

**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 J. COHEN 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 J. Cohen declares as follows:

1. I am a shareholder of the law firm Meissner Tierney Fisher & Nichols S.C., and counsel for Defendant United States Fire Insurance Company ("U.S. Fire") in this case. I submit this Declaration in support of U.S. Fire's Joinder in Continental Casualty Company and Columbia Casualty Company's Motion for Partial Summary Judgment as to the Statute of Limitations.

2. Attached hereto as **Exhibit A** is a true and correct copy of Madison-Kipp Corporation's First Set of Requests for Admission, Interrogatories and Requests for Production of Documents to United States Fire Insurance Company (including Exhibit 1 referenced therein, an August 1, 2003 Letter from David A. Crass, legal counsel for Madison-Kipp, to Christine Beyrent, Riverstone Claims Management).

3. Attached hereto as **Exhibit B** is a true and correct copy of United States Fire Insurance Company's Responses and Objections to Madison-Kipp Corporation's First Set of Requests for Admissions, Interrogatories and Requests for Production of Documents to United States Fire Insurance Company.

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

Executed this 19th day of February, 2013 in Milwaukee, Wisconsin.

/s/ Michael J. Cohen
Michael J. Cohen, Esq.

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

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

v.)
MADISON-KIPP CORPORTION,)
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)

Case No.: 11-cv-724
Hon. Barbara B. Crabb, Judge

Hon. Stephen L. Crocker,
Magistrate Judge

INSRUANCE COMPANY, and JOHN DOE)
INSRUANCE COMPANIES 1-20,)
Third-Party Defendants.)

**MADISON-KIPP CORPORATION'S FIRST SET OF REQUESTS FOR
ADMISSIONS, INTERROGATORIES, AND REQUESTS FOR PRODUCTION
OF DOCUMENTS TO UNITED STATES FIRE INSURANCE COMPANY**

TO: ALL COUNSEL OF RECORD
(See Attached Service List)

Plaintiff Madison-Kipp Corporation ("Madison-Kipp") by its attorneys, Michael Best & Friedrich LLP, hereby requests that United States Fire Insurance Company ("U.S. Fire") admit the following requests for admissions, answer under oath the following interrogatories, and produce for inspection and copying the documents and electronically stored information requested pursuant to Rules 26, 33, 34, and 36 of the Federal Rules of Civil Procedure. Please take notice that these discovery requests are continuing so as to require U.S. Fire to supplement and amend its responses as required by the Federal Rules of Civil Procedure.

DEFINITIONS

1. "You" or "Your" means U.S. Fire, its predecessors, employees, officers, directors, agents, representatives, investigators, attorneys and any other person acting or purporting to act on behalf of U.S. Fire with respect to any matter which is the subject of this action.

2. "Person" means any individual, corporation, firm, association, partnership, joint venture, sole proprietorship or any other business, legal, or state or federal governmental entity.

3. "Document" means any original or non-identical duplicate written, recorded or graphic matter, including but not limited to all forms of books, ledgers, records, reports, papers, correspondence, e-mail, CD Roms and similar discs, memoranda, check receipts, invoices, tapes or other recordings, electric or magnetic impulses, computerized data or information, computer tapes or printouts, photographs or videotapes, regardless of form or media. "Document" as used herein includes all electronically stored information.

4. "Site" means the area in and around Madison-Kipp's manufacturing facility on Waubesa Street in Madison, Wisconsin.

5. "Oral communication" means any manner of communication, other than through a document, by or in which any thought or information was transmitted.

6. "Identify" shall mean the following:

- a. To identify a natural person, state his or her full name, present or last known business and resident address, and describe his or her relationship to You.
- b. To identify a person other than a natural person, state its full name, the state and date of its incorporation (if applicable), specify its nature (e.g. corporation, partnership, joint venture, etc.), state its

business address and generally describe its business and its relationship to You.

- c. To identify a document:
 - i. Identify the person who prepared it;
 - ii. Identify each person to whom it was sent or otherwise disclosed and state the date of the disclosure;
 - iii. Generally describe the nature of the document (e.g., letter, memo, etc.) and state the date it was prepared;
 - iv. Identify the person having present custody of the documents.
- d. When referring to something other than a person or document, "identify" means to provide a description sufficient to distinguish the thing identified from other things of a similar nature.

7. As used in these interrogatories, requests for admissions, and requests for production of documents, the term "respecting," or the phrase "with respect to," shall mean in any way, directly or indirectly, alluding to or about, analyzing, commenting upon or about, concerning, connected with, containing, constituting, describing, discussing, evidencing, expressing, mentioning, pertaining to or about, regarding, relating to or about, relevant to, responding to or showing.

8. "Environmental Claim" or "Environmental Claims" means any claim made against You with respect to one of Your liability policies and respecting or alleging injury or damage to real property arising from the release, discharge or

disbursal of any pollutant, contaminant or hazardous substance, including inter alia any claims involving liability arising under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq. ("CERCLA"), the Resource Conservation Recovery Act, 42 U.S.C. §6901, et seq. ("RCRA") or any regulations thereunder, as well as claims arising under state environmental statutes, regulations or common law.

9. "Policy" or "Policies" means any liability insurance policy, including without limitation any primary, excess or umbrella policy, endorsement, rider, binder, cover note, subscription agreement, market order, agency subscription, certificate, declarations, amendments, conditions and exclusions thereto issued and/or sold by You or any of Your sales agents or representatives naming, identifying or otherwise including as a named or additional insured Madison-Kipp or its predecessors, affiliates, divisions, subsidiaries, and other related corporate entities.

10. "Underlying Claims" means each and every Environmental Claim, suit, claim, demand or request made against Madison-Kipp by any Person, including without limitation the Plaintiffs in this Lawsuit, the Wisconsin Department of Natural Resources, the United States Environmental Protection Agency, and/or any state or federal trustees of the natural resources of the State of Wisconsin, arising from or relating to the Site.

11. "Letter" means the August 1, 2003 letter from David A Crass to Christine Beyrent at Riverstone Claims Management.

INSTRUCTIONS

1. Answer each interrogatory, document request, and request to admit separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objections must be stated in lieu of an answer.

2. An evasive or incomplete answer will be deemed a failure to answer under Rule 37(a)(4).

3. If You object to any interrogatory, request to admit, or document request or any portion thereof on the grounds that it requires information that is privileged or falls within the work product doctrine, provide the following information, except as it may call for the precise information You object to disclosing:

- a. Identify the privilege or doctrine You claim.
- b. If the privilege relates to a document:
 - i. Identify the document and state the date on which and the purpose for which it was prepared;
 - ii. Identify each person to whom the substance of the document has been disclosed and the date of each disclosure;
 - iii. Identify the present custodian of the document.
 - iv. If the privilege relates to an oral communication:
- c. Identify the oral communication and state the date on which it occurred;
- d. Identify all persons to whom the substance of the oral communication has been disclosed (including all persons present

when the oral communication was made) and the date of each disclosure.

- e. Identify each document which contains any information relating to the oral communication, identify each person to whom the substance of the document has been disclosed, and identify the present custodian of the document.

REQUESTS TO ADMIT

REQUEST TO ADMIT NO. 1: The document attached as Exhibit 1 is a true and correct copy of an August 1, 2003 letter from David A. Crass, legal counsel for Madison-Kipp, to Christine Beyrent, Riverstone Claims Management.

REQUEST TO ADMIT NO. 2: David Crass' August 1, 2003 letter to Christine Beyrent (the "Letter") placed U.S. Fire on notice of a claim by Madison-Kipp for defense and indemnity relating to the Site.

REQUEST TO ADMIT NO. 3: U.S. Fire received the Letter on or about August 1, 2003.

REQUEST TO ADMIT NO. 4: U.S. Fire did not acknowledge receipt of the Letter.

REQUEST TO ADMIT NO. 5: U.S. Fire did not provide any written response to the Letter.

REQUEST TO ADMIT NO. 6: U.S. Fire did not have any oral communications with Madison-Kipp in response to the Letter.

REQUEST TO ADMIT NO. 7: U.S. Fire never informed Madison-Kipp that it would deny coverage for the claims tendered to U.S. Fire in the Letter.

REQUEST TO ADMIT NO. 8: Madison-Kipp had no obligation to provide You notice of an environmental claim arising out of the Site in 1994.

REQUEST TO ADMIT NO. 9: Madison-Kipp had no obligation to provide You notice of an environmental claim arising out of the Site until 2003.

INTERROGATORIES

INTERROGATORY NO. 1: Identify any inspections, investigations, evaluations, or audits You conducted of Madison-Kipp.

INTERROGATORY NO. 2: In regards to Your Fifth Affirmative Defense, identify the complete factual basis for any allegation that Madison-Kipp's claims are barred by the applicable statute of limitations.

INTERROGATORY NO. 3: In regards to Your Seventh Affirmative Defense, identify the complete factual basis for any allegation that Madison-Kipp failed to assist or cooperate with U.S. Fire.

INTERROGATORY NO. 4: In regards to Your Eighth Affirmative Defense, which alleges that Madison-Kipp failed to comply with the notice provisions of Your Policies, provide the following information:

- a. The nature of any prejudice You allege You sustained by reason of any alleged untimely or late notice;
- b. The complete "factual basis" for Your claim of prejudice with respect to any alleged untimely or late notice; and

- c. State all activities that You would have taken, but were denied the opportunity to take because of any alleged untimely or late notice, and for each such activity identify all other files or claims in which You undertook that activity in the context of an Environmental Claim.

INTERROGATORY NO. 5: In regards to Your Tenth Affirmative Defense, identify the complete factual basis for any allegation that Madison-Kipp has made voluntary payments.

INTERROGATORY NO. 6: In regards to Your Eleventh Affirmative Defense, identify the complete factual basis for any allegation that Madison-Kipp's conduct giving rise to its claims for coverage was expected, intended, deliberate or intentional in nature.

INTERROGATORY NO. 7: In regards to Your Fourteenth Affirmative Defense, identify the complete factual basis for any allegation that Madison-Kipp failed "to take reasonable measures to mitigate, minimize or avoid damages".

INTERROGATORY NO. 8: In regards to Your Twenty-Ninth Affirmative Defense, identify the complete factual basis for any allegation that the Plaintiffs' or WDNR's claims were known or could have reasonably been foreseen by Madison-Kipp prior to the inception or issuance of the U.S. Fire policies.

INTERROGATORY NO. 9: Identify the extent to which You claim any of the Policies have been exhausted or impaired by the payment of prior claims.

INTERROGATORY NO. 10: Identify any written response You made to the Letter.

INTERROGATORY NO. 11: Identify all communications between You and Madison-Kipp relating to the Letter.

INTERROGATORY NO. 12: Identify all efforts You made to investigate the claims and/or environmental contamination at the Site, in response to the Letter.

INTERROGATORY NO. 13: State in detail what U.S. Fire did upon receiving the Letter.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST TO PRODUCE NO. 1: Produce each document identified in response to the interrogatories above.

REQUEST TO PRODUCE NO. 2: Produce each document which You reviewed or consulted to prepare responses to the interrogatories above.

REQUEST TO PRODUCE NO. 3: Produce each Policy or Policies, including any policy forms, cover note, subscription agreement, market order, agency subscription, declarations, applications, certifications, documents respecting communication with brokers and/or agents, documents respecting communication with underwriters and other documents with respect to each Policy or Policies. To the extent that You are unable to locate a complete, legible copy of each Policy or Policies, provide all evidence of the existence and/or terms of any such Policy or Policies.

REQUEST TO PRODUCE NO. 4: Produce Your entire claims file for each claim or request for coverage made by Madison-Kipp under Your Policy or Policies relating to

the Site and/or the Underlying Claims, including the entire claims file respecting each claim and/or request for coverage made by Madison-Kipp with respect to the Underlying Claims.

REQUEST TO PRODUCE NO. 5: Produce each notice of any suit, claim or occurrence provided to You by Madison-Kipp or its representatives, including its attorneys.

REQUEST TO PRODUCE NO. 6: Produce all correspondence and other documents consisting of, reflecting or respecting any written or oral communication between You and Madison-Kipp with respect to the Site and/or the Underlying Claims.

REQUEST TO PRODUCE NO. 7: Produce all correspondence and other documents consisting of, reflecting or respecting any written or oral communications from You to Madison-Kipp responding to any of Madison-Kipp's notice letters with respect to the Site and/or the Underlying Claims.

REQUEST TO PRODUCE NO. 8: Produce the cover of any file folder or jacket containing any information whatsoever respecting the Underlying Claims.

REQUEST TO PRODUCE NO. 9: Produce all correspondence, notes, memoranda, computer printouts or other documents respecting any investigation performed by You (including any investigation performed by Your representatives or investigators) with respect to the Site and/or the Underlying Claims.

REQUEST TO PRODUCE NO. 10: Produce all claims manuals, manuals, guidelines, procedures, instructions and other documents used by You in adjusting,

evaluating, investigating or determining claims by Your insureds for coverage of Environmental Claims during the period of 1994 to the present.

REQUEST TO PRODUCE NO. 11: Produce all applications for insurance and other documents referred to or created by any person acting on Your behalf with respect to the underwriting of Your Policies, including without limitation all applications for insurance coverage and the entire contents of any underwriting file with respect to each Policy.

REQUEST TO PRODUCE NO. 12: Produce all documents respecting Madison-Kipp's application or request for insurance coverage from You, including without limitation any application forms or other documents Madison-Kipp provided to You by any person before (or at the time) You issued Your Policy or Policies naming or including Madison-Kipp as an insured.

REQUEST TO PRODUCE NO. 13: Produce any interview statements, signed or unsigned, or tape recording or interview of persons having knowledge regarding the Site and/or the Underlying Claims.

REQUEST TO PRODUCE NO. 14: Produce all documents regarding Your inspections, investigations, evaluations, or audits of the Site and/or its operations.

REQUEST TO PRODUCE NO. 15: Identify all documents which relate to Your claim of prejudice with respect to any alleged untimely or late notice.

REQUEST TO PRODUCE NO. 16: Produce Your entire underwriting file related to the Policies.

Dated this 23rd day of August, 2012.

MICHAEL BEST & FRIEDRICH LLP

s/ Lee M. Seese

Lee M. Seese, SBN 1036636

Leah H. Ziemba

Attorneys for Madison-Kipp Corporation

P.O. BOX:

N19 W24133 Riverwood Drive, Suite 200

Waukesha, WI 53188

Phone: 262-956-6560

Fax: 262-956-6565

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2012, I caused a true and correct copy of the following document to be served on all counsel of record by electronic mail:

Madison-Kipp Corporation's First Set Of Request For Admissions, Interrogatories, and Requests for Production of Documents to United States Fire Insurance Company

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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,

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
Page 4

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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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,

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MADISON-KIPP CORPORATION,
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CONTINENTAL CASUALTY COMPANY,
COLUMBIA CASUALTY COMPANY, and
UNITED STATES FIRE INSURANCE
COMPANY,

Cross-Claim Defendant,

and

CONTINENTAL CASUALTY COMPANY and
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MADISON-KIPP CORPORATION,
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and

LUMBERMENS MUTUAL CASUALTY
COMPANY, AMERICAN MOTORISTS
INSURANCE COMPANY, and JOHN DOE
INSURANCE COMPANIES 1-20,

Third-Party Defendants.

**UNITED STATES FIRE INSURANCE COMPANY'S RESPONSES AND OBJECTIONS
TO MADISON-KIPP CORPORATION'S FIRST SET OF REQUESTS FOR
ADMISSIONS, INTERROGATORIES, AND REQUESTS FOR PRODUCTION OF
DOCUMENTS TO UNITED STATES FIRE INSURANCE COMPANY**

Defendant, United States Fire Insurance Company ("U.S. Fire"), by its attorneys, Meissner Tierney Fisher & Nichols S.C., hereby responds to Defendant Madison-Kipp Corporation's ("MKC") First Set of Requests for Admissions, Interrogatories, and Requests for Production of Documents to United States Fire Insurance Company ("MKC's First Discovery Requests") as follows:

GENERAL OBJECTIONS

Each of MKC's First Discovery Requests, including the "Instructions" and "Definitions" relative thereto, is responded to subject to the general objections set forth below. These objections form a part of each of U.S. Fire's responses to MKC's First Discovery Requests even though they may not be specifically referred to in each and every response to each request for admission, interrogatory and document request. Failure to incorporate any of these general objections into any specific response should not be construed as a waiver of same.

Discovery has not proceeded sufficiently to enable U.S. Fire to fully respond to all of MKC's First Discovery Requests. The responses herein reflect U.S. Fire's best information as of this date. Discovery is continuing and the responses herein are given with the caveat that, as discovery continues, U.S. Fire may modify and amend certain of the responses to reflect newly discovered and acquired information and/or documents.

1. U.S. Fire objects to each request for admission, interrogatory and document request to the extent that it calls for the production of information or materials protected by the attorney/client privilege and/or work product doctrine.

2. U.S. Fire objects to each request for admission, interrogatory and document request to the extent that it calls for the disclosure of information or materials prepared in anticipation of litigation.

3. U.S. Fire objects to each request for admission, interrogatory and document request to the extent that it calls for a legal conclusion, or the opinions, mental impressions, conclusions, or legal theories of counsel.

4. U.S. Fire objects to each request for admission, interrogatory and document request to the extent that it calls for the disclosure of information relating to U.S. Fire's other insureds on the grounds that such information is confidential business information protected by the good faith obligation between an insurer and its insured, and by the trade secret privilege. Such information is also irrelevant and immaterial to the present action and not reasonably calculated to lead to the discovery of admissible evidence. Additionally, such information is proprietary of such other insureds and is provided to U.S. Fire in confidence and, thus, all other insureds are entitled to notice and a hearing before production of this information.

5. U.S. Fire objects to each interrogatory to the extent that it requests an exhaustive recitation of facts supporting U.S. Fire's present contentions and/or requires U.S. Fire to speculate as to its future contentions prior to the completion of discovery. Such interrogatories are unduly burdensome to U.S. Fire. U.S. Fire's contentions are set forth in its answer and it refers MKC to that pleading.

6. U.S. Fire objects to each request for admission, interrogatory and document request to the extent that it seeks information relating to the drafting and interpretation of the alleged U.S. Fire insurance policies at issue and/or any other insurance policies it may have issued to other insureds at any time, on the ground that such extrinsic evidence is irrelevant and

not reasonably calculated to lead to the discovery of admissible evidence, and as such is unduly burdensome.

7. U.S. Fire objects to each request for admission, interrogatory and document request to the extent it seeks information already within MKC's knowledge or control, or is more easily available to MKC, on the grounds that such interrogatories are unduly burdensome and oppressive.

8. U.S. Fire objects to each request for admission, interrogatory and document request to the extent that it requests information that is irrelevant and immaterial to the present action and is not reasonably calculated to lead to the discovery of admissible evidence.

9. U.S. Fire objects to each request for admission, interrogatory and document request to the extent that the information sought is confidential business information and/or is a trade secret and asserts each and every applicable privilege or rule to the fullest extent provided by law.

10. U.S. Fire objects to each request for admission, interrogatory and document request to the extent that it is so overly broad and/or unduly burdensome so as to render it impossible for U.S. Fire to respond in any reasonable time or manner.

11. U.S. Fire objects to each request for admission, interrogatory and document request to the extent that it is so vague, ambiguous, repetitive and convoluted so as to render it impossible for U.S. Fire to respond in any reasonable time or manner.

12. U.S. Fire objects to the requests for admission, interrogatories and document requests including the "Instructions" and "Definitions" to the extent they seek to extend U.S. Fire's obligations beyond the Federal Rules of Civil Procedure and/or any local court rule which may apply.

13. U.S. Fire objects to the time period encompassed by the requests for admission, interrogatories and document requests as directed to U.S. Fire to the extent that the designation of such time period is an attempt to impose upon U.S. Fire a duty to respond for a period of time beyond that during which U.S. Fire has acknowledged the existence of policies issued to MKC. To such extent, these requests for admission, interrogatories and document requests seek information that is neither relevant to this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Further, providing answers for such an overly broad period would create an undue burden and expense for U.S. Fire.

14. U.S. Fire objects to each request for admission, interrogatory and document request to the extent that it purports to require disclosure of information not within U.S. Fire's possession, custody or control.

15. U.S. Fire objects to each request for admission, interrogatory and document request to the extent that it seeks information or material that is available to MKC in the public domain or is more easily available to MKC, on the grounds that such interrogatories and document requests are unduly burdensome and oppressive.

16. U.S. Fire objects to each request for admission, interrogatory and document request to the extent that it calls for speculation on the part of U.S. Fire.

GENERAL OBJECTIONS TO "DEFINITIONS"

U.S. Fire generally objects to the "Definitions" and "Instructions" to the extent they seek to extend U.S. Fire's obligations beyond the Federal Rules of Civil Procedure and/or any local court rule, which may apply.

SPECIFIC OBJECTIONS TO "DEFINITIONS"

1. "You" or "Your" means U.S. Fire, its predecessors, employees, officers, directors, agents, representatives, investigators, attorneys and any other person acting or purporting to act on behalf of U.S. Fire with respect to any matter which is the subject of this action.

OBJECTION TO PARAGRAPH 1 OF DEFINITIONS:

U.S. Fire objects to the definition of “You” or “Your” on the grounds that it is vague, overly broad, and unduly burdensome, encompassing persons and entities who are not parties to this action nor over whom U.S. Fire has any control. U.S. Fire further objects to this definition to the extent it may encompass privileged communications between U.S. Fire and its counsel.

3. “Document” means any original or non-identical duplicate written, recorded or graphic matter, including but not limited to all forms of books, ledgers, records, reports, papers, correspondence, e-mail, CD Roms and similar discs, memoranda, check receipts, invoices, tapes or other recordings, electric or magnetic impulses, computerized data or information, computer tapes or printouts, photographs or videotapes, regardless of form or media. “Document” as used herein includes all electronically stored information.

OBJECTION TO PARAGRAPH 3 OF DEFINITIONS:

U.S. Fire objects to the definition of “Document” on the grounds that it is vague, overly broad, and unduly burdensome. U.S. Fire further objects to the extent that it may encompass privileged documents.

4. “Site” means the area in and around Madison-Kipp’s manufacturing facility on Waubesa Street in Madison, Wisconsin.

OBJECTION TO PARAGRAPH 4 OF DEFINITIONS:

U.S. Fire objects to the definition of “Site” on the grounds that it is vague, overly broad, and unduly burdensome.

5. “Oral communication” means any manner of communication, other than through a document, by or in which any thought or information was transmitted.

OBJECTION TO PARAGRAPH 5 OF DEFINITIONS:

U.S. Fire objects to the definition of “oral communication” on the grounds that it is vague, overly broad and unduly burdensome. U.S. Fire further objects to the extent that it may encompass privileged communications.

6. "Identify" shall mean the following:
- (a) To identify a natural person, state his or her full name, present or last known business and resident address, and describe his or her relationship to You;
 - (b) To identify a person other than a natural person, state its full name, the state and date of its incorporation (if applicable), specify its nature (e.g. corporation, partnership, joint venture, etc.) state its business address and generally describe its business and relationship to You;
 - (c) To identify a document:
 - (i) Identify the person who prepared it;
 - (ii) Identify each person to whom it was sent or otherwise disclosed and state the date of the disclosure;
 - (iii) Generally describe the nature of the document (e.g., letter, memo, etc.) and state the date it was prepared;
 - (iv) Identify the person having present custody of the documents.
 - (d) When referring to something other than a person or document, "identify" means to provide a description sufficient to distinguish the thing identified from other things of a similar nature.

OBJECTION TO PARAGRAPH 6 OF DEFINITIONS:

U.S. Fire objects to the definition of "Identify" on the grounds that it is overly broad and unduly burdensome.

8. "Environmental Claim" or "Environmental Claims" means any claim made against You with respect to one of Your liability policies and respecting or alleging injury or damage to real property arising from the release, discharge or disbursement of any pollutant, contaminant or hazardous substance, including inter alia, any claims involving liability arising under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq. ("CERCLA"), the Resource Conservation Recovery Act, 42 U.S.C. 6901, et seq., ("RCRA") or any regulations thereunder, as well as claims arising under state environmental statutes, regulations or common law.

OBJECTION TO PARAGRAPH 8 OF DEFINITIONS:

U.S. Fire objects to the definition of "Environmental Claim" or "Environmental Claims" on the grounds that it is vague, overly broad, and unduly burdensome encompassing persons and entities who are not parties to this action. U.S. Fire further objects to this definition to extent that

it relates to information regarding other insureds of U.S. Fire and/or seeks information that is confidential and proprietary to the other insured, irrelevant and immaterial to the present action and is not reasonably calculated to lead to the discovery of admissible evidence.

9. "Policy" or "Policies" means any liability insurance policy, including without limitation any primary, excess or umbrella policy, endorsement, rider, binder, cover note, subscription agreement, market order, agency subscription, certificate, declarations, amendments, condition and exclusions thereto issued and/or sold by You or any of Your sales agents or representatives naming, identifying or otherwise including as a named or additional insured Madison-Kipp or its predecessors, affiliates, divisions, subsidiaries, and other related corporate entities.

OBJECTION TO PARAGRAPH 9 OF DEFINITIONS:

U.S. Fire objects to the definition of "Policy" or "Policies" on the grounds that it is vague, overly broad, and unduly burdensome, encompassing insurance policies issued by U.S. Fire which are not at issue in this case and have no relevance to this action.

10. "Underlying Claims" means each and every Environmental Claim, suit, claim, demand or request made against Madison-Kipp by any Person, including without limitation the Plaintiffs in this Lawsuit, the Wisconsin Department of Natural Resources, the United States Environmental Protection Agency, and/or any state or federal trustees of the natural resources of the State of Wisconsin arising from or relating to the Site.

OBJECTION TO PARAGRAPH 10 OF DEFINITIONS:

U.S. Fire objects to the definition of "Underlying Claims" on the grounds that it is vague, overly broad and unduly burdensome. U.S. Fire further objects to this definition to the extent it relies upon MKC's legal conclusion as to whether there is coverage for costs incurred in connection with the Site.

GENERAL OBJECTIONS TO "INSTRUCTIONS"

U.S. Fire generally objects to the "Instructions" to the extent they seek to extend U.S. Fire's obligations beyond the Federal Rules of Civil Procedure and/or any local court rule which may apply.

RESPONSES TO ADMIT

REQUEST TO ADMIT NO. 1: The document attached as Exhibit 1 is a true and correct copy of an August 1, 2003 letter from David A. Crass, legal counsel for Madison-Kipp, to Christine Beyrent, Riverstone Claims Management.

RESPONSE TO REQUEST TO ADMIT NO. 1: See General Objection Nos. 3, 7, 14 and 15. Subject to and without waiving these objections, U.S. Fire admits that Exhibit A is a true and correct copy of an August 1, 2003 letter from David A. Crass, legal counsel for Madison-Kipp, to Christine Beyrent, Riverstone Claims Management.

REQUEST TO ADMIT NO. 2: David Crass' August 1, 2003 letter to Christine Beyrent (the "Letter") placed U.S. Fire on notice of a claim by Madison-Kipp for defense and indemnity relating to the Site.

RESPONSE TO REQUEST TO ADMIT NO. 2: See General Objection Nos. 1, 2, 3, 7, 11, 14 and 15. Subject to and without waiving these objections, U.S. Fire denies that its claims file indicates that U.S. Fire received the Letter on or about August 1, 2003 and that it was placed on notice of a claim by MKC for defense and indemnity relating to the Site at that time. In further response, MKC admits that the letter states that "[t]he 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."

REQUEST TO ADMIT NO. 3: U.S. Fire received the Letter on or about August 1, 2003.

RESPONSE TO REQUEST TO ADMIT NO. 3: See General Objection Nos. 7, 11, 14 and 15. Subject to and without waiving these objections, U.S. Fire denies that its claims file indicates that U.S. Fire received the Letter on or about August 1, 2003.

REQUEST TO ADMIT NO. 4: U.S. Fire did not acknowledge receipt of the Letter.

RESPONSE TO REQUEST TO ADMIT NO. 4: See General Objection Nos. 1, 2, 3, 7, 14 and 15. Subject to and without waiving the foregoing objections, U.S. Fire denies that it never acknowledged receipt of the Letter.

REQUEST TO ADMIT NO. 5: U.S. Fire did not provide any written response to the Letter.

RESPONSE TO REQUEST TO ADMIT NO. 5: See General Objection Nos. 1, 2, 3, 11, 14 and 15. Subject to and without waiving the foregoing objections, U.S. Fire denies that it never provided a written response to the Letter.

REQUEST TO ADMIT NO. 6: U.S. Fire did not have any oral communications with Madison-Kipp in response to the Letter.

RESPONSE TO REQUEST TO ADMIT NO. 6: See General Objection Nos. 1, 2, 3, 7, 11, 14 and 15. Subject to and without waiving the foregoing objections, U.S. Fire denies that it never had any oral communications with MKC in response to the Letter.

REQUEST TO ADMIT NO. 7: U.S. Fire never informed Madison-Kipp that it would deny coverage for the claims tendered to U.S. Fire in the Letter.

RESPONSE TO REQUEST TO ADMIT NO. 7: See General Objection Nos. 1, 2, 3, 7, 11, 14 and 15. Subject to and without waiving the foregoing objections, U.S. Fire admits that it never informed MKC that it would deny coverage for the claims tendered to U.S. Fire in the Letter, but affirmatively states that it has informed MKC that it has reserved its rights to deny coverage for those claims.

REQUEST TO ADMIT NO. 8: Madison-Kipp had no obligation to provide You notice of an environmental claim arising out of the Site in 1994.

RESPONSE TO REQUEST TO ADMIT NO. 8: See General Objection Nos. 1, 2, 3, 7, 10, 11, 14 and 15. Subject to and without waiving the foregoing objections, U.S. Fire denies that MKC had no obligation to provide U.S. Fire with notice of an environmental claim arising out of the Site in 1994.

REQUEST TO ADMIT NO. 9: Madison-Kipp had no obligation to provide You notice of an environmental claim arising out of the Site until 2003.

RESPONSE TO REQUEST TO ADMIT NO. 9: See General Objection Nos. 1, 2, 3, 7, 10, 11, 14 and 15. Subject to and without waiving the foregoing objections, U.S. Fire denies

that MKC had no obligation to provide U.S. Fire with notice of an environmental claim arising out of the Site until 2003.

INTERROGATORIES

INTERROGATORY NO. 1: Identify any inspections, investigations, evaluations, or audits You conducted of Madison-Kipp.

ANSWER TO INTERROGATORY NO. 1: See General Objection Nos. 1, 2, 8, 10, 11, 12 and 13. U.S. Fire further objects to this Interrogatory on the basis that the terms “inspections, investigations, evaluations, or audits” are undefined and are therefore, vague and ambiguous. Subject to and without waiving the foregoing objections, U.S. Fire refers MKC to the relevant, non-privileged portions of its claims materials for the claims at issue in this case.

INTERROGATORY NO. 2: In regards to Your Fifth Affirmative Defense, identify the complete factual basis for any allegation that Madison-Kipp’s claims are barred by the applicable statute of limitations.

ANSWER TO INTERROGATORY NO. 2: See General Objection Nos. 1, 2, 3, 5, 7, 10, 12, 14 and 16. Subject to and without waiving the foregoing objections, U.S. Fire states that once MKC had a presently enforceable claim in relation to Policy No. 523-3772464 6 (with a policy period of January 1, 1984-January 1, 1985) and/or Policy No. 523-220099 4 (with a policy period of January 1, 1985-January 1, 1986) in relation to the Underlying Claims (as that term is defined by MKC in its First Discovery Requests), it had six years to bring its claim against U.S. Fire under the applicable statute of limitations. To the extent that MKC contends that the Wisconsin Supreme Court’s decisions in *Johnson Controls, Inc. v. Employers Ins. Co. of Wausau*, 2003 WI 108, 264 Wis. 2d 60, 665 N.W.2d 257 and *Plastics Engineering Co. v. Liberty Mutual Insurance Co.*, 2009 WI 13, 315 Wis. 2d 556, 759 N.W.2d 613, are to apply retroactively, the six year statute of limitations may bar, in whole or in part, MKC’s claims against U.S. Fire. In further response, U.S. Fire refers MKC to the relevant, non-privileged portions of its claims materials for the claims at issue in this case. U.S. Fire further states that

discovery is ongoing and U.S. Fire therefore reserves its right to pursue this defense after the completion of discovery. U.S. Fire's investigation, including without limitation, discovery in this suit, continues.

INTERROGATORY NO. 3: In regards to Your Seventh Affirmative Defense, identify the complete factual basis for any allegation that Madison-Kipp failed to assist or cooperate with U.S. Fire.

ANSWER TO INTERROGATORY NO. 3: See General Objection Nos. 1, 2, 3, 5, 7, 10, 12, 14 and 16. Subject to and without waiving the foregoing objections, U.S. Fire states that, upon information and belief, in and around October 2011, MKC, by and through its agents and/or representatives, requested that the Wisconsin Department of Natural Resources and/or the Wisconsin Department of Justice pursue federal hazardous waste enforcement action or other state hazardous waste enforcement action against it. Upon information and belief, apparently as a result of, *inter alia*, MKC's request, the Wisconsin Department of Natural Resources referred MKC to the Wisconsin Department of Justice for alleged violations of Wisconsin's hazardous substance discharge laws. In further response, U.S. Fire refers MKC to the relevant, non-privileged portions of its claims materials for the claims and U.S. Fire policies at issue in this case. U.S. Fire further states that discovery is ongoing and U.S. Fire therefore reserves its right to pursue this defense after the completion of discovery. U.S. Fire's investigation, including without limitation, discovery in this suit, continues.

INTERROGATORY NO. 4: In regards to Your Eighth Affirmative Defense, which alleges that Madison-Kipp failed to comply with the notice provisions of Your Policies, provide the following information:

- a. The nature of any prejudice You allege You sustained by reason of any alleged untimely or late notice;
- b. The complete "factual basis" for Your claim of prejudice with respect to any alleged untimely or late notice; and
- c. State all activities that You would have taken, but were denied the opportunity to take because of any alleged untimely or late notice, and for each such activity identify all other files or claims in which You undertook that activity in the context of an Environmental Claim.

ANSWER TO INTERROGATORY NO. 4: See General Objection Nos. 1, 2, 3, 5, 7, 9, 10, 11, 12, 14 and 16. Subject to and without waiving these objections, U.S. Fire states that it was prejudiced by, among other things, the lost opportunity to timely investigate, evaluate, and/or settle the Underlying Claims, and promptly determine coverage. U.S. Fire's opportunity to conduct a timely investigation has been impaired by the passage of time between the alleged occurrence and MKC's notice to U.S. Fire. As a consequence of this delay in time, witnesses relating to the Site are or may no longer be available, their recollection of events may be forgotten or distorted, and records were, or are believed to be, lost or destroyed (including, but not limited to, MKC's records relating to insurance policies, procurement of insurance policies, the operations at the Site and the materials and substances used in such operations) and physical characteristics of the Site may have changed. U.S. Fire was further denied the opportunity to associate in the defense of the claims. U.S. Fire may have also lost the opportunity to seek contribution from other insurers (*e.g.*, Lumbermens Mutual Casualty Company and American Motorists Insurance Company) who are now unavailable due to insolvencies and to establish the terms of lost policies involving those insurers. In further response to this interrogatory, U.S. Fire refers MKC to the relevant and non-privileged portions of the claims materials and U.S. Fire policies at issue. U.S. Fire further states that discovery is ongoing and U.S. Fire therefore reserves its right to pursue this defense after the completion of discovery. U.S. Fire's investigation, including without limitation, discovery in this suit, continues.

INTERROGATORY NO. 5: In regards to Your Tenth Affirmative Defense, identify the complete factual basis for any allegation that Madison-Kipp has made voluntary payments.

ANSWER TO INTERROGATORY NO. 5: See General Objections Nos. 1, 2, 3, 5, 7, 10, 13, 14 and 16. Subject to and without waiving the foregoing objections, U.S. Fire states that to the extent that there were payments made by MKC in relation to the Underlying Claims

without the knowledge and/or consent of U.S. Fire for which MKC claims U.S. Fire is responsible for under its policies, MKC has made voluntary payments. In further response to this interrogatory, U.S. Fire refers MKC to the U.S. Fire policies at issue. U.S. Fire further states that discovery is ongoing and U.S. Fire therefore reserves its right to pursue this defense after the completion of discovery. U.S. Fire's investigation, including without limitation, discovery in this suit, continues.

INTERROGATORY NO. 6: In regards to Your Eleventh Affirmative Defense, identify the complete factual basis for any allegation that Madison-Kipp's conduct giving rise to its claims for coverage was expected, intended, deliberate or intentional in nature.

ANSWER TO INTERROGATORY NO. 6: See General Objection No. 1, 2, 3, 5, 7, 10, 12, 14 and 16. Subject to and without waiving the foregoing objections, U.S. Fire states that Plaintiffs have alleged, *inter alia*, that MKC knew that Plaintiffs and the Class are exposed to and/or threatened by contamination, but yet has intentionally failed to promptly and adequately investigate and mitigate the threat to Plaintiffs and the Class. To the extent that Plaintiffs are successful in establishing this allegation, MKC conduct giving rise to its claims for coverage was expected, intended, deliberate or intentional in nature. U.S. Fire further states that according to a letter from Robert J. Nauta, RSV Engineering, Inc., to Mark Meunier, Madison-Kipp Corporation, dated March 16, 2006, "[p]ersonal communications with MKC staff has also indicated that historically, oils that may have been PCB-containing may have been used for dust suppression prior to paving the parking area/loading dock area at the northeastern quadrant of the facility." In further response to this interrogatory, U.S. Fire refers MKC to the U.S. Fire policies at issue. U.S. Fire further states that discovery is ongoing and U.S. Fire therefore reserves its right to pursue this defense after the completion of discovery, including but not limited to the disclosure of expert witnesses on this defense.

INTERROGATORY NO. 7: In regards to Your Fourteenth Affirmative Defense, identify the complete factual basis for any allegation that Madison-Kipp failed "to take

reasonable measures to mitigate, minimize or avoid damages”.

ANSWER TO INTERROGATORY NO. 7: See General Objection Nos. 1, 2, 3, 5, 7, 10, 12, 13, 14 and 16. Subject to and without waiving the foregoing objections, U.S. Fire incorporates its Answers to Interrogatories Nos. 3 and 6. In further response, U.S. Fire states that Plaintiffs contend that MKC has, *inter alia*, failed to adequately investigate and remediate the contamination present at its facility and failed to promptly and effectively investigate and address the migration of vapor intrusion contamination off-site and into the surrounding residential areas. To the extent that Plaintiffs are successful in establishing this allegation, MKC may have also failed to take reasonable measures to mitigate, minimize or avoid damages. U.S. Fire further states that discovery is ongoing and U.S. Fire therefore reserves its right to pursue this defense after the completion of discovery. U.S. Fire’s investigation, including without limitation, discovery in this suit, continues.

INTERROGATORY NO. 8: In regards to Your Twenty-Ninth Affirmative Defense, identify the complete factual basis for any allegation that the Plaintiffs’ or WDNR’s claims were known or could have reasonably been foreseen by Madison-Kipp prior to the inception or issuance of the U.S. Fire policies.

ANSWER TO INTERROGATORY NO. 8: See General Objection No. 1, 2, 3, 5, 7, 10, 12, 13, 14 and 16. Subject to and without waiving the foregoing objections, U.S. Fire states that according to a letter from Robert J. Nauta, RSV Engineering, Inc., to Mark Meunier, Madison-Kipp Corporation, dated March 16, 2006, “[p]ersonal communications with MKC staff has also indicated that historically, oils that may have been PCB-containing may have been used for dust suppression prior to paving the parking area/loading dock area at the northeastern quadrant of the facility.” In addition, according to a letter from David A. Crass, Michael Best & Friedrich, LLP, to Linda Hanefeld, the Wisconsin Department of Natural Resources, dated April 20, 2012, MKC’s interviews with “long-term employees and determined that the parking lot was paved sometime between 1976 and 1977,” which is prior to the inception of Policy No. 523-

3772464 6 (with a policy period of January 1, 1984-January 1, 1985) and Policy No. 523-220099 4 (with a policy period of January 1, 1985-January 1, 1986), both of which were issued by U.S. Fire to MKC. In further response, U.S. Fire states that discovery is ongoing and U.S. Fire therefore reserves its right to pursue this defense after the completion of discovery. U.S. Fire's investigation, including without limitation, discovery in this suit, continues.

INTERROGATORY NO. 9: Identify the extent to which You claim any of the Policies have been exhausted or impaired by the payment of prior claims.

ANSWER TO INTERROGATORY NO. 9: See General Objection Nos. 1, 2, 3 and 7. Subject to and without waiving the foregoing objections, U.S. Fire states that neither Policy No. 523-3772464 6 (with a policy period of January 1, 1984-January 1, 1985) nor Policy No. 523-220099 (with a policy period of January 1, 1985-January 1, 1986) have been exhausted or impaired by the payment of prior claims. U.S. Fire further states that discovery is ongoing and U.S. Fire therefore reserves its right to pursue this defense after the completion of discovery. U.S. Fire's investigation, including without limitation, discovery in this suit, continues.

INTERROGATORY NO. 10: Identify any written response You made to the Letter.

ANSWER TO INTERROGATORY NO. 10: See General Objection Nos. 1, 2, 3, 7, 8, 10, 11, 12, 13 and 14. Subject to and without waiving the foregoing objections, U.S. Fire refers MKC to the relevant, non-privileged portions of its claims materials for the claims at issue in this case including, but not limited to, USFIRE000001-88 and USFIRE000473-658. In further response, U.S. Fire states that discovery is ongoing and U.S. Fire's investigation, including without limitation, discovery in this suit, continues.

INTERROGATORY NO. 11: Identify all communications between You and Madison-Kipp relating to the Letter.

ANSWER TO INTERROGATORY NO. 11: See General Objection Nos. 1, 2, 3, 7, 8, 10, 11, 12, 13 and 14. Subject to and without waiving the foregoing objections, U.S. Fire refers

MKC to the relevant, non-privileged portions of its claims materials for the claims at issue in this case including, but not limited to, USFIRE000001-88 and USFIRE000473-658. In further response, U.S. Fire states that discovery is ongoing and U.S. Fire's investigation, including without limitation, discovery in this suit, continues.

INTERROGATORY NO. 12: Identify all efforts You made to investigate the claims and/or environmental contamination at the Site, in response to the Letter.

ANSWER TO INTERROGATORY NO. 12: See General Objection Nos. 1, 2, 3, 8, 9, 10, 11, 12 and 13. Subject to and without waiving the foregoing objections, U.S. Fire refers MKC to its Responses to Requests to Admit Nos. 3-7 and to the relevant, non-privileged portions of its claims materials for the claims at issue in this case. In further response, U.S. Fire states that discovery is ongoing and U.S. Fire's investigation, including without limitation, discovery in this suit, continues.

INTERROGATORY NO. 13: State in detail what U.S. Fire did upon receiving the Letter.

ANSWER TO INTERROGATORY NO. 13: See General Objection Nos. 1, 2, 3, 7, 8, 9, 10, 11, 12 and 13. Subject to and without waiving the foregoing objections, U.S. Fire refers MKC to its Responses to Requests to Admit Nos. 3-7 and to the relevant, non-privileged portions of its claims materials for the claims at issue in this case. In further response, U.S. Fire states that discovery is ongoing and U.S. Fire's investigation, including without limitation, discovery in this suit, continues.

REQUESTS FOR PRODUCTION

REQUEST TO PRODUCE NO. 1: Produce each document identified in response to the interrogatories above.

RESPONSE TO REQUEST TO PRODUCE NO. 1: See General Objection Nos. 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16. Subject to and without waiving these objections, U.S. Fire refers MKC to the relevant, non-privileged portions of its claims materials for the claims at

issue in this case, including, but not limited to USFIRE000001-88 and USFIRE000473-658.

Because discovery is continuing, U.S. Fire reserves the right to amend and/or supplement this response.

REQUEST TO PRODUCE NO. 2: Produce each document which You reviewed or consulted to prepare responses to the interrogatories above.

RESPONSE TO REQUEST TO PRODUCE NO. 2: See General Objection Nos. 1, 2, 3, 7, 8, 9, 10, 11, 12, 13 and 15. Subject to and without waiving these objections, U.S. Fire refers MKC to the relevant, non-privileged portions of its claims materials for the claims at issue in this case, including, but not limited to, USFIRE000001-88 and USFIRE000473-658, as well as the documents previously produced in this case by MKC and Plaintiffs. Because discovery is continuing, U.S. Fire reserves the right to amend and/or supplement this response.

REQUEST TO PRODUCE NO. 3: Produce each Policy or Policies, including any policy forms, cover note, subscription agreement, market order, agency subscription, declarations, applications, certifications, documents respecting communication with brokers and/or agents, documents respecting communication with underwriters and other documents with respect to each Policy or Policies. To the extent that You are unable to locate a complete, legible copy of each Policy or Policies, provide all evidence of the existence and/or terms of any such Policy or Policies.

RESPONSE TO REQUEST TO PRODUCE NO. 3: See General Objection Nos. 1, 2, 3, 6, 7, 8, 9, 10, 11, 12 and 14. Subject to and without waiving the foregoing objections, U.S. Fire refers MKC to the relevant, non-privileged portions of its production, including, but not limited to, USFIRE000089-471 and USFIRE000659-853. Because discovery is continuing, U.S. Fire reserves the right to amend and/or supplement this response.

REQUEST TO PRODUCE NO. 4: Produce Your entire claims file, through November 28, 2011, for each claim or request for coverage made by Madison-Kipp under Your Policy or Policies relating to the Site and/or the Underlying Claims, including the entire claims file, through November 28, 2011, respecting each claim and/or request for coverage made by Madison-Kipp with respect to the Underlying Claims.

RESPONSE TO REQUEST TO PRODUCE NO. 4: See General Objections Nos. 1, 2, 3, 8, 9, 10, 11, 12 and 14. Subject to and without waiving the foregoing objections, U.S. Fire

refers MKC to the relevant, non-privileged portions of its claims materials, including, but not limited to, USFIRE000001-88 and USFIRE000473-658. Because discovery is continuing, U.S. Fire reserves the right to amend and/or supplement this response.

REQUEST TO PRODUCE NO. 5: Produce each notice of any suit, claim or occurrence provided to You by Madison-Kipp or its representatives, including its attorneys.

RESPONSE TO REQUEST TO PRODUCE NO. 5: See General Objection Nos. 1, 2, 3, 7, 8, 10, 11 and 14. Subject to and without waiving the foregoing objections, U.S. Fire refers MKC to the relevant, non-privileged portions of its claims materials, including, but not limited to, USFIRE000001-88 and USFIRE000473-658. Because discovery is continuing, U.S. Fire reserves the right to amend and/or supplement this response.

REQUEST TO PRODUCE NO. 6: Produce all correspondence and other documents, through November 28, 2011, consisting of, reflecting or respecting any written or oral communication between You and Madison-Kipp with respect to the Site and/or the Underlying Claims.

RESPONSE TO REQUEST TO PRODUCE NO. 6: See General Objection Nos. 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14 and 16. Subject to and without waiving the foregoing objections, U.S. Fire refers MKC to the relevant, non-privileged portions of its claims materials, including, but not limited to, USFIRE000001-88 and USFIRE000473-658. Because discovery is continuing, U.S. Fire reserves the right to amend and/or supplement this response.

REQUEST TO PRODUCE NO. 7: Produce all correspondence and other documents, through November 28, 2011, consisting of, reflecting or respecting any written or oral communications from You to Madison-Kipp responding to any of Madison-Kipp's notice letters with respect to the Site and/or the Underlying Claims.

RESPONSE TO REQUEST TO PRODUCE NO. 7: See General Objection Nos. 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14 and 16. Subject to and without waiving the foregoing objections, U.S. Fire refers MKC to the relevant, non-privileged portions of its claims materials, including, but not limited to, USFIRE000001-88 and USFIRE000473-658. Because discovery is continuing, U.S. Fire reserves the right to amend and/or supplement this response.

REQUEST TO PRODUCE NO. 8: Produce the cover of any file folder or jacket containing any information whatsoever respecting the Underlying Claims.

RESPONSE TO REQUEST TO PRODUCE NO. 8: See General Objection Nos. 1, 2, 3, 8, 10, 11 and 12. Subject to and without waiving the foregoing objections, U.S. Fire refers MKC to documents attached hereto as USFIRE000001-853. Because discovery is continuing, U.S. Fire reserves the right to amend and/or supplement this response.

REQUEST TO PRODUCE NO. 9: Produce all correspondence, notes, memoranda, computer printouts or other documents respecting any investigation performed by You, prior to November 28, 2011, (including any investigation performed by Your representatives or investigators) with respect to the Site and/or the Underlying Claims.

RESPONSE TO REQUEST TO PRODUCE NO. 9: See General Objection Nos. 1, 2, 3, 7, 8, 9, 10, 11, 12, 13 and 14. Subject to and without waiving the foregoing objections, U.S. Fire refers MKC to the relevant, non-privileged portions of its claims materials, including, but not limited to, USFIRE000001-88 and USFIRE000473-658. Because discovery is continuing, U.S. Fire reserves the right to amend and/or supplement this response.

REQUEST TO PRODUCE NO. 10: Produce all claims manuals, manuals, guidelines, procedures, instructions and other documents used by You in adjusting, evaluating, investigating or determining claims by Your insureds for coverage of Environmental Claims during the period of 1994 to the present.

RESPONSE TO REQUEST TO PRODUCE NO. 10: See General Objection Nos. 1, 2, 3, 4, 6, 8, 9, 10, 11, 12, 13 and 14.

REQUEST TO PRODUCE NO. 11: Produce all applications for insurance and other documents referred to or created by any person acting on Your behalf with respect to the underwriting of Your Policies, including without limitation all applications for insurance coverage and the entire contents of any underwriting file with respect to each Policy.

RESPONSE TO REQUEST TO PRODUCE NO. 11: See General Objection Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 16. Subject to and without waiving the foregoing objections, U.S. Fire refers MKC to the relevant, non-privileged portions of its underwriting file,

including, but not limited to, USFIRE000089-472 and USFIRE000659-853. Because discovery is continuing, U.S. Fire reserves the right to amend and/or supplement this response.

REQUEST TO PRODUCE NO. 12: Produce all documents respecting Madison Kipp's application or request for insurance coverage from You, including without limitation any application forms or other documents Madison-Kipp provided to You by any person before (or at the time) You issued Your Policy or Policies naming or including Madison-Kipp as an insured.

RESPONSE TO REQUEST TO PRODUCE NO. 12: See General Objection Nos. 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 16. Subject to and without waiving the foregoing objections, U.S. Fire refers MKC to the relevant, non-privileged portions of its underwriting file, including, but not limited to, USFIRE000089-472 and USFIRE000659-853. Because discovery is continuing, U.S. Fire reserves the right to amend and/or supplement this response.

REQUEST TO PRODUCE NO. 13: Produce any interview statements, signed or unsigned, or tape recording or interview of persons having knowledge regarding the Site and/or the Underlying Claims.

RESPONSE TO REQUEST TO PRODUCE NO. 13: See General Objection Nos. 1, 2, 3, 10, 11, 12, 13, 14 and 16. Subject to and without waiving the foregoing objections, U.S. Fire refers MKC to the relevant, non-privileged portions of its claims materials, including, but not limited to, USFIRE000001-88 and USFIRE000473-658. Because discovery is continuing, U.S. Fire reserves the right to amend and/or supplement this response.

REQUEST TO PRODUCE NO. 14: Produce all documents regarding Your inspections, investigations, evaluations, or audits of the Site and/or its operations.

RESPONSE TO REQUEST TO PRODUCE NO. 14: See General Objection Nos. 1, 2, 3, 5, 7, 8, 9, 10, 11, 12, 13, 14 and 16. Subject to and without waiving the foregoing objections, U.S. Fire refers MKC to the relevant, non-privileged portions of its claims materials, including, but not limited to, USFIRE000001-88 and USFIRE000473-658. Because discovery is continuing, U.S. Fire reserves the right to amend and/or supplement this response.

REQUEST TO PRODUCE NO. 15: Identify all documents which relate to Your claim of prejudice with respect to any alleged untimely or late notice.

RESPONSE TO REQUEST TO PRODUCE NO. 15: See General Objection Nos. 1, 2, 3, 5, 7, 10, 11, 12, 14 and 16. U.S. Fire further objects on the basis that this Request directs U.S. Fire to "Identify" documents. Such a request is more properly the subject of an Interrogatory. Subject to and without waiving the foregoing objections, U.S. Fire refers MKC to the relevant, non-privileged portions of its claims materials for the claims at issue in this case, including, but not limited to, USFIRE000001-88 and USFIRE000473-658.

REQUEST TO PRODUCE NO. 16: Produce Your entire underwriting file related to the Policies.

RESPONSE TO REQUEST TO PRODUCE NO. 16: See General Objection Nos. 1, 2, 3, 6, 8, 9, 10, 11, 12, 13, 14 and 16. Subject to and without waiving the foregoing objections, U.S. Fire refers MKC to the relevant, non-privileged portions of its underwriting file, including, but not limited to, USFIRE000089-472 and USFIRE000658-853.

Dated this 10th day of October, 2012.

AS TO OBJECTIONS:
MEISSNER TIERNEY FISHER & NICHOLS S.C.

By: 

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**Attorneys for Defendant United States Fire
Insurance Company**

VERIFICATION

I, MICHAEL C. BAIRD, being first duly sworn according to law, declare as follows:

I am MICHAEL C. BAIRD, Associate General Counsel for RiverStone Claims Management, LLC, the authorized representative of United States Fire Insurance Company, a party to this action. On behalf of United States Fire Insurance Company, I declare and verify that I am duly authorized to make this verification, that I have read the foregoing:

1. UNITED STATES FIRE INSURANCE COMPANY'S RESPONSES AND OBJECTIONS TO MADISON-KIPP CORPORATION'S FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES, AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO UNITED STATES FIRE INSURANCE COMPANY

which were prepared by counsel, based in part upon documents now known to exist and/or produced in discovery conducted to date, that I know the content of the responses, and that the statements contained therein are true and correct to the best of my information, knowledge and belief based upon the information and documents available to me.

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

Executed this 9 day of October, 2012.



Michael C. Baird