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3219 McKinney Avenue
Dallas, Texas 75204

Hearing: September 9, 2011
“How Fraud and Abuse in the Asbestos
Compensation System Affect Victims, Jobs, the
Economy, and the Legal System”

I would like to thank the Subcommittee for the opportunity to testify on the state of asbestos litigation today. My name is Charles Siegel. I live in Dallas and I am a lifelong resident of Texas. I am a partner in the firm of Waters and Kraus, and for 25 years I have had the privilege of representing persons seriously injured by exposure to asbestos, or their survivors.

The Tragedy of Asbestos Disease

I am proud to represent people such as Dudley Pounders and his wife Vicki. The Pounders live in Mesa, Arizona, and they are constituents of Chairman Franks. Mr. Pounders died of mesothelioma at age 63 after a career as a welder at Arizona Public Service. The doctor conducting the autopsy diagnosed both asbestosis and mesothelioma. Asbestosis is a chronic, progressive inflammation of the lungs which makes it difficult to breathe and may result in death. Mesothelioma is a rare cancer of the lining of the chest, known only to be caused by asbestos. His widow was left with over \$300,000 in medical expenses.

Another client we were proud to represent was Mark Smith, from Chairman Lamar Smith's district. Mr. Smith lived in San Antonio. He was exposed to asbestos through his father, who worked as a contactor installing siding and roofing materials that contained asbestos. Mr. Smith's father would come home with asbestos on his clothes that young Mark would breathe. Mark Smith died at the age of 50, leaving a wife and a twelve-year-old son.

Our firm also represented Terry McCann. Terry was a gold medalist in wrestling at the Rome Olympics in 1960. He served on the boards of numerous charities and sports clubs, and belonged to five Halls of Fame. He was an Executive Director of Toastmasters International. He died at age 72 of mesothelioma.

Tommie Williams was another of our clients. He grew up the son of a Mississippi sharecropper. He lost the use of one hand as a child; after an accident, his parents couldn't afford to take him to a doctor. Nonetheless, he moved to Los Angeles and worked for decades in the shipyards there despite only having the use of one hand. He died of mesothelioma at the age of 62.

Barbara Navarro died of mesothelioma at 55. She was exposed to asbestos as a child, while volunteering at church projects.

Richard Ontiveros died of mesothelioma at 32. His only exposure was through his father, who would come home with asbestos dust on his work clothes; as a baby, Ontiveros breathed in this dust.

Yet another of our clients, Katherine Lopez, is dying of mesothelioma at the age of 48. She has perhaps six months to live.

These stories, from just my law firm, are very poignant, but they are merely a few of many hundreds of thousands of similar stories. Asbestos is widely agreed to be the greatest public health disaster of the 20th century, and it continues unabated in the 21st century. Hundreds of thousands, perhaps millions, of persons have died of asbestosis, lung cancer and

mesothelioma in the last several decades. Even today, seven or eight persons die of mesothelioma alone every day of the year in the United States, and these deaths are projected to continue at a slowly decreasing rate for 40 to 50 more years. Professor Brickman has described mesothelioma as a “particularly virulent cancer, which is gruesome to behold and always results in death.” Many other victims also continue to die and will continue to die of lung cancer and other cancers.

According to the National Institute for Occupational Safety and Health, the leading occupations for deaths due to asbestos exposures are plumbers, pipefitters and steamfitters.¹ Many were exposed while serving in the U.S. military. Others were exposed as a result of working in an industry in which asbestos was utilized. Examples of such industries are construction, shipbuilding, asbestos mining and processing, chemical manufacturing and metalworking. Because the latency period between the first exposure to asbestos and clinical disease is typically 20 to 40 years, many are not yet identified.

There is an international consensus that asbestos causes mesothelioma (a cancer of the lining of the lung), lung cancer, and asbestosis, and is associated with an increased risk of other cancers, including stomach, colon, and esophageal cancer.² Victims of mesothelioma typically only live for 4 to 18 months after their diagnosis.³ The Occupational Safety and Health Administration (“OSHA”) first regulated asbestos exposures in 1972.⁴ EPA adopted a regulation, later overturned in Court, banning asbestos use. Almost two decades ago, OSHA observed that “it was aware of no instance in which exposure to a toxic substance has more clearly demonstrated detrimental health effects on humans than has asbestos exposure.” 51 Fed. Reg. 22,615 (1986).

The states with the highest number of mesothelioma cancer victims (> 500) between 1999-2005 are: California, Pennsylvania, Florida, New Jersey, New York, Texas, Illinois, Virginia, Ohio, Massachusetts, Washington, and Michigan.⁵ During 1999-2005 the national rate of mesothelioma deaths was about 11.5 per million population per year, but more than half the states had higher rates. The states with the highest rate of mesothelioma deaths are: Maine, New Hampshire, Rhode Island, Connecticut, New Jersey, Delaware, Maryland, Virginia, West Virginia, Pennsylvania, Ohio, Michigan, Indiana, Illinois, Louisiana, Wisconsin, Minnesota, Utah, Wyoming, Montana, Idaho, Alaska, Washington, and Oregon.⁶ In addition, asbestosis was a contributing cause in over 1400 deaths between 2000-2005, a sharp rise from the rate of death in 1998.⁷

The Asbestos Tragedy was Caused by Corporate Misconduct

We are here because these deaths have a cause. The courts and Congress have wrestled with asbestos litigation for decades because litigation was necessary, and litigation was necessary because there was fault. Juries and judges hearing these cases in state courts around the country for the last 40 years have consistently heard evidence of corporate concealment of the dangers of asbestos exposure. A corporate official for Bendix Co., for example, wrote to Johns-Manville in 1966 that “if you have enjoyed a good life while working with asbestos products why not die from it? There’s got to be some cause.”

Another example is provided by the conduct of Union Carbide Corporation, the client of Mr. Stengel, one of the witnesses in today's hearing. Union Carbide actually mined and marketed raw asbestos. It touted its own asbestos as being safe while questioning the safety of other forms of the mineral.

This corporate conduct, and the vast legacy of death and disease that resulted, have led to decades of litigation. The overwhelming majority of this litigation has occurred in state courts, and continues to occur there. As we move further away in time from the years of the most heavy asbestos exposure, the number of cases is fortunately decreasing, and the federal court in Philadelphia that presides over all federal asbestos litigation has announced plans to dissolve the federal court asbestos consolidation later this year or early next year.

As a result, all except a handful of cases will be heard in state court. This continues a trend that has prevailed for the last 20 years, in which the vast majority of asbestos cases have been resolved in state court, under state substantive law and state procedural rules.

The substantial majority of these state-court cases involve mesothelioma and lung cancer. Victims were exposed in a variety of ways, but each case typically involves claims against companies that made asbestos-containing products or machinery, or premises owners or contractors responsible for a worker's exposure. State law provides that a claimant may recover from each party found by the jury to have been responsible for exposure, and to have behaved negligently or to have supplied an unreasonably dangerous product. In New York, Pennsylvania, for the most part in Texas and California, and in nearly all the jurisdictions with any significant number of cases, there is no joint and several liability, and so the jury simply assigns a percentage of responsibility to each company it finds to be liable.

The Asbestos Bankruptcy Trust System

In addition to claims made against defendants in state courts, plaintiffs also can make claims against bankruptcy trusts. These trusts have been set up to pay claims against companies that declared bankruptcy at some point in the past. Since many companies have used this device to avoid defending asbestos lawsuits, a word about asbestos bankruptcies is in order.

In 1994, Congress amended the Bankruptcy Code to create Section 524(g) to specifically address asbestos-related bankruptcies. Among other things, the provision allows a bankruptcy court to bind future asbestos injury claimants to a plan of reorganization through the appointment of a future representative to represent their interest in the negotiation of the plan. Because of the long latency period between exposure to asbestos and manifestation of a disease, Congress recognized that provisions must be made for the compensation of future asbestos victims and determined that a trust would be the best vehicle for handling claims against a bankrupt defendant. Section 524(g) basically codified the approach to dealing with asbestos claims that the court had approved in the Johns-Manville bankruptcy.

A trust that is created pursuant to Section 524(g) assumes the asbestos-related liabilities of the debtor company and must use all of its assets and income to pay qualifying asbestos

claims. The trust must treat future claimants substantially the same as present claimants, and at least 75 percent of present asbestos claimants must vote to accept the plan. If all of the requirements of Section 524(g) are met, the bankruptcy courts will issue a channeling injunction directing that asbestos claims may be brought only against the trust. In addition to creating Section 524(g), Congress also amended the Bankruptcy Code to add section 524(h), a provision that allows certain injunctions that existed on the date of the enactment of Section 524(g) to be treated as Section 524(g) injunctions.

When a company files for bankruptcy protection, there is a popular perception that the factories and company offices are closed, the plants are padlocked and all the employees lose their jobs. This is not true in the asbestos context. Almost every company to have sought bankruptcy protection due to asbestos liabilities has been able to recover their economic health while also compensating victims of asbestos disease.⁸ The asbestos trust system acts to preserve the assets of the company, compensates present and future claimants, and allows the company to resume economic activity.

524(g) of the Bankruptcy Code exists precisely so that companies facing substantial asbestos claims can compensate victims while continuing normal operations. The trusts are set up by the companies after a period of negotiation and, if necessary, litigation of certain issues in bankruptcy courts. They are approved by federal bankruptcy judges, with a right of appeal by any interested party. Interested parties may include solvent co-defendants, insurers, victims, and other commercial and financial creditors.

Trusts are governed by one or more independent trustees, many of whom are retired judges. These trustees have the authority, and the responsibility, to manage the trusts in accordance with the terms of the trust documents. These documents were, of course, approved during the course of the bankruptcy case by the bankruptcy courts and federal district and appellate courts. Plaintiffs' lawyers have no involvement in the trusts' determinations of whether to pay any particular claim, nor do they have any control over trustees' decisions. If plaintiffs' lawyers are opposed to a particular decision by trustees, the question may be submitted to arbitrators, and eventually to the federal court which oversaw the particular bankruptcy proceeding. It is ultimately that court which resolves any disputes between trustees and claimants' lawyers.

Asbestos Victims are not Fully Compensated by Asbestos Trusts

In recent years, defendants have argued that asbestos lawsuits have come to constitute "double dipping," since claimants may potentially recover both from defendants in the state court system and from bankruptcy trusts. The claim is false and reflects a basic, fundamental misunderstanding of the way both the bankruptcy system and state court lawsuits operate. If any court anywhere—any state or federal, trial or appellate court hearing asbestos cases, or any bankruptcy court—had found any merit in this contention, it might have credibility, but no court ever has.

The assertion is that large amounts of money are recoverable from bankruptcy trusts, and that plaintiffs routinely game the system so that they receive a full recovery in the bankruptcy

system, and then a second, “double” recovery in the tort system. Neither premise is correct: there is no windfall of money available to mesothelioma claimants, and plaintiffs cannot and do not “game the system” such that solvent tort defendants pay the liability shares of bankrupt companies.

The proponents of this assertion describe an imaginary asbestos bankruptcy trust system awash in cash, in which mesothelioma victims need only file a few forms to recover a million dollars or more. But as for the lavish payments these trusts are supposedly doling out, it must be emphasized that there is a “scheduled value” of a particular disease claim, and then a “payment percentage” for all claims. So, for example, while a certain trust may officially “value” a mesothelioma claim at, say, \$100,000, the payment percentage may be 15%, resulting in an actual payment of only \$15,000. RAND finds that “[m]ost trusts do not have sufficient funds to pay every claim in full and, thus, set a payment percentage that is used to determine the actual payment a claimant will be offered.” The median payment percentage is 25 percent, but some trusts pay as low as 1.1 percent of the value of a claim.^{9[i]}

It must also be borne in mind that no claimant would ever qualify for payment from all, or even close to all, of the trusts. For example, a Navy seaman might well have worked around a Babcock & Wilcox boiler, but would not have worked with U.S. Gypsum joint compound. A plasterer, conversely, would have used joint compound but would not have worked on marine boilers. It is certainly true that a number of bankruptcy trusts exist, and that a typical qualifying claimant might receive significant compensation from them. But the description of the bankruptcy system as simply churning out bags of money to claimants is an outright lie.

The Existence of Asbestos Bankruptcy Trusts does not Disadvantage Solvent Defendants

A related argument is that in asbestos trials today, defendants are paying an unfair share of the damages awarded to plaintiffs. This is supposedly because solvent defendants are prevented from learning the true facts about a plaintiff’s asbestos exposure, since plaintiffs are also filing bankruptcy claims, but in secret. This argument betrays a hopeless lack of awareness about how asbestos cases are actually litigated.

First, of course, there is no “fair share” for a defendant in asbestos litigation; there is only whatever percentage of causal responsibility is assigned by a jury in any particular case, and each case turns on its own facts. Moreover, the fact that other parties may share responsibility for causing injury is not a ground for avoiding liability. To quote a California case, “[E]ach tortfeasor whose negligence is a proximate cause of an indivisible injury remains individually liable for all compensable damages attributable to that injury.” *American Motorcycle Ass’n v. Superior Court* (1978) 20 Cal.3d 578, 582. The fact that others may also have been negligent or at fault for the injury, is no defense. “A tortfeasor may not escape this responsibility simply because another act, either an ‘innocent’ occurrence such as an ‘act of God’ or other negligent conduct, may also have been a cause of the injury.” (*Id.* at 586.) It is further immaterial that others that may have contributed to causing the injury are bankrupt or immune from suit. “When independent negligent actions or a number of tortfeasors are each a proximate cause of a single injury, each tortfeasor is thus personally liable for the damage sustained, and the injured person may sue one or all of the tortfeasors to obtain a single recovery for his injuries; the fact that one

of the tortfeasors is impecunious or otherwise immune from suit does not relieve another tortfeasor of his liability for damage which he himself has proximately caused.” (*Id.* at 587.). This is a California case, but the same rule holds in all 50 states.

Defendants routinely and vigorously assert their rights to place other responsible parties on the verdict form that is filled out by jury, including bankrupt entities. The critics of state courts’ handling of asbestos cases are apparently unaware that defendants in civil lawsuits can conduct discovery to vindicate these rights. Such discovery includes interrogatories and requests for production of documents and admissions to the plaintiff, and depositions of the plaintiff, his family members and any co-workers. Materials submitted by plaintiffs to bankruptcy trusts are discoverable. See e.g. *Volkswagen of America, Inc. v. Superior Court* (2006) 139 Cal.App.4th 1481. Defendants obviously conduct their own unilateral investigation into plaintiffs’ claims as well.

Does this discovery work, or have plaintiffs so gamed the system that the solvent asbestos defendants are routinely paying the bankrupt companies’ “fair share”? In jurisdictions with several liability, defendants are liable only for the proportional harm they caused. The results in trials show that solvent defendants are not being disadvantaged by the asbestos trusts. Less than two months ago, in a case tried by our firm, a jury allocated 5% responsibility to the trial defendant, and a total of 34% to four different bankruptcy companies.¹⁰ In another, a recent case tried to verdict by our firm, the jury evaluated the alleged fault of the trial defendant, Kaiser Gypsum, as well as 32 other entities, and five additional generic categories of products (e.g. “pipe covering” or “asbestos felt”). Of the 32 entities, at least 20 had bankruptcy trusts at the time of trial, and of these 20 entities, the jury determined that 18 of them were at fault. These 17 entities were assigned percentages of responsibility ranging from 1.5% to 8%. The trial defendant itself was assigned a 4% share, with the trust entities cumulatively receiving 61%.¹¹

In another recent trial, the jury was presented with evidence to evaluate the liability of several entities and assessed a .5% share to Crane, an 85% share to the Navy, a .5% share to the bankrupt entity Babcock & Wilcox, and a 10% share to “Insulation Manufacturers,” which includes trust entities such as Johns-Manville. In other words, presented with evidence of all of the plaintiff’s exposures, the jury allotted 21 times the responsibility to trust entities as it did to the trial defendant Crane Co.¹²

In another California case that went to verdict in July 2006, the jury was also able to evaluate evidence against trial defendants and numerous third-party entities, assigning 8% responsibility to each of the two trial defendants, 8% responsibility to the bankrupt entity USG, 8% responsibility to the bankrupt entity National Gypsum Company, and 44% responsibility to Johns-Manville Corporation. Again, each of the trial defendants was assessed 8% of the liability, while the bankrupt entities were assessed more than seven times that amount—60% of the liability.¹³

A pair of recent trials in Wisconsin demonstrate the same thing. In a case tried last year in Milwaukee, 72% of the responsibility was allocated to bankrupt entities. In another case tried in Milwaukee in 2006, 66% of the responsibility was allocated to bankruptcy companies.¹⁴ It is

thus absurd to suggest that defendants are somehow handcuffed in defending themselves in these cases, or that the results unfairly burden them.

Nor do plaintiffs in states with joint and several liability obtain a “double recovery” when they are compensated both in the tort system and from the trusts. Under the “one satisfaction” rule, a plaintiff is entitled to only one recovery for a particular injury. Thus, after a verdict is entered, the non-settling defendants are entitled to discover the amount of settlements after the verdict is entered, and will be given a set-off equal to the settlements – including any settlements with trusts. Further, if the plaintiff did not obtain a settlement from the defendant’s co-tortfeasor, the defendant can seek contribution directly from that co-tortfeasor or the asbestos trust that has assumed its responsibilities. In a pure several liability jurisdiction, of course, neither set-offs nor contributions are necessary, as the verdict will reflect only the defendant’s portion of the liability.

Finally, a word about nonmalignant claims. The large number of nonmalignant claims that were brought in prior years are a thing of the past. Heavy criticism was leveled at “mass screenings” which yielded large number of “non-injured” claimants. Leaving aside the issue of whether such persons really had no injury, or whether any member of this panel would trade his lungs for those of a person who had worked with asbestos, such claims simply are not brought in any measurable numbers. Even six years ago, Professor Brickman noted a “substantial decline in nonmalignant asbestos claiming that began in the second half of 2003.”¹⁵ Those filings have, in the years since, declined virtually to nothing.

As noted, we are moving further in time away from the years of heavy asbestos exposure, and so the good news is that disease rates are gradually, if slowly, decreasing. Litigation is thus decreasing as well.

Conclusion

Almost two decades ago, OSHA observed that “it was aware of no instance in which exposure to a toxic substance has more clearly demonstrated detrimental health effects on humans than has asbestos exposure.” 51 Fed. Reg. 22,615 (1986). Asbestos was a preventable tragedy that poisoned hundreds of thousands of workers and their families. Many were poisoned while serving our country in the military. They have suffered painful, debilitating injuries and deaths, their families have suffered grievous losses. State law provides a remedy to these families and asbestos victims should not have to apologize for seeking compensation for their injuries.

Ever since the asbestos tragedy first came to light, the companies that are responsible for this tragedy have tried to avoid paying for the harm they caused and have tried to shift blame to other parties and to the victims and their families. The complaints about the lack of transparency in the system are, in reality, just the latest tactic in a decades-long effort to delay and avoid compensating victims of asbestos disease.

¹ National Institute for Occupational Safety and Health, Division of Respiratory Disease Studies, *Work-Related Lung Disease Surveillance Report 2002*, page 9 (May 2003); Available at: <http://www.cdc.gov/niosh/docs/2003-111/pdfs/2003-111.pdf>.

² National Institute of Occupational Safety and Health, Division of Standards Development and Technology Transfer, *Occupational Health and Safety Guideline for Asbestos: Potential Human Carcinogen* (1988); available at <http://www.cdc.gov/niosh/docs/81-123/pdfs/0041.pdf>

³ Mesothelioma Applied Research Foundation, *Mesothelioma Information: Disease Development and Progression*, available at: http://www.curemeso.org/site/c.kkLUJ7MPKtH/b.4023387/k.643A/Mesothelioma_Information.htm#whattimesothelioma

⁴ *Building and Construction Trades Dept. v. Brock*, 838 F.2d 1258, 1262 (D.C. Cir. 1988)

⁵ National Institute of Occupational Safety and Health, Work-Related Lung Disease (WoRLD) Surveillance System *Table 7-4. Malignant mesothelioma: Number of deaths by state, U.S. residents age 15 and over, 1999-2005*, (March 2009); available at <http://www2a.cdc.gov/drds/WorldReportData/FigureTableDetails.asp?FigureTableID=894&GroupRefNumber=T07-04>.

⁶ National Institute of Occupational Safety and Health, Work-Related Lung Disease (WoRLD) Surveillance System *Table 7-5. Malignant mesothelioma: Number of deaths, death rates (per million population), and years of potential life lost (YPLL) by state, U.S. residents age 15 and over, 1999-2005* (March 2009); charts available at: <http://www2a.cdc.gov/drds/WorldReportData/FigureTableDetails.asp?FigureTableID=895&GroupRefNumber=T07-05>.

⁷ National Institute of Occupational Safety and Health, Work-Related Lung Disease (WoRLD) Surveillance System *Table 1-4. Asbestosis: Number of deaths by state, U.S. residents age 15 and over, 1996-2005* (March 2009) available at: <http://www2a.cdc.gov/drds/WorldReportData/FigureTableDetails.asp?FigureTableID=493&GroupRefNumber=T01-04>.

⁸ These include Johns-Manville, United States Gypsum, Owens-Corning Fiberglas, Pittsburgh-Corning, W. R. Grace, Halliburton, Armstrong World Industries, Federal Mogul Corp., McDermott Industries (Babcock & Wilcox), and National Gypsum.

⁹ *Supra*, Dixon, RAND INSTITUTE FOR CIVIL JUSTICE at page xv (2010).

¹⁰ See verdict form in *Mansir v. Air & Liquid Systems Corp., et al*, No. 37-2010-00104112-CU-AS-CTL (San Diego County, Superior Court), exhibit 1.

¹¹ See attached excerpts from the verdict form in *Silvestro v. AC&S, Inc., et al.* (Aug. 3, 2010) Case No. BC 253974, Los Angeles County Superior Court, exhibit 2.

¹² See attached excerpts from the verdict form in *Woodard v. Crane Co. and Sepco Corporation* (Feb. 2, 2009) Case No. BC 387774, Los Angeles County Superior Court, exhibit 3.

¹³ See attached excerpts from the verdict form in *Hall v. Bondex Int'l, Inc.* (Jul. 10, 2006) Case No. BC 340466, Los Angeles County Superior Court, exhibit 4.

¹⁴ See verdict forms in *Gosz v. Building Service Industrial Sales Co.*, No. 05-CV-9218 (Milwaukee County Circuit Court) and *Eske v. Fleming Materials Co.*, No. 07-CV-10206 (Milwaukee County Circuit Court, attached as exhibit 5.

¹⁵ Lester Brickman, *An Analysis of the Financial Impact of S. 852: The Fairness in Asbestos Injury Resolution Act of 2005*, 27 *Cardozo L. Rev.* 991, 1011 n.93 (2005).

Exhibit 1

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F I L E D
Clerk of the Superior Court

JUL 20 2011

By: _____, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

WILLIAM W. MANSIR and TERI M.
MANSIR,

Plaintiffs,

vs.

AIR & LIQUID SYSTEMS CORPORATION
(sued individually and as successor by merger)
to BUFFALO PUMPS, INC., et al.,

Defendants.

Case No.: 37-2010-00104112-CU-AS-CTL

SPECIAL VERDICT

We, the jury in the above-entitled action, answer the questions submitted to us as

follows:

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STRICT PRODUCTS LIABILITY

(Design Defect - Consumer Expectations Test)

Question No. 1: Were John Crane Inc. Gaskets and/or Packing misused after they left John Crane Inc.'s possession in a way that was not reasonably foreseeable to John Crane Inc.?

Yes No
_____ ✓

Answer

If you answered "no", then answer Question No. 3.

If you answered "yes", then answer Question No. 2.

Question No. 2: Was the misuse the sole cause of William Mansir's harm?

Yes No

Answer

If you answered "no", then answer Question 3.

If you answered "yes", then answer Question No. 6.

Question No. 3: Did John Crane Inc. Gaskets and/or Packing fail to perform as safely as an ordinary consumer would have expected?

Yes No
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Answer

If you answered "yes", then answer Question No. 4.

If you answered "no", then answer Question No. 6.

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STRICT PRODUCTS LIABILITY
(Failure to Warn)

Question No. 6: Did John Crane Inc. Gaskets and/or Packing have potential risks that were known or knowable to John Crane Inc. through the use of scientific knowledge available at the time of manufacture, distribution or sale?

Yes No
✓ _____

Answer

If you answered "yes", then answer Question No. 7.
If you answered "no", then answer Question No. 12.

Question No. 7: Did the potential risks present a substantial danger to users of John Crane Inc. Gaskets and/or Packing?

Yes No
✓ _____

Answer

If you answered "yes", then answer Question No. 8.
If you answered "no", then answer Question No. 12.

Question No. 8: Would ordinary consumers have recognized the potential risks?

Yes No
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Answer

If you answered "no", then answer Question No. 9.
If you answered "yes", then answer Question No. 12.

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NEGLIGENCE

Question No. 12: Was John Crane Inc. negligent in manufacturing, designing or supplying Gaskets and/or Packing?

Yes No

Answer

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If you answered "yes", then answer Question No. 13.

If you answered "no" but you answered "yes" to Question 5 and/or Question 11, then answer Question No. 14.

If you answered "no" and you answered "no" to or did not answer both Question 5 and Question 11, then sign and return this verdict.

Question No. 13: Was John Crane Inc.'s negligence a substantial factor in causing harm to William Mansir?

Yes No

Answer

If you answered "yes", then Answer Question 14.

If you answered "no" but you answered "yes" to Question 5 and/or Question 11, then answer Question No. 14.

If you answered "no" and you answered "no" to or did not answer both Question 5 and Question 11, then sign and return this verdict.

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Question No. 14: What are William Mansir's damages?

PAST ECONOMIC LOSS

Medical Expenses:

152,000 \$ ~~10,000~~

Loss of Household Services:

\$ 13,761

FUTURE ECONOMIC LOSS

Loss of Pension and Social Security Benefits:

\$ 217,200

Loss of Household Services:

\$ 69,000

Medical expenses:

\$ 99,000

PAST NONECONOMIC LOSS

For physical pain and mental suffering:

\$ 250,000

FUTURE NONECONOMIC LOSS

For physical pain and mental suffering:

\$ 1,000,000

Answer Question No. 15

Question No. 15: Was Terri Mansir harmed by the injury to her husband, William Mansir?

Yes No

Answer

✓

If you answered "yes", then answer Question No. 16.

If you answered "no", then answer Question No. 17.

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Question No. 16: What are Plaintiff Teri Mansir's damages?

PAST NONECONOMIC LOSS

For the loss of her husband's love,
companionship, comfort, care,
assistance, protection, affection,
society, moral support, and
enjoyment of sexual relations:

\$ 150,000

FUTURE NONECONOMIC LOSS

For the loss of her husband's love,
companionship, comfort, care,
assistance, protection, affection,
society, moral support, and
enjoyment of sexual relations:

\$ 300,000

Answer Question No. 17.

Question No. 17: If 100% represents the total fault that was the cause of William and Teri Mansir's injuries, what percentage of this 100% was due to the fault of John Crane Inc. and the others listed below?

John Crane Inc.

5 %

William Mansir

1 %

U.S. Navy

13 %

Raybestos-Manhattan

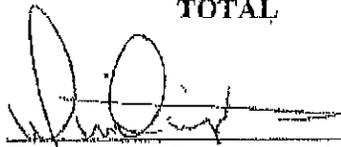
5 %

Garlock

5 %

1	Anchor Packing	5 %
2	Owens-Illinois	22 %
3	Unibestos	22 %
4	Crane Co.	1 %
5	IMO Industries	1 %
6	Ingersoll Rand	1 %
7	Warren Pumps	1 %
8	Yarway Corp.	1 %
9	Foster Wheeler	1 %
10	Babcock & Wilcox	1 %
11	Kelly-Moore	3 %
12	Georgia Pacific	3 %
13	Kaiser Gypsum	3 %
14	Union Carbide Corporation	3 %
15	Certainfeed	3 %
16	TOTAL	100%

18 DATED: July 20, 2011

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19 Foreperson (Sign & Print Name)
20 William H. Carpenter

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Exhibit 2

FILED
LOS ANGELES SUPERIOR COURT
AUG 03 2010

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

JOHN A. GEHRKE, CLERK

Chen

DORIS SILVESTRO, et al.,

CASE NO.: BC 253974

Plaintiffs,

Assigned for all Purposes to the Hon. Mary Ann Murphy; Dept. 25)

v.

AC&S, INC., et al.,

SPECIAL VERDICT FORM

Defendants.

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We, the jury in the above-entitled action, find the following Special Verdict on the questions submitted to us:

Question No. 1:

Were any of the entities listed below negligent or otherwise at fault?

Answer "Yes" or "No" after the name of each entity.

Answer:

JOINT COMPOUND:

BONDEX INTERNATIONAL, INC.

FLINTKOTE COMPANY

GEORGIA-PACIFIC CORP.

KELLY-MOORE PAINT COMPANY

PROKO INDUSTRIES

SYNKOLOID COMPANY

TRIKO

///

Yes
Yes
Yes
Yes
Yes
Yes
Yes

12

1	DEFENDANT KAISER GYPSUM COMPANY, INC.	4 %
2	<u>JOINT COMPOUND:</u>	
3	BONDEX INTERNATIONAL, INC.	1.5 %
4	FLINTKOTE COMPANY	1.5 %
5	GEORGIA-PACIFIC CORP.	1.5 %
6	KELLY-MOORE PAINT COMPANY	1.5 %
7	PROKO INDUSTRIES	1.5 %
8	SYNKOLOID COMPANY	1.5 %
9	TRIKO	1.5 %
10	<u>PLASTER/TEXTURES:</u>	
11	CERTAINTED CORP. (KALITE)	0 %
12	TEX A LITE	0 %
13	<u>PIPE COVERING/BLOCK INSULATION:</u>	
14	ARMSTRONG, INC.	4 %
15	JOHNS MANVILLE	2 %
16	OWENS-ILLINOIS	3.5 %
17	OWENS-CORNING FIBERGLAS	3.5 %
18	PITTSBURGH CORNING	7 %
19	UNARCO	7 %
20	<u>REFRACTORIES/CASTABLES:</u>	
21	AP GREEN	4 %
22	HARBISON & WALKER	4 %
23	KAISER ALUMINUM & CHEMICAL CO.(V BLOCK)	4 %
24	QUIGLEY COMPANY, INC.	6 %
25	<u>GASKETS:</u>	
26	FLEXTALIC	1 %
27	GARLOCK	2.5 %

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ASBESTOS CLOTH:

ASBESTON, INC. 4%

ASBESTOS GLOVES:

GUARD-LINE 2%

BOILERS:

BABCOCK & WILCOX 0%

COMBUSTION ENGINEERING 3%

FOSTER WHEELER 0%

FRASER'S BOILER SERVICE, INC. 0%

OTHER:

CAPE ASBESTOS (AMOSITE SUPPLIER) 8%

FRANKLIN MACHINE (EMPLOYER) 3.5%

SERVICE ENGINEERING (EMPLOYER) 3.5%

JT THORPE & SON, INC. (INSULATION CONTRACTOR) 0%

METALCLAD INSULATION CORP. (INSULATION CONTRACTOR) 0%

PIPE COVERING 3%

BLOCK INSULATION 3%

ASBESTOS PADS 3%

ASBESTOS FELT 3%

RAW ASBESTOS 1%

TOTAL: 100%

DATED 8-3-2010

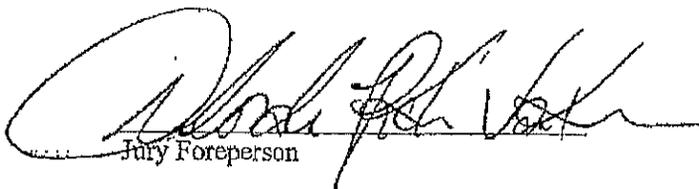

Jury Foreperson



Exhibit 3

FILED
LOS ANGELES SUPERIOR COURT
W FEB 02 2009
WIN A. CLARK, EXECUTIVE OFFICER
C. Wright
BY CAROL WRIGHT, DEPUTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DENNIS H. WOODARD and MYRA J. WOODARD,)	Case No.	BC 387 774
)		
Plaintiffs,)		
)	SPECIAL VERDICT	
vs.)		
)		
CRANE CO. and SEPCO CORPORATION,)		
)		
Defendants.)		

WE, THE JURY in the above-entitled action, find the following special verdict on the questions submitted to us:

QUESTION NO. 1: Was there a defect in the design of the defendant's product in that it failed to perform as safely as an ordinary user would expect?

Answer "yes" or "no" after the name of each defendant.	Yes	No
Defendant Crane Co.	<u>2</u>	<u>10</u>
Defendant Sepco Corporation	<u>0</u>	<u>12</u>

If you answered "no" as to both defendants in Question No. 1, then proceed to Question No. 4. If you answered "yes" to Question No. 1 for either defendant, then answer Question No. 2 as to that defendant only.

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QUESTION NO. 10: If 100% represents the total fault that was the cause of plaintiffs' injury, what percentage of this 100% was due to the fault of the defendants and others listed below?

Crane Co.	<u>.5</u> %
Sepec Corporation	<u>0</u> %
U.S. Navy	<u>85</u> %
Babcock and Wilcox	<u>.5</u> %
Cutler Hammer	<u>.5</u> %
Garlock	<u>.5</u> %
General Electric	<u>.5</u> %
Georgia Pacific	<u>.5</u> %
Billett Company	<u>.5</u> %
IMO Industries	<u>.5</u> %
Insulation Manufacturers	<u>10</u> %
Warren Pumps	<u>.5</u> %
Westinghouse	<u>.5</u> %

TOTAL: 100%

Dated: 2/2/2009

Steven M. Lockard
FOREPERSON

Exhibit 4

COPY

RECEIVED

JUN 14 2006

Dept. 316

ORIGINAL FILED

JUL 10 2006

LOS ANGELES SUPERIOR COURT

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C. ANDREW WATERS, CA Bar No. 147259
MICHAEL L. ARMITAGE, CA Bar No. 152740
KEVIN M. LOEW, CA Bar No. 238080
WATERS & KRAUS, LLP
300 N. Continental Blvd., Suite 500
El Segundo, California 90245
Tel: (310) 414-8146
Fax: (310) 414-8156

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

By FAX

HENRY HALL and LAURA MARIE HALL,
Plaintiffs,
vs.
BONDEX INTERNATIONAL, INC., et al.,
Defendants.

Case No. BC 340 466

JUDGMENT ON SPECIAL VERDICTS

Time: 9:30 a.m.
Dept: 316
Trial Date: April 24, 2006
Action Filed: September 27, 2006

This action came on regularly for trial on May 1, 2006, in Department 316 of the above entitled court, the Honorable Ricardo Torres, judge presiding. The plaintiffs, HENRY HALL and LAURA MARIE HALL, appeared by and through their attorneys of record Waters & Kraus. Defendant Kelly-Moore Paint Company, Inc. appeared by and through its attorneys of record Foley & Mansfield. Defendant Kaiser Gypsum Company, Inc. appear by and through its attorneys of record Jackson & Wallace, LLP.

A jury of 12 persons was regularly impaneled and sworn. Witnesses were sworn and testified.

1 QUESTION NO. 13: What do you find to be the total amount of damages, including economic
2 and non-economic damages, if any, suffered by the Plaintiff HENRY HALL?

3 ANSWER: Economic Damages \$ 26,886.52
4 ANSWER: Non-Economic Damages \$ 2,500,000.00
5
6 TOTAL: \$ 2,526,886.52
7

8 QUESTION NO. 14: What is the total amount of non-economic damages, if any, sustained by
9 Plaintiff LAURA MARIE HALL as a result of HENRY HALL's malignant mesothelioma?

10 ANSWER: \$ 800,000.00
11

12 QUESTION NO. 15: If 100% represents the total fault that was the cause of plaintiffs' injury,
13 what percentage of this 100% was due to the fault of the defendants and others listed below?

14 ANSWER:
15 To Defendant KAISER GYPSUM COMPANY, INC. 8%
16 To Defendant KELLY-MOORE PAINT COMPANY, INC 8%
17 To BONDEX INTERNATIONAL, INC./ RPM, INC 8%
18 To DOWMAN PRODUCTS, INC 8%
19 To GEORGIA-PACIFIC CORPORATION 8%
20 To UNITED STATES GYPSUM COMPANY 8%
21 To JOHNS-MANVILLE CORPORATION 44%
22 To NATIONAL GYPSUM COMPANY 8%
23
24 TOTAL: 100%
25

26 ///
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Exhibit 5

HELEN GOSZ,

Plaintiff,

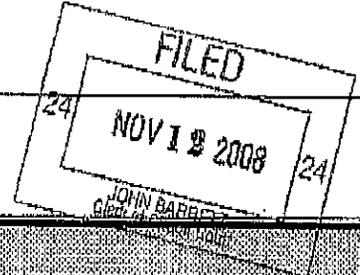
v.

Case No. 05-CV-9218

BUILDING SERVICE INDUSTRIAL SALES COMPANY,

Defendant.

VERDICT



QUESTION 1: CAUSE OF DISEASE

1. Was Clarence Gosz' malignant mesothelioma caused by significant occupational exposure to asbestos fibers?

Yes



No

If you answered question 1 "no," go to question 6. If you answered question 1 "yes," then go to question 2.

QUESTIONS 2, 3 & 4: CELOTEX PRODUCTS

2. Did Clarence Gosz have significant occupational exposure to asbestos fibers from Celotex asbestos-containing pipe cover?

Yes



No

If you answered question 2 "yes," go to question 3. If you answered "no," then go to question 5.

3. If Clarence Gosz had significant occupational exposure to asbestos fibers from Celotex asbestos-containing pipe cover, was that product unreasonably dangerous and defective?

Yes



No

If you answered question 3 "yes" then go to question 4. If you answered "no," then go to question 5.

4. Was the defective and unreasonably dangerous condition of Celotex asbestos-containing pipe cover a cause of Clarence Gosz' malignant mesothelioma?

Yes



No

QUESTIONS 5, 6 & 7: FOSTER WHEELER ASBESTOS-CONTAINING INSULATED BOILERS

5. Did Clarence Gosz have significant occupational exposure to asbestos fibers from Foster Wheeler asbestos-containing insulated boilers?

Yes No

If you answered question 5 "yes," go to question 6. If you answered "no," then go to question 8.

6. If Clarence Gosz had significant occupational exposure to asbestos fibers from Foster Wheeler asbestos-containing insulated boilers, was that product unreasonably dangerous and defective?

Yes No

If you answered question 6 "yes," then go to question 7. If you answered "no," then go to question 8.

7. Was the defective and unreasonably dangerous condition of Foster Wheeler asbestos-containing insulated boilers a cause of Clarence Gosz' malignant mesothelioma?

Yes No

QUESTIONS 8, 9 & 10: COMBUSTION ENGINEERING ASBESTOS-CONTAINING INSULATED BOILERS

8. Did Clarence Gosz have significant occupational exposure to asbestos fibers from Combustion Engineering asbestos-containing insulated boilers?

Yes No

If you answered question 8 "yes," go to question 9. If you answered "no," then go to question 11.

9. If Clarence Gosz had significant occupational exposure to asbestos fibers from Combustion Engineering asbestos-containing insulated boilers, was that product unreasonably dangerous and defective?

Yes No

If you answered question 9 "yes," then go to question 10. If you answered "no," then go to question 11.

10. Was the defective and unreasonably dangerous condition of Combustion Engineering asbestos-containing insulated boilers a cause of Clarence Gosz' malignant mesothelioma?

Yes No

QUESTIONS 11, 12 & 13: JOHN MARVILLE ASBESTOS-CONTAINING PIPE COVERS

11. Did Clarence Gosz have significant occupational exposure to asbestos fibers from Johns Marville asbestos-containing pipecover?

Yes No

If you answered question 11 "yes," go to question 12. If you answered "no," then go to question 14.

12. If Clarence Gosz had significant occupational exposure to asbestos fibers from Johns Marville asbestos-containing pipecover, was that product unreasonably dangerous and defective?

Yes No

If you answered question 12 "yes" then go to question 13. If you answered "no" then go to question 14.

13. Was the defective and unreasonably dangerous condition of Johns Marville asbestos-containing pipecover a cause of Clarence Gosz' malignant mesothelioma?

Yes No

QUESTIONS 14, 15 & 16: PRODUCTS DISTRIBUTED BY BUILDING SERVICE INDUSTRIAL SALES (BSIS) INCLUDING ASBESTOS-CONTAINING CEMENT OR OWENS-CORNING FIBERGLASS, INC. KAYLO ASBESTOS-CONTAINING PIPECOVER

14. Did Clarence Gosz have significant occupational exposure to asbestos fibers from pipecover products distributed by Building Service Industrial Sales (BSIS), including cement or Owens-Corning Fiberglass, Inc. Kaylo?

Yes No

If you answered question 14 "yes," go to question 15. If you answered "no," then go to question 17.

15. If Clarence Gosz had significant occupational exposure to asbestos fibers from pipecover distributed by Building Service Industrial Sales, was that product unreasonably dangerous and defective?

Yes No

If you answered question 15 "yes" then go to question 16. If you answered "no," then go to question 17.

16. Was the defective and unreasonably dangerous condition of pipecover products distributed by Building Service Industrial Sales a cause of Clarence Gosz' malignant mesothelioma?

Yes No

QUESTIONS 17 & 18: AMERICAN CAN COMPANY

17. Did American Can Company fail to provide Clarence Gosz with employment as safe as the nature of his employment would reasonably permit?

Yes No

If you answered question 17 "yes," go to question 18. If you answered "no," then go to question 19.

18. Was the failure of American Can Company to provide a safe place of employment for Clarence Gosz a cause of Clarence Gosz' malignant mesothelioma?

Yes No

QUESTIONS 19 & 20: THILMANY PAPER COMPANY

19. Did Thilmany Paper Company fail to provide Clarence Gosz with employment as safe as the nature of his employment would reasonably permit?

Yes No

If you answered question 19 "yes," go to question 20. If you answered "no," then go to question 21.

20. Was the failure of Thilmany Paper Company to provide a safe place of employment for Clarence Gosz a cause of Clarence Gosz' malignant mesothelioma?

Yes No

QUESTIONS 21 & 22: EMPLOYER P.G. MIRON

21. Did employer P.G. Miron fail to provide Clarence Gosz with employment as safe as the nature of his employment would reasonably permit?

Yes No

If you answered question 21 "yes," go to question 22. If you answered "no," then go to question 23.

22. Was the failure of P.G. Miron to provide a safe place of employment for Clarence Gosz a cause of Clarence Gosz' malignant mesothelioma?

Yes No

QUESTION 23: COMPARISON OF FAULT

Now you must assign a percentage of the fault of each company which contributed to Mr. Gosz' disease.

Answer this question only for each company corresponding to any "yes" answers you gave to questions 4, 7, 10, 13, 16, 18, 20 or 22.

For all the to which you gave a "yes" answer on questions 4, 7, 10, 13, 16, 18, 20 or 22, assign a percentage of responsibility for the disease of Mr. Gosz. This question asks for the percentage of responsibility of each such company to reach a total of 100%. The total of your numbers must equal 100.

23. Taking 100% of the total, what percentage of the total cause of fault for Clarence Gosz' asbestos exposure do you attribute to each of the following?

- | | |
|--|------------|
| A. Celotex asbestos-containing pipe cover | <u>22%</u> |
| B. Foster Wheeler asbestos-containing insulated boilers | <u>22%</u> |
| C. Combustion Engineering asbestos-containing insulated boilers | <u>22%</u> |
| D. Johns Manville asbestos-containing pipe covers | <u>22%</u> |
| E. Products distributed by Building Service Industrial Sales, including asbestos-containing joint cement and Owens-Corning Fiberglass, the Kaylo asbestos-containing pipecover | <u>0</u> |
| F. American Can Company | <u>4%</u> |
| G. Thimpany Paper Company | <u>4%</u> |
| H. P.G. Miron Company | <u>4%</u> |
| | 100% |

QUESTION 24 DAMAGES

Regardless of how you answered any of the other questions, you must answer each subpart of this question.

24. What sum of money will fairly and reasonably compensate Helen Gosz and the Estate of Clarence Gosz for the following?

A. Past pain and suffering

\$ 50,000

B. Loss of society and companionship

\$ 75,000

Total:

\$ 125,000

[Signature]

Foreperson

November, 12, 2008

Dissenters

Verdict question(s) to which dissented:

Barbara Montgomery-Finnors

17, ^{or} ~~18~~ # 19, # 23 (F+G)

DJ Hall

21

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

MARILYN ESKE, and ESTATE OF WILBUR ESKE

VERDICT

Plaintiffs,

v.

Case No. 07-CV-10206

FLEMING MATERIALS COMPANY and GEORGIA PACIFIC CORPORATION,

Defendants.

Questions 1-5: Fleming Materials Company

1. Did Wilbur Eske have occupational exposure to asbestos fibers from asbestos-containing joint compound supplied by Fleming Materials Company?

Yes _____

No

If you answered question 1 "yes," then answer this question 2. If you answered "no," then skip to question 6.

2. Was Fleming Materials Company negligent in supplying asbestos-containing joint compound before July 1, 1973?

Yes _____

No _____

If you answered question 2 "yes," then answer this question 3. If you answered "no," then skip to question 4.

3. Was the negligence of Fleming Materials Company a cause of Wilbur Eske's malignant mesothelioma?

Yes _____

No _____

If you answered question 3 "yes," or "no" answer this question 4.

4. If Wilbur Eske had occupational exposure to asbestos fibers from asbestos-containing joint compound supplied by Fleming Materials Company, was that product unreasonably dangerous and defective?

Yes _____

No _____

If you answered question 4 "yes," then answer this question 5. If you answered "no," then skip to question 6.

5. Was the defective and unreasonably dangerous condition of asbestos-containing joint compound supplied by Fleming Materials Company a cause of Wilbur Eske's malignant mesothelioma?

Yes _____

No _____

Questions 11-13: Building Service, Inc.

11. Did Wilbur Eske have occupational exposure to asbestos while on the job working for Building Service, Inc. (BSI)?

Yes No

If you answered question 11 "yes," then answer this question 12. If you answered "no," then skip to question 14.

12. Was BSI negligent in providing a safe place of employment for Wilbur Eske?

Yes No

If you answered question 12 "yes," then answer this question 13. If you answered "no," then skip to question 14.

13. Was the negligence of BSI a cause of Wilbur Eske's malignant mesothelioma?

Yes No

Questions 14 - 15: Wilbur Eske

14. Was Wilbur Eske negligent with respect to his own safety?

Yes No

If you answered question 14 "yes," then answer this question 15. If you answered "no," then skip to question 16.

15. Was the negligence of Wilbur Eske a cause of his malignant mesothelioma?

Yes No

Question 16: Comparisons of Products

16. Taking 100% as the total, what percentage of the total causes for Wilbur Eske' asbestos exposure do you attribute to each of the following?

A. Armstrong ceiling tile	<u>0</u> %
B. Boiler cement and insulation other than Kewanee and Clever-Brooks boilers	<u>0</u> %
C. Bondex joint compounds	<u>2</u> %
D. Building Services Inc.	<u>0</u> %
E. Celotex ceiling tile	<u>14</u> %
F. Clever-Brooks boiler cement and insulation	<u>5</u> %
G. Duct covering containing asbestos	<u>1</u> %
H. Wilbur Eske	<u>0</u> %
I. Joint compounds supplied by Fleming Materials	<u>0</u> %
J. Floor tiles	<u>1</u> %
K. Georgia Pacific joint compounds	<u>0</u> %
L. Johns Manville ceiling tile	<u>11</u> %
M. Kaylo asbestos pipe covering supplied by companies other than Sprinkmann	<u>8</u> %
N. Kewaunee boiler cement and insulation	<u>5</u> %
O. Mortar tile cement	<u>0</u> %
P. National Gypsum (Gold Bond) joint compounds supplied by others than Fleming	<u>2</u> %
Q. Plaster products	<u>1</u> %
R. Sprinkmann supplied pipe covering materials	<u>9</u> %
S. Spray-on fireproofing	<u>25</u> %
T. United States Gypsum joint compounds supplied by others than Fleming	<u>10</u> %
U. Wisconsin Drywall supplied joint compounds	<u>0</u> %
	100 %

Questions 17: Damages

Regardless of how you answered any of the other questions, you must answer each subpart of this question:

- A. What sum of money will fairly and reasonably compensate the Estate of Wilbur Eske for Wilbur Eske's past pain and suffering? \$ 50,000.00

- B. What sum of money will fairly and reasonably compensate Marilyn Eske for her loss of society and companionship from the time Wilbur Eske was diagnosed with malignant mesothelioma until his death? \$ 40,000.00

- C. What sum of money will fairly and reasonably compensate Marilyn Eske for loss of society and companionship resulting from Mr. Eske's death? \$ 65,000.00

- Total: \$ 155,000.00

Dated this 5th day of May, 2010 at Milwaukee, Wisconsin.

Wade Avinger
Foreperson

Dissenter(s)

Verdict question(s) to which dissented:

Orlando Johnson

1, 12

Michael E. Barton

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