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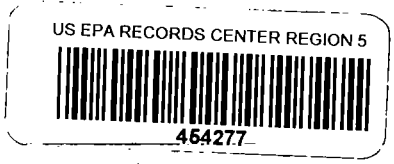
September 15, 2003

Thomas C. Nash, Esq.
Associate Regional Counsel
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590



Re: Chemical Recovery Systems Site Parties

Dear Mr. Nash:

Thank you for taking the time to talk with David Graham and me recently. Both David and I felt that it was time well spent, and we hope that you agree. At the conclusion of that call, we agreed to send you a brief letter summarizing some of the information that we have developed regarding certain Chemical Recovery Systems ("CRS") parties that are not yet members of the CRS PRP Group (the "Group"). Below, we pose specific requests for U.S.EPA to share information with the Group, and any assistance that you can provide in our efforts to recruit more parties into the Group will be appreciated.

The CRS parties that the Group is currently focusing on include:

C&C Supply Company

You mentioned that U.S.EPA believes that C&C Supply was owned and operated by a Don Cain, and that he now operates another company called "C&C Supply" in Kentucky. If U.S. EPA has not yet sent a §104(e) Request regarding the site to Mr. Cain, the Group recommends that U.S.EPA consider immediately sending such a Request both to him and to the Kentucky-based C&C Supply, which could have information relating to Mr. Cain's Ohio-based C&C Supply's operations. The Group also suggests that U.S. EPA consider including in those requests specific questions regarding the generators noted in the parentheticals on the "dirty inventory" list. These companies include: Cen (Con? Gen?) Electric, Kenner Toys, Masonite Corp., and Hobart Corp.

Chemical Recovery Systems, Inc.

We understand that U.S.EPA has been able to obtain records from CRS's former owner, Peter Shagena. The Group would appreciate it if U.S.EPA could provide contact information for Mr. Shagena and any written responses to the 104(e) Requests already put to Mr. Shagena or CRS. Once EPA has achieved service of the PRP notice letter on him, the Group plans to contact him. As we discussed on the telephone, the Group has also become aware of a Fort Wayne, Indiana corporation of the same name, incorporated in March 1978. We are including information regarding that Indiana company for consideration by you and your investigators.

E.F. Hauserman Co

As we discussed, the corporate history of E.F. Hauserman following its involvement at the CRS site is murky. You noted that U.S.EPA's investigators have identified several possible successor companies, including Strafor Facom and SteelCase (which acquired Celestra Hauserman from Strafor Facom in 1999).

The Group has obtained information indicating that E.F. Hauserman was a subsidiary of Hauserman, Inc., an Ohio corporation, and that on March 1, 1984, E.F. Hauserman changed its name to Sunar Hauserman, Inc. Sunar Hauserman, Inc., is currently registered in New York and Ohio as an active foreign business corporation. Hauserman, Inc. and SunarHauserman, Inc. filed for bankruptcy on October 5, 1989 and entered into a joint liquidating plan of reorganization on April 12, 1999. The bankruptcy case was terminated on February 24, 2000. It appears, however, that no environmental creditors were notified of the bankruptcy. Accordingly, it is possible that liability for CRS still rests in the entity that emerged from the Sunar Hauserman bankruptcy and its successors. We are including information on Sunar Hauserman and the Sunar Hauserman bankruptcy for use by you and your investigators.

The Group has also included with this letter information for your consideration about E.F. Houghton & Co., which, to my knowledge, has not yet been identified in any documents related to the site (while E.F. Hauserman has) but could possibly have had involvement at the CRS site.

General Tire & Rubber Corp.

The Group believes that the successor in interest to General Tire & Rubber's CRS liability may be Akron, Ohio's, GenCorp. If U.S. EPA has not yet sent a §104(e) Request regarding the CRS site to GenCorp, the Group recommends that U.S.EPA consider doing so immediately.

NS Marketing

You mentioned that U.S.EPA believes that NS Marketing was owned and operated by a Nick Shilatz. If U.S. EPA has not yet sent a §104(e) Request regarding the site to Mr. Shilatz, the Group recommends that U.S.EPA consider immediately sending such a letter to him. The Group also suggests that U.S. EPA consider including in that request specific questions regarding the entity noted parenthetically next to NS Marketing on the dirty inventory list, Ecology Chemical. Finally, the Group would appreciate it if U.S.EPA would provide us with contact information for Mr. Shilatz. As with Mr. Shagena, once EPA has achieved service of the PRP notice letter on him, the Group plans to contact him.

As we discussed on the telephone, the Group has become aware of a company called N.S. Marketing, Inc. based in Toronto, Ohio, that sells or sold chemicals to the oil and gas production industry. A case referencing that company is included for consideration by you and your investigators.

Robert Ross & Sons

We understand that U.S.EPA has received a response and clarifying information from one of the Ross companies in response to a §104(e) Request. You mentioned that Ross has asserted a confidentiality claim over some or all of the information that they have provided. The Group would like to request copies of all information submitted by Ross that, pursuant to CERCLA §104(e)(7)(F), is not entitled to protection under the confidentiality provisions of §104(e)(7) and copies of all information that Ross has claimed to be entitled to confidential treatment, but for which they have not satisfied the criteria required for such treatment as set forth in CERCLA §104(e)(7)(E).

Uniroyal, Inc.

The Group understands that the party responsible for Uniroyal's share at the CRS site may be in the midst of a bankruptcy proceeding. The Group would appreciate it if U.S.EPA would share the 104(e) response provided to U.S. EPA by Uniroyal (or any Uniroyal affiliated company, such as Uniroyal Technologies).

Yenkin-Majestic

The Group would appreciate it if U.S.EPA could provide copies of any written responses to 104(e) Requests put to Yenkin-Majestic.

Beazer East (Koppers) (Parr, Inc.) and Checkmate Boats

The Group understands that U.S.EPA has sent requests for information to these two entities, without response, and recommends that EPA send a follow-up on and renew these earlier requests.

The Group looks forward to cooperating with U.S.EPA with regard to our parallel efforts at the CRS site. If you have any questions, or if we can provide you with any additional information, please give David (757-259-3855), Doug McWilliams (216-479-8332) or me a call.

Sincerely,

Elton L. Parker

Encls.

Cc: David B. Graham, Esq.
Douglas A. McWilliams, Esq.

Chemical Recovery Systems Inc.
Ft. Wayne, Indiana

Name Searched On:
chemical recovery (Legal)

Current Information

Entity Legal Name:
CHEMICAL RECOVERY SYSTEMS INCORPORATED

Entity Address:
2923 WOODSTOCK CT , FORT WAYNE, IN 46815

General Entity Information:

Control Number: **197803-084**
Status: **Active**
Entity Type: **For-Profit Domestic Corporation**

Entity Creation Date: **3/3/1978**
Entity Date to Expire:
Entity Inactive Date:

There are no other names on file for this Entity.

Registered Agent(name, address, city, state, zip):
THEODORE H HEEMSTRA
2923 WOODSTOCK CT
FORT WAYNE, IN 46815

Principals(name, address, city, state, zip - when provided)
HEEMSTRA.THEODORE. H.
President
2923 WOODSTOCK CT
FORT WAYNE,

HEEMSTRA.PATRICIA.
Secretary
2923 WOODSTOCK CT
FORT WAYNE,

Transactions:

Date Filed	Effective Date	Type
3/3/1978	3/3/1978	Articles of Incorporation

Corporate Reports:

Years Paid

1983 1984 1985 1986 1987 1988 1989 1990 1991 1992
1993 1994 1995 1996 1998 2000 2002

Years Due

None

Additional Services Available:

GO	Generate an official Certificate of Existence/Authorization. There is a fee of $20.00 for *accessIndiana* subscribers and a fee of $23.10 for credit card users. Example Certificate

NEW SEARCH

All the entity information captured by the Indiana Secretary of State, pursuant to law, is displayed on the Internet. For further information, please call our office at 317-232-6576. Copies of actual corporate documents can also be ordered online.
If you encounter technical difficulties while using these services, please contact the accessIndiana Webmaster

E.F. Hauserman

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-85 (26) C
Corporation Tax
October 21, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION PETITION NO. C820628A

On June 28, 1982, a Petition for an Advisory Opinion was received from Hauserman, Inc., 5711 Grant Avenue, Cleveland, Ohio 44105.

At issue is whether Petitioner, a foreign corporation which rents a showroom-sales office in New York to display the products of and act as the sole sales agent for a related alien corporation, is subject to the Franchise Tax on Business Corporations imposed under Article 9-A of the Tax Law. Petitioner also inquires whether the related alien corporation would be subject to such tax.

Hauserman, Inc., an Ohio corporation, operates five showroom-sales offices in the United States, including one in New York, through its division Sunar, U.S.A.. Hauserman, Inc. is the exclusive sales agent in the United States for the furniture products manufactured by the Sunar division of a related Canadian corporation, Hauserman, Ltd.. All contracts or orders solicited by the Sunar, U.S.A. division of Hauserman, Inc. at the New York showroom-sales office are accepted at and filled from the office and plant of Hauserman, Ltd. in Canada.

Hauserman, Inc. leases a showroom-sales office in New York. Leasehold improvements are owned by its division, Sunar, U.S.A.. Hauserman, Ltd. owns the furniture located in the New York showroom-sales office, such furniture being both displayed for sale and used as office furniture. No payment is made by Hauserman, Inc. to Hauserman, Ltd. for such usage. Furniture so used is used solely in connection with the above-described solicitation activities. The display products in the New York showroom-sales office are, on occasion, offered for sale to dealers when the display furniture is changed, as when a new line is introduced. Approximately thirty to forty percent of the display furniture is consigned each year to an unrelated party for sale. Approximately $25,000 is received each year from such sales, which are made in New York. Petitioner's average total annual sales to New York purchasers is approximately $3,000,000.

The relationship between Hauserman, Ltd. and Hauserman, Inc. is governed by an Exclusive Sales Representative Agreement. Section 3 of this agreement grants to Hauserman, Ltd. the right to disapprove the design, location, and appointments of the New York showroom. Section 4 of the agreement provides that Hauserman, Ltd. is to set all prices, terms, and conditions for orders to be solicited at the New York showroom, such orders and bids to be taken on standard forms approved by Hauserman, Ltd.. Section 5 provides that Hauserman, Inc. is to negotiate contracts with individual sales representatives, with the proviso that the negotiation and execution of such contracts is to be made in consultation with Hauserman, Ltd.. Further, Hauserman, Ltd. retains control over the hiring and firing of personnel working at or out of the New York showroom. Finally, the U.S.A. Sales Manager of Hauserman, Inc., who is responsible for the operation of all five showrooms, including the one in New York, reports to the President of the Sunar Division of Hauserman, Ltd.. Hauserman, Ltd. retains ultimate control over the operations conducted at or out of the New York showrooms including the hiring and firing of individuals, as well as the manner in which operations are

to be conducted. Under Section 6 of the agreement, Hauserman, Ltd. will pay Hauserman, Inc. fifteen percent of the final accepted contract price of each order obtained in its territory for the performance of Hauserman, Inc.'s sales service.

Subsequent to the submission of its Petition for Advisory Opinion, Petitioner submitted additional facts with respect to which it also requests a ruling. Effective on and after March 1, 1984 the E. F. Hauserman, Co., subsidiary of Hauserman Inc., changed its corporate name to Sunar Hauserman, Inc.. Sunar Hauserman, Inc. vacated its former branch sales office and moved into and operates out of the Sunar, U.S.A. New York showroom-sales office at 730 Fifth Avenue, New York, New York 10019. Sunar Hauserman, Inc. rents this office space from Sunar, U.S.A. for use in the sale of its Interior Building Partition & Wall Products as well as for the sale of Sunar of Canada's furniture products. Through this reorganization, Sunar Hauserman, Inc. is replacing Hauserman, Ltd. as the ultimate control over operations conducted at or out of the Sunar New York showroom-sales office.

The franchise tax at issue is imposed on every foreign corporation, not otherwise specifically exempted, which is doing business, employing capital, owning or leasing property or maintaining an office in New York (Tax Law, § 209.1; 20 NYCRR 1-3.2). Notwithstanding the imposition of the franchise tax, however, a foreign corporation whose income is derived solely from interstate commerce is not subject to tax if its New York activities do not exceed those prescribed by Public Law 86-272, which is codified at 15 U.S.C. §§381-4. (20 NYCRR §1-3.4(b)(9)). P.L. 86-272 was enacted in order to overcome the U.S. Supreme Court decision in Northwestern States Portland Cement Co. v. Minnesota, 3 L. Ed. 2d 421 (1959). In Northwestern, the U.S. Supreme Court for the first time permitted the application of a state net income tax to the income of a taxpayer engaged exclusively in interstate commerce, holding that such a tax satisfies the Due Process Clause of the U.S. Constitution where a corporation's activities in the taxing state are such that there is created a sufficient nexus between such activities and the tax imposed; that is, that the corporation is "sufficiently included in local events to forge 'some definite link, some minimum connection' sufficient to satisfy due process requirements." (Id. at 431).

The corporations in the two cases consolidated for decision in Northwestern were engaged in the taxing states in the solicitation of orders for tangible personal property, such orders being accepted, filled, and delivered from a location outside of the taxing state. Activities closely related to solicitation were also carried on, such as leasing and operating offices for the use of salesmen and secretarial staff, as well as the furnishing of cars to the salesmen. In one of the two cases salesmen received and transmitted claims against the corporation for loss or damage. The Court held that in each case the derivation of income from "vigorous and continuous sales campaigns run through a central office located in the [taxing] State" satisfied the nexus requirement of the Due Process Clause. Id. It was as a reaction to this extension of the States' taxing powers that Congress enacted, within seven months of the decision, Public Law 86-272. This legislation created a statutory minimum for the nexus required to permit imposition of state net income taxes on businesses

engaged in the taxing state exclusively in interstate commerce, in certain limited situations. The statute thus prohibits state net income taxes (including taxes, like New York's franchise tax, measured by net income) on foreign corporations whose sole contact with the taxing state consists of either, or both, of the following:

> (1) the solicitation of orders by such person [viz., the corporation], or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State; and
>
> (2) the solicitation of orders by such person, or his representative, in such State in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in paragraph (1). (15 U.S.C. § 381(a)).

One of the defects of P.L. 86-272 is its failure to define the term "solicitation". The courts of various jurisdictions have grappled with this issue, giving rise to two broad and contrary views of the matter. One such view is that the Congress intended the term "solicitation" to be narrowly construed, in which case ancillary activities such as promoting sales or scanning the inventory of retailers would take the selling corporation's activities outside the ambit of the statutory protection. See, Hervey v. A.M.F. Beaird, 464 S.W.2d 557 (Ark. 1971); See also, Clairol, Inc. v. Kingsley, 262 A.2d 213 (N.J. 1970). A more liberal approach has been taken by other jurisdictions, such as Pennsylvania. See, U.S. Tobacco Co. v. Commonwealth, 386 A.2d 471 (Pa. 1978). The New York State Court of Appeals has apparently opted for a liberal view, bringing within the concept of solicitation those sundry activities which are closely related to the efforts of solicitation taken in the narrow sense. Gillette Co. v. Tax Comm'n., 56 A.D.2d 475 (1977), aff'd, 45 N.Y.2d 846 (1978). The Gillette Company, in addition to "pure" solicitation, had its representatives in New York engage in advising certain retailers, who did not order directly from Gillette, on display techniques. Id. The court held such activities not to transcend the limits of P.L. 86-272, stating that:

> although it is not possible to state a general rule demarcating solicitation from merchandising, certainly where, as here, the complaining taxpayer owns no real or personal property (except salesmen's samples) in the State and makes no repairs on its goods after sale, the purpose of Public Law 86-272 would be frustrated by permitting the tax. Advice to retailers on the art of displaying goods to the public can hardly be more thoroughly solicitation, i.e., in this context, an effort to induce purchase of Gillette products. Making the evanescent distinctions which would be necessary to justify the imposition of the tax upon petitioner herein would, if indulged in by the several States, tend to "balkanize the American economy", a result which it was Congress' purpose to prevent.

Id. at 482. The court also grounded its conclusion on a finding that "some sort of calls upon indirect accounts was expressly anticipated and condoned by the statute .... " For an instance of the Tax Commission's application of this approach, see National Tires, Inc., Decision of the State Tax Commission, October 17, 1980, TSB-H-80(28)C.

In the present case, Hauserman, Ltd's ownership of the furniture held as samples is purely ancillary to its solicitation and, therefore, does not of itself give rise to a basis for taxation. (See 20 NYCRR 1-3.4(b)(9)(iv)(a)).Using samples in connection with solicitation is merely incidental to offering tangible personal property for sale and will not make the corporation taxable. (See also, American Association of Advertising Agencies, State Tax Commission Advisory Opinion, November 7, 1980, TSB-H-80(32)C). However, the maintenance of the New York showroom-sales office by Sunar, U.S.A. on behalf of Hauserman, Ltd. exceeds the statutorily prescribed minimum activities protected by Public Law 86-272, and thereby subjects Hauserman, Ltd. to tax. The embodiment of the Public Law exemption in the Franchise Tax Regulations specifically provides that maintenance of an office in New York exceeds the scope of the federally protected solicitation activities, and renders a corporation subject to tax. (20 NYCRR §1-3.4(b)(9)(vi)). The regulations further define an office as "any area, enclosure, or facility which is used in the regular course of the corporate business." (20 NYCRR 1-3.2(e)). The New York showroom-sales office operated by Sunar, U.S.A. falls within the contemplation of the regulations as an "office", and it is, in effect, maintained by Hauserman, Ltd., via the Exclusive Sales Representative Agreement between Hauserman, Ltd. and Hauserman, Inc. This conclusion flows from the extent of Hauserman, Ltd's control over the operations of the office by Hauserman, Inc.

The regulations, tracking the federal statute, do provide the following exception to taxability based solely on the maintenance of an office:

> [A] corporation will not be considered to have engaged in taxable activities in New York State by reason of maintaining an office in New York State by one or more independent contractors whose activities on behalf of the corporation in New York State consist solely of making sales, or soliciting orders for sales, of tangible personal property. (emphasis added) (20 NYCRR 1-3.4(b) (9) (ii).

The regulations further provide, in accordance with the federal statutory provisions, that:

> [t]he term independent contractor means a commission agent, broker, or other independent contractor who is engaged in selling, or in soliciting orders for the sale of tangible personal property for more than one principal who holds himself out as such in the regular course of his business activities. The term representative does not include an independent contractor. (emphasis added) (20 NYCRR 1-3.4(b) (9) (iii)).

While the maintenance of an office by such an independent contractor is protected by the statute, the same is not true where an office is maintained by an agent or employee of the foreign corporation. (See, Jantzen Inc. v. District of Columbia, 395 A.2d 29 (D.C. 1978)). In Jantzen, the court went on to conclude that the "fact that the statute allows the maintenance of an office by an independent contractor, but makes no such express allowance with respect to a sales representative, supports the inference that the latter is not permitted such an exemption." (Id. at 31).

In the present case, the Exclusive Sales Representative Agreement expressly provides, in section eight, that "[i]t is understood and agreed that the Representative is an independent contractor and is not in any manner an agent or employee of the Company .... " The statutory definition provided in Public Law 86-272, however, requires an independent contractor to be engaged in a representative capacity for more than one principal. (20 NYCRR §1-3.4 (b)(9)(iii)). On the facts presented, Hauserman, Inc. represents only one principal -- that being Hauserman, Ltd.. Therefore, despite the obvious intent of the parties Sunar, U.S.A. is a representative of, not an independent contractor for, Hauserman, Ltd., for purposes of Public Law 86-272. Further, the term independent contractor generally signifies "one who, exercising an independent employment, contracts to do a piece of work according to his own methods, and without being subject to the control of his employer, except as to the result of the work." Ostrander v. Billie Holm's Village Travel, Inc., 87 Misc. 2d 1049, 1051 (1976), citing Hogan v. Comac Sales, 245 A.D. 216, 221 (3d Dept. 1935) (Hefferman, J., dissenting), aff'd, 271 N.Y. 562 (1936). Despite the terminology employed, Sunar, U.S.A. is not in substance an independent contractor, as Hauserman, Ltd. maintains control over essentially all aspects of the services performed by Sunar, U.S.A.

As to Sunar Hauserman, Inc., not only has this corporation replaced Hauserman, Ltd. in its possession of ultimate control over the activities carried on in the New York showroom, under the new arrangement it is Sunar Hauserman, Inc. which itself rents the real property in question and thus clearly falls within the ambit of Article 9-A's jurisdictional standard.

The activities of Hauserman, Inc. performed in new York are two-fold: (1) providing the service of acting as sales representative for Hauserman, Ltd. pursuant to the "Exclusive Sales Representative Agreement," and (2) discharging this agency obligation by, among other things, leasing the New York showroom-sales office and actually soliciting orders for the goods. These activities are properly to be evaluated separately, for purposes of determining taxability under Article 9-A of the Tax Law.

As previously noted, the Franchise Tax is imposed on a corporation for, among other things, doing business in New York State. (Tax Law, §209). In the instant case, those activities performed in the discharge of agency obligations are performed on behalf of Hauserman, Ltd., and accordingly do not constitute doing business for Hauserman, Inc. However, by providing its services as sales representative to Hauserman, Ltd. and creating the agency, Hauserman, Inc. is specifically carrying out a (its) business purpose. Further, Hauserman, Inc. is being remunerated for its services by

Hauserman, Ltd. in accordance with the Exclusive Sales Representative Agreement. Thus, it must be concluded that it is "doing business" for purposes of the Franchise Tax. (20 NYCRR §1-3.2(b)). Accordingly, Hauserman, Inc. is subject to the New York State Franchise Tax on Business Corporations.

DATED: September 9, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.

NYS Department of State
Division of Corporations

Entity Information

Selected Entity Name: SUNARHAUSERMAN, INC.

Current Entity Name:	SUNARHAUSERMAN, INC.
Initial DOS Filing Date:	07/07/1921
County:	NEW YORK
Jurisdiction:	OHIO
Entity Type:	FOREIGN BUSINESS CORPORATION
Current Entity Status:	ACTIVE

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)
C/O C T CORPORATION SYSTEM
111 EIGHTH AVENUE
NEW YORK, NEW YORK 10011

Registered Agent
C T CORPORATION SYSTEM
111 EIGHTH AVENUE
NEW YORK, NEW YORK 10011

NOTE: New York State does not issue organizational identification numbers.

[Search Results] [Search the Database]

[Division of Corporations, State Records and UCC Home Page] [NYS Department of State Home Page]

CLOSED, CONS

U.S.

Bankruptcy Court
Northern District of Ohio (Cleveland)
Bankruptcy Petition #: 89-14101-dfs

Assigned to: JUDGE DAVID F SNOW
Chapter 11
Voluntary
Asset

Date Filed: 10/05/1989
Date Terminated: 02/24/2000

Hauserman, Inc.
5711 Grant Ave
Cleveland, OH 44105
Tax id: 91-0841501
Debtor

represented by

Marvin A Sicherman
Dettelbach, Sicherman & Baumgart
1100 Ohio Savings Plaza
1801 East 9th Street
Cleveland, OH 44114-3169
(216) 696-6000
Fax : (216) 696-3338
Email: msicherman@dsb-law.com

Filing Date	Docket Text
02/01/1994	All previous docket events for this case can be found on a hard card docket in the clerk's office. lsmit (Entered: 02/04/1994)
02/24/2000	Case Closed. pmcca (Entered: 02/24/2000)

PACER Service Center

Transaction Receipt

08/18/2003 09:09:35

PACER Login:	ss0050	**Client Code:**	5691700001
Description:	Docket Report	**Case Number:**	89-14101-dfs
Billable Pages:	1	**Cost:**	0.07

United States Bankruptcy Court
Northern District of Ohio

Notice of Bankruptcy Case Filing

A bankruptcy case concerning the debtor(s) listed below was filed under Chapter 11 of the United States Bankruptcy Code, entered on 02/04/1994 at 08:59 AM and filed on 02/01/1994.

Hauserman, Inc.
5711 Grant Ave
Cleveland, OH 44105
Tax id: 91-0841501

ERROR - Unable to read de_who Record from Person Table

prid = 663

PACER Service Center			
Transaction Receipt			
08/18/2003 09:08:28			
PACER Login:	ss0050	**Client Code:**	5691700001
Description:	Notice of Filing	**Case Number:**	89-14101-dfs
Billable Pages:	1	**Cost:**	0.07

89-14101-dfs Hauserman, Inc.
Case type: bk **Chapter:** 11 **Asset:** Yes **Vol:** v **JUDGE:** DAVID F SNOW
Date filed: 10/05/1989 **Date terminated:** 02/24/2000 **Date of last filing:** 02/24/2000

Case Summary

Office:	Cleveland	**Filed:**	10/05/1989
County:	Cuyahoga	**Terminated:**	02/24/2000
Fee:	Paid	**Discharged:**	
Reopen:	0	**Reopened:**	
Previous Term:		**Converted:**	
Disposition:	Discharge Granted	**Dismissed:**	
Joint:	n		

Pending Status: Case Closed
Flags: CLOSED, CONS
Party 1: Hauserman, Inc. (91-0841501) (db)
Atty: Marvin A Sicherman **Represents party 1:** db **Phone:**(216) 696-6000
Fax: (216) 696-3338
Email: msicherman@dsb-law.com

PACER Service Center			
Transaction Receipt			
08/18/2003 09:01:40			
PACER Login:	ss0050	**Client Code:**	5691700001
Description:	Case Summary	**Case Number:**	89-14101-dfs
Billable Pages:	2	**Cost:**	0.14

89-14101-dfs Hauserman, Inc.
Case type: bk **Chapter:** 11 **Asset:** Yes **Vol:** v **JUDGE:** DAVID F SNOW
Date filed: 10/05/1989 **Date terminated:** 02/24/2000 **Date of last filing:** 02/24/2000

Creditors

Allen C Clark
Palm Beach County
P.O.Box L (cr)
West Palm Beach, FL 33402-3715

Arthur E Carlson
42 Normandy Dr. (cr)
Westfield, NJ 07090-3432

Arthur H. Dillemuth
17558 Merry Oaks Trail (cr)
Chagrin Falls, OH 44022-5623

At&T
430 Mountain Ave. (cr)
Murray Hill, NJ 07974-2798

Baker & Hostetler
Attn: Matthew Goldman
3200 National City Center (cr)
Cleveland, OH 44114-3401

Complete Installation Services
William S. Smith
One Oxford Centre, 13th Floor (cr)
Pittsburgh, PA 15279

Daniel Logan
400 Blue Hill Dr (cr)
Westwood, MA 02090-2161

Deborah Wright
2394 Mariner Sq Dr#135 (cr)
Alameda, CA 94501-1016

E. Roy Satterthwait
454 Sabal Trail Circle (cr)
Longwood, FL 32779-6128

Elizabeth A White
1285 Dellwood Dr. (cr)
Westlake, OH 44145-1360

Ernst And Young Inc.
1300 Huntington Blvd. (cr)
Cleveland, OH 44115-1405

Facility Space Solutions
P.O. Box 1982 (cr)
Placentia, CA 92670-0198

Gray Industrial Supply
1412 East 25th St. (cr)
Cleveland, OH 44114-2178

Internal Revenue Service
P.O. Box 99183 (cr)
Cleveland, OH 44199-0183

Judith Ann Wisniewski
6512 Rousseau Dr. (cr)
Parma, OH 44129-6309

Konica Business Machines Usa
500 Day Hill Rd. (cr)
Windsor, CT 06095-4704

Leaseway Trucking Inc.
3700 Park East Dr. (cr)
Cleveland, OH 44122-4343

Megan K Kennedy
2652 Edgerton Rd. (cr)
University Hts., OH 44118-4415

Musto Properties Inc.
1280 Columbus Ave. (cr)
San Francisco, CA 94133-1324

NY Telephone Co
375 Pearl St #1208 (cr)
New York NY 10038

Niels Diffrient
879 North Salem Road (cr)
Ridgefield, CT 06877-1714

Ohio Department Of Taxation
Attention: Claims Section (cr)
30 East Broad Street
Columbus, OH 43216

Owen Breitner
38 Azalea Rd. (cr)
Sharon, MA 02067-3214

R. G. Hardy & S. A. Markus
900 Bond Court Bldg.
1300 E. Ninth St.
Cleveland, OH 44114-1502 (cr)

Ralph Rocco
U.S. Bankruptcy Court, Rm. 434
201 Superior Avenue
Cleveland, OH 44114-1201 (cr)

Robert S Nash
schulte,Roth & Zabel
900 Third Ave
New York, NY 10022-4728 (cr)

Robin Lynn Wisniewski
6512 Rousseau Dr.
Parma, OH 44129-6309 (cr)

Ryder Truck Rental Inc.
3600 N.W. 82nd Ave.
Miami, FL 33166-6682 (cr)

Seko-Air Freight Inc.
790 Busse Rd.
Elk Grove Village, IL 60007-2118 (cr)

Shirley Miller
4609 Colfax Ave.So.Upper
Minneapolis, MN 55409-2335 (cr)

Stanley Hardware
195 Lake St.
New Britain, CT 06052-1335 (cr)

Superior Fast Freight
P.O.Box 60100
Terminal Annex
Los Angeles, CA 90060-0100 (cr)

The Commerrcial Traffic Co.
12487 Plaza Dr.
Parma, OH 44130-1056 (cr)

The Independent Election Co.
2335 New Hyde Park Dr
Lake Success, NY 11042-1212 (cr)

Thomas Coyne
8115 Whitehaven Dr.
Parma, OH 44129-5363 (cr)

Tnt Holland Motor Express,Inc.
750 E. 40th St. (cr)
Holland, MI 49423-5398

U.S. Trustee
113 St. Clair Avenue
Suite 350 (cr)
Cleveland, OH 44114-1214

United Parcel Service Inc.
3312 Broadway St. N.E. (cr)
Minneapolis, MN 55413-1709

Universal Trucking Inc.
1940 S. Elizabeth St (cr)
Kokomo, IN 46904-6069

Xerox Corp.
350 S.Northwest Highway (cr)
Park Ridge, IL 60068-4276

Yellow Freight Sys. Inc.
P.O.Box 7929 (cr)
Overland Park, KS 66207-0929

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08/18/2003 09:01:53			
PACER Login:	ss0050	**Client Code:**	5691700001
Description:	Creditor List	**Case Number:**	89-14101-dfs
Billable Pages:	1	**Cost:**	0.07

89-14101-dfs Hauserman, Inc.
Case type: bk **Chapter:** 11 **Asset:** Yes **Vol:** v **JUDGE:** DAVID F SNOW
Date filed: 10/05/1989 **Date terminated:** 02/24/2000 **Date of last filing:** 02/24/2000

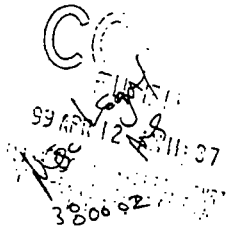
Pending Statuses

Status	Begin Date	Time in Status	#	Status Set By
Case Closed	02/24/2000	1271 days		Close Bankruptcy Case

No statuses have been terminated for this case.

PACER Service Center			
Transaction Receipt			
08/18/2003 09:09:00			
PACER Login:	ss0050	**Client Code:**	5691700001
Description:	Status	**Case Number:**	89-14101-dfs
Billable Pages:	1	**Cost:**	0.07

Schuerman #1



UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In Re:	)	Case No. 89-14100-S
	)	89-14101-S
SUNARHAUSERMAN, INC. and	)	
HAUSERMAN, INC.,	)	Chapter 11
	)	
Debtor.	)	Judge: DAVID F. SNOW

ORDER CONFIRMING JOINT LIQUIDATING PLAN OF REORGANIZATION PURSUANT TO §1129(a) OF THE BANKRUPTCY CODE

At Cleveland, in said District, this 27th day of April, 1999.

Hauserman, Inc. and SunarHauserman, Inc., the above-named Debtors, having filed a Joint Liquidating Plan of Reorganization and Disclosure Statement, which Disclosure Statement was approved by this Court by Order entered on January 28, 1999; and the approved Disclosure Statement and Plan (the "Plan") having been transmitted to creditors and parties in interest as required by the Bankruptcy Code, and after more than 25 days due notice by mail of the hearing on Acceptance and Confirmation of the Plan, the hearing having been held on March 11, 1999; and

IT APPEARING TO THE COURT AND THE COURT THEREFORE FINDS:

1. The Plan complies with the applicable provisions of Chapter 11 of the Bankruptcy Code.

2. The proponent of the Plan has complied with the applicable provisions of Chapter 11 of the Bankruptcy Code.

3. The Plan has been proposed in good faith and not by any means forbidden by law.

4. Any payment made or promised by the proponent, by the Debtor, or by any person issuing securities or acquiring property under the Plan, for services or for costs and expenses in, or in connection with the case, or in connection with the Plan and incident to the case, has been disclosed to the Court; and any such payment made before confirmation of the Plan is reasonable; or if such payment is to be fixed after confirmation of the Plan, such payment is subject to the approval of the Court as reasonable.

5. The identity, qualifications, and affiliations of the persons who are to be directors and officers of the Debtor after confirmation of the Plan have been fully disclosed and the appointment of such persons to such offices, or their continuance therein, is equitable and consistent with the interests of creditors and equity security holders and with public policy. The Proponent of the Plan has disclosed the identity of all insiders that will be employed or retained by the Reorganized Debtors and the nature of any compensation for such insider.

6. The Plan does not affect the rights of any regulatory commission with jurisdiction.

7. With respect to each class of claims or interests, the holders thereof will receive, pursuant to the terms of the Plan, property of a value as of the Effective Date of the Plan, that is not less than the amount that such holder would receive if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code on such date.

8. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that:

A. with respect to a claim of a kind specified in §507(a)(1) or §507(a)(2) of the Code, on the Effective Date of the Plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

B. with respect to a claim of a kind specified in §§507(a)(3), 507(a)(4), 507(a)(5), 507(a)(6) and 507(a)(7) of the Code, each holder of a claim of such class will receive cash payments of a value, as of the Effective Date of the Plan, equal to the allowed amount of such claim.

9. Excluding any acceptance of the Plan by any insider, at least one class of claims that is impaired under the Plan has accepted the Plan.

10. Confirmation of the Plan is not likely to be followed by a need for further financial reorganization of the Debtor.

11. All fees payable under 28 U.S.C. §1930 have been paid or the Plan provides for the payment of all such fees on the Effective Date of the Plan.

12. The Debtors do not as of the current time have or provide retiree benefits, as that term is defined in §1114(a) of the Bankruptcy Code, and all such Plans were terminated prior to the date hereof.

13. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of §5 of the Securities Act of 1933.

14. Classes I, II, III and IV claimants are unimpaired under the Plan. Pursuant to §1126(f), holders of a claim or interest of a class that is not impaired under a plan are conclusively presumed to have accepted the Plan, and that solicitation or acceptance with respect to such class from the holders of claims or interests of such class is not required.

15. Classes V, VI and VII are impaired under the Plan.

16. Class V has accepted the Plan in that the timely ballots accepting the Plan cast in such class was more than two-thirds in amount and more than one-half in number of the voting claims in such Class; and Classes VI and VII will receive nothing under the Plan and are deemed to have rejected the Plan.

17. All of the applicable requirements of §1129(a) of the Bankruptcy Code have been met by the Plan, other than §1129(a)(8).

18. The proponent of the Plan has asked this Court to confirm the Plan notwithstanding the requirement of §1129(a)(8).

19. The Plan does not discriminate unfairly, and is fair and equitable with respect to each class of claims or interests that is impaired under, and has not accepted, the Plan in that Classes VI and VII are, respectively, claims that are subordinated to Class V, and equity holders, neither of whom will receive any distribution under the Plan.

20. The objection of the United States of America Internal Revenue Service to the confirmation of the Plan has been withdrawn, in that the Debtors have agreed because of the economic effect on creditors, and the Court has approved the agreement to transfer the Internal Revenue Service's Claim No. 1427-02 in the allowed amount of $757,938.23 from Class VI to Class V; and to further provide the distribution to all Classes entitled to distribution under the Plan with the exception of Class V is to occur on the Effective Date.

IT IS THEREFORE ORDERED that it be and hereby is determined that all of the applicable requirements of §1129(a) other than paragraph (8) are met with respect to the Plan and that the Plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and had not accepted, the Plan.

-4-

IT IS FURTHER ORDERED that the Plan filed by the Debtors, the Proponents of the Plan, on December 7, 1998, be and the same hereby is Confirmed.

IT IS FURTHER ORDERED as follows:

1. All executory contracts having been rejected prior to the filing of the Plan, any party to such contracts whose claim has not been filed and allowed, is forever barred from asserting such claim(s) against the Debtors.

2. The Reorganized Debtors by and through William Hauserman, their Chief Executive Officer, shall be responsible for the disbursements to be made under the Plan, and are to serve without bond or compensation.

3. The Reorganized Debtors are on the 13th day after the entry of the within Order, provided no appeal is taken or made by any party in interest, to commence distribution under the Plan to all Class I, II and Class IV claimants with allowed claims. Distribution to Class V claimants with allowed claims shall be delayed until the Court has determined and allowed any and all unpaid administrative expenses consisting of the final fees and expenses to be requested by Dettelbach, Sicherman & Baumgart, as counsel for the Debtors and Debtors in Possession and Squire, Sanders and Dempsey, as Special Counsel to the Debtors as Debtors in Possession. Further in order to determine the precise amount of the funds available to be distributed to Class V claimants with allowed claims, the post-confirmation Debtors may prepay the expenses of making the distribution, the fees owed and to be paid to the Office of the U. S. Trustee through either the third or fourth quarter of the year 1999, as may be necessary to fully pay such fees, and any other necessary expenses to finalize all affairs of the Debtors.

4. For purposes of making all distributions under the Plan as Confirmed, as well as the

payment of any administrative expenses as is provided for in this Order and the fees of counsel to be allowed prospective, the post-confirmation Debtors may continue to use the existing bank accounts of the Debtors as Debtors in Possession.

5. This Court shall and does retain jurisdiction for the following purposes:

A. Enforcement and implementation of the effect of the provisions of the Confirmed Plan.

B. Correction of any defects, curing of any omissions, or reconciliation of any inconsistencies in the Confirmed Plan, as may be necessary to carry out the purpose and intent of the Confirmed Plan.

C. The modification of the Confirmed Plan pursuant to §1127 of the Bankruptcy Code.

D. The entry of an Order necessary to enforce the title, rights and powers of the Debtors pursuant to §§1107 and 1141 of the Bankruptcy Code; and to impose such limitations, restrictions, terms and conditions of such title, rights and powers as this Court may deem necessary.

E. The entry of an Order concluding, terminating and closing the within case.

6. Title to all existing property of the estate and assets of the Debtors and Debtors in Possession are hereby vested in the Reorganized Debtors, free and clear of all claims and interests of creditors and equity security holders, for the exclusive purpose of making the distributions provided for herein and in the Confirmed Plan. The Reorganized Debtors shall be and are entitled to management of their affairs without further Order of this Court for purposes of making and concluding the distribution to creditors.

7. The provisions of the Confirmed Plan are binding upon and bind the Debtors, any entity issuing securities under the Plan, and any creditor and equity security holder, whether or not the claim or interest of such creditor or equity security holder is impaired under the Confirmed Plan,

and whether or not such creditor or equity security holder has filed a claim or proof thereof or is deemed pursuant to §501 of the Bankruptcy Code to have filed a proof of claim in this case under Title 11 of the U.S. Code, or accepted or rejected the Plan.

8. As is provided for in §1141 of the Bankruptcy Code, the Debtors, while not granted a discharge, are released from all dischargeable debts, particularly those debts which arose before the entry of this Order, and any debts of the kind specified in §§502(g), 502(h), or 502(i) of the Bankruptcy Code. Any judgment heretofore or hereafter obtained in any court other than this Court is null an void as a determination of the liability of the debtors with respect to all debts of the Debtors. ~~All creditors whose debts are dealt with ;under the Plan or this Order, and all creditors~~ whose judgments are declared null and void by ~~this Order~~, are enjoined from instituting or continuing any action or ~~employing~~ any process or engaging in any act to collect such debts as liabilities ~~of the~~ Reorganized Debtors, except with respect to the distributions to be made pursuant ~~to the Confirmed Plan.~~ D.S.

9. Any unclaimed distributions under the Confirmed Plan are to be deposited by the post-confirmation Debtors with the Clerk of this Court and to be handled by the Clerk in the same manner as unclaimed distributions in a Chapter 7 case would be reported and handled.

10. Upon presentment and delivery of a file stamped copy of this Order to the Secretary of State of the State of Ohio, the Articles of Incorporation and qualification to do business of both Debtors shall be canceled and terminated by the Secretary of State.

11. The Debtors shall, pursuant to Rule 3020(c) and Rule 2002(f)(7) of the Federal Rules of Bankruptcy Procedure, give notice of the entry of the within Order to the Debtor, creditors, equity security holders, and other parties in interest.

DAVID F. SNOW, United States Bankruptcy Judge

ORDER SUBMITTED BY:

Marvin A. Sicherman (#0007355)
DETTELBACH, SICHERMAN & BAUMGART
A Legal Professional Association
1801 East Ninth Street, Suite 1100
Cleveland, OH 44114-3169
Phone: (216) 696-6000
Fax: (216) 696-3338

Attorneys for Hauserman, Inc. and
SunarHauserman, Inc., Debtors and Debtors in Possession

Approved:

Donza Poole (Reg. # 0039353),
Special Ass't. U. S. Attorney
for the United States of
America, Internal Revenue Service

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April 8, 1999

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1.	9/22/1999	199925701178	DIS DOMESTIC/DISSOLUTION		35.00	0.00	0.00	0.00	0.00
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Secretary of State - J. Kenneth Blackwell

380002

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Document(s)	*Document No(s):*
DOMESTIC/DISSOLUTION	*199925701178*

United States of America
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Office of the Secretary of State

Witness my hand and the seal of the Secretary of State at Columbus, Ohio, This 7th day of September, A.D. 1999

J. Kenneth Blackwell
Secretary of State

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Houghton offers a scope and depth of technical services unequaled in the industry. Through our unique FLUIDCARE Chemical Management program, Houghton customers are finding new ways to save on overall process chemical and disposal costs.

Today, as Houghton continues to expand its Pacific Rim operations and grow its worldwide manufacturing and research facilities, Houghton is still guided by the goals of its founders: *to study industry and provide the oils and chemicals needed to keep it running.* We work to help our customers run safer, smarter, and more efficiently. We invite you to join our customer family.

1970 William MacDonald becomes Chairman and CEO and Bill MacDonald Jr. is elected Treasurer.

1978 Bill MacDonald Jr. becomes CEO.

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N.S. Marketing

Source: Legal > States Legal - U.S. > Ohio > Cases > OH Cases, Administrative Decisions & Attorney General Opinions, Combined ⓘ
Terms: "n.s. marketing" or "ns marketing" or "c&c supply" or "c & c supply" or "chemical recovery systems" (Edit Search)

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*1991 Ohio App. LEXIS 3889, **

Bradford Supply Co., et al., Plaintiffs-Appellants v. **N.S. Marketing,** Inc., et al., Defendants-Appellees

Case No. 90CA3

Court of Appeals of Ohio, Fourth Appellate District, Washington County

1991 Ohio App. LEXIS 3889

August 12, 1991
August 12, 1991, Released

DISPOSITION: [*1]

JUDGMENT AFFIRMED.

CASE SUMMARY

PROCEDURAL POSTURE: Appellants, a supply company and two oil companies, sought review of a judgment from the Washington County Court of Common Pleas (Ohio), which found in favor of appellee, chemical company, in an action against the chemical company for negligence, breach of contract, and breach of warranty.

OVERVIEW: The supply company purchased two chemical products from the chemical company for the two oil companies. The chemicals were allegedly incompatible with one another and caused problems in the oil production process. Appellants filed an action against the chemical company seeking damages for the cleaning costs of the oil wells, a return of the purchase price of the chemicals, and punitive damages. The trial court found in favor of the chemical company on the ground that appellants failed to establish a prima facie case against the chemical company. On appeal, the court upheld the judgment and ruled that, based upon the imprecise and contradictory identification of the various chemical samples by appellants' witness, the trial court did not abuse its discretion in denying appellants' motion for a new trial. The court found that appellants' evidence was of little probative value in evaluating the parties' respective claims and that the information presented by the witness regarding the chemicals, coupled with the important issue of their origin and mode of shipment, was extremely confusing. Finally, the demonstrations by the chemical company's witness had no effect upon the judgment.

OUTCOME: The court affirmed the judgment of the trial court.

CORE TERMS: chemical, demonstration, emulsion, drum, parasolve, new trial, inhibitor, mixing, gelatinous, mixed, shipped, shipment, mixture, assignment of error, regular, drip, abused, appellants failed, open air, identification, injected, manifest, steel, rust, oil, mix, motion to dismiss, burden of proof, final judgment, date of filing

LexisNexis (TM) HEADNOTES - Core Concepts - ◆ Hide Concepts

Civil Procedure > Appeals > Rehearings

HN1 The Ohio Rules of Civil Procedure do not provide for a motion to reconsider a final judgment.

Civil Procedure > Relief From Judgment > Motions for New Trial

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

HN2 Ohio R. Civ. P. 59(A)(6) provides that a new trial "may" be granted if the judgment is not sustained by the weight of the evidence. The use of the word "may" indicates that it is in the trial court's discretion to make such a ruling and the discretionary nature of that ruling is reflected in the case law. Accordingly, upon appellate review, the order of a trial court granting or denying a new trial under Civ. R. 59(A)(6) may be reversed only upon a showing of an abuse of discretion by the trial court. In determining that a trial court abused its discretion, an appellate court must find more than an error of law or judgment; it must find that the trial court's decision was unreasonable, arbitrary, or unconscionable.

COUNSEL: Mr. Paul G. Bertram, Jr., Marietta, Ohio, for Appellants.

Mr. William Haynes, Jr., Toronto, Ohio, for Appellee, **N.S. Marketing,** Inc.

Fields & Nichols, Mr. Brian R. Walker, Marietta, Ohio, for Appellee, Chemply.

JUDGES: For the Court: BY: William H. Harsha, Judge. Abele, J., & Grey, J, Concur in Judgment & Opinion.

OPINIONBY: HARSHA

OPINION: DECISION AND JUDGMENT ENTRY

This is an appeal from a defense verdict of nonliability entered by the Washington County Court of Common Pleas following a trial to the court. Appellants brought this action seeking damages as a result of Appellees' alleged negligence, breach of contract, and breach of warranty. On appeal, appellants assert the following assignments of error:

I. Plaintiffs contend that Judge Boyer's finding that . . . due to inadequate source identification of product samples and mixtures represented by plaintiffs' Exhibits 6 through 13, plaintiffs failed to carry their burden of proof. . . is against the weight and sufficiency of the evidence and that a new trial should be granted pursuant to Rule 59(A)(6).

II. The trial court erred **[*2]** in permitting over the objection of plaintiff the chemical mixing demonstration and testing of defendants' witness, Nick Schlatts, Jr., and for the allowance into evidence of the resulting chemical mixture reactions * * *.

Appellants alleged that appellant, Bradford Supply Company (BSC) purchased from appellee, **N.S. Marketing,** Inc. (NSM) two chemical products known as Foamax and Parasolve 1000. These products are used in the production of oil and gas. They are injected into the oil/gas wells to facilitate unimpeded flow from the wells. Foamax is a soap product used in wells to assist the natural gas pressure within the wells to force the oil and water to the surface (as opposed to the liquid being pulled to the surface by a mechanical pump). Parasolve 1000 is used to dissolve paraffin which tends to accumulate in the well bore and tubing, obstructing the flow from the wells. These products, although formulated by NSM, are blended by appellee, Chemply. The office and laboratory of NSM is located on Chemply property.

Appellants further allege that NSM informed BSC that the two chemical products were

compatible in that they could be used simultaneously in the same well. BSC used the **[*3]** two chemicals in two wells (Dunn #1 and Hill #3) owned by appellants, Jacklyn Company, Inc., B.P. Account Partnership, and Valentine Oil Properties. Appellants claim that when the chemicals were injected into the wells, they combined to form a gelatinous substance which obstructed the wells and decreased production. Appellants alleged that the chemicals were impure, defective and failed to perform as warranted. Appellants claimed damages for the cleaning costs of the wells and further sought the return of the purchase price of the chemicals, punitive damages and their costs in prosecuting the action.

The testimony at trial revealed that for a period of time, BSC and NSM worked together to identify the cause of, and a solution to, the formation of the gelatinous material. NSM determined through testing that the formation of the gel resulted from the mixture of a high carbon "drip gas" with the Foamax. BSC proceeded under that theory but later found that when it mixed the Foamax and Parasolve 1000 in the open air, the two chemicals formed a gelatinous emulsion in the absence of "drip gas."

BSC, feeling that the chemicals were incompatible, brought the above action. NSM defended under **[*4]** the theory that the gelatinous emulsions in the wells and the gelatinous emulsions created by BSC in the open air resulted from two different causes. NSM maintained its belief that the emulsions in the wells were caused when BSC introduced "drip gas" in combination with Foamax. NSM attributed the open air emulsion to the fact that BSC was mistakenly shipped a drum of Foamax containing a rust inhibitor. This Foamax formulation was created specifically for Burdett Drilling by NSM. Burdett required that NSM package Foamax in steel drums rather than plastic drums; thus NSM created a formulation of Foamax containing a corrosion inhibitor. A drum of this "Burdett Foamax" was mistakenly shipped from Chemply's warehouse to BSC. However, this shipment did not occur until after BSC had discovered the gelatinous emulsions in the Dunn #1 and Hill #3 wells. It was NSM's contention that if the "Burdett Foamax" created an emulsion, it was a result of the rust inhibitor; since BSC received that type Foamax only after the emulsions formed in the wells, it must have been the "drip gas" BSC mixed with the regular Foamax that caused those emulsions.

At trial, appellants mixed Foamax and Parasolve 1000 **[*5]** together to demonstrate to the court that this mixing created a gelatinous emulsion. Appellants' two mixtures were combinations of the two chemicals reportedly taken from different sources at appellants' facilities and received at different times by appellants. Upon mixing the chemicals, a gelatinoid substance was formed in both cases. NSM also conducted a chemical mixing demonstration at trial.

Appellants' first assignment of error asserts that "a new trial should be granted pursuant to Rule 59(A)(6)" because the trial court's determination that appellants failed to meet their burden of proof "is against the weight and sufficiency of the evidence." We note initially that appellants did not file a motion for new trial below. They filed a "Motion for Reconsideration." The trial court treated this motion as a motion for new trial. (We have done the same in ruling on the appellee's motion to dismiss. We note HN1 the civil rules do not provide for a motion to reconsider a final judgment). The trial court denied appellants' motion.

Appellants argue that the trial court erred in failing to grant a new trial in that the judgment was contrary to the weight of the evidence. They do not directly **[*6]** raise the argument that the judgment was against the manifest weight of the evidence. Accordingly, we must use the standard of review applicable to a trial court's decision as to whether to grant a new trial. We cannot apply the standard applicable to "manifest weight of the evidence" cases.

Civ. R. 59(A)(6) HN2 provides that a new trial "may" be granted if the judgment is not sustained by the weight of the evidence. The use of the word "may" indicates that it is in the trial court's discretion to make such a ruling and the discretionary nature of that ruling is

reflected in the case law. See, e.g., Rohde v. Farmer (1970), 23 Ohio St. 2d 82; Krejci v. Halak (1986), 34 Ohio App. 3d 1. Accordingly, upon appellate review, the order of a trial court granting or denying a new trial under Civ. R. 59(A)(6) may be reversed only upon a showing of an abuse of discretion by the trial court. See, Rohde, 23 Ohio St. 2d at 83, paragraph 1 of the syllabus; Krejci, 34 Ohio App. 3d at 3. In determining that a trial court abused its discretion, an appellate court must find more than an error of law or judgment; it must **[*7]** find that the trial court's decision was unreasonable, arbitrary or unconscionable. Cedar Bay Constr., Inc. v. Fremont (1990), 50 Ohio St. 3d 19, 22.

At trial, appellants attempted to demonstrate that regardless of which type Foamax was mixed with Parasolve 1000, an emulsion would form, and thus the two chemicals, as shipped to BSC, were incompatible. The record is unclear as to which of appellants' exhibits were mixed in each of the two mixing demonstrations. Appellants contend that the record shows that the first mixing demonstration was done with Foamax not containing a corrosion inhibitor, i.e., "regular Foamax," while the second demonstration was done with Foamax containing the inhibitor, i.e. "Burnett Foamax." However, upon cross-examination, appellants' witness stated that the Foamax used in both demonstrations came from the same drum.

To add to the confusion, appellants described or identified their samples or exhibits in very vague terms. For instance, the record reveals the following. Appellants' exhibit 6 was identified as being a sample of Foamax from ". . . the last one we received . . ." which the parties agree contained the rust inhibitor and **[*8]** was received around July 22, 1988. Appellants' exhibit 10 was identified as being ". . . withdrawn from the old drum . . ." Appellants' exhibit 11 was described as being ". . . removed from the drum . . ." without any further identification. In conducting their demonstrations, the appellants were directed by counsel to first mix samples ". . . having been purchased sometime back, not the last purchase . . ." Counsel further instructed the appellants' witness to mix samples ". . . from a batch not claimed by the defendant N.S. to have been polluted with an inhibitor." The results of this demonstration were identified as plaintiff's exhibit 12. Next appellants' witness was instructed to ". . . please mix the Foamex (sic) and parasolve from the last batch which. . . Defendant **N.S. Marketing** claims to have . . . introduction of an inhibitor into the parasolve or foamex (sic)?" The results of this demonstration were identified as plaintiff's exhibit 13.

After taking the matter under advisement, the trial court ruled that appellants failed to demonstrate that the two samples of Foamax used at trial were from different sources. The court held that appellants had failed to show that one of **[*9]** the samples of Foamax used in their demonstrations was regular Foamax. It is not contested that Burdett type Foamax will produce a gelatinoid substance when mixed with Parasolve 1000. Nor is it contested that Burdett type Foamax was never injected into the wells in combination with Parasolve 1000. Thus, when appellants failed to unequivocally identify one of the Foamax samples as being of the regular type, they left it up to the court to speculate as to the origin of both samples. The court expressly refused to engage in such speculation. The court stated:

Crucial to the inquiry is whether or not the Foamax samples which are alleged to be the source of the problem are drawn from one source or from two. If from two different drums with each producing an emulsion when mixed with the two different samples of Parasolve then the Plaintiff has at least shown that the Faomax [sic] is not properly formulated. If the Foamax is from a drum contended by the Defendants to have been of the special formulation because it was shipped in a steel drum, then the Plaintiffs have not proved their case even under their own theory. The last Faomax [sic] shipped was in a steel drum and therefore according **[*10]** to the defendants, would have been the Faomax [sic] with the inhibitor. The earlier shipments were in plastic drums.

In order to clarify this point the Defendants asked the Plaintiffs [sic] main witness, William Hass, to clarify the origin of these exhibits. Mr. Hass received from his employee, Mr. Stern, one sample of Parasolve and one sample of Foamax. He removed the other samples from the latest drums shipped. Where did Mr. Stern get his samples? Mr. Stern did not identify the

samples nor testify as to their origin. Nor did he specify the date of the samples. The Plaintiff has failed to prove that the samples were from two different shipments of Foamax. If both samples were taken from the last shipment - one by Mr. Stern and two by Mr. Hass - then they were from a shipment of Faomax [sic] which contained the inhibitor and which would form an emulsion on mixing with the Parasolve, but which was never used in the wells. The court cannot speculate on such a matter.

Based upon the imprecise and contradictory identification of the samples by appellants' witness, we cannot say the trial court abused its discretion in denying the motion for a new trial. In essence the trial court admitted **[*11]** the appellants' evidence so as to establish a prima facie case, but found its weight to be of little probative value in evaluating the parties respective cases. This is manifest in the court's denial of appellees improperly designated motion for a "directed verdict" which the court properly treated as a Civil Rule 41(B) motion to dismiss. Based upon the imprecise and somewhat confusing record before us, we cannot say the trial court abused its discretion. Appellant's first assignment of error is overruled.

Appellants' second assignment of error asserts that the trial court erred in admitting into evidence appellees' chemical mixing demonstrations and the resulting chemical mixtures. Each of appellees' briefs argues, inter alia, that the admission of appellees' demonstrations was harmless error, if error at all. Appellees contend that their demonstrations had no effect upon the decision. We agree.

The trial court held that appellants failed to prove that the expenses they incurred were reasonable and necessary for the correction of the problem. Appellants chose not to contest this finding in their brief on appeal nor in their motion for new trial. Appellees introduced evidence **[*12]** that the emulsions in the wells could have been cured by methanol injections rather than by the elaborate method used by BSC. In all fairness, it appears BSC was not aware of this solution until after it had begun cleaning the wells. However, this does not alleviate appellants of the burden of showing that the expenses they incurred were reasonable and necessary. Exclusion of appellees' demonstration would not have aided appellants in presenting this portion of their case. Accordingly, appellants' second assignment of error is not well taken, and the judgment of the trial court is affirmed.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that Appellees recover of Appellants costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Court of Common Pleas to carry this judgment into execution.

Any Stay previously granted by this Court is hereby terminated as of the date of filing of this Entry.

A certified copy of this Entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

NOTICE TO COUNSEL

Pursuant to **[*13]** Local Rule No. 11, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

JUDGMENT AFFIRMED.

Source: Legal > States Legal - U.S. > Ohio > Cases > **OH Cases, Administrative Decisions & Attorney General Opinions, Combined** ⓘ
Terms: **"n.s. marketing" or "ns marketing" or "c&c supply" or "c & c supply" or "chemical recovery systems"** (Edit Search)
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dmcwilliams@ssd.com

SQUIRE SANDERS | LEGAL COUNSEL WORLDWIDE

November 27, 2002

Thomas C. Nash
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Re: Chemical Recovery Systems, Inc. Site
TechLaw Volumetric Ranking and Waste-In List

Dear Tom:

The CRS Site Group and its members present the following comments and questions regarding the Revised Draft CRS Site Waste-In List and Volumetric Ranking (November 4, 2002) prepared by U.S. EPA contractor TechLaw, Inc. In addition to these Group comments, a number of CRS Site Group member companies have submitted, or will be submitting, comments regarding TechLaw's work. To complete the review process, we need a full and fair opportunity to correct potential errors in the TechLaw work and to engage in productive discussions regarding the choices and assumptions underlying the report. These comments and questions are designed to further those discussions.

1. The Waste-In List does not address significant categories of waste contributed to the Site. These additional amounts of waste include, but are not limited to, the following:

- Waste was contributed to the Site when it was discharged into the Locust Street stormdrain system. Evidence indicates that pigments and other chemicals were discharged into this storm sewer via manholes on Locust Street and they were observed draining into the East Branch of the Black River at the stormdrain outfall. The area surrounding the storm sewer outfall is one of the areas of concern at the Site where hazardous substances have been detected. This waste sent to the Site should be part of the TechLaw database.

- Many activities on the Site before and after the solvent recovery business have contributed hazardous substances to the Site that are not represented in the TechLaw database. For instance, evidence indicates that a car repair business inhabited the existing building closest to Locust Street after CRS solvent recovery activities had ceased. An underground sump

pit in this area appears to have been used for the disposal of waste oil and solvents. Many activities on this Site unrelated to the solvent recovery business may have contributed hazardous substances. These contributions are not included in the TechLaw Waste-In database. TechLaw's exclusive focus on the solvent recovery customers generates an incomplete view of the waste-in at the Site.

- Upstream sources may be significant waste-in contributors to any hazardous substances found in the sediment or surface water adjacent to the Site. A significant portion of the Site investigation will focus on areas that may have been impacted by wastes that arrived at the Site via the river. These are wastes at the Site that are not reflected in the TechLaw database.

2. The Volumetric Ranking identifies a number of significant PRPs that have not been named as PRPs. Please provide our Group with any information that you have regarding these unnamed PRPs and your basis for not naming them at this time. This includes, but is not limited to, C & C Supply Co.; N.S. Marketing, Inc.; E.F. Hauserman Co.; Ecology Chemical; and Carter Oil Co. Please indicate whether the volumes attributable to these unnamed PRPs should be considered orphan shares at this Site.

3. Some of the companies on the volumetric ranking appear to have been brokering and/or transporting wastes for multiple parties. When a second party is named specifically (as with some C & C Supply transactions), TechLaw attributes the volume to the second party as the waste generator. What efforts have been made to find customer records for C & C Supply, N.S. Marketing, or any other unnamed PRP that may have been involved with the transport or marketing of waste generated by other companies? The combined volumes represented by these entities exceed 500,000 gallons on the TechLaw volumetric ranking. If records were available to attribute these gallons to the companies generating the waste, the volumetric ranking could change significantly. Some "smaller volume" named PRPs (according to the TechLaw document) could end up with a significant volumetric share. Therefore, this information must be obtained before the volumetric ranking is used as the basis for de minimis settlements.

4. TechLaw has used the Dirty Inventory List, Accounts Receivable Records, Purchase Payment Journals, and Cash Payment Journals to develop this database. Please provide any available background information regarding these records including, but not limited to, the following:

- Who prepared the records? Or, if unknown, who can establish their authenticity?
- Where, how, and by whom were these records maintained?
- What time period is covered and what do we know about records relating to other time periods?

- What do we know, and how do we know, about the inter-relationship between these documents (*e.g.*, are all DI transactions reflected in the Accounts Receivable Records, and if not, why not)?

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5. TechLaw excluded certain DI entries on the basis that they "do not appear to correspond to the shipment of hazardous chemicals." Please explain these determinations in greater detail. Some of the categories (*e.g.*, Liquid Caustic) could be hazardous. Also, does TechLaw have witness statements or business records that refute the RCRA-based presumption that empty drums contain one gallon of residual waste until they are triple rinsed?

6. What was the basis for including transactions in Table 5 (Dirty Inventory/Purchase Payment Journal Comparison)? Similarly, what evidence did TechLaw use for establishing a source-specific conversion factor, for applying a proxy value, and for deciding whether or not to apply a proxy value?

We appreciate the opportunity to share these questions and comments. We request that a meeting be coordinated with our Group representatives and TechLaw to discuss these questions and to review with them the background information so that we fully understand the basis for the TechLaw Report. If you have any questions, please call me at the above-referenced direct dial number.

Sincerely,

Douglas A. McWilliams
Chairperson, CRS Site Group

Copy: CRS Site Group (by e-mail)

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SQUIRE SANDERS | LEGAL COUNSEL WORLDWIDE

November 27, 2002

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U.S. EPA, Region 5
77 West Jackson Boulevard
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Douglas A. McWilliams
Chairperson, CRS Site Group

Copy: CRS Site Group (by e-mail)

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AUG 27 [illegible]

Inadmissible Offer of Compromise
Subject to Federal Rule of Evidence 408

August 24, 2001

VIA OVERNIGHT DELIVERY

Deena Sheppard-Johnson
Enforcement Specialist
U.S. Environmental Protection Agency
Remedial Enforcement Support Section
77 West Jackson Boulevard (SR-6J)
Chicago, Illinois 60604-3590

Re: Good Faith Offer Pertaining to the Chemical Recovery Systems, Inc. Site in Elyria, Ohio

Dear Ms. Sheppard-Johnson:

This letter constitutes a good faith offer ("GFO") submitted on behalf of the parties listed in Exhibit A ("Respondents") to undertake or finance studies and investigations for the Chemical Recovery Systems, Inc. Site at 142 Locust Street, Elyria, Ohio ("the Site"). Each Respondent has received correspondence that purports to be a Special Notice Letter from U.S. EPA pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") Section 122(e) identifying it as a potentially responsible party ("PRP") associated with the Site. Under CERCLA § 122(e), a Special Notice Letter commences a 90-day period during which PRPs may negotiate with U.S. EPA for the opportunity to conduct the necessary studies and investigations at the Site. These negotiations have commenced and they are scheduled to continue. Nothing herein should be construed as an admission by any Respondent of liability or responsibility for any costs or actions associated with the Site.

CERCLA § 122(e) requires that the PRPs submit within 60 days of receipt of the Special Notice letter a proposal to undertake or finance the studies and investigations at the Site. This GFO letter submitted on or before August 25, 2001 meets any obligation that Respondents may have under CERCLA § 122(e) for making such a proposal. At minimum, Respondents and U.S. EPA have the benefit of the full 90-day negotiation moratorium (until September 24, 2001) to reach agreement on the scope of the studies and investigations at the Site and whether U.S. EPA will agree to allow Respondents to conduct or finance these activities.

Respondents are willing to conduct or finance studies and investigations at the Site subject to and in accordance with a negotiated statement of work ("SOW") and administrative consent order containing reasonably acceptable terms. To facilitate these negotiations, Respondents are meeting on or about August 27, 2001 to formalize a group structure and appoint the person(s) responsible for representing the interests of the PRP Group members in negotiations with U.S. EPA. This meeting is the culmination of a series of meetings and communications among PRPs to lay the groundwork for an organization that can work efficiently and effectively to finance or conduct tasks in the SOW. Until notified differently, communications with the Respondents should be made through Geoffrey Barnes at Squire, Sanders & Dempsey L.L.P. (216.479.8646) at the address listed above.

The Respondents have the technical and financial capability to undertake studies and investigations at the Site. A brief review of just the publicly traded companies on the list of Respondents should remove any doubt that Respondents have the financial capability to undertake the necessary studies and investigations at the Site. The list of Respondents includes three of the four largest companies on the Fortune 500 list with combined revenues of over $500 billion. While many of the Respondents have the capability to finance the studies and investigations, Respondents are working on an interim cost sharing arrangement to maximize PRP participation.

Respondents also have significant technical experience in the area of environmental studies and site investigations. Many Respondents have technical representatives with substantial CERCLA and RCRA site investigation experience. The ad hoc technical committee includes representatives from Exxon-Mobil, General Motors, Goodyear, PPG Industries, and Ashland Chemical, who have worked on many site investigations and field studies. The ad hoc technical committee has also identified a short list of qualified remediation contractors who will be invited to bid on performing the studies and investigations at the Site under the capable supervision of the technical committee and the steering committee members.

The Special Notice Letter invites Respondents to provide a paragraph-by-paragraph response to U.S. EPA's Statement of Work and Draft Administrative Order. This level of detail is best addressed through face-to-face negotiations. As such, Respondents request an opportunity to meet with U.S. EPA technical and legal representatives to discuss these documents at your earliest convenience. Further, the majority of paragraphs contain model language that will not require much discussion or negotiation. Therefore, we prefer to use this opportunity to identify some of the key issues for which Respondents request further clarification and discussion including the following:

- The Statement of Work includes an investigation of the "segment of the East Branch of the Black River adjacent to Chemical Recovery Systems, Inc." The 1999 ATSDR Health Consultation concludes that surface water and sediment are not pathways of concern, and that "U.S. EPA shall continue its investigations as to the source and extent of the continued ***groundwater*** contamination at the CRS Site." Respondents are interested in

discussing U.S. EPA's justification for including the Black River within the scope of the Site investigation.

- The Statement of Work also includes gathering data in consultation with Trustees to enable natural resource damage assessment activities. The entities asserting Trustee status and the natural resources allegedly affected are not identified. Please identify all entities that are considering asserting Trustee status and the natural resources involved. Respondents are interested in reviewing the Trustees' Pre-Assessment Screen and their Assessment Plan so that we can properly evaluate the scope of these NRD-related activities.

- It is unclear how the baseline risk assessment is to be used in the process. The SOW does not indicate if EPA, Ohio EPA, or the Respondents will prepare the baseline risk assessment, or how it will be used to develop preliminary remediation goals and assist in defining the extent of contamination. The Respondents would prefer to conduct the baseline risk assessment based on site-specific conditions as well as future land use considerations. Furthermore, the risk assessment should be used in the investigation to identify target constituents of concern to focus remedial efforts.

Respondents understand that U.S. EPA is trying out a new streamlined approach to managing this Site without going through the formal process of listing the Site on CERCLA's National Priorities List. Respondents are very interested in working with U.S. EPA to support this new approach and to discuss additional ways to improve the efficiency and effectiveness of the remedial investigation and feasibility study process at this Site. Respondents have experience with the standard RI/FS process incorporated into the Draft Administrative Order and the Statement of Work, and we are prepared to discuss discrete improvements to this process that will continue to meet all of the necessary elements of the National Contingency Plan.

Respondents recognize U.S. EPA's authority to recover certain costs that it may incur overseeing RI/FS work at the Site from parties liable under CERCLA § 107(a). Respondents request that U.S. EPA forgive all oversight costs in accordance with the U.S. EPA's Interim Guidance on Orphan Share Compensation for Settlors of Remedial Design/Remedial Action and Non-Time Critical Removals. The orphan share attributable to non-viable PRPs will be significant at this Site. U.S. EPA reports that the shares attributable to the primary owner/operators (Chemical Recovery Systems, Inc. and Obitts Chemical) and many of the other PRPs will likely be unrecoverable orphan shares. Under EPA's Orphan Share Policy oversight costs may be forgiven to reduce the burden on performing PRPs to cover the quantifiable shares attributable to insolvent and defunct PRPs. Respondents request the opportunity to demonstrate that orphan shares at this Site will far exceed U.S. EPA's oversight costs. Therefore, U.S. EPA costs should be forgiven or pursued from PRPs who refuse to participate in the work at the Site.

We understand that USEPA has recently sent information requests and notice letters to a number of additional parties. We appreciate U.S. EPA's efforts to notify all potentially responsible parties of their obligations at this Site. However, in order to give these newly noticed parties adequate time to make an informed decision about participating in this PRP Group, we will need additional time to formalize our group structure. We propose a meeting on or about September 6, 2001 to discuss the draft Administrative Order and the Statement of Work. We appreciate the opportunity to work with U.S. EPA on an effective and efficient approach to completing the necessary studies and investigations at the Site.

Sincerely,

Geoffrey K. Barnes
Douglas A. McWilliams
Squire, Sanders & Dempsey L.L.P.
On behalf of Respondents

Enclosure

Copy: Thomas C. Nash, Associate Regional Counsel, U.S. EPA
Gwendolyn Massenburg, Remedial Project Manager, U.S. EPA
Lawrence Antonelli, Ohio EPA
Appendix A Respondents

APPENDIX A

Chemical Recovery System, Inc. ("CRS") Superfund Site - Elyria, Ohio
Good Faith Offer Respondents

Adams Automatic, Inc.
Alcoa Building Products f/k/a Stolle Corporation
Ashland Inc.
Avery Dennison Corporation
Bucyrus International, Inc. f/k/a Bucyrus Erie Co.
The Dow Chemical Company
E.I. duPont de Nemours f/k/a DuPont Chemical
Essex Specialty Products, Inc.
EXXON Mobil
Ford Motor Company
General Motors Corporation
Goodyear Tire & Rubber Company
Hobart Corporation
Honeywell International, Inc. (Sinclair & Valentine Co.)
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US EPA, Remedial Enforcement Support Se

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Eugene Swift – A 1996 Olympian representing the United States in the 110-meter hurdles, Swift is training in the same event for the 2000 Olympic Games in Australia. He has worked at UPS for 14 years and is currently in the human resources department in Oakland, California. He is a member of the global UPS Athlete Training Assistance Program (ATAP), which provides employee-athletes with the support they need to pursue their Olympic dreams.

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Third Party

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Total Packages

Total Weight

†Our liability is limited to $100 unless you declare a higher value. See the FedEx Service Guide.

8 Release Signature Sign to authorize delivery without obtaining signature.

By signing you authorize us to deliver this shipment without obtaining a signature and agree to indemnify and hold us harmless from any resulting claims.

Questions? Visit our Web site at fedex.com or call 1-800-Go-FedEx® (800)463-3339.

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