

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

KATHLEEN McHUGH and
DEANNA SCHNEIDER, individually
and on behalf of all persons similarly situated,
Plaintiffs,

v.

Case No: 11-CV-724-BBC

MADISON-KIPP CORPORATION,
CONTINENTAL CASUALTY COMPANY,
COLUMBIA CASUALTY COMPANY,
UNITED STATES FIRE INSURANCE
COMPANY and ABC INSURANCE
COMPANIES 1 – 50,

Defendants,

and

MADISON-KIPP CORPORATION,
Cross-Claimant,

v.

CONTINENTAL CASUALTY COMPANY,
COLUMBIA CASUALTY COMPANY, and
UNITED STATES FIRE INSURANCE
COMPANY,

Cross-Claim Defendant,

and

CONTINENTAL CASUALTY COMPANY and
COLUMBIA CASUALTY COMPANY,
Cross-Claimants/Third-Party Plaintiffs,

v.

MADISON-KIPP CORPORATION,
Cross-Claim Defendants,

and

LUMBERMENS MUTUAL CASUALTY
COMPANY, AMERICAN MOTORISTS
INSURANCE COMPANY, and JOHN DOE
INSURANCE COMPANIES 1-20,
Third-Party Defendants.

DECLARATION OF MICHAEL C. BAIRD IN SUPPORT OF UNITED STATES FIRE INSURANCE COMPANY'S JOINDER IN CONTINENTAL CASUALTY COMPANY AND COLUMBIA CASUALTY COMPANY'S MOTION FOR PARTIAL SUMMARY JUDGMENT: STATUTE OF LIMITATIONS

Pursuant to 28 U.S.C. § 1746, Michael C. Baird declares as follows:

1. I am an Associate General Counsel for RiverStone Claims Management, LLC ("RiverStone"). I submit this Declaration in support of United States Fire Insurance Company's Joinder in Continental Casualty Company and Columbia Casualty Company's Motion for Partial Summary Judgment: Statute of Limitations.

2. RiverStone is acting on behalf of United States Fire Insurance Company ("U.S. Fire") and is administering Madison-Kipp Corporation's ("MKC") claims against U.S. Fire for coverage relating to the Wisconsin Department of Natural Resources' demands against MKC for investigation and remediation of the property located at 201 Waubesa Street, Madison, Wisconsin (the "Site").

3. U.S. Fire issued to MKC Policy No. 523-220099 4 for the policy period January 1, 1984 through January 1, 1985.

4. U.S. Fire issued to MKC Policy No. 523-377264 6 for the policy period January 1, 1985 through January 1, 1986.

5. The U.S. Fire claims file for MKC indicates that there were no communications concerning the Site or MKC's demands for defense and indemnity relating to the DNR's claims against MKC arising out of the Site exchanged between MKC and U.S. Fire between August 1, 2003 and July 25, 2011.

6. Michael Best & Friedrich LLP (“Michael Best”) transmitted a letter dated July 25, 2011 to U.S. Fire on behalf of MKC (the “July 2011 U.S. Fire Notice Letter”). A true and correct copy of the July 2011 U.S. Fire Notice Letter is attached hereto as **Exhibit A**.

7. Michael Best transmitted a letter dated October 21, 2011 to U.S. Fire on behalf of MKC (the “October 2011 U.S. Fire Notice Letter”). A true and correct copy of the October 2011 U.S. Fire Notice Letter is attached hereto as **Exhibit B**.

8. U.S. Fire, acting through Christina M. Villano of Crum & Forster Latent Claims Division, the then-administrator of MKC’s claims against U.S. Fire for coverage for defense and indemnity, responded to the July 2011 U.S. Fire Notice Letter by letter dated November 28, 2011 (the “November 2011 U.S. Fire Response Letter”). A true and correct copy of the November 2011 U.S. Fire Response Letter is attached hereto as **Exhibit C**.

9. U.S. Fire, acting through Christina M. Villano of Crum & Forster Latent Claims Division, the then-administrator of MKC’s claims against U.S. Fire for coverage for defense and indemnity, sent a letter to Michael Best dated December 14, 2011 (the “December 2011 U.S. Fire Response Letter”). A true and correct copy of the December 2011 U.S. Fire Response Letter is attached hereto as **Exhibit D**.

I declare under penalty of perjury that the foregoing statements are true and correct.

Executed this 19th day of February, 2013 in Manchester, New Hampshire.

/s/ Michael C. Baird
Michael C. Baird, Esq.

CFI

Baillien



Michael Best & Friedrich LLP
Attorneys at Law
One South Pinckney Street
Suite 700
Madison, WI 53703
P.O. Box 1806
Madison, WI 53701-1806
Phone 608.257.3501
Fax 608.283.2275

David A. Crass
Direct 608.283.2267
Email dacrass@michaelbest.com

July 25, 2011

**BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Riverstone Claims Management
Attn: Christine Beyrent
250 Commercial Street, Suite 5000
Manchester, NH 03101

RECEIVED

SEP 29 2011

Re: Supplemental Notice of Potential Claim
Insured: Madison-Kipp Corporation
Site: Waubesa Street Facility, Madison, WI
Insurer: U.S. Fire Insurance Co./ Crum & Forster
Policy Nos.: 5233772646 and 5232200994

LATENT CLAIMS

Dear Ms. Beyrent:

Please be advised that this firm continues to represent Madison-Kipp Corporation ("MKC") in connection with environmental matters arising from MKC's facility located on Waubesa Street in Madison, Wisconsin (the "Site"). On August 1, 2003, we notified your company of a claim for defense and indemnity arising out of the presence of tetrachloroethene ("PCE") detected in the soils and the groundwater beneath the Site. A copy of that prior notice is enclosed. The purpose of this letter is to supplement that prior notice by alerting your company of additional claims for defense and indemnity arising from demands recently made by the Wisconsin Department of Natural Resources ("WDNR") in connection with additional investigation beyond the Site, as well as the July 19, 2011 notice of intent to file legal action by neighboring residents alleging property damage, health risks and diminished home values.

Background

MKC has investigated soil and groundwater contamination from PCE releases at and migrating from the Site. In 2002, soils on the east side of the facility were found to contain elevated levels of PCE. Shallow groundwater at the MKC property was also found to be contaminated, but the municipal well that serves the area was not affected by the contamination. Also in 2002, soil samples were collected from adjacent off-site residential properties and PCE was discovered in the soil.

In 2005, MKC injected an oxidizing agent into affected soils on its property and adjacent off-site residential properties to breakdown and eliminate PCE. In 2006, MKC also installed vapor probes on the off-site residential properties to determine whether PCE vapors were migrating through sub-surface soils and toward homes. Recent sampling has detected PCE vapors in yards and near homes.



Riverstone Claims Management
July 25, 2011
Page 2

Recent Activities

In 2010, samples from beneath the off-site residential properties found elevated PCE vapors. Sampling of indoor air found a trace amount of PCE in one home. In April 2011, MKC installed a sub-slab vapor migration system in each of the off-site residential properties which effectively removed PCE vapors from beneath the homes and prevents soil vapors from entering indoor air. In May 2011, MKC installed vapor migration systems in two more homes as a precautionary measure. The probes will be sampled to determine whether PCE vapors are present and if further action is needed.

In response to concerns raised at a neighborhood public meeting held on June 15, 2011, WDNR issued a demand letter to MKC on June 23, 2011 requiring significant additional investigation and remedial efforts at the Site. The nature and extent of WDNR's demands were recently discussed in a June 28, 2011 meeting with WDNR. The activities now required by WDNR include excavating soils, expanding the installation of vapor recovery systems to new locations and performing additional testing. Enclosed is a copy of WDNR's June 23, 2011 letter to MKC.

On July 19, 2011, attorneys representing neighboring residents notified MKC of the neighbors' Intent to File Suit pursuant to Section 7002(a)(1) and Notice of Endangerment pursuant to Section 7002(b)(2)(a) of the Resource Conservation and Recovery Act ("RCRA"). Enclosed is a copy of the Notice of Intent to File Suit dated July 19, 2011. We will be taking steps to defend the insured.

Policy Information

Based on the information developed to date, your company issued at least the following comprehensive general liability insurance policies and/or umbrella insurance policies for the following policy period to MKC.

<u>Policy No.</u>	<u>Policy Period</u>
5233772646	1/1/85-86
5232200994	1/1/84-85

We request that you conduct an internal search for policies or evidence of policies issued by your company to MKC and provide copies of such documentation to my attention.

MKC tenders this notice of claim and would like to discuss the potential of defense and indemnification under the above-referenced policies.



Riverstone Claims Management
July 25, 2011
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Please acknowledge receipt of this notice. If you have any questions or require further information, please do not hesitate to contact me.

Sincerely,

MICHAEL BEST & FRIEDRICH LLP

David A. Grass 

Enclosures

cc: Mark W. Meunier

063628-0090\9445891.2



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(Michael Best & Friedrich LLC)

Author: David A. Crass
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Member: Lex Mundi,
A Global Network of more than
150 Independent Firms

August 1, 2003

VIA CERTIFIED MAIL –
RETURN RECEIPT REQUESTED

Ms. Christine Beyrent
Riverstone Claims Management
250 Commercial Street, Ste. 5000
Manchester, NH 03101

Re: Notice of Claim
Insured: Madison-Kipp Corporation
Site: Waubesa St. Facility, Madison, WI
Insurer: U.S. Fire Insurance/Crum & Forster
Policy Nos.: 5233772646 (1/1/85-86)
5233200994 (1/1/84-85)

Dear Ms. Beyrent:

Please be advised that this firm has been retained to represent Madison-Kipp Corporation ("MKC") regarding the above-referenced claim. The purpose of this letter is to provide you with notice and information regarding the above-referenced site and to tender this claim to you for defense and indemnity under the above-referenced policies.

Based on the information developed to date, your company issued at least the following comprehensive general liability insurance policies and/or umbrella insurance policies for the following policy period to MKC.

<u>Policy No.</u>	<u>Policy Period</u>
5233772646	(1/1/85-86)
5233200994	(1/1/84-85)

We request that you conduct an internal search for copies of all policies or evidence of policies issued by your company to MKC and provide copies of such documentation to my attention.

On July 8, 1994, the Wisconsin Department of Natural Resources ("WDNR") issued MKC a responsible party letter ordering that MKC conduct an investigation into the potential presence of tetrachloroethane ("PCE") in the groundwater beneath the company's main manufacturing facility located on Waubesa Street in Madison, Wisconsin. In Wisconsin,

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groundwater is held in trust and owned by the State of Wisconsin. See, Muench v. PSC, 261 Wis. 492 (1952).

MKC responded to this demand by retaining the services of a professional environmental consultant Dames & Moore, n.k.a. URS ("URS"). URS conducted a series of investigations which included the installation of soil borings, groundwater monitoring wells, soil and groundwater sample analysis and research into site history in an effort to identify the sources and extent of PCE impacts at and emanating from MKC's property. URS confirmed the presence of residual PCE in the soils and groundwater at and beneath MKC's property and extending off-site at levels exceeding that compound's groundwater Enforcement Standard, as contained in Wis. Admin. Code Chapter NR 140.

Initially, URS identified two areas at the facility believed to be the source of impacts to groundwater: impacted soils beneath the vent of a historic vapor degreaser and impacted soils near the location of a former aboveground PCE storage tank, both such areas existing on the north end of the MKC facility. URS defined the degree and extent of impacted soils that required remediation in those areas. A detailed description of site investigation results was presented in a progress report submitted to WDNR on March 20, 1999.

MKC then authorized URS to initiate soil cleanup actions geared toward protecting groundwater resources. URS successfully implemented an innovative in-situ injection remedial technology known as the BiOx™ Process to address the above-described impacted soils areas at the site. This process involves the injection of certain chemical reagents resulting in real-time oxidation of the chlorinated PCE contaminants. URS implemented the BiOx™ Process at the site in three remedial injections, the last of which occurred in May of 1999. Post-injection soil verification sampling was conducted following these injections, with the last of these samplings taking place in September 1999.

On or about March 20, 2000, URS submitted to WDNR a soil remediation documentation report presenting the results of the remedial injections. URS opined that both soil areas discussed above were remediated to the extent practicable and recommended no further action with respect to soils in these areas. As for groundwater, URS proposed a period of quarterly groundwater sampling be performed for at least two years after soil remediation.

In March 2001, URS began quarterly groundwater sampling from the existing monitoring well network, as well as from three newly-installed wells to assess whether groundwater quality improved following the soil remediation as well as to assess whether natural biodegradation of the contaminants in groundwater is occurring. On December 27, 2001, URS submitted a report to WDNR summarizing the groundwater monitoring results collected thus far. The results showed that chlorinated volatile organic compounds ("CVOCs") at most locations appear to be stable or reducing. URS therefore recommended that quarterly monitoring of the three newly-constructed wells continue in February and May 2002.

In September 2002, URS submitted a further status report to WDNR. The groundwater samples collected in 2001 and 2002 from an on-site monitoring well nest at the MW-5 location

indicated the presence of an additional source area of impacted soils not previously identified. An historic investigation concerning operations in the vicinity of MW-5 revealed the historic presence of yet another vapor degreaser external vent formerly located on the east side of the MKC building adjacent to MW-5. URS conducted a geoprobe investigation in this area and confirmed this additional source of contamination.

The soil impacts from this source area extend easterly to the property boundary and off-site onto adjacent residential properties. In November 2002, MKC collected off-site soil samples from the adjacent residential properties to define the extent of the impacted off-site soil. The results of the sampling indicated that concentrations of PCE exist off-site on the adjacent residential properties. It was determined that additional samples needed to be collected from the adjacent residential properties in order to fully define the extent of contamination. The additional soil sampling is expected to occur during the summer of 2003. MKC plans to initiate another series of BiOx™ applications to remediate these impacted soils in this source area.

As for groundwater, WDNR approved MKC's plan for the construction of a deeper piezometer adjacent to the existing MW-5 well nest to attempt to fully delineate the vertical extent of impacts to the groundwater at the MW-5 source area. In February 2003, two nested monitoring wells were installed in the bedrock aquifer at the northwest corner of Marquette Street and Atwood Avenue, to the southeast of the site, and one additional monitoring well at the MW-5 source area. The result of the sampling showed that groundwater is migrating away from a City of Madison high-capacity well. The results also indicate that the vertical extent of impacts to the groundwater has now been defined. URS recommends installing a high capacity well that would removed contaminants from the bedrock aquifer and prevent the contamination plume from migrating. MKC will continue sampling of the monitoring well network to evaluate the groundwater conditions and whether improvement is shown following remediation of the MW-5 source area soils.

To date, MKC has incurred approximately \$322,000 in costs for site investigation and remediation in response to DNR's orders for remediation of the site. MKC has further incurred over \$58,000 in legal fees and costs to defend itself in response to the same.

On July 11, 2003, the Wisconsin Supreme Court issued its decision in the case captioned Johnson Controls, Inc. v. Employers Insurance of Wausau, Case No. 01-1193, which overturned the Court's 1994 decision in City of Edgerton v. General Casualty Company of Wisconsin, 184 Wis.2d 750, 517 N.W. 2d 463 (1994). The Court held in Johnson Controls that:

[A]n insured's costs of restoring and remediating damaged property, whether the costs are based on remediation efforts by a third-party (including the government) or are incurred directly by the insured, are covered damages under applicable CGL policies, provided that other policy exclusions do not apply. We also conclude that receipt of a potentially responsible party ("PRP") letter from the EPA or an equivalent state agency, in the CERCLA

**MICHAEL BEST
& FRIEDRICH LLP**
Attorneys at Law

August 1, 2003
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context, marks the beginning of adversarial administrative legal proceedings that seek to impose liability upon an insured. A PRP letter significantly affects legal interests of the insured. Therefore, reasonable insurers would expect this letter to trigger its CGL insurers duty to defend.

A copy of the Court's decision can be downloaded from the Court's website at <http://www.wicourts.gov/sc/opinions/01/pdf/01-1193.pdf>. On behalf of the insured, we urge you to consider this decision in your coverage analysis.

Therefore, we hereby place your company on notice of a claim for defense and indemnity obligations stemming from liabilities that have been and will be incurred by your insured in response to and as a result of WDNR's demands with respect to this site. We request that your company analyze this matter and accept duties of defense and indemnity owned under the CGL and/or umbrella policies. We will provide you with further information as it is developed in this matter.

We look forward to your acknowledgement of receipt of this notice of claim. If you have any questions or require further information, please do not hesitate to contact me.

Very truly yours,

MICHAEL BEST & FRIEDRICH LLP



David A. Crass

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State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
South Central Region Headquarters
3911 Fish Hatchery Road
Fitchburg WI 53711-5397

Scott Walker, Governor
Cathy Stepp, Secretary
Lloyd L. Egan, Regional Director
Telephone 608-276-3266
FAX 608-276-3338
TTY Access via relay - 711



June 23, 2011

File Ref: 02-13-001569
Dane County

Mr. Mark Meunier
Madison Kipp Corporation
201 Waubesa Street
Madison WI 53704

Subject: Madison Kipp Data Needs

Dear Mr. Meunier:

Thank you for representing Madison Kipp at the June 15 public meeting. Through the course of that meeting I believe there were a number of good ideas proposed by members of the local neighborhood. I was also impressed by the honest concern raised about the possible magnitude of the contamination problem. As you know state statutes mandate the Department require responsible parties to determine, to the degree practical, the full extent of soil and water contamination. Based in part on this legal responsibility and in part on the ideas and concerns expressed by the public, the Department believes additional investigation and remedial efforts are needed at the Kipp site. The additional measures are part of the long ongoing process of identifying and addressing the impacts of past chlorinated compound releases. Specifically the following tasks need implementation in a timely fashion:

1) Complete the four (4) offsite monitoring wells as planned. The volatile organic chemical (VOC) water results from these wells can be used to evaluate future offsite groundwater monitoring needs and the possibility of groundwater sourced vapor intrusion issues east of Marquette Street.

2) Based on the June 2011 shallow soil sample results from the residential properties at 150, 154 and 162 South Marquette Streets, the Department must reiterate our request that these soils be excavated or remediated in some effective fashion. The detected concentrations do not exceed current health based direct contact guidelines but given the exposure scenario of children on very small residential lots the Department believes remediation and elimination of any level of direct contact risk is justified.

Furthermore, the rationale used to select these three parcels for past testing and treatment is uncertain. Based on the file and known site history it is not obvious that these should be the only three impacted lots. Therefore, the Department feels justified in requesting the shallow soils in the backyards of two additional lots (one to the north and one to the south of the three impacted properties) be tested. This testing protocol would be following the iterative process used when previously sampling the homes for vapor concerns.

3) Based on the preliminary soil vapor results recently reported for the homes at 142 and 202 South Marquette Street the Department believes either sub slab testing be done at these homes or soil vapor mitigation systems be installed at each location. The results are below the state's current action guidelines. However, without repeated samplings it is hard to evaluate the possible range of concentrations. Also, these probes may be shallower, intersecting the clay soils and not the more permeable silty sands potentially biasing the sample results. Sub slab sampling would more accurately define the homeowner risk. Either additional sampling or system installation are acceptable means to move forward at these two problem sites.

4) The Department is not requesting additional soil vapor testing at individual homes at this time. Rather, the next request is to conduct a site perimeter soil gas survey (one of the ideas presented at the public meeting). A well done perimeter survey would identify other problem areas where we could focus more detailed testing as needed. As was accurately raised at the public meeting, there is not a good material/waste handling history for the site. A site wide gas survey could help fill the data gaps about where there needs to be concern for possible public exposures.

5) The Department is requesting new soil confirmation samples from the treated soil area adjacent to well nest 5 on the east side of Kipp. It is important everyone understand the residual soil concentrations and their potential to act as a long term vapor source for homes to the east. These sample results may be used to define another soil remedial effort in this area.

This list outlines the Department's action requests at this time. It seems certain that based on the results of these efforts additional investigation or remedial actions will be necessary. The full extent of these future actions is unknown. To continue to move this site ahead the Department requests that a meeting with all interested parties be held as soon as possible. Please contact me directly with any concerns about this letter and the scheduling of an upcoming meeting

Sincerely,



Michael Schunoller
Hydrogeologist

VARGA BERGER LEDSKY HAYES & CASEY
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

125 SOUTH WACKER DRIVE
SUITE 2150
CHICAGO, ILLINOIS 60606-4473

TELEPHONE: 312-341-9400
FACSIMILE: 312-419-0225

MICHAEL D. HAYES
(312) 341-9830

mhayes@vblhc.com

July 19, 2011

VIA REGISTERED U.S. MAIL
RETURN RECEIPT REQUESTED

Madison-Kipp Corporation
201 Waubesa Street
Madison, Wisconsin 53704

Re: Notice of Intent to File Suit Pursuant to Section 7002(a)(1) and Notice of Endangerment Pursuant to Section 7002(b)(2)(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(b) and 40 CFR 254

Dear Sir or Madam:

We represent the persons listed on Attachment A to this letter (the "Madison Families") and are writing on their behalf. This letter is to notify you that the Madison Families, individually and on behalf of other similarly situated families in Madison, Wisconsin, plan to file one or more claims pursuant to Section 7002(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), among other claims, against Madison-Kipp Corporation ("MKC"). The Madison Families' RCRA claims arise from releases of hazardous and other harmful substances, including but not limited to perchloroethene and other volatile organic compounds (collectively, "the Hazardous Substances"), from MKC's manufacturing facility located at 201 Waubesa in Madison, Wisconsin (the "Facility").

The Madison Families own homes in Madison, Wisconsin located near the Facility. The Madison Families' properties, their neighbors' properties, and the surrounding environment, as well as the health of persons who live near the Facility, have been and continue to be damaged and threatened as a result of releases of the Hazardous Substances from the Facility. Specifically, as a result of releases from the Facility, the Hazardous Substances are present in unsafe levels within and beneath their homes (in vapor form) and on (in soil, vapor and groundwater contamination) the Madison Families' properties and many other properties in the area.

Based on information presently available to the Madison Families, the Hazardous Substances were used by MKC in its operations at the Facility and released into the environment there via venting, spills, leaks and other disposal activities. The Hazardous Substances have

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VARGA BERGER LEDSKY HAYES & CASEY

July 19, 2011
Page 2

migrated off of the Facility property, contaminating the surrounding environment, including the groundwater and soil on the Madison Families' properties, the air inside and under the Madison Families' homes, and have similarly impacted or threatened other properties in the area. MKC is responsible for the subject contamination, by failing to contain the Hazardous Substances at the Facility, and by failing to adequately investigate and abate the contamination that has migrated from the Facility onto adjacent properties. The current soil, groundwater and vapor migration of Hazardous Substances from the Facility presents an imminent and substantial endangerment to health and the environment as defined in RCRA.

MKC has contributed and is contributing to the past or present handling, storage and disposal of solid wastes which may present an imminent and substantial endangerment to health or the environment. Specifically, MKC's handling and storage of the Hazardous Substances, and the spilling and leaking of such substances into the environment, constituting the improper disposal of solid wastes, has and continues to create an imminent hazard to health and the environment by polluting the soil, groundwater, and air on properties adjacent to the Facility. Also, MKC's failure to adequately investigate and remediate the contamination and prevent migration of contaminants from the Facility has contributed to the imminent and substantial endangerment posed to human health and the environment. As a "contributor" to this hazardous condition, MKC is subject to suit pursuant to Section 7002(a)(1)(B) of RCRA.

MKC has failed to adequately investigate the nature and extent of the contamination emanating from its Facility, and the Madison Families will be seeking injunctive relief under RCRA which requires MKC to perform a comprehensive environmental investigation which characterizes the aerial extent of the contamination and identifies the residences and other properties in the area which are impacted or threatened by MKC's contamination. The Madison Families will also be seeking injunctive relief under RCRA to compel MKC to perform such remediation in the areas that are determined to be impacted or threatened as is warranted to comprehensively abate this contamination and protect the public from exposure to MKC's contamination.

Please take notice that, unless the matters referenced herein are resolved to the Madison Families' satisfaction within ninety (90) days after the date this notice is served, the Madison Families will assert claims under RCRA against MKC in the United States District Court for the Western District of Wisconsin. In such proceeding, the Madison Families will seek injunctive relief, appropriate civil penalties, and costs of litigation, including reasonable attorneys' and expert witness fees, as well as any other appropriate relief available under RCRA.

This notice is provided on behalf of each of the Madison Families, individually and on behalf of all others similarly situated. The Madison Families own properties adjacent to the Facility at the addresses listed on Attachment A.

VARGA BERGER LEDSKY HAYES & CASEY

July 19, 2011
Page 3

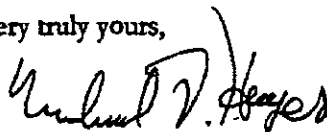
The names, addresses and telephone numbers of legal counsel representing the Madison Families are:

Shawn Collins
Edward J. Manzke
Aaron W. Rapier
The Collins Law Firm
1770 North Park Street
Suite 200
Naperville, Illinois 60563
(630) 527-1595

Norman B. Berger
Michael D. Hayes
Varga Berger Ledsky Hayes & Casey
125 South Wacker Drive, Suite 2150
Chicago, Illinois 60606
(312) 341-9400

All further communication concerning this matter should be with Shawn Collins, Norman Berger or the undersigned.

Very truly yours,



Michael D. Hayes

cc: Shawn M. Collins
Norman B. Berger

Lisa Jackson
Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

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VARGA BERGER LEDSKY HAYES & CASEY

July 19, 2011

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Susan Hedman
Regional Administrator for Region V
United States Environmental Protection Agency
77 West Jackson Blvd.
Chicago, Illinois 60604

Cathy Stepp
Secretary
Wisconsin Department of Natural Resources
101 S. Webster Street
Madison, Wisconsin 53707

Eric Holder
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Mark D. Daniel
Registered Agent for Madison-Kipp Corporation
201 Waubesa Street
Madison, Wisconsin 53704

ATTACHMENT A

Kenneth Hennrick, Jr.
142 S. Marquette Street
Madison, Wisconsin 53704

Eric Fuller
Kathleen McHugh
146 S. Marquette Street
Madison, Wisconsin 53704

Deanna Schneider
150 S. Marquette Street
Madison, Wisconsin 53704

Prentice Burge
Doris Yang Burge
154 S. Marquette Street
Madison, Wisconsin 53704

Peter Uttech
162 S. Marquette Street
Madison, Wisconsin 53704

Sharon Helmus
Carla Mills
166 S. Marquette Street
Madison, Wisconsin 53704

Chad Gooblis
Brandi Rogers
202 S. Marquette Street
Madison, Wisconsin 53704



Michael Best & Friedrich LLP
Attorneys at Law
One South Pinckney Street
Suite 700
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P.O. Box 1806
Madison, WI 53701-1806
Phone 608.257.3501
Fax 608.283.2275

David A. Crass
Direct 608.283.2267
Email dacrass@michaelbest.com

October 21, 2011

**BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

RECEIVED

NOV -7 2011

LATENT CLAIMS

Christine Beyrent
Riverstone Claims Management
250 Commercial Street, Ste. 5000
Manchester, NH 03101

Re: Suit: McHugh, Kathleen et al. v. Madison-Kipp Corporation, Case No. 11-CV-724
Insured: Madison-Kipp Corporation
Site: Waubesa Street Facility, Madison, WI
Insurer: U.S. Fire Insurance Co./ Crum & Forster
Policy Nos.: 5233772646 (1/1/85-86)
5232200994 (1/1/84-85)

Dear Ms. Beyrent:

On July 25, 2011, we notified your company of potential claims for defense and indemnity arising from demands recently made by the Wisconsin Department of Natural Resources ("WDNR") in connection with additional investigation beyond the Site, as well as the July 19, 2011 notice of intent to file legal action by neighboring residents alleging property damage, health risks and diminished home values. The purpose of this letter is to tender to U.S. Fire Insurance Co./ Crum & Forster for defense and indemnification, the previous claim made and now the lawsuit filed against your insured, Madison-Kipp Corporation ("MKC").

Enclosed please find the Complaint filed against MKC by neighboring residents ("Citizen Suit") alleging various statutory and common law claims of negligence, private nuisance and trespass. The Plaintiffs seek compensatory and punitive damages.

MKC has retained Michael Best & Friedrich LLP to provide a defense to this action. We will be protecting your insured's interests. Please acknowledge receipt of this tender and confirm your company's acceptance of defense and indemnification.



October 21, 2011
Page 2

If you have any questions or require further information, please do not hesitate to contact me. We look forward to your company's acceptance of its obligation to defend and indemnify its insured for this claim.

Sincerely,

MICHAEL BEST & FRIEDRICH LLP

David A. Crass

Enclosures

cc: Mark W. Meunier

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KATHLEEN McHUGH,
ERIC FULLER,
KENNETH HENNRICK, JR.,
DEANNA SCHNEIDER,
DORIS YANG BERGE,
PRENTICE BERGE,
PETER UTTECH,
SHARON HELMUS,
CARLA MILLS,
BRANDI ROGERS, and
CHAD GOOBLIS,

Plaintiffs,

-v-

Case No. 11-CV-724

MADISON-KIPP CORPORATION,
and ABC INSURANCE COMPANIES
1 - 50,

Defendants.

COMPLAINT

Plaintiffs, Kathleen McHugh, Eric Fuller, Kenneth Hennrick, Jr., Deanna Schneider, Doris Yang Berge, Prentice Berge, Peter Uttech, Sharon Helmus, Carla Mills, Brandi Rogers, and Chad Gooblis (collectively, "Plaintiffs"), by and through their attorneys, Shawn M. Collins and Edward J. Manzke of the Collins Law Firm, P.C., Norman B. Berger and Michael D. Hayes of Varga Berger Ledsky Hayes & Casey, and Richard J. Lewandowski of Whyte Hirschboeck Dudek S.C., for their Complaint against Defendants, Madison-Kipp Corporation ("MKC") and ABC Insurance Companies 1 - 50, state as follows:

NATURE OF THE ACTION

1. This is a lawsuit brought by residents of Madison, Wisconsin who live in an area that has been contaminated by a nearby manufacturing facility (the "Facility") owned and operated by MKC.
2. Over the course of many years, MKC spilled, leaked and otherwise released large volumes of toxic chemicals onto the ground and into the environment at the Facility. The Facility property is severely contaminated. The toxic chemicals released by MKC at the Facility have migrated into the surrounding residential area, contaminating the air inside and soil and groundwater beneath Plaintiffs' homes. Plaintiffs have been and continue to be directly exposed to these toxic chemicals, which are present in unsafe levels within and beneath their homes.
3. The value of Plaintiffs' homes has been substantially diminished due to the contamination caused by MKC. This lawsuit seeks to recover these lost property values, as well as other damages (compensatory and punitive) authorized by Wisconsin law.
4. MKC has failed to adequately investigate and remediate the contamination present at the Facility, which continues to migrate onto Plaintiffs' properties. MKC has failed to adequately investigate and delineate the geographical scope of contamination emanating from the Facility,¹ and has taken insufficient steps to remediate the contamination known to exist on Plaintiffs' properties. This lawsuit thus seeks injunctive relief against MKC under the federal RCRA statute and Wisconsin law, specifically the entry of an order which 1) preliminarily and permanently restrains and enjoins MKC from allowing its contamination from continuing to migrate onto Plaintiffs' and other off-site properties, 2) compels MKC to investigate and

¹ In the event that further environmental investigation reveals that other properties in the area, not owned by Plaintiffs, have been impacted by releases of hazardous substances at the MKC site, Plaintiffs reserve the right to seek leave to amend to add additional individual plaintiffs and/or to convert this case into a class action, as warranted.

delineate the geographical scope of contamination caused by MKC's releases of hazardous substances and wastes, and 3) compels MKC to sufficiently and permanently abate the contamination it has caused at the Facility, on Plaintiffs' properties, and on other impacted properties in the area.

THE PARTIES

5. Defendant MKC is a Delaware corporation with its principal place of business located in Madison, Wisconsin. MKC's Facility is located at 201 Waubesa Street, Madison, Wisconsin.

6. Defendants ABC Insurance Companies 1 – 50 are unknown insurance companies who, on information and belief, issued primary and excess comprehensive general liability and other types of insurance policies to MKC which entitle MKC to indemnification against one or more of the claims asserted in this action by Plaintiffs.

7. Plaintiffs Kathleen McHugh and Eric Fuller own property located at 146 S. Marquette Street, Madison, Wisconsin, adjacent to the Facility.

8. Plaintiff Kenneth Hennrick, Jr. owns property located at 142 S. Marquette Street, Madison, Wisconsin, adjacent to the Facility.

9. Plaintiff Deanna Schneider owns property located at 150 S. Marquette Street, Madison, Wisconsin, adjacent to the Facility.

10. Plaintiffs Doris Yang Berge and Prentice Berge own property located at 154 S. Marquette Street, Madison, Wisconsin, adjacent to the Facility.

11. Plaintiff Peter Uttech owns property located at 162 S. Marquette Street, Madison, Wisconsin, adjacent to the Facility.

12. Plaintiffs Sharon Helmus and Carla Mills own property located at 166 S. Marquette Street, Madison, Wisconsin, adjacent to the Facility.

13. Plaintiffs Chad Gooblis and Brandi Rogers own property located at 202 S. Marquette Street, Madison, Wisconsin, adjacent to the Facility.

JURISDICTION AND VENUE

14. This Court has federal question subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1331, as Plaintiffs assert a claim (Count I) under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6921, *et seq.*, and has supplemental jurisdiction over Plaintiffs' common law claims (Counts II – V) under 28 U.S.C. §1367.

15. Pursuant to 42 U.S.C. §6972(a) and 28 U.S.C. §1391(b), venue is proper in this Court because this case arises out of actions occurring at and pertaining to property located in Madison, Wisconsin, within this judicial district.

ALLEGATIONS COMMON TO ALL CLAIMS

16. MKC has conducted manufacturing operations at the Facility for many decades, dating back at least until 1967.

17. Various hazardous substances, including tetrachloroethylene ("PCE") and trichloroethylene ("TCE"), known human carcinogens, were used at the Facility during MKC's ownership and operation of the Facility. Upon their disposal by MKC, PCE and TCE became hazardous wastes within the meaning of RCRA and regulations adopted thereunder. MKC used PCE and TCE at the Facility over the course of several decades, including throughout most of the 1980's.

18. MKC stored on site, disposed of and released various hazardous substances and hazardous wastes, including PCE and TCE, into the environment at the Facility. MKC disposed

of PCE and TCE into the environment at the Facility over the course of several decades, including throughout most of the 1980's.

19. The hazardous substances and hazardous wastes, including PCE and TCE, released by MKC at the Facility have migrated and continue to migrate onto Plaintiffs' properties and other properties in the area. The groundwater and soil beneath Plaintiffs' homes is contaminated. PCE and TCE vapors are present inside Plaintiffs' homes.

20. As a result of MKC's contamination, the value of Plaintiffs' homes has been severely diminished. Further, Plaintiffs have been forced to live in homes impacted by contamination, resulting in the loss of the reasonable use and enjoyment of their property, and aggravation and annoyance.

21. MKC has failed to adequately investigate and remediate the contamination caused by its unlawful hazardous waste handling practices, which continue to migrate onto Plaintiffs' properties.

22. MKC has failed to adequately investigate and delineate the geographical scope of contamination emanating from the Facility.

23. MKC has taken insufficient steps to remediate the contamination known to exist on Plaintiffs' properties.

COUNT I
RCRA § 6972(a)(1)(B)

24. Plaintiffs repeat, reallege and incorporate by reference paragraphs 1 through 23 of this Complaint as paragraph 24 of this Count I, as though fully set forth herein.

25. Defendant MKC is a "person" as defined in RCRA §1004(15), 42 U.S.C. §6903(15).

26. The PCE and TCE handled, stored and disposed of at, and released and migrating from the Facility, and the resulting contaminated media, are hazardous wastes as defined in RCRA §1004(5) and (27), 42 U.S.C. §6903(5) and (27).

27. MKC engaged in the handling, storage, treatment, transportation or disposal of hazardous wastes in a manner which has contributed to and is contributing to the contamination of the Facility, Plaintiffs' properties, other properties in the area, and the environment.

28. During the period of MKC's ownership, operation, and control of the Facility, various hazardous wastes, including PCE and TCE, which had been disposed of at the Facility, migrated off of the Facility property and contaminated the surrounding environment. Those releases from the Facility have been determined to have contaminated Plaintiffs' properties and to have threatened other properties in the area. MKC is responsible for the subject contamination, by failing to properly handle, dispose, and contain the hazardous wastes at and released from the Facility, and by failing to properly investigate and abate the contamination that has migrated from the Facility onto Plaintiffs' properties and other properties in the area. The releases from the Facility present an imminent and substantial endangerment to health and the environment as defined in RCRA. As a contributor to this hazardous condition, MKC is subject to suit pursuant to RCRA §7002(a)(1)(B), 42 U.S.C. §6972(a)(1)(B).

29. In accordance with 42 U.S.C. §6972(b) and 40 C.F.R. 254, Plaintiffs sent a letter by registered mail, return receipt requested, dated July 19, 2011 to MKC, providing it with prior notice of the violations alleged and the claims made in this Court. Copies of the letter were also sent in a like manner as required to the Administrator of the United States Environmental Protection Agency ("U.S. E.P.A."), the Attorney General of the United States, the Regional Administrator for Region V of the U.S. E.P.A., and the Secretary of the Wisconsin Department

of Natural Resources ("DNR"). This letter was received by MKC more than 90 days prior to the filing of this Complaint. No actions have been commenced by these federal or state environmental authorities during this 90-day period which would preclude Plaintiffs from pursuing a claim herein under RCRA §7002(a)(1)(B), 42 U.S.C. §6972(a)(1)(B).

30. Pursuant to 42 U.S.C. §6972(b)(2)(F), Plaintiffs will serve a copy of this Complaint on the Attorney General of the United States and the Administrator of the U.S. E.P.A.

31. This Court has jurisdiction pursuant to RCRA §7002(a), 42 U.S.C. §6972(a), to enter injunctive relief restraining and enjoining MKC from allowing continued contamination of Plaintiffs' properties and other properties in the area, compelling MKC to perform an environmental investigation which defines the geographical scope of the contamination emanating from the Facility, and compelling MKC to abate the contamination it has caused at the Facility, on Plaintiffs' properties, and on other impacted properties in the area. Under RCRA, this Court should also award Plaintiffs their attorneys' fees and expert costs, and impose any appropriate civil penalties.

COUNT II
NEGLIGENCE

32. Plaintiffs repeat, reallege and incorporate by reference paragraphs 1 through 31 of this Complaint as paragraph 32 of this Count II, as though fully set forth herein.

33. MKC had and has a duty to Plaintiffs not to permit or allow hazardous substances and hazardous wastes, including PCE and TCE, at the Facility to invade the groundwater, soil and air on Plaintiffs' properties. MKC also had and has a duty to promptly respond to known releases of contaminants in a manner which would prevent further contamination, and otherwise protect Plaintiffs from this contamination and the impacts it has on Plaintiffs' properties.

34. MKC has breached these duties by its negligent acts and omissions in owning, operating, maintaining, and controlling the Facility, by its improper release and disposal of contaminants, by its failure to properly handle, dispose of, contain and abate the hazardous wastes at, and released from, the Facility, and by its failure to promptly and effectively investigate and address the disposal and migration of contaminants off-site and into the surrounding residential areas.

35. MKC has also breached its duty to timely warn Plaintiffs of the threatened and actual contamination of their properties, and the risk of personal harm due to the presence of PCE and TCE vapors within their homes.

36. MKC's breaches of its duties to Plaintiffs are continuing and have caused substantial injury and damage to Plaintiffs, including, but not limited to, injury in the form of damages to their property, loss of property value, loss of the reasonable use and enjoyment of their property, and aggravation and annoyance. In addition to compensatory damages, Plaintiffs also seek injunctive relief under this Court, in the form of an injunctive order restraining and enjoining MKC from allowing continued contamination of Plaintiffs' properties and compelling MKC to abate the contamination it has caused on Plaintiffs' properties.

COUNT III
PRIVATE NUISANCE

37. Plaintiffs repeat, reallege and incorporate by reference paragraphs 1 through 36 of this Complaint as paragraph 37 of this Count III, as though fully set forth herein.

38. The Facility is a private nuisance to Plaintiffs. MKC remains in control of the Facility with respect to addressing the contamination present there and which continues to impact Plaintiffs' neighboring properties.

39. Contaminants improperly disposed at and released from the Facility continue to migrate onto Plaintiffs' properties.

40. MKC has failed to properly dispose of, contain and abate the hazardous wastes at, and released from, the Facility. MKC's continuing control over the Facility, so as to cause and permit further contamination of Plaintiffs' properties, constitutes an unreasonable, unwarranted and unlawful use of the Facility. MKC's control and maintenance of this nuisance has substantially interfered with Plaintiffs' reasonable use and enjoyment of their properties.

41. Plaintiffs have suffered substantial damage as a result of MKC's control and ongoing maintenance of the Facility, a private nuisance. In addition to damages, Plaintiffs also seek injunctive relief under this Count, in the form of an injunctive order restraining and enjoining MKC from allowing continued contamination of Plaintiffs' properties, and compelling MKC to abate the contamination it has caused on Plaintiffs' properties.

COUNT IV
TRESPASS

42. Plaintiffs repeat, reallege and incorporate by reference paragraphs 1 through 41 of this Complaint as paragraph 42 of this Count IV, as though fully set forth herein.

43. MKC continues to cause and permit contaminants to enter Plaintiffs' properties. This entry is unlawful and without the consent of Plaintiffs.

44. In addition, contaminants that originate from the Facility are known, or should be known, by MKC to be present at, on and/or inside Plaintiffs' properties. In spite of this knowledge, MKC has failed to remove or otherwise sufficiently remediate these hazardous waste contaminants from Plaintiffs' properties.

45. MKC has failed to properly dispose of, contain and abate the hazardous wastes at, and released from, the Facility. MKC's past and continuing wrongful acts and omissions have

resulted, and continue to result in: releases of contaminants from the Facility into the environment; migration of such contaminants to Plaintiffs' properties; and invasion of Plaintiffs' properties, without the consent of Plaintiffs.

46. The invasion of Plaintiffs' properties is unreasonable and unlawful. As a result of MKC's continuing trespasses, the lawful rights of Plaintiffs to use and enjoy their properties has been substantially interfered with, and Plaintiffs have been damaged. In addition to damages, Plaintiffs also seek injunctive relief under this Count, in the form of an injunctive order restraining and enjoining MKC from allowing continued contamination of Plaintiffs' properties, and compelling MKC to abate the contamination it has caused on Plaintiffs' properties.

COUNT V
WILLFUL AND WANTON MISCONDUCT

47. Plaintiffs repeat, reallege and incorporate by reference paragraphs 1 through 46 of this Complaint as paragraph 47 of this Count V, as though fully set forth herein.

48. MKC has acted in a willful and wanton manner and in reckless indifference to Plaintiffs' health and property, and to the safety of the general public.

49. MKC knew that Plaintiffs are exposed to and otherwise threatened by this contamination, yet has intentionally failed to promptly and adequately investigate and mitigate the threat to Plaintiffs.

50. MKC has failed to properly dispose of, contain and abate the hazardous wastes at, and released from, the Facility. MKC has failed to adequately remediate the Facility and thereby has continued to contaminate Plaintiffs' properties. MKC also has failed to sufficiently remediate Plaintiffs' homes, exposing Plaintiffs to hazardous chemicals.

51. As a direct and proximate result of the willful, wanton and reckless acts and/or omissions of MKC, Plaintiffs have sustained damages. In addition to damages, Plaintiffs also

seek injunctive relief under this Court, in the form of an injunctive order restraining and enjoining MKC from allowing continued contamination of Plaintiffs' properties, and compelling MKC to abate the contamination it has caused on Plaintiffs' properties.

RELIEF REQUESTED

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor and against Defendants, and specifically request entry of the following relief:

- A. that pursuant to Plaintiffs' RCRA claim, the Court enter an order 1) preliminarily and permanently restraining and enjoining MKC from allowing its contamination from continuing to migrate onto Plaintiffs' and other off-site properties, 2) compelling MKC to investigate and delineate the geographical scope of contamination caused by MKC's releases of hazardous substances and wastes, and 3) compelling MKC to sufficiently and permanently abate the contamination it has caused at the Facility, on Plaintiff's properties, and other impacted properties in the area;
- B. that pursuant to Plaintiffs' RCRA claim, the Court award Plaintiffs their costs of litigation (including reasonable attorney and expert witness fees);
- C. that pursuant to Plaintiffs' common law claims, the Court award Plaintiffs compensatory and other appropriate damages in amounts to be determined by the evidence at trial and allowed by law;
- D. that pursuant to Plaintiffs' common law claims, the Court award Plaintiffs punitive damages as allowed by law and in an amount sufficient to deter MKC and other companies and/or individuals who are similarly situated from acting in a similar manner;
- E. that pursuant to Plaintiffs' common law claims, the Court preliminarily and permanently restrain and enjoin MKC from allowing continued contamination of Plaintiffs' properties and compel MKC to abate the contamination it has caused on Plaintiffs' properties;
- F. that the Court declare that ABC Insurance Companies 1 – 50 are obligated to indemnify MKC against the damages and other relief awarded to Plaintiffs in this action or, alternatively, to satisfy such damages and other relief directly to Plaintiffs in the event MKC fails to do so; and
- G. that the Court award Plaintiffs their costs of suit and such other and further relief as the Court deems appropriate and just.

JURY TRIAL DEMANDED

Plaintiffs request trial by jury on all issues so triable.

Dated: October 20, 2011

By: s/ Cynthia L. Buchko
One of Plaintiffs' Attorneys

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State Bar No. 1018459
Cynthia L. Buchko
State Bar No. 1036102
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Counsel for Plaintiffs

* Application for admission to practice before the Western District to be submitted.

**U.S. District Court
Western District of Wisconsin (Madison)
CIVIL DOCKET FOR CASE #: 3:11-cv-00724**

McHugh, Kathleen et al v. Madison-Kipp Corporation
Assigned to:
Cause: 42:6901 Resource & Recovery Act

Date Filed: 10/20/2011
Jury Demand: None
Nature of Suit: 890 Other Statutory
Actions
Jurisdiction: Federal Question

Plaintiff

Kathleen McHugh

represented by **Richard J. Lewandowski**
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Plaintiff

Eric Fuller

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ATTORNEY TO BE NOTICED

Cynthia L. Buchko
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Kenneth Hennrick, Jr.

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Cynthia L. Buchko
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Plaintiff

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Cynthia L. Buchko
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Plaintiff

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Cynthia L. Buchko
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Plaintiff

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Cynthia L. Buchko
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Plaintiff

Peter Uttech

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Cynthia L. Buchko
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ATTORNEY TO BE NOTICED

Plaintiff

Sharon Helmus

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Cynthia L. Buchko
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Plaintiff

Carla Mills

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Cynthia L. Buchko

(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff**Brandi Rogers**

represented by **Richard J. Lewandowski**
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ATTORNEY TO BE NOTICED

Cynthia L. Buchko
 (See above for address)
ATTORNEY TO BE NOTICED

Plaintiff**Chad Gooblis**

represented by **Richard J. Lewandowski**
 (See above for address)
ATTORNEY TO BE NOTICED

Cynthia L. Buchko
 (See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant**Madison-Kipp Corporation**

Date Filed	#	Docket Text
10/20/2011	<u>1</u>	COMPLAINT against Madison-Kipp Corporation. (Filing fee \$ 350 receipt number 0758-862960.), filed by Prentice Berge, Chad Gooblis, Eric Fuller, Deanna Schneider, Doris Berge Yang, Carla Mills, Sharon Helmus, Kathleen McHugh, Peter Uttech, Brandi Rogers, Kenneth Hennrick, Jr.. (Attachments: # <u>1</u> JS-44 Civil Cover Sheet, # <u>2</u> Summons) (Buchko, Cynthia) (Entered: 10/20/2011)

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10/20/2011 11:12:26			
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Sent To: David A. Crass / Michael, Best & Friedrich
 Street, Apt. No. or PO Box No. One South Pinckney Street, Ste 700
 City, State, ZIP+4 Madison, WI 53703

PS Form 3800, June 2002 See Reverse for Instructions

9270 899E 4000 091T 5002

November 28, 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David A. Crass
Michael, Best & Friedrich
One South Pinckney Street
Suite 700
Madison, WI 53703

Alleged Policyholder: Madison-Kipp Corporation
Policy Numbers: 523-220099 4
523-377264 6
Insurance Company: United States Fire Insurance Company
Site: Waubesa Street Facility
Madison, WI
Claim Type: Hazardous Waste

Dear Mr. Crass:

As you are aware, RiverStone Claims Management, LLC (hereinafter "RiverStone") has been administering this claim on behalf of United States Fire Insurance Company (hereinafter "U.S. Fire") under alleged policies 523-220099 4 and 523-377264 6. Please be advised, RiverStone will no longer be responsible for the future administration of this account as it pertains to alleged U.S. Fire policies 523-220099 4 and 523-377264 6.

The Latent Claims Unit of Crum & Forster will be responsible for the future administration of this account, as it pertains to alleged U.S. Fire policies 523-220099 4 and 523-377264 6. All future correspondence should be directed to my attention at the following address:

Christina M. Villano
Crum & Forster Latent Claims
412 Mt. Kemble Avenue, Suite 20
P.O. Box 1904
Morristown, NJ 07960

We are in receipt of your correspondence dated July 25, 2011 and August 26, 2011 with regard to the above referenced matter.

USFIRE000515

November 28, 2011
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As an initial matter, Crum & Forster will initiate a search for alleged policies 523-220099 4 and 523-377264 6. If you possess or can obtain copies of some or all of these alleged policies, kindly forward them to my attention as soon as possible.

Once Crum & Forster has received alleged policies 523-220099 4 and 523-377264 6 and I have had sufficient time to review them, along with the facts and allegations associated with this claim, Crum & Forster will advise Madison-Kipp Corporation of its right to coverage, if any, for this claim under alleged policies 523-220099 4 and 523-377264 6.

If necessary, Crum & Forster may request additional or clarifying information. Please note that without copies of alleged policies 523-220099 4 and 523-377264 6, Crum & Forster cannot determine if coverage is available to Madison-Kipp Corporation for this claim under alleged policies 523-220099 4 and 523-377264 6.

Please note that the process of determining whether the alleged policies issued to Madison-Kipp Corporation affords coverage for costs sought or recovered in the captioned matter may take some time, depending on how expediently all the information necessary to complete our analysis can be obtained.


A review of the policy numbers indicates the policies may provide umbrella and/or excess coverage. If the referenced policies are umbrella or excess policies, no obligation to defend or indemnify any insured can exist under the policies until the applicable limits of the underlying policies and any other insurance applicable to this matter are properly exhausted by the payment of covered claims. Accordingly, if you are in possession of any evidence the primary insurance carriers' limits have been exhausted, please provide documentation as soon as possible.

In addition, as you receive additional information pertaining to this matter, please immediately provide it to Crum & Forster.

This letter should not be construed to change, waive or modify any of the terms, conditions or provisions of alleged policies 523-220099 4 and 523-377264 6. This acknowledgement of this matter and any further actions taken in regard to this matter are undertaken subject to a complete reservation of rights under the terms, conditions and provisions of alleged policies 523-220099 4 and 523-377264 6 and in law and equity. No action taken shall constitute an admission of liability or coverage under alleged policies 523-220099 4 and 523-377264 6 and should not be construed as a waiver of any right or as an estoppel from asserting any right to disclaim or limit coverage under alleged policies 523-220099 4 and 523-377264 6.

Should you have any questions concerning this correspondence or should you wish to discuss it further, please don't hesitate to call me at my direct dial number: (973) 631-5990. You may also contact me by e-mail at Christina_Villano@cfins.com.

Very truly yours,


Christina M. Villano
Claims Specialist



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City, State, ZIP+4 *Madison, WI 53703*

PS Form 3800, August 2010 See Reverse for Instructions

December 14, 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Lee Seese
Michael, Best & Friedrich
One South Pinckney Street
Suite 700
Madison, WI 53703

Policyholder: Madison-Kipp Corporation
Policy Numbers: 523-220099 4
 523-377264 6
Insurance Company: United States Fire Insurance Company
Site: Waubesa Street Facility
 Madison, WI
Caption: McHugh, et. al. v. Madison-Kipp Corporation, et. al.
Claim Type: Hazardous Waste

Dear Mr. Crass:

As you are aware, Crum & Forster is administering this claim on behalf of United States Fire Insurance Company ("U.S. Fire") under policies 523-220099 and 523-377264. Please continue to direct all future correspondence concerning these claims to my attention at Crum & Forster using the address indicated above. This correspondence will communicate U.S. Fire's coverage analysis concerning the captioned matters, and will explain why policies 523-220099 4 and 523-377264 6 are not potentially applicable at this time to costs sought or recovered from Madison-Kipp Corporation ("MKC") in these matters, as the policies provide umbrella coverage, which is not yet triggered.

Factual Background

Wisconsin Department of Natural Resources ("WDNR") made demands in connection with additional investigation of contamination at and beyond Madison-Kipp Corporation's (MKC) facility, located at 201 Waubesa Street, Madison, WI.

Additionally, we were placed on notice of a lawsuit filed neighboring residents. The lawsuit was filed by Kathleen McHugh, et. al. v. Madison-Kipp Corporation and ABC Insurance Companies 1 – 50. There are eleven Plaintiffs. The suit was filed in United States District Court for the Western District of Wisconsin. According to the Complaint, Plaintiffs are residents of Madison, WI, who live in an area that has been contaminated by the MKC facility. MKC purportedly released large volumes of toxic chemicals on the

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ground and into the environment at the facility, which is severely purportedly contaminated. The chemicals have allegedly migrated into the surrounding residential area, contaminating the soil, air and groundwater beneath Plaintiffs' homes. The Counts of the Complaint include RCRA, Negligence, Private Nuisance, Trespass and Willful and Wanton Misconduct. Plaintiffs are requesting an Order restraining MKC from allowing its contamination to migrate to off-site properties and compelling MKC to investigate, delineate and abate the contamination. Plaintiffs are also requesting litigation costs, compensatory and other damages, including punitive damages. Further, Plaintiffs are requesting a declaration that ABC Insurance Companies are obligated to indemnify MKC against the damages awarded Plaintiffs in the matter.

Policies

The following policies were issued to MKC:

Policy Number	Policy Period	Limits of Liability / Attachment Points
523-220099 4	1/1/84 to 1/1/85	\$10,000,000 each occurrence / \$10,000,000 products hazard aggregate, excess of \$500,000 CSL each occurrence, aggregate when applicable
523-377264 6	1/1/85 to 1/1/86	\$10,000,000 each occurrence / \$10,000,000 products hazard aggregate, excess of \$500,000 CSL each occurrence, aggregate when applicable

Based upon our review of policies 523-220099 4 and 523-377264 6 and the information we have obtained to date, Crum & Forster has determined that U.S. Fire has no current obligation to defend or indemnify MKC for the damages sought by the WDNR or Plaintiffs with regard to the McHugh, et. al. Complaint, as the underlying insurance and other insurance available to MKC has not yet been properly exhausted by payment of covered claims. The remainder of this correspondence will explain our analysis and determination under policies 523-220099 4 and 523-377264 6.

Policies 523-220099 4 and 523-377264 6 contain The Defender form FM101.0.755 (5/83), which includes the following insuring agreement:

INSURING AGREEMENTS

I. COVERAGE

The Company agrees to pay on behalf of the insured the ultimate net loss in excess of the retained limit hereinafter stated, which the insured may sustain by reason of the liability imposed upon the insured by law, or assumed by the insured under contract, for:

- (a) Bodily Injury Liability,
- (b) Personal Injury Liability,
- (c) Property Damage Liability, or
- (d) Advertising Liability,

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arising out of an occurrence.

In any jurisdiction where, by reason of law or statute, this policy is invalid as a "pay on behalf" of contract, the Company agrees to indemnify the insured for ultimate net loss in excess of the retained limit.

Certain terms that appear in the insuring agreement above are defined in policies 523-220099 4 and 523-377264 6 as follows:

III. DEFINITIONS

4. "PROPERTY DAMAGE"

"Property Damage" means:

(a) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or

(b) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an occurrence during the policy period, or

(c) injury to tangible property which occurs during the policy period sustained by an organization as a result of wrongful eviction, malicious prosecution, libel, slander or defamation but excluding any such damage included within the definition of advertising liability.

6. "ULTIMATE NET LOSS"

"Ultimate Net Loss" means the total of the following sums with respect to each occurrence;

(a) all sums which the insured is legally obligated to pay as damages whether by reason of adjudication or settlement, because of bodily injury, personal injury, property damage or advertising liability to which this policy applies, and

(b) all expenses, other than defense settlement provided in Insuring Agreement II, incurred by or on behalf of the insured in the investigation, negotiation, settlement and defense of any claim covered by this policy or suit seeking such damages, excluding only the salaries of the insured's regular employees.

This policy shall not apply to defense, investigation, settlement or legal expenses covered by underlying insurance.

9. "OCCURRENCE"

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"Occurrence" means;

(a) with respect to Bodily Injury Liability or Property Damage Liability, injurious exposure to conditions which results in Bodily Injury or Property Damage neither expected nor intended from the standpoint of the insured. All damages arising out of such exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

Policies 523-220099 4 and 523-377264 6 also include a "Retained Limit" provision that states as follows:

V. RETAINED LIMIT – LIMIT OF LIABILITY

The Company's liability shall be only for the ultimate net loss in excess of the insured's retained limit defined as the greater of;

(a) the total of the applicable limits of the underlying policies listed in Schedule A hereof, and the applicable limits of any other insurance collectible by the insured; or

(b) the self-insured retention stated in Item 4(c) of the declarations as the result of all occurrences not covered by said underlying insurance, and which shall be borne by the insured, separately as respects each annual period of this policy.

When the self-insured retention stated in Item 4(c) has been exhausted, this policy shall apply without application of the self-insured retention for the remainder of that annual period.

The company's liability shall not exceed the amount stated in Item 4(a) of the declarations as the result of any one occurrence. There is no limit to the number of occurrences during the policy period for which claims may be made except that the liability of the company arising out of the Products Hazard and the Completed Operations Hazard on account of all occurrences during each policy year shall not exceed the aggregate amount stated in Item 4(b) of the declarations.

Policies 523-220099 4 and 523-377264 6 also contain the following relevant conditions:

G. Loss Payable. Liability of the company with respect to any one occurrence shall not attach unless and until the insured, the company on behalf of the insured, or the insured's underlying insurer, has paid the amount of retained limit. Where the company must indemnify the insured for ultimate net loss in accordance with Insuring Agreements, the insured shall make a definite claim for loss for which the company may be liable within twelve (12) months after the insured has paid an amount of ultimate net loss in excess of the amount borne by the insured or after the insured's liability shall have been made certain by final judgment against the insured after actual trial, or by written agreement of the insured, the claimant and the company. If any subsequent payments are made by the insured on account of the same occurrence, additional claims shall be made similarly from

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time to time and shall be payable within thirty (30) days after proof of conformity with this policy.

I. Other Insurance. If other collectible insurance including other insurance with this company is available to the insured covering a loss also covered hereunder (except insurance purchased to apply in excess of the sum of the retained limit of liability hereunder) the insurance hereunder shall be in excess of and not contribute with such other insurance.

J. Underlying Insurance. If underlying insurance is exhausted by any occurrence, the company shall be obligated to assume charge of the settlement or defense of any claim or proceeding against the insured resulting from the same occurrence, but only where this policy applies immediately in excess of such underlying insurance, without the intervention of excess insurance of another carrier.

In the event of the reduction or exhaustion of the aggregate limits of liability of the underlying policies listed in Schedule A solely by reason of losses paid thereunder in respect of occurrences happening during the policy period of this policy, this policy, (1) in the event of reduction shall pay the excess of the reduced underlying limits; or (2) in the event of exhaustion, shall continue in force as underlying insurance.

O. Maintenance of Underlying Insurance. It is warranted by the insured that the underlying policies listed in Schedule A, or renewals and replacements thereof not more restricted, shall be maintained in force during the currency of this policy, except for any reduction of the aggregate limits contained therein solely by payment of claims in respect of occurrences happening during this policy period. In the event of failure by the insured to so maintain such policies in force or to meet all conditions and warranties subsequent to loss under such policies the insurance afforded by this policy shall apply in the same manner it would have applied had such policies been so maintained in force.

In the event there is no recovery available to the insured as a result of bankruptcy or insolvency of the underlying Insurer, the coverage hereunder shall apply in excess of the applicable limit of liability specified in Schedule A.

Policies 523-220099 4 and 523-377264 6 also contain the following relevant exclusions:

EXCLUSIONS

This policy shall not apply:

(b) to injury to or destruction of or loss of:

(1) property owned by the Named Insured

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(f) to liability arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gasses, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if the discharge, dispersal, release or escape is sudden and accidental;

Policies 523-220099 4 and 523-377264 6 also contain the following Exclusion of Damage to Real Property endorsement:

This policy does not apply to injury to, destruction of or loss of use of real property leased, rented to, occupied or managed by the insured.

Analysis

Crum & Forster is not aware of and has not been provided with any evidence that all underlying and/or other insurance available to MKC has been properly exhausted by payment of covered claims. Likewise, we have not been informed that the underlying insurance and any other insurance available to MKC do not provide coverage for the captioned matters. As set forth in the Insuring Agreement, the Retained Limit provision and in the Loss Payable, Other Insurance, Underlying Insurance and Maintenance of Underlying Insurance conditions, absent such proper exhaustion or payment of the self-insured retention, U.S. Fire has no current obligation to defend or indemnify MKC under policies 523-220099 4 and 523-377264 6 for costs sought or recovered from MKC in the captioned matters.

Reservation of Rights

Notwithstanding the fact that U.S. Fire has no current obligation to defend or indemnify MKC for the captioned matters, there are other issues and policy provisions that may operate to limit or preclude coverage for the captioned matters. Accordingly, in the event that the underlying insurance and any other insurance become properly exhausted by payment of covered claims, U.S. Fire reserves the right to assert the following coverage defenses:

- 1) Based upon the Insuring Agreements, there would be no duty to defend MKC in any event unless there was a suit in a court of law pending against MKC;
- 2) Based upon Condition D (Notice of Occurrence) contained in policies 523-220099 4 and 523-377264 6, coverage does not apply should it be determined that any "insured" failed to promptly notify U.S. Fire of the captioned matters;
- 3) In accordance with the insuring agreement and definitions of "bodily injury" and "property damage" and applicable law, coverage is not available under policies 523-220099 4 and 523-377264 6 for any cost alleged to have been or to be incurred in connection with any claim for equitable or injunctive relief;
- 4) In accordance with the insuring agreement and definitions of "bodily injury" and "property damage" and applicable law, coverage is not available under policies 523-220099 4 and 523-377264 6 for punitive damages, fines or penalties alleged or recovered in this matter;

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- 5) In accordance with the insuring agreement and definitions of "bodily injury," "property damage" and "occurrence," coverage is not available under policies 523-220099 4 and 523-377264 6 for bodily injury or property damage that occurs before the inception or after the expiration of policies 523-220099 4 and 523-377264 6;
- 6) Based upon the insuring agreement contained in policies 523-220099 4 and 523-377264 6 and applicable law, coverage does not apply to costs sought or recovered in the captioned matter that do not represent "damages" within the meaning of policies 523-220099 4 and 523-377264 6;
- 7) Based upon the definitions of "bodily injury" and "property damage" contained in policies 523-220099 4 and 523-377264 6, coverage does not apply to any alleged damage or injury that does not constitute "bodily injury" or "property damage" as defined in policies 523-220099 4 and 523-377264 6;
- 8) Based upon the definition of "occurrence" contained in policies 523-220099 4 and 523-377264 6, coverage does not apply to "bodily injury" or "property damage" that is expected or intended from the standpoint of the "insured" or is otherwise not caused by an "occurrence" as defined in policies 523-220099 4 and 523-377264 6;
- 9) Based upon Exclusion (f) contained in policies 523-220099 4 and 523-377264 6, coverage does not apply to "bodily injury" or "property damage" arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water, unless such discharge, dispersal, release or escape is sudden and accidental; and
- 10) Based upon the Exclusion of Damage to Real Property Endorsement, as well as the owned property exclusion contained in policies 523-220099 4 and 523-377264 6, coverage does not apply to "property damage" to injury to, destruction of or loss of use of real property owned, leased, rented to, occupied or managed by the insured.

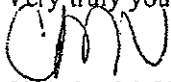
If MKC possesses or is aware of any additional information that evidences underlying insurance and all other insurance available to MKC has been properly exhausted by payment of covered claims or that such underlying and other insurance is inapplicable to costs sought or recovered in the captioned matters, please forward any such information to my attention. Upon receipt of any such information, Crum & Forster, on behalf of U.S. Fire will review it to determine whether its coverage analysis for these matters remains appropriate.

This letter should not be construed to change, waive or modify any of the terms, conditions or provisions of the above referenced policies. This correspondence and any further actions taken in regard to these matters are undertaken subject to a complete reservation of rights under the terms, conditions and provisions of the aforementioned policies and in law and equity. No action taken shall constitute an admission of liability or coverage under the aforementioned policies, and should not be construed as a waiver of any right or as an estoppel from asserting any right to disclaim or limit coverage under the aforementioned policies. We specifically reserve the right to modify our coverage position based on additional information that should become available concerning these matters.

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Should you have any questions concerning this correspondence or should you wish to discuss it further, please don't hesitate to call me at my direct dial number: (973) 631-5990. You may also contact me by e-mail at Christina_Villano@cfins.com.

Very truly yours,



Christina M. Villano
Claims Specialist