agreement and acknowledgement of Purchaser's ethics policies.

ARTICLE X.

CONDITIONS TO CLOSING

10.1. Conditions Precedent to Obligations of Parent and Purchaser. The obligation of Parent and Purchaser to consummate the transactions contemplated by this Agreement is subject to the fulfillment, as of the Closing Date, of each of the following conditions (any or all of which may be waived by Parent or Purchaser in their sole discretion in whole or in part to the extent permitted by applicable Law, such waiver to be in writing signed by an executive officer of Parent or Purchaser referencing this section and the specific condition to be waived):

(a) All representations and warranties of the Sellers in this Agreement or in any exhibit, schedule or document delivered pursuant hereto shall be true, complete and correct in all respects (with respect to representations and warranties qualified or limited by materiality or Seller Material Adverse Effect) or in all material respects (with respect to representations and warranties not so qualified or limited), in each case when made (unless cured as provided in Section 4.4(e)) and as of the Closing Date as if made on the Closing Date, other than any such representations or warranties that expressly speak only as of an earlier date, which shall be true, complete and correct in all respects (with respect to representations and warranties qualified or limited by materiality or Seller Material Adverse Effect) or in all material respects (with respect to representations and warranties not so qualified or limited), as of such earlier date.

(b) All of the terms, covenants and conditions to be complied with and performed by the Sellers on or prior to the Closing Date (other than the covenants contained in Section 8.2 (a)(i), Sections 8.2(b)(iii) through (xi), Section 8.2(b)(xii) (to the extent it relates to commitments to do items covered in Sections 8.2(b)(iii) through (xi)) , Section 8.2(c), and Section 8.9(d), as to which Section 10.1(l) applies) shall have been complied with or performed in all material respects and all breaches of any such covenants in the aggregate do not result in a Seller Material Adverse Effect.

(c) Purchaser shall have received a certificate or certificates, dated as of the Closing Date, executed on behalf of the Company, by an authorized executive officer thereof, in the form of the attached Exhibit O.

(d) Any Governmental Authorities whose consent is required for consummation of the transactions contemplated hereby (other than the HSR Act as more particularly described in Section 10.3(c)) shall have issued all consents required for the transactions contemplated hereby, without any unreasonable condition or limitation.

(e) There shall not be in effect any Law or Order of any Governmental Body of competent jurisdiction restraining, enjoining or otherwise preventing consummation of the transactions contemplated by this Agreement.

(f) [Intentionally Omitted]

(g) Purchaser, in its reasonable discretion, shall be satisfied with the terms and conditions of the Ancillary Documents (with Purchaser deemed to be satisfied with Ancillary Documents with respect to which forms have been attached hereto to the extent the Ancillary Documents delivered at Closing are in the form of such attachments).

(h) The title company selected by Purchaser shall be committed to issue, at normal premium rates an ALTA Owner's Title Insurance Policy for each of the Material Owned Real Properties and an ALTA Leasehold Title Insurance Policy for each of the Leased Real Properties for which the Real Property Lease or a memorandum thereof has been placed of record (or may be placed of record in accordance with the terms of the Real Property Lease), insuring Purchaser's fee or leasehold interest, as applicable, in an amount equal to the fair market value of each of the Material Owned Real Properties and such amount as is customary for leasehold title policies with respect to the Leased Real Properties, subject only to the Permitted Exceptions, together with extended coverage over the so-called "general" exceptions, (to the extent available in the respective States where the Material Owned Real Properties and Leased Real Properties are located) and such endorsements as Purchaser may reasonably request.

(i) The amount of Current Trade Payables to be assumed by Purchaser under Section 2.3(a)(viii) shall not exceed $47,500,000 in the aggregate;

(j) Sellers shall have delivered, or caused to be delivered, to Purchaser all of the items set forth in Section 4.2;

(k) As of the Closing Date, neither Sellers nor Purchaser and its Affiliates shall have received any notice from a Governmental Body, no Order shall have been issued stating and no Governmental Body shall have taken any position in any action before the Bankruptcy Court or any other Governmental Body, asserting, that Purchaser is required under Law or otherwise to purchase any Excluded Assets or to assume any Excluded Liabilities, which notice, Order or position has not been withdrawn with prejudice or dismissed with prejudice by a Final Order of the Bankruptcy Court and/or a court of competent jurisdiction;

(l) Sellers shall have fully complied with and performed their obligations set forth in Sections 8.2(a)(i), Sections 8.2(b)(iii) through (xi), Section 8.2(b)(xii) (to the extent it relates to commitments to do items covered in Sections 8.2(b)(iii) through (xi)), Section 8.2(c) and Section 8.9(d) hereof;

(m) The amount of all obligations (other than those in respect of letters of credit issued in respect of trade payables and workers compensation obligations) outstanding under the DIP Credit Agreement shall not exceed $120,000,000, and the amount of all obligations outstanding in respect of letters of credit issued in respect of trade payables and workers compensation obligations shall not exceed $35,000,000;

(n) Assuming the accuracy of the representation set forth in Section 6.9 hereof, the Bankruptcy Court shall have determined, in the Sale Order and, if applicable, the Confirmation Order, that Aretex (i) as a First Lien Lender, shall have an allowed claim in the

face amount of $193,503,839.26, plus interest, (reduced by any payments made after the date hereof) and be entitled to not less than 39.989% of any securities or other property or assets delivered and allocated among the First Lien Lenders; and (ii) as a Second Lien Lender, shall have an allowed claim in the face amount of $84,500,000, plus interest, and be entitled to not less than 51.212% of any securities or other property or assets delivered and allocated among the Second Lien Lenders; and

(o) The Distributable Value shall have been determined by the Bankruptcy Court.

10.2. Conditions Precedent to Obligations of Sellers. The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment, as of the Closing Date, of each of the following conditions (any or all of which may be waived by Sellers in whole or in part to the extent permitted by applicable Law, such waiver to be in writing signed by an executive officer of each of the Sellers referencing this section and the specific condition to be waived):

(a) the representations and warranties of Parent and Purchaser set forth in this Agreement or in any exhibit, schedule or document required to be delivered in accordance with the terms of this Agreement shall be true, complete and correct in all respects (with respect to representations and warranties qualified or limited by materiality or Purchaser Material Adverse Effect) or in all material respects (with respect to representations and warranties not so qualified or limited), in each case as of the date hereof (unless cured as provided in Section 4.4(f)) and as of the Closing Date as if made on the Closing Date, other than any such representations or warranties that expressly speak only as of an earlier date, which shall be true, complete and correct in all respects as of such date (with respect to representations and warranties qualified or limited by materiality or Purchaser Material Adverse Effect) or in all material respects (with respect to representations and warranties not so qualified or limited), as of such earlier date;

(b) All of the terms, covenants and conditions to be complied with and performed by Purchaser on or prior to the Closing Date shall have been complied with or performed in all material respects and all breaches of any such covenants in the aggregate do not result in a Purchaser Material Adverse Effect;

(c) Purchaser shall have delivered, or Parent shall have caused to be delivered, to Sellers all of the items set forth in Section 4.3;

(d) Seller, in its reasonable discretion, shall be satisfied with the terms and conditions of the Ancillary Documents (with Seller deemed to be satisfied with Ancillary Documents with respect to which forms have been attached hereto to the extent the Ancillary Documents delivered at Closing are in the form of such attachments); and

(e) Seller shall have received a certificate or certificates, dated as of the Closing Date, executed on behalf of the Purchaser, by an authorized executive officer thereof, in the form of the attached Exhibit P.

10.3. Conditions Precedent to Obligations of Parent, Purchaser and Sellers. The respective obligations of Parent, Purchaser and Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment of each of the following conditions (any or all of which may be waived by Parent, Purchaser and Sellers in whole or in part to the extent permitted by applicable Law, such waiver to be in writing signed by an executive officer of Parent, Purchaser or the applicable Seller, referencing this section and the specific condition to be waived):

(a) there shall not be in effect any Order by a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby as of the Closing Date;

(b) the Bankruptcy Court shall have entered the Selection Order, the Sale Order and, if applicable, the Confirmation Order; and

(c) the waiting period applicable to the transactions contemplated by this Agreement under the HSR Act shall have expired or early termination shall have been granted as of the Closing Date.

10.4. Frustration of Closing Conditions. Neither Sellers nor Purchaser may rely on the failure of any condition set forth in Section 10.1, 10.2 or 10.3, as the case may be, if such failure was caused by such party's failure to comply with any provision of this Agreement.

10.5. Force Majeure. If, prior to Closing, any damage or loss to any of the Sellers properties and assets, including, without limitation, the Owned Real Properties and the Leased Real Properties, occurs due to fire, flood, riot, theft, act of God or other casualty, or by reason of condemnation, and if individually or in the aggregate the Losses associated therewith that are not covered by any insurance or condemnation awards exceeds $25,000,000 (such Loss, a "Material Property Loss"), then Purchaser may terminate this Agreement with no cost or obligation on the part of Purchaser. "Loss" means the sum of the reasonably estimated total cost necessary to repair or replace the damage or loss to any such asset, plus the amount of Lost Profits associated with such Loss minus reasonably estimated insurance recoveries or condemnation awards that will be assigned to Purchaser, all as reasonably determined by Purchaser and as set forth by Purchaser in writing to Sellers describing such calculation of Loss. "Lost Profits" means the amount of profits lost or reasonably expected to be lost in connection with the operation of the Business as a result of any damage or loss to any of the properties or assets during the period from the date of such damage or Loss to the expected date of completion of any rebuilding or replacement of such damaged property or asset, all as reasonably determined by Purchaser and as set forth by Purchaser in writing to Sellers describing such calculation of Lost Profits. Sellers shall cooperate with Purchaser and provide such information as reasonably necessary for Purchaser to determine such Lost Profits.

ARTICLE XI.

TAXES

11.1. Transfer Taxes. Purchaser shall be responsible for (and shall indemnify and hold harmless Sellers and their respective directors, officers, employees, Affiliates, agents, successors and permitted assigns (the "Indemnified Persons") against any sales, use, stamp, documentary stamp, filing, recording, transfer or similar fees or taxes or governmental charges (including any interest and penalty thereon) payable in connection with the transactions contemplated by this Agreement ("Transfer Taxes"). Sellers shall, however, seek to include (to the extent permitted under applicable Law) in the Sales Order a provision that provides that the transfer of the Purchased Assets shall be free and clear of any stamp or similar taxes under Section 1146(c) of the Bankruptcy Code. To the extent that any Transfer Taxes are required to be paid by Sellers (or such Transfer Taxes are assessed against Seller), Purchaser shall promptly reimburse Seller, as applicable, for such Transfer Taxes. Sellers and Purchaser shall cooperate and consult with each other prior to filing any Tax Returns in respect of Transfer Taxes; provided, however, Sellers may initially pay any Transfer Taxes (for which Purchaser shall promptly reimburse Sellers) and, thereafter, in reliance on Section 1146(c) of the Bankruptcy Code (if applicable) apply for a refund (which refund shall be remitted to the Purchaser to the extent such Transfer Taxes were previously reimbursed by Purchaser). Sellers and Purchaser shall cooperate and otherwise take commercially reasonable efforts to obtain any available refunds for Transfer Taxes.

11.2. Purchase Price Allocation. As soon as reasonably practicable after the Closing Date, the Purchase Price for the Purchased Assets shall be determined and allocated in accordance with a statement provided by Purchaser to Sellers (the "Asset Acquisition Statement"). The Asset Acquisition Statement as prepared by Purchaser shall be final provided the entries in the Statement are reasonable. Sellers and Purchaser shall allocate the Purchase Price among Sellers and among the Purchased Assets of each Seller as specified in the Asset Acquisition Statement. In accordance with the Asset Acquisition Statement and Section 1060 of the Tax Code and the Treasury Regulations issued thereunder, Purchaser shall prepare and file Form 8594 and any exhibits thereto and any other forms or supplements required to be filed. All income Tax Returns and reports filed by Purchaser and Sellers shall be prepared consistently with such Asset Acquisition Statement.

11.3. Tax Reporting.

(a) Purchaser shall prepare and file (or cause to be prepared and filed) on behalf of the Sellers all Tax Returns, whether related to income taxes or non-income taxes, required to be filed or that Purchaser otherwise deems appropriate, including the filing of amended Tax Returns, for all Tax periods through and including any Tax period that includes the Closing Date. Purchaser shall furnish a completed copy of any such Tax Return (including any supporting workpapers) to be filed by Purchaser to Sellers for Sellers' review at least thirty (30) days prior to the due date for filing such returns. Sellers shall have the right to raise reasonable objections to such Tax Returns. In the event that the parties are unable to resolve in good faith

any dispute prior to fifteen (15) days before the due date, the parties shall jointly request that an independent accountant mutually agreed upon by Sellers and Purchaser (the "Referee") to resolve any dispute as promptly as possible; provided, however, that Purchaser's position shall prevail provided such position is reasonable. If the Referee is unable to make a determination with respect to a disputed issue prior to the date which is five (5) days prior to the due date for the filing of the Tax Return in question, then Purchaser may file such Tax Return on the due date therefor without such determination having been made and without Sellers' consent. Notwithstanding the filing of such Tax Return, the Referee shall make a determination with respect to the disputed issue in accordance with this Section 11.3. All fees and expenses of the Referee shall be paid by Purchaser.

(b) Purchaser shall pay, and indemnify and hold harmless Sellers and the Indemnified Persons against, all Taxes of the Sellers included in the Assumed Liabilities. Sellers shall indemnify and hold harmless Purchaser against, all Taxes of Sellers that are included in Excluded Liabilities pursuant to Section 2.4(g).

11.4. Cooperation and Audits. Purchaser, its affiliates and the Sellers shall cooperate fully with each other regarding Tax matters (including the execution of appropriate powers of attorney) and shall make available to the other as reasonably requested all information, records and documents relating to Taxes governed by this Agreement until the expiration of the applicable statute of limitations or extension thereof or the conclusion of all audits, appeals or litigation with respect to such Taxes. Each of the Sellers shall deliver to the Purchaser any written notices, information, documents or records received from any Tax Authority for taxable periods prior to the Closing Date, within five (5) days of receipt of such notices, information, documents or records. Without limiting the generality of the foregoing, the Sellers shall execute on or prior to the Closing Date a power of attorney authorizing Purchaser to correspond, sign, collect, negotiate, settle and administer all Tax payments and Tax Returns.

ARTICLE XII.

MISCELLANEOUS

12.1. No Survival of Representations and Warranties. The parties hereto agree that the representations and warranties contained in this Agreement shall not survive the Closing hereunder, and none of the parties shall have any liability to each other after the Closing for any breach thereof. The parties hereto agree that the covenants contained in this Agreement to be performed at or after the Closing shall survive the Closing hereunder, and each party hereto shall be liable to the other after the Closing for any breach thereof.

12.2. Expenses. Except as otherwise provided in this Agreement, each of Sellers, Parent and Purchaser shall bear its own expenses incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby; provided, that Purchaser shall pay all filing fees with respect to the HSR Act payable in connection with this Agreement.

12.3. Injunctive Relief. Damages at law may be an inadequate remedy for the breach of any of the covenants, promises and agreements contained in this Agreement, and, accordingly, any party hereto shall be entitled to injunctive relief, without the requirement to post any bond, with respect to any such breach, including specific performance of such covenants, promises or agreements or an order enjoining a party from any threatened, or from the continuation of any actual, breach of the covenants, promises or agreements contained in this Agreement; provided, however, Sellers shall not be entitled to any injunctive relief or other equitable remedy for any reason until after the Closing has occurred. Subject to the limitations in the preceding proviso and in Section 12.4, the rights set forth in this Section 12.3 shall be in addition to any other rights which a party hereto may have at law or in equity or pursuant to this Agreement.

12.4. Exclusive Remedy. The parties hereto agree that prior to the Closing, the right, if any, to receive the Deposit Amount pursuant to Section 3.2 shall be the sole and exclusive remedy that Sellers have against Purchaser for any claim or action or liability arising out of or related to this Agreement or the Ancillary Documents or any termination of this Agreement. Such payment of the Deposit Amount shall be liquidated damages and Sellers and Purchaser agree in advance that actual damages would be difficult to ascertain and that the amount of such liquidated damages is a fair and equitable amount to reimburse Sellers, as applicable, for damages sustained by them prior to Closing.

12.5. Submission to Jurisdiction; Consent to Service of Process.

(a) Without limiting any party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 12.9 hereof; provided, however, that if the Bankruptcy Case has closed, the parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York sitting in New York County or the Commercial Division, Civil Branch of the Supreme Court of the State of New York sitting in New York County and any appellate court from any thereof, for the resolution of any such claim or dispute. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(b) Each of the parties hereto hereby consents to process being served by any party to this Agreement in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 12.9.

12.6. Waiver of Right to Trial by Jury. Each party to this Agreement waives any right to trial by jury in any action, matter or proceeding regarding this Agreement or any provision hereof.

12.7. Entire Agreement; Amendments and Waivers. This Agreement (including the schedules and exhibits hereto) represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

12.8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and performed in such State without regard to the conflict of laws principles thereof.

12.9. Notices. Except as specifically contemplated by or permitted in Section 8.1(c), all notices and other communications under this Agreement shall be in writing and shall be deemed given (i) when delivered personally by hand (with written confirmation of receipt), (ii) when sent by facsimile (with written confirmation of transmission) or (iii) one business day following the day sent by overnight courier (with written confirmation of receipt), in each case at the following addresses and facsimile numbers (or to such other address or facsimile number as a party may have specified by notice given to the other party pursuant to this provision):

If to Sellers, to:

WestPoint Stevens Inc.
507 W. 10th Street
West Point, GA 31833
Facsimile: (706) 645-4396
Attention: General Counsel
Email: humphries.clay@wpstv.com

With a copy (which shall not constitute notice) to:

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Facsimile: (212) 310-8007
Attention: Ted S. Waksman, Esq.
Michael F. Walsh, Esq.

If to Purchaser or Parent, to:

Textile Co., Inc.
WS Textile Co., Inc.
100 South Bedford Road
Mt. Kisco, New York 10549
Facsimile: (914) 242-9282
Attention: Felicia Buebel, Esq.

With a copy to:

Sonnenschein Nath & Rosenthal LLP
1221 Avenue of the Americas
New York, NY 10020-1089
Facsimile: (212) 768-6800
Attention: Peter D. Wolfson, Esq.

12.10. Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any law or public policy, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

12.11. Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement (other than AREH pursuant to Section 8.9), including any Person who is party to, or benefits from the assumption of, any Assumed Liability. No assignment of this Agreement or of any rights or obligations hereunder may be made by either Sellers, Parent or Purchaser (by operation of law or otherwise) without the prior written consent of the other parties hereto and any attempted assignment without the required consents

shall be void; provided, however, that Purchaser may, prior to Closing, designate any one or more of its Affiliates to purchase, and transfer to any Affiliate, its rights under this Agreement to purchase, any Purchased Asset. No assignment of any obligations hereunder shall relieve the parties hereto of any such obligations. Upon any permitted assignment, the references in this Agreement to Sellers, Parent or Purchaser shall also apply to any such assignee unless the context otherwise requires. Nothing herein shall prevent Parent, Purchaser or their permitted assignees from assigning this Agreement or any rights or obligations hereunder or transferring any Purchased Assets to any Person after the Closing Date.

12.12. Non-Recourse. Except for fraud, no past, present or future director, officer, employee, incorporator, member, partner or equityholder of Sellers, Parent or Purchaser or their Affiliates shall have any liability for the respective obligations or liabilities of such Person under this Agreement or any agreement entered into in connection herewith or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby and thereby.

12.13. Publicity. Prior to the Closing, none of the Purchasers, Parent or Sellers shall issue, and after the Closing, none of Sellers shall issue, any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other party, which approval will not be unreasonably withheld or delayed, unless, in the reasonable judgment of the party intending to issue such release, disclosure is otherwise required by applicable Law, or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement, provided the party intending to issue such release shall use its commercially reasonable efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other party with respect to the text thereof.

12.14. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written above.

WS TEXTILE CO., INC.

By: _____
Name: Jon Z. Weber
Title:

TEXTILE CO., INC.

By: _____
Name: Jon Z. Weber
Title:

NEW TEXTILE ONE, INC.

By: _____
Name: Jon Z. Weber
Title:

NEW TEXTILE TWO, INC.

By: _____
Name: Jon Z. Weber
Title:

SELLERS:

WESTPOINT STEVENS INC.

By: M. L. Fontenot
Name: M.L. "Chip" Fontenot
Title: President and Chief Executive Officer

WESTPOINT STEVENS INC. I

By: Lester D. Sears
Name: Lester D. Sears
Title: President

WESTPOINT STEVENS STORES INC.

By: Lester D. Sears
Name: Lester D. Sears
Title: Vice President

J.P. STEVENS ENTERPRISES, INC.

By: Lester D. Sears
Name: Lester D. Sears
Title: President

WESTPOINT HOME, INC.

August 1, 2005

WestPoint Stevens Inc.
507 W. 10th Street
West Point, GA 31833
Attn: General Counsel
Facsimile: (706) 645-4396
Email: humphries.clay@wpstv.com

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Attn: Ted S. Waksman, Esq. (ted.waksman@weil.com)
Michael F. Walsh, Esq. (michael.walsh@weil.com)
Facsimile: (212) 310-8007

Ladies and Gentlemen:

Reference is made to the Asset Purchase Agreement dated as of June 23, 2005 by and among WS Textile Co., Inc (n/k/a WestPoint International, Inc.), New Textile One, Inc. (n/k/a WP One, Inc.), New Textile Two, Inc. (n/k/a WP Two, Inc.), Textile Co., Inc.(n/k/a WestPoint Home, Inc.), WestPoint Stevens Inc., WestPoint Stevens Inc. I, WestPoint Stevens Stores Inc., and J.P. Stevens Enterprises, Inc. (the "APA"). Capitalized terms used and not otherwise defined herein shall have the meanings as defined in the APA.

1. Pursuant to Sections 2.1(b) and 2.1(c) of the APA, Purchaser hereby designates the following as Purchased Assets:

A. The Owned Real Properties as set forth on Exhibit A hereto;

B. All rights of Sellers under the Real Property Leases as described on Exhibit B hereto;

C. All rights of Sellers under or relating to the Intellectual Property Licenses described on Exhibit C hereto, in each case to the extent assignable as provided in Section 2.1(b)(ix) of the APA;

D. All rights of Sellers under or relating to the Contracts (other than Contracts referred to in Sections 2.1(b)(vi), 2.1(b)(ix) and 2.1(b)(xiv) of the APA) described on Exhibit D hereto, to the extent assignable as provided in Section 2.1(b)(x) of the APA;

2. Pursuant to Sections 2.1(c) of the APA, Purchaser hereby designates as Excluded Assets the items described on Exhibit E hereto.

WestPoint Home, Inc. (f/k/a Textile Co. Inc.)

By: Jon J. Weba
by

EXHIBIT A

OWNED REAL PROPERTY

PROPERTY DESIGNATED AS "ACCEPT" ARE "PURCHASED ASSETS"

"MATERIAL" OWNED REAL PROPERTY

Name of Real Property	Owner of Real Property	Street Address	Open/Closed	Accept/ Reject
Abbeville Plant	WestPoint Stevens Inc.	268 State Hwy 27 Abbeville, AL 36310	Open	Accept
Fairfax Mill (a/k/a Fairfax Greige)	WestPoint Stevens Inc.	201 Boulevard, Valley, AL 36854	Closed, except for one open yarn-dying department	Accept
Fairfax Finishing Plant	WestPoint Stevens Inc.	1016 Martex Avenue Valley, AL 36854	Open	Accept
Towel Operations Building	WestPoint Stevens Inc.	1001 Towel Ave. Valley, AL 36854	Open	Accept
Cotton Department	WestPoint Stevens Inc.	401 Towel Ave. Valley, AL 36854	Open	Accept
Fairfax Distribution	WestPoint Stevens Inc.	1135 Towel Avenue Valley, AL 36854	Open	Accept
Fairfax Fabricating	WestPoint Stevens Inc.	1055 Towel Avenue Valley, AL 36854	Open	Accept
Fairview Manufacturing Plant (including Fairview Camp)	WestPoint Stevens Inc.	1050 Fairview Avenue Valley, AL 36854	Open	Accept
Greenville Plant	WestPoint Stevens Inc.	591 Glendale Rd. Greenville, AL 36037	Open	Accept
Opelika Mill	WestPoint Stevens Inc.	2401 First Ave. Opelika, AL 36801	Open	Accept
Opelika Finishing Plant	WestPoint Stevens Inc.	2401-B First Ave. Opelika, AL 36801	Open	Accept
Opelika Water Filter Plant	WestPoint Stevens Inc.	2810 Pepperell Parkway Opelika, AL 36801	Open	Accept
Grifftex Chemicals	WestPoint Stevens Inc.	1900 Cunningham Drive Opelika, AL 36801	Open	Accept
Opelika Excess Land and Residential Lots	WestPoint Stevens Inc.	North and West of Grifftex Chemicals		Accept
Riverdale Mill	WestPoint Stevens Inc.	50 Middle Street Valley, AL 36854	Closed	Reject
Lanier/Carter Mill	WestPoint Stevens Inc.	525 Fob James Drive Valley, AL 36854	Open	Accept
Valley Mill Store	WestPoint Stevens Inc.	523 Fob James Drive Valley, AL 36854	Open	Accept
Transportation Center	WestPoint Stevens Inc.	6211 Fairfax ByPass Valley, AL 36854	Open	Accept

Name of Real Property	Owner of Real Property	Street Address	Open/Closed	Accept/ Reject
Engineering and Environmental Building (including parking lot behind E&E Building)	WestPoint Stevens Inc.	3300 23rd Drive Valley, AL 36854	Open	Accept
Lakeview Camp (including portion of vacated Combs Road)	WestPoint Stevens Inc.	Behind Lanier and Carter Mills, Valley, AL	Open	Accept
Lanett Mill	WestPoint Stevens Inc.	401 Gilmer Avenue Lanett, AL 36863	Open	Accept
Chipley Plant	WestPoint Stevens Inc.	1056 Commerce Avenue, Chipley, FL 32428	Open	Accept
Dixie Mill	WestPoint Stevens Inc.	710 Greenville Street LaGrange, GA 30240	Closed, but used for storage	Accept
Dunson Mill	WestPoint Stevens Inc.	101 Fulton St. LaGrange, GA 30240	Closed, but used for storage in warehouse	Accept
Corporate Office (including parking lot across street)	WestPoint Stevens Inc.	507 West 10th St. West Point, GA 31833	Open	Accept
WestPoint Stevens Graphics Building (including parking lot)	WestPoint Stevens Inc.	901 Third Avenue West Point, GA 31833	Open	Accept
Records Center Building	WestPoint Stevens Inc.	420 W. 7th Street West Point, GA 31833	Open	Accept
Corporate Data Processing (or IT Building)	WestPoint Stevens Inc.	413 W. 10th St. West Point, GA 31833	Open	Accept
Liebhardt Office	WestPoint Stevens Inc.	9100 S. County Road 800W, Daleville, IN 47334	Closed	Accept
Middletown Plant	WestPoint Stevens Inc.	8984 W. St. Rd. 236 Middletown, IN 47356	Closed	Accept
Biddeford Mill	WestPoint Stevens Inc.	1 York Street Biddeford, ME 04005	Open	Accept

Name of Real Property	Owner of Real Property	Street Address	Open/Closed	Accept/ Reject
Pepperell Lodge	WestPoint Stevens Inc.	14 Marston Rd. Windham, ME 04062	Open	Accept
Lumberton Mill Store	WestPoint Stevens Inc.	3501 Lackey St. Lumberton, NC 28358	Open	Accept
Alamance Center (including truck terminal)	WestPoint Stevens Inc.	2516 Industry Drive Burlington, NC 27215	Closed	Accept
Longview Plant	WestPoint Stevens Inc.	3000 Second Avenue, NW Hickory, NC 28601	Closed -*Sale Pending*	Accept
Wagram Complex-Scotland Greige	WestPoint Stevens Inc.	19320 Air Base Road Wagram, NC 28396	Open	Accept
Wagram Complex-Bob Stevens Finishing, Fabrication and Distribution	WestPoint Stevens Inc.	19320 Air Base Road Wagram, NC 28396	Open	Accept
Calhoun Falls Plant	WestPoint Stevens Inc.	Main Street Calhoun Falls, SC 29628	Open	Accept
Clemson Complex (includes Greige, Fabricating, Finishing and Distribution)	WestPoint Stevens Inc.	500 West Cherry Road Seneca, SC 29631	Partially Closed	Accept
Drakes Branch Plant (including excess land and residential lots)	WestPoint Stevens Inc.	635 WestPoint Stevens Road, Drakes Branch, VA 23937	Closed	Accept

"IMMATERIAL" OWNED REAL PROPERTY

Description	Owner of Real Property	Location/Tax Parcel ID Number	Accept/Reject
Lot 32A, Block 7 - vacant lot across 10th Street SE from Lanett Mill	West Point Pepperell, Inc. (according to tax records)	Lanett, Chambers County, Alabama Tax Parcel Number: 12-10-07-36-1-002-001.000	Reject
Vacant Land across the street from Engineering Building	West Point Pepperell, Inc. (according to tax records)	Valley, Chambers County, Alabama Tax Parcel Number: 12-17-01-01-4-001-001.000	Reject
Parking lot across the street from the Engineering Building	West Point Pepperell, Inc. (according to tax records)	Valley, Chambers County, Alabama Tax Parcel Number: 12-17-01-01-4-001-004.000	Accept (will be included with conveyance of Environmental and Engineering Building)
7 ½ foot wide strip of land (one-half of vacated Combs Road), behind Lagoon, next to Lanier/Carter Mill	West Point Pepperell, Inc. (according to tax records)	Valley, Chambers County, Alabama Tax Parcel Number: 12-17-05-22-0-001-007.000	Accept (will be included with the conveyance of Lakeview Camp)
20 ft x 20 ft lot on Maple Street and Fairfax Bypass	West Point Pepperell, Inc. (according to tax records)	Chambers County, Alabama Tax Parcel Number: 12-17-06-24--2-003-001.000	Reject
Strip of land by Church	West Point Pepperell, Inc. (according to tax records)	Chambers County, Alabama Tax Parcel Number: 12-17-06-24-4-001-023.000	Reject
Substation land by Bos House	West Point Pepperell, Inc. (according to tax records)	Chambers County, Alabama Tax Parcel Number: 12-18-03-07-4-006-018.000	Reject
Tract of Land at the end of "Rails to Trails", on the west side of the trail and road- Riverview	West Point Pepperell, Inc. (according to tax records)	Chambers County, Alabama Tax Parcel Number: 12-18-04-020-04-001-010.000	Reject
Reservoir	West Point Pepperell, Inc. (according to tax records)	Chambers County, Alabama Tax Parcel Number: 12-18-05-21-3-001-017.000	Reject
Tract west of Riverview Trail, north of Myhand Street	West Point Pepperell, Inc. (according to tax records)	Chambers County, Alabama Tax Parcel Number: 12-18-08-28-2-003-101.000	Reject
Tract east of Riverview Trail, south of road	West Point Pepperell, Inc. (according to tax records)	Chambers County, Alabama Tax Parcel Number: 12-18-08-28-2-003-010.004	Reject

Description	Owner of Real Property	Location/Tax Parcel ID Number	Accept/Reject
Tract west of Riverview Trail, south of road	West Point Pepperell, Inc. (according to tax records)	Chambers County, Alabama Tax Parcel Number: 12-18-09-29-1-001-004.000	Reject
Tract east of Riverview Trail, south of road	West Point Pepperell, Inc. (according to tax records)	Chambers County, Alabama Tax Parcel Number: 12-18-09-29-1-002-001.000	Reject
Tract east of Riverview Trail, south of road	West Point Pepperell, Inc. (according to tax records)	Chambers County, Alabama Tax Parcel Number: 12-18-09-30-1-003-020.000	Reject
Triangle of Land	WestPoint Stevens Inc.	Opelika, Lee County, Alabama Tax Parcel Number: 43053-09-06-14-4-000-064.004	Reject
.1 acre parcel	WestPoint Stevens Inc.	Greenville County, South Carolina Tax Parcel Number:0610.06-01.022.00	Reject
.1 acre strip of land next to Lot 142	WestPoint Stevens Inc.	Greenville County, South Carolina Tax Parcel Number: 0616.02-01-092.00	Reject
.4 acre strip of land next to Highway 20	WestPoint Stevens Inc.	Greenville County, South Carolina Tax Parcel Number: 0616.02-01-094.00	Reject
.1 acre parcel on Mill Street	WestPoint Stevens Inc.	Greenville County, South Carolina Tax Parcel Number: 0616.03-01-152.00	Reject
.1 acre, 4 foot sidewalk parcel	WestPoint Stevens Inc.	Greenville County, South Carolina Tax Parcel Number: 0616.03-01-154.00	Reject
.3 acre parcel	WestPoint Stevens Inc.	Greenville County, South Carolina Tax Parcel Number: 0616.03-01-158.00	Reject
.1 acre parcel on Point Street	WestPoint Stevens Inc.	Greenville County, South Carolina Tax Parcel Number: 0616.03-01-159.00	Reject
.3 acre parcel	WestPoint Stevens Inc.	Greenville County, South Carolina Tax Parcel Number: 0616.04-01-064.00	Reject

Description	Owner of Real Property	Location/Tax Parcel ID Number	Accept/Reject
.2 acre abandoned railroad parcel	WestPoint Stevens Inc.	Greenville County, South Carolina Tax Parcel Number: 0616.04-01-067.00	Reject
2.4 acre parcel off Pine Bluff	WestPoint Stevens Inc.	Greenville County, South Carolina Tax Parcel Number: 0616.05-01-015.00	Reject
Grove Road parcel	WestPoint Stevens Inc.	Greenville County, South Carolina Tax Parcel Number: WG06.01-01-018.00	Reject
"Riverdale Portion"	WestPoint Stevens Inc.	Harris County, Georgia Tax Parcel Number: 004 002	Reject
Lot 290 Utica Homes -- .23 acres	WestPoint Stevens Inc.	Oconee County, South Carolina Tax Parcel Number: 240-02-16-001	Reject
MVM Main Plant -- .2470 acres	WestPoint Stevens Inc.	Comal County, Texas Tax Parcel Number: 37477	Reject

EXHIBIT B

REAL PROPERTY LEASES

LEASES DESIGNATED AS "YES" UNDER "ACCEPTANCE" ARE "PURCHASED ASSETS"; provided, that the lease between WestPoint Stevens, Inc. (Landlord) and Evantage (Tenant) in Wagram, NC will be a Purchased Asset only if Purchaser or its subsidiary does not purchase the Steam Facility located thereon from Evantage simultaneously with the Closing.

WESTPOINT STEVENS

REAL ESTATE LEASES

Leased Premises	Parties	Use	Acceptance (Yes, No)
WESTPOINT STEVENS INC. AS TENANT			
Bellevue, WA 682 square feet at Hidden Valley Office Park, 1750 112th Avenue, N.E. Bellevue Washington, Suite D-161	Hidden Valley Equities, LLC, as successor-in-interest to ASA Properties, Inc. **(Landlord)** and WestPoint Stevens **(Tenant)**	Sales Office/general office purposes (administrative, sales, marketing)	Yes
Chipley, FL 50,000 square foot building located in the Chipley Industrial Park	City of Chipley **(Landlord)** and WestPoint Stevens, Inc. **(Tenant)**	Warehouse/manufacturing of textile products	Yes
Chipley, FL County of Washington, Highway 90 East Florida	Coggin Properties, Inc. **(Landlord)** and WestPoint Stevens, Inc. **(Tenant)**	Retail mill outlet for textile products	Yes
Clemson, SC 24,263 rentable square feet on 1-4th floors of the Clemson Centre, 391 College Avenue, Clemson, SC. Also includes parking for 140 spaces in attached parking garage and surface lots within one block of Clemson Centre, available to Tenant 7 AM to 6PM, M-F.	Clemson Downtown Properties LLC **(Landlord)** and WestPoint Stevens, Inc. **(Tenant)**	General and administrative office and related supporting purposes	Yes
Columbia, AL 42,680 square feet. Premises described in Legal Description in Exhibit A. There is no Exhibit A attached. - 101 West North Street, Columbia, AL 36319	HouseCalls International, Inc. **(Landlord)** and WestPoint Stevens Inc. **(Tenant)**	Manufacture or storage of textile products and general office purposes	Yes
Columbia, AL 26,000 square feet, located at	The City of Columbia **(Lessor)** and WestPoint Stevens,	Manufacture or storage of textile products and general office purposes	Yes

WESTPOINT STEVENS
REAL ESTATE LEASES

Leased Premises	Parties	Use	Acceptance (Yes, No)
101 West North Street	Inc. **(Lessee)**		
Elkin, NC ("Chatham Plant") Surry County	CMI Industries, Inc. **(Landlord)** and WestPoint Stevens, Inc. **(Tenant)**	Fiberwoven Blanket Plant	Yes
Elkin, NC ("Chatham Distribution Center") 170,720 square feet located at Brendle's Distribution Center at Highway 21 and Poplar Springs Road	P.B. Realty, Inc. **(Landlord)** and WestPoint Stevens, Inc. **(Tenant)**	Warehouse	Yes
Greenville, AL Approximately 14,000 square feet at 200 West Commerce Street, Greenville, AL	Earnest Dean **(Landlord)** and WestPoint Stevens **(Tenant)**	Retail mill outlet for textile products	Yes
Greenville, AL (SUBLEASE) 86,000 square feet at 300 Industrial Parkway	The Industrial Development Board of the City of Greenville **(Landlord)** and West Point Stevens, as successor-in-interest to Liebhardt, Inc. **(Tenant)**	Manufacturing facility	Yes
Greenville, AL (SUBLEASE) 100 Pleasant Hill Court, Suite B	Wm. T. Burnett & Co. **(Tenant)** and Butler County Industrial Development Authority **(Landlord)** Wm. T. Burnett & Co. **(Sub Landlord)** and WestPoint Stevens **(Sub Tenant)**	Manufacturing and warehousing products	Yes
Jing'An District, Shanghai 387 square meters, 2309-10A, 1038 Nanjing Road, Jing'An District, Shanghai	Shanghai Westgate Mall Co. Ltd. **(Landlord)** and WestPoint Stevens, Inc. **(Tenant)**	Office Use	Yes
LaGrange, GA (LaGrange-Callaway Airport)	Troup County Airport Authority **(Landlord)** and WestPoint Stevens Inc. **(Tenant)**	Airport Parkway and Storage	Yes

WESTPOINT STEVENS
REAL ESTATE LEASES

Leased Premises	Parties	Use	Acceptance (Yes, No)
Las Vegas, NV (SUBLEASE)	Wilmington Trust SP Services (Nevada), Inc., f/k/a Nevada Corporate Management, Inc. and WestPoint Stevens Inc. I	General Office	Yes
Las Vegas, NV (SUBLEASE)	Wilmington Trust SP Services (Nevada), Inc., f/k/a Nevada Corporate Management, Inc. and J.P. Stevens Enterprises, Inc.	General Office	No
Marianna, FL 259,271 square feet at 3521 Russell Road, Marianna, Florida	Arquette Development Corp **(Landlord)** and WestPoint Stevens Inc **(Tenant)**	Warehouse Facility	Yes
Middletown, IN Parking Lot	James M. Liebhardt **(Landlord)** and WestPoint Stevens, Inc. as successor-in-interest to Liebhardt Inc. **(Tenant)**	Parking Lot	No
Minneapolis, MN 1,490 square feet located at the Plymouth Building, Suite 530, Minneapolis, Minnesota	Historic Plymouth Building, LLC, as successor-in-interest to JEA Plymouth Corporation **(Landlord)** and WestPoint Stevens, Inc. **(Tenant)**	Sales Office - general office purposes	Yes
Mississauga, Ontario, Canada 6150 McLaughlin Road, Mississauga, Ontario, Canada	Orlando Corporation **(Landlord)**, Stevron Holdings Limited **(Trustee)** and WestPoint Stevens (Canada) Ltd. **(Tenant)** **SUBLEASED** WestPoint Stevens (Canada) Ltd. **(Sub-Landlord)** and Associated Logistics	Warehouse/Sales Office	No *Per Weil, not listed in 5/23 disclosure schedules as Canadian assets are excluded.*

WESTPOINT STEVENS
REAL ESTATE LEASES

Leased Premises	Parties	Use	Acceptance (Yes, No)
	Solutions Inc. **(Sub-Tenant)**		
Mississauga, Ontario, Canada 5800 Avebury Road, Unit #3, Mississauga, Ontario Canada	Orlando Corporation **(Landlord)** and WestPoint Stevens (Canada) Ltd. **(Tenant)** **SUBLEASED** WestPoint Stevens (Canada) Ltd. **(Sub-Landlord)**, Orlando Corporation **(Landlord)** and United Furniture Warehouse LP **(Sub-Tenant)**	Warehouse	No *Per Weil, not listed in 5/23 disclosure schedules as Canadian assets are excluded.*
New York, NY Longacre House #21B 305 W. 50th Street	ExecuStay Corporation **(Landlord)** and WestPoint Stevens **(Tenant)**	Residential	Yes
New York, NY 1185 Avenue of the Americas, Floors 9-13, 15, Lobby, Basement and Sub-Basement	Reckson 1185 Avenue of the Americas, LLC, successor-in-interest to Fisher Brothers 74th Co. **(Landlord)** and WestPoint Stevens, Inc., successor-in-interest to J.P. Stevens & Co., Inc. **(Tenant)**	Sales Office	Yes
Plano, TX 5,618 square feet located at Granite Park Two, 5700 Granite Parkway, Suite 360, Plano Texas, 75024	Granite Park II, Ltd. **(Landlord)** and WestPoint Stevens, Inc. **(Tenant)**	General Office and showroom use	Yes
Rogers, AK - 5430 Walsh Lane, Suite 300	Stoneybrook Creeks, LLC **(Landlord)** and West Point Stevens **(Tenant)**	Sales Office	Yes
Roswell, GA 1,690 square feet at 11111	Howard Garrett & Company, a.k.a., Dominion Court Office	Sales Office - general office purposes	Yes

WESTPOINT STEVENS
REAL ESTATE LEASES

Leased Premises	Parties	Use	Acceptance (Yes, No)
Houze Road, Suite 330, Roswell Georgia 30076	Complex **(Landlord)** and WestPoint Stevens, Inc. **(Tenant)**		
Santa Fe, CA 1,623 square feet located at 10330 Pioneer Boulevard, Suite 160, Santa Fe, California	Town Center Associates **(Landlord)** and WestPoint Stevens, Inc. **(Tenant)**	Sales Office - general office use	Yes
Sparks, NV 162,600 square feet at 45 Vista Boulevard, Sparks, Nevada 89434	Dermody Industrial Group **(Landlord)** and WestPoint Stevens, Inc. **(Tenant)**	Bedding manufacturing and distribution	No *Facility closed-turned over to broker for sublease.*
West Point, GA Lots 1 and 2 of Block 10, Lots used as Parking Lot	George D. Webb, Jr. as successor-in-interest to Martha Hill Webb **(Landlord)** and West Point - Pepperell, Inc. **(Tenant)**	Parking Lot	Yes
WESTPOINT STEVENS INC. AS LANDLORD			
LaGrange, GA 6,300 sf in Dixie Commerce Center, and use of parking spaces	West Point-Pepperell, Inc. **(Lessor)** and J. David Boykin **(Lessee)**	Garage for automobile repair and related purposes	Yes
LaGrange, GA Whorton (Dixie) Field	WestPoint Stevens Inc. **(Lessor)** and City of LaGrange, Georgia **(Lessee)**	Athletic and recreational activities sponsored, approved by or conducted under the auspices of the City.	Yes
Opelika, AL 10.5 acres along Pepperell Parkway and North 30th Street	WestPoint-Pepperell, Inc. **(Lessor)** and City of Opelika, AL **(Lessee)**	Dixie Youth League baseball activity and other approved athletic and recreational activities.	Yes
Wagram, NC 2.0 acres, together with rights of ingress and egress and utility easements	WestPoint Stevens Inc. **(Landlord)** and Evantage **(Tenant)**	Steam Generation Plant	Yes *WPS is in the process of purchasing the steam generation plant from Evantage.*
West Point, GA	WestPoint Stevens Inc. **(Lessor)** and River City Ventures, Ltd.	6 parking spaces in lot used by Graphics	Yes

WESTPOINT STEVENS
REAL ESTATE LEASES

Leased Premises	Parties	Use	Acceptance (Yes, No)
	(Lessee)	Building	
WESTPOINT STEVENS STORES INC. AS TENANT:			
Albertville, MN Approx. 10,000 s.f. at Minneapolis Outlet Center	Albertville Factory Outlets, L.L.C. **(Landlord)** and WestPoint Stevens Stores, Inc. d/b/a/ WestPoint Stevens Bed, Bath & Linens Factory Outlet **(Tenant)**	Retail Outlet Store	Yes
Allen, TX Allen Premium Outlets, Unit 210 (*note: Commencement Date Agreement indicates Unit 470*), 12,580 sf of Floor Space & satellite dish space	Chelsea Allen Development, L.P. **(Landlord)** and Westpoint Stevens Stores Inc. **(Tenant)**	Retail Outlet Store	Yes
Birch Run, MI Manufacturer's Marketplace Parcel "2", approx. 12,500 sf	Birch Run Outlets II, L.L.C., as successor to Birch Run Commons II Limited Partnership **(Landlord)** and Westpoint Stevens Stores, Inc., as successor to Westpoint Pepperell Stores, Inc. d/b/a WestPoint Pepperell Bed, Bath and Linens Factory Outlet **(Tenant)**	Retail Outlet Store	Yes
Boaz, AL Approx. 17,000 sf in Building 6, 400 Elizabeth Street at Boaz Outlet Center	CTE Investments, L.L.C. (successor to Retail Developers, Ltd.) **(Landlord)** and Westpoint Stevens Stores Inc. (f/k/a Westpoint Pepperell Stores, Inc.) **(Tenant)**	Retail Outlet Store	Yes
Burlington, NC Burlington Manufactures Outlet Center, Bay #8-5, 22,500 sf	I.R.E. BMOC, Inc. **(Landlord)** and WestPoint Stevens Stores, Inc. (f/k/a Westpoint Pepperell Stores, Inc.) **(Tenant)**	Retail Outlet Store	Yes
Cabazon, CA Desert Hills Premium Outlets, Unit 116, approx. 14,422 sf	CPG Partners, L.P. **(Landlord)** and WestPoint Stevens Stores Inc. **(Tenant)**	Retail Outlet Store	Yes

WESTPOINT STEVENS
REAL ESTATE LEASES

Leased Premises	Parties	Use	Acceptance (Yes, No)
Camarillo, CA Unit 844, 9,544 sf Camarillo Premium Outlets Shopping Center	CPG Partners, L.P. **(Landlord)** and WestPoint Stevens Stores, Inc. **(Tenant)**	Retail Outlet Store	Yes
Central Valley (Woodbury), NY 8,840 sf, Unit A-7, Woodbury Common Premium Outlets Addition (Note: 2nd Am references Unit 660)	Chelsea GCA Realty Partnership, L.P. (successor - in-interest to Woodbury Common Partners) **(Landlord)** and Westpoint Stevens Stores, Inc. (f/k/a Westpoint Pepperell Stores, Inc.) **(Tenant)**	Retail Outlet Store	Yes
Clinton, CT 10,497 s.f., Unit 195, Clinton Crossing Premium Outlets	CPG Partners, L.P. (successor-in-interest to Chelsea GCA Realty Partnership, L.P.) **(Landlord)** and Westpoint Stevens Stores, Inc. d/b/a WestPoint Stevens Bed, Bath & Linens **(Tenant)**	Retail Outlet Store	Yes
Columbus, GA 23,520 sf [original lease says 23,230 sf), 6499 Veterans Parkway	Corporate Services Inc NW **(Landlord)** and WestPoint Stevens Stores Inc. **(Tenant)**	Retail Outlet Store	Yes
Commerce, GA 11,500 sf, Suite 410, Tanger Outlet Center	Tanger Properties Limited Partnership **(Landlord)** and Westpoint Stevens Stores, Inc. **(Tenant)**	Retail Outlet Store	Yes
Dalton, GA Suite 22, 1001 Market St., The Dalton Factory Stores Plaza, 29,230 sf NW, 24,280 sf SW	Dalton Outlet Center, LLC, as successor-in-interest to Timothy T. Hogan and Edward G. Johnson **(Landlord)** and West Point Stevens Store, Inc., successor-in-interest to Westpoint Pepperell Stores, Inc. **(Tenant)**	Retail Outlet Store	Yes
Dawsonville, GA Unit 615 and Unit 600, 15,062 sf, North Georgia Factory Outlets Shopping Center	Chelsea GCA Realty Partnership, L.P. **(Landlord)** and Westpoint Steven Stores, Inc. **(Tenant)**	Retail Outlet Store	Yes

WESTPOINT STEVENS
REAL ESTATE LEASES

Leased Premises	Parties	Use	Acceptance (Yes, No)
Destin, FL Space #154, Silver Sands Factory Stores, 10746 Emerald Coast Parkway West, 12,000 sf	Silver Sands Joint Venture Partners II **(Landlord)** and Westpoint Stevens Stores, Inc. **(Tenant)**	Retail Outlet Store	Yes
Edinburgh, IN Unit I100, 10,000 sf, Edinburgh Premium Outlets, Edinburgh, IN	CPG Partners, L.P. **(Landlord)** and WestPoint Stevens Stores, Inc. **(Tenant)**	Retail Outlet Store	Yes
Ellenton, FL 10,000 sf at Ellenton Retail Center, 2215 60th Avenue E	Nathan Benderson, Randall Benderson and David H. Baldauf, Trustees under that Trust Agreement dated 12/29/95 known as The Ronald Benderson 1995 Trust, and WR-I Associates, Ltd., as Tenants in common **(Landlord)** and WestPoint Stevens Stores, Inc. **(Tenant)**	Retail Outlet Store	Yes
Fairburn, GA 200,500 sf located at 7405 Graham Road, Unincorporated Fulton County, Georgia	Gateway Central Properties, successor-in-interest to Graham Road Joint Venture **(Landlord)** and WestPoint Stevens Stores, Inc., successor-in-interest to WestPoint Pepperell Stores, Inc. **(Tenant)**	Office, warehouse, distribution and ancillary retail outlet use	Yes
Foley, AL 29,321 sf (initially 34,321 sf), Riviera Centre Factory Stores	Charter Oak Partners, Inc., successor-in-interest to R.R. Foley, Inc. and The Riviera Centre, Inc. **(Landlord)** and WestPoint Pepperell Stores, Inc. **(Tenant)**	Retail Outlet Store	Yes
Greenville, SC 3.99 acres, 2712 Laurens Road	Dolphin Enterprises of Greenville, LLC, successor-in-interest to John J. Martin, Jr. and Herbert J. Wright d/b/a Martin & Wright Associates **(Landlord)**	Retail Outlet Store	No *[WPS rejected 5/17/05]*

WESTPOINT STEVENS
REAL ESTATE LEASES

Leased Premises	Parties	Use	Acceptance (Yes, No)
	and J.P. Stevens & Co., Inc. **(Tenant)**		
Greenville, SC	Verdae Marketfair Associates, LP and WestPoint Stevens Stores, Inc.	Retail Outlet Store *[temporary space, month to month]*	Yes
Howell, MI 9,098 sf, Unit G-110, Kensington Valley Factory Stores	Kensington Valley Factory Shops, L.L.C. **(Landlord)** and WestPoint Stevens Store, Inc. **(Tenant)**	Retail Outlet Store	Yes
La Marque, TX 25,264 sf, Building 2, Store A, Outlet Ships at La Marque	La Marque Outlet Development, LP, successor-in-interest to RTA Texas Associates Limited Partnership **(Landlord)** and Westpoint Stevens Stores, Inc., successor-in-interest to WestPoint Pepperell Stores, Inc. **(Tenant)**	Retail Outlet Store	Yes
Lancaster, PA 10,000 sf in Building B2, Rockvale Square	Rockvale Outlet Center LP, successor-in-interest to Bowman Road Associates, L.P. **(Landlord)** and Westpoint Stevens Stores, Inc., successor-in-interest to Westpoint Pepperell Stores, Inc. **(Tenant)**	Retail Outlet Store	No *[WPS to reject]*
New Braunfels, TX 37,876 sf in New Braunfels Marketplace (formerly known as Mill Store Plaza)	New Braunfels Marketplace, L.P., successor-in-interest to R.R. New Braunfels, Inc. **(Landlord)** and WestPoint Stevens Stores, Inc., successor - in-interest to Westpoint Pepperell Stores, Inc. **(Tenant)**	Retail Outlet Store	Yes
Newnan, GA 9450 Square Feet located at 120 Bullsboro Drive,	Eastgate Partners Ltd. **(Landlord)** and WestPoint Stevens	Retail Outlet Store	No *[WPS to reject]*

WESTPOINT STEVENS
REAL ESTATE LEASES

Leased Premises	Parties	Use	Acceptance (Yes, No)
Newman, Georgia	Stores, Inc. **(Tenant)**		
Park City, UT Space E, 25,376 sf, The Factory Stores at Park City	R.R. Park City **(Landlord)** and WestPoint Stevens Store, Inc., f/k/a Westpoint Pepperell Stores, Inc. **(Tenant)**	Retail Outlet Store	Yes
Pigeon Forge, TN 30,888 sf, Space No. 980, Belz Factory Outlet World (Annex I) - Pigeon Forge 02	BVT/WELP Pigeon Forge, L.P., successor-in-interest to Pigeon Forge Associates **(Landlord)** and West Point Pepperell Store, Inc. **(Tenant)**	Retail Outlet Store	Yes
Riverhead, NY Unit 916 (according to Comm. Date Agreement), 9,600 sf, Phase I, Tanger Factory Outlet Center - Riverhead II	Tanger Properties Limited Partnership **(Landlord)** and WestPoint Stevens Store, Inc. **(Tenant)**	Retail Outlet Store	Yes
San Marcos, TX 10,000 sf in Unit No. 740 at Tanger Factory Outlet	Tanger Properties Limited Partnership **(Landlord)** and WestPoint Stevens Stores Inc. **(Tenant)**	Retail Outlet Store	Yes
Sarasota, FL Approximately 18,458 sf located at Sarasota Outlet Center, Cooper Creek Boulevard, University Park, Florida	RB-3 Associates, Ronald Benderson and David H. Baldauf as Trustees under a Trust Agreement dated 9/22/1993 Known as the Randall Benderson 1993-1 Trust and WR-1 Associates, Ltd., as Ts in common **(Landlord)** and WestPoint Stevens Stores, Inc. **(Tenant)**	Retail Outlet Store	Yes
St. Augustine, FL 25,063 sf in St. Augustine Outlet Center, Space No. 400,	St. Augustine Outlet Group, Ltd **(Landlord)** and West Point Pepperell Stores, Inc.	Retail Outlet Store	Yes

WESTPOINT STEVENS
REAL ESTATE LEASES

Leased Premises	Parties	Use	Acceptance (Yes, No)
at Interstate 95 and State Road 16	**(Tenant)**		
Lake Park (Valdosta), GA 29,424 sf, Store No. 17 located at Lake Park Factory Stores	Lake Park Partners, LLC, successor-in-interest to R.R. Lake Park, Inc. **(Landlord)** and WestPoint Stevens Stores, Inc. **(Tenant)**	Retail Outlet Store	Yes
Williamsburg, VA Approximately 27,942 sf - Unit D at Patriot Plaza Premium Outlets	CPG Partners, L.P., f/k/a Chelsea GCA Realty Partnership, L.P. **(Landlord)** and WestPoint Stevens Stores, Inc. **(Tenant)**	Retail Outlet Store	Yes
Woodburn, OR Approximately 9,057 sf - Unit No. 112 at Woodburn Company Stores Shopping Center	Craig Realty Group - Woodburn, LLC **(Landlord)** and WestPoint Stevens Stores Inc. **(Tenant)**	Retail Outlet Store	Yes
Wrentham, MA Approximately 8,961 sf - Unit No. 0240, Wrentham Village Premium Outlets Shopping Center	Chelsea GCA Realty Partnership, L.P. **(Landlord)** and WestPoint Stevens Stores, Inc. **(Tenant)**	Retail Outlet Store	Yes

EXHIBIT C

INTELLECTUAL PROPERTY LICENSES

The Intellectual Property Licenses set forth on the list attached to Exhibit D hereto.

EXHIBIT D

CONTRACTS

1. The Contracts (other than Contracts referred to in Sections 2.1(b)(vi), 2.1(b)(ix) and 2.1(b)(xiv) of the APA) set forth on the attached list, other than:

ID#

9349 - Neco Electric Products Corporation

9161 - Virginia Electric and Power Company (Evantage), will be excluded if Purchaser or its subsidiary purchases the Steam Facility referred to in the Steam Production Sales Agreement listed below simultaneous with the closing.

418 - Those of the 50 CSX easements that relate to facilities not presently owned

1367 - Wellington Sears

1366 - Wellington Sears

1368 - Wellington Sears

1369 - Wellington Sears

2. That Steam Production Sales Agreement between WestPoint Stevens Inc. and Evantage, a Division of Virginia Electric and Power Company, dated July 22, 1997, if, and only if, Purchaser or its subsidiary does not purchase the Steam Facility referred to therein simultaneously with the Closing.

3. ID 1390: Wilmington Trust SP Services (Nevada) - Agreement to Supply Administrative and Accounting Services to WestPoint Stevens Inc. I

4. ID 1392: Wilmington Trust SP Services (Nevada) - Non Residential Real Property Lease for Commercial Office Space to be used by WestPoint Stevens Inc. I

5. ID 9141: Accu-Sort - Accusort System AGK-400C Equipment and Services

6. ID 9364: Water Works Board of the City of Opelika - Agreement to Purchase Water

7. Such of approximately 100 additional contracts recently provided by Sellers to Purchaser for review as Purchaser shall designate as assumed contracts.

ID	CREDITOR	CATEGORY
2	1185 SIXTH LLC	NON RESIDENTIAL REAL PROPERTY LEASE
1506	AAA COOPER TRANSPORTATION	TRANSPORTATION
9360	ABBEVILLE COUNTY, SC	TAX ABATEMENT AGREEMENT
7	ACCESS TO INFORMATION (ATI)	SOFTWARE LICENSE
9141	ACCU-SORT (SELLER)	EQUIPMENT LEASE
9140	ACCU-SORT (SELLER)	SERVICE CONTRACT
16	ADOBE SYSTEMS INC.	SOFTWARE LICENSE
45	ADT SECURITY	ALARM
1484	ADT SECURITY SERVICES, INC.	ALARM
1483	ADT SECURITY SERVICES, INC.	ALARM
1481	ADT SECURITY SERVICES, INC.	ALARM
1478	ADT SECURITY SERVICES, INC.	ALARM
1485	ADT SECURITY SERVICES, INC.	ALARM
1475	ADT SECURITY SERVICES, INC.	ALARM
1492	ADT SECURITY SERVICES, INC.	ALARM
1477	ADT SECURITY SERVICES, INC.	ALARM
1486	ADT SECURITY SERVICES, INC.	ALARM
1488	ADT SECURITY SERVICES, INC.	ALARM
1474	ADT SECURITY SERVICES, INC.	ALARM
1490	ADT SECURITY SERVICES, INC.	ALARM
1491	ADT SECURITY SERVICES, INC.	ALARM
1493	ADT SECURITY SERVICES, INC.	ALARM
1495	ADT SECURITY SERVICES, INC.	ALARM
1496	ADT SECURITY SERVICES, INC.	ALARM
1489	ADT SECURITY SERVICES, INC.	ALARM
1432	ADT SECURITY SERVICES, INC.	ALARM
1472	ADT SECURITY SERVICES, INC.	ALARM
1473	ADT SECURITY SERVICES, INC.	ALARM
1471	ADT SECURITY SERVICES, INC.	ALARM

53	ADT SECURITY SYSTEM	ALARM
1482	ADT SECUTITY SERVICES, INC.	ALARM
57	ADT/SECURITY LINK	ALARM
60	ADVANCED SYSTEMS CONCEPTS	SOFTWARE LICENSE
59	ADVANCED SYSTEMS CONCEPTS	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
71	AKZO NOBEL	PURCHASE AGREEMENT
73	ALABAMA GAS	UTILITIES
9139	ALABAMA GAS CORPORATION (COMPANY)	SUPPLY AGREEMENT
74	ALABAMA POWER	UTILITIES
78	ALABAMA POWER	UTILITIES
75	ALABAMA POWER	UTILITIES
76	ALABAMA POWER	UTILITIES
77	ALABAMA POWER	UTILITIES
79	ALABAMA POWER	UTILITIES
9302	ALAMAC KNIT FABRICS, INC. (SUBLICENSEE)	LICENSE AGREEMENT
9294	ALEXANDER HENRY FABRICS	LICENSE AGREEMENT
9096	ALK ASSOCIATES, INC (LICENSOR)	SOFTWARE LICENSE
9203	ALLENBERG COTTON COMPANY	PURCHASE AGREEMENT
87	ALLIANCE DATA SYSTEMS	CREDIT CARD
9101	ALLIANCE DATA SYSTEMS, INC.	SOFTWARE LICENSE
90	ALLTEL	TELEPHONE SERVICE
9048	ALPHABLOX CORPORATION (LICENSOR)	SOFTWARE LICENSE
9049	ALPHABLOX CORPORATION (LICENSOR)	SOFTWARE LICENSE
9121	AMERICAN BUSINESS DEVELOPMENT	DISTRIBUTION AGREEMENT
9125	AMERICAN BUSINESS DEVELOPMENT	LICENSE AGREEMENT
9120	AMERICAN BUSINESS DEVELOPMENT	SALES CONTRACT
95	AMERICAN EXPRESS	CREDIT CARD
9296	APOLLO CHEMICAL CORPORATION	LICENSE AGREEMENT
9311	ARQUETTE DEVELOPMENT CORP.	NON RESIDENTIAL REAL PROPERTY LEASE
115	ASCOM HASLER MAILING SYSTEMS	EQUIPMENT LEASE - POSTAGE EQUIPMENT
9130	ASCOM HASLER MAILING SYSTEMS, INC.	EQUIPMENT LEASE
121	ASNA	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
123	AT & T	TELEPHONE SERVICE
125	AT & T	INTERNET SERVICES CONTRACT
124	AT & T	TELEPHONE SERVICE

127	AT & T 800 READYLINE	TELEPHONE SERVICE
128	AT & T WIRELESS (2)	CELLULAR PHONE AGREEMENT
9187	AT&T COMMERCIAL FINANCE CORP./ HYSTER CREDIT COMPANY (LESSOR) -- *AT&T IS NOW NEWCOURT FINANCIAL, A PART OF THE CIT GROUP.	EQUIPMENT LEASE
135	ATOFINA	PURCHASE AGREEMENT
137	AVAYA FINANCIAL SVC	EQUIPMENT MAINTENANCE - TELEPHONE
1505	AVERITT EXPRESS	TRANSPORTATION
145	BAKER LINEN COMPANY, INC.	LICENSE AGREEMENT
149	BARLOWORLD	EQUIPMENT MAINTENANCE - FORKLIFT
150	BARLOWORLD	EQUIPMENT MAINTENANCE - FORKLIFT
154	BARLOWORLD	EQUIPMENT LEASE - FORKLIFT
155	BARLOWORLD	EQUIPMENT LEASE - FORKLIFT
156	BARLOWORLD	EQUIPMENT LEASE - FORKLIFT
147	BARLOWORLD	EQUIPMENT LEASE - FORKLIFT
151	BARLOWORLD	EQUIPMENT MAINTENANCE - FORKLIFT
157	BARLOWORLD FLEET	EQUIPMENT LEASE - FORKLIFT
158	BARLOWORLD FLEET	EQUIPMENT LEASE - FORKLIFT
165	BARLOWORLD FLEET LEASING LLC	EQUIPMENT MAINTENANCE - FORKLIFT
164	BARLOWORLD FLEET LEASING LLC	EQUIPMENT LEASE - FORKLIFT
166	BARLOWORLD FLEET LEASING LLC	EQUIPMENT MAINTENANCE - FORKLIFT
163	BARLOWORLD FLEET LEASING LLC	EQUIPMENT MAINTENANCE - FORKLIFT
9180	BARLOWORLD HANDLING LP (DEALER/CONTRACTOR)	MAINTENANCE AGREEMENT
9206	BASIC CHEMICAL SOLUTIONS, LLP ("BCS") (PURCHASEE)	PURCHASE AGREEMENT
171	BECK & ASSOCIATES	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
172	BECK AND ASSOCIATES	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
173	BECUBED SOFTWARE, INC.	SOFTWARE LICENSE
9318	BED BATH & BEYOND PROCUREMENT CO. INC.	LICENSE AGREEMENT
177	BELL SOUTH COMMUNICATIONS	EQUIPMENT MAINTENANCE - TELEPHONE
178	BELL SOUTH COMMUNICATIONS	EQUIPMENT MAINTENANCE - TELEPHONE
179	BELL SOUTH COMMUNICATIONS	EQUIPMENT MAINTENANCE - TELEPHONE

9095	BENXL TECHNOLOGIES, INC. (LICENSOR)	SOFTWARE LICENSE
188	BIG KAHUNA FABRICS (CENTURY)	LICENSE AGREEMENT
190	BIRCH RUN OUTLETS, LLC	NON RESIDENTIAL REAL PROPERTY LEASE
9254	BLACKBERRY	SOFTWARE LICENSE
192	BLOOMBERG	SERVICE CONTRACT
203	BREWSTER WALLPAPER CORP.	LICENSE AGREEMENT
9319	BRITANNICA HOME FASHIONS, INC.	SETTLEMENT AGREEMENT
205	BROWN, CAULKINS & CO	EQUIPMENT MAINTENANCE - OTHER
9098	BUSINESS SOFTWARE INC.	SERVICE CONTRACT
9257	BUSINESS SOFTWARE INC.	SERVICE CONTRACT
9050	BUSINESS SOFTWARE INC. AND LAWSON SOFTWARE, INC. (LICENSOR AND SUPPORT PROVIDER)	SERVICE CONTRACT
223	BUSINESS SOFTWARE, INC.	SOFTWARE LICENSE
224	BUSINESS SOFTWARE, INC.	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
225	BUTLER CO. INDUSTRIAL	NON RESIDENTIAL REAL PROPERTY LEASE
226	BUYDOMAINS.COM	INTERNET SERVICES CONTRACT
228	BVT / WELP PIGEON FORGE, L.P.	NON RESIDENTIAL REAL PROPERTY LEASE
9199	CALCOT, LTD.	PURCHASE AGREEMENT
274	CAROLINA HANDLING	EQUIPMENT MAINTENANCE - FORKLIFT
294	CB INTERNATIONAL	SALES CONTRACT
297	CCBN	INTERNET SERVICES CONTRACT
9211	CELANESE	SUPPLY AGREEMENT
300	CENTRAL MAINE	UTILITIES
9350	CENTRAL MAINE POWER	UTILITIES
9237	CENTRAL MAINE POWER COMPANY (CMP)	MISCELLANEOUS CONTRACT
9236	CENTRAL MAINE POWER COMPANY (CMP)	SERVICE CONTRACT
9355	CHAMBERS COUNTY COMMISSION	TAX ABATEMENT AGREEMENT

311	CHATTAHOOCHEE WATER SUPPLY DISTRICT	UTILITIES
312	CHELSEA ALLEN DEVELOPMENT, L.P.	NON RESIDENTIAL REAL PROPERTY LEASE
313	CHELSEA GCA REALTY PARTNERSHIP, L.P.	NON RESIDENTIAL REAL PROPERTY LEASE
314	CHELSEA GCA REALTY PARTNERSHIP, L.P.	NON RESIDENTIAL REAL PROPERTY LEASE
315	CHELSEA PROPERTY GROUP, INC.	NON RESIDENTIAL REAL PROPERTY LEASE
9097	CHI/COR MANAGEMENT INFORMATION INC (LICENSOR)	SOFTWARE LICENSE
9127	CHILLINGWORTH/RADDING INC.	PROFESSIONAL SERVICES CONTRACT
323	CICSO	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
337	CIT LENDING SERVICES CORP	EQUIPMENT LEASE - FORKLIFT
342	CITICORP FINANCE SERVICES	EQUIPMENT LEASE - FORKLIFT
343	CITICORP VENDOR	EQUIPMENT LEASE - FORKLIFT
344	CITICORP VENDOR	EQUIPMENT LEASE - FORKLIFT
350	CITY OF BIDDEFORD, ME	UTILITIES
1232	CITY OF CHIPLEY, THE	NON RESIDENTIAL REAL PROPERTY LEASE
9354	CITY OF GREENVILLE	TAX ABATEMENT AGREEMENT
9357	CITY OF GREENVILLE, BUTLER COUNTY COMMISSION	TAX ABATEMENT AGREEMENT
352	CITY OF LAGRANGE OFFICE OF THE CLERK-TREASURER	NON RESIDENTIAL REAL PROPERTY LEASE
354	CITY OF LANETT, AL	SERVICE CONTRACT
355	CITY OF OPELIKA, ALABAMA	UTILITIES
356	CITY OF OPELIKA, ALABAMA	SERVICE CONTRACT
9356	CITY OF VALLEY, AL	TAX ABATEMENT AGREEMENT
357	CITY OF VALLEY, AL	SERVICE CONTRACT
360	CLEARSWIFT	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
9307	CLEMSON DOWNTOWN PROPERTIES LLC	NON RESIDENTIAL REAL PROPERTY LEASE

363	CMI INDUSTRIES	NON RESIDENTIAL REAL PROPERTY LEASE
9126	CMI INDUSTRIES INC. AND INTERFACE FABRICS GROUP, INC.	SERVICE CONTRACT
364	CMI INDUSTRIES, INC.	NON RESIDENTIAL REAL PROPERTY LEASE
366	COCALO	LICENSE AGREEMENT
367	COGGIN PROPERTIES, INC.	NON RESIDENTIAL REAL PROPERTY LEASE
368	COGNIS	PURCHASE AGREEMENT
9210	COGNIS CORPORATION (SELLER)	SUPPLY AGREEMENT
369	COLE MANAGED VISION	PROFESSIONAL SERVICES CONTRACT
370	COLLINS & CO.	LICENSE AGREEMENT
1511	COMPASS ENERGY CONSULTING, LLC	CONSULTING AGREEMENT
9054	COMPUTER CONTROL + INTEGRATION, INC. (CONTRACTOR)	SERVICE CONTRACT
9055	COMPUTER CONTROL + INTEGRATION, INC. (LICENSOR)	SOFTWARE LICENSE
381	COMPUTER GENERATED SOLUT.	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
9104	COMPUTER KEYES	SOFTWARE LICENSE
9263	COMPUTER KEYES	SOFTWARE LICENSE
384	COMPUTER KEYS	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
382	COMPUTER KEYS	SOFTWARE LICENSE
383	COMPUTER KEYS	SOFTWARE LICENSE
9076	COMPUTER PACKAGES INC.	MAINTENANCE AGREEMENT
9080	COMPUTER PACKAGES INC.	MAINTENANCE AGREEMENT
9079	COMPUTER PACKAGES INC.	MAINTENANCE AGREEMENT
9078	COMPUTER PACKAGES INC.	MAINTENANCE AGREEMENT
9077	COMPUTER PACKAGES INC.	MAINTENANCE AGREEMENT
385	CONCUR TECHNOLOGIES	SOFTWARE LICENSE
9283	CONNECTED CORP.	SOFTWARE LICENSE
9123	CONNECTED CORP.	SOFTWARE LICENSE
9365	CONSUMERS DIGEST COMMUNICATIONS, LLC	LICENSE AGREEMENT
391	COPELCO	EQUIPMENT LEASE - FORKLIFT
9321	CORPORATE PROPERTIES, LLC	PROFESSIONAL SERVICES CONTRACT
9322	CORPORATE PROPERTIES, LLC	PROFESSIONAL SERVICES CONTRACT

394	COTTON INC.	LICENSE AGREEMENT
395	COTTON INC.	LICENSE AGREEMENT
9243	COTTON INC. (LESSOR)	MISCELLANEOUS CONTRACT
9244	COTTON INC. (LESSOR)	MISCELLANEOUS CONTRACT
9245	COTTON INC. (LESSOR)	MISCELLANEOUS CONTRACT
9242	COTTON INC. (LESSOR)	MISCELLANEOUS CONTRACT
9082	COTTON INC. (LESSOR)	SOFTWARE LICENSE
9081	COTTON INC. (LESSOR)	SOFTWARE LICENSE
400	CPG PARTNERS, L.P.	NON RESIDENTIAL REAL PROPERTY LEASE
401	CPG PARTNERS, L.P.	NON RESIDENTIAL REAL PROPERTY LEASE
405	CPG PARTNERS, L.P.	NON RESIDENTIAL REAL PROPERTY LEASE
398	CPG PARTNERS, L.P.	NON RESIDENTIAL REAL PROPERTY LEASE
9316	CPG PARTNERS, L.P.	NON RESIDENTIAL REAL PROPERTY LEASE
397	CPG PARTNERS, L.P.	NON RESIDENTIAL REAL PROPERTY LEASE
399	CPG PARTNERS, L.P.	NON RESIDENTIAL REAL PROPERTY LEASE
406	CPI	SOFTWARE LICENSE
408	CRAIG REALTY GROUP- WOODBURN, LLC	NON RESIDENTIAL REAL PROPERTY LEASE
9295	CREATIF LICENSING CORPORATION AS AGENT FOR ROB BLACKARD STUDIO	LICENSE AGREEMENT
9251	CREO INC.	SOFTWARE LICENSE
417	CRYSTAL DECISIONS, INC.	SOFTWARE LICENSE
418	CSX TRANSPORTATION	EASEMENT
9343	CSX TRANSPORTATION, INC.	EASEMENT
9348	CSX TRANSPORTATION, INC.	EASEMENT
9330	CSX TRANSPORTATION, INC.	EASEMENT
9331	CSX TRANSPORTATION, INC.	EASEMENT

9332	CSX TRANSPORTATION, INC.	EASEMENT
9336	CSX TRANSPORTATION, INC.	EASEMENT
9337	CSX TRANSPORTATION, INC.	EASEMENT
9346	CSX TRANSPORTATION, INC.	EASEMENT
419	CTE INVESTMENTS, L.L.C.	NON RESIDENTIAL REAL PROPERTY LEASE
423	DAN RIVER	LICENSE AGREEMENT
425	DANE PRAIRIE SYSTEMS, LLC	SOFTWARE LICENSE
9252	DANTZ	SOFTWARE LICENSE
434	DISNEY	LICENSE AGREEMENT
478	DUN & BRADSTREET	SERVICE CONTRACT
482	DUPONT	PURCHASE AGREEMENT
489	EARNEST DEAN	NON RESIDENTIAL REAL PROPERTY LEASE
491	EAST ALABAMA WATER, SEWER & FIRE PROTECTION DISTRICT	UTILITIES
492	EAST ALABAMA WATER, SEWER & FIRE PROTECTION DISTRICT	SERVICE CONTRACT
490	EAST ALABAMA WATER, SEWER & FIRE PROTECTION DISTRICT	UTILITIES
9202	ECOM USA INC.	PURCHASE AGREEMENT
9200	ECOM USA INC.	PURCHASE AGREEMENT
504	EGYPTIAN MINISTRY OF ECONOMY	LICENSE AGREEMENT
505	EL CAMINO	TELEPHONE SERVICE
9198	ELF ATOCHEM NORTH AMERICA, INC. (SELLER)	PURCHASE AGREEMENT
9312	EXECUSTAY CORPORATION	NON RESIDENTIAL REAL PROPERTY LEASE
9124	EXTENSIS CORPORATION	SOFTWARE LICENSE
540	FAIRWAY OUTDOOR ADVERTISING	ADVERTISING CONTRACT - OUTDOOR
541	FARPOINT TECHNOLOGIES, INC.	SOFTWARE LICENSE
543	FEDEX GROUND	SERVICE CONTRACT
544	FEDEX SERVICES	SERVICE CONTRACT

9056	FISHER-ROSEMOUNT SYSTEMS, INC. (FRSI) (LICENSOR)	SOFTWARE LICENSE
548	FLORIDA LIGHT & POWER (FORMERLY CENTRAL ME PWR)	UTILITIES
549	FRANCO MANUFACTURING CO. INC.	LICENSE AGREEMENT
550	FRANCO MANUFACTURING CO. INC.	LICENSE AGREEMENT
9306	FRANCO MANUFACTURING COMPANY, INC.	LICENSE AGREEMENT
551	FRANCO SUBLICENSE FROM MTV	LICENSE AGREEMENT
556	FRONTIER ENERGY	UTILITIES
9057	FRSI AND WPS	LICENSE AGREEMENT
9325	GALAXY PARTNERS, INC.	PROFESSIONAL SERVICES CONTRACT
9323	GALAXY PARTNERS, INC.	PROFESSIONAL SERVICES CONTRACT
568	GALAXY PARTNERS, INC.	NON RESIDENTIAL REAL PROPERTY LEASE
569	GATEWAY CENTRAL PROPERTIES, INC.	NON RESIDENTIAL REAL PROPERTY LEASE
573	GATX	COMPUTER EQUIPMENT LEASE
572	GATX	COMPUTER EQUIPMENT LEASE
575	GATX	COMPUTER EQUIPMENT LEASE
570	GATX	COMPUTER EQUIPMENT LEASE
9191	GATX TECHNOLOGY CORPORATION (LESSOR)	EQUIPMENT LEASE
9192	GATX TECHNOLOGY CORPORATION (LESSOR)	EQUIPMENT LEASE
567	GE BETZ	SERVICE CONTRACT
182	GE CAPITAL	EQUIPMENT LEASE - COPIER
577	GE CAPITAL	EQUIPMENT LEASE - TELEPHONE SYSTEM
565	GE CAPITAL CORP	EQUIPMENT LEASE - TELEPHONE SYSTEM
1668	GE CAPITAL CORPORATION	EQUIPMENT LEASE

1663	GE CAPITAL CORPORATION	VEHICLE LEASE AGREEMENT
1666	GE CAPITAL CORPORATION	EQUIPMENT LEASE
1665	GE CAPITAL CORPORATION	EQUIPMENT LEASE
1664	GE CAPITAL CORPORATION	EQUIPMENT LEASE
1669	GE CAPITAL CORPORATION	EQUIPMENT LEASE
1670	GE CAPITAL CORPORATION	VEHICLE LEASE AGREEMENT
1667	GE CAPITAL CORPORATION	VEHICLE LEASE AGREEMENT
1662	GE CAPITAL CORPORATION	VEHICLE LEASE AGREEMENT
1660	GE CAPITAL CORPORATION	VEHICLE LEASE AGREEMENT
564	GE CAPITAL CORPORATION	EQUIPMENT LEASE
578	GE CAPITAL CORPORATION	VEHICLE LEASE AGREEMENT
1661	GE CAPITAL CORPORATION	VEHICLE LEASE AGREEMENT
9163	GE WATER TECHNOLOGIES, INC.	SERVICE CONTRACT
586	GEORGE D. WEBB, JR.	NON RESIDENTIAL REAL PROPERTY LEASE
590	GEORGIA POWER	UTILITIES
589	GEORGIA POWER	UTILITIES
593	GILL COMPANIES, LLC	NON RESIDENTIAL REAL PROPERTY LEASE
594	GLOBAL CREDIT SERVICES	SERVICE CONTRACT
9058	GLOBAL SOFTWARE INC.	SERVICE CONTRACT
597	GLOBAL SOFTWARE, INC.	SOFTWARE LICENSE
596	GLOBAL SOFTWARE, INC.	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
9059	GLOBAL SOFTWARE, INC.	SOFTWARE LICENSE
600	GLYNDA TURLEY PRINTS, INC.	LICENSE AGREEMENT
603	GPI DEVELOPMENT LTD.	MISCELLANEOUS CONTRACT
605	GRANITE PARK II, LTD.	NON RESIDENTIAL REAL PROPERTY LEASE
609	GREATAMERICA LEASING CORPORATION®	EQUIPMENT LEASE - POSTAGE EQUIPMENT

614	GRUPO INDUSTRIAL MOSLEY	LICENSE AGREEMENT
618	GULISTAN CARPET	MISCELLANEOUS CONTRACT
9329	GULISTAN HOLDINGS, INC.	MISCELLANEOUS CONTRACT
9060	HANDWIRE, LLC	INTERNET SERVICES CONTRACT
625	HAWKEYE	SOFTWARE LICENSE
628	HELP SYSTEMS	SOFTWARE LICENSE
9359	HENRY COUNTY, IN	TAX ABATEMENT AGREEMENT
633	HIDDEN VALLEY EQUITIES, LLC	NON RESIDENTIAL REAL PROPERTY LEASE
635	HISTORIC PLYMOUTH BUILDING, LLC	NON RESIDENTIAL REAL PROPERTY LEASE
640	HONEYWELL MAINTENANCE SERVICE PLAN	EQUIPMENT MAINTENANCE - OTHER
9308	HOUSECALLS INTERNATIONAL, INC.	NON RESIDENTIAL REAL PROPERTY LEASE
641	HOWARD GARRETT & COMPANY	NON RESIDENTIAL REAL PROPERTY LEASE
644	HYSTER (COPELCO)	EQUIPMENT LEASE - FORKLIFT
645	HYSTER (COPELCO)	EQUIPMENT LEASE - FORKLIFT
647	HYSTER CAPITAL	EQUIPMENT LEASE - FORKLIFT
646	HYSTER CAPITAL	EQUIPMENT LEASE - FORKLIFT
651	HYSTER CREDIT	EQUIPMENT LEASE - FORKLIFT
652	HYSTER CREDIT	EQUIPMENT LEASE - FORKLIFT
653	HYSTER CREDIT	EQUIPMENT LEASE - FORKLIFT
654	HYSTER CREDIT	EQUIPMENT LEASE - FORKLIFT
649	HYSTER CREDIT	EQUIPMENT LEASE - FORKLIFT
655	HYSTER CREDIT CO	EQUIPMENT LEASE - FORKLIFT
664	I.R.E. BMOC	NON RESIDENTIAL REAL PROPERTY LEASE
668	I2 TECHNOLOGIES	SOFTWARE LICENSE
667	I2 TECHNOLOGIES	SOFTWARE LICENSE

665	I2 TECHNOLOGIES	SOFTWARE LICENSE
666	I2 TECHNOLOGIES	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
9063	I2 TECHNOLOGIES, INC.	SOFTWARE LICENSE
674	IBM	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
671	IBM	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
669	IBM	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
670	IBM	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
675	IBM CORP.	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
689	IBM CREDIT CORP.	COMPUTER EQUIPMENT LEASE
679	IBM CREDIT CORP.	COMPUTER EQUIPMENT LEASE
676	IBM CREDIT CORP.	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
695	IBM CREDIT CORP.	COMPUTER EQUIPMENT LEASE
694	IBM CREDIT CORP.	COMPUTER EQUIPMENT LEASE
687	IBM CREDIT CORP.	COMPUTER EQUIPMENT LEASE
692	IBM CREDIT CORP.	COMPUTER EQUIPMENT LEASE
691	IBM CREDIT CORP.	COMPUTER EQUIPMENT LEASE
690	IBM CREDIT CORP.	COMPUTER EQUIPMENT LEASE
698	IBM CREDIT CORP.	COMPUTER EQUIPMENT LEASE
683	IBM CREDIT CORP.	COMPUTER EQUIPMENT LEASE
680	IBM CREDIT CORP.	COMPUTER EQUIPMENT LEASE
701	IBM CREDIT CORP.	COMPUTER EQUIPMENT LEASE
702	IBM CREDIT CORP.	COMPUTER EQUIPMENT LEASE
706	IBM CREDIT CORP.	COMPUTER EQUIPMENT LEASE
707	IBM CREDIT CORPORATION	COMPUTER EQUIPMENT LEASE
9065	INDOSCENE, INC.	SERVICE CONTRACT

717	INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF GREENVILLE	NON RESIDENTIAL REAL PROPERTY LEASE
721	INFRAGISTICS	SOFTWARE LICENSE
724	INGERSOLL RAND	EQUIPMENT MAINTENANCE - OTHER
725	INGERSOLL RAND AIR COMP GROUP	EQUIPMENT MAINTENANCE - OTHER
727	INGERSOLL RAND AIR COMP. GROUP	EQUIPMENT MAINTENANCE - OTHER
726	INGERSOLL RAND AIR COMP. GROUP	EQUIPMENT MAINTENANCE - OTHER
735	INOVIS	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
733	INOVIS	SOFTWARE LICENSE
734	INOVIS	SOFTWARE LICENSE
9066	INOVIS AND PEREGRINE MARKETS (SEPARATELY)	SOFTWARE LICENSE
738	INOVIS USA	SOFTWARE LICENSE
736	INOVIS USA	SOFTWARE LICENSE
737	INOVIS USA	SOFTWARE LICENSE
9230	INOVIS USA INC.	SOFTWARE LICENSE
739	INSTALLSHIELD SOFTWARE CORPORATION	SOFTWARE LICENSE
9173	INTEGRATIVE LOGIC LLC	SOFTWARE LICENSE
744	INTERFACE INC.	UTILITIES
747	INTERSTATE TELEPHONE	TELEPHONE SERVICE
748	INTERSTATE TELEPHONE CO.	UTILITIES
750	INTERWOVEN	SOFTWARE LICENSE
753	ITC	TELEPHONE SERVICE
754	ITC DELTACOM	INTERNET SERVICES CONTRACT
755	IVILLAGE	INTERNET SERVICES CONTRACT
9247	IVILLAGE INC.	INTERNET SERVICES CONTRACT
764	JASPAL & SONS CO., LTD.	LICENSE AGREEMENT
766	JDA SOFTWARE GROUP, INC.	SOFTWARE LICENSE
767	JDA SOFTWARE GROUP, INC.	SOFTWARE LICENSE

770	JIM SLONE TOOLS	SOFTWARE LICENSE
779	JOYCE TEXTILE CO. LTD.	LICENSE AGREEMENT
9290	KARATEX S.A.I.C.	LICENSE AGREEMENT
783	KEWILL	SOFTWARE LICENSE
784	KEWILL ELECTRONIC COMMERCE, INC.	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
9171	KINCAID TECHNOLOGIES, INC.	SERVICE CONTRACT
785	KMART CORP.	LICENSE AGREEMENT
9269	KROLL ONTRACK	SOFTWARE LICENSE
9110	KROLL ONTRACK	SOFTWARE LICENSE
793	LA MARQUE OUTLET DEVELOPMENT, L.P.	NON RESIDENTIAL REAL PROPERTY LEASE
796	LAKE PARK PARTNERS, LLC	NON RESIDENTIAL REAL PROPERTY LEASE
9216	LAWSON	NON-DISCLOSURE AGREEMENT
9217	LAWSON ASSOCIATES (CONTRACTOR)	NON-DISCLOSURE AGREEMENT
803	LAWSON SOFTWARE	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
802	LAWSON SOFTWARE	SOFTWARE LICENSE
9031	LAWSON SOFTWARE	SOFTWARE LICENSE
9086	LAWSON SOFTWARE, INC.	SOFTWARE LICENSE
9085	LAWSON SOFTWARE, INC.	SOFTWARE LICENSE
9084	LAWSON SOFTWARE, INC.	SOFTWARE LICENSE
805	LBA-VIF ONE SANTA FE TOWNE CENTER, LLC,	NON RESIDENTIAL REAL PROPERTY LEASE
807	LEARJET INC. SMART PARTS	MAINTENANCE AGREEMENT
810	LEASEPLAN USA	VEHICLE LEASE AGREEMENT
9267	LOFTWARE	SOFTWARE LICENSE
9108	LOFTWARE	SOFTWARE LICENSE
9334	M.P. CALLAWAY, AS TRUSTEE OF THE PROPERTY OF CENTRAL GEORGIA RAILWAY COMPANY AND EMPIRE LAND COMPANY	EASEMENT
9335	M.P. CALLAWAY, AS TRUSTEE OF THE PROPERTY OF CENTRAL GEORGIA RAILWAY COMPANY AND EMPIRE LAND COMPANY	EASEMENT
9030	MAMBO MEDIA	MAINTENANCE AGREEMENT
9128	MANAGEMENT VENTURES, INC.	SERVICE CONTRACT

832	MAPLES INDUSTRIES, INC.	LICENSE AGREEMENT
831	MAPLES INDUSTRIES, INC.	LICENSE AGREEMENT
9115	MCAFEE	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
9274	MCAFEE	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
842	MCP	EQUIPMENT MAINTENANCE - OTHER
845	MEDLINE TAIWAN CO. LTD.	LICENSE AGREEMENT
846	MERCATOR SOFTWARE	SOFTWARE LICENSE
9299	MERCURY INTERACTIVE CORPORATION	SOFTWARE LICENSE
9014	MICRO SERVICES GROUP, INC. (LICENSOR)	SOFTWARE LICENSE
9293	MICROBAN INTERNATIONAL LTD.	LICENSE AGREEMENT
9015	MICROSOFT CORPORATION	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
9016	MICROSOFT CORPORATION	SERVICE CONTRACT
9017	MICROSOFT CORPORATION	SERVICE CONTRACT
861	MICROSOFT CORPORATION	SOFTWARE LICENSE
868	MKS	SOFTWARE LICENSE
9019	MKS INC.	MAINTENANCE AGREEMENT
9185	MOTION INDUSTRIES, INC. (SELLER)	PURCHASE AGREEMENT
888	MR. DAVID BOYKIN	NON RESIDENTIAL REAL PROPERTY LEASE
889	M-TECH	SOFTWARE LICENSE
897	MUZAK LLC	MUSIC LICENSE OR SERVICE
9300	NATIONAL TRAFFIC SERVICES, INC.	SOFTWARE LICENSE
9349	NECO ELECTRICAL PRODUCTS CORPORATION	

912	NETWORK SOLUTIONS INC.	INTERNET SERVICES CONTRACT
913	NEW BRANUFELS MARKETPLACE, L.P.	NON RESIDENTIAL REAL PROPERTY LEASE
9043	NEW GENERATION COMPUTING, INC. (LICENSOR)	SOFTWARE LICENSE
919	NEXTEL PARTNERS INC.	CELLULAR PHONE AGREEMENT
921	NEXTIRAONE	TELEPHONE SERVICE
924	NMC TECHNOLOGIES	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
925	NMC TECHNOLOGIES	SOFTWARE LICENSE
926	NMHG FINANCIAL SERVICES	EQUIPMENT LEASE - FORKLIFT
927	NMHG FINANCIAL SERVICES	EQUIPMENT LEASE - FORKLIFT
930	NORFOLK SOUTHERN CORPORATION	EASEMENT
9363	NOTRA MORGAN	LICENSE AGREEMENT
931	NOTRA MORGAN	LICENSE AGREEMENT
934	NTFC	EQUIPMENT LEASE - TELEPHONE SYSTEM
936	NTFC CAPITAL CORP	EQUIPMENT LEASE - TELEPHONE SYSTEM
938	NTFC CAPITAL CORP	EQUIPMENT LEASE - TELEPHONE SYSTEM
939	NTFC CAPITAL CORP	EQUIPMENT LEASE - TELEPHONE SYSTEM
9361	OCONEE COUNTY, SC	TAX ABATEMENT AGREEMENT
9291	OFFICIAL PILLOWTEX LLC	LICENSE AGREEMENT
1507	OLD DOMINION FREIGHT LINE, INC.	TRANSPORTATION
944	OLIN	PURCHASE AGREEMENT
953	OTG SOFTWARE	SOFTWARE LICENSE
960	P.B. REALTY, INC.	NON RESIDENTIAL REAL PROPERTY LEASE
9116	PATRICK TOWNSEND & ASSOCIATES, INC.	SOFTWARE LICENSE
9275	PATRICK TOWNSEND & ASSOCIATES, INC.	SOFTWARE LICENSE
9201	PAUL REINHART, INC.	PURCHASE AGREEMENT
9204	PAUL REINHART, INC.	PURCHASE AGREEMENT
974	PC HELPS SUPPORT	SOFTWARE LICENSE
978	PEARL C. HARRELL	ADVERTISING CONTRACT - OUTDOOR
9067	PEREGRINE	SOFTWARE LICENSE
9092	PEREGRINE E-MARKETS, INC. (LICENSOR)	SOFTWARE LICENSE

9093	PEREGRINE E-MARKETS, INC. (LICENSOR)	SOFTWARE LICENSE
981	PERLE SYSTEMS LIMITED	EQUIPMENT MAINTENANCE - OTHER
991	PITNEY BOWES	EQUIPMENT LEASE - POSTAGE EQUIPMENT
996	PITNEY BOWES	EQUIPMENT LEASE - POSTAGE EQUIPMENT
992	PITNEY BOWES	EQUIPMENT LEASE - POSTAGE EQUIPMENT
993	PITNEY BOWES	EQUIPMENT LEASE - POSTAGE EQUIPMENT
997	PITNEY BOWES	EQUIPMENT LEASE - POSTAGE EQUIPMENT
1538	PITNEY BOWES CREDIT CORP	EQUIPMENT LEASE - POSTAGE EQUIPMENT
1529	PITNEY BOWES CREDIT CORP	EQUIPMENT LEASE - POSTAGE EQUIPMENT
1527	PITNEY BOWES CREDIT CORP	EQUIPMENT LEASE - POSTAGE EQUIPMENT
1539	PITNEY BOWES CREDIT CORP	EQUIPMENT LEASE - POSTAGE EQUIPMENT
1530	PITNEY BOWES CREDIT CORP	EQUIPMENT LEASE - POSTAGE EQUIPMENT
1534	PITNEY BOWES CREDIT CORP	EQUIPMENT LEASE - POSTAGE EQUIPMENT
1528	PITNEY BOWES CREDIT CORP	EQUIPMENT LEASE - POSTAGE EQUIPMENT
1533	PITNEY BOWES CREDIT CORP	EQUIPMENT LEASE - POSTAGE EQUIPMENT
1006	PITNEY BOWES MAILING SYSTEMS	EQUIPMENT LEASE - POSTAGE EQUIPMENT
1012	PORTFOLIO TEXTILES	LICENSE AGREEMENT
1015	POWERTECH	SOFTWARE LICENSE
1019	PR NEWSWIRE	MISCELLANEOUS CONTRACT
1024	PRODATA	SOFTWARE LICENSE
1033	PRUITT COMMUNICATIONS	EQUIPMENT MAINTENANCE - TELEPHONE
1042	PSR	SOFTWARE LICENSE
1043	QRS CORPORATION	SOFTWARE LICENSE
9046	QRS SALES AND SERVICES CORPORATION	SOFTWARE LICENSE
9068	QRS SALES AND SERVICES CORPORATION	SOFTWARE LICENSE
9069	QUARK	SOFTWARE LICENSE
9256	QUARK DISTRIBUTION	SOFTWARE LICENSE
1044	R.R PARK CITY, INC.	NON RESIDENTIAL REAL PROPERTY LEASE
1045	R.R. FOLEY, INC.	NON RESIDENTIAL REAL PROPERTY LEASE
1048	RALPH LAUREN HOME COLLECTION	LICENSE AGREEMENT
1659	RAYMOND LEASING	EQUIPMENT LEASE - FORKLIFT

1056	REAL VISION IMAGING	SOFTWARE LICENSE
1057	REAL VISION IMAGING	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
9070	REAL VISION SOFTWARE, INC.	SOFTWARE LICENSE
1062	RELO DIRECT, INC.	PROFESSIONAL SERVICES CONTRACT
1501	REPUBLIC WASTE SERVICES	WASTE HAULING & TRASH REMOVAL
1070	RETAIL TECHNOLOGIES CORP.	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
1069	RETAIL TECHNOLOGIES CORP.	SOFTWARE LICENSE
9148	RETAIL TECHNOLOGIES CORPORATION	SERVICE CONTRACT
1073	RICHLOOM FABRICS GROUP INC.	LICENSE AGREEMENT
1076	RING'S FORKLIFT	EQUIPMENT LEASE - FORKLIFT
1079	RINGS FORKLIFT & BATTERY SERVICE	EQUIPMENT LEASE - FORKLIFT
1080	RINGS FORKLIFT & BATTERY SERVICE	EQUIPMENT LEASE - FORKLIFT
1504	ROADWAY EXPRESS, INC.	TRANSPORTATION
1089	ROHM & HAAS (WPS I)	PURCHASE AGREEMENT
1092	RONALD BENDERSON TRUST AND WR-I ASSOC.	NON RESIDENTIAL REAL PROPERTY LEASE
1093	RONALD BENDERSON TRUST AND WR-I ASSOC.	NON RESIDENTIAL REAL PROPERTY LEASE
9001	RTC GROUP, INC.	SERVICE CONTRACT
9073	RTC GROUP, INC.	SOFTWARE LICENSE
9219	RTC GROUP, INC. ("RTC")	CONFIDENTIALITY AGREEMENT
9075	RTC GROUP, LLC (LICENSOR)	SOFTWARE LICENSE
1098	SAFE STONE	SOFTWARE LICENSE
1102	SANDS TELECOMMUNICATION	TELEPHONE SERVICE
1103	SATELLINK COMMUNICATIONS	PAGING
9250	SCENICSOFT, INC	SOFTWARE LICENSE
9145	SD	CELLULAR PHONE AGREEMENT
1119	SECURITY LINK (ADT)	ALARM
9310	SHANGHAI WESTGATE MALL CO. LTD.	NON RESIDENTIAL REAL PROPERTY LEASE
9289	SHERIDAN AUSTRALIA PTY LTD.	LICENSE AGREEMENT
1127	SHOWCASE CORP.	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
1126	SHOWCASE CORP.	SOFTWARE LICENSE
9004	SHOWCASE CORP.	PURCHASE AGREEMENT

9007	SHOWCASE CORP.	PURCHASE AGREEMENT
9006	SHOWCASE CORP.	SERVICE CONTRACT
9005	SHOWCASE CORP.	PURCHASE AGREEMENT
1130	SILVER SANDS JOINT VENTURE PARTNERS II	NON RESIDENTIAL REAL PROPERTY LEASE
9028	SILVON SOFTWARE, INC.	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
9027	SILVON SOFTWARE INC.	SOFTWARE LICENSE
9026	SILVON SOFTWARE INC.	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
9025	SILVON SOFTWARE INC.	SOFTWARE LICENSE
9288	SMITH BARNEY CITIGROUP	PROFESSIONAL SERVICES CONTRACT
1137	SMK-ADVENT POWER	EQUIPMENT MAINTENANCE - OTHER
9255	SOFTMART	SOFTWARE LICENSE
1158	SPRINT	EQUIPMENT LEASE - TELEPHONE SYSTEM
1156	SPRINT	EQUIPMENT LEASE - TELEPHONE SYSTEM
1159	SPRINT	EQUIPMENT MAINTENANCE - TELEPHONE
1154	SPRINT	EQUIPMENT MAINTENANCE - TELEPHONE
9177	STI CREDIT CORPORATION (LESSOR)	EQUIPMENT LEASE
9175	STI CREDIT CORPORATION (LESSOR)	EQUIPMENT LEASE
9178	STI CREDIT CORPORATION (LESSOR)	EQUIPMENT LEASE
9176	STI CREDIT CORPORATION (LESSOR)	EQUIPMENT LEASE
9313	STONEYBROOK CREEKS, LLC.	NON RESIDENTIAL REAL PROPERTY LEASE
9117	STRANDWARE INC.	SOFTWARE LICENSE
9276	STRANDWARE INC.	SOFTWARE LICENSE
1180	SUENO FUEGUINO S.A.	LICENSE AGREEMENT
1182	SUN MICROSYSTEMS, INC	SOFTWARE LICENSE
1186	SUNTRUST	VEHICLE LEASE AGREEMENT
1187	SUPIMA ASSOCIATION	LICENSE AGREEMENT
1188	SYMANTEC	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
1194	SYMIX COMPUTER SYSTEMS	SOFTWARE LICENSE
1197	SYMIX COMPUTER SYSTEMS	SOFTWARE LICENSE
1195	SYMIX COMPUTER SYSTEMS	SOFTWARE LICENSE
1193	SYMIX COMPUTER SYSTEMS	SOFTWARE LICENSE
1192	SYMIX COMPUTER SYSTEMS	SOFTWARE LICENSE

1191	SYMIX COMPUTER SYSTEMS	SOFTWARE LICENSE
1196	SYMIX COMPUTER SYSTEMS	SOFTWARE LICENSE
1207	TANGER PROPERTIES LIMITED PARTNERSHIP	NON RESIDENTIAL REAL PROPERTY LEASE
1210	TANGER PROPERTIES LIMITED PARTNERSHIP	NON RESIDENTIAL REAL PROPERTY LEASE
1208	TANGER PROPERTIES LIMITED PARTNERSHIP	NON RESIDENTIAL REAL PROPERTY LEASE
1209	TANGER PROPERTIES LIMITED PARTNERSHIP	NON RESIDENTIAL REAL PROPERTY LEASE
9309	THE CITY OF COLUMBIA	NON RESIDENTIAL REAL PROPERTY LEASE
1240	THINC	LICENSE AGREEMENT
1244	THOMPSON FINANCIAL (FIRST CALL)	MISCELLANEOUS CONTRACT
1250	TIMUR JAYA IMPEX	LICENSE AGREEMENT
9298	T-INK, LLC	LICENSE AGREEMENT
1251	TL ASHFORD	SOFTWARE LICENSE
1252	TL ASHFORD	SOFTWARE LICENSE
1201	TL ASHFORD (TLA)	SOFTWARE LICENSE
1253	T-MOBILE	CELLULAR PHONE AGREEMENT
1254	TMW SYSTEMS	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
9013	TORREY COMMERCE, INC. (TCI)	INTERNET SERVICES CONTRACT
1259	TOWN OF ELKIN	UTILITIES
1261	TRAILBLAZER SYSTEMS	SOFTWARE LICENSE
9037	TRAILBLAZER SYSTEMS INC.	SOFTWARE LICENSE
9036	TRAILBLAZER SYSTEMS INC.	SOFTWARE LICENSE
9034	TRAILBLAZER SYSTEMS INC.	SOFTWARE LICENSE
1265	TRAILBLAZER SYSTEMS, INC.	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
1264	TRAILBLAZER SYSTEMS, INC.	SOFTWARE LICENSE
1263	TRAILBLAZER SYSTEMS, INC.	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
1262	TRAILBLAZER SYSTEMS, INC.	SOFTWARE LICENSE
1270	TRANSAMERICA	EQUIPMENT LEASE
1285	TROUP COUNTY AIRPORT AUTH.	NON RESIDENTIAL REAL PROPERTY LEASE
9218	TRUSTWAVE CORP.	CONFIDENTIALITY AGREEMENT

9035	TRUSTWAVE CORPORATION	MISCELLANEOUS CONTRACT
1288	TSI INTERNATIONAL SOFTWARE	SOFTWARE LICENSE
9287	UBS FINANCIAL SERVICES, INC.	PROFESSIONAL SERVICES CONTRACT
1298	UNITED PARCEL SERVICE (UPS)	SERVICE CONTRACT
9320	V. KANN. RASMUSSEN & CO.	SETTLEMENT AGREEMENT
9112	VERITAS	SOFTWARE LICENSE
9271	VERITAS	SOFTWARE LICENSE
1316	VERTEX	SOFTWARE LICENSE
1318	VERTEX	SOFTWARE LICENSE
1317	VERTEX	COMPUTER MAINT. CONTRACT (SOFTWARE/HARDWARE)
9161	VIRGINIA ELECTRIC AND POWER COMPANY	UTILITIES
9358	WASHINGTON COUNTY, FL	TAX ABATEMENT AGREEMENT
1354	WASTE MANAGEMENT OF CENTRAL NC	WASTE HAULING & TRASH REMOVAL
9364	WATER WORKS BOARD OF THE CITY OF OPELIKA, ALABAMA	MISCELLANEOUS CONTRACT
1508	WATKINS MOTOR LINES, INC.	TRANSPORTATION
1362	WEDDINGCHANNEL.COM	INTERNET SERVICES CONTRACT
1367	WELLINGTON SEARS (JOHNSTON INDUSTRIES)	EASEMENT
1366	WELLINGTON SEARS (JOHNSTON INDUSTRIES)	EASEMENT
1368	WELLINGTON SEARS (JOHNSTON INDUSTRIES)	EASEMENT
1369	WELLINGTON SEARS (JOHNSTON INDUSTRIES)	EASEMENT
9338	WESTERN RAILWAY OF ALABAMA	EASEMENT
9347	WESTERN RAILWAY OF ALABAMA	EASEMENT
9345	WESTERN RAILWAY OF ALABAMA	EASEMENT
9344	WESTERN RAILWAY OF ALABAMA	EASEMENT

9342	WESTERN RAILWAY OF ALABAMA	EASEMENT
9341	WESTERN RAILWAY OF ALABAMA	EASEMENT
9339	WESTERN RAILWAY OF ALABAMA	EASEMENT
9333	WESTERN RAILWAY OF ALABAMA	EASEMENT
9340	WESTERN RAILWAY OF ALABAMA	EASEMENT
1378	WESTPOINT STEVENS INC.	INTERCOMPANY AGREEMENT
1380	WESTPOINT STEVENS INC.	INTERCOMPANY AGREEMENT
9314	WESTPOINT-PEPPERELL INC. (LESSOR) AND CITY OF OPELIKA, AL (LEASEE)	NON RESIDENTIAL REAL PROPERTY LEASE
1390	WILMINGTON TRUST SP SERVICES (NEVADA), INC. (F/K/A NEVADA CORPORATE MANAGEMENT, INC.)	SERVICE CONTRACT
1391	WILMINGTON TRUST SP SERVICES (NEVADA), INC. (F/K/A NEVADA CORPORATE MANAGEMENT, INC.)	NON RESIDENTIAL REAL PROPERTY LEASE
9147	WPS ENERGY SERVICES INC. (SELLER) WEST POINT STEVENS INC. I (BUYER)	UTILITIES
1424	YANKELOVICH YOUTH MONITOR	MISCELLANEOUS CONTRACT
1425	YARD PRO	LANDSCAPING SERVICE

DESCRIPTION	ADDRESS1	ADDRESS2	ADDRESS3
NEW YORK, NEW YORK - FLEET BOSTON FINANCIAL BUILDING, 1185 AVENUE OF THE AMERICANS 10036; NEW YORK WPS SALES OFFICES (118,650 SQ. FT. LEASED IN THE BUILDING)	1185 SIXTH AVENUE		
TRANSPORTATION AGREEMENT	PO BOX 6827		
FEE AGREEMENT IN LIEU OF PROPERTY TAXES FOR CALHOUN FACILITY	102 COURT SQUARE		
SOFTWARE	789 ROOSEVELT ROAD	BUILDING 4	
ACCUSORT SYSTEMS AGK-400C EQUIPMENT AND SERVICES	13029 COLLECTION CENTER DR		
SALE AND SERVICE RELATED TO COMPUTER, PROCESSORS, SYSTEM, ETC.	13029 COLLECTION CENTER DR		
SOFTWARE VENDOR - LICENSE ONLY - PDF WRITER FOR THE WEB	345 PARK AVENUE		
FIRE PROTECTION	PO BOX 95175		
BURGLAR ALARM FOR FAIRBURN, GA	5555 OAKBROOK PKWY	SUITE 200	
BURGLAR ALARM FOR ELLENTON, FL STORE	5555 OAKBROOK PKWY	SUITE 200	
BURGLAR ALARM FOR DAWSONVILLE, GA STORE	5555 OAKBROOK PKWY	SUITE 200	
BURGLAR ALARM FOR CLINTON, CT STORE	5555 OAKBROOK PKWY	SUITE 200	
BURGLAR ALARM FOR FOLEY, AL STORE	5555 OAKBROOK PKWY	SUITE 200	
BURGLAR ALARM FOR CAMARILLO, TX STORE	5555 OAKBROOK PKWY	SUITE 200	
BURGLAR ALARM FOR SAN MARCOS, TX STORE	5555 OAKBROOK PKWY	SUITE 200	
BURGLAR ALARM FOR CENTRAL VALLEY, NY STORE	5555 OAKBROOK PKWY	SUITE 200	
BURGLAR ALARM FOR GREENVILLE, SC STORE	5555 OAKBROOK PKWY	SUITE 200	
BURGLAR ALARM FOR LA MARQUE, TX STORE	5555 OAKBROOK PKWY	SUITE 200	
BURGLAR ALARM FOR CABAZON, CA STORE	5555 OAKBROOK PKWY	SUITE 200	
BURGLAR ALARM FOR PARK CITY, UT STORE	5555 OAKBROOK PKWY	SUITE 200	
BURGLAR ALARM FOR RIVERHEAD, NY STORE	5555 OAKBROOK PKWY	SUITE 200	
BURGLAR ALARM FOR UNIVERSITY PARK, FL STORE	5555 OAKBROOK PKWY	SUITE 200	
BURGLAR ALARM FOR WOODBURN, OR STORE	5555 OAKBROOK PKWY	SUITE 200	
BURGLAR ALARM FOR WRENTHAM, MA STORE	5555 OAKBROOK PKWY	SUITE 200	
BURGLAR ALARM FOR LANCASTER, PA STORE	5555 OAKBROOK PKWY	SUITE 200	
MAINTENANCE SERVICES FOR BURGLAR ALARMS - RETAIL STORES DIVISION	8601 DUNWOODY PLACE	SUITE 112	
BURGLAR ALARM FOR ALLEN, TX STORE	5555 OAKBROOK PKWY	SUITE 200	
BURGLAR ALARM FOR BIRCH RUN, MI STORE	5555 OAKBROOK PKWY	SUITE 200	
BURGLAR ALARM FOR ALBERTVILLE, MN STORE	5555 OAKBROOK PKWY	SUITE 200	

SECURITY SYSTEM AND SERVICE	PO BOX 371967		
BURGLAR ALARM FOR DESTIN, FL STORE	5555 OAKBROOK PKWY	SUITE 200	
SECURITY SYSTEM	2821 HARLEY COURT		
LICENSE - SEQUEL SOFTWARE	1300 WOODFILED ROAD	SUITE 310	
MAINTENANCE - SEQUEL SOFTWARE	1300 WOODFILED ROAD	SUITE 310	
SALT	PO BOX 471175		
MONTHLY GAS USAGE BILL	20 20TH ST. SOUTH		
SUPPLY AGREEMENT - NATURAL GAS	PO BOX 11407		
ELECTRICITY FOR GREENVILLE, AL - BLANKET	ATTN: CHARLIE BRITTON	PO BOX 160	334-832-3352
ELECTRICITY FOR OPELIKA, AL	ATTN: CHARLIE BRITTON	PO BOX 160	334-832-3352
ELECTRICITY FOR GREENVILLE, AL - UTILITY	ATTN: CHARLIE BRITTON	PO BOX 160	334-832-3352
ELECTRICITY FOR CARTER/LANIER, AL	ATTN: CHARLIE BRITTON	PO BOX 160	334-832-3352
ELECTRICITY FOR LANETT, AL	ATTN: CHARLIE BRITTON	PO BOX 160	334-832-3352
ELECTRICITY FOR ABBEVILLE, AL	ATTN: CHARLIE BRITTON	PO BOX 160	334-832-3352
TRADEMARK LICENSE - VELLUX	SOUTH CHESTNUT ST. EXTENSION	PO BOX 1347	
DESIGN LICENSE - FABRIC PRINT	1120 SCOTT ROAD		
SOFTWARE LICENSE AGREEMENT	1000 HERRONTOWN RD		
PURCHASE AGREEMENT	PO BOX 5000		
MONTHLY CHARGE CARD ACTIVITY SERVICES	PO BOX 841133		
SOFTWARE LICENSE AGREEMENT - ADS LINK	PO BOX 84113		
TELEPHONE SERVICE	4129 RAEFORD RD.		
SOFTWARE LICENSE AGREEMENT	516 CLYDE AVE		
SOFTWARE LICENSE AGREEMENT	516 CLYDE AVE		
DISTRIBUTOR AGREEMENT	HANS-THOMAS STRABE 4	61467 KRONBERG/TS.	GERMANY
TRADEMARK AND MANUFACTURING LICENSE AGREEMENT	HANS-THOMAS STRABE 4	61467 KRONBERG/TS.	
SALES REPRESENTATIVE AGREEMENT	HANS-THOMAS STRABE 4	61467 KRONBERG/TS.	GERMANY
CREDIT PROVIDER FOR TRAVEL	PO BOX 36001		
PATENT LICENSE - CELLULOSE ENZYME (APCOZYME ACE)	PO BOX 2176		
MARIANNA, FL - 259,271 SQUARE FEET AT 3521 RUSSELL ROAD, MARIANNA, FLORIDA	4421 THOMAS DRIVE		
LEASE POSTAGE METER	19 FOREST PKWY		
EQUIPMENT LEASE - POSTAGE METER	DIVISION OF MELLON LEASING		
SOFTWARE VENDOR - LICENSE & MAINTENANCE - ASNA DEVELOPMENT TOOLS & AS/400 INTERFACE	14855 BLANCO ROAD	SUITE 300	
TELEPHONE SERVICE	4000 DEKALB TECH. PKWY	BLDG 100	
INTERNET CONTRACT FOR STN	55 CORPORATE DR.		
CONTRACT #0809 - VOICE AND DATA SERVICES	1200 PEACHTREE ST. NE		

1-800-READY LINE PROVIDER (CLEMSON TERMINAL)	PO BOX 9001309		
WIRELESS & BLACKBERRY SERVICE	PO BOX 78405		
EQUIPMENT LEASE - INDUSTRIAL EQUIPMENT	PO BOX 33076		
PEROXIDE	3 PARKWAY	SUITE 309	
MAINTENANCE ACCOUNT FOR SANTE FE SPRINGS	3795 DATA DRIVE		
TRANSPORTATION AGREEMENT	518 OLD KENTUCKY ROAD		
DESIGN LICENSE	500 CORPORATE DRIVE		
	3000 HAYNEYVILLE ROAD		
MAINTENANCE AGREEMENT S#A216A5317Y & A216A5322Y	3000 HAYNEYVILLE ROAD		
S80XL2 LIFT TRUCK	3000 HAYNEYVILLE ROAD		
MARKLIFT	3000 HAYNEYVILLE ROAD		
LIFT-TRUCK LEASE	3000 HAYNEYVILLE ROAD		
LIFT TRUCK LEASE	3000 HAYNEYVILLE ROAD		
MAINTENANCE AGREEMENT S#A216A5283Y	3000 HAYNEYVILLE ROAD		
LIFT TRUCK LEASE S#A216A05283Y	3000 HAYNEYVILLE ROAD		
LIFT TRUCK LEASE S#A216A05322Y	3000 HAYNEYVILLE ROAD		
LIFT TRUCK MAINTAINENCE	3000 HAYNEYVILLE ROAD		
LIFT TRUCK RENTAL	3000 HAYNEYVILLE ROAD		
LIFT TRUCK MAINTAINENCE	3000 HAYNEYVILLE ROAD		
LIFT TRUCK MAINTAINENCE	3000 HAYNEYVILLE ROAD		
MAINTENANCE AGREEMENT - EQUIPMENT	PO BOX 410050		
SALT PURCHASE AGREEMENT	PO BOX 414252		
MAINTENANCE COMPUTER PRINTERS	3718 SECOND AVE.		
MAINTENANCE - COMPUTER PRINTERS	3718 SECOND AVENUE		
SOFTWARE VENDOR - LICENSE ONLY OLE TOOLS - ACTIVE XS	543 RIVERCREST DRIVE		
COPYRIGHT LICENSE - LICENSED DESIGNS	110 BI-COUNTY BLVD.		
MAINTENANCE CONTRACT FOR CSC	PO BOX 5455		
MAINTENANCE CONTRACT FOR ACS	PO BOX 5455		
MASTER MAINTENANCE AGREEMENT	PO BOX 5455		

SOFTWARE LICENSE AGREEMENT	PO BOX 1311		
DESIGN LICENSE	600 N. LINCOLN AVE.		
MILL STORE LEASE BIRCH RUN	PRIME RETAIL, L.P.	100 EAST PRATT STREET	19TH FLOOR
SOFTWARE LICENSE AGREEMENT - SERVER AND CLIENT LICENSE	12432 COLLECTIONS CENTER DRIVE		
LICENSE AGREEMENT (#130445)	4833 RUGBY	SUITE 600	
TRADEMARK AGREEMENT TO USE MARKS OWNED BY WESTPOINT STEVENS INC. I – MARTEX, ATELIER MARTEX, GRAND PATRICIAN, BABY MARTEX, LADY PEPPERELL, MODERN LIVING BY MARTEX, AND MARTEX BARE NECESSITIES	67 PACELLA PARK DRIVE		
SETTLEMENT AGREEMENT - PLATINUM COLLECTION TRADEMARK	SUITE 1202	214 39TH STREET	
MAINTENANCE ON BURSTER AT CSC	PO BOX 476		
PLATFORM VERSION MODIFICATION AGREEMENT	155 TECHNOLOGY PKWY	SUITE 100	
PLATFORM VERSION MODIFICATION AGREEMENT	155 TECHNOLOGY PKWY	SUITE 100	
PLATFORM VERSION MODIFICATION AGREEMENT	155 TECHNOLOGY PKWY	SUITE 100	
LICENSE - TAX SYSTEM ASSOCIATED WITH LAWSON SYSTEM	155 TECHNOLOGY PARKWAY	SUITE 100	
MAINTENANCE - TAX SYSTEM ASSOCIATED WITH LAWSON SYSTEM	155 TECHNOLOGY PARKWAY	SUITE 100	
GREENVILLE LMI WAREHOUSE-GREENVILLE, AL	DEVELOPMENTAL AUTHORITY	ONE DEPOT SQUARE	
DOMAIN NAME REGISTRATION	PO BOX 502010		
MILL STORE LEASE PIGEON FORGE	C/O BELZ ENTERPRISES	100 PEABODY PLACE	SUITE 1400
COTTON PURCHASE AGREEMENT	PO BOX 259		
LIFT TRUCK MAINTENANCE	PO BOX 451309		
NON-EXCLUSIVE SALES REPRESENTATIVE - LATIN AMERICA	ATTN: MARIA L. BOLIVAR	1452 ASHFORD AVE.	COND. ADA LIGIA, ROOM 312
SUBSCRIPTION AGREEMENT DATED 09-30-02 FOR IR ONLINE SERVICES INCLUDING TRANSCIPTS FOR PEER COMPANIES	343 CONGRESS STREET		
SUPPLY AGREEMENT - CEL VOL 418	PO BOX 532445		
ELECTRICITY FOR BIDDEFORD, ME	VAN HOBGOOD,438 SANFORD RD	207/490/3075	
TIE SWITCH INSTALLATION FOR POWER SUPPLY	438 SANFORD RD		
EXPANSION AGREEMENT	EDISON DR		
WATER SERVICES AGREEMENT	EDISON DR		
TAX ABATEMENT FOR 4 TOWEL FACILITIES AT 1016 AND 1001 TOWEL AVENUE, VALLEY, AL OF APPROXIMATELY $104,800/YEAR OVER 10 YEARS	2 S. LAFAYETTE ST.		

AGREEMENT TO PURCHASE WATER	PO BOX 37		
MILL STORE LEASE ALLEN	103 EISENHOWER PARKWAY		
MILL STORE LEASE WILLIAMSBURG	103 EISENHOWER PARKWAY		
MILL STORE LEASE CENTRAL VALLEY	103 EISENHOWER PARKWAY		
MILL STORE LEASE ST. AUGUSTINE	103 EISENHOWER PARKWAY		
SOFTWARE LICENSE AGREEMENT	300 WEST ADAMS ST	SUITE 500	
ADVERTISING AND MARKETING SERVICES	35 EAST 21ST ST		
SUPPORT CONTRACTS ON ALL CISCO HARDWARE	170 W. TASMAN DR.		
LIFT LEASES	PO BOX 5605		
LEASE AGREEMENT ON LIFT TRUCKS	1800 PARKWAY PLACE	SUITE 820	
LIFT TRK LEASES	PO BOX 7247-0371		
LEASE LIFT TRUCKS	PO BOX 7247-0371		
AGREEMENT TO WITHDRAW WATER FROM SACO RIVER	BIDDEFORD & SACO WATER CO.,	POB 304	
FLORIDA, WASHINGTON COUNTY, CHIPLEY - CHIPLEY INDUSTRIAL PARK: WAREHOUSE	ATTN: MS. PATTY YATES- CITY CLERK	PO BOX 1007	
TAX ABATEMENT FOR FACILITY AT 591 GLENDALE ROAD, GREENVILLE, AL OF APPROXIMATELY $103,500/YEAR OVER 10 YEARS	101 W. COMMERCE ST.		
TAX ABATEMENT FOR FACILITY AT 300 INDUSTRIAL PARKWAY, GREENVILLE, AL OF APPROXIMATELY $11,000/YEAR OVER 10 YEARS	101 W. COMMERCE ST.		
GEORGIA, TROUP, LAGRANGE - LEASE OF DIXIE MILL (WHORTON BALL FIELD) TO CITY OF LAGRANGE	PO BOX 430		
AGREEMENT TO PROVIDE FIRE PROTECTION	410 N. LANIER AVE.		
AGREEMENT TO SELL RAW WATER	WATER WORKS BOARD	502 GENEVA ST.	
AGREEMENT TO PROVIDE POLICE & FIRE PROTECTION	OFFICE OF THE MAYOR, P.O. BOX 390		
TAX ABATEMENT FOR FACILITY AT I-85, VALLEY-HUGHLEY EXIT, VALLEY, AL OF APPROXIMATELY $139,500/YEAR OVER 10 YEARS	20 FOB JAMES DR.		
AGREEMENT TO PROVIDE POLICE SERVICES	20 FOB JAMES DRIVE		
SUPPORT CONTRACT ON MIMESWEEPER SOFTWARE	15500 SE 30TH PLACE		
CLEMSON, SC - 24,263 RENTABLE SQUARE FEET ON 1-4TH FLOORS OF THE CLEMSON CENTRE, 391 COLLEGE AVENUE, CLEMSON, SC	C/O TOM WINKOOP REALTOR/DEVELOPER, LLC	391 COLLEGE AVENUE, SUITE 506	

BUILDING LEASE FOR MANUFACTURING AND OFFICES	1301 GERVAIS STREET	SUITE 700	
SERVICE AGREEMENT	PO BOX 1215		
NORTH CAROLINA, SURRY COUNTY, ELKIN. FIBERWOVEN BLANKET PLANT	1301 GERVAIS STREET	SUITE 700	
TRADEMARK AGREEMENT TO USE MARKS OWNED BY WESTPOINT STEVENS INC. I – MARTEX, WESTPOINT STEVENS, DESIGN OF GRIFFIN, BABY MARTEX, ATELIER BEBE, PATRICIAN BABY, AND EXPECTATIONS BY BABY MARTEX	2920 RED HILL AVENUE		
FLORIDA, WASHINGTON COUNTY, CHIPLEY - HWY 90 EAST; OUTLET STORE	PO BOX 432		
SOFTENER, CHEMICALS	5051 ESTECREEK DRIVE		
SUPPLY AGREEMENT - ADASIL DCS SILICONE SOFTENER	5051 ESTECREEK DR		
CLAIMS ADMINISTRATOR FOR THE COMPANY'S VISION PLAN	1925 ENTERPRISE PARKWAY		
SUB-LICENSE TO MFR., DISTRIBUTE & SELL VELLUX BLANKETS IN AUSTRALIA	ATTN: JOHN COLLINS	1 PERCIVAL ROAD	STANMORE
ENERGY CONSULTING SERVICES AGREEMENT	808 MOOREFIELD PARK DRIVE		
SERVICE AGREEMENT - HARDWARE, SOFTWARE, AND ENGINEERING	1200 WOODRUFF ROAD	SUITE C-39	
SOFTWARE LICENSE AGREEMENT	1200 WOODRUFF ROAD	SUITE C-39	
SOFTWARE FOR ACS, CHP, CHP REMOTE, VALLEY, WPS CUST. PROG.	LEADTEC	333 S. GRAND AVE.	
SOFTWARE LICENSE AGREEMENT	21929 MAKAH RD		
SOFTWARE LICENSE AGREEMENT	21929 MAKAH RD		
MAINTENANCE - KEYSMAIL SOFTWARE	21929 MAKAH ROAD		
SOFTWARE	21929 MAKAH ROAD		
LICENSE - KEYSMAIL SOFTWARE	21929 MAKAH ROAD		
MAINTENANCE AGREEMENT	414 HUNGERFORD DR	THIRD FLOOR	
MAINTENANCE AGREEMENT	414 HUNGERFORD DR	THIRD FLOOR	
MAINTENANCE AGREEMENT	414 HUNGERFORD DR	THIRD FLOOR	
MAINTENANCE AGREEMENT	414 HUNGERFORD DR	THIRD FLOOR	
MAINTENANCE AGREEMENT	414 HUNGERFORD DR	THIRD FLOOR	
QUICKXPENSE 20 SEATS - EXPENSE REPORTING SYSTEM LICENSE	6222 185TH AVE. NE		
END USER LICENSE AGREEMENT	100 PENNSYLVANIA AVE		
END USER LICENSE AGREEMENT	100 PENNSYLVANIA AVE		
LICENSE AGREEMENT	8001 NORTH LINCOLN AVENUE	5TH FLOOR	
LIFT-TRUCK LEASE	1800 OVERCENTER DRIVE		
LISTING AGREEMENT FOR SALE OF ALAMANCE CENTER, BURLINGTON, NC	280 MADISON AVE.	SUITE # 800	
LISTING AGREEMENT FOR SALE OF ROSEMARY COMPLEX (SOLD) AND LONGVIEW PLANT (UNDER CONTRACT)	280 MADISON AVE.	SUITE # 800	

TRADEMARK LICENSE (IN)	488 MADISON AVE.		
LICENSE - COTTON GRADING SYSTEM	4205 CREEDMOOR ROAD		
ENGINEERED FIBER SELECTION LEASE AGREEMENT	488 MADISON AVE		
ENGINEERED FIBER SELECTION LEASE AGREEMENT	488 MADISON AVE		
ENGINEERED FIBER SELECTION LEASE AGREEMENT	488 MADISON AVE		
ENGINEERED FIBER SELECTION LEASE AGREEMENT	488 MADISON AVE		
SOFTWARE LICENSE AGREEMENT	488 MADISON AVE		
SOFTWARE LICENSE AGREEMENT	488 MADISON AVE		
MILL STORE LEASE CLINTON	C/O CHELSEA PROPERTY GROUP, INC.	103 EISENHOWER PARKWAY	
MILL STORE LEASE WRENTHAM	C/O CHELSEA PROPERTY GROUP, INC.	103 EISENHOWER PARKWAY	
MILL STORE LEASE CAMARILLO	C/O CHELSEA PROPERTY GROUP, INC.	103 EISENHOWER PARKWAY	
MILL STORE LEASE CABAZON	C/O CHELSEA PROPERTY GROUP, INC.	103 EISEN HOWER PARKWAY	
EDINBURGH, IN - UNIT 1100, 10,000 SQUARE FEET, EDINBURGH PREMIUM OUTLETS, EDINBURGH, IN	103 EISENHOWER PARKWAY		
MILL STORE LEASE DAWSONVILLE	C/O CHELSEA PROPERTY GROUP, INC.	103 EISENHOWER PARKWAY	
MILL STORE LEASE ALBERTVILLE	PO BOX 3995		
TRADEMARK MANAGEMENT SYSTEM SOFTWARE LICENSE	414 HUNGERFORD DR.	3RD FLOOR	
MILL STORE LEASE WOODBURN	1500 QUAIL STREET	SUITE 100	
DESIGN LICENSE - DESIGNS CREATED BY ROB BLACKARD	31 OLD TOWN CROSSING		
END USER LICENSE AGREEMENT	8 OAK PARK DR		
SOFTWARE VENDOR - LICENSE ONLY - CRYSTAL REPORTS	895 EMERSON STREET		
APPROX. 50 EASEMENTS FOR REAL ESTATE, WIRELINES, WATER & GAS PIPELINES, SEWERS AND RUNOFFS AT VARIOUS PLANTS	ATTN: PROPERTY SERVICES	500 WATER STREET J180	
APPURTENANT LICENSE TO CONSTRUCT AND MAINTAIN PIPELINE OR DUCT WORK FOR WATER TRANSMISSION UNDER AND ACROSS RR RIGHT-OF-WAY FOR ONE-TIME FEE OF $750	ATTN: PROPERTY SERVICES	500 WATER ST.	
APPURTENANT LICENSE TO CONSTRUCT AND MAINTAIN 15KV ELECTRIC WIRE LINE ACROSS RR RIGHT-OF-WAY FOR ONE-TIME FEE OF $1.00	ATTN: PROPERTY SERVICES	500 WATER ST.	
APPURTENANT LICENSE FOR 1 1/2 INCH WIDE GALVANIZED WATER PIPELINE ALONG RR RIGHT-OF-WAY FOR $1.00/YEAR	ATTN: PROPERTY SERVICES	500 WATER ST.	
APPURTENANT LICENSE FOR 8-INCH WIDE CAST IRON WATER PIPELINE ALONG RR RIGHT-OF-WAY FOR $1.00/YEAR	ATTN: PROPERTY SERVICES	500 WATER ST.	

APPURTENANT-LICENSE FOR 8-INCH WIDE CAST IRON WATER PIPELINE ALONG RR RIGHT-OF-WAY FOR $1.00/YEAR	ATTN: PROPERTY SERVICES	500 WATER ST.	
APPURTENANT LICENSE TO CONSTRUCT, USE AND MAINTAIN WIRE OR CABLE FOR ELECTRIC TRANSMISSION THROUGH OR ON METAL STRAND WIRES ALONG RR RIGHT-OF-WAY FOR $1,100/YEAR	ATTN: PROPERTY SERVICES	500 WATER ST.	
APPURTENANT LICENSE TO CONSTRUCT, USE AND MAINTAIN WIRE OR CABLE FOR ELECTRIC TRANSMISSION THROUGH OR ON METAL STRAND WIRES ALONG RR RIGHT-OF-WAY FOR $100/YEAR	ATTN: PROPERTY SERVICES	500 WATER ST.	
APPURTENANT LEASE OF 30 FOOT WIDE DRIVEWAY PARCEL FOR $2,400/YEAR PLUS TAXES DUE	ATTN: PROPERTY SERVICES	500 WATER ST.	
MILL STORE LEASE BOAZ	425 MCCLESKY STREET	SUITE 534	
ROYALTY FREE LICENSE TO USE BED-IN-A-BAG TM	2291 MEMORIAL DRIVE		
SOFTWARE VENDOR - LICENSE ONLY - WIN2PDF	PO BOX 24491		
SOFTWARE LICENSE AGREEMENT	3003 OAK ROAD	3RD FLOOR	
DESIGN LICENSE	500 S. BUENA VISTA ST.		
SERVICES USED FOR OBTAINING DOMESTIC AND INTERNATIONAL CREDIT REPORTS.	PO BOX 75434		
POLYVINYL ALCOHOL (PVA)	6324 FAIRVIEW ROAD		
ALABAMA, BUTLER, GREENVILLE, 200 WEST COMMERCE STREET; OUTLET STORE	PO BOX 1049		
AGREEMENT TO TRANSPORT WATER	PO BOX 37		
AGREEMENT TO PROVIDE FIRE PROTECTION	PO BOX 37		
AGREEMENT TO PROVIDE WASTE WATER TREATMENT FOR THE FAIRFAX, FAIRVIEW, RIVERDALE, AND LANIER PLANTS.	PO BOX 37		
COTTON PURCHASE AGREEMENT	PO BOX 2854		
COTTON PURCHASE AGREEMENT	PO BOX 2854		
TRADEMARK LICENSE (IN)	12 MOHAMED TALAAT ST.		
TELEPHONE SYSTEM AND VOICEMAIL LEASE FOR SNC	12031 WARNER CENTER LN		
PURCHASE AGREEMENT - HYDROGEN PEROXIDE	CS DRAWER 198024		
NEW YORK, NY - LONGACRE HOUSE # 21B, 305 WEST 50TH STREET	7595 RICKENBACKER DRIVE		
SOFTWARE LICENSE AGREEMENT - EXTENSIS SUITCASE	1800 SW FIRST AVE	SUITE 500	
BILLBOARD LEASE	PO BOX 60125		
SOFTWARE VENDOR - LICENSE ONLY - TABPRO	808 AVIATION PARKWAY		
PARCEL PROCESSING	PO BOX 108		
OVERNIGHT DELIVERY SERVICE	PEACHTREE DISTRICT SALES	949 BOB ARNOLD BLVD	

SOFTWARE LICENSE AGREEMENT - #B0110	PO BOX 73388		
AGREEMENT TO TREAT WATER	PO BOX 025576		
TRADEMARK AGREEMENT TO USE MARKS OWNED BY J. P. STEVENS ENTERPRISES, INC. – UTICA	555 PROSPECT STREET		
TRADEMARK AGREEMENT TO USE MARKS OWNED BY WESTPOINT STEVENS INC. I – GRAND PATRICIAN, PATRICIAN, MARTEX, ATELIER MARTEX, LADY PEPPERELL, MODERN LIVING BY MARTEX, MARTEX BARE NECESSITIES, LUXURY LIVING BY MARTEX, AND ROYAL LEGACY BY MARTEX	555 PROSPECT STREET		
TRADEMARK LICENSE - GRAND PATRICIAN, MARTEX, AND UTICA	555 PROSPECT STREET		
TRADEMARK LICENSE AND MANUFACTURE AGREEMENT - FOR SPONGE BOB	555 PROSPECT STREET		
NATURAL GAS FOR CHATHAM	1927 N. BRIDGE ST.		
LICENSE AGREEMENT	PO BOX 73388		
CONSULTING SERVICES IN CONNECTION WITH RELOCATION AND CONSOLIDATION OF CERTAIN OFFICE SPACE IN GEORGIA	50 GLENLAKE PKWY	SUITE # 420	
LISTING AGREEMENT FOR SALE OF CLEMSON COMPLEX, CLEMSON, SC AND DUNSON MILL IN LAGRANGE, GA. AMENDED 5/05 TO INCLUDE SALE OF MIDDLETOWN, IN AND DRAKES BRANCH, VA	50 GLENLAKE PKWY	SUITE # 420	
LEASE PAYMENTS FO RETAIL STORES - MANAGEMENT OF RETAIL OUTLET STORES	50 GLENLAKE PARKWAY	SUITE 420	
MILL STORE LEASE FAIRBURN	BEAVER RUIN BUSINESS CENTER	1895 B BEAVER RIDGE ROAD	
LEASE - AS/400 LOCATED IN FAIRBURN, GA	2502 N ROCKY POINT DR.	SUITE 960	
2 CISCO ROUTERS – 1 @ MIC, 1 @ CSC	2502 N ROCKY POINT DR.	SUITE 960	
OLD TELEPHONE SYSTEM THAT WAS REUSED FOR SNC	2502 N ROCKY POINT DR.	SUITE 960	
LEASE FOR 10 1140 PRINTERS	2502 N ROCKY POINT DR.	SUITE 960	
EQUIPMENT LEASE - SCHEDULE #32 TO MASTER EQUIPMENT LEASE	2502 N ROCKY POINT DR.	SUITE 960	
EQUIPMENT LEASE - ADDENDUM TO SCHEDULE 32	2502 N ROCKY POINT DR.	SUITE 960	
WATER TREATMENT CONTRACT	4636 SOMERTON ROAD		
COPIER RENTAL	1961 HIRST DRIVE		
LEASE ON PHONE SYSTEM	3500 CORP WAY		
TELEPHONE SYSTEM AND VOICEMAIL LEASE FOR CHATHAM	501 CORP. CENTER DR.		
EQUIPMENT LEASE - 3 SEWING LINE (ABBEVILE & WAGRAM) - SCH 030 TO MLA 5/1/96	501 CORP. CENTER DRIVE		

EQUIPMENT LEASE - OTTAWA YARD TRACTOR - SCH 024 TO MLA 5/1/96	501 CORP. CENTER DRIVE		
EQUIPMENT LEASE - 1 TEXPA FOLDING LINE & 4 TEXPA SEWING LINE (CLEMSON & VALLEY) - SCH 028 TO MLA 5/1/96	501 CORP. CENTER DRIVE		
EQUIPMENT LEASE - 5 TEXPA SEWING LINE (ABBEVILLE & VALLEY) - SCH 027 TO MLA 5/1/96	501 CORP. CENTER DRIVE		
EQUIPMENT LEASE - 59 DORNIER AIRJET & TERRY WEAVING @ WAGRAM - SCH 026 TO MLA 5/1/96	501 CORP. CENTER DRIVE		
EQUIPMENT LEASE - 3 SEWING LINE (WAGRAM & CLEMSON) - SCH 032 TO MLA 5/1/96	501 CORP. CENTER DRIVE		
EQUIPMENT LEASE - GMC TRUCK W/ 1330 TRUCK MOUNT - SCH 021 TO MLA 5/1/96	501 CORP. CENTER DRIVE		
EQUIPMENT LEASE - GMC TRUCK - SCH 029 TO MLA 5/1/96	501 CORP. CENTER DRIVE		
EQUIPMENT LEASE - 2 GMC TRUCKS - SCH 024 TO MLA 5/1/96	501 CORP. CENTER DRIVE		
EQUIPMENT LEASE - COMBATEL HI-RANGER/FORD - SCH 004 TO MLA 5/1/96	501 CORP. CENTER DRIVE		
EQUIPMENT LEASE - OTTAWA YARD TRACTOR - SCH 033 TO MLA 5/1/96	501 CORP. CENTER DR.		
EQUIPMENT LEASE - 25 FREIGHTLINER TRACTORS - SCH 031 TO MLA 5/1/96	PO BOX 640387		
EQUIPMENT LEASE - SCAMMAN BUCKET LOADER TRACTOR - SCH 019 TO MLA 5/1/96	501 CORP. CENTER DRIVE		
SERVICE AGREEMENT - CHEMICALS AND TECHNICAL SERVICES	4636 SOMERTON RD		
GEORGIA, TROUP, WEST POINT - PARKING LOTS 1 & 2, CORNER OF 5TH & 10TH STREETS	411 9TH STREET, N.E.		
ELECTRICITY FOR DIXIE - LAGRANGE, GA	ATTN: DON MARTIN	PO BOX 1220	706/321/3543
ELECTRICITY FOR DUNSON-LAGRANGE,GA	ATTN: DON MARTIN	PO BOX 1220	706/321/3543
MILL STORE LEASE COLUMBUS	4411 HOLLY AVENUE		
CREDIT MONITORING SERVICE USED FOR DAILY UPDATES/ALERTS	545 MADISON AVE		
ADDENDUM TO GENERAL LEDGER IMPLEMENTATION SERVICES	3200 ATLANTIC AVE		
LICENSE - GENERAL LEDGER/ACCOUNTS PAYABLE/FIXED ASSETS/CHECK RECON SYSTEMS	3200 ATLANTIC AVE.		
MAINTENANCE - GENERAL LEDGER/ACCOUNTS PAYABLE/FIXED ASSETS/CHECK RECON SYSTEMS	3200 ATLANTIC AVE.		
SOFTWARE LICENSE AGREEMENT	3200 ATLANTIC AVE		
DESIGN LICENSE	PO BOX 112	7H CLEBURNE PARD RD.	
MONTHLY PARKING FOR COMPANY CARS	PO BOX 911597		
TEXAS, PLANO - SUITE 360, 5700 GRANITE PARKWAY; SALES OFFICE	5800 GRANITE PARKWAY	SUITE 750	
BIDDEFORD MAILING SYSTEM	2750 FIRST AVENUE NE	PO BOX 609	

DISTRIBUTION AND TRADEMARK LICENSE AGREEMENT (DISTRIBUTOR AND MANUFACTURER - MEXICO)	SR. EMILIO MUSSALI GALANTE	IXTACCIIUATL SA DE CV	RIO FRIO 167, COL.MAGDELENA MIXHUCA, C.P.15850
WAGRAM FACILITY AND SERVICES SEPARATION	PO BOX A	HWY. 5	
AGREEMENT REGARDING CONVEYANCE OF PORTION OF BOB STEVENS PLANT TO GULISTAN HOLDINGS TOGETHER WITH NONEXCLUSIVE RIGHTS TO COMMON AREAS, LOADING DOCKS, STEAM AND OTHER SUPPORT FACILITIES	PO BOX A	HWY 5	
WEBSITE SERVICES AND HOSTING AGREEMENT	101 W. 6TH ST., SUITE 709		
SOFTWARE	PO BOX 2167		
SOFTWARE	6101 BAKER ROAD		
TAX EXEMPTION FOR MIDDLETOWN FACILITY THAT EXCLUDES A CERTAIN PORTION OF THE ASSESSED VALUE OF PERSONAL PROPERTY	1426 BROAD ST.		
WASHINGTON, KINGS COUNTY, BELLEVUE - 1750 112TH AVE. NE, SUITE 161, HIDDEN VALLEY OFFICE PARK; SALES OFFICE	HIDDEN VALLEY OFFICE PARK	1750 112TH AVENUE, NE	
MINNESOTA, MINNEAPOLIS, PLYMOUTH BUILDING, SUITE 530; SALES OFFICE	SOUTH 6TH STREET	200 PLYMOUTH BUILDING	
MAINTENANCE OF LEARJET 45	PO BOX 93078		
COLUMBIA, AL - 42,680 SQUARE FEET. - 101 WEST NORTH STREET, COLUMBIA, AL 36319	PO BOX 82741		
GEORGIA, FULTON, ROSWELL - BUILDING 11111, SUITE 330, 11111 HOUZE ROAD 30076; SALES OFFICE	A/K/A DOMINION COURT OFFICE COMPLEX,	11111 HOUZE ROAD	SUITE 300
LIFT TRUCK LEASE S#A216A04633X & #A216A404634X	PO BOX 4366		
LIFT TRUCK LEASE S#A216A04631X & #A216A404632X	PO BOX 4366		
LIFT-TRUCK LEASE	1033 GARRIS DRIVE		
LIFT TRUCK LEASE	1033 GARRIS DRIVE		
FORK LIFT LEASE	PO BOX 4366		
FORK LIFT LEASE	PO BOX 4366		
FORK LIFT LEASE	PO BOX 4366		
FORK LIFT LEASE	PO BOX 4366		
HYSTER LEASE	PO BOX 4366		
LEASE HYSTER	1540 W. FOUNTAIN-HEAD PKWY		
MILL STORE LEASE BURLINGTON	1750 EAST SUNRISE BOULEVARD	THIRD FLOOR	
SOFTWARE	11701 LUNA ROAD		
SOFTWARE PERPETUAL LICENSE AGREEMENT FOR "DEMAND PLANNER"; (#SL99016/MS99016)	11701 LUNA ROAD		

SOFTWARE PERPETUAL LICENSE AGREEMENT FOR "INFOREM"; (#SL99016/ASL03016)	11701 LUNA ROAD		
SOFTWARE MAINTENANCE AGREEMENT FOR "DEMAND PLANNER"; (#SL99016/MS03017)	11701 LUNA ROAD		
SOFTWARE LICENSE AGREEMENT	11701 LUNA ROAD		
CUSTOMER AGREEMENT AS AMENDED - ICA NO. 12291	4111 NORTHSIDE PKWY		
MAINTENANCE ON 2 3130'S	PO BOX 2489		
DISASTER RECOVERY CONTRACT	4600 PARK RD.		
DISASTER RECOVERY CONTRACT	4600 PARK RD.		
SOFTWARE SUPPORT AGREEMENT FOR DB2 OLAP PERSONAL EDITION (PASSPORT ADVANTAGE AGREEMENT NUMBER 11026) (ANNUAL)	400 RIVERPARK DR.		
LEASE FOR 2 3590'S, 6 5769'S, AND 7208 AT CSC	4111 NORTHSIDE PKWY		
CISCO ROUTERS AND SOFTWARE FOR CISCO ROUTERS	4111 NORTHSIDE PKWY		
MAINTENANCE CONTRACT	4111 NORTHSIDE PKWY		
LEASE FOR 3590, 7855, 9309 AT CSC	4111 NORTHSIDE PKWY		
LEASE FOR 20 3487'S AT RRR	4111 NORTHSIDE PKWY		
LEASE ON 3590, 9309, 9406 AT GVL	4111 NORTHSIDE PKWY		
LEASE FOR 43 3487'S AT RRR	4111 NORTHSIDE PKWY		
LEASE FOR 6400 PRINTERS AT TWH	4111 NORTHSIDE PKWY		
LEASE FOR 7208, 7852, AND 9406 AT TTC	4111 NORTHSIDE PKWY		
LEASE FOR 3590, 7852, AND 9406 AT ACS	4111 NORTHSIDE PKWY		
LEASE FOR 2 3590'S, 7852, 9309 AND 9406 AT SNC	4111 NORTHSIDE PKWY		
LEASE FOR 3590, 5733, 5798'S, 7852, 9309, 9406 AT BID	4111 NORTHSIDE PKWY		
LEASE FOR 3490 AT TOB	4111 NORTHSIDE PKWY		
LEASE FOR 3488 AND 4230 AT TWH	4111 NORTHSIDE PKWY		
LEASE FOR 5746 AT BID	4111 NORTHSIDE PKWY		
MASTER LEASE FOR U.S.	4111 NORTHSIDE PKWY		
OUTSOURCING AGREEMENT	530 EAST 20TH ST	SUITE 1A	

TRADEMARK AGREEMENT TO USE MARKS OWNED BY WESTPOINT STEVENS INC. I – MARTEX, STEVENS, GRAND PATRICIAN, AND LADY PEPPERELL	MOODY RIDGE ROAD	PO BOX 40	
TRADEMARK AGREEMENT TO USE MARKS OWNED BY J. P. STEVENS ENTERPRISES, INC. – UTICA	MOODY RIDGE ROAD	PO BOX 40	
SUPPORT AGREEMENT - VIRUS DETECTION SOFTWARE	3965 FREEDOM CIRCLE		
SUPPORT AGREEMENT - VIRUS DETECTION SOFTWARE	3965 FREEDOM CIRCLE		
MAINTENANCE ON UPS SYSTEMS AT MIC AND TWH	2150 BOGGS ROAD		
LICENSE OF VELLUX FOR MFR.& SALE OF BLANKETS IN TAIWAN ROC/PRC	ATTN: LARRY LAI	3/F, 239 YEN JI STREET	
MERCATOR AUTHORING SYSTEM 2.1.1-EDI MAPPING SYSTEM - LICENSE	PO BOX 200149		
SOFTWARE LICENSE AGREEMENT - FOR IT APPLICATIONS AND SOFTWARE MANAGEMENT	PO BOX 200876		
SOFTWARE LICENSE AGREEMENT - NO 101	2200 A. 35TH PLACE		
TRADEMARK AND DISTRIBUTION LICENSE - MICROBAN TRADEMARK AND RIGHT TO DISTRIBUTE MICROBAN PRODUCTS	275 MADISON AVENUE, SUITE 3700		
SERVICE AGREEMENT - MICROSOFT MAPPOINT WEB SERVICE	PROFESSIONAL SUPPORT SALES	PO BOX 844510	
SERVICE AGREEMENT	PROFESSIONAL SUPPORT SALES	PO BOX 844510	
SERVICE AGREEMENT	PROFESSIONAL SUPPORT SALES	PO BOX 844510	
WEB DEVELOPMENT SOFTWARE - LICENSES ONLY - VISUAL STUDIO .NET, SQL SERVER DATABASE, FRONTPAGE	ONE MICROSOFT WAY		
SOFTWARE	PO BOX 728		
MAINTENANCE AGREEMENT	PO BOX 728		
MRO PURCHASING AGREEMENT: INCLUDES BEARINGS, POWER TRANSMISSION, ELECTRIC MOTORS, ELECTRICAL POWER TRANSMISSION, FLUID POWER TRANSMISSION PRODUCTS, V-BELTS, AND ROLLER CHAIN.	PO BOX 404130		
GEORGIA, TROUP COUNTY, LAGRANGE - DIXIE MILL WAREHOUSE #3 LEASE	PO BOX 1586		
SOFTWARE	735 12TH AVE., SW	CALGARY	
MILL STORE MUSIC MASTER	PO BOX 402107		
SOFTWARE LICENSE AGREEMENT - FREIGHT MANAGEMENT SYSTEM TOOL	151 JOHN JAMES AUDUBON PARKWAY		
PURCHASE BY NECO OF CERTAIN REAL ESTATE, MACHINERY AND EQUIPMENT, AS WELL AS AGREEMENT BY WPP TO OPERATE STEAM PLANT AND SUPPLY NECO WITH STEAM	720 SE LOOP 289		

DOMAIN NAME REGISTRATION	505 HUNTMAR PARK DRIVE		
MILL STORE LEASE NEW BRAUNFELS	C/O TRAMMELL CROW CENTRAL TEXAS, LTD.	700 N. ST. MARY'S , STE 900	SUITE 900
SOFTWARE LICENSE AGREEMENT - FOR SOURCING ACTIVITIES	PO BOX 105034		
CELL PHONE CONTRACT (LOCAL DRIVERS)	PO BOX 4192		
PHONE SYSTEM SERVICE, MAINT., LABOR	250 PARK AVE		
MAINTENANCE - ACCOUNTS RECEIVABLE SYSTEM	11419 CRONRIDGE DRIVE	SUITE 1	
LICENSE - ACCOUNTS RECEIVABLE SYSTEM	11419 CRONRIDGE DRIVE	SUITE 1	
FORKLIFTS LEASE	PO BOX 642385		
LIFT-TRUCK LEASE	PO BOX 642385		
CLEMSON, SC: 3 TRACK CROSSING EASEMENTS AND 2 FLASHING LIGHT SIGNALS TRACK CROSSINGS = $300 PER ANNUM; SIGNAL LIGHT MAINT. = +$1300 PER ANNUM.	110 FRANKLIN ROAD, SE		
TRADEMARK AGREEMENT TO USE MARKS OWNED BYJ.P. STEVENS ENTERPRISES, INC. –UTICA	ONE WOODBRIDGE CENTER		
TRADEMARK AGREEMENT TO USE MARKS OWNED BY WESTPOINT STEVENS INC. I – STEVENS AND VELLUX	ONE WOODBRIDGE CENTER		
NORSTAR PHONE SYSTEM	PO BOX 3083		
OPTION 61C FOR NY	501 CORP. CENTER DR.		
TELEPHONE SYSTEM AND VOICEMIAL LEASE FOR GVL	501 CORP. CENTER DR.		
ADD ON EQUIPMENT TELEPHONE SYSTEM FOR NY	501 CORP. CENTER DR.		
FEE AGREEMENT IN LIEU OF PROPERTY TAXES FOR CLEMSON FACILITY	502 E. MAIN ST.		
TRADEMARK LICENSE - CHARISMA	C/O EARTHBOUND	22 WEST 27TH STREET, 11TH FLOOR	ATTN: JACK DWECK
TRANSPORTATION AGREEMENT	500 OLD DOMINION WAY		
CAUSTIC SODA, REDUCTONE	PO BOX 1234		
DOCUMENT IMAGING SYSTEM - LICENSE	6701 DEMOCRACY BLVD	8TH FLOOR	
NORTH CAROLINA, SURRY, ELKIN - HIGHWAY 21 & POPLAR SPRINGS ROAD; WAREHOUSE	800 GOLFVIEW PARK	PO BOX 500	
END USER LICENSE AGREEMENT	7700 EARLING ST NE		
END USER LICENSE AGREEMENT	7700 EARLING ST NE		
COTTON PURCHASE AGREEMENT	PO BOX 850538		
COTTON PURCHASE AGREEMENT	PO BOX 850538		
SOFTWARE	1 BALA PLAZA		
BILLBOARD LEASE	915 S. WILLOWCREST WAY		
SOFTWARE LICENSE AGREEMENT - ADDENDUM A	PO BOX 198145		
SOFTWARE LICENSE AGREEMENT	PO BOX 198145		

SOFTWARE LICENSE AGREEMENT	PO BOX 198145		
PERLE CONTROLLER MAINENANCE (23 UNITS) CORPORATION	60 RENFREW DRIVE		
MAILROOM EQUIPMT.	11 PENN PLAZA		
MAILROOM EQUIPMT.	11 PENN PLAZA		
MAILROOM EQUIPMT.	11 PENN PLAZA		
MAILROOM EQUIPMT.	11 PENN PLAZA		
MAILROOM EQUIPMT.	11 PENN PLAZA		
EQUIPMENT LEASE - POSTAGE MACHINE @ CLEMSON, SC	PO BOX 5151		
EQUIPMENT LEASE - POSTAGE MACHINE @ ELKIN	PO BOX 5151		
EQUIPMENT LEASE - POSTAGE MACHINE @ BIDDEFORD, ME	PO BOX 5151		
EQUIPMENT LEASE - POSTAGE MACHINE @ NEW YORK, NY	PO BOX 5151		
EQUIPMENT LEASE - POSTAGE MACHINE @ CHIPLEY, FL	PO BOX 5151		
EQUIPMENT LEASE - POSTAGE MACHINE @ CLEMSON, SC	PO BOX 5151		
EQUIPMENT LEASE - POSTAGE MACHINE @ GREENVILLE, AL	PO BOX 5151		
EQUIPMENT LEASE - POSTAGE MACHINE @ OPELIKA, AL	PO BOX 5151		
SMALL PACKAGE SHIPPING SYSTEM - AS/400	PO BOX 781270		
DESIGN LICENSE	225 CENTRAL AVE. S.		
POWERLOCK NETWORK SECURITY FOR CLM400A, FDC400A, OPK400A	19426 68TH AVE.		
LETTER OF AGREEMENT DATED 12-17-2002 WITH PRICING TERMS FOR WIRE RELEASES OF NEWS RELEASES	950 EAST PACES FERRY ROAD	SUITE 2155	
SOFTWARE	2809 S 160TH ST		
MAINTENANCE CONTRACT FOR ABV	550 BIC ROAD		
SOFTWARE FOR BID	770 DEDHAM ST		
TRADEWEAVE DATA EXCHANGE, PRODUCT CATALOG, & MANAGED CONNECTIVITY SERVICES (EDI)	1400 MARINA WAY SOUTH		
SOURCE CODE LICENSE AGREEMENT	1400 MARINA WAY SOUTH		
SOURCE CODE LICENSE AGREEMENT	1400 MARINA WAY SOUTH		
GLOBAL SOFTWARE LICENSE AGREEMENT	PO BOX 12027		
SOFTWARE LICENSE AGREEMENT - QUARK SOFTWARE	PO BOX 12027		
MILL STORE LEASE PARK CITY	C/O CHARTER OAKS PARNTERS	8000 TOWERS CRESCENT DRIVE	SUITE 950
MILL STORE LEASE FOLEY	C/O CHARTER OAK PARTNERS, INC.	8000 TOWERS CRESCENT DRIVE	SUITE 950
DESIGN LICENSE	103 FOULK RD.	SUITE 201	
MASTER LEASE AGREEMENT - FORKTRUCKS	20 S. CANAL ST		

LICENSE - IMAGING SYSTEM	PO BOX 12958		
MAINTENANCE - IMAGING SYSTEM	PO BOX 12958		
SOFTWARE LICENSE AGREEMENT - SOFTWARE IMAGING SYSTEM	PO BOX 12958		
EMPLOYEE RELOCATION	7499 PARKLANE RD.	SUITE 120	
WASTE HAULING / TRASH REMOVAL AT BURLINGTON MILL STORE	2875 LOWERY ST		
MAINTENANCE - RETAIL STORE POLLING SOFTWARE	975 COBB PLACE BLVD.	SUITE 213	
LICENSE - RETAIL STORE POLLING SOFTWARE	975 COBB PLACE BLVD.	SUITE 213	
RTC GROUP, INC. SALES AUDIT AND POLLING ENGAGEMENT AGREEMENT	975 COBB PLACE BLVD	SUITE 213	
DESIGN LICENSE	261 FIFTH AVE.		
KOMATSU LEASE	100 GORDON COMMERCIAL DRIVE		
LEASE OF KOMATSU FB18SH-7 ELECTRIC LIFT TRUCK	100 GORDAN COMMERICAL DRIVE		
LEASE OF KOMATSU FG30HT-12 LPG LIFT TRUCK	100 GORDAN COMMERICAL DRIVE		
TRANSPORTATION AGREEMENT	1077 GORGE BLVD		
CHEMICALS	100 N RIVERSIDE PLAZA		
MILL STORE LEASE ELLENTON	C/O BENDERSON DEVELOPMENT COMPANY, INC.	570 DELAWARE AVE.	
MILL STORE LEASE SARASOTA	C/O BENDERSON DEVELOPMENT COMPANY, INC.	570 DELAWARE AVE.	
CUSTOMER SUPPORT CONTRACT	135 S. LASALLE ST	DEPT. 1045	
RTC GROUP, INC. SOFTWARE LICENSE AGREEMENT	135 S. LASALLE ST	DEPT. 1045	
CONFIDENTIALITY AGREEMENT	135 S. LASALLE ST	DEPT. 1045	
SOFTWARE LICENSE AGREEMENT	135 S. LASALLE ST	DEPT. 1045	
DETECT IT SOFTWARE	600 ALEXANDER PARK		
LOCAL TELEPHONE SERVICES & REPAIR	16323 HIGHWAY 219		
PAGERS	2800 OLD DAWSON RD.		
SOFTWARE LICENSE AGREEMENT - PREPS 3.7	C/O CREO AMERICAS	3 FEDERAL ST	
MASTER CORPORATE SERVICES AGREEMENT	PO BOX 742596		
SECURITY SYSTEM	2821 HARLEY COURT		
JING'AN DISTRICT, SHANGHAI - 387 SQUARE METERS, 2309-10A, 1038 NANJING ROAD, JING'AN DISTRICT, SHANGHAI	8TH FLOOR, WESTGATE TOWER	1038 NANJING XI LU, JINGAN DISTRICT	
TRADEMARK LICENSE AGREEMENT - VELLUX TRADEMARK	10-14 WATERLOO STREET	SURRY HILLS NSW 2010	
SOFTWARE MAINTENANCE AGREEMENT FOR BUSINESS INTELLIGENCE SOFTWARE	4115 HWY 52 NORTH	SUITE 300	
SOFTWARE PERPETUAL LICENSE AGREEMENT FOR BUSINESS INTELLIGENCE SOFTWARE	4115 HWY 52 NORTH	SUITE 300	
PURCHASE AGREEMENT	2323 CHESHIRE BRIDGE RD NE		

PURCHASE AGREEMENT - SC STRATEGY SOLUTION	2323 CHESHIRE BRIDGE RD NE		
SERVICE AGREEMENT	2323 CHESHIRE BRIDGE RD NE		
PURCHASE AGREEMENT	2323 CHESHIRE BRIDGE RD NE		
MILL STORE LEASE DESTIN	C/O HOWARD GROUP	630 GRAND BLVD.	SUITE 100
SOFTWARE MAINTENANCE AGREEMENT	PO BOX 88631		
SOFTWARE LICENSE AGREEMENT	PO BOX 88631		
SOFTWARE MAINTENANCE AGREEMENT	PO BOX 88631		
SOFTWARE UPGRADE INFORMATION (ADDENDUM TO ORIGINAL AGREEMENT)	PO BOX 88631		
INSTITUTIONAL/CORPORATE COMMODITY AGREEMENT	THE PINNACLE	390 GREENWICH ST.	FIRST FLOOR
MAINTENANCE - UPS LOCATED AT FAIRBURN COMPUTER ROOM	PO BOX 16776		
SOFTWARE LICENSE AGREEMENT	PO BOX 8500-52288		
LEASE MASTER AGREEMENT FOR BID	600 NEW CENTRY PKWY		
256K CIRCUIT CONTRACT BETWEEN CHATHAM AND THEIR DC	HILL CAPITAL BLVD		
MAINTENANCE CONTRACT FOR ELKIN	14111 CAPITAL BLVD		
MAINTENANCE AGREEMENT ON PHONE SYSTEM	320 FIRST AVE NW		
MASTER EQUIPMENT LEASE	SUNTRUST LEASING	PO BOX 440329	
MASTER EQUIPMENT LEASE	SUNTRUST LEASING	PO BOX 440329	
MASTER EQUIPMENT LEASE	SUNTRUST LEASING	PO BOX 440329	
MASTER EQUIPMENT LEASE	SUNTRUST LEASING	PO BOX 440329	
ROGERS, AK - 5430 WALSH LANE, SUITE # 300	C/O SHEARIN HATHAWAY GROUP	2526 PINNACLE HILLS PKWY	
SOFTWARE LICENSE AGREEMENT	C/O TEKLYNX	PO BOX 1786	
SOFTWARE LICENSE AGREEMENT	C/O TEKLYNX	PO BOX 1786	
MANUFACTURES VELLUX BLANKETS FROM ROLL GOODS FOR EXPORT TO BRAZIL	ATTN: OHANES BOGIATZIAN	MORENO 1369(10901)	
SUN OPERATING SYSTEM VERSION 5.5 - LICENSE	500 ELDORADO BLVD.		
LEASE CONTRACT FOR COMPANY VEHICLES AND EQUIPMENT OVER 1 TON	PO BOX 440329		
TRADEMARK LICENSE (IN)	4141 E. BROAWAY ROAD		
SUPPORT CONTRACTS ON FIREWALL/VPS S/W @ MIC, CSC, STN, TODMORDEN	20330 STEVENS CREEK BV		
COGNOS BUSINESS INTELLIGENCE SYSTEM - LICENSE	PO BOX 711892		
SYMIX REPORT SOURCE CODE - LICENSE	PO BOX 711892		
SYMIX EDI - LICENSE	PO BOX 711892		
PROGRESS 4GL DATA BASE - LICENSE	PO BOX 711892		
LICENSE - SYMIX SYSTEM	PO BOX 711892		

JETFORMS FOR SYMIX - FORMS/LABEL PRINTING - LICENSE	PO BOX 711892		
WEBSPEED TRANSACTION SERVER - WEB INTERFACE - LICENSE	PO BOX 711892		
MILL STORE LEASE RIVERHEAD	PO BOX 29168		
MILL STORE LEASE SAN MARCOS	C/O TANGER FACTORY OUTLET CENTERS, INC.	3200 NORTHLINE AVE	SUITE 360
MILL STORE LEASE HOWELL	3600 NORTHLINE AVE.,	SUITE 360	
MILL STORE LEASE DALTON	1400 WEST NORTHWOOD STREET		
COLUMBIA, AL - 26,000 SQUARE FEET, LOCATED AT 101 WEST NORTH STREET	C/O COLUMBIA CITY HALL	203 S. WASHINGTON ST	
DESIGN LICENSE	28 LIBERTYSHIP WAY		
SUBSCRIPTION AGREEMENT	156 WEST 56TH STREET	10TH FLOOR	
TRADEMARK & DESIGN LICENSE (OUT)	57 CAIRNHILL RD.	#14-06 ELIZABETH HEIGHTS	
PATENT LICENSE - CONDUCTIVE INK AND COATING TECHNOLOGY	244 WEST 54TH STREET		
LICENSE - BARCODE PRINTING SOFTWARE	525 WEST FIFTH STREET		
MAINTENANCE - BARCODE PRINTING SOFTWARE	525 WEST FIFTH STREET		
BARCODE LABELING SOFTWARE	525 W. FIFTH STREET		
SMALL POOLING BUSINESS PLAN ACCOUNT# 244092017 (ON-CALL CELL PHONES FOR EDI GROUP)	PO BOX 742596		
SOFTWARE MAINTENANCE SERVICES AGREEMENT FOR WP TRANSPORTATION'S COPY OF TL2000 SOFTWARE	3659 GREEN ROAD	SUITE 322	
WEB SITE MANAGEMENT AGREEMENT	8400 MIRAMAR RD	SUITE 290	
WATER & SEWER	PO BOX 857	226 N. BRIDGE STREET	
SOFTWARE	1700 WATER PLACE	SUITE 300	
SOFTWARE LICENSE AGREEMENT	1700 WATER PLACE	SUITE 300	
SOFTWARE LICENSE AGREEMENT	1700 WATER PLACE	SUITE 300	
SOFTWARE LICENSE AGREEMENT	1700 WATER PLACE	SUITE 300	
SOFTWARE MAINTENANCE AGREEMENT FOR EDI/INT AS2	1700 WATER PLACE	SUITE 300	
SOFTWARE PERPETUAL LICENSE AGREEMENT FOR EDI/INT AS2	1700 WATER PLACE	SUITE 300	
SOFTWARE MAINTENANCE AGREEMENT FOR ZMOD EXCHANGE FTP	1700 WATER PLACE	SUITE 300	
SOFTWARE PERPETUAL LICENSE AGREEMENT FOR ZMOD EXCHANGE FTP	1700 WATER PLACE	SUITE 300	
34 TSUDAKOMA AIRJET WEAVING LOOMS	5080 SPECTRUM DRIVE	SUITE 1100	
GEORGIA, TROUP, LAGRANGE - AIRPORT HANGAR, SUITE 202B, AIRPORT PARKWAY	200 AIRPORT PARKWAY		
CONFIDENTIALITY AGREEMENT	201 DEFENSE HWY	SUITE 100	

TRUSTKEEPER MERCHANT SUBSCRIBER AGREEMENT	201 DEFENSE HWY	SUITE 100	
TSI SOFT PC32 EDI DEVELOPMENT SYSTEM - 1 USER	45 DANBURY ROAD		
BROKERAGE AGREEMENT	12600 DEERFIELD PARKWAY, SUITE 400		
PARCEL PROCESSING	55 GLENLAKE PARKWAY, N.E.		
SETTLEMENT AGREEMENT - WPS VELLUX MARK AND KANN'S VELLUX MARK	10 TOBAKSVEJEN	2860 SOBORG	DENMARK
SOFTWARE LICENSE AGREEMENT	350 ELLIS ST		
SOFTWARE LICENSE AGREEMENT	350 ELLIS ST		
LICENSE - RETAIL SALES TAX SYSTEM	1041 OLD CASSATT ROAD		
SALES TAX SOFTWARE	1041 OLD CASSATT ROAD		
MAINTENANCE - RETAIL SALES TAX SYSTEM	1041 OLD CASSATT ROAD		
LETTER AGREEMENT DATED OCTOBER 4, 2004	PO BOX 26543		
TAX EXEMPTION OVER 10 YEARS ON THE EXPANSION AT THE CHIPLEY FACILITY COMPLETED IN 1998 (EXCLUDES $3.3 MILLION OF MACHINERY ADDITIONS AND $1.8 MILLION OF REAL PROPERTY ADDITIONS)	1331 SOUTH BLVD		
COMPACTOR RENTAL & WASTE PICK UP	4201 DISTRIBUTION DR		
AGREEMENT TO PURCHASE WATER	502 GENEVA STREET		
TRANSPORTATION AGREEMENT	PO BOX 95001		
ADVERTISING ON WEBSITE	888 FIGUEROA STREET	SUITE 700	
GRANTS AND RESERVATIONS OF EASEMENTS (LANGDALE)	PO BOX 98		
GRANTS AND RESERVATIONS OF EASEMENTS (SHAWMUT)	PO BOX 98		
GRANTS AND RESERVATIONS OF EASEMENTS (UTILIZATION)	PO BOX 98		
GRANTS AND RESERVATIONS OF EASEMENTS (PERSONNEL SERVICES CENTER)	PO BOX 98		
APPURTENANT LICENSE TO CONSTRUCT, MAINTAIN AND OPERATE 8-INCH WASTE LINE CROSSING UNDER RR'S MAIN TRACK AND RIGHT-OF-WAY FOR ONE TIME FEE OF $1.00	C/O CSX	ATTN: PROPERTY SERVICES	500 WATER ST.
LEASE AGREEMENT FOR DRIVEWAY FOR $12.00/YEAR PLUS TAXES DUE	C/O CSX	ATTN: PROPERTY SERVICES	500 WATER ST.
APPURTENANT AGREEMENT FOR CONSTRUCTION, MAINTENANCE AND USE OF A SIDETRACK TO SERVICE WESTPOINT FOR ONE-TIME FEE OF $22,395	C/O CSX	ATTN: PROPERTY SERVICES	500 WATER ST.
LEASE FOR PURPOSE OF ENCLOSING LEASEE'S PROPERTY WITH A FENCE FOR $1.00/YEAR	C/O CSX	ATTN: PROPERTY SERVICES	500 WATER ST.

APPURTENANT LICENSE TO INSTALL AND MAINTAIN 6-INCH PVC PIPE TO TOP OF 48-INCH CULVERT FOR ONE-TIME FEE OF $1.00	C/O CSX	ATTN: PROPERTY SERVICES	500 WATER ST.
APPURTENANT LICENSE TO INSTALL, MAINTAIN AND OPERATE A DRAINAGE SYSTEM FOR STORM WATER AND PLANT WASTE UNDER AND ALONG RR'S MAIN TRACK AND RIGHT-OF-WAY FOR $15.00/YEAR	C/O CSX	ATTN: PROPERTY SERVICES	500 WATER ST.
APPURTENANT LICENSE TO INSTALL, MAINTAIN AND OPERATE 10-INCH CAST IRON WATER LINE ACROSS RR RIGHT-OF-WAY AND UNDER RR'S MAIN TRACK FOR ONE-TIME FEE OF $15.00	C/O CSX	ATTN: PROPERTY SERVICES	500 WATER ST.
APPURTENANT LICENSE FOR 2 GAS PIPES ALONG RR RIGHT-OF-WAY FOR ONE TIME FEE OF $1.00	C/O CSX	ATTN: PROPERTY SERVICES	500 WATER ST.
APPURTENANT LEASE TO OCCUPY, USE AND MAINTAIN A DRIVEWAY OVER RR RIGHT-OF-WAY FOR $12.00/YEAR	C/O CSX	ATTN: PROPERTY SERVICES	500 WATER ST.
SERVICES AGREEMENT REQUIRING WESTPOINT STEVENS INC. TO PROVIDE SERVICES TO THE BIDDEFORD DIVISION OF WESTPOINT STEVENS INC. I	507 WEST 10TH STREET		
CONTRACTOR'S AGREEMENT REQUIRING WESTPOINT STEVENS INC. I TO MANUFACTURE, DISTRIBUTE, AND PROCESS CERTAIN PRODUCTS ACCORDING TO THE SPECIFICATIONS OF WESTPOINT STEVENS INC.	507 WEST 10TH STREET		
OPELIKA, AL - 10.5 ACRES ALONG PEPPERELL PARKWAY AND NORTH 30TH STREET	214 JETER STREET		
AGREEMENT TO SUPPLY ADMINISTRATIVE AND ACCOUNTING SERVICES TO WESTPOINT STEVENS INC. I.	3993 HOWARD HUGHES PKWY	SUITE 250	
LEASE FOR NON RESIDENTIAL REAL PROPERTY - COMMERCIAL OFFICE SPACE TO BE USED BY WESTPOINT STEVENS INC. I.	3993 HOWARD HUGHES PKWY	SUITE 250	
AUTHORIZATION FOR SALE (MAINE) - ELECTRIC ENERGY SUPPLY	PO BOX 19046		
SUBSCRIPTION	2ND FLOOR NORTH	MERRITT ON THE RIVER	20 GLOVER AVE.
LAWN SERVICE	21453 US 431		

CITY	STATE	ZIP
NEW YORK	NY	10036
DOTHAN	AL	36302
ABBEVILLE	SC	29620
GLEN ELLYN	IL	60137
CHICAGO	IL	60693
CHICAGO	IL	60693
SAN JOSE	CA	95110
LAS VEGAS	NV	89193
NORCROSS	GA	30093
NORCROSS	GA	30093
NORCROSS	GA	30093
NORCROSS	GA	30093
NORCROSS	GA	30093
NORCROSS	GA	30093
NORCROSS	GA	30093
NORCROSS	GA	30093
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NORCROSS	GA	30093
NORCROSS	GA	30093
NORCROSS	GA	30093
NORCROSS	GA	30093
NORCROSS	GA	30093
NORCROSS	GA	30093
ATLANTA	GA	30350
NORCROSS	GA	30093
NORCROSS	GA	30093
NORCROSS	GA	30093

PITTSBURGH	PA	15250-7967
NORCROSS	GA	30093
COLUMBUS	GA	31909
SCHAUMBURG	IL	60173
SCHAUMBURG	IL	60173
CHARLOTTE	NC	28247
BIRMINGHAM	AL	35295-0188
BIRMINGHAM	AL	35246
MONTGOMERY	AL	36101
MONTGOMERY	AL	36101
MONTGOMERY	AL	36101
MONTGOMERY	AL	36101
MONTGOMERY	AL	36101
MONTGOMERY	AL	36101
LUMBERTON	NC	28358
BURBANK	CA	91504
PRINCETON	NJ	8540
CORDOVA	TN	38088
DALLAS	TX	75284-1133
DALLAS	TX	75284
FAYETTEVILLE	NC	28384
MOUNTAIN VIEW	CA	94043
MOUNTAIN VIEW	CA	94043
GERMANY		
GERMANY		
GERMANY		
FORT LAUDERDALE	FL	33336-0001
BURLINGTON	NC	27216
PANAMA CITY	FL	32408
SHELTON	CT	6484
DEERFIELD	IL	60015
SAN ANTONIO	TX	78216
ATLANTA	GA	30340
BRIDGEVIEW	NJ	08807
ATLANTA	GA	30309

LOUISVILLE	KY	40290-1309
PHOENIX	AZ	85062
NEWARK	NJ	07188
PHILADELPHIA	PA	19102
NORCROSS	GA	30092
COOKEVILLE	TN	38501
MAHWAH	NJ	07430
MONTGOMERY	AL	36108
MONTGOMERY	AL	36108
MONTGOMERY	AL	36108
MONTGOMERY	AL	36108
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MONTGOMERY	AL	36108
MONTGOMERY	AL	36108
CHARLOTTE	NC	28241
BOSTON	MA	02241
COLUMBUS	GA	31906
COLUMBUS	GA	31906
WOODSTOCK	GA	30188
FARMINGDALE	NY	11735
ROANOKE	VA	24012
ROANOKE	VA	24012
ROANOKE	VA	24012

BRYN MAWR	PA	19010
LINCOLNWOOD	IL	60645
BALTIMORE	MD	21202
CHICAGO	IL	60693
BETHESDA	MD	20814
RANDOLPH	MA	02368
NEW YORK	NY	
NASHVILLE	NC	27856
NORCROSS	GA	27604
NORCROSS	GA	27604
NORCROSS	GA	27604
NORCROSS	GA	27604
NORCROSS	GA	27604
GREENVILLE	AL	36037
SAN DIEGO	CA	92150-2010
MEMPHIS	TN	38103
BAKERSFIELD	CA	93302
ATLANTA	GA	311451309
SAN JUAN	00907	
BOSTON	MA	02210
ATLANTA	GA	30353
ALFRED	ME	04002
ALFRED	ME	04002
AUGUSTA	ME	04332
AUGUSTA	ME	04332
LAFAYETTE	AL	36862

VALLEY	AL	36854
ROSELAND	NJ	07068-1029
ROSELAND	NJ	07068-1029
ROSELAND	NJ	07068-1029
ROSELAND	NJ	07068-1029
CHICAGO	IL	60606
NY	NY	10010
SAN JOSE	CA	95123
PORTLAND	OR	97228-5605
MARIETTA	GA	30067
PHILADELPHIA	PA	19170
PHILADELPHIA	PA	19170
BIDDEFORD	ME	04005
CHIPLEY	FL	32428
GREENVILLE	AL	36037
GREENVILLE	AL	36037
LAGRANGE	GA	30241
LANETT	AL	36863
OPELIKA	AL	36801
OPELIKA	AL	36801
VALLEY	AL	36854
VALLEY	AL	36854
BELLEVUE	WA	98007
CLEMSON	SC	29631

COLUMBIA	SC	29211
CLINTON	SC	29325
COLUMBIA	SC	29201
COSTA MESA	CA	92626
CHIPLEY	FL	32428
CINCINNATI	OH	45232
CINCINNATI	OH	45232
TWINSBURG	OH	44087
SYDNEY		2048
RICHMOND	VA	23236
GREENVILLE	SC	29607
GREENVILLE	SC	29607
LOS ANGELES	CA	90071
WOODWAY	WA	98020
WOODWAY	WA	98020
WOODWAY	WA	98020
WOODWAY	WA	98020
WOODWAY	WA	98020
ROCKVILLE	MD	20850
ROCKVILLE	MD	20850
ROCKVILLE	MD	20850
ROCKVILLE	MD	20850
ROCKVILLE	MD	20850
REDMOND	WA	98052
FRAMINGHAM	MA	01701
FRAMINGHAM	MA	01701
SKOKIE	IL	60077
MOBERLY	MO	65270
NEW YORK	NY	10016
NEW YORK	NY	10016

NEW YORK	NY	10022
RALEIGH	NC	27612
NEW YORK	NEW YORK	10022
NEW YORK	NEW YORK	10022
NEW YORK	NEW YORK	10022
NEW YORK	NEW YORK	10022
NEW YORK	NEW YORK	10022
NEW YORK	NEW YORK	10022
ROSELAND	NJ	07068-1029
ROSELAND	NJ	07068-1029
ROSELAND	NJ	07068-1029
ROSELAND	NJ	07068
ROSELAND	NJ	07068
ROSELAND	NJ	07068-1029
BOSTON	MA	02241-0995
ROCKVILLE	MD	20850
NEWPORT BEACH	CA	92660
MT. KISCO	NY	10549
BEDFORD	MA	01730
PALO ALTO	CA	94301
JACKSONVILLE	FL	32202-4445
JACKSONVILLE	FL	32202
JACKSONVILLE	FL	32202
JACKSONVILLE	FL	32202
JACKSONVILLE	FL	32202

JACKSONVILLE	FL	32202
JACKSONVILLE	FL	32202
JACKSONVILLE	FL	32202
JACKSONVILLE	FL	32202
BOAZ	AL	35957
DANVILLE	VA	24541
MINNEAPOLIS	MN	55424
WALNUT CREEK	CA	94597
BURBANK	CA	91521
CHICAGO	IL	60675
CHARLOTTE	NC	28210
GREENVILLE	AL	36037
VALLEY	AL	36854
VALLEY	AL	36854
VALLEY	AL	36854
CAROL STREAM	IL	60132
CAROL STREAM	IL	60132
ALEXANDRIA	EGYPT	
WOODLAND HILLS	CA	91367
ATLANTA	GA	30384
GAITHERSBURG	MD	20879
PORTLAND	OR	97201
CHARLOTTE	NC	28260
MORRISVILLE	NC	27560
PITTSBURGH	PA	15230
PEACHTREE CITY	GA	30122

CHICAGO	IL	60673
MIAMI	FL	33102
METUCHEN	NJ	08840
METUCHEN	NJ	08840
METUCHEN	NJ	08840
METUCHEN	NJ	08840-2293
ELKIN	NC	28621
CHICAGO	IL	60673
ATLANTA	GA	30328
ATLANTA	GA	30328
ATLANTA	GA	30328-3489
NORCROSS	GA	30071
TAMPA	FL	33607
TAMPA	FL	33607
TAMPA	FL	33607
TAMPA	FL	33607
TAMPA	FL	33607
TAMPA	FL	33607
TREVOSE	PA	19053
MOBERLY	MO	65270
DEULETH	GA	30136
FRANKLIN	TN	37067
FRANKLIN	TN	37076

FRANKLIN	TN	37067
FRANKLIN	TN	37067
FRANKLIN	TN	37067
FRANKLIN	TN	37067
FRANKLIN	TN	37076
FRANKLIN	TN	37076
FRANKLIN	TN	37076
FRANKLIN	TN	37067
FRANKLIN	TN	37067
FRANKLIN	TN	37067
PITTSBURGH	PA	15264-0387
FRANKLIN	TN	37067
TREVOSE	PA	19053
ATLANTA	GA	30309-4210
COLUMBUS	GA	31902
COLUMBUS	GA	31902
COLUMBUS	GA	31904
NEW YORK	NY	10022
RALEIGH	NC	27604
RALEIGH	NC	27604
RALEIGH	NC	27604
RALEIGH	NC	27604
HEBER SPRINGS	AR	72543
DALLAS	TX	75391
PLANO	TX	75024
CEDAR RAPIDS	IA	52406-0609

		D.F.
ABERDEEN	NC	28315
ABERDEEN	NC	28315
AUSTIN	TX	78701
FT. COLLINS	CO	80522
MINNETONKA	MN	55345
NEW CASTLE	IN	47362
BELLEVUE	WA	98004
MINNEAPOLIS	MN	55402
CHICAGO	IL	60673-3078
CONYERS	GA	30013
ROSWELL	GA	30076
PORTLAND	OR	97208
PORTLAND	OR	97208
MOBILE	AL	36695
MOBILE	AL	36695
PORTLAND	OR	97208
PORTLAND	OR	97208
PORTLAND	OR	97208
PORTLAND	OR	97208
PORTLAND	OR	97208
TEMPE,	AZ	85282
FT. LAUDERDALE	FL	33304
DALLAS	TX	75234
DALLAS	TX	75234

DALLAS	TX	75234
DALLAS	TX	75234
DALLAS	TX	75234
ATLANTA	GA	30327
ATLANTA	GA	30301
CHARLOTTE	NC	28209
CHARLOTTE	NC	28209
NORTH READING	MA	01864
ATLANTA	GA	30309
ATLANTA	GA	30327
ATLANTA	GA	30309
ATLANTA	GA	30309
ATLANTA	GA	30327
ATLANTA	GA	30309
ATLANTA	GA	30327
ATLANTA	GA	30309
ATLANTA	GA	30327
ATLANTA	GA	30327
ATLANTA	GA	30309
ATLANTA	GA	30309
ATLANTA	GA	30309
ATLANTA	GA	30309
ATLANTA	GA	30309
ATLANTA	GA	30309
NEW YORK	NEW YORK	10009

GREENVILLE	AL	36037
EAST WINDSOR	NJ	08520
NASHVILLE	TN	37211
NASHVILLE,	TN	37211
NASHVILLE	TN	37211
NASHVILLE	TN	37211
SAN DIEGO	CA	92130
ATLANTA	GA	30319
SAN DIEGO	CA	92130
ATLANTA	GA	30384
CONCORD	CA	94520
CONCORD	CA	94520
CONCORD	CA	94520
ATLANTA	GA	30384
SCHAUMBURG	IL	60173
DECATUR	GA	30030
ELKIN	NC	28621
WEST POINT	GA	31833
LANETT	AL	36863
SUNNYVALE	CA	94089
WEST POINT	GA	31833
ATLANTA	GA	30303
NEW YORK	NY	10018
NEW YORK	NEW YORK	10018
BANGKOK		10260
SCOTTSDALE	AZ	85260-3649
SCOTTSDALE	AZ	85260-3649

PURCHASE	NY	10577
SHINDIAN CITY	TAIPEI	231
ARGENTINA		
MARLBOROUGH	MA	01752
COLUMBUS	OH	43228
COLORADO SPRINGS	CO	80920
TROY	MI	48084
FOUNTAIN VALLEY	CA	92708
FOUNTAIN VALLEY	CA	92708
EDMOND	OK	73003
ATLANTA	GA	30328
ST. PAUL	MN	55102
ST. PAUL	MN	55102
ST. PAUL	MN	55102
ST. PAUL	MN	55102
ST. PAUL	MN	55102
ST. PAUL	MN	55102
ST. PAUL	MN	55102
LOS ANGELES	CA	90051-5629
WICHITA	KS	67209
ALPHARETTA	GA	30004-4738
CAPE NEDDICK	ME	03902
CAPE NEDDICK	ME	03902
ROANOKE	VA	24042
ROANOKE	VA	24042
LAKE OSWEGO	OR	97034
PHILADELPHIA	PA	19178

SCOTTSBORO	AL	35768
SCOTTSBORO	AL	35768
SANTA CLARA	CA	95054
SANTA CLARA	CA	95054
DULUTH	GA	30096
TAIPEI 106		
PITTSBURGH	PA	15251-0149
DALLAS	TX	75320
VALLEY	AL	36854
NEW YORK	NY	10016
DALLAS	TX	75284
DALLAS	TX	75284
DALLAS	TX	75284
REDMOND	WA	98052
BUFFALO	NY	14240
BUFFALO	NY	14240
ATLANTA	GA	30384
LAGRANGE	GA	30241
ALBERTA T2R1J7	CA	
COLLEGE PARK	GA	30384-2107
AMHERST	NY	14228
LUBBOCK	TX	79404

HERNDON	VA	20170
SAN ANTONIO	TX	78205
ATLANTA	GA	30348
CAROL STREAM	IL	60197-4192
NY	NY	10177
OWINGS MILLS	MD	21117
OWINGS MILLS	MD	21117
PITTSBURG	PA	15264-2385
PITTSBURGH	PA	15264
ROANOKE	VA	24042-0044
WOODBRIDGE	NJ	07095
WOODBRIDGE	NJ	07095
CEDAR RAPIDS	IA	52406-3083
FRANKLIN	TN	37067
FRANKLIN	TN	37067
FRANKLIN	TN	37067
WALHALLA	SC	29691
NEW YORK	NY	10001
THOMASVILLE	NC	27360
AUGUSTA	GA	30903
BETHESDA	MD	20817
LENOIR	NC	28645
OLYMPIA	WA	98506
OLYMPIA	WA	98506
RICHARDSON	TX	75085
RICHARDSON	TX	75085
BALA CYNWYD	PA	19004
LAGRANGE	GA	30240
ATLANTA	GA	30384
ATLANTA	GA	30384

ATLANTA	GA	30384
MARKHAM, ONTARIO		L3R 0E1
NY	NY	10003
NY	NY	10003
NY	NY	10003
NY	NY	10003
NY	NY	10003
SHELTON	CT	06484
SHELTON	CT	06484
SHELTON	CT	06484
SHELTON	CT	06484
SHELTON	CT	06484
SHELTON	CT	06484
SHELTON	CT	06484
SHELTON	CT	06484
INDIANAPOLIS	IN	46278-8270
BETHPAGE	NY	11714
KENT	WA	98032
ATLANTA	GA	30326
OMAHA	NB	68130
DOTHAN	AL	36301
CANTON	MA	02021
RICHMOND	CA	94804
RICHMOND	CA	94804
RICHMOND	CA	94804
CHEYENNE	WY	82003
CHEYENNE	WY	82003
VIENNA	VA	22182
VIENNA	VA	21182
WILMINGTON	DE	19803
GREENE	NY	13778

ALEXANDER	LA	71315-2958
ALEXANDER	LA	71315-2958
ALEXANDER	LA	71315-2958
COLUMBIA	SC	29223
WINSTON SALEM	NC	27101
KENNESAW	GA	30144
KENNESAW	GA	30144
KENNESAW	GA	30144
NEW YORK	NY	10016
LAGRANGE	GA	30240
LAGRANGE	GA	30240-5740
LAGRANGE	GA	30240-5740
AKRON	OH	44310
CHICAGO	IL	606061598
BUFFALO	NY	14202
BUFFALO	NY	14202
CHICAGO	IL	60674
CHICAGO	IL	60674
CHICAGO	IL	60674
CHICAGO	IL	60674
PRINCETON	NJ	08540
WEST POINT	GA	31833
ALBANY	NY	31707
BILLERICA	MA	01821
CINCINNATI	OH	45274
COLUMBUS	GA	31909
SHANGHAI	PRC	200041
AUSTRALIA		
ROCHESTER	MN	55901
ROCHESTER	MN	55901
ATLANTA	GA	30324

ATLANTA	GA	30324
ATLANTA	GA	30324
ATLANTA	GA	30324
DESTIN	FL	32550
CHICAGO	IL	60680
CHICAGO	IL	60680
CHICAGO	IL	60680
CHICAGO	IL	60680
NEW YORK	NY	10013
JACKSONVILLE	FL	32245
PHILADELPHIA	PA	19178
NEW CENTURY	KS	65031
WAKE FOREST	NC	27587
WAKE FOREST	NC	27587
HICKORY	NC	28601
NASHVILLE	TN	37244
NASHVILLE	TN	37244
NASHVILLE	TN	37244
NASHVILLE	TN	37244
ROGERS	AK	72758
MILWAUKEE	WI	53201
MILWAUKEE	WI	53201
BUENOS AIRES		
BROOMFIELD	CO	80021
NASHVILLE	TN	37244-0329
PHOENIX	AZ	85040
CAPER TINA	CA	95014
COLUMBUS	OH	43271-1892
COLUMBUS	OH	43271-1892
COLUMBUS	OH	43271-1892
COLUMBUS	OH	43271-1892
COLUMBUS	OH	43271-1892

COLUMBUS	OH	43271-1892
COLUMBUS	OH	43271-1892
GREENSBORO	NC	27408
GREENSBORO	NC	27408
GREENSBORO	NC	27408
GREENSBORO	NC	27408
COLUMBIA	AL	36319
SAUSALITO	CA	94965
NEW YORK	NY	10019
SINGAPORE		229668
NEW YORK	NY	10019
COVINGTON	KY	41011
COVINGTON	KY	41011
COVINGTON	KY	41011
CINCINNATI	OH	45274-2596
CLEVELAND	OH	44122
SAN DIEGO	CA	92126
ELKIN	NC	28621
ATLANTA	GA	30339
ATLANTA	GA	30339
ATLANTA	GA	30339
ATLANTA	GA	30339
ATLANTA	GA	30339
ATLANTA	GA	30339
ATLANTA	GA	30339
ATLANTA	GA	30339
ADDISON	TX	75001
LAGRANGE	GA	30240
ANNAPOLIS	MD	21401

ANNAPOLIS	MD	21401
WILTON	CT	06897-0840
ALPHARETTA	GA	30004
ATLANTA	GA	30328
MOUNTAIN VIEW	CA	94043
MOUNTAIN VIEW	CA	94043
BERWYN	PA	19312
BERWYN	PA	19321
BERWYN	PA	19312
RICHMOND	VA	23290
CHIPLEY	FL	32428
FAYETTEVILLE,	NC	28308
OPELIKA	AL	36801
LAKELAND	FL	33804
LOS ANGELES	CA	90017
VALLEY	AL	36854
VALLEY	AL	36854
VALLEY	AL	36854
VALLEY	AL	36854
JACKSONVILLE	FL	32202
JACKSONVILLE	FL	32202
JACKSONVILLE	FL	32202
JACKSONVILLE	FL	32202

JACKSONVILLE	FL	32202
JACKSONVILLE	FL	32202
JACKSONVILLE	FL	32202
JACKSONVILLE	FL	32202
JACKSONVILLE	FL	32202
WEST POINT	GA	31833
WEST POINT	GA	31833
OPELIKA	AL	36801
LAS VEGAS	NV	89109
LAS VEGAS	NV	89109
GREEN BAY	WI	54307
NORWALK	CT	06850
LAFAYETTE	AL	36862

EXHIBIT E
Excluded Assets

The trademarks "Stevens" and "WestPoint Stevens".

Norman Paschall Waste Agreement.

Buckley, Kate F.

From: Kleiner, H. Frances
Sent: Wednesday, November 02, 2005 5:08 PM
To: Buckley, Kate F.
Subject: FW: WPS Purchased Assets

-----Original Message-----
From: Kleiner, H. Frances
Sent: Friday, August 05, 2005 5:42 PM
To: Clay Humphries (humphries.clay@wpstv.com)
Cc: Ted Waksman (ted.waksman@weil.com); Michael Walsh (michael.walsh@weil.com); Jason Lilien (jason.lilien@weil.com); Keith L. Shaitkin (kls@sfire.com); jweber@arep-lp.com; Wolfson, Peter D.; Richards, Robert E.; Blanchard, Wenyu T.
Subject: WPS Purchased Assets

Please note the following additional changes to Purchaser's designation of Purchased Assets

-----Original Message-----
From: Blanchard, Wenyu T.
Sent: Friday, August 05, 2005 4:47 PM
To: Kleiner, H. Frances
Subject: FW: License Agreements Question

Hi Fran. Here is my comprehensive list of the agreements that should be added/deleted from the Purchased Assets list.

TO BE ADDED TO LIST OF PURCHASED ASSETS

Settlement Agreement with V. Kann Rasmussen & CO and West Point-Pepperell, Inc. dated December 1, 1984

Settlement Agreement dated _____, 2004 between Charles D. Owen Mfg. Co., Robert Fleischer, and WestPoint Stevens Inc.

Trademark License Agreement dated March 3, 2004 between Brewster Wallpaper Corp. and WestPoint Stevens Inc.

Trademark License Agreement dated April 22, 2002 between Brewster Wallpaper Corp., WestPoint Stevens Inc. and WestPoint Stevens Inc. I, as amended June 18, 2004

Design License Agreement dated August 30, 1999 between Brewster Wallpaper Company and WestPoint Stevens Inc., as amended October 29, 1999 and June 21, 2000.

[**Note:** There is only one Brewster Wallpaper Corp. agreement currently listed on the Purchased Assets document, but it is unclear which one is being referred to. There are actually 3 agreements.]

TO BE DELETED FROM LIST OF PURCHASED ASSETS

Trademark License Agreement dated August 1, 2000 between Sueno Fueguino S.A. and WestPoint Stevens Inc., as amended November 15, 2000. [Note: This agreement has been terminated.]

Buckley, Kate F.

From: Kleiner, H. Frances
Sent: Wednesday, November 02, 2005 5:09 PM
To: Buckley, Kate F.
Subject: FW: License Agreements Question

-----Original Message-----
From: Kleiner, H. Frances
Sent: Friday, August 05, 2005 4:09 PM
To: Clay Humphries (humphries.clay@wpstv.com)
Cc: Ted Waksman (ted.waksman@weil.com); Michael Walsh (michael.walsh@weil.com); Jason Lilien (jason.lilien@weil.com); Keith L. Shaitkin (kls@sfire.com); jweber@arep-lp.com; Wolfson, Peter D.; Richards, Robert E.; Blanchard, Wenyu T.
Subject: FW: License Agreements Question

Please note the change below to Purchaser's designation of Purchased Assets

-----Original Message-----
From: Blanchard, Wenyu T.
Sent: Friday, August 05, 2005 3:54 PM
To: Kleiner, H. Frances
Subject: FW: License Agreements Question

Hi Fran. Based on Shornden and Clay's response, there is only one changees to the Purchased Assets.

TO BE DELETED FROM LIST OF PURCHASED ASSETS
Trademark License Agreement dated August 1, 2000 between Sueno Fueguino S.A. and WestPoint Stevens Inc., as amended November 15, 2000. [Note: This agreement has been terminated.]

From the Office of
Wenyu Blanchard
Sonnenschein Nath & Rosenthal LLP
8000 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
(312) 876-8022 (voice)
(312) 876-7934 (fax)

www.sonnenschein.com
wblanchard@sonnenschein.com

Sent via BlackBerry from Cingular Wireless

Hearing Date and Time: August 24, 2005 at 10:00 a.m.
Objection Deadline: August 17, 2005 at 5:00 p.m.

WEIL, GOTSHAL & MANGES LLP
Attorneys for the Debtors
767 Fifth Avenue
New York, New York 10153
(212) 310-8000
John J. Rapisardi (JR 7781)
Michael F. Walsh (MW 8000)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	**Chapter 11 Case No.**
WESTPOINT STEVENS INC., et al.	:	**03-13532 (RDD)**
	:	**(Jointly Administered)**
Debtors.	:	

NOTICE OF FILING OF AMENDMENTS TO SCHEDULE SETTING FORTH EXECUTORY CONTRACTS AND UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY TO BE ASSUMED AND ASSIGNED TO PURCHASER IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS AND THE CURE AMOUNTS ASSOCIATED THEREWITH

PLEASE TAKE NOTICE that on July 22, 2005, WestPoint Stevens Inc. ("WestPoint") and the above-captioned debtors, as debtors and debtors in possession in these chapter 11 cases (collectively, the "Debtors") filed a schedule (the "Cure Schedule") of the (i) proposed assumption and assignment of the executory contracts and unexpired leases (collectively, the "Contracts") to Textile Co., Inc. (an entity owned and controlled by American Real Estate Holding Limited Partnership) (the "Purchaser") and (ii) cure costs, if any, to be paid (the "Cure Amounts") pursuant to 11 U.S.C. § 365(b)(1)(A) in connection with the assumption and assignment of the Contracts to the Purchaser. The Cure Schedule was filed in accordance with the Order Authorizing the Sale (the "Sale") of Substantially All of the Sellers' Assets Free and Clear of Liens, Claims, Encumbrances and Interests, the Assumption of Certain Liabilities, Approval of Successful Bidder and Certain Related Matters (as amended, the "Sale Order") entered by the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") on July 8, 2005.

PLEASE TAKE FURTHER NOTICE that the Debtors have amended the Cure Schedule as set forth on the annexed Exhibit "A." Specifically, the Debtors have added ten (10) additional contracts (the "Additional Contracts") to the Cure Schedule, and have removed six (6) Contracts from the Cure Schedule (the "Removed Contracts"). The Debtors have served notice of the amendment to the Cure Schedule upon the counterparties to the Additional Contracts and Removed Contracts.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the proposed assumption and assignment of the Additional Contracts and/or the Cure Amounts (each an "Objection") must be filed with the Bankruptcy Court by August 17, 2005, and must set forth the basis for the Objection, including, to the extent applicable, the revised cure cost proposed by the objecting party, and include all supporting documentation relied upon by the objecting party in support of its Objection. Objections shall be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and Local Rules of the Bankruptcy Court, shall set forth the name of the objector and shall be filed with the Bankruptcy Court electronically in accordance with General Order M-242 (which can be found at www.nysb.uscourts.gov) by registered users of the Bankruptcy Court's case filing system and, by all other parties in interest, on a 3.5 inch disk, preferably in Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format (with a hard copy delivered directly to Judge Drain's Chambers) and served in accordance with General Order M-242, and shall further be served upon (i) WestPoint Stevens Inc., 507 West Tenth Street, West Point, Georgia 31833 (Attn: M. Clayton Humphries, Jr., Esq., Vice President & General Counsel); (ii) the attorneys for the Debtors, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: John J. Rapisardi, Esq. and Michael F. Walsh, Esq.); (iii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st floor, New York, New York 10004 (Attn: Brian Masumoto, Esq.); and (iv) the attorneys for the Purchaser, Sonnenschein Nath & Rosenthal LLP, 1221 Avenue of the Americas, New York, New York 10020 (Attn: Peter Wolfson, Esq.).

PLEASE TAKE FURTHER NOTICE that if no Objections are received in accordance with the preceding paragraph, the Debtors shall be authorized to assume and assign to the Purchaser the Additional Contracts, retroactive to the closing of the Sale (the "Closing"), and the Cure Amounts set forth on the annexed Exhibit "A" shall be binding upon the counterparties to the Additional Contracts for all purposes in these cases and will constitute a final determination of total cure amounts required to be paid by the Debtors in connection with the assumption and assignment of the Additional Contracts.

PLEASE TAKE FURTHER NOTICE that if an Objection is timely filed, a status conference with respect to such Objection and the Additional Contract(s) will be held before the Honorable Robert D. Drain, United States Bankruptcy Judge, in Room 610 of the United States Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, New York, New York, on August 24, 2005 at 10:00 a.m. Such hearing may be continued at the Debtors' sole discretion. The assumption and assignment of all other Additional Contracts will not be affected by such Objection at the hearing.

PLEASE TAKE FURTHER NOTICE parties may contact Mr. Frank Yantek, at Yantek Consulting Group, Executory Contract Consultants to the Debtors, at (706) 645-4879 for assistance if there are any questions concerning the Cure Amounts or Cure Schedule.

Dated: New York, New York
August 8, 2005

/s/ John J. Rapisardi
John J. Rapisardi, Esq. (JR 7781)
Michael F. Walsh, Esq. (MW 8000)
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153-0119
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for Debtors and
Debtors in Possession

Exhibit "A"

WestPoint Stevens Inc. Supplemental Executory Contract List

CONTRACTS TO BE ADDED

WestPoint Stevens ID	Name of Contract	Name and Address of Counterparty	Nature of Contract	Cure Amount
9457	AMERICAN EXPRESS CARD ACCEPTANCE AGREEMENT	AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC. 1117 PERIMETER CENTER WEST SUITE E201A ATLANTA, GA 30338	CREDIT CARD ACCEPTANCE AGREEMENT	$0.00
9459	DESIGN LICENSE AGREEMENT	BREWSTER WALLPAPER CORP. 67 PACELLA PARK DRIVE RANDOLPH, MA 02368	LICENSE AGREEMENT	$0.00
604	MILL STORE LEASE BURLINGTON	I.R.E. BMOC 1750 EAST SUNRISE BOULEVARD THIRD FLOOR FT. LAUDERDALE, FL 33304	NON RESIDENTIAL REAL PROPERTY LEASE	$0.00
711	LICENSE - DEDUCTION MANAGEMENT SYSTEM	I-MANY 537 CONGRESS STREET PORTLAND, ME 4101	SOFTWARE LICENSE	$0.00
9397	SOFTWARE LICENSE	LEADTEC SYSTEMS, INC. 1100 ABERNATHY ROAD SUITE 1008 BLDG 500 ATLANTA, GA 30328	SOFTWARE LICENSE	$0.00
9482	AS 400 SOFTWARE LICENSES (11)	NETWORK SYSTEMS INTERNATIONAL 127 N. GREENE ST. GREENSBORO, NC 27401	SOFTWARE LICENSE AGREEMENT	$0.00
9458	MERCHANT SERVICES BANKCARD AGREEMENT	WACHOVIA MERCHANT SERVICES, L.L.C. 265 BROAD HOLLOW ROAD MELVILLE, NY 11747	CREDIT CARD ACCEPTANCE AGREEMENT	$0.00
9364	AGREEMENT TO PURCHASE WATER	WATER WORKS BOARD OF THE CITY OF OPELIKA, ALABAMA 502 GENEVA STREET OPELIKA, AL 36801	MISCELLANEOUS CONTRACT	$0.00
1390	AGREEMENT TO SUPPLY ADMINISTRATIVE AND ACCOUNTING SERVICES TO WESTPOINT STEVENS INC. I.	WILMINGTON TRUST SP SERVICES (NEVADA), INC. (F/K/A NEVADA CORPORATE MANAGEMENT, INC.) 3993 HOWARD HUGHES PKWY SUITE 250 LAS VEGAS, NV 89109	SERVICE CONTRACT	$0.00
1391	LEASE FOR NON RESIDENTIAL REAL PROPERTY - COMMERCIAL OFFICE SPACE - TO BE USED BY WESTPOINT STEVENS INC. I.	WILMINGTON TRUST SP SERVICES (NEVADA), INC. (F/K/A NEVADA CORPORATE MANAGEMENT, INC.) 3993 HOWARD HUGHES PKWY SUITE 250 LAS VEGAS, NV 89109	NON RESIDENTIAL REAL PROPERTY LEASE	$0.00

CONTRACTS TO BE REMOVED

WestPoint Stevens ID	Name of Contract	Name and Address of Counterparty	Nature of Contract	Cure Amount
418	APPROX. 50 EASEMENTS FOR REAL ESTATE, WIRELINES, WATER & GAS PIPELINES, SEWERS AND RUNOFFS AT VARIOUS PLANTS	CSX TRANSPORTATION ATTN: PROPERTY SERVICES 500 WATER STREET J180 JACKSONVILLE, FL 32202-4445	EASEMENT	$0.00
9349	PURCHASE BY NECO OF CERTAIN REAL ESTATE, MACHINERY AND EQUIPMENT, AS WELL AS AGREEMENT BY WPP TO OPERATE STEAM PLANT AND SUPPLY NECO WITH STEAM	NECO ELECTRICAL PRODUCTS CORPORATION 720 SE LOOP 289 LUBBOCK, TX 79404	ASSET PURCHASE AGREEMENT	$0.00

1366	GRANTS AND RESERVATIONS OF EASEMENTS (SHAWMUT)	WELLINGTON SEARS (JOHNSTON INDUSTRIES) PO BOX 98 VALLEY, AL 36854	EASEMENT	$0.00
1367	GRANTS AND RESERVATIONS OF EASEMENTS (LANGDALE)	WELLINGTON SEARS (JOHNSTON INDUSTRIES) PO BOX 98 VALLEY, AL 36854	EASEMENT	$0.00
1368	GRANTS AND RESERVATIONS OF EASEMENTS (UTILIZATION)	WELLINGTON SEARS (JOHNSTON INDUSTRIES) PO BOX 98 VALLEY, AL 36854	EASEMENT	$0.00
1369	GRANTS AND RESERVATIONS OF EASEMENTS (PERSONNEL SERVICES CENTER)	WELLINGTON SEARS (JOHNSTON INDUSTRIES) PO BOX 98 VALLEY, AL 36854	EASEMENT	$0.00

WestPoint Stevens Contracts to be Added for Assumption

WestPoint Stevens ID	Name of Contract	Name and Address of Counterparty	Nature of Contract
9482	AS 400 SOFTWARE LICENSES (11)	NETWORK SYSTEMS INTERNATIONAL 127 N. GREENE ST. GREENSBORO, NC 27401	SOFTWARE LICENSE AGREEMENT

WestPoint Stevens Contracts to be Added for Assumption

Cure Amount
$0.00

WOMBLE CARLYLE SANDRIDGE & RICE
A LIMITED LIABILITY PARTNERSHIP

1727 Hampton Street
Columbia, SC 29201

Telephone: (803) 454-6504
Fax: (803) 454-6509
www.wcsr.com

Direct Dial: 803-454-7730
Direct Fax: 803-381-9130
E-mail: Todd.Carroll@wcsr.com

December 18, 2015

2015 DEC 18 PM 3:51
C.C.P. & G.S.

The Honorable Alison Renee Lee
P O Box 192
1701 Main St., Room 324
Columbia, SC 29202-0192

The Honorable Jeanette W. McBride
Clerk of Court
Richland County Judicial Center
Post Office Box 2766
Columbia, SC 29202-2766

Re: South Carolina Workers' Compensation Commission v WestPoint Home, LLC
Civil Action No. 2014-CP-40-2496 (Business Court)

Dear Judge Lee and Ms. McBride:

At the close of the November 23, 2015 hearing in the above-referenced case, Your Honor requested that the parties provide the Court with a copy of the June 2, 2003 Post-Petition Credit Agreement between WestPoint Stevens and Bank of America. This document, which is also referred to as the "DIP Credit Agreement," was filed as Document 23-1 in WestPoint Stevens's bankruptcy proceedings, Case No. 03-13532 (RDD) (Bankr. S.D.N.Y.).

As requested, please find enclosed a copy of the DIP Credit Agreement, which we have obtained from WestPoint Stevens's bankruptcy counsel. We are also sending a copy to the Clerk of Court for filing, along with an enclosed envelope for her to return a filed copy to us.

We very much appreciate the Court's consideration of the parties' respective positions and submissions in this matter. If we can provide Your Honor with any additional materials or information, please do not hesitate to call on us.

Very truly yours,

M. Todd Carroll

Enclosure
cc: T. Parkin Hunter, Esq.
J. Keith Roberts, Esq.
Herbert Beigel, Esq.

POST-PETITION CREDIT AGREEMENT

Dated as of June 2, 2003

Among

WESTPOINT STEVENS INC.
AND CERTAIN OF ITS SUBSIDIARIES
(the Borrowers)

THE FINANCIAL INSTITUTIONS NAMED HEREIN
(the Lenders)

and

BANK OF AMERICA, N.A.
(the Administrative Agent)

and

WACHOVIA BANK, NATIONAL ASSOCIATION
(the Syndication Agent)

Arranger:

BANC OF AMERICA SECURITIES LLC

Co-Book Managers:

BANC OF AMERICA SECURITIES LLC
WACHOVIA SECURITIES, INC.

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POST-PETITION CREDIT AGREEMENT

This POST-PETITION CREDIT AGREEMENT, dated as of June 2, 2003 (this "Agreement"), is made among WESTPOINT STEVENS INC., a Delaware corporation and Chapter 11 debtor-in-possession ("WPS"), WESTPOINT STEVENS INC I, a Delaware corporation and Chapter 11 debtor-in-possession ("WPSI"), J.P. STEVENS & CO., INC., a Delaware corporation and Chapter 11 debtor-in-possession ("JPS"), J.P. STEVENS ENTERPRISES, INC., a Delaware corporation and Chapter 11 debtor-in-possession ("JPSE"), and WESTPOINT STEVENS STORES INC., a Georgia corporation and Chapter 11 debtor-in-possession ("WPSS") (WPS, WPSI, JPS, JPSE and WPSS each is referred to hereinafter as a "Borrower" and collectively as the "Borrowers"), the financial institutions from time to time parties hereto (such financial institutions, together with their respective successors and assigns, are referred to hereinafter each individually as a "Lender" and collectively as the "Lenders"), BANK OF AMERICA, N.A., in its capacity as administrative and collateral agent for the Lenders (together with its successors in such capacity, the "Administrative Agent"), and WACHOVIA BANK, NATIONAL ASSOCIATION, in its capacity as syndication agent for the Lenders (in such capacity, the "Syndication Agent").

W I T N E S S E T H:

WHEREAS, Borrowers are debtors-in-possession under Chapter 11 of the Bankruptcy Code in cases (the "Chapter 11 Cases") pending in the United States Bankruptcy Court for the Southern District of New York (together with any other court having jurisdiction over the Chapter 11 Cases or any proceedings therein from time to time, the "Court"), as Case Nos. 03-13532 through 03-13536

WHEREAS, Borrowers have requested the Lenders to make available to the Borrowers a revolving line of credit for loans and letters of credit in an amount not to exceed $300,000,000, which extensions of credit the Borrowers will use only for the purposes permitted hereunder;

WHEREAS, capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings ascribed thereto in Annex A which is attached hereto and incorporated herein; the rules of construction contained therein shall govern the interpretation of this Agreement, and all Annexes, Exhibits and Schedules attached hereto are incorporated herein by reference;

WHEREAS, the Lenders have agreed to make available to the Borrowers a revolving credit facility upon the terms and conditions set forth in this Agreement, and subject to the terms and conditions set forth in orders of the Court approving the proposed financing.

NOW, THEREFORE, in consideration of the mutual conditions and agreements set forth in this Agreement, and for good and valuable consideration, the receipt of which is hereby acknowledged, the Lenders, the Administrative Agent, and the Borrowers hereby agree as follows:

ARTICLE 1
LOANS AND LETTERS OF CREDIT

1.1 DIP Facility. Subject to all of the terms and conditions of this Agreement and the other DIP Financing Documents, the Lenders agree to make available a total credit facility of up to $300,000,000 (the "DIP Facility") to the Borrowers from time to time during the term of this Agreement. The DIP Facility shall be composed of a revolving line of credit consisting of Revolving Loans and Letters of Credit described herein.

1.2 Revolving Loans.

(a) Amounts. Subject to the satisfaction of the conditions precedent set forth in Article 8, each Lender severally, but not jointly, agrees, upon the Borrowers' request from time to time on any Business Day during the period from the Closing Date to the day before the last day of the DIP Term, to make revolving loans (the "Revolving Loans") to the Borrowers in amounts not to exceed such Lender's Pro Rata Share of Availability, except for Non-Ratable Loans and Agent Advances. The Lenders, however, in their unanimous discretion, may elect to make Revolving Loans or issue or arrange to have issued Letters of Credit in excess of the Borrowing Base, on one or more occasions, but if they do so, neither the Administrative Agent nor the Lenders shall be deemed thereby to have changed the limits of the Borrowing Base or to be obligated to exceed such limits on any other occasion. If any Borrowing would exceed Availability, the Lenders may refuse to make or may otherwise restrict the making of Revolving Loans as the Lenders determine until such excess has been eliminated, subject to the Administrative Agent's authority, in its sole discretion, to make Agent Advances pursuant to the terms of Section 1.2(i).

(b) Use of Proceeds. During the Interim Period, the proceeds of the Revolving Loans shall be used by Borrowers exclusively for one or more of the following purposes: (i) to pay expenses described (and in amounts not to exceed those shown) in the Budget; (ii) to pay any of the Obligations; (iii) to pay any amounts authorized or required to be paid pursuant to any of the "first day orders" of the Court or pursuant to any other order of the Court; (iv) to pay adequate protection payments pursuant to the Interim Pre-Petition Lender Protection Order; and (v) to pay Claims authorized to be paid under Section 556 of the Bankruptcy Code. After the Interim Period, the proceeds of the Revolving Loans shall be used by Borrowers exclusively for one or more of the following purposes: (i) to pay operating expenses in the Ordinary Course of Business provided that the incurrence or payment thereof is not otherwise violative of this Agreement or the Financing Orders; (ii) to pay adequate protection payments pursuant to the Final Pre-Petition Lender Protection Order; (iii) to pay Adequate Protection Claims, Reclamation Claims and Critical Vendor Claims, but only to the extent authorized by the Court; (iv) to pay fees required to be paid to the Office of the United States Trustee; (v) to pay Professional Expenses of Professional Persons and Committee Expenses, in each case subject to allowance by the Court and Borrowers' receipt of an itemized billing and expense statement from each such Professional Person and Committee member; (vi) to pay any of the Obligations; (vii) to pay property taxes with respect to any Collateral to the extent nonpayment thereof is secured by a Lien senior to Administrative Agent's Liens thereon; (viii) to

repurchase or otherwise reacquire any Purchased Receivables pursuant to Section 7.15(c), but only to the extent authorized by the Court; (ix) to purchase any returned goods pursuant to Section 7.15(b), but only to the extent authorized by the Court; (x) to pay fees and expenses associated with a KERP, provided that the KERP is approved by final order of the Court and is reasonably acceptable to Administrative Agent; and (xi) to pay other liabilities or obligations of a Borrower so long as the incurrence or payment of such liabilities and obligations is not violative of this Agreement, the Financing Orders, any other order of the Court or applicable law. Notwithstanding anything to the contrary contained herein, in no event shall proceeds of Revolving Loans be used to pay Professional Expenses incurred in connection with the assertion of or joinder in any claim, counterclaim, action, contested matter, objection, defense or other proceeding, the purpose of which is to seek or the result of which would be to obtain any order, judgment, declaration, or similar relief (a) seeking damages against any Agent or Lender on account of any alleged cause of action arising on, before or after the Petition Date; (b) invalidating, setting aside, avoiding or subordinating, in whole or in part, any of the Obligations or Liens and security interests in any of the Collateral granted to Administrative Agent under this Agreement or the Financing Orders; (c) declaring any of the DIP Financing Documents to be invalid, not binding or unenforceable in any respect; (d) preventing, enjoining, hindering or otherwise delaying Administrative Agent's or any Lender's enforcement of any of the DIP Financing Documents or any realization upon any Collateral (unless such enforcement or realization is in direct violation of an explicit provision in any of the Financing Orders); (e) declaring any Liens granted or purported to be granted under any of the DIP Financing Documents to have a priority other than the priority set forth therein or in any of the Financing Orders; or (f) seeking to use the cash proceeds of any of the Collateral without the prior written consent of Administrative Agent and the Majority Lenders. Nothing in this Section 1.2(b) shall be construed to waive any Agent's or Lender's right to object to any requests, motions or applications made in or filed with the Court, including any applications for interim or final allowances of Professional Expenses.

(c) Procedure for Borrowing. Each Borrowing shall be made upon the Borrowers' irrevocable written notice delivered to the Administrative Agent in the form of a notice of borrowing ("Notice of Borrowing"), which must be received by the Administrative Agent prior to (i) 12:00 noon (Atlanta, Georgia time) three Business Days prior to the requested Funding Date, in the case of LIBOR Revolving Loans, and (ii) 12:00 noon (Atlanta, Georgia time) on the requested Funding Date, in the case of Base Rate Revolving Loans, specifying:

(A) the amount of the Borrowing, which in the case of a LIBOR Revolving Loan must equal or exceed $10,000,000 (and increments of $1,000,000 in excess of such amount);

(B) the requested Funding Date, which must be a Business Day;

(C) whether the Revolving Loans requested are to be Base Rate Revolving Loans or LIBOR Revolving Loans (and if not specified, it shall be deemed a request for a Base Rate Revolving Loan); and

(D) the duration of the Interest Period for LIBOR Revolving Loans (and if not specified, it shall be deemed a request for an Interest Period of one month);

provided, however, that with respect to the Borrowings to be made during the period commencing on the Closing Date and ending on the seventh day after the Closing Date, such Borrowings will consist of Base Rate Revolving Loans only.

(2) In lieu of delivering a Notice of Borrowing, the Borrowers may give the Administrative Agent telephonic notice of such request for advances to the Designated Account on or before the deadline set forth above. The Administrative Agent at all times shall be entitled to rely on such telephonic notice in making such Revolving Loans, regardless of whether any written confirmation is received.

(3) The Borrowers shall have no right to request a LIBOR Revolving Loan while a Default or Event of Default has occurred and is continuing.

(d) Reliance upon Authority. Prior to the Closing Date, the Borrowers shall deliver to the Administrative Agent, a notice setting forth the account of the Borrowers ("Designated Account") to which the Administrative Agent is authorized to transfer the proceeds of the Revolving Loans requested hereunder. The Borrowers may designate a replacement account from time to time by written notice. The Designated Account must be reasonably satisfactory to the Administrative Agent. The Administrative Agent is entitled to rely conclusively on any Person's request for Revolving Loans on behalf of the Borrowers, so long as the proceeds thereof are to be transferred to the Designated Account. The Administrative Agent has no duty to verify the identity of any individual representing himself or herself as a person authorized by the Borrowers to make such requests on its behalf.

(e) No Liability. The Administrative Agent shall not incur any liability to the Borrowers as a result of acting upon any notice referred to in Sections 1.2(c) and (d), which the Administrative Agent believes in good faith to have been given by an officer or other person duly authorized by the Borrowers to request Revolving Loans on its behalf. The crediting of Revolving Loans to the Designated Account conclusively establishes the obligation of the Borrowers to repay such Revolving Loans as provided herein.

(f) Notice Irrevocable. Any Notice of Borrowing (or telephonic notice in lieu thereof) made pursuant to Section 1.2(c) shall be irrevocable. The Borrowers shall be bound to borrow the funds requested therein in accordance therewith.

(g) Administrative Agent's Election. Promptly after receipt of a Notice of Borrowing (or telephonic notice in lieu thereof), the Administrative Agent shall elect to have the terms of Section 1.2(h) or the terms of Section 1.2(i) apply to such requested Borrowing. If Bank of America declines in its sole discretion to make a Non-Ratable Loan pursuant to Section 1.2(i), the terms of Section 1.2(h) shall apply to the requested Borrowing.

(h) Making of Revolving Loans. If Administrative Agent elects to have the terms of this Section 1.2(h) apply to a requested Borrowing, then promptly after receipt of a Notice of Borrowing or telephonic notice in lieu thereof, the Administrative Agent shall notify

the Lenders by telecopy, telephone or e-mail of the requested Borrowing. Each Lender shall transfer its Pro Rata Share of the requested Borrowing available to the Administrative Agent in immediately available funds, to the account from time to time designated by Administrative Agent, not later than 1:00 p.m. (Atlanta, Georgia time) on the applicable Funding Date. After the Administrative Agent's receipt of all proceeds of such Revolving Loans, the Administrative Agent shall make the proceeds of such Revolving Loans available to the Borrowers on the applicable Funding Date by transferring same day funds to the account designated by the Borrowers; provided, however, that the amount of Revolving Loans so made on any date shall not exceed the Availability on such date.

(i) Making of Non-Ratable Loans.

(A) If Administrative Agent elects, with the consent of Bank of America, to have the terms of this Section 1.2(i) apply to a requested Borrowing, Bank of America shall make a Revolving Loan in the amount of that Borrowing available to the Borrower on the applicable Funding Date by transferring same day funds to the Designated Account. Each Revolving Loan made solely by Bank of America pursuant to this Section is herein referred to as a "Non-Ratable Loan," and such Revolving Loans are collectively referred to as the "Non-Ratable Loans." Each Non-Ratable Loan shall be subject to all the terms and conditions applicable to other Revolving Loans except that all payments thereon shall be payable to Bank of America solely for its own account. The aggregate amount of Non-Ratable Loans outstanding at any time shall not exceed $30,000,000. The Administrative Agent shall not request Bank of America to make any Non-Ratable Loan if (1) the Administrative Agent has received written notice from any Lender that one or more of the applicable conditions precedent set forth in Article 8 will not be satisfied on the requested Funding Date for the applicable Borrowing, or (2) the requested Borrowing would exceed Availability on that Funding Date.

(B) The Non-Ratable Loans shall be secured by the Administrative Agent's Liens in and to the Collateral and shall constitute Base Rate Revolving Loans and Obligations hereunder.

(j) Agent Advances.

(A) Notwithstanding anything to the contrary elsewhere in this Agreement or any other DIP Financing Document (and irrespective of the existence of any Overadvance Condition), but subject to the dollar limitations set forth below, the Administrative Agent is authorized by the Borrowers and the Lenders, from time to time in the Administrative Agent's sole discretion, (A) after the occurrence of a Default or an Event of Default (and for so long as such Default or Event of Default is not waived or cured) or (B) at any time that any of the other conditions precedent set forth in Article 8 have not been satisfied (and, as a consequence thereof one or more of the Lenders gives notice to the Administrative Agent of its intent not to fund Revolving Loans), to make Base Rate Revolving Loans from time to time to the Borrowers on behalf of the Lenders which the Administrative Agent, in its reasonable business judgment, deems necessary or desirable (1) to preserve, protect, insure, marshall, market, sell or otherwise dispose of any of the Collateral or to enhance the likelihood of, or maximize the amount of,

repayment of the Loans and other Obligations, provided that the Administrative Agent shall not be authorized to make any Agent Advance (as hereinafter defined) if the principal amount of such Agent Advance, when added to the aggregate principal amount of all Agent Advances then outstanding, would exceed $10,000,000 (or, with the consent of the Syndication Agent, $20,000,000), (2) to pay fees and expenses covered by the Carve-Out, or (3) to pay any other amount chargeable to the Borrowers pursuant to the terms of this Agreement, including costs, fees and expenses as described in Section 13.7 (any of such advances are herein referred to as "Agent Advances"); provided, that the Lenders (but not the Majority Lenders or the Supermajority Lenders) may at any time revoke the Administrative Agent's authorization to make Agent Advances by the written direction of all of such Lenders. Any such revocation must be in writing and shall become effective prospectively upon the Administrative Agent's receipt thereof.

(B) The Agent Advances shall be secured by the Administrative Agent's Liens in and to the Collateral and shall constitute Base Rate Revolving Loans and Obligations hereunder.

(k) Borrowers' Agent. Each Borrower hereby irrevocably appoints WPS, and WPS agrees to act under this Agreement, as the agent and representative of itself and each other Borrower for all purposes under this Agreement (in such capacity, "Borrowers' Agent"), including requesting Revolving Loans and receiving account statements and other notices and communications to Borrowers (or any of them) from the Administrative Agent and the Lenders. The Administrative Agent and the Lenders may rely, and shall be fully protected in relying, upon any Notice of Borrowing, disbursement instructions, reports, information, Borrowing Base Certificates or any other notice or communication made or given by Borrowers' Agent, whether in its own name, on behalf of any Borrower or on behalf of "the Borrowers," and the Administrative Agent and the Lenders shall have no obligation to make any inquiry or to request any confirmation from or on behalf of any other Borrower as to the binding effect on such Borrower of any such Notice of Borrowing, instruction, report, information, Borrowing Base Certificate or other notice or communication, nor shall the joint and several character of the Borrowers' liability for the Obligations be affected, provided that the provisions of this Section 1.2(l) shall not be construed to preclude any Borrower from directly requesting Revolving Loans or taking other actions permitted to be taken by "a Borrower" hereunder. The Administrative Agent and the Lenders may maintain a single Loan Account in the name of "WPS" hereunder, and each Borrower expressly agrees to such arrangement and confirms that such arrangement shall have no effect upon the joint and several character of such Borrower's liability for the Obligations.

1.3 Letters of Credit; Agreement to Issue or Cause to Issue. (a) Subject to the terms and conditions of this Agreement, the Administrative Agent agrees (i) to cause the Letter of Credit Issuer to issue for the account of the Borrowers one or more commercial/documentary and standby letters of credit ("Letter of Credit") and/or (ii) to provide to a Letter of Credit Issuer credit support or other enhancement acceptable to the Administrative Agent (any such credit support or enhancement being herein referred to as a "Credit Support") from time to time during the term of this Agreement.

(b) Amounts; Outside Expiration Date. The Administrative Agent shall not have any obligation to issue or cause to be issued any Letter of Credit or to provide Credit Support for any Letter of Credit at any time if: (i) the maximum face amount of the requested Letter of Credit is greater than the Unused Letter of Credit Subfacility at such time; (ii) the maximum undrawn amount of the requested Letter of Credit and all commissions, fees, and charges due from the Borrowers in connection with the opening thereof would exceed Availability at such time; or (iii) such Letter of Credit has an expiration date more than twelve (12) months from the date of issuance for standby letters of credit and one hundred eighty (180) days for documentary letters of credit. With respect to any Letter of Credit which contains any "evergreen" or automatic renewal provision, each Lender shall be deemed to have consented to any such extension or renewal unless any such Lender shall have provided to the Administrative Agent written notice that it declines to consent to any such extension or renewal at least thirty (30) days prior to the date on which the Letter of Credit Issuer is entitled to decline to extend or renew the Letter of Credit. If all of the requirements of this Section 1.3 are met and no Default or Event of Default has occurred and is continuing, no Lender shall decline to consent to any such extension or renewal.

(c) Other Conditions. In addition to conditions precedent contained in Article 8, the obligation of the Administrative Agent to cause to be issued any Letter of Credit or to provide Credit Support for any Letter of Credit is subject to the following conditions precedent having been satisfied in a manner reasonably satisfactory to the Administrative Agent:

(1) The Borrowers shall have delivered to the Letter of Credit Issuer, at such times and in such manner as such Letter of Credit Issuer may prescribe, an application in form and substance satisfactory to such Letter of Credit Issuer and reasonably satisfactory to the Administrative Agent for the issuance of the Letter of Credit and such other documents as may be required pursuant to the terms thereof, and the form, terms and purpose of the proposed Letter of Credit shall be reasonably satisfactory to the Administrative Agent and the Letter of Credit Issuer; and

(2) As of the date of issuance, no order of any court, arbitrator or Governmental Authority shall purport by its terms to enjoin or restrain money center banks generally from issuing letters of credit of the type and in the amount of the proposed Letter of Credit, and no law, rule or regulation applicable to money center banks generally and no request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over money center banks generally shall prohibit, or request that the proposed Letter of Credit Issuer refrain from, the issuance of letters of credit generally or the issuance of such Letters of Credit.

(d) Issuance of Letters of Credit.

(1) Request for Issuance. Borrowers must notify the Administrative Agent of a requested Letter of Credit at least three (3) Business Days prior to the proposed issuance date. Such notice shall be irrevocable and must specify the original face amount of the Letter of Credit requested, the Business Day of issuance of such

requested Letter of Credit, whether such Letter of Credit may be drawn in a single or in partial draws, the Business Day on which the requested Letter of Credit is to expire, the purpose for which such Letter of Credit is to be issued, and the beneficiary of the requested Letter of Credit. The Borrowers shall attach to such notice the proposed form of the Letter of Credit.

(2) Responsibilities of the Administrative Agent; Issuance. As of the Business Day immediately preceding the requested issuance date of the Letter of Credit, the Administrative Agent shall determine the amount of the applicable Unused Letter of Credit Subfacility and Availability. If (i) the face amount of the requested Letter of Credit is less than the Unused Letter of Credit Subfacility and (ii) the amount of such requested Letter of Credit and all commissions, fees, and charges due from the Borrowers in connection with the opening thereof would not exceed Availability, the Administrative Agent shall cause the Letter of Credit Issuer to issue the requested Letter of Credit on the requested issuance date so long as the other conditions hereof are met.

(3) No Extensions or Amendment. The Administrative Agent shall not be obligated to cause the Letter of Credit Issuer to extend or amend any Letter of Credit issued pursuant hereto unless the requirements of this Section 1.3 are met as though a new Letter of Credit were being requested and issued.

(e) Payments Pursuant to Letters of Credit. The Borrowers agree to reimburse immediately the Letter of Credit Issuer for any draw under any Letter of Credit and the Administrative Agent for the account of the Lenders upon any payment pursuant to any Credit Support, and to pay the Letter of Credit Issuer the amount of all other charges and fees payable to the Letter of Credit Issuer in connection with any Letter of Credit immediately when due, irrespective of any claim, setoff, defense or other right which the Borrowers may have at any time against the Letter of Credit Issuer or any other Person. Each drawing under any Letter of Credit shall constitute a request by the Borrowers to the Administrative Agent for a Borrowing of a Base Rate Revolving Loan in the amount of such drawing. The Funding Date with respect to such borrowing shall be the date of such drawing.

(f) Indemnification; Exoneration; Power of Attorney.

(1) Indemnification. In addition to amounts payable as elsewhere provided in this Section 1.3, the Borrowers agree, jointly and severally, to protect, indemnify, defend, pay and save the Lenders and the Administrative Agent harmless from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable attorneys' fees) which any Lender or the Administrative Agent (other than a Lender in its capacity as Letter of Credit Issuer) may incur or be subject to as a consequence, direct or indirect, of the issuance of any Letter of Credit or the provision of any Credit Support or enhancement in connection therewith. The Borrowers' obligations under this Section shall survive payment of all of the Obligations and termination of the Commitments.

(2) Assumption of Risk by the Borrowers. As among the Borrowers, the Lenders, and the Administrative Agent, the Borrowers assume all risks of the acts and

omissions of, or misuse of any of the Letters of Credit by, the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, the Lenders and the Administrative Agent shall not be responsible for: (A) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any Person in connection with the application for and issuance of and presentation of drafts with respect to any of the Letters of Credit, even if it should prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (B) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (C) the failure of the beneficiary of any Letter of Credit to comply duly with conditions required in order to draw upon such Letter of Credit; (D) errors, omissions, interruptions, or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (E) errors in interpretation of technical terms; (F) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any Letter of Credit or of the proceeds thereof; (G) the misapplication by the beneficiary of any Letter of Credit of the proceeds of any drawing under such Letter of Credit; (H) any consequences arising from causes beyond the control of the Lenders or the Administrative Agent, including any act or omission, whether rightful or wrongful, of any present or future *de jure* or *de facto* Governmental Authority or (I) the Letter of Credit Issuer's honor of a draw for which the draw or any certificate fails to comply in any respect with the terms of the Letter of Credit. None of the foregoing shall affect, impair or prevent the vesting of any rights or powers of the Administrative Agent or any Lender under this Section 1.3(f).

(3) Exoneration. Without limiting the foregoing, no action or omission whatsoever by Administrative Agent or any Lender (excluding any Lender in its capacity as a Letter of Credit Issuer) shall result in any liability of Administrative Agent or and Lender to any Borrower, or relieve the Borrowers of any of their obligations hereunder to any such Person.

(4) Rights Against Letter of Credit Issuer. Nothing contained in this Agreement is intended to limit the Borrowers' rights, if any, with respect to the Letter of Credit Issuer which arise as a result of the letter of credit application and related documents executed by and between the Borrowers and the Letter of Credit Issuer.

(5) Account Party. The Borrowers hereby authorize and direct any Letter of Credit Issuer to name the Borrowers as the "Account Party" therein and to deliver to the Administrative Agent all instruments, documents and other writings and property received by the Letter of Credit Issuer pursuant to the Letter of Credit, and to accept and rely upon the Administrative Agent's instructions and agreements with respect to all matters arising in connection with the Letter of Credit or the application therefor.

(g) Supporting Letter of Credit; Cash Collateral. If, notwithstanding the provisions of Section 1.3(b) and Section 10.1, any Letter of Credit or Credit Support is outstanding upon the termination of this Agreement, then upon such termination the Borrowers shall deposit with the Administrative Agent, for the ratable benefit of the Administrative Agent

and the Lenders, with respect to each Letter of Credit or Credit Support then outstanding, as the Administrative Agent shall specify, either (i) a standby letter of credit (a "Supporting Letter of Credit") in form and substance satisfactory to the Administrative Agent, issued by an issuer satisfactory to the Administrative Agent in an amount equal to 105% of the greatest amount for which such Letter of Credit or such Credit Support may be drawn, under which Supporting Letter of Credit the Administrative Agent is entitled to draw amounts necessary to reimburse the Administrative Agent and the Lenders for payments to be made by the Administrative Agent and the Lenders under such Letter of Credit or Credit Support and any fees and expenses associated with such Letter of Credit or Credit Support or (ii) cash collateral in an amount equal to 105% of the greatest amount for which such Letter of Credit or such Credit Support may be drawn, which the Administrative Agent is entitled to apply as necessary to reimburse the Administrative Agent and the Lenders for payments to be made by the Administrative Agent and the Lenders under such Letter of Credit or Credit Support and any fees and expenses associated with such Letter of Credit or Credit Support. Such Supporting Letter of Credit shall be held by the Administrative Agent, for the ratable benefit of the Administrative Agent and the Lenders, as security for, and to provide for the payment of, the aggregate undrawn amount of such Letters of Credit or such Credit Support remaining outstanding.

1.4 Bank Products. The Borrowers may request and, to the extent authorized by order of the Court, the Administrative Agent may, in its sole and absolute discretion, arrange for the Borrowers to obtain from Bank of America or Bank of America's Affiliates, Bank Products although the Borrowers are not required to do so. If Bank Products are provided by an Affiliate of Bank of America, the Borrowers agree to indemnify and hold the Administrative Agent, Bank of America and the Lenders harmless from any and all costs and obligations now or hereafter incurred by the Administrative Agent, Bank of America or any of the Lenders which arise from any indemnity given by the Administrative Agent to its Affiliates related to such Bank Products; provided, however, nothing contained herein is intended to limit the Borrowers' rights, with respect to Bank of America or its Affiliates, if any, which arise as a result of the execution of documents by and between the Borrowers and Bank of America which relate to Bank Products. The agreement contained in this Section shall survive termination of this Agreement. The Borrowers acknowledge and agree that the obtaining of Bank Products from Bank of America or Bank of America's Affiliates (a) is in the sole and absolute discretion of Bank of America or Bank of America's Affiliates, and (b) is subject to all rules and regulations of Bank of America or Bank of America's Affiliates.

ARTICLE 2
INTEREST AND FEES

2.1 Interest.

(a) Interest Rates. All outstanding Obligations shall bear interest on the unpaid principal amount thereof (including, to the extent permitted by applicable law, on interest thereon not paid when due) from the date made until paid in full in cash at a rate determined by reference to the Base Rate or the LIBOR Rate plus the Applicable Margins as set forth below, but not to exceed the Maximum Rate. If at any time Loans are outstanding with respect to which the Borrowers have not delivered to the Administrative Agent a notice specifying the basis for determining the interest rate applicable thereto in accordance herewith, those Loans shall bear

interest at a rate determined by reference to the Base Rate until notice to the contrary has been given to the Administrative Agent in accordance with this Agreement and such notice has become effective. Except as otherwise provided herein, the outstanding Obligations shall bear interest as follows:

(i) For all Base Rate Revolving Loans and other Obligations (other than LIBOR Revolving Loans) at a fluctuating per annum rate equal to the Base Rate plus the Applicable Margin; and

(ii) For all LIBOR Revolving Loans at a per annum rate equal to the LIBOR Rate plus the Applicable Margin,

subject in each case to adjustment in accordance with the terms of the Interest and Fee Letter.

Each change in the Base Rate shall be reflected in the interest rate applicable to Base Rate Revolving Loans as of the effective date of such change. All interest charges shall be computed on the basis of a year of 360 days and actual days elapsed (which results in more interest being paid than if computed on the basis of a 365-day year). The Borrowers shall pay to the Administrative Agent, for the ratable benefit of Lenders, interest accrued on all Base Rate Revolving Loans in arrears on the first day of each month hereafter and on the Commitment Termination Date. The Borrowers shall pay to the Administrative Agent, for the ratable benefit of Lenders, interest on all LIBOR Revolving Loans in arrears on each LIBOR Interest Payment Date.

(b) Default Rate. If any Default or Event of Default occurs and is continuing and the Administrative Agent or the Majority Lenders in their discretion so elect, then, while any such Default or Event of Default is continuing, all of the Obligations shall bear interest at the Default Rate applicable thereto.

2.2 Continuation and Conversion Elections.

(a) The Borrowers may:

(i) elect, as of any Business Day, in the case of Base Rate Revolving Loans, to convert any Base Rate Revolving Loans (or any part thereof in an amount not less than $10,000,000, or that is in an integral multiple of $1,000,000 in excess thereof) into LIBOR Revolving Loans; or

(ii) elect, as of the last day of the applicable Interest Period, to continue any LIBOR Revolving Loans having Interest Periods expiring on such day (or any part thereof in an amount not less than $1,000,000, or that is in an integral multiple of $1,000,000 in excess thereof);

provided, that if at any time the aggregate amount of LIBOR Revolving Loans in respect of any Borrowing is reduced, by payment, prepayment, or conversion of part thereof to be less than $1,000,000, such LIBOR Revolving Loans shall automatically convert into Base Rate Revolving Loans; and provided further, that if the notice shall fail to specify the duration of the Interest Period, such Interest Period shall be one month.

(b) The Borrowers shall deliver a notice of continuation/conversion ("Notice of Continuation/Conversion") to the Administrative Agent not later than 12:00 noon (Atlanta, Georgia time) at least three (3) Business Days in advance of the Continuation/Conversion Date, if the Loans are to be converted into or continued as LIBOR Revolving Loans and specifying:

(i) the proposed Continuation/Conversion Date;

(ii) the aggregate amount of Loans to be converted or renewed;

(iii) the type of Loans resulting from the proposed conversion or continuation; and

(iv) the duration of the requested Interest Period, provided that the Borrowers may not select an Interest Period that ends after the last day of the DIP Term.

(c) If upon the expiration of any Interest Period applicable to LIBOR Revolving Loans, the Borrowers have failed to select timely a new Interest Period to be applicable to LIBOR Revolving Loans or if any Default or Event of Default then exists, the Borrowers shall be deemed to have elected to convert such LIBOR Revolving Loans into Base Rate Revolving Loans effective as of the expiration date of such Interest Period.

(d) The Administrative Agent will promptly notify each Lender of its receipt of a Notice of Continuation/Conversion. All conversions and continuations shall be made ratably according to the respective outstanding principal amounts of the Loans with respect to which the notice was given held by each Lender.

(e) There may not be more than eight (8) different LIBOR Revolving Loans in effect hereunder at any time.

2.3 Maximum Interest Rate. In no event shall any interest rate provided for hereunder or under any of the DIP Financing Documents exceed the maximum rate legally chargeable by any Lender under applicable law for such Lender with respect to loans of the type provided for hereunder (the "Maximum Rate"). If, in any month, any interest rate, absent such limitation, would have exceeded the Maximum Rate, then the interest rate for that month shall be the Maximum Rate, and, if in future months, that interest rate would otherwise be less than the Maximum Rate, then that interest rate shall remain at the Maximum Rate until such time as the amount of interest paid hereunder equals the amount of interest which would have been paid if the same had not been limited by the Maximum Rate. In the event that, upon payment in full of the Obligations, the total amount of interest paid or accrued under the terms of this Agreement is less than the total amount of interest which would, but for this Section 2.3, have been paid or accrued if the interest rate otherwise set forth in this Agreement had at all times been in effect, then the Borrowers shall, to the extent permitted by applicable law, pay the Administrative Agent, for the account of the Lenders, an amount equal to the excess of (a) the lesser of (i) the amount of interest which would have been charged if the Maximum Rate had, at all times, been in effect or (ii) the amount of interest which would have accrued had the interest rate otherwise set forth in this Agreement, at all times, been in effect over (b) the amount of interest actually paid or accrued under this Agreement. If a court of competent jurisdiction determines that the

Administrative Agent and/or any Lender has received interest and other charges hereunder or under any of the DIP Financing Documents in excess of the Maximum Rate, such excess shall be deemed received on account of, and shall automatically be applied to reduce, the Obligations other than interest, in the inverse order of maturity, and if there are no Obligations outstanding, the Administrative Agent and/or such Lender shall refund to the Borrowers such excess.

2.4 Closing and Agency Fees. The Borrowers jointly and severally agree to pay all fees set forth in the Interest and Fee Letter, as and when provided in the Interest and Fee Letter.

2.5 Unused Line Fee. On the first day of each month and on the Commitment Termination Date the Borrowers agree to pay to the Administrative Agent, for the account of the Lenders, in accordance with their respective Pro Rata Shares, an unused line fee (the "Unused Line Fee"), which shall be equal to the Applicable Margin for the Unused Line Fee times the amount by which the Maximum Revolver Amount exceeded the sum of the average daily outstanding amount of Revolving Loans and the average daily undrawn face amount of outstanding Letters of Credit, during the immediately preceding month or such portion of such month during which the Commitments were in effect. The Unused Line Fee shall be computed on the basis of a 360-day year for the actual number of days elapsed. All principal payments received by the Administrative Agent shall be deemed to be credited to the Borrowers' Loan Account immediately upon receipt for purposes of calculating the Unused Line Fee pursuant to this Section 2.5.

2.6 Letter of Credit Fees. The Borrowers agree to pay to the Administrative Agent, for the account of the Lenders, in accordance with their respective Pro Rata Shares, for each Letter of Credit, a fee (the "Letter of Credit Fee") at a rate per annum equal to the Applicable Margin in effect from time to time for LIBOR Revolving Loans, and to the Administrative Agent, for the benefit of the Letter of Credit Issuer, a fronting fee (the "Fronting Fee") of one-half of one percent (0.5%) per annum, in each case based upon the undrawn face amount of each Letter of Credit, and to the Letter of Credit Issuer, all of its normal and customary fees associated with the issuance, amending, renewal, negotiating, processing and administration of Letters of Credit, together with its out-of-pocket costs and expenses incurred by the Letter of Credit Issuer in connection therewith (such fees, costs and expenses, collectively, the "Letter of Credit Issuer Amounts"). The Letter of Credit Fee and the Fronting Fee shall each be payable monthly in arrears on the first day of each month following any month in which a Letter of Credit is outstanding and on the Commitment Termination Date. The Letter of Credit Issuer Amounts shall be payable as and when assessed by the Letter of Credit Issuer. The Letter of Credit Fee and the Fronting Fee shall each be computed on the basis of a 360-day year for the actual number of days elapsed.

ARTICLE 3
PAYMENTS AND PREPAYMENTS

3.1 Repayment of Obligations.

(a) The Borrowers shall repay the outstanding principal balance of the Obligations on the Commitment Termination Date.

(b) The Borrowers shall be obligated to prepay the Obligations (i) when an Overadvance Condition exists, to the extent of the Overadvance Condition; (ii) from the Net Proceeds of any sale, lease or other disposition of any of the Collateral (other than sales of Inventory in the Ordinary Course of Business), to the extent of such Net Proceeds (other than any portion thereof required to be shared with the First Priority Pre-Petition Lenders in accordance with the Pre-Petition Lender Protection Orders); and (iii) from the proceeds of any insurance or condemnation awards, as provided in Section 7.6, to the extent of such proceeds. So long as any Cash Dominion Period is in effect, the Borrowers shall also be obligated to prepay the Obligations upon any Borrower's or the Administrative Agent's receipt of proceeds of any Collateral (including collections of Accounts), to the extent of such proceeds (other than any portion of the Net Proceeds derived from the sale or other disposition of Fixed Assets (as defined in the Pre-Petition Lender Protection Orders) and required to be shared with the First Priority Pre-Petition Lenders in accordance with the Pre-Petition Lender Protection Orders). Notwithstanding the foregoing, provided no Event of Default exists at the time of the Borrowers' receipt of Net Proceeds from sales or other dispositions of Fixed Assets, the Borrowers shall be authorized to retain and use in the Ordinary Course of Business, each Fiscal Year, up to $1,000,000 in aggregate Net Proceeds from all sales or other dispositions of Fixed Assets. Provided each of the conditions precedent set forth in Section 8.2 hereof is satisfied, the Borrowers shall be authorized to reborrow amounts prepaid, subject to the limits of Availability on the date of each requested Borrowing.

3.2 Termination of DIP Facility; Extension of DIP Facility.

(a) The Borrowers may terminate the DIP Facility (and the Commitments thereunder) upon at least ten (10) Business Days notice to the Administrative Agent and the Lenders; provided, however, no such termination by the Borrowers shall be effective until Full Payment of the Obligations. Any notice of termination given by the Borrowers shall be irrevocable unless the Administrative Agent otherwise agrees in writing. The Borrowers may elect to terminate the DIP Facility in its entirety only.

(b) The Borrowers may, at their option, extend the term of the DIP Facility for up to two successive periods of six months each (each period, a "Renewal Period"), provided that (i) the Borrowers deliver to the Administrative Agent not later than thirty (30) days prior to the then scheduled last day of the DIP Term written notice of the Borrowers' intent to extend the DIP Facility in accordance with the provisions of this Section 3.2(b) (any such notice, a "Renewal Notice"); (ii) together with the delivery of any Renewal Notice, the Borrowers pay any fees then required to be paid pursuant to the Interest and Fee Letter; and (iii) no Default or Event of Default exists on the date any Renewal Notice is delivered to the Administrative Agent or on the first day of the applicable Renewal Period.

3.3 LIBOR Revolving Loan Prepayments. In connection with any prepayment, if any LIBOR Revolving Loans are prepaid prior to the expiration date of the Interest Period applicable thereto, the Borrowers shall pay to the Lenders the amounts described in Section 4.4.

3.4 Payment Conventions.

(a) All payments to be made by the Borrowers shall be made without set-off, recoupment or counterclaim. Except as otherwise expressly provided herein, all payments by the Borrower shall be made to the Administrative Agent for the account of the Lenders, at the account designated by the Administrative Agent and shall be made in Dollars and in immediately available funds, no later than 12:00 noon (Atlanta, Georgia time) on the date specified herein. Any payment received by the Administrative Agent after such time shall be deemed (for purposes of calculating interest only) to have been received on the following Business Day and any applicable interest shall continue to accrue.

(b) Subject to the provisions set forth in the definition of "Interest Period," whenever any payment is due on a day other than a Business Day, such payment shall be due on the following Business Day, and such extension of time shall in such case be included in the computation of interest or fees, as the case may be.

3.5 Payments as Revolving Loans. At the election of the Administrative Agent, all payments of principal, interest, reimbursement obligations in connection with Letters of Credit and Credit Support for Letters of Credit, fees, premiums, reimbursable expenses and other sums payable hereunder, may be paid from the proceeds of Revolving Loans made hereunder. The Borrowers hereby irrevocably authorize the Administrative Agent to charge the Loan Account for the purpose of paying all amounts from time to time due hereunder and agrees that all such amounts charged (including Non-Ratable Loans and Agent Advances) shall constitute Revolving Loans.

3.6 Apportionment, Application and Reversal of Payments. Principal and interest payments shall be apportioned ratably among the Lenders (according to the unpaid principal balance of the Loans to which such payments relate held by each Lender) and payments of the fees shall, except as otherwise provided in the Interest and Fee Letter, be apportioned ratably among the Lenders, except for fees payable solely to the Administrative Agent and the Letter of Credit Issuer and except as provided in Section 11.1(b). All payments shall be remitted to the Administrative Agent and all such payments not relating to principal or interest of specific Loans, or not constituting payment of specific fees, and all proceeds of Accounts or other Collateral received by the Administrative Agent, shall be applied, ratably, subject to the provisions of this Agreement, first, to pay any fees, indemnities or expense reimbursements then due to the Administrative Agent from the Borrowers; second, to pay any fees or expense reimbursements then due to the Lenders from the Borrowers and to pay any amounts under ACH Transactions then owing to Bank of America; third, to pay interest due in respect of all Loans, including Non-Ratable Loans and Agent Advances; fourth, to pay or prepay principal of the Non-Ratable Loans and Agent Advances; fifth, to pay or prepay principal of the Revolving Loans (other than Non-Ratable Loans and Agent Advances) and unpaid reimbursement obligations in respect of Letters of Credit; sixth, to pay an amount to the Administrative Agent equal to the aggregate undrawn face amount of all outstanding Letters of Credit to be held as cash collateral for such Obligations; and seventh, to the payment of any other Obligation, including any amounts relating to Bank Products (other than ACH Transactions) due to the Administrative Agent or any Lender by the Borrowers. Notwithstanding anything to the contrary contained in this Agreement, unless so directed by the Borrowers, or unless an Event of Default

has occurred and is continuing, neither the Administrative Agent nor any Lender shall apply any payments which it receives to any LIBOR Revolving Loan, except (a) on the expiration date of the Interest Period applicable to any such LIBOR Revolving Loan, or (b) in the event, and only to the extent, that there are no outstanding Base Rate Revolving Loans and, in any event, the Borrowers shall pay LIBOR breakage losses in accordance with Section 4.4. The Administrative Agent and the Lenders shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Obligations.

3.7 Indemnity for Returned Payments. If after receipt of any payment which is applied to the payment of all or any part of the Obligations, the Administrative Agent, any Lender, Bank of America or any Affiliate of Bank of America is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason, then the Obligations or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by the Administrative Agent or such Lender and the Borrowers shall be liable to pay to the Administrative Agent and the Lenders, and hereby do indemnify the Administrative Agent and the Lenders and hold the Administrative Agent and the Lenders harmless for the amount of such payment or proceeds surrendered. The provisions of this Section 3.7 shall be and remain effective notwithstanding any contrary action which may have been taken by the Administrative Agent or any Lender in reliance upon such payment or application of proceeds, and any such contrary action so taken shall be without prejudice to the Administrative Agent's and the Lenders' rights under this Agreement and shall be deemed to have been conditioned upon such payment or application of proceeds having become final and irrevocable. The provisions of this Section 3.7 shall survive the termination of this Agreement.

3.8 Administrative Agent's and Lenders' Books and Records; Monthly Statements. The Administrative Agent shall record the principal amount of the Loans owing to each Lender, the undrawn face amount of all outstanding Letters of Credit and the aggregate amount of unpaid reimbursement obligations outstanding with respect to the Letters of Credit from time to time on its books. In addition, each Lender may note the date and amount of each payment or prepayment of principal of such Lender's Loans in its books and records. Failure by the Administrative Agent or any Lender to make such notation shall not affect the obligations of the Borrower with respect to the Loans or the Letters of Credit. The Borrowers agree that the Administrative Agent's and each Lender's books and records showing the Obligations and the transactions pursuant to this Agreement and the other DIP Financing Documents shall be admissible in any action or proceeding arising therefrom, and shall constitute rebuttably presumptive proof thereof, irrespective of whether any Obligation is also evidenced by a promissory note or other instrument. The Administrative Agent will provide to the Borrowers a monthly statement of Loans, payments, and other transactions pursuant to this Agreement. Such statement shall be deemed correct, accurate, and binding on the Borrowers and an account stated (except for reversals and reapplications of payments made as provided in Section 3.7 and corrections of errors discovered by the Administrative Agent), unless the Borrowers notify the Administrative Agent in writing to the contrary within thirty (30) days after such statement is rendered. In the event a timely written notice of objections is given by the Borrowers, only the items to which exception is expressly made will be considered to be disputed by the Borrowers.

3.9 Nature and Extent of Each Borrower's Liability

(a) Joint and Several Liability. Each Borrower shall be liable for, on a joint and several basis, and hereby guarantees the timely payment by all other Borrowers of, all of the Revolving Loans and other Obligations, regardless of which Borrowers actually may have received the proceeds of any Revolving Loans or other extensions of credit hereunder or the amount of such Revolving Loans received or the manner in which the Administrative Agent or any Lender accounts for such Revolving Loans or other extensions of credit on its books and records, it being acknowledged and agreed that Revolving Loans to any Borrower inure to the mutual benefit of all Borrowers and that the Administrative Agent and the Lenders are relying upon the joint and several liability of Borrowers in extending the Revolving Loans and other financial accommodations hereunder. Each Borrower hereby unconditionally and irrevocably agrees that upon default in the payment when due (whether at stated maturity, by acceleration or otherwise) of any principal of, or interest owed on, any of the Revolving Loans or other Obligations, such Borrower shall forthwith pay the same, without notice or demand.

(b) Unconditional Nature of Liability. Each Borrower's joint and several liability hereunder with respect to, and guaranty of, the Revolving Loans and other Obligations shall, to the fullest extent permitted by applicable law, be unconditional irrespective of (i) the validity, enforceability, avoidance or subordination of any of the Obligations or of any promissory note or other document evidencing all or any part of the Obligations, (ii) the absence of any attempt to collect any of the Obligations from any other Obligor or any Collateral or other security therefor, or the absence of any other action to enforce the same, (iii) the waiver, consent, extension, forbearance or granting of any indulgence by the Lenders with respect to any of the Obligations or any instrument or agreement evidencing or securing the payment of any of the Obligations, or any other agreement now or hereafter executed by any other Borrower and delivered to the Administrative Agent or any Lender, (iv) the failure by the Administrative Agent or the Lenders to take any steps to perfect or maintain the perfected status of its security interest in or Lien upon, or to preserve its rights to, any of the Collateral or other security for the payment or performance of any of the Obligations, or the Administrative Agent's release of any Collateral or of its Liens upon any Collateral, (v) the release or compromise, in whole or in part, of the liability of a Borrower or other Obligor for the payment of any of the Obligations, (vi) any amendment or modification of any of the DIP Loan Documents or waiver of any Default or Event of Default thereunder, (vii) any increase in the amount of the Obligations beyond any limits imposed herein or in the amount of any interest, fees or other charges payable in connection therewith, or any decrease in the same or (viii) any other circumstance that might constitute a legal or equitable discharge or defense of any Borrower or other Obligor. At any time an Event of Default exists, the Administrative Agent and the Lenders may proceed directly and at once, without notice to any Borrower or other Obligor, against any or all Obligors to collect and recover all or any part of the Obligations, without first proceeding against any other Obligor or against any Collateral or other security for the payment or performance of any of the Obligations, and each Borrower waives any provision that might otherwise require the Administrative Agent or the Lenders under applicable law to pursue or exhaust its remedies against any Collateral or Obligor before pursuing such Borrower or another Obligor. Each Borrower consents and agrees that neither the Administrative Agent nor the Lenders shall be under any obligation to marshal any assets in favor of any Obligor or against or in payment of any or all of the Obligations.

(c) No Reduction in Liability for Obligations. No payment or payments made by an Obligor or received or collected by the Administrative Agent or any Lender from any Collateral or any other Person by virtue of any action or proceeding or any setoff or appropriation or application at any time or from time to time in reduction of or in payment of the Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Borrower under this Agreement, each of which shall remain jointly and severally liable for the payment and performance of all Revolving Loans and other Obligations until Full Payment of the Obligations.

(d) Contribution. Each Borrower is unconditionally obligated to repay the Obligations as a joint and several obligor under this Agreement. If, as of any date, the aggregate amount of payments made by a Borrower on account of the Obligations and proceeds of such Borrower's Collateral that are applied to the Obligations exceeds the aggregate amount of Loan proceeds actually used by such Borrower in its business (such excess amount being referred to as an "Accommodation Payment"), then the other Borrower shall be obligated to make contribution to such Borrower (the "Paying Borrower") in an amount equal to (A) the product derived by multiplying the sum of each Accommodation Payment of each Borrower by the Allocable Percentage of the Borrower from whom contribution is sought less (B) the amount, if any, of the then outstanding Accommodation Payment of such Contributing Borrower (such last mentioned amount which is to be subtracted from the aforesaid product to be increased by any amounts theretofore paid by such Contributing Borrower by way of contribution hereunder, and to be decreased by any amounts theretofore received by such Contributing Borrower by way of contribution hereunder); provided, however, that a Paying Borrower's recovery of contribution hereunder from the other Borrower shall be limited to that amount paid by the Paying Borrower in excess of its Allocable Percentage of all Accommodation Payments then outstanding of all Borrowers. As used herein, the term "Allocable Percentage" shall mean, on any date of determinations thereof, a fraction the denominator of which shall be equal to the number of Borrowers who are parties to this Agreement on such date and the numerator of which shall be 1.

(e) Subordination. Each Borrower hereby subordinates any claims, including any right of payment, subrogation, contribution and indemnity, that it may have from or against any other Obligor, and any successor or assign of any other Obligor, howsoever arising, due or owing or whether heretofore, now or hereafter existing, to the Full Payment of the Obligations.

ARTICLE 4
TAXES, YIELD PROTECTION AND ILLEGALITY

4.1 Taxes.

(a) Any and all payments by the Borrowers to each Lender or the Administrative Agent under this Agreement and any other DIP Financing Document shall be made free and clear of, and without deduction or withholding for any Taxes. In addition, the Borrowers shall pay all Other Taxes.

(b) The Borrowers agree to indemnify and hold harmless each Lender and the Administrative Agent for the full amount of Taxes or Other Taxes (including any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section) paid by any Lender or

the Administrative Agent and any liability (including penalties, interest, additions to tax and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted. Payment under this indemnification shall be made within thirty (30) days after the date such Lender or the Administrative Agent makes written demand therefor.

(c) If any Borrower shall be required by law to deduct or withhold any Taxes or Other Taxes from or in respect of any sum payable hereunder to any Lender or the Administrative Agent, then:

(i) the sum payable shall be increased as necessary so that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section) such Lender or the Administrative Agent, as the case may be, receives an amount equal to the sum it would have received had no such deductions or withholdings been made;

(ii) each Borrower shall make such deductions and withholdings;

(iii) each Borrower shall pay the full amount deducted or withheld to the relevant taxing authority or other authority in accordance with applicable law; and

(iv) Borrowers shall also pay to each Lender or the Administrative Agent for the account of such Lender, at the time interest is paid, all additional amounts which the respective Lender specifies as necessary to preserve the after-tax yield such Lender would have received if such Taxes or Other Taxes had not been imposed.

(d) At the Administrative Agent's request, within 30 days after the date of any payment by any Borrower of Taxes or Other Taxes, such Borrower shall furnish the Administrative Agent the original or a certified copy of a receipt evidencing payment thereof, or other evidence of payment satisfactory to the Administrative Agent.

(e) If the Borrowers are required to pay additional amounts to any Lender or the Administrative Agent pursuant to subsection (c) of this Section, then such Lender shall use reasonable efforts (consistent with legal and regulatory restrictions) to change the jurisdiction of its lending office so as to eliminate any such additional payment by the Borrowers which may thereafter accrue, if such change in the judgment of such Lender is not otherwise disadvantageous to such Lender.

4.2 Illegality.

(a) If any Lender determines that the introduction of any Requirement of Law, or any change in any Requirement of Law, or in the interpretation or administration of any Requirement of Law has made it unlawful, or that any central bank or other Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make LIBOR Revolving Loans, then, on notice thereof by that Lender to the Borrowers through the

Administrative Agent, any obligation of that Lender to make LIBOR Revolving Loans shall be suspended until that Lender notifies the Administrative Agent and the Borrowers that the circumstances giving rise to such determination no longer exist.

(b) If a Lender determines that it is unlawful to maintain any LIBOR Revolving Loan, the Borrowers shall, upon receipt of notice of such fact and demand from such Lender (with a copy to the Administrative Agent), prepay in full such LIBOR Revolving Loans of that Lender then outstanding, together with interest accrued thereon and amounts required under Section 4.4, either on the last day of the Interest Period thereof, if that Lender may lawfully continue to maintain such LIBOR Revolving Loans to such day, or immediately, if that Lender may not lawfully continue to maintain such LIBOR Revolving Loans. If the Borrowers are required to so prepay any LIBOR Revolving Loans, then concurrently with such prepayment, the Borrowers shall borrow from the affected Lender, in the amount of such repayment, a Base Rate Revolving Loan.

4.3 Increased Costs and Reduction of Return.

(a) If any Lender determines that due to either (i) the introduction of or any change in the interpretation of any law or regulation, in each case after the date hereof, or (ii) the compliance by that Lender with any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law), there shall be any increase in the cost to such Lender of agreeing to make or making, funding or maintaining any LIBOR Revolving Loans, then the Borrowers shall be liable for, and shall from time to time, upon demand (with a copy of such demand to be sent to the Administrative Agent), pay to the Administrative Agent for the account of such Lender, additional amounts as are sufficient to compensate such Lender for such increased costs.

(b) If any Lender shall have determined that (i) the introduction after the date hereof of any Capital Adequacy Regulation, (ii) any change in any Capital Adequacy Regulation, (iii) any change in the interpretation or administration of any Capital Adequacy Regulation by any central bank or other Governmental Authority charged with the interpretation or administration thereof, or (iv) compliance by such Lender or any corporation or other entity controlling such Lender with any Capital Adequacy Regulation, affects or would affect the amount of capital required or expected to be maintained by such Lender or any corporation or other entity controlling such Lender and (taking into consideration such Lender's or such corporation's or other entity's policies with respect to capital adequacy and such Lender's desired return on capital) determines that the amount of such capital is increased as a consequence of its Commitments, loans, credits or obligations under this Agreement, then, upon demand of such Lender to the Borrowers through the Administrative Agent, the Borrowers shall pay to such Lender, from time to time as specified by such Lender, additional amounts sufficient to compensate such Lender for such increase.

4.4 Funding Losses. The Borrowers shall reimburse each Lender and hold each Lender harmless from any loss or expense which such Lender may sustain or incur as a consequence of:

(a) the failure of the Borrowers to make on a timely basis any payment of principal of any LIBOR Revolving Loan;

(b) the failure of the Borrowers to borrow, continue or convert a Loan after the Borrowers have given (or are deemed to have given) a Notice of Borrowing or a Notice of Continuation/Conversion; or

(c) the prepayment or other payment (including after acceleration thereof) of any LIBOR Revolving Loans on a day that is not the last day of the relevant Interest Period;

including any such loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain its LIBOR Revolving Loans or from fees payable to terminate the deposits from which such funds were obtained. Borrowers shall also pay any customary administrative fees charged by any Lender in connection with the foregoing.

4.5 Inability to Determine Rates. If the Administrative Agent determines that for any reason adequate and reasonable means do not exist for determining the LIBOR Rate for any requested Interest Period with respect to a proposed LIBOR Revolving Loan, or that the LIBOR Rate for any requested Interest Period with respect to a proposed LIBOR Revolving Loan does not adequately and fairly reflect the cost to the Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrowers and each Lender. Thereafter, the obligation of the Lenders to make or maintain LIBOR Revolving Loans hereunder shall be suspended until the Administrative Agent revokes such notice in writing. Upon receipt of such notice, the Borrowers may revoke any Notice of Borrowing or Notice of Continuation/Conversion then submitted by it. If the Borrowers do not revoke such Notice, the Lenders shall make, convert or continue the Loans, as proposed by the Borrowers, in the amount specified in the applicable notice submitted by the Borrowers, but such Loans shall be made, converted or continued as Base Rate Revolving Loans instead of LIBOR Revolving Loans.

4.6 Certificates of Administrative Agent. If any Lender claims reimbursement or compensation under this Article 4, Administrative Agent shall determine the amount thereof and shall deliver to the Borrowers (with a copy to the affected Lender) a certificate setting forth in reasonable detail the amount payable to the affected Lender, and such certificate shall be conclusive and binding on the Borrowers in the absence of manifest error.

4.7 Survival. The agreements and obligations of the Borrowers in this Article 4 shall survive the payment of all other Obligations.

ARTICLE 5
BOOKS AND RECORDS; FINANCIAL INFORMATION; NOTICES

5.1 Books and Records. Each Borrower shall maintain, at all times, correct and complete books, records and accounts in which complete, correct and timely entries are made of its transactions in accordance with GAAP applied consistently with the audited Financial Statements required to be delivered pursuant to Section 5.2(a). Each Borrower shall, by means of appropriate entries, reflect in such accounts and in all Financial Statements proper liabilities and reserves for all taxes and proper provision for depreciation and amortization of property and

bad debts, all in accordance with GAAP. The Borrowers shall maintain at all times books and records pertaining to the Collateral in such detail, form and scope as the Administrative Agent or any Lender shall reasonably require, including records of (a) all payments received and all credits and extensions granted with respect to the Accounts; (b) the return, rejection, repossession, stoppage in transit, loss, damage, or destruction of any Inventory; and (c) all other dealings affecting the Collateral.

5.2 Financial and Other Information. The Borrowers shall promptly furnish to each Lender, all such financial information as the Administrative Agent shall reasonably request. Without limiting the foregoing, the Borrowers will furnish to the Administrative Agent, in sufficient copies for distribution by the Administrative Agent to each Lender, in such detail as the Administrative Agent or the Lenders shall request, the following:

(a) As soon as available, but in any event not later than ninety-five (95) days after the close of each Fiscal Year, consolidated audited balance sheets, and income statements, cash flow statements and changes in stockholders' equity for the Borrowers and their consolidated Subsidiaries for such Fiscal Year, and the accompanying notes thereto, setting forth in each case in comparative form figures for the previous Fiscal Year, all in reasonable detail, fairly presenting the financial position and the results of operations of the Borrowers and their consolidated Subsidiaries as at the date thereof and for the Fiscal Year then ended, and prepared in accordance with GAAP. Such statements shall be examined in accordance with generally accepted auditing standards by and, in the case of such statements prepared on a consolidated basis, accompanied by a report thereon unqualified in any respect (except any such qualification resulting from the commencement of the Chapter 11 Cases) of independent certified public accountants selected by the Borrowers and reasonably satisfactory to the Administrative Agent. The Borrowers, simultaneously with retaining such independent public accountants to conduct such annual audit, shall send a letter to such accountants, with a copy to the Administrative Agent and the Lenders, notifying such accountants that one of the primary purposes for retaining such accountants' services and having audited financial statements prepared by them is for use by the Administrative Agent and the Lenders. The Borrowers hereby authorize the Administrative Agent to communicate directly with its certified public accountants and, by this provision, authorizes those accountants to disclose to the Administrative Agent any and all financial statements and other supporting financial documents and schedules relating to the Borrowers and to discuss directly with the Administrative Agent the finances and affairs of the Borrowers.

(b) As soon as available, but in any event not later than thirty (30) days after the end of each Fiscal Month (or fifty (50) days after the end of any such Fiscal Month that is the last Fiscal Month of a Fiscal Quarter and ninety-five (95) days after the end of any such Fiscal Month that is the last Fiscal Month of a Fiscal Year), the consolidated unaudited balance sheet of the Borrowers and their consolidated Subsidiaries as at the end of such Fiscal Month, and the consolidated unaudited income statement and cash flow statement for the Borrowers and their consolidated Subsidiaries for such Fiscal Month and for the period from the beginning of the Fiscal Year to the end of such Fiscal Month, all in reasonable detail, fairly presenting the financial position and results of operations of the Borrowers and their consolidated Subsidiaries as at the date thereof and

for such periods, and, in each case, in comparable form, figures for the corresponding period in the prior Fiscal Year and in the Borrowers' budget, and prepared in accordance with GAAP applied consistently with the audited Financial Statements required to be delivered pursuant to Section 5.2(a). The Borrowers shall certify by a certificate signed by the chief financial officer, treasurer or controller of WPS that all such statements have been prepared in accordance with GAAP and present fairly the Borrowers' financial position as at the dates thereof and its results of operations for the periods then ended, subject to normal year-end adjustments.

(c) As soon as available, but in any event not later than fifty (50) days after the end of each Fiscal Quarter, the consolidated unaudited balance sheets of the Foreign Subsidiaries as at the end of such Fiscal Quarter, and the consolidated unaudited income statement for the Foreign Subsidiaries for such Fiscal Quarter and for the period from the beginning of the Fiscal Year to the end of such Fiscal Quarter, all in reasonable detail, fairly presenting the financial position and results of operations of the Foreign Subsidiaries as at the date thereof and for such periods, and, in each case, in comparable form, figures for the corresponding period in the prior Fiscal Year, and prepared in accordance with GAAP consistently applied with the audited Financial Statements required to be delivered pursuant to Section 5.2(a). The Borrowers shall certify by a certificate signed by the chief financial officer, treasurer or controller of WPS that all such statements have been prepared in accordance with GAAP and present fairly the Foreign Subsidiaries' financial position as at the dates thereof and its results of operations for the periods then ended, subject to normal year-end adjustments.

(d) With each of the audited Financial Statements delivered pursuant to Section 5.2(a), a certificate of the independent certified public accountants that examined such statement to the effect that they have reviewed and are familiar with this Agreement and that, in examining such Financial Statements, they did not become aware of any fact or condition which then constituted a Default or Event of Default with respect to a financial covenant, except for those, if any, described in reasonable detail in such certificate.

(e) With each of the annual audited Financial Statements delivered pursuant to Section 5.2(a), and within thirty (30) days after the end of each Fiscal Month (or fifty (50) days after the end of any such Fiscal Month that is the last Fiscal Month of a Fiscal Quarter and ninety-five (95) days after the end of any such Fiscal Month that is the last Fiscal Month of a Fiscal Year), a certificate of the chief financial officer of WPS setting forth in reasonable detail the calculations required to establish that the Borrowers were in compliance with the covenants set forth in Sections 7.22 through 7.23 during the period covered in such Financial Statements and as at the end thereof. With each of the annual audited Financial Statements delivered pursuant to Section 5.2(a), and within fifty (50) days after the end of any Fiscal Month that is the last Fiscal Month of a Fiscal Quarter, the certification of the Financial Statements required of the chief financial officer or the chief executive officer of WPS pursuant to the Sarbanes-Oxley Act. Within thirty (30) days after the end of each Fiscal Month, a certificate of the chief financial officer, treasurer or controller of each Borrower stating that, except as explained in reasonable detail in such certificate, (A) all of the representations and warranties of such Borrower

contained in this Agreement and the other DIP Financing Documents are correct and complete in all material respects as at the date of such certificate as if made at such time, except for those that speak as of a particular date, (B) such Borrower is, at the date of such certificate, in compliance in all material respects with all of its respective covenants and agreements in this Agreement and the other DIP Financing Documents, (C) no Default or Event of Default then exists or existed during the period covered by the Financial Statements for such Fiscal Month, (D) if such Fiscal Month is the last Fiscal Month in a Fiscal Quarter or Fiscal Year, describing and analyzing in reasonable detail all material trends, changes, and developments in each and all Financial Statements; and (E) explaining the variances of the figures in the corresponding budgets and prior Fiscal Year financial statements. If such certificate discloses that a representation or warranty is not correct or complete, or that a covenant has not been complied with, or that a Default or Event of Default existed or exists, such certificate shall set forth what action such Borrower has taken or proposes to take with respect thereto.

(f) No later than thirty (30) days after the first day of each Fiscal Year, annual forecasts (to include forecasted consolidated balance sheets, income statements and cash flow statements) for the Borrowers and their consolidated Subsidiaries as at the end of and for each Fiscal Month of such Fiscal Year.

(g) Promptly after filing with the PBGC and the IRS, a copy of each annual report or other filing filed with respect to each Plan of the Borrowers.

(h) Promptly upon the filing thereof, copies of all reports, if any, to or other documents filed by any Borrower or any of its Subsidiaries with the Securities and Exchange Commission under the Exchange Act, and all reports, notices, or statements sent or received by any Borrower or any of its Subsidiaries to or from the holders of any equity interests of such Borrower (other than routine non-material correspondence sent by shareholders of the Borrower to the Borrower) or any such Subsidiary or of any Debt of any Borrower or any of its Subsidiaries registered under the Securities Act of 1933 or to or from the trustee under any indenture under which the same is issued.

(i) As soon as available, but in any event not later than fifteen (15) days after a Borrower's receipt thereof, a copy of all management reports and management letters prepared for such Borrower by any independent certified public accountants of such Borrower.

(j) Promptly after their preparation, copies of any and all proxy statements, financial statements, and reports which any Borrower makes available to its shareholders.

(k) If requested by the Administrative Agent, promptly after filing with the IRS, a copy of each tax return filed by any Borrower or by any of its Subsidiaries.

(l) At the time the same are required to be delivered in accordance with the provisions of Section 9 of the Security Agreement, the reports and schedules with respect to the Collateral described therein.

(m) As soon as available, but in any event not later than (i) Wednesday of each week, a Borrowing Base Certificate prepared as of Saturday of the preceding week and (ii) the 15th day of each Fiscal Month, a Borrowing Base Certificate prepared as of the last Saturday of the preceding Fiscal Month, in each case supporting information in accordance with Section 9 of the Security Agreement.

(n) Promptly after the Borrowers have notified the Administrative Agent of any intention by the Borrowers to treat the Loans and/or Letters of Credit as being a "reportable transaction" (within the meaning of Treasury Regulation Section 1.6011-4), a duly completed copy of IRS Form 8886 or any successor form.

(o) As soon as available, but in any event not later than Wednesday of each week, the forecasted cash receipts and disbursements of the Borrowers and their Subsidiaries, on a consolidated basis, for the succeeding thirteen (13) weeks.

(p) Such additional information as the Administrative Agent and/or any Lender may from time to time reasonably request regarding the financial and business affairs of any Borrower or any Subsidiary.

5.3 Notices and Reports to the Administrative Agent and the Lenders. The Borrowers shall notify the Administrative Agent and the Lenders in writing of the following matters at the following times and, where applicable, shall provide the Administrative Agent and the Lenders with the following described documents:

(a) Immediately after becoming aware of any Default or Event of Default;

(b) Immediately after becoming aware of the assertion by the holder of any capital stock of any Borrower or of any Subsidiary or the holder of any Debt of any Borrower or any Subsidiary incurred after the Petition Date in a face amount in excess of $100,000 that a default exists with respect thereto or that such Borrower or such Subsidiary is not in compliance with the terms thereof, or the threat or commencement by such holder of any enforcement action because of such asserted default or non-compliance;

(c) Immediately after becoming aware of any event or circumstance which could have a Material Adverse Effect;

(d) Immediately after becoming aware of any pending or threatened action, suit, or proceeding, by any Person, or any pending or threatened investigation by a Governmental Authority, which could reasonably be expected to have a Material Adverse Effect;

(e) Immediately after becoming aware of any pending or threatened strike, work stoppage, unfair labor practice claim, or other labor dispute affecting the Borrower or any of its Subsidiaries in a manner which could reasonably be expected to have a Material Adverse Effect;

(f) Immediately after becoming aware of any violation of any law, statute, regulation, or ordinance of a Governmental Authority affecting any Borrower or any Subsidiary which could reasonably be expected to have a Material Adverse Effect;

(g) Immediately after receipt of any notice of any violation by any Borrower or any of its Subsidiaries of any Environmental Law which could reasonably be expected to have a Material Adverse Effect or that any Governmental Authority has asserted in writing that such Borrower or any Subsidiary is not in compliance with any Environmental Law or is investigating such Borrower's or such Subsidiary's compliance therewith;

(h) Immediately after receipt of any written notice that any Borrower or any of its Subsidiaries is or may be liable to any Person as a result of the Release or threatened Release of any Contaminant or that such Borrower or such Subsidiary is subject to investigation by any Governmental Authority evaluating whether any remedial action is needed to respond to the Release or threatened Release of any Contaminant which, in either case, is reasonably likely to give rise to liability in excess of $1,000,000;

(i) Immediately after receipt of any written notice of the imposition of any Environmental Lien against any property of any Borrower or any of its Subsidiaries;

(j) Any change in any Borrower's name as it appears in the state of its incorporation or other organization, state of incorporation or organization, type of entity, organizational identification number, locations of Collateral, or form of organization, trade names under which such Borrower will sell Inventory or create Accounts, or to which instruments in payment of Accounts may be made payable, in each case at least thirty (30) days prior thereto;

(k) Within ten (10) Business Days after any Borrower or any ERISA Affiliate knows or has reason to know, that an ERISA Event or a prohibited transaction (as defined in Sections 406 of ERISA and 4975 of the Code) has occurred, and, when known, any action taken or threatened by the IRS, the DOL or the PBGC with respect thereto;

(l) Upon request, or, in the event that such filing reflects a significant change with respect to the matters covered thereby, within three (3) Business Days after the filing thereof with the PBGC, the DOL or the IRS, as applicable, copies of the following: (i) each annual report (form 5500 series), including Schedule B thereto, filed with the PBGC, the DOL or the IRS with respect to each Plan, (ii) a copy of each funding waiver request filed with the PBGC, the DOL or the IRS with respect to any Plan and all communications received by any Borrower or any ERISA Affiliate from the PBGC, the DOL or the IRS with respect to such request, and (iii) a copy of each other filing or notice filed with the PBGC, the DOL or the IRS, with respect to each Plan by either a Borrower or any ERISA Affiliate;

(m) Upon request, copies of each actuarial report for any Plan or Multi-employer Plan and annual report for any Multi-employer Plan; and within three (3) Business Days after receipt thereof by any Borrower or any ERISA Affiliate, copies of

the following: (i) any notices of the PBGC's intention to terminate a Plan or to have a trustee appointed to administer such Plan; (ii) any favorable or unfavorable determination letter from the IRS regarding the qualification of a Plan under Section 401(a) of the Code; or (iii) any notice from a Multi-employer Plan regarding the imposition of withdrawal liability;

(n) Within three (3) Business Days after the occurrence thereof: (i) any changes in the benefits of any existing Plan which increase any Borrower's annual costs with respect thereto by an amount in excess of $2,000,000, or the establishment of any new Plan or the commencement of contributions to any Plan to which such Borrower or any ERISA Affiliate was not previously contributing; or (ii) any failure by any Borrower or any ERISA Affiliate to make a required installment or any other required payment under Section 412 of the Code on or before the due date for such installment or payment;

(o) Within three (3) Business Days after any Borrower or any ERISA Affiliate knows or has reason to know that any of the following events has or will occur: (i) a Multi-employer Plan has been or will be terminated; (ii) the administrator or plan sponsor of a Multi-employer Plan intends to terminate a Multi-employer Plan; or (iii) the PBGC has instituted or will institute proceedings under Section 4042 of ERISA to terminate a Multi-employer Plan;

(p) Immediately after receipt of termination or non-renewal of or default under the License Agreements to which Ralph Lauren and Disney Enterprises, respectively, are parties as licensors and any other License Agreement material to the operations of any Borrower; and

(q) Immediately after a Borrower's becoming aware of any non-compliance with or violation or breach of any provision in the Pre-Petition Lender Protection Orders or of any asserted violation, non-compliance or breach thereof (whether or not disputed by Borrowers).

Each notice given under this Section shall describe the subject matter thereof in reasonable detail, and shall set forth the action that the Borrowers, any Subsidiary, or any ERISA Affiliate, as applicable, has taken or proposes to take with respect thereto. The Borrowers shall include counsel for the Administrative Agent on any "Special Notice List" or other similar list of parties to be served with papers in the Chapter 11 Cases.

ARTICLE 6
GENERAL WARRANTIES AND REPRESENTATIONS

Each Borrower severally warrants and represents to the Administrative Agent and the Lenders that, except as hereafter disclosed to and accepted by the Administrative Agent and the Majority Lenders in writing:

6.1 Authorization, Validity, and Enforceability of this Agreement and the DIP Financing Documents. Subject to entry of the Interim Financing Order, each Borrower has the power and authority to execute, deliver and perform the DIP Financing Documents, to incur the Obligations, and, on the date of initial funding of the Loans hereunder, will be authorized to

grant to the Administrative Agent Liens upon and security interests in the Collateral pursuant to Sections 363 and 364 of the Bankruptcy Code. Each Borrower has taken all necessary action (including obtaining approval of its stockholders if necessary) to authorize its execution, delivery, and performance of this Agreement and the DIP Financing Documents to which it is a party. This Agreement and the other DIP Financing Documents to which each Borrower is a party have been duly executed and delivered by such Borrower and, subject to entry of the Interim Financing Order, constitute the legal, valid and binding obligations of such Borrower, enforceable against it in accordance with their respective terms and the terms of the Financing Orders. Each Borrower's execution, delivery, and performance of this Agreement and the other DIP Financing Documents to which it is a party (a) does not and will not conflict with, or constitute a violation or breach of, or result in the imposition of any Lien upon the property of the Borrower or any of its Subsidiaries, by reason of the terms of any contract, mortgage, lease, agreement, indenture, or instrument to which such Borrower is a party or which is binding upon it, (b) following entry of the Interim Financing Order, will not violate any Requirement of Law applicable to such Borrower or any of its Subsidiaries, and (c) is not in contravention with any provision of its certificate or articles of incorporation or by-laws or other constituent documents of such Borrower or any of its Subsidiaries.

6.2 Validity and Priority of Security Interest. Upon entry of the Interim Financing Order, the security interests granted pursuant to the DIP Financing Documents constitute valid, enforceable, perfected and first priority Liens on the Collateral, except for Permitted Liens on the Petition Date that (i) relate solely to Equipment and are held by Persons other than the Pre-Petition Lenders or (ii) constitute statutory Liens for property taxes that have priority under applicable law.

6.3 Organization and Qualification. Each Borrower (a) is duly organized or incorporated and validly existing in good standing under the laws of the state of its organization or incorporation, (b) is qualified to do business and is in good standing in the jurisdictions set forth on Schedule 6.3 which are the only jurisdictions in which qualification is necessary in order for it to own or lease its property and conduct its business and (c) has all requisite power and authority to conduct its business and to own its property.

6.4 Corporate Name; Prior Transactions. Except as otherwise disclosed on Schedule 6.4, each Borrower has not, during the past five (5) years, been known by or used any other corporate or fictitious name, or been a party to any merger or consolidation, or acquired all or substantially all of the assets of any Person, or acquired any of its property outside of the ordinary course of business.

6.5 Subsidiaries and Affiliates. Schedule 6.5 is a correct and complete list of the name and relationship to each Borrower of each and all of that Borrower's Subsidiaries and other Affiliates. Each Subsidiary is (a) duly incorporated or organized and validly existing in good standing under the laws of its state of incorporation or organization set forth on Schedule 6.5, and (b) qualified to do business and in good standing in each jurisdiction in which the failure to so qualify or be in good standing could reasonably be expected to have a material adverse effect on any such Subsidiary's business, operations, prospects, property, or condition (financial or otherwise) and (c) has all requisite power and authority to conduct its business and own its property.

6.6 Financial Statements and Projections.

(a) The Borrowers have delivered to the Administrative Agent and the Lenders consolidated audited balance sheet and related statements of income, retained earnings, cash flows, and changes in stockholders equity for the Borrower and its consolidated Subsidiaries as of December 31, 2001, and for the Fiscal Year then ended, accompanied by the report thereon of the Borrowers' independent certified public accountants, Ernst & Young LLP. The Borrowers have also delivered to the Administrative Agent and the Lenders the consolidated unaudited balance sheet and related statements of income and cash flows for the Borrower and its consolidated Subsidiaries as of September 30, 2002. Such financial statements are attached hereto as Exhibit C. All such financial statements have been prepared in accordance with GAAP and present accurately and fairly in all material respects the financial position of the Borrowers and their consolidated Subsidiaries as at the dates thereof and their results of operations for the periods then ended.

(b) The Latest Projections when submitted to the Lenders as required herein represent the Borrowers' best estimate of the future financial performance of the Borrowers and their consolidated Subsidiaries for the periods set forth therein. The Latest Projections have been prepared on the basis of the assumptions set forth therein, which the Borrowers believe are fair and reasonable in light of current and reasonably foreseeable business conditions at the time submitted to the Lenders.

6.7 [Intentionally Omitted].

6.8 Liens on Collateral. There are no Liens of any nature whatsoever on any assets of a Borrower other than Permitted Liens. Without limiting the generality of the foregoing, no Borrower has granted (i) a UCC security interest in any of its Inventory or in the proceeds thereof (including Accounts) in favor of any Person, except the Administrative Agent, the Pre-Petition Agents and, solely with respect to Accounts sold by WPS prior to the Petition Date, WPSRC, or (ii) a mortgage Lien with respect to any of its Real Estate other than the Administrative Agent and the Pre-Petition Agents.

6.9 Debt. After giving effect to the making of the Revolving Loans to be made on the Closing Date, the Borrowers and their Subsidiaries have no Debt, except (a) the Obligations, (b) Debt of Foreign Subsidiaries outstanding on the Closing Date, and (c) Debt described on Schedule 6.9.

6.10 Distributions. Since the Petition Date, no Distribution has been declared, paid, or made upon or in respect of any capital stock or other securities of the Borrowers or any of their Subsidiaries, except for Distributions made by a Subsidiary to a Borrower or by a Borrower to another Borrower.

6.11 Real Estate; Leases. Schedule 6.11 sets forth, as of the Closing Date, a correct and complete list of all Real Estate owned by the Borrowers and all Real Estate owned by any of their Subsidiaries, all leases and subleases of real or personal property held by the Borrowers as lessee or sublessee (other than leases of personal property as to which a Borrower is lessee or sublessee for which the value of such personal property in the aggregate is less than $1,000,000),

and all leases and subleases of real or personal property held by the Borrowers as lessor, or sublessor. Each of such leases and subleases is valid and enforceable in accordance with its terms and is in full force and effect, and no default by any party to any such lease or sublease exists except for defaults by the Borrowers thereunder arising prior to the Petition Date or as a consequence of the commencement of any of the Chapter 11 Cases. The Borrowers have good and marketable title in fee simple to the Real Estate identified on Schedule 6.11 as owned by the Borrower noted thereon, or valid leasehold interests in all Real Estate designated therein as "leased" by the Borrowers and the Borrowers have good, indefeasible, and merchantable title to all of their other property, free of all Liens except Permitted Liens.

6.12 Proprietary Rights. Schedule 6.12 sets forth a correct and complete list of all of the Borrowers' Proprietary Rights (other than any foreign patents or trademarks or related Proprietary Rights). None of the Proprietary Rights is subject to any licensing agreement or similar arrangement except as set forth on Schedule 6.12. To the best of the Borrowers' knowledge, none of the Proprietary Rights infringes on or conflicts with any other Person's property, and no other Person's property infringes on or conflicts with the Proprietary Rights. The Proprietary Rights described on Schedule 6.12 constitute all of the property of such type necessary to the current and anticipated future conduct of the Borrowers' business. No claim or litigation regarding any of the Borrowers' Proprietary Rights is pending or threatened, and no patent, invention, device, application, principle or any statute, law, rule, regulation, standard or code is pending or, to the knowledge of the Borrowers, proposed, which, in either case, could reasonably be expected to have a Material Adverse Effect.

6.13 Trade Names. All trade names or styles under which the Borrowers or any of its Subsidiaries will sell Inventory or create Accounts, or to which instruments in payment of Accounts may be made payable, are listed on Schedule 6.13.

6.14 Litigation. Except as set forth on Schedule 6.14, there is no pending, or to the best of any Borrower's knowledge threatened, action, suit, proceeding, or counterclaim by any Person, or to the best of any Borrower's knowledge, investigation by any Governmental Authority, or any basis for any of the foregoing, which could reasonably be expected to have a Material Adverse Effect.

6.15 Labor Disputes. Except as set forth on Schedule 6.15, as of the Closing Date (a) there is no collective bargaining agreement or other labor contract covering employees of any Borrower or any of their Subsidiaries, (b) no such collective bargaining agreement or other labor contract is scheduled to expire during the term of this Agreement, (c) no union or other labor organization is seeking to organize, or to be recognized as, a collective bargaining unit of employees of any Borrower or any of their Subsidiaries or for any similar purpose, and (d) there is no pending or (to the best of any Borrower's knowledge) threatened, strike, work stoppage, material unfair labor practice claim, or other material labor dispute against or affecting such Borrower or its Subsidiaries or their employees.

6.16 Environmental Laws. Except as otherwise disclosed on Schedule 6.16:

(a) Each Borrower and its Subsidiaries have complied in all material respects with all Environmental Laws and neither such Borrower nor any Subsidiary nor any of its

presently owned real property or presently conducted operations, nor its previously owned real property or prior operations, is subject to any enforcement order from or liability agreement with any Governmental Authority or private Person respecting (i) compliance with any Environmental Law or (ii) any potential liabilities and costs or remedial action arising from the Release or threatened Release of a Contaminant, except for instances of noncompliance which could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Each Borrower and its Subsidiaries have obtained all permits necessary for their current operations under Environmental Laws, and all such permits are in good standing and such Borrower and its Subsidiaries are in compliance with all material terms and conditions of such permits.

(c) None of the Borrowers or their Subsidiaries, nor, to the best of the Borrowers' knowledge, any of their predecessors in interest, has in violation of applicable law stored, treated or disposed of any hazardous waste, except for instances of noncompliance which could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(d) None of the Borrowers or their Subsidiaries has received any summons, complaint, order or similar written notice indicating that it is not currently in compliance with, or that any Governmental Authority is investigating its compliance with, any Environmental Laws or that it is or may be liable to any other Person as a result of a Release or threatened Release of a Contaminant, except with respect to Releases or threatened Releases which could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(e) To the best of each Borrower's knowledge, none of the present or past operations of such Borrower and its Subsidiaries is the subject of any investigation by any Governmental Authority evaluating whether any remedial action is needed to respond to a Release or threatened Release of a Contaminant, except with respect to Releases or threatened Releases which could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(f) There is not now, nor to the best of each Borrower's knowledge has there ever been on or in the Real Estate:

(1) any underground storage tanks or surface impoundments,

(2) any asbestos-containing material, or

(3) any polychlorinated biphenyls (PCBs) used in hydraulic oils, electrical transformers or other equipment,

except to the extent the presence of any of the foregoing could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(g) None of the Borrowers or their Subsidiaries has filed any notice under any requirement of Environmental Law reporting a spill or accidental and unpermitted Release or discharge of a Contaminant into the environment, except with respect to spills, Releases or discharges which could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(h) None of the Borrowers or their Subsidiaries has entered into any negotiations or settlement agreements with any Person (including the prior owner of its property) imposing material obligations or liabilities on such Borrower or any of its Subsidiaries with respect to any remedial action in response to the Release of a Contaminant or environmentally related claim.

(i) None of the products manufactured, distributed or sold by the Borrowers or any of their Subsidiaries contain asbestos containing material.

(j) No Environmental Lien has attached to the Real Estate.

6.17 No Violation of Law. Neither the Borrower nor any of its Subsidiaries is in violation of any law, statute, regulation, ordinance, judgment, order, or decree applicable to it which violation could reasonably be expected to have a Material Adverse Effect.

6.18 No Default. None of the Borrowers nor their Subsidiaries is in default with respect to any note, indenture, loan agreement, mortgage, lease, deed, or other agreement entered into on or after the Petition Date to which such Borrower or such Subsidiary is a party or by which it is bound, which default could reasonably be expected to have a Material Adverse Effect.

6.19 ERISA Compliance. Except in each case for instances of non-compliance which individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect or as specifically disclosed in Schedule 6.19:

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state law. Each Plan which is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS and to the best knowledge of each Borrower, nothing has occurred which would cause the loss of such qualification. Each Borrower and each ERISA Affiliate have made all required contributions to any Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan.

(b) There are no pending or, to the best knowledge of each Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan which has resulted or could reasonably be expected to result in a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan which has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) neither any Borrower nor any

ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither any Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multi-employer Plan; and (v) neither any Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

6.20 Taxes. The Borrowers and their Subsidiaries have filed all federal and other tax returns and reports required to be filed, and have paid all federal and other taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable (other than certain taxes arising prior to the Petition Date) unless such unpaid taxes and assessments would constitute a Permitted Lien.

6.21 Regulated Entities. None of the Borrowers, any Person controlling any Borrower, or any Subsidiary, is an "Investment Company" within the meaning of the Investment Company Act of 1940. No Borrower is subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, the Interstate Commerce Act, any state public utilities code or law, or any other federal or state statute or regulation limiting its ability to incur indebtedness.

6.22 Use of Proceeds; Margin Regulations; Loans to Directors and Executive Officers. The proceeds of the Loans are to be used solely for the purposes set forth in Section 1.2(b). No Borrower or Subsidiary is engaged in the business of purchasing or selling Margin Stock or extending credit for the purpose of purchasing or carrying Margin Stock. None of the proceeds of the Loans will be used directly or indirectly to fund a personal loan to or for the benefit of a director or executive officer of a Borrower or other Obligor, or otherwise used for any purpose that is prohibited by applicable law.

6.23 Copyrights, Patents, Trademarks and Licenses, etc. The Borrowers own or are licensed or otherwise have the right to use all of the patents, trademarks, service marks, trade names, copyrights, contractual franchises, licenses, rights of way, authorizations and other rights that are reasonably necessary for the operation of its businesses, without conflict with the rights of any other Person. To the best knowledge of the Borrowers, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by the Borrowers or any Subsidiary infringes upon any rights held by any other Person. .

6.24 No Material Adverse Change. Since the Petition Date, no event has occurred that has or could reasonably be expected to have a Material Adverse Effect.

6.25 Full Disclosure. None of the representations or warranties made by any Borrower or any Subsidiary in the DIP Financing Documents as of the date such representations and warranties are made or deemed made, and none of the statements contained in any exhibit, report, statement or certificate furnished by or on behalf of any Borrower or any Subsidiary in connection with the DIP Financing Documents (including the offering and disclosure materials delivered by or on behalf of the Borrowers to the Lenders prior to the Closing Date), contains

any untrue statement of a material fact or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not misleading as of the time when made or delivered.

6.26 [Intentionally Omitted].

6.27 Bank Accounts. Schedule 6.27 contains as of the Closing Date a complete and accurate list of all bank accounts maintained by each Borrower with any bank or other financial institution.

6.28 Governmental Authorization. Other than entry by the Court of the Interim Financing Order and, thereafter, the Final Financing Order, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Borrower or any Subsidiaries of this Agreement or any other DIP Financing Document.

6.29 Tax Shelter Regulations. The Borrowers do not intend to treat the Loans and/or Letters of Credit as being a "reportable transaction" (within the meaning of Treasury Regulation Section 1.6011-4). In the event the Borrowers determine to take any action inconsistent with such intention, it will promptly notify the Administrative Agent thereof. If the Borrowers so notify the Administrative Agent, the Borrowers acknowledge that one or more of the Lenders may treat its Loans and/or its interest in Non-Ratable Loans and/or Agent Advances and/or Letters of Credit as part of a transaction that is subject to Treasury Regulation Section 301.6112-1, and such Lender or Lenders, as applicable, will maintain the lists and other records required by such Treasury Regulation.

6.30 Reaffirmation of Representations and Warranties. All of the foregoing representations and warranties made by Borrowers in this Agreement or in any of the other DIP Financing Documents shall survive the execution and delivery of this Agreement and such other DIP Financing Documents, and shall be deemed to have been remade and reaffirmed on each day that Borrowers request or are deemed to have requested the funding of a Loan under the DIP Facility, except for changes that may occur after the date hereof in the Ordinary Course of Business as long as Administrative Agent and Lenders have consented to such changes or such changes are not violative of any provision of this Agreement.

ARTICLE 7
AFFIRMATIVE AND NEGATIVE COVENANTS

Each Borrower covenants to the Administrative Agent and each Lender that so long as any of the Obligations remain outstanding or this Agreement is in effect:

7.1 Taxes and Other Obligations. Each Borrower shall, and shall cause each of Subsidiaries to, (a) file when due all tax returns and other reports which it is required to file; (b) pay, or provide for the payment, when due, of all taxes, fees, assessments and other governmental charges against it or upon its property, income and franchises, in each case, arising on or after the Petition Date, make all required withholding and other tax deposits, and establish adequate reserves for the payment of all such items, and provide to the Administrative Agent and

the Lenders, upon request, satisfactory evidence of its timely compliance with the foregoing; and (c) pay when due all Debt owed by it and all claims of materialmen, mechanics, carriers, warehousemen, landlords, processors and other like Persons, and all other indebtedness owed by it and perform and discharge in a timely manner all other obligations undertaken by it, in each case arising on or after the Petition Date; provided, however, so long as the Borrowers have notified the Administrative Agent in writing, neither a Borrower nor any of its Subsidiaries need pay any tax, fee, assessment, or governmental charge (i) it is contesting in good faith by appropriate proceedings diligently pursued, (ii) as to which such Borrower or its Subsidiary, as the case may be, has established proper reserves as required under GAAP, and (iii) the nonpayment of which does not result in the imposition of a Lien (other than a Permitted Lien).

7.2 Legal Existence and Good Standing. Each Borrower shall, and shall cause each of its Subsidiaries to, maintain its legal existence and its qualification and good standing in all jurisdictions in which the failure to maintain such existence and qualification or good standing could reasonably be expected to have a Material Adverse Effect.

7.3 Compliance with Law and Agreements; Maintenance of Licenses . Each Borrower shall comply, and shall cause each Subsidiary to comply, in all material respects with all Requirements of Law of any Governmental Authority having jurisdiction over it or its business (including the Bankruptcy Code, the Federal Fair Labor Standards Act, all Environmental Laws and the Sarbanes-Oxley Act). Each Borrower shall, and shall cause each of its Subsidiaries to, obtain and maintain all licenses, permits, franchises, and governmental authorizations necessary to own its property and to conduct its business as conducted on the Closing Date. No Borrower shall modify, amend or alter its certificate or articles of incorporation, or its limited liability company operating agreement or limited partnership agreement, as applicable, other than in a manner which does not adversely affect the rights of the Lenders or the Administrative Agent.

7.4 Maintenance of Property; Inspection of Property.

(a) Each Borrower shall, and shall cause each of its Subsidiaries to, maintain all of its property necessary and useful in the conduct of its business, in good operating condition and repair, ordinary wear and tear excepted.

(b) Each Borrower shall permit representatives and independent contractors of the Administrative Agent from time to time, as often as may be reasonably requested (but only during normal business hours), and at the expense of the Borrower, to visit and inspect any of its properties (including any Collateral), to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom and to discuss its affairs, finances and accounts with its directors, officers and independent public accountants, at such reasonable times during normal business hours and as soon as may be reasonably desired, upon reasonable advance notice to Borrowers; provided, however, when an Event of Default exists, the Administrative Agent or any Lender may do any of the foregoing at the expense of the Borrowers at any time during normal business hours and without advance notice.

7.5 Insurance.

(a) Each Borrower shall, and shall cause each of its Subsidiaries to, maintain in full force and effect insurance (including worker's compensation insurance, liability insurance, property insurance and business interruption insurance) in such amounts, with such insurers, covering such risks and liabilities and with such deductibles or self-insurance retentions as are in accordance with reasonable business practices and are customary for Persons engaged in the same or similar business.

(b) Each Borrower shall cause the Administrative Agent, for the ratable benefit of the Administrative Agent and the Lenders, to be named as secured party or mortgagee and loss payee or additional insured, in a manner acceptable to the Administrative Agent. Each policy of insurance shall contain a clause or endorsement requiring the insurer to give not less than thirty (30) days prior written notice to the Administrative Agent in the event of cancellation of the policy for any reason whatsoever and a clause or endorsement stating that the interest of the Administrative Agent shall not be impaired or invalidated by any act or neglect of such Borrower or any of its Subsidiaries or the owner of any Real Estate for purposes more hazardous than are permitted by such policy. All premiums for such insurance shall be paid by each Borrower when due, and certificates of insurance and, if requested by the Administrative Agent or any Lender, photocopies of the policies, shall be delivered to the Administrative Agent. If a Borrower fails to procure such insurance or to pay the premiums therefor when due, the Administrative Agent may, and at the direction of the Supermajority Lenders shall, do so from the proceeds of Revolving Loans.

7.6 Disposition of Insurance and Condemnation Proceeds. Each Borrower shall promptly notify the Administrative Agent and the Lenders of any loss, damage, or destruction to the Collateral, whether or not covered by insurance. The Administrative Agent is hereby authorized to collect all insurance and condemnation proceeds in respect of Collateral directly and to apply them as follows:

(a) With respect to insurance and condemnation proceeds relating to Collateral other than Fixed Assets, Borrowers shall promptly remit, or cause to be promptly remitted, to the Administrative Agent all such proceeds and, after deducting from such proceeds the reasonable expenses, if any, incurred by the Administrative Agent in the collection or handling thereof, the Administrative Agent shall apply such proceeds to the reduction of the Obligations in the order provided for in Section 3.6.

(b) With respect to insurance and condemnation proceeds relating to Collateral consisting of Fixed Assets ("Fixed Asset Loss Proceeds"), the Borrowers shall promptly remit, or cause to be remitted, to the Administrative Agent all such Fixed Asset Loss Proceeds and, after deducting therefrom the reasonable expenses, if any, incurred by the Administrative Agent in the collection or handling thereof, the Administrative Agent shall apply such Fixed Asset Loss Proceeds to the reduction of the Obligations in the manner specified in Section 3.6. Concurrently with its application of such Fixed Asset Loss Proceeds to the Obligations, the Administrative Agent shall impose, or add to, a reserve (the "Fixed Asset Reserve") in an amount equal to the amount of such Fixed Asset Loss Proceeds applied to the Obligations. If the Borrowers shall, within a period of ninety (90) days after the Administrative Agent's receipt of such Fixed Asset Loss Proceeds, elect, by written notice to the Administrative Agent, to replace, repair, restore or rebuild the relevant Fixed Asset that was the subject of the

insured loss or condemnation, or if the Administrative Agent (acting at the direction of the Supermajority Lenders) shall require the Borrowers to replace, repair, restore, or rebuild such Fixed Asset, then the Borrowers shall proceed to do so in a diligent and expeditious manner and (in the case of a repair, restoration or rebuilding) with material and workmanship of substantially the same quality as existed before such insured loss or condemnation; and the Administrative Agent shall reduce the amount of the Fixed Asset Reserve on each date that the Borrowers request a Revolving Loan for the purpose of paying any indebtedness incurred by them for the replacement, repair, restoration or rebuilding of such Fixed Asset (a "Restoration Advance"), but any such reduction in the Fixed Asset Reserve shall be conditioned upon satisfaction of each of the following conditions: (1) no Default or Event of Default exists at the time of the Borrowers' request for a Restoration Advance or would exist after the funding thereof; (2) the Borrowers first (i) provide the Administrative Agent and the Lenders with plans and specifications ("Plans and Specs") for any repair, restoration or rebuilding, and such Plans and Specs are reasonably satisfactory to the Administrative Agent and the Majority Lenders and (ii) demonstrate to the reasonable satisfaction of the Administrative Agent and the Majority Lenders that funds available to the Borrowers will be sufficient to complete such project in accordance with the Plans and Specs; (3) the Commitment Termination Date has not occurred; (4) after giving effect to any requested Restoration Advance, and a concurrent reduction in the Fixed Asset Reserve in a corresponding amount, no Overadvance Condition would exist; and (5) the aggregate amount of Restoration Advances in connection with which the Fixed Asset Reserve is to be reduced does not exceed the lesser of (x) $8,000,000 and (y) the amount of insurance or condemnation proceeds applied to the Obligations as a result of loss of or damage to the relevant Fixed Asset. If the aggregate proceeds attributable to the loss of Fixed Assets in a single casualty or condemnation exceed $8,000,000, then the excess ("Excess Casualty/Condemnation Proceeds") shall not form a part of the Fixed Asset Reserve but shall be added to the Reduction Event Reserve.

7.7 Environmental Laws. (a) Each Borrower shall, and shall cause each of its Subsidiaries to, conduct its business in compliance in all material respects with all Environmental Laws applicable to it, including those relating to the generation, handling, use, storage, and disposal of any Contaminant. Each Borrower shall, and shall cause each of its Subsidiaries to, take prompt and appropriate action to respond to any non-compliance with Environmental Laws and shall regularly report to the Administrative Agent on such response.

(b) The Administrative Agent and its representatives will have the right at any reasonable time to enter and visit the Real Estate and any other place where any property of a Borrower is located for the purposes of observing the Real Estate, taking and removing soil or groundwater samples, and conducting tests on any part of the Real Estate. The Administrative Agent is under no duty, however, to visit or observe the Real Estate or to conduct tests, and any such acts by the Administrative Agent will be solely for the purposes of protecting the Administrative Agent's Liens and preserving the Administrative Agent and the Lenders' rights under the DIP Financing Documents. No site visit, observation or testing by the Administrative Agent and the Lenders will result in a waiver of any default of the Borrowers or impose any liability on the Administrative Agent or the Lenders. In no event will any site visit, observation or testing by the Administrative Agent be a representation that hazardous substances are or are not present in, on or under the Real Estate, or that there has been or will be compliance with any Environmental Law. Neither any Borrower nor any other party is entitled to rely on any site

visit, observation or testing by the Administrative Agent. The Administrative Agent and the Lenders owe no duty of care to protect any Borrower or any other party against, or to inform any Borrower or any other party of, any hazardous substances or any other adverse condition affecting the Real Estate. The Administrative Agent may in its discretion disclose to a Borrower or to any other party if so required by law any report or findings made as a result of, or in connection with, any site visit, observation or testing by the Administrative Agent. The Borrowers understand and agree that the Administrative Agent makes no warranty or representation to the Borrowers or any other party regarding the truth, accuracy or completeness of any such report or findings that may be disclosed. The Borrowers also understand that depending on the results of any site visit, observation or testing by the Administrative Agent and disclosed to the Borrowers, the Borrowers may have a legal obligation to notify one or more environmental agencies of the results, that such reporting requirements are site-specific, and are to be evaluated by the Borrowers without advice or assistance from the Administrative Agent. In each instance, the Administrative Agent will give such Borrower reasonable notice before entering the Real Estate or any other place the Administrative Agent is permitted to enter under this Section 7.7(b). The Administrative Agent will make reasonable efforts to avoid interfering with such Borrower's use of the Real Estate or any other property in exercising any rights provided hereunder.

7.8 Compliance with ERISA. Each Borrower shall, and shall cause each of its ERISA Affiliates to: (a) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state law; (b) cause each Plan which is qualified under Section 401(a) of the Code to maintain such qualification; (c) make all required contributions to any Plan subject to Section 412 of the Code; (d) not engage in a prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan; and (e) not engage in a transaction that could be subject to Section 4069 or 4212(c) of ERISA.

7.9 Mergers, Consolidations or Sales. None of the Borrowers nor any of their Subsidiaries shall enter into any transaction of merger, reorganization, or consolidation, or wind up, liquidate or dissolve, or transfer, sell, assign, lease, or otherwise dispose of all or any part of its property, or agree to do any of the foregoing, except (i) sales of Inventory in the Ordinary Course of Business of a Borrower (subject, in the case of a sale to a Foreign Subsidiary, to the limitations contained in Section 7.15), (ii) sales or other dispositions by a Borrower of Equipment that is obsolete or no longer useable by such Borrower in its business with an orderly liquidation value not to exceed, in the aggregate, $1,000,000 in any Fiscal Year, and (iii) dispositions of property that is consented to in writing by Administrative Agent and the Majority Lenders and authorized by the Court after notice and a hearing. Without limiting the generality of the foregoing, no Borrower shall, after the Petition Date, sell, assign, transfer or otherwise dispose of, or grant any security or other interest in, any of its Accounts to or in favor of WPSRC or any other Person (except Liens granted in favor of the Administrative Agent).

7.10 Distributions; Capital Change; Restricted Investments. None of the Borrowers nor any of their Subsidiaries shall (i) directly or indirectly declare or make, or incur any liability to make, any Distribution except for Distributions made by a Subsidiary to a Borrower (including Distributions made by WPSRC consisting of Purchased Receivables) or by a Borrower to another Borrower, (ii) make any change in its capital structure which could have a

Material Adverse Effect or (iii) make any Restricted Investment, except that this clause (iii) shall not apply to transactions otherwise permitted by Sections 7.13 and 7.15.

7.11 Transactions Affecting Collateral or Obligations. None of the Borrowers nor any of their Subsidiaries shall enter into any transaction which would be reasonably expected to have a Material Adverse Effect.

7.12 Guaranties. No Borrower or any Subsidiary shall make, issue, or become liable on any Guaranty, except Guaranties of the Obligations in favor of the Administrative Agent for the benefit of itself and the Lenders.

7.13 Permitted Debt. No Borrower or any Subsidiary shall create, incur, assume or suffer to exist any Debt other than (i) Claims in existence on the Petition Date, (ii) the Obligations, (iii) Claims under Capitalized Leases and Purchase Money Debt, which, if secured, are only secured by a Permitted Lien, to the extent expenditures in connection therewith are not in violation of Section 7.22, (iv) indebtedness of a Borrower owing to another Borrower (but each Borrower subordinates its right to payment of any such indebtedness to the Full Payment of the Obligations), and (v) indebtedness of any Foreign Subsidiary to any Borrowers and outstanding on the Petition Date and, to the extent permitted by Section 7.15, indebtedness incurred by Foreign Subsidiaries after the Petition Date to any Borrowers.

7.14 Prepayment. No Borrower or any Subsidiary shall voluntarily prepay any Debt, except (i) the Obligations in accordance with the terms of the DIP Financing Documents, (ii) any Debt owing by a Subsidiary to a Borrower, and (iii) in the case of WPSRC, Debt outstanding under the Congress Loan Agreement.

7.15 Transactions with Affiliates. No Borrower or any Subsidiary shall sell, transfer, distribute, or pay any money or property, including any fees or expenses of any nature (including any fees or expenses for management services), to any Affiliate, or lend or advance money or property to any Affiliate, or invest in (by capital contribution or otherwise) or purchase or repurchase any stock or indebtedness, or any property, of any Affiliate, or become liable on any Guaranty of the indebtedness, dividends, or other obligations of any Affiliate, or cause any letter of credit to be issued to support or secure any Debt of a Foreign Subsidiary or to otherwise benefit a Foreign Subsidiary; provided that (a) the Borrowers may (i) sell Inventory to Foreign Subsidiaries in the Ordinary Course of Business of such Borrowers and in arm's length transactions and (ii) make Foreign Subsidiary Advances, to the extent that the sum of (A) the aggregate outstanding face amount of Accounts arising from such sales to Foreign Subsidiaries after the Petition Date, and (B) the aggregate amount of all Foreign Subsidiary Advances made after the Petition Date, does not exceed $7,500,000 at any time, (b) WPS may purchase from WPSRC any goods the sale of which gave rise to a Purchased Receivable, to the extent that such goods are returned by the account debtor obligated on such Purchased Receivable, for a purchase price not to exceed the lesser of the unpaid balance of the subject Purchased Receivable and the then unpaid balance outstanding under the Congress Loan Agreement, but only if such purchase will result in WPS owning such goods free and clear of all Liens created by or through WPSRC, and (c) WPS may repurchase any Purchased Receivables and related assets from WPSRC in accordance with the Receivables Purchase Agreement, but in no event for a purchase price exceeding the then unpaid balance outstanding under the Congress Loan Agreement and

provided that such purchase will result in WPS owning such Purchased Receivables and related assets free and clear of all Liens created by or through WPSRC.

7.16 Investment Banking and Finder's Fees. No Borrower or any Subsidiary shall pay or agree to pay, or reimburse any other party with respect to, any investment banking or similar or related fee, underwriter's fee, finder's fee, or broker's fee to any Person in connection with this Agreement. The Borrowers shall defend and indemnify the Administrative Agent and the Lenders against and hold them harmless from all claims of any Person that the Borrower is obligated to pay for any such fees, and all costs and expenses (including attorneys' fees) incurred by the Administrative Agent and/or any Lender in connection therewith.

7.17 Business Conducted. No Borrower shall, and no Borrower shall permit any of its Subsidiaries to, engage directly or indirectly, in any line of business other than the businesses in which the Borrower is engaged on the Petition Date or businesses reasonably related thereto.

7.18 Liens. No Borrower shall, and no Borrower shall permit any of its Subsidiaries to, create, incur, assume, or permit to exist any Lien on any property (including any Collateral) now owned or hereafter acquired by any of them, except Permitted Liens.

7.19 Sale and Leaseback Transactions. No Borrower or any Subsidiary shall, directly or indirectly, enter into any arrangement with any Person providing for such Borrower or such Subsidiary to lease or rent property that such Borrower or such Subsidiary has sold or will sell or otherwise transfer to such Person.

7.20 New Subsidiaries. The Borrowers shall not, directly or indirectly, organize, create, acquire or permit to exist any Subsidiary other than Subsidiaries in existence on the Petition Date and described in Schedule 6.5.

7.21 Fiscal Year. The Borrowers shall not change their Fiscal Year.

7.22 Capital Expenditures. Neither the Borrowers nor any of their Subsidiaries shall make or incur any Capital Expenditure if, after giving effect thereto, the aggregate amount of all Capital Expenditures made or incurred by the Borrowers and their Subsidiaries on a consolidated basis would exceed $50,000,000 during any Fiscal Year; provided, that any unused portion of such allowance up to $15,000,000 may be carried over but only to the succeeding Fiscal Year. All Capital Expenditures shall be applied first to reduce the annual $50,000,000 allowance.

7.23 EBITDA.

(a) The Borrowers and their Subsidiaries, on a consolidated basis, shall be required to have EBITDA for each specified period set forth below of not less than the amount set forth below opposite each such specified period:

Period	EBITDA
The period of four consecutive Fiscal Months ending on the last day of the Fiscal Month of	$58,000,000

September, 2003	
The period of seven consecutive Fiscal Months ending on the last day of the Fiscal Month of December, 2003	$97,000,000
The period of ten consecutive Fiscal Months ending on the last day of the Fiscal Month of March, 2004	$130,000,000
The period of four consecutive Fiscal Quarters ending on the last day of the Fiscal Month of June, 2004	$145,000,000
Each period of four consecutive Fiscal Quarters ending on or after the last day of the Fiscal Month of September, 2004	$155,000,000

(b) If, at any time during the Fiscal Month immediately following a period specified below, Availability is less than $75,000,000, then the Borrowers and their Subsidiaries, on a consolidated basis, shall be required to have EBITDA for such period of not less than the amount set forth below opposite such period:

Period	EBITDA
The period of five consecutive Fiscal Months ending on the last day of the Fiscal Month of October, 2003	$74,000,000
The period of six consecutive Fiscal Months ending on the last day of the Fiscal Month of November, 2003.	$85,000,000
The period of eight consecutive Fiscal Months ending on the last day of the Fiscal Month of January, 2004	$109,000,000
The period of nine consecutive Fiscal Months ending on the last day of the Fiscal Month of February, 2004	$116,000,000
The period of eleven consecutive Fiscal Months ending on the last day of the Fiscal Month of April, 2004	$135,000,000
Each period of twelve consecutive Fiscal Months ending on the last day of the Fiscal	$145,000,000

Months of May, June, July and August, 2004	
Each period of twelve consecutive Fiscal Months ending on or after the last day of the Fiscal Month of September, 2004	$155,000,000

7.24 [Intentionally Omitted].

7.25 Margin Stock. The Borrowers shall not, and shall not suffer or permit any Subsidiary to, use any portion of the Loan proceeds, directly or indirectly, (i) to purchase or carry Margin Stock, (ii) to repay or otherwise refinance indebtedness of the Borrower or others incurred to purchase or carry Margin Stock, (iii) to extend credit for the purpose of purchasing or carrying any Margin Stock, or (iv) to acquire any security in any transaction that is subject to Section 13 or 14 of the Exchange Act.

7.26 Further Assurances; Post-Closing Obligations.

(a) The Borrowers shall promptly execute and deliver, or promptly cause to be executed and delivered, to the Administrative Agent and/or the Lenders such documents and agreements, and shall take or cause to be taken such actions, as the Administrative Agent or any Lender may, from time to time, request to carry out the terms and conditions of this Agreement and the DIP Financing Documents.

(b) Without limiting the generality of the foregoing, the Borrowers agree to execute and deliver, or cause to be executed or delivered, to the Administrative Agent and/or the Lenders as soon as possible, but in any event not later than forty-five (45) days after the Closing Date, any Security Documents not executed and delivered by the Borrowers on or prior to the Closing Date.

7.27 Compliance with Orders. To the extent having applicability to such Borrower or Subsidiary, each Borrower and its Subsidiaries shall comply with the Interim Financing Order, the Financing Orders, the Pre-Petition Lender Protection Orders and all other orders entered by the Court in the Chapter 11 Cases.

7.28 Turnover of Collateral Proceeds. Except as expressly otherwise provided in the Financing Orders, during any Cash Dominion Period, each Borrower and Subsidiary shall promptly (but no later than the next Business Day after its receipt thereof) turn over to Administrative Agent all proceeds received from any sale, other disposition or collection of any Collateral or representing insurance or condemnation proceeds with respect to any Collateral, such proceeds to be applied to the Obligations, subject to the provisions of Section 3.6. After Full Payment of the Obligations, Administrative Agent shall be authorized to return and apply any remaining proceeds for other purposes set forth in Section 3.6.

7.29 Payment of Claims. No Borrower shall make any payment of principal or interest on account of any Claim that arose before the Petition Date, other than Claims that may be paid

from proceeds of the Loans pursuant to Section 1.2(b), subject to any required approval of the Court.

7.30 Filing of Motions and Applications. No Borrower shall apply to the Court for authority to (i) take any action that is prohibited by the terms of any of the DIP Financing Documents, (ii) refrain from taking any action that is required to be taken by the terms of any of the DIP Financing Documents or the Financing Orders or (iii) permit any Debt or Claim to be *pari passu* with or senior to any of the Obligations, other than a Claim covered by the Carve-Out to the extent provided in the Financing Orders.

7.31 Modifications to Orders. No Borrower shall seek or consent to any amendment, supplement or any other modification of any of the terms of the Financing Orders or the Pre-Petition Lender Protection Orders without the consent of the Administrative Agent and the Majority Lenders.

7.32 Reclamation Claims. No Borrower shall (a) make any return of property on account of Claims asserted by any vendors of such Borrower for reclamation in accordance with Section 2-702 of the Uniform Commercial Code and Section 546(c) of the Bankruptcy Code, unless otherwise ordered by the Court, or (b) enter into any agreements or file any motion seeking an order from the Court for the return of any property of such Borrower to any vendor pursuant to Section 546(g) of the Bankruptcy Code if the aggregate value of all property of Borrowers so returned exceeds $1,000,000.

7.33 Subsidiary Guarantors. If and to the extent requested to do so by the Administrative Agent and the Majority Lenders, each Borrower shall cause each Subsidiary that is not a Borrower to become a Subsidiary Guarantor and to execute and deliver to the Administrative Agent a Subsidiary Guaranty and a Subsidiary Security Agreement.

7.34 Plant Shutdown Costs. The Borrowers shall not, after the Petition Date, incur any Plant Shutdown Costs, in cash, in an aggregate amount in excess of $8,500,000.

7.35 Commingling. The Borrowers will endeavor in good faith not to commingle or permit the commingling of Collateral or proceeds of Collateral with other property of or under the control of such Borrower or any of its Subsidiaries that is not Collateral or proceeds of Collateral (including proceeds of Accounts that were sold by WPS to WPSRC prior to the Petition Date).

7.36 Royalty Payments. The Borrowers shall promptly pay, when due, all Royalties in connection with License Agreements.

ARTICLE 8
CONDITIONS OF LENDING

8.1 Conditions Precedent to Making of Loans on the Closing Date. The obligation of the Lenders to make the initial Revolving Loans on the Closing Date, and the obligation of the Administrative Agent to cause the Letter of Credit Issuer to issue any Letter of Credit on the Closing Date, are subject to the following conditions precedent having been satisfied in a manner satisfactory to the Administrative Agent and each Initial Lender:

(a) All of the DIP Financing Documents shall have been executed in form and substance satisfactory to the Administrative Agent and the Lenders by each party thereto and accepted by the Administrative Agent and the Initial Lenders and the Borrowers shall have performed and complied with all covenants, agreements and conditions contained herein and the other DIP Financing Documents which are required to be performed or complied with by the Borrowers before or on such Closing Date.

(b) All representations and warranties made hereunder and in the other DIP Financing Documents shall be true and correct as if made on such date.

(c) No Default or Event of Default shall have occurred and be continuing after giving effect to the Loans to be made and the Letters of Credit to be issued on the Closing Date.

(d) The Interim Financing Order shall have been entered, shall be in full force and effect and shall not have been vacated, reversed, modified or stayed in any respect (and, if such order is the subject of a pending appeal, no performance of any obligation of any party shall have been stayed pending such appeal).

(e) All of the "first day orders" presented to the Court at or about the time of the commencement of the Chapter 11 Cases (including orders with respect to maintenance of Borrowers' cash management system) shall be satisfactory in form and substance to the Administrative Agent and the Initial Lenders.

(f) The Administrative Agent and the Initial Lenders shall have received such opinions of counsel for the Borrowers and their Subsidiaries as the Administrative Agent or any Lender shall request, each such opinion to be in a form, scope, and substance satisfactory to the Administrative Agent, the Lenders, and their respective counsel.

(g) The Administrative Agent shall have received acknowledgment copies (or confirmation satisfactory to it of the filing) of proper financing statements, duly filed on or before the Closing Date under the UCC of all jurisdictions that the Administrative Agent may deem necessary or desirable in order to perfect the Administrative Agent's Liens; and

(h) The Borrowers shall have paid (or made adequate provision for the payment on the Closing Date of) all fees and expenses of the Administrative Agent and the Attorney Costs incurred in connection with any of the DIP Financing Documents and the transactions contemplated thereby to the extent invoiced.

(i) The Administrative Agent shall have received evidence, in form, scope, and substance, reasonably satisfactory to the Administrative Agent, of all insurance coverage as required by this Agreement.

(j) The Administrative Agent and the Initial Lenders shall have had an opportunity, if they so choose, to examine the books of account and other records and files of the Borrowers and to make copies thereof, and to conduct a pre-closing audit which shall include, without limitation, verification of Inventory, Accounts, and the Borrowing Base, and the results of such examination and audit shall have been satisfactory to the Administrative Agent and the Lenders in all respects.

(k) All proceedings taken in connection with the execution of this Agreement and each other DIP Financing Document and all documents and papers relating hereto or thereto shall be satisfactory in form, scope, and substance to the Administrative Agent and the Lenders.

(l) The Administrative Agent and the Initial Lenders shall have reviewed and found acceptable the Budget.

(m) The Court shall have entered an order for the joint administration of the Chapter 11 Cases.

(n) The Interim Pre-Petition Lender Protection Order shall have been entered by the Court in form and substance satisfactory to the Administrative Agent and the Initial Lenders and shall be in full force and effect.

(o) No order shall have been entered by the Court (i) for the appointment of a trustee or examiner with enlarged powers substantially similar to those of a trustee, or (ii) converting any of the Chapter 11 Cases to a Chapter 7 case or dismissing any of the Chapter 11 Cases or (iii) terminating prior to any expiration date the Borrowers' exclusive time period to file a plan of reorganization and, with respect to clauses (i) through (iii) above, no such order shall have been requested by the Borrowers.

(p) Without limiting the generality of the items described above, the Borrowers and each Person guarantying or securing payment of the Obligations shall have delivered or caused to be delivered to the Administrative Agent (in form and substance reasonably satisfactory to the Administrative Agent), the financial statements, instruments, resolutions, documents, agreements, certificates, opinions and other items set forth on the "Closing Checklist" delivered by the Administrative Agent to the Borrowers prior to the Closing Date.

The acceptance by the Borrowers of any Loans made or Letters of Credit issued on the Closing Date shall be deemed to be a representation and warranty made by the Borrowers to the effect that all of the conditions precedent to the making of such Loans or the issuance of such Letters of Credit have been satisfied, with the same effect as delivery to the Administrative Agent and the Lenders of a certificate signed by a Responsible Officer of the Borrowers, dated the Closing Date, to such effect.

Execution and delivery to the Administrative Agent by a Lender of a counterpart of this Agreement shall be deemed confirmation by such Lender that (i) all conditions precedent in this Section 8.1 have been fulfilled to the satisfaction of such Lender, (ii) the decision of such Lender to execute and deliver to the Administrative Agent an executed counterpart of this Agreement was made by such Lender independently and without reliance on the Administrative Agent or any other Lender as to the satisfaction of any condition precedent set forth in this Section 8.1, and (iii) all documents sent to such Lender for approval consent, or satisfaction were acceptable to such Lender.

8.2 Conditions Precedent After Interim Period. The obligation of the Lenders to make Loans and of the Administrative Agent to cause the Letter of Credit Issuer to issue any Letter of Credit after the Interim Period shall be subject to the further condition precedents that:

(a) The Final Financing Order shall have been entered, shall be in full force and effect and shall not have been vacated, reversed, modified or stayed in any respect (and, if such order is the subject of a pending appeal, no performance of any obligation of any party shall have been stayed pending such appeal).

(b) The Final Pre-Petition Lender Protection Order shall have been entered, shall be in full force and effect and shall not have been vacated, reversed, modified or stayed in any respect (and, if such order is the subject of a pending appeal, no performance of any obligation of any party shall have been stayed pending such appeal).

8.3 Conditions Precedent to Each Loan. The obligation of the Lenders to make each Loan, including the initial Revolving Loans on the Closing Date, and the obligation of the Administrative Agent to cause the Letter of Credit Issuer to issue any Letter of Credit shall be subject to the further conditions precedent that on and as of the date of any such extension of credit:

(q) The following statements shall be true, and the acceptance by the Borrower of any extension of credit shall be deemed to be a statement to the effect set forth in clauses (i), (ii) and (iii) with the same effect as the delivery to the Administrative Agent and the Lenders of a certificate signed by a Responsible Officer, dated the date of such extension of credit, stating that:

(i) The representations and warranties contained in this Agreement and the other DIP Financing Documents are correct in all material respects on and as of the date of such extension of credit as though made on and as of such date, other than any such representation or warranty which relates to a specified prior date and except to the extent the Administrative Agent and the Lenders have been notified in writing by the Borrowers that any representation or warranty is not correct and the Majority Lenders have explicitly waived in writing compliance with such representation or warranty; and

(ii) No event has occurred and is continuing, or would result from such extension of credit, which constitutes a Default or an Event of Default; and

(iii) No event has occurred and is continuing, or would result from such extension of credit, which has had or would have a Material Adverse Effect.

(r) No such Borrowing shall exceed Availability, provided, however, that the foregoing conditions precedent are not conditions to each Lender participating in or reimbursing Bank of America or the Administrative Agent for such Lender's Pro Rata Share of any Non-Ratable Loan or Agent Advance made in accordance with the provisions of Sections 1.2(i) and (j).

ARTICLE 9
DEFAULT; REMEDIES

9.1 Events of Default. .It shall constitute an event of default ("Event of Default") if any one or more of the following shall occur for any reason:

(a) any failure by the Borrowers to pay the principal of or interest or premium on any of the Obligations or any fee or other amount owing hereunder when due, whether upon demand or otherwise;

(b) any representation or warranty made or deemed made by any Borrower this Agreement or by any Borrower or any of its Subsidiaries in any of the other DIP Financing Documents, any Financial Statement, or any certificate furnished by a Borrower or any of its Subsidiaries at any time to the Administrative Agent or any Lender shall prove to be untrue in any material respect as of the date on which made, deemed made, or furnished;

(c) (i) any default shall occur in the observance or performance of any of the covenants and agreements contained in Sections 5.2(k), 7.2, 7.5, 7.9-7.34, or Section 11 of the Security Agreement, (ii) any default shall occur in the observance or performance of any of the covenants and agreements contained in Sections 5.2 (other than 5.2(k)) or 5.3 and such default shall continue for three (3) days or more; or (iii) any default shall occur in the observance or performance of any of the other covenants or agreements contained in any other Section of this Agreement or any other DIP Financing Document or any other agreement entered into at any time to which the Borrower or any Subsidiary and the Administrative Agent or any Lender are party (including in respect of any Bank Products) and such default shall continue for fifteen (15) days or more;

(d) any default shall occur with respect to any Debt (other than the Obligations) of any Borrower or any of its Subsidiaries incurred after the Petition Date in an outstanding principal amount which exceeds $500,000, or under any agreement or instrument under or pursuant to which any such Debt may have been issued, created, assumed, or guaranteed by such Borrower or any of its Subsidiaries, and such default shall continue for more than the period of grace, if any, therein specified, if the effect thereof (with or without the giving of notice or further lapse of time or both) is to accelerate, or to permit the holders of any such Debt to accelerate, the maturity of any such Debt; or any such Debt shall be declared due and payable or be required to be prepaid (other than by a regularly scheduled required prepayment) prior to the stated maturity thereof;

(e) Borrowers shall fail to comply with any of the provisions of the Financing Orders; a trustee shall be appointed in any of the Chapter 11 Cases; an examiner shall be appointed in any of the Chapter 11 Cases with enlarged powers (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code; any of the Chapter 11 Cases shall be dismissed or converted to a case under Chapter 7 or a motion for any such dismissal or conversion shall be filed by any Borrower; any Borrower or any Affiliate shall obtain Court approval of a disclosure statement for a Reorganization Plan other than an Acceptable Plan or a Confirmation Order shall be entered with respect to a Reorganization Plan (regardless of the proponent of such Reorganization Plan) if such Reorganization Plan is not an Acceptable Plan; there shall be filed by a Borrower any motion to sell all or a substantial part of the Collateral on terms that are not acceptable to Lenders in their sole discretion; any substantial part of the Borrowers' assets, other than the Collateral, shall be sold by a Borrower and,

as a consequence of such sale, such Borrower is not able to continue its business operations in substantially the same manner as was conducted by it prior to such sale; any Borrower shall file any motion to alter, amend, vacate, supplement, modify, or reconsider, in any respect, either of the Financing Orders or, without the Administrative Agent's prior written consent, either of the Financing Orders is amended, vacated, supplemented, modified or stayed or reversed on appeal; the Court shall enter an order granting to any Person other than the Administrative Agent or any Lender relief from the automatic stay to foreclose upon a Lien with respect to any Accounts or Inventory or with respect to any other Property of a Borrower having an aggregate book value in excess of $1,000,000; an order shall be entered for the substantive consolidation of the Estate of a Borrower with any other Person that is not a Borrower; Borrowers shall not have sufficient Availability on any date to pay, or shall otherwise fail to pay as and when due and payable, all costs and expenses of administration that are incurred by it in the Chapter 11 Cases that are due and payable on such date; any Borrower shall file a motion or other request with the Court seeking authority to use any cash proceeds of the Collateral or to obtain any financing under Section 364(d) of the Bankruptcy Code secured by a priming Lien, or Lien of equal priority with Administrative Agent's Liens, upon any Collateral, in each case without Administrative Agent's and Lenders' prior written consent; an application shall be filed by any Borrower for the approval of any superpriority claim in the Chapter 11 Case that is *pari passu* with or senior to the Obligations or any of the Pre-Petition Debt or there shall arise or be granted any such *pari passu* or superpriority claim; without the Administrative Agent's and the Majority Lenders' consent, any Borrower shall discontinue or suspend all or any material part of its business operations; the Pre-Petition Lender Protection Orders, including provisions relating to the amount, timing and conditions to payment of any Adequate Protection Claim or sharing of Net Proceeds of any Fixed Assets (as defined therein), are modified, amended or supplemented without Administrative Agent's consent, or Borrower's are in default of their obligations under either of the Pre-Petition Lender Protection Orders; or the Final Financing Order shall not have been entered by the Court on or prior to the 45th day after the Court's entry of the Interim Financing Order.

(f) a Borrower or any material Subsidiary shall file a certificate of dissolution under applicable state law or shall be liquidated, dissolved or wound-up or shall commence or have commenced against it any action or proceeding for dissolution, winding-up or liquidation, or shall take any corporate action in furtherance thereof;

(g) all or any material part of the property of a Borrower or any of its Subsidiaries shall be nationalized, expropriated or condemned, seized or otherwise appropriated, or custody or control of such property or of the Borrower or such Subsidiary shall be assumed by any Governmental Authority or any court of competent jurisdiction at the instance of any Governmental Authority, except where contested in good faith by proper proceedings diligently pursued where a stay of enforcement is in effect;

(h) any DIP Financing Document shall be terminated, revoked or declared void or invalid or unenforceable or challenged by any Borrower or any other Obligor;

(i) one or more judgments, orders, decrees or arbitration awards is entered against a Borrower involving in the aggregate liability (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage) as to any single or related or unrelated series of transactions, incidents or conditions, of $1,000,000 or more, and the same shall remain unsatisfied, unvacated and unstayed pending appeal for a period of sixty (60) days after the entry thereof;

(j) any loss, theft, damage or destruction of any item or items of Collateral or other property of a Borrower or any Subsidiary occurs which could reasonably be expected to cause a Material Adverse Effect and is not adequately covered by insurance;

(k) there is filed against a Borrower or any of its Subsidiaries any action, suit or proceeding under any federal or state racketeering statute (including the Racketeer Influenced and Corrupt Organization Act of 1970), which action, suit or proceeding (i) is not dismissed within one hundred twenty (120) days, and (ii) could reasonably be expected to result in the confiscation or forfeiture of any material portion of the Collateral;

(l) for any reason, any DIP Financing Document ceases to be in full force and effect or any Lien with respect to any material portion of the Collateral intended to be secured thereby ceases to be, or is not, valid, perfected and prior to all other Liens (other than Permitted Liens) or is terminated, revoked or declared void;

(m) an ERISA Event shall occur with respect to a Pension Plan or Multi-employer Plan which could reasonably be expected to have a Material Adverse Effect or which results in the imposition of a Lien on any Borrower's assets;

(n) there occurs a Change of Control; or

(o) one or more License Agreements are terminated by a Borrower or any other party to such License Agreement and (i) such termination could reasonably be expected to have a Material Adverse Effect, or (ii) as a consequence of such termination, neither the Borrowers nor the Administrative Agent shall be entitled under the License Agreement or otherwise lawfully to sell or otherwise dispose of the Inventory subject to such License Agreement.

9.2 Remedies.

(a) If a Default or an Event of Default exists, but subject at all times to any limitations in the Financing Orders, the Administrative Agent may, in its discretion, and shall, at the direction of the Supermajority Lenders, do one or more of the following at any time or times and in any order: (i) reduce the Maximum Revolver Amount, or the advance rates against Eligible Accounts and/or Eligible Inventory used in computing the Borrowing Base, or reduce one or more of the other elements used in computing the Borrowing Base; (ii) restrict the amount of or refuse to make Revolving Loans; and (iii) restrict or refuse to provide Letters of Credit or Credit Support. If an Event of Default exists, but subject at all times to any limitations in the then applicable Financing Order, the Administrative Agent shall, at the direction of the Supermajority Lenders, do one or more of the following, in addition to the actions described in

the preceding sentence, at any time or times and in any order: (A) terminate the Commitments and this Agreement; (B) declare any or all Obligations to be immediately due and payable; provided, however, that upon the occurrence of any Event of Default described in Sections 9.1(f), the Commitments shall automatically and immediately expire and all Obligations shall automatically become immediately due and payable without notice or demand of any kind; (C) require the Borrowers to cash collateralize the aggregate undrawn face amount of all outstanding Letters of Credit; and (D) pursue its other rights and remedies under the DIP Financing Documents, the Financing Orders and applicable law.

(b) If an Event of Default has occurred and is continuing, but subject at all times to any limitations in the Financing Orders: (i) the Administrative Agent shall have for the benefit of the Lenders, in addition to all other rights of the Administrative Agent and the Lenders, the rights and remedies of a secured party under the DIP Financing Documents and the UCC; (ii) the Administrative Agent may, at any time, take possession of the Collateral and keep it on the Borrowers' premises, at no cost to the Administrative Agent or any Lender, or remove any part of it to such other place or places as the Administrative Agent may desire, or the Borrowers shall, upon the Administrative Agent's demand, at the Borrowers' cost, assemble the Collateral and make it available to the Administrative Agent at a place reasonably convenient to the Administrative Agent; and (iii) the Administrative Agent may sell and deliver any Collateral at public or private sales, for cash, upon credit or otherwise, at such prices and upon such terms as the Administrative Agent deems advisable, in its sole discretion, and may, if the Administrative Agent deems it reasonable, postpone or adjourn any sale of the Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale without giving a new notice of sale. Without in any way requiring notice to be given in the following manner, the Borrowers agree that any notice by the Administrative Agent of sale, disposition or other intended action hereunder or in connection herewith, whether required by the UCC or otherwise, shall constitute reasonable notice to the Borrowers if such notice is mailed by registered or certified mail, return receipt requested, postage prepaid, or is delivered personally against receipt, at least five (5) Business Days prior to such action to the Borrowers' address specified in or pursuant to Section 13.8. If any Collateral is sold on terms other than payment in full at the time of sale, no credit shall be given against the Obligations until the Administrative Agent or the Lenders receive payment, and if the buyer defaults in payment, the Administrative Agent may resell the Collateral without further notice to any Borrower. In the event the Administrative Agent seeks to take possession of all or any portion of the Collateral by judicial process, the Borrowers irrevocably waive: (A) the posting of any bond, surety or security with respect thereto which might otherwise be required; (B) any demand for possession prior to the commencement of any suit or action to recover the Collateral; and (C) any requirement that the Administrative Agent retain possession and not dispose of any Collateral until after trial or final judgment. The Borrowers agree that the Administrative Agent has no obligation to preserve rights to the Collateral or marshal any Collateral for the benefit of any Person. The Administrative Agent is hereby granted a license or other right to use, without charge, the Borrowers' labels, patents, copyrights, name, trade secrets, trade names, trademarks, and advertising matter, or any similar property, in completing production of, advertising or selling any Collateral, and the Borrowers' rights under all licenses and all franchise agreements shall inure to the Administrative Agent's benefit for such purpose. The proceeds of any sale shall be applied first to all expenses of sale, including attorneys' fees, and then to the Obligations. The

Administrative Agent will return any excess to the Borrowers and the Borrowers shall remain liable for any deficiency.

(c) If an Event of Default occurs, the Borrowers hereby waive all rights to notice and hearing prior to the exercise by the Administrative Agent of the Administrative Agent's rights to repossess the Collateral without judicial process or to reply, attach or levy upon the Collateral without notice or hearing, subject at all times to any limitations contained in the Financing Orders and applicable law.

ARTICLE 10
TERM AND TERMINATION

10.1 Term and Termination. The term of this Agreement shall end on the last day of the DIP Term unless sooner terminated in accordance with the terms hereof. The Administrative Agent may (and, upon direction from the Supermajority Lenders, shall) terminate this Agreement (and the DIP Facility and the Commitments thereunder) without notice upon the occurrence of an Event of Default. Upon the effective date of termination of this Agreement (and the DIP Facility and the Commitments thereunder) for any reason whatsoever, all Obligations (including all unpaid principal, accrued and unpaid interest and any early termination or prepayment fees or penalties) shall become immediately due and payable and the Borrowers shall immediately arrange for the cancellation and return of Letters of Credit then outstanding. Notwithstanding the termination of this Agreement (and the DIP Facility and the Commitments thereunder), until Full Payment of the Obligations, the Borrowers shall remain bound by the terms of this Agreement and shall not be relieved of any of its Obligations hereunder or under any other DIP Financing Document, and the Administrative Agent and the Lenders shall retain all their rights and remedies hereunder (including the Administrative Agent's Liens in and all rights and remedies with respect to all then existing and after-arising Collateral).

ARTICLE 11
AMENDMENTS; WAIVERS; PARTICIPATIONS; ASSIGNMENTS; SUCCESSORS

11.1 Amendments and Waivers.

(a) No amendment or waiver of any provision of this Agreement or any other DIP Financing Document, and no consent with respect to any departure by a Borrower therefrom, shall be effective unless the same shall be in writing and signed by the Majority Lenders (or by the Administrative Agent at the written request of the Majority Lenders) and the Borrowers, and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such waiver, amendment, or consent shall, unless in writing and signed by all the Lenders and the Borrowers and acknowledged by the Administrative Agent, do any of the following:

(i) increase or extend the Commitment of any Lender;

(ii) postpone or delay any date fixed by this Agreement or any other DIP Financing Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other DIP Financing Document;

(iii) reduce the principal of, or the rate of interest specified herein on any Loan, or any fees or other amounts payable hereunder or under any other DIP Financing Document;

(iv) increase any of the percentages set forth in the definitions of Accounts Formula Amount or Inventory Formula Amount;

(v) amend this Section or any provision of this Agreement providing for consent or other action by all Lenders;

(vi) release Collateral other than as permitted by Section 12.11 or any of the Security Documents;

(vii) change the definitions of "Majority Lenders" or "Supermajority Lenders";

(viii) increase the Maximum Revolver Amount or the Letter of Credit Subfacility; or

(ix) amend Section 1.2(j) (other than to increase the dollar amounts shown therein, which may be amended by vote of the Majority Lenders).

provided, however, the Administrative Agent may, in its sole discretion and notwithstanding the limitations contained in clauses (v) and (viii) above and any other terms of this Agreement, make Agent Advances in accordance with Section 1.2(j) and, provided further, that no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent, affect the rights, duties, powers or discretion of the Administrative Agent under this Agreement or any other DIP Financing Document or any indemnities in favor of the Administrative Agent and provided further, that Schedule 1.2 hereto (Commitments) may be amended from time to time by Administrative Agent alone to reflect assignments of Commitments in accordance herewith.

(b) If any fees are paid to the Lenders as consideration for amendments, waivers or consents with respect to this Agreement, at Administrative Agent's election, such fees may be paid only to those Lenders that agree to such amendments, waivers or consents within the time specified for submission thereof.

(c) If, in connection with any proposed amendment, waiver or consent (a "Proposed Change"):

(i) requiring the consent of all Lenders, the consent of Supermajority Lenders is obtained, but the consent of other Lenders is not obtained (any such Lender whose consent is not obtained as described in this clause (i) and in clause (ii) below being referred to as a "Non-Consenting Lender"), or

(ii) requiring the consent of Supermajority Lenders, the consent of Majority Lenders is obtained,

then, so long as the Administrative Agent is not a Non-Consenting Lender, at the Borrowers'

request, the Administrative Agent or an Eligible Assignee shall have the right (but not the obligation) with the Administrative Agent's approval, to purchase from the Non-Consenting Lenders, and the Non-Consenting Lenders agree that they shall sell, all the Non-Consenting Lenders' Commitments for an amount equal to the principal balances thereof and all accrued interest and fees with respect thereto through the date of sale pursuant to Assignment and Acceptance Agreement(s), without premium or discount.

11.2 Assignments; Participations.

(a) Any Lender may, with the written consent of the Administrative Agent (which consent shall not be unreasonably withheld), assign and delegate to one or more Eligible Assignees (provided that no consent of the Administrative Agent shall be required in connection with any assignment and delegation by a Lender to an Affiliate of such Lender) (each an "Assignee") all, or any ratable part of all, of the Loans, the Commitments and the other rights and obligations of such Lender hereunder, in a minimum amount of $2,500,000 (provided that, unless an assignor Lender has assigned and delegated all of its Loans and Commitments, no such assignment and/or delegation shall be permitted unless, after giving effect thereto, such assignor Lender retains a Commitment in a minimum amount of $2,500,000; provided, however, that the Borrowers and the Administrative Agent may continue to deal solely and directly with such Lender in connection with the interest so assigned to an Assignee until (i) written notice of such assignment, together with payment instructions, addresses and related information with respect to the Assignee, shall have been given to the Borrowers and the Administrative Agent by such Lender and the Assignee; (ii) such Lender and its Assignee shall have delivered to the Borrowers and the Administrative Agent an Assignment and Acceptance in the form of Exhibit F ("Assignment and Acceptance"); and (iii) the assignor Lender or Assignee has paid to the Administrative Agent a processing fee in the amount of $4,000.

(b) From and after the date that the Administrative Agent notifies the assignor Lender that it has received an executed Assignment and Acceptance and payment of the above-referenced processing fee, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations, including, but not limited to, the obligation to participate in Letters of Credit and Credit Support have been assigned to it pursuant to such Assignment and Acceptance, shall have the rights and obligations of a Lender under the DIP Financing Documents, and (ii) the assignor Lender shall, to the extent that rights and obligations hereunder and under the other DIP Financing Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto).

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other DIP Financing Document furnished pursuant hereto or the

attachment, perfection, or priority of any Lien granted by the Borrowers to the Administrative Agent or any Lender in the Collateral; (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Borrowers or the performance or observance by the Borrowers of any of their obligations under this Agreement or any other DIP Financing Document furnished pursuant hereto; (iii) such Assignee confirms that it has received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such Assignee will, independently and without reliance upon the Administrative Agent, such assigning Lender or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such Assignee appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to the Administrative Agent by the terms hereof, together with such powers, including the discretionary rights and incidental power, as are reasonably incidental thereto; and (vi) such Assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) Immediately upon satisfaction of the requirements of Section 11.2(a), this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Commitments arising therefrom. The Commitment allocated to each Assignee shall reduce such Commitments of the assigning Lender *pro tanto*.

(e) Any Lender may at any time sell to one or more commercial banks, financial institutions, or other Persons not Affiliates of the Borrowers (a "Participant") participating interests in any Loans, the Commitment of that Lender and the other interests of that Lender (the "originating Lender") hereunder and under the other DIP Financing Documents; provided, however, that (i) the originating Lender's obligations under this Agreement shall remain unchanged, (ii) the originating Lender shall remain solely responsible for the performance of such obligations, (iii) the Borrowers and the Administrative Agent shall continue to deal solely and directly with the originating Lender in connection with the originating Lender's rights and obligations under this Agreement and the other DIP Financing Documents, and (iv) no Lender shall transfer or grant any participating interest under which the Participant has rights to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other DIP Financing Document except the matters set forth in Sections 11.1(a)(i), (ii) and (iii), and all amounts payable by the Borrowers hereunder shall be determined as if such Lender had not sold such participation; except that, if amounts outstanding under this Agreement are due and unpaid, or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent and subject to the same limitation as if the amount of its participating interest were owing directly to it as a Lender under this Agreement.

(f) Notwithstanding any other provision in this Agreement, any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement in favor of any Federal Reserve Bank in accordance with Regulation

A of the FRB or U.S. Treasury Regulation 31 CFR §203.14, and such Federal Reserve Bank may enforce such pledge or security interest in any manner permitted under applicable law.

ARTICLE 12
THE ADMINISTRATIVE AGENT

12.1 Appointment and Authorization. Each Lender hereby designates and appoints Bank of America as the Administrative Agent under this Agreement and the other DIP Financing Documents and each Lender hereby irrevocably authorizes the Administrative Agent to take such action on its behalf under the provisions of this Agreement, each other DIP Financing Document and the Financing Orders and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement, any other DIP Financing Document and the Financing Orders, together with such powers as are reasonably incidental thereto. The Administrative Agent agrees to act as such on the express conditions contained in this Article 12. The provisions of this Article 12 are solely for the benefit of the Administrative Agent and the Lenders and the Borrowers shall have no rights as a third party beneficiary of any of the provisions contained herein. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other DIP Financing Document, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall the Administrative Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other DIP Financing Document or otherwise exist against the Administrative Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" in this Agreement with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. Except as expressly otherwise provided in this Agreement, the Administrative Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions which the Administrative Agent is expressly entitled to take or assert under this Agreement and the other DIP Financing Documents, including (a) the determination of the applicability of ineligibility criteria with respect to the calculation of the Borrowing Base, (b) the making of Agent Advances pursuant to Section 1.2(i), and (c) the exercise of remedies pursuant to Section 9.2, and any action so taken or not taken shall be deemed consented to by the Lenders.

12.2 Delegation of Duties. The Administrative Agent may execute any of its duties under this Agreement or any other DIP Financing Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects as long as such selection was made without gross negligence or willful misconduct.

12.3 Liability of Administrative Agent. None of the Administrative Agent-Related Persons shall (i) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other DIP Financing Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (ii) be

responsible in any manner to any of the Lenders for any recital, statement, representation or warranty made by the Borrowers or any Subsidiary or Affiliate of the Borrowers, or any officer thereof, contained in this Agreement or in any other DIP Financing Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other DIP Financing Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other DIP Financing Document, or for any failure of the Borrowers or any other party to any DIP Financing Document to perform its obligations hereunder or thereunder. No Administrative Agent-Related Person shall be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other DIP Financing Document, or to inspect the properties, books or records of the Borrowers or any of the Borrowers' Subsidiaries or Affiliates.

12.4 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to the Borrower), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other DIP Financing Document unless it shall first receive such advice or concurrence of the Supermajority Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other DIP Financing Document in accordance with a request or consent of the Supermajority Lenders (or all Lenders if so required by Section 11.1) and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders.

12.5 Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless the Administrative Agent shall have received written notice from a Lender or a Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." The Administrative Agent will notify the Lenders of its receipt of any such notice. The Administrative Agent shall take such action with respect to such Default or Event of Default as may be requested by the Supermajority Lenders in accordance with Section 9; provided, however, that unless and until the Administrative Agent has received any such request, the Administrative Agent may (but shall not be obligated to) continue to make Revolving Loans to the Borrowers on behalf of the Lenders in reliance on the provisions of Section 12.15 and take such other action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable.

12.6 Credit Decision. Each Lender acknowledges that none of the Administrative Agent-Related Persons has made any representation or warranty to it, and that no act by the Administrative Agent hereinafter taken, including any review of the affairs of the Borrowers and their Affiliates, shall be deemed to constitute any representation or warranty by any