

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

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Kathleen McHugh, et al.,

Plaintiffs,

Case No. 11-cv-00724-bbc

v.

Madison-Kipp Corporation, et al.,

Defendants.

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**DECLARATION OF JOHN C. SCHELLER**

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I, John C. Scheller, declare under penalty of perjury that the following is true and correct:

1. I am an attorney with the law firm Michael Best & Friedrich LLP, and one of the attorneys representing Defendant Madison-Kipp Corporation (“Madison-Kipp”) in the above matter.

2. On Tuesday, March 13, 2012, at 9:30 a.m. , acting on behalf of Madison-Kipp, myself and several colleagues participated in a telephonic meet-and-confer with several attorneys for Plaintiffs Kathleen McHugh and Deanna Schneider.

3. We explained our position that we needed to immediately begin obtaining relevant discovery regarding all allegations in the complaint, including

issues about both liability and damages, from all 34 putative class member/property owners to be able to comply with relevant case deadlines.

4. We further explained that although we needed relevant information from all 34 putative class member/property owners, we were willing to begin obtaining discovery from the nine putative class members who had previously been named as plaintiffs before the filing of the First Amended Complaint, before moving forward with discovery as to the remaining individuals.

5. All nine of the previously named plaintiffs have relevant information as specifically noted in the Federal Rule of Civil Procedure 26(a)(1) disclosures provided by Plaintiffs. (Attached hereto as Exhibit A is a true and correct copy of Plaintiffs' Rule 26(a)(1) disclosures.)

6. Counsel for Plaintiffs' McHugh and Schneider argued that Madison-Kipp cannot obtain any discovery from any putative class members other than Plaintiffs McHugh and Schneider.

7. During the meet-and-confer process, Plaintiffs' counsel asserted that Madison-Kipp should not be able to take its proposed discovery until after a liability trial and that the matter should be bifurcated.

8. After the meet-and-confer, counsel for Plaintiffs McHugh and Schneider informed us that they would be filing the current motion for protective order.

Dated this 21st day of March, 2012.

/s/ John C. Scheller  
John C. Scheller

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
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, )

Case No. 11-CV-724-bbc

Plaintiffs, )

v. )

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

Defendants. )

**PLAINTIFFS' RULE 26(a)(1) DISCLOSURES**

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, Plaintiffs make the following initial disclosures to Defendant, Madison-Kipp Corporation ("MKC"). These disclosures are based on the information reasonably available to Plaintiffs as of the present date. Plaintiffs reserve the right to supplement these disclosures as further information becomes available.

**(A) Individuals with Discoverable Information:**

1. Kathleen McHugh

Kathleen has information concerning issues raised in the Complaint, including but not limited to: the environmental testing of her home and/or neighboring homes; attempts to minimize exposures to the contamination on her property; the effects of the environmental contamination at her home and on her family and neighborhood; and her damages.

2. Eric Fuller

Eric has information concerning issues raised in the Complaint, including but not limited to: the environmental testing of his home and/or neighboring homes;

attempts to minimize exposures to the contamination on his property; the effects of the environmental contamination at his home and on his family and neighborhood; and his damages.

3. Kenneth Henrick, Jr.

Kenneth has information concerning issues raised in the Complaint, including but not limited to: the environmental testing of his home and/or neighboring homes; attempts to minimize exposures to the contamination on his property; the effects of the environmental contamination at his home and on his family and neighborhood; and his damages.

4. Deanna Schneider

Deanna has information concerning issues raised in the Complaint, including but not limited to: the environmental testing of her home and/or neighboring homes; attempts to minimize exposures to the contamination on her property; the effects of the environmental contamination at her home and on her family and neighborhood; and her damages.

5. Doris Yang Berge & Prentice Berge

Doris and Prentice have information concerning issues raised in the Complaint, including but not limited to: the environmental testing of their home and/or neighboring homes; attempts to minimize exposures to the contamination on their property; the effects of the environmental contamination at their home and on their family and neighborhood; and their damages.

6. Peter Uttech

Peter has information concerning issues raised in the Complaint, including but not limited to: the environmental testing of his home and/or neighboring homes; attempts to minimize exposures to the contamination on his property; the effects of the environmental contamination at his home and on his family and neighborhood; and his damages.

7. Sharon Helmus

Sharon has information concerning issues raised in the Complaint, including but not limited to: the environmental testing of her home and/or neighboring homes; attempts to minimize exposures to the contamination on her property; the effects of the environmental contamination at her home and on her family and neighborhood; and her damages.

8. Carla Mills

Carla has information concerning issues raised in the Complaint, including but not limited to: the environmental testing of her home and/or neighboring homes; attempts to minimize exposures to the contamination on her property; the effects of the environmental contamination at her home and on her family and neighborhood; and her damages.

9. Brandi Rogers

Brandi has information concerning issues raised in the Complaint, including but not limited to: the environmental testing of her home and/or neighboring homes; attempts to minimize exposures to the contamination on her property; the effects of the environmental contamination at her home and on her family and neighborhood; and her damages.

10. Chad Goolbis

Chad has information concerning issues raised in the Complaint, including but not limited to: the environmental testing of his home and/or neighboring homes; attempts to minimize exposures to the contamination on his property; the effects of the environmental contamination at his home and on his family and neighborhood; and his damages.

11. Mike Schmoller/other representatives of Wisconsin DNR and other governmental agencies

Mr. Schmoller works for the Wisconsin Department of Natural Resources (DNR). Mr. Schmoller and other representatives of DNR and other state and local authorities are expected to possess discoverable information related to: environmental conditions at the MKC facility (the Site); environmental tests performed at the Site and at the Plaintiffs' properties and the surrounding area; the source of the contamination found at the Plaintiffs' properties; and past activities and future plans re investigation and remediation at the Site and impacted off-site areas. Mr. Schmoller and other DNR representatives are also expected to possess discoverable information related to the reports submitted by MKC to DNR, and written and oral communications between DNR and MKC concerning the environmental problems at issue in this case.

12. Employees and Representatives of MKC

Various MKC employees and representatives are expected to have knowledge of: MKC's purchase, storage, handling, use and disposal of chemicals which caused the contamination at issue in this suit; investigation and remediation efforts undertaken or to be undertaken with respect to the subject contamination; and MKC's communications with DNR and other governmental authorities about the subject contamination. Plaintiffs have served discovery requests on MKC to specifically identify such MKC employees and representatives.

13. MKC's Environmental Consultants

MKC's various environmental consultants are expected to possess discoverable information related to: environmental conditions at the Site; environmental tests performed at the Site and at the Plaintiffs' properties and the surrounding area; the source of the contamination found at the Plaintiffs' properties; and investigation and remediation efforts undertaken or to be undertaken with respect to the subject contamination. MKC's environmental consultants are also expected to possess discoverable information related to the reports submitted by MKC to DNR, and written and oral communications between MKC and DNR and other governmental authorities concerning the environmental problems at issue in this case. Plaintiffs have served discovery requests on MKC to specifically identify such MKC environmental consultants.

**(B) A description by category of all documents, data compilations and tangible things that are in the Plaintiffs' possession, custody or control, that Plaintiffs may use to support their claims in this case:**

Plaintiffs currently possess the following categories of documents that they may use to support their claims in this case: documents related to environmental conditions at the MKC Site and on or adjacent to Plaintiffs' homes (obtained via FOIA requests and from other sources); documents related to ownership of Plaintiffs' homes; documents related to appraised values of Plaintiffs' homes; and documents related to efforts to sell certain Plaintiffs' homes.

**(C) A computation of any category of damages claimed by the Plaintiffs:**

As specified in their complaint, Plaintiffs seek all damages available under the law, including but not limited to the following categories of damages: monetary damages for lost property values, aggravation and annoyance damages, and punitive damages.

Plaintiffs also seek injunctive relief under their RCRA and common law claims, as specified in the Complaint and to be supported by expert opinion at a later stage in this



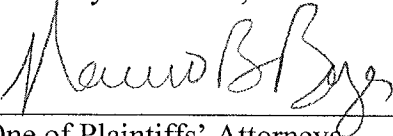
case, and seek to recover their attorneys' fees and expert witness costs under RCRA. A computation of damages by dollar amount has not yet been determined.

**(D) Insurance available to satisfy part or all of the judgment which may be entered in this case:**

Plaintiffs are not insured under any insurance policies applicable to the claims in this case. Plaintiffs' counsel have received information from MKC's counsel concerning coverage MKC has under a series of CNA (and perhaps other carrier) policies which may be available to satisfy a judgment against MKC in this case.

Dated: December 15, 2011

Respectfully submitted,

By:   
One of Plaintiffs' Attorneys

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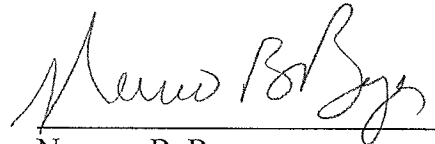
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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of **Plaintiffs' Rule 26(a)(1) Disclosures** was sent to the following counsel of record via First Class Mail and Electronic Mail on December 15, 2011:

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