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8 March 2010

The Honorable Sandra Mazer Moss
Complex Litigation Center
Court of Common Pleas of
Philadelphia County
622 City Hall
Philadelphia, Pennsylvania 19107

Attention: Donna Candelora, Esquire

**MASTER ASBESTOS DOCKET**

**CONTROL NUMBER 1003_____**

| | |
|---|---|
| Plaintiffs' Counsel: | Benjamin P. Shein, Esquire |
| Defendant's (Durabla Manufacturing Company) Counsel: | William F. Mueller, Esquire |
| Defendant's (Durabla Canada, Ltd.) Counsel: | Suzanne M. Bachovin, Esquire |
| Defendants' (David W. Moser and DFT, Inc.) Counsel: | Henry F. Reichner, Esquire |

Plaintiffs' Motion Filed: 8 March 2010
Defendants' Response Due: 15 March 2010

***In re Asbestos Litigation***
**October Term 1986, No. 00001**

# PLAINTIFFS' MOTION FOR PARTIAL LIFTING OF STIPULATION AND PROTECTIVE ORDER TO ALLOW DISCLOSURE OF CONFIDENTIAL INFORMATION TO CERTAIN SPECIFIED COUNSEL AND/OR PARTIES



Case ID: 861000001
Control No.: 10031383

Plaintiffs represented by the Shein Law Center, Ltd. who have filed so-called "alter ego" liability claims against defendants David W. Moser, DFT, Inc. and/or Durabla Canada, Ltd. (hereinafter referred to as "Plaintiffs"), acting by and through their undersigned counsel, hereby move this Honorable Court for the entry of an Order lifting, in part, the Stipulation and Protective Order entered by this Court on 10 December 2008 so as to allow Plaintiffs' counsel, the Shein Law Center, Ltd., to disclose information designated as "Confidential" by defendants Durabla Manufacturing Company, David W. Moser, DFT, Inc. and/or Durabla Canada, Ltd. to certain counsel and/or parties as specified herein. Any such disclosure to such specified counsel and/or parties would otherwise be subject to the terms of this Court's 10 December 2008 Stipulation and Protective Order, which would otherwise remain in full force and effect. For the reasons set forth below, Plaintiffs respectfully request that this Court grant the relief requested herein and permit Plaintiffs' counsel to disclose information designated "Confidential" pursuant to this Court's 10 December 2008 Stipulation and Protective Order to the specified counsel and/or parties identified herein.

## STATEMENT OF FACTS

Certain asbestos plaintiffs represented by the Shein Law Center, Ltd. previously have asserted claims against defendants Durabla Manufacturing Company (hereinafter referred to as "Durabla") and Durabla Canada, Ltd. (hereinafter referred to as "Durabla Canada"). The basis for such claims is that Plaintiffs suffered personal injuries and damages as a result of their (or their Decedents') exposure to asbestos-containing products manufactured and supplied by Durabla and/or Durabla Canada. In connection with those claims, Plaintiffs have also asserted so-called "alter ego" liability claims against defendants David W. Moser (hereinafter referred to as "Moser"), DFT, Inc. (hereinafter referred to as "DFT") and Durabla Canada, asserting that those Defendants are liable to Plaintiffs as the "alter ego" of Durabla.[1] Plaintiffs who presently have such alter ego claims pending against Moser, DFT and Durabla Canada are identified in Exhibit "A."

As part of their efforts to pursue their alter ego claims against Moser, DFT and Durabla Canada, Plaintiffs propounded certain discovery upon Defendants. Defendants, in turn, objected to Plaintiffs' discovery requests on the grounds that said requests called for the disclosure of confidential information. In an effort to avoid unnecessary controversy and in order to obtain needed discovery in a timely fashion, Plaintiffs agreed to the entry of a Stipulation and Protective

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1 Depending on the facts of the case, Plaintiffs may have direct claims and/or alter ego claims against Durabla Canada. Beginning in 1974, Durabla Canada manufactured and supplied to Durabla asbestos sheet gasket material which Durabla then resold or used to fabricate gaskets that were then sold by Durabla. Thus in certain (post-1973) exposure cases, Plaintiffs' claims against Durabla Canada are premised on direct liability. In pre-1974 exposure cases, the liability of Durabla Canada is premised on alter ego liability.

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Order, which was approved by the Court (per Tereshko, J.) on 10 December 2008. A copy of the Stipulation and Protective Order, as approved by the Court, is attached as Exhibit "B."

Thereafter, Plaintiffs proceeded with their discovery, which included obtaining answers to written interrogatories and the production of documents from Durabla, Moser, DFT and Durabla Canada, as well as the deposition of Moser and other witnesses. Following the completion of discovery with respect to Plaintiffs' alter ego claims, Moser and DFT filed separate motions for summary judgment with respect to Plaintiffs' alter ego claims against them in eight (8) separate cases. A list of the eights cases where Moser and DFT filed motions for summary judgment and the applicable control number for each motion is attached as Exhibit "C."

The summary judgment motions filed by Moser and DFT were opposed by Plaintiffs. In their oppositions to Moser's and DFT's motions for summary judgment, Plaintiffs set forth substantial evidence in support of their alter ego liability claims against Moser and DFT. Much of the evidence relied upon by Plaintiffs in opposing Moser's and DFT's motions for summary judgment consisted of corporate records that had been produced by Moser, DFT, Durabla and Durabla Canada in discovery and the deposition testimony of Moser and other witnesses, all of which had been designated as "Confidential" by Moser, DFT, Durabla and Durabla Canada under the Stipulation and Protective Order.[2]

In sixteen (16) separate Orders, all of which were dated 6 October 2009 and entered on the docket on 7 October 2009, this Court denied all of the summary judgment motions that had been filed by Moser and DFT with respect to Plaintiffs' alter ego liability claims.

On 15 December 2009, Moser, in his capacity as the President, sole Director and owner of 78.6 percent of the shares of Durabla, placed Durabla into voluntary bankruptcy (Chapter 11) in the United States Bankruptcy Court for the District of Delaware (hereinafter referred to as the "Durabla Bankruptcy Proceeding"). A true and correct copy of Durabla's Voluntary Bankruptcy (Chapter 11) Petition is attached as Exhibit "D."

On 7 January 2010, Moser, DFT and Durabla Canada filed in the Durabla Bankruptcy Proceeding a Complaint for Declaratory Judgment. A true and correct copy of Moser's, DFT's and Durabla Canada's Complaint for Declaratory Judgment is attached as Exhibit "E." On 8 January 2010, Moser, DFT and Durabla Canada filed their First Amended Complaint for Declaratory Judgment. A true and correct copy of Moser's, DFT's and Durabla Canada's Complaint for Declaratory Judgment is attached as Exhibit "F." By way of their declaratory judgment action in the Durabla Bankruptcy Proceeding, Moser, DFT and Durabla Canada seek a declaration that Moser, DFT and Durabla Canada "are not liable under any of the Alter Ego

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2 Because of the "confidential" nature of the evidence relied upon by Plaintiffs in opposing Moser's and DFT's summary judgment motions, Plaintiffs' oppositions to those motions were filed "under seal."



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Theories[3] for and Asbestos Actions against DMC [Durabla]" and that the assets of Moser, DFT and Durabla Canada "may not be used to satisfy any present and/or future Asbestos Claims[4] or any other asbestos present and/or personal injury or any other present and/or future claims or demands of any kind against DMC [Durabla]." Ex. F at 14 (footnotes added). The purported grounds for this declaratory judgment action are identical to the grounds advanced by Moser and DFT in their motions for summary judgment. *Compare* Ex. F, ¶¶ 10-23, at 4-9 *with* Motion for Summary Judgment of Defendant David W. Moser at 4-7 & 9-10 (copy attached as Exhibit "G") ("Confidential" information redacted).

Through the Shein Law Center, Ltd., Plaintiffs have retained the services of Montgomery, McCracken, Walker & Rhoads to represent their interests in connection with the Durabla Bankruptcy Proceeding and the declaratory judgment action that has been filed by Moser, DFT and Durabla Canada as part of the Durabla bankruptcy. In addition, the Office of the United States Trustee (United States Department of Justice) for the District of Delaware has responsibility for overseeing the conduct of the Durabla Bankruptcy Proceeding. The Trustee, in turn, has appointed a Committee of Unsecured Creditors, as follows:

1. Thomas M. James, c/o Brayton Purcell, LLP (Attention: Alan R. Brayton), 222 Rush Landing Road, Novato, California 94948;

2. Diane M. Allen, c/o Weitz & Luxenberg, P.C. 700 Broadway, New York, New York 10003;

3. Peter Moreni, c/o The Jaques Admiralty Law Firm, P.C. (Attention: Alan Kellman), Suite 1370, 645 Griswold, Detroit, Michigan 48226;

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3 In their declaratory judgment action, the "Alter Ego Theories" are defined to include the following theories of alter ego liability:

> [D]enuding-the-corporation, single-business-enterprise, corporate trust funds, breach of fiduciary duty or conspiracy, allegations that Plaintiffs [Moser, DFT and Durabla Canada] were the mere instrumentality, agent , or alter ego of DMC [Durabla] or that the corporate veil should be pierced, or that as a result of domination and control over the Debtor [Durabla], directly or indirectly, Plaintiffs [Moser, DFT and Durabla Canada] should be liable for asbestos-related claims or any other claims that have origins in acts or omissions of the Debtor [Durabla], or any other theories alleging direct or indirect liability for the conduct of, claims against, or demands on the Debtor [Durabla] to the extent that such alleged liability arises by reason of any of the other circumstances enumerated in section 524(g)(4)(A)(ii) of the Bankruptcy Code.

Ex. F, ¶ 7, at3-4.

4 In their declaratory judgment action, "Asbestos Claims" are defined as "claims against the Debtor [Durabla], arising from alleged injuries from claimed exposure to asbestos and/or asbestos-containing products." Ex. F, ¶ 1, at 1.



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4. Joseph W. Canter, c/o The Law Offices of Peter G. Angelos (Attention: Paul M. Matheny), Twenty-First Floor – One Charles Center, 100 North Charles Street, Baltimore, Maryland 21201;

5. Thomas Williams, c/o Wilentz, Goldman & Spitzer (Attention: Deidre Pacheco), 90 Woodbridge Center Drive, Woodbridge, New Jersey 07095;

6. Dolores M. Brewer, c/o Goldberg, Persky & White, P.C. (Attention: Mark C. Meyer), 1030 Fifth Avenue, Pittsburgh, Pennsylvania 15219;

7. Donald E. McLaughlin, c/o Kelly & Ferraro LLP (Attention: Thomas M. Wilson), 2200 Key Tower, 22 Public Square, Cleveland, Ohio 44114;

8. Rosalia Adelsfugel, c/o Motley Rice LLC, 28 Bridgeside Boulevard, Mt. Pleasant, South Carolina 29464; and

9. Jane F. Witkowski, c/o Waters & Kraus LLP (Attention: Tracie Whetstone), 3219 McKinley Avenue, Dallas, Texas 75204.

A copy of the Trustee's Notice of Appointment of Committee of Unsecured Creditors is attached as Exhibit "H." The various legal counsel associated with the Committee of Unsecured Creditors all have extensive experience in asbestos personal injury litigation. The Committee of Unsecured Creditors has, in turn, retained counsel, as follows:

1. Caplin & Drysdale
   Suite 1100
   One Thomas Circle N.W.
   Washington, DC 20005

2. Campbell & Levine
   Suite 300
   800 North King Street
   Wilmington, Delaware 19801

## ARGUMENT

Moser, as the President, sole Director and predominant shareholder of Durabla, made the decision to voluntarily place Durabla into bankruptcy. Moser did so only two (2) months after this Court had denied Moser's and DFT's motions for summary judgment regarding Plaintiffs' alter ego liability claims. Further, Moser, in an act that is directly contrary to the interests of



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Durabla, then filed, along with DFT and Durabla Canada, the declaratory judgment action in the Durabla Bankruptcy Proceeding, seeking to avoid the alter ego liability that this Court found was an issue for a jury by way of its denial of Moser's and DFT's summary judgment motions.

The Durabla Bankruptcy Proceeding and Moser's, DFT's and Durabla Canada's declaratory judgment action are nothing more than flagrant forum shopping on the part of Moser, DFT and Durabla Canada, whereby those defendants seek what they perceive to be a more favorable forum for the determination of the alter ego claims that have been filed against them.

Even if Moser's act of placing Durabla into bankruptcy was not motivated by his own personal self-interest and the interests of his related entities (DFT and Durabla Canada), it is clear that the issues that Moser, DFT and Durabla Canada have raised by way of their declaratory judgment action are identical to the issues that have been litigated in this Court for more than a year. Accordingly, the discovery obtained by Plaintiffs will have equal applicability in the Durabla Bankruptcy Proceeding. In order to properly defend against the declaratory judgment action, certain parties involved in the Durabla Bankruptcy Proceeding will require – and should be granted – access to the confidential information previously produced by Moser, DFT, Durabla and Durabla Canada in the litigation pending in this Court.

Plaintiffs here emphasize that the relief that they are seeking is limited. Specifically, Plaintiffs are not seeking a complete lifting of the Stipulation and Protective Order although, given Moser's self-serving actions in initiating the Durabla Bankruptcy Proceeding and subsequent filing of the declaratory judgment action, a complete lifting of the Stipulation and Protective Order would be appropriate. Rather, Plaintiffs seek the ability to disclose such confidential information only to necessary and appropriate parties who will require such information in order to respond to the declaratory judgment action; *to wit,* Counsel for the Shein Law Center, Ltd., Plaintiffs in the Durabla Bankruptcy Proceeding (Montgomery, McCracken, Walker & Rhoads), the members of the Committee of Unsecured Creditors and their respective counsel, counsel for the Committee of Unsecured Creditors, and the United States Trustee.

Further, Plaintiffs here agree that any disclosure to such individuals would be subject to the terms and conditions of the Stipulation and Protective Order in that no such disclosure would occur unless the party to whom such confidential information is to be disclosed acknowledges the Stipulation and Protective Order and agrees to its requirements that the confidentiality of the disclosed information be maintained.

Finally, denial of the limited relief requested herein would be prejudicial to Plaintiffs (as well as Moser, DFT and Durabla Canada) in that Plaintiffs, in order to protect their interests with respect to the declaratory judgment action, would be required to duplicate all of the discovery that has already been conducted. Such a waste of time and money serves no purpose whatsoever.

The relief requested by Plaintiffs herein is necessary and appropriate in order for Plaintiffs to adequately protect their interests in the Durabla Bankruptcy Proceeding. Further, the limited relief requested by Plaintiffs herein is narrow and appropriately tailored to meet the needs of Plaintiffs.



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## CONCLUSION

For the foregoing reasons, Plaintiffs represented by the Shein Law Center, Ltd. who have filed so-called "alter ego" liability claims against defendants David W. Moser, DFT, Inc. and/or Durabla Canada, Ltd. respectfully request that this Honorable Court grant the instant Motion for Partial Lifting of Stipulation and Protective Order to Allow Disclosure of Confidential Information to Certain Specified Counsel and/or Parties so as to allow Plaintiffs' counsel, the Shein Law Center, Ltd., to disclose information designated as "Confidential" by Moser, DFT, Durabla Canada and Durabla to certain counsel and/or parties as specified herein.[5]

SHEIN LAW CENTER, LTD.

By: _____
Benjamin P. Shein, Esquire
John P. Kopesky, Esquire

Attorneys for Plaintiffs

cc: Via Electronic Service, Hand Delivery or Facsimile

Suzanne M. Bachovin, Esquire
William F. Mueller, Esquire
Henry F. Reichner, Esquire

5 A proposed form of Order is attached as Exhibit "I."



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IN THE COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY, PENNSYLVANIA
FIRST JUDICIAL DISTRICT – CIVIL TRIAL DIVISION

| | | |
|---|---|---|
| *IN RE:* | : | OCTOBER TERM 1986 |
| | : | |
| *ASBESTOS LITIGATION* | : | No. 00001 |
| | : | |

# O R D E R

AND NOW, to wit, this _____ day of March 2010, upon consideration of Plaintiffs' Motion for Partial Lifting of Stipulation and Protective Order to Allow Disclosure of Confidential Information to Certain Specified Counsel and/or Parties and the papers filed in support thereof, and for good cause shown, it is hereby **ORDERED, ADJUDGED** and **DECREED** that said Motion is **GRANTED** as follows:

1. Paragraph 2.1 of the 10 December 2008 Stipulation and Protective Order is amended to allow documents and information designated as "Confidential" to be used for the purposes of the Durabla Bankruptcy Proceeding (*In the Matter of: Durabla Manufacturing Company, Debtor,* Chapter 11, Case No. 09-14415 (MFW)) in the United States Bankruptcy Court for the District of Delaware, and all related proceedings, including specifically Adversary Proceeding No. 10-5005 (*DFT, Inc., Durabla Canada, Ltd., and David W. Moser v. Durabla Manufacturing Company*).

2. Paragraph 2.2(a) of the 10 December 2008 Stipulation and Protective Order is amended to include the following as "'Qualified Persons' for Confidential Information'"

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1. Roberta A. DeAngelis
William K. Harrington
David M. Klauder
District of Delaware
Office of the United States Trustee – Region Three
United States Department of Justice
Suite 2207
844 King Street
Wilmington, Delaware 19810

2. Montgomery, McCracken, Walker & Rhoads
123 South Broad Street
Philadelphia, Pennsylvania 19109

and

Fifteenth Floor
1105 North Market Street
Wilmington, Delaware 19801

3. Thomas M. James, c/o Brayton Purcell, LLP (Attention: Alan R. Brayton), 222 Rush Landing Road, Novato, California 94948

4. Diane M. Allen, c/o Weitz & Luxenberg, P.C. 700 Broadway, New York, New York 10003

5. Peter Moreni, c/o The Jaques Admiralty Law Firm, P.C. (Attention: Alan Kellman), Suite 1370, 645 Griswold, Detroit, Michigan 48226

6. Joseph W. Canter, c/o The Law Offices of Peter G. Angelos (Attention: Paul M. Matheny), Twenty-First Floor – One Charles Center, 100 North Charles Street, Baltimore, Maryland 21201

7. Thomas Williams, c/o Wilentz, Goldman & Spitzer (Attention: Deidre Pacheco), 90 Woodbridge Center Drive, Woodbridge, New Jersey 07095

8. Dolores M. Brewer, c/o Goldberg, Persky & White, P.C. (Attention: Mark C. Meyer), 1030 Fifth Avenue, Pittsburgh, Pennsylvania 15219

9. Donald E. McLaughlin, c/o Kelly & Ferraro LLP (Attention: Thomas M. Wilson), 2200 Key Tower, 22 Public Square, Cleveland, Ohio 44114



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10. Rosalia Adelsfugel, c/o Motley Rice LLC, 28 Bridgeside Boulevard, Mt. Pleasant, South Carolina 29464

11. Jane F. Witkowski, c/o Waters & Kraus LLP (Attention: Tracie Whetstone), 3219 McKinley Avenue, Dallas, Texas 75204

12. Caplin & Drysdale
Suite 1100
One Thomas Circle N.W.
Washington, DC 20005

13. Campbell & Levine
Suite 300
800 North King Street
Wilmington, Delaware 19801

3. The parties otherwise remain subject to the provisions of the 10 December 2008 Stipulation and Protective Order.

BY THE COURT:

_____
Hon. Sandra Mazer Moss



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## CERTIFICATION OF SERVICE

It is hereby certified by the undersigned member of the Bar of this Court that one (1) copy of the foregoing Plaintiffs' Motion for Partial Lifting of Stipulation and Protective Order to Allow Disclosure of Confidential Information to Certain Specified Counsel and/or Parties has been served upon each of the counsel whose name and address is set forth below via United States first class mail, postage prepaid, on Monday, the 8th day of March 2010.

SUZANNE M. BACHOVIN, ESQUIRE
Goldberg Segalla, LLP
Suite 1418
1700 Market Street
Philadelphia, Pennsylvania 19103-3907

Attorney for Defendant
Durabla Canada, Ltd.

WILLIAM F. MUELLER, ESQUIRE
Clemente Mueller
Post Office Box 1296
Morristown, New Jersey 07962-1296

Attorney for Defendant
Durabla Manufacturing Company

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Case ID: 861000001
Control No.: 10031383

HENRY F. REICHNER, ESQUIRE
Reed Smith LLP
2500 One Liberty Place
1650 Market Street
Philadelphia, Pennsylvania 19103

Attorney for Defendants
David W. Moser and DFT, Inc.

Dated: 8 March 2010

SHEIN LAW CENTER, LTD.

By: _____
John P. Kopesky, Esquire

Attorney for Plaintiffs



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Control No.: 10031383

# EXHIBIT A

Case ID: 861000001
Control No.: 10031383

# EXHIBIT A

## Shein Law Center, Ltd. Plaintiffs With "Alter Ego" Claims Against Defendants David W. Moser, DFT, Inc. and/or Durabla Canada, Ltd.

| Plaintiff | Docket Number |
|---|---|
| Estate of Mary Anne Adamkovic (Anthony Adamkovic – Executor) and Anthony Adamkovic | 0712-00239 |
| Estate of John E. Barr (Fannie Barr – Administratrix) and Fannie Barr | 0812-04941 |
| Robert and Lucille Behl | 0806-04537 |
| Estate of Vincent J. Golini (Theresa Golini – Executrix) and Theresa Golini | 0906-01931 |
| Estate of Henry B. Jablonski (Eleanor Jablonski – Executrix) and Eleanor Jablonski | 0610-01171 |
| Elman and Jean Lansdowne | 0909-03102 |
| Estate of John E. Llewellyn (Gloria Llewellyn – Executrix) and Gloria Llewellyn | 0612-03591 |
| Estate of Roy Love (Florence L. Chapman – Executrix) and Elizabeth Love | 0612-03593 |
| Estate of Bernard F. Massinger (Marion L. Massinger – Personal Representative) and Marion L. Massinger | 0709-01825 |
| Stanley G. Mills, Jr. | 0903-01646 |
| James and Inez Muhlbauer | 0606-03868 |
| Estate of Edward M. Novotny (Nadine Collier – Executrix) | 0912-02240 |
| Estate of James Peverill (Barbara Impriano – Personal Representative) | 0808-03778 |
| Estate of Albert F. Pfeifer (Sherry L. Robb – Executrix) | 0712-04574 |
| Albert Privito | 0702-00011 |
| Estate of Robert M. Smith, Jr. (Francis G. Smith – Executrix) and Francis G. Smith | 0903-03247 |
| Estate of John P. Smyth (Mary T. Smyth – Executrix) and Mary T. Smyth | 0712-02670 |
| Estate of Joseph R. Stone (Kathleen Ochs – Executrix) and Miriam Stone | 0712-03604 |
| Charles J. Teller and Rachel M. Teller | 0909-00431 |
| Estate of James F. Valentine (Margaret Valentine – Executrix) and Margaret Valentine | 0812-05013 |
| Juanita K. Westhafer and Paul S. Westhafer | 0812-05083 |
| Estate of Raymond Wildey (Raymond Wildey – Administrator) and Estate of Betty Wildey (Raymond Wildey – Administrator) | 0512-01870 |

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# EXHIBIT B

Case ID: 861000001
Control No.: 10031383

DOCKETED
COMPLEX LIT CENTER
DEC 15 2008
J. STEWART

86100000100343

| | | |
|---|---|---|
| IN RE | : | COURT OF COMMON PLEAS<br>PHILADELPHIA COUNTY |
| ASBESTOS LITIGATION | : | OCTOBER TERM, 1986<br>NO. 0001 |

COPIES SENT
PURSUANT TO Pa.R.C.P. 236(b)
DEC 15 2008
FIRST JUDICIAL DISTRICT OF PA
USER I.D.:

## STIPULATION AND PROTECTIVE ORDER

**WHEREAS**, during the course of the Action (as hereafter defined), the parties or others may be required to produce in discovery information which a party or the person or entity from whom discovery is sought considers to be confidential business information, confidential technical information, and other information subject to privacy protection under applicable constitutional and statutory law, confidential information pertaining to the financial affairs of the parties and the method by which the parties conduct their business, trade secrets, proprietary or other confidential information; and

**WHEREAS**, the parties hereto desire to agree to a protective order for the protection of specified information and documents during the pendency of this action and thereafter, and also for resolution of other issues which have or may arise in connection with this Action;

**THEREFORE, IT IS ORDERED** that:

1. **Terms:** The terms defined in this Paragraph shall have the meanings provided. Defined terms may be used in the singular or plural.

1.1 **"Producing Party"** means the party, or person/entity other than a party, being asked to produce documents or information considered by that party or person to be Confidential Information, or a party asserting a confidentiality interest in information produced by others.

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1.2 **"Receiving Party"** means that party/person/entity receiving or requesting production of Confidential Information.

1.3 **"Confidential Information"** means information, whether or not embodied in any physical medium, including all originals and copies of any document and/or information, used by the Producing Party in or pertaining to its business, or information pertaining to third-party privacy interests, which information the Producing Party reasonably and in good faith judgment believes contains or discloses confidential, non-public, proprietary and/or sensitive information including, but not limited to:

(a) financial data and information reflecting non-public business or financial strategies;

(b) technical information, such trade secrets or other confidential, research and development information, product specifications, proprietary or nonpublic commercial information;

(c) compensation information;

(d) any other information involving privacy interest and commercially and/or competitively sensitive information of nonpublic nature, or received on a confidential basis.

1.4 **"Litigation Documents"** means all pleadings, motions, affidavits and related papers, all documents produced or exchanged in the course of this action or any settlement negotiations, all written discovery responses and all transcripts and testimony given in depositions, in hearings or at trial.

1.5 **"Discovery Materials"** means all products of discovery and all information derived therefrom, including, but not limited to, all documents, objects or things, deposition



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testimony and interrogatory/request for admission responses, and any copies, excerpts or summaries thereof, obtained by any party pursuant to the requirements of any court order, requests for production of documents, requests for admissions, interrogatories or subpoena.

1.6 **"Termination"** means the dismissal of this Action, or entry of final judgment or expiration of all periods to appeal or seek judicial review of this Action.

1.7 **"Action"** means the pretrial proceedings and trial or settlement of In Re Asbestos Litigation, Phila. CCP, October Term 1986, No. 0001, including any and all suits filed by Shein Law Center, Ltd. on behalf of individual asbestos plaintiffs where the defendants include David Moser and/or DFT, Inc.

2. **Use of Confidential Information**

2.1 All documents and information designated in good faith by a party to the Action as Confidential Information shall be used solely for the purposes of this Action and shall not be used for any other purpose, including, without limitation, any business or commercial purpose, product development, intellectual property development, or in any other legal proceeding, action or matter and shall not, directly or indirectly, in whole or in part, be revealed or disclosed, or made available for inspection or copying to persons other than "qualified persons" as defined in paragraph 2.2.

2.2 "Qualified Person" for Confidential Information means:

(a) counsel for Plaintiffs and DFT Inc. and David W. Moser in this Action, including office associates, paralegals, and stenographic and clerical employees;

(b) any court reporter or typist recording or transcribing testimony in this Action and any outside independent reproduction firm;



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(c) David W. Moser and persons noticed for depositions in the Action who are current or former employees of DFT Inc.; and

(d) experts retained by Plaintiffs, DFT Inc. or David W. Moser in connection with this Action who have signed the Confidentiality Agreement that is set forth in Attachment "A".

2.3 In the event that any of the foregoing persons ceases to be engaged in the preparation of this Action, access by such person(s) to discovery material designated as Confidential shall be terminated. Any such material in the possession of any such person(s) shall be returned or destroyed. The provisions of this Order shall remain in full force and effect as to all such person(s) as to all such material and the obligations not to disclose any portions of such material, except as may be specifically ordered by the Court.

3. **Redaction of Documents**

3.1 Notwithstanding the provisions of Paragraph 2 above, the Producing Party may redact from any materials containing Confidential Information any information that is privileged or would infringe on privacy rights (e.g., disclosure of social security and other confidential identification information). If a document has been withheld or redacted in whole or in part, the Producing Party agrees to provide a log that explains the basis for withholding or redacting the document.

3.2 If there is a dispute whether any redacted material qualifies for redaction under this paragraph, counsel may move for ruling, which may require this Court's *in camera* inspection of a document on the issue of whether certain information is entitled to redaction.



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4. **Designation of Confidential Information**

4.1 **Documents.** Any Producing Party may, in good faith, designate Confidential Information contained in a document or thing specifically by either marking the document or thing as "CONFIDENTIAL" or by designation, in writing, identifying the Bates stamp number which has been assigned to the document or thing.

4.2 **Depositions.** Any Producing Party may, in good faith, designate information or documents disclosed during deposition as Confidential Information by indicating on the record at the deposition that the entire deposition testimony, or any specified part of the testimony given or to be given, and/or all or any part of the document or thing marked for identification at such deposition is Confidential Information subject to the provisions of this Stipulated Protective Order. Within thirty (30) days after receipt of a deposition transcript, any Producing Party may specifically designate information not previously designated as confidential as Confidential Information, by notifying all parties in writing of any specific pages and lines of the transcript which contain the Confidential Information. Each party shall attach a copy of such written statement to the face of the transcript and each copy thereof in its possession, custody or control.

4.3 **Interrogatories.** Any party may, in good faith, designate Confidential Information contained in response to an interrogatory by designating the responses Confidential, or the Receiving Party otherwise shall be advised in writing of such confidential status, and the information may be served and filed in a separate document if desired.

5. **Mistake or Inadvertence.** Notwithstanding the procedure set forth in paragraph 4, above, documents or other discovery materials produced and not designated as CONFIDENTIAL through mistake or inadvertence shall likewise be deemed confidential upon notice of such mistake or inadvertence. Moreover, where a Producing Party has inadvertently



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produced a document which the Producing Party later claims should not have been produced because of privilege, the Producing Party may require the return of any such document within 10 days of discovering that it was inadvertently produced (or inadvertently produced without redacting the privileged content). A request for the return of any document shall identify the document by Bates number and the basis for asserting that the specific document (or portions thereof) is subject to the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity from discovery, the basis for asserting that the production was inadvertent, and the date of discovery that there had been an inadvertent production. The inadvertent production of any document which a Producing Party later claims should not have been produced because of a privilege will not be deemed to be a waiver of any privilege to which the Producing Party would have been entitled had the privileged document not inadvertently been produced. If a Producing Party requests the return, pursuant to this paragraph, of any such document from another party, the party to whom the request is made shall within 10 days return to the requesting party all copies of the document within its possession, custody, or control - including all copies in the possession of experts, consultants or others to whom the document was provided. In the event that only portions of the document contain privileged subject matter, the Producing Party shall substitute a redacted version of the document at the time of making the request for the return of the requested document. In the event the Receiving Party contests the claim of privilege or inadvertent production, the Receiving Party shall file a motion within 10 days after the return of the document to obtain a court determination that the document is not privileged.

6. **Challenge of Designation.** The Receiving Party shall not be obligated to challenge the propriety of the Confidential Information designation at the time made or upon a submission to



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the Court. In the event a party disagrees at any stage of these proceedings with the Producing Party's designation of Confidential Information, the parties shall first try to dispose of such dispute in good faith on an informal basis. If a dispute cannot be informally resolved, the Receiving Party may seek appropriate relief from this Court, and the Producing Party shall have the burden of proving that the information is entitled to confidentiality protection. The Confidential Information shall remain Confidential and under the status given to it by the designating party unless and until the Ccourt rules to the contrary.

7. **Court Filings.** All Litigation Documents filed with the Court and designated by either party as containing Confidential Information shall be filed in a sealed envelope (or other appropriately sealed container) which shall be endorsed with the title of this action, an indication of the nature of the contents of such sealed envelope or container and the phrase "CONFIDENTIAL INFORMATION PURSUANT TO PROTECTIVE ORDER. NOT TO BE OPENED OR THE CONTENTS REVEALED EXCEPT (1) TO THE COURT OR (2) BY ORDER OF THE COURT."

8. **Subpoena by The Courts or Agencies.** If another person, entity, court or an administrative agency subpoenas or orders production of Confidential Documents that the parties have obtained under the terms of this Order, the parties shall immediately (and specifically prior to any production) notify counsel for the Producing Party of the pendency of such subpoena or order. The Party to whom the subpoena is directed shall not, to the extent permitted by applicable law, provide or otherwise disclose such document or information until twenty (20) days after giving counsel for the Producing Party notice in writing of the subpoena, accompanied by a copy of the subpoena. If the Producing Party objects to the subpoena, the Producing Party shall so advise the Party to whom the subpoena is directed and shall file an appropriate motion,



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and the Party to whom the subpoena is directed agrees not to produce Documents in response to it until the resolution of the objection by the appropriate court or until ordered by the court to do so.

9. **Client Consultations.** Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients and, in the course thereof, relying generally on examination of Confidential Documents.

10. **Use.** Persons obtaining access to Confidential Documents under this Order shall use the information only for preparation and trial of this case, and shall not use such information for any other purpose, including business, governmental, commercial, administrative, legal or judicial proceedings. All objections as to admissibility into evidence of the discovery material subject to this Order are reserved until trial of this case. The use of Confidential Information as evidence at the trial of this case shall be subject to an order of the Court as may, at the time, be reasonably necessary to preserve the confidentiality of the material involved.

11. **Non-Termination.** The provisions of this Order shall not terminate at the conclusion of this action. This Order shall remain in full force and effect and each person subject to this Order shall continue to be subject to the jurisdiction of this Court for the purposes of enforcement of the confidentiality terms of this Order. Within 120 days after final conclusion of all aspects of this lawsuit, Confidential Documents and all copies of same (other than exhibits of record) shall be returned to the Producing Party, at its cost or at the option of the Producing Party destroyed. All counsel shall make certification of compliance herewith and shall deliver the same to counsel for the Producing Party not more than 150 days after final conclusion of this litigation.



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12. **Modification Permitted.** Nothing in this Order shall prevent a party from seeking modification of this Order or from objecting to discovery that it believes otherwise to be improper.

13. **Responsibility of Attorneys.** The attorneys are responsible for employing reasonable measures, consistent with this Order, to control duplication of, access to, and distribution of copies of Confidential Documents. Parties shall not duplicate any Confidential Document except working copies and for filing in court under seal. All copies made of Confidential Documents shall bear the appropriate confidential designation.

14. **No Waiver.**

14.1 Review of the Confidential Information by counsel, experts, or consultants for litigants in the lawsuit shall not waive the confidentiality of the documents or objections to production.

14.2 The inadvertent, unintentional, or *in camera* disclosure of Confidential Documents and information shall not, under any circumstances, be deemed a waiver in whole or in part, of any party's claims of confidentiality.

14.3 Nothing contained in this Protective Order shall constitute a waiver of, or otherwise prejudice, the Producing Party's right to protect from disclosure any information based on any applicable privilege, right of privacy, trade secret protection or other statutory common law immunity.

15. Nothing contained in this Protective Order and no action taken pursuant to it shall prejudice the right of any party to contest the alleged confidentiality, relevancy, admissibility, or discoverability of the Confidential Documents and information sought.



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16. The terms of this Protective Order shall survive and remain in effect after the termination of this and any related lawsuit.

17. **Governing Law.** Pennsylvania law shall govern the Stipulation and Protective Order.

18. **Jurisdiction Over Agreement.** The Philadelphia Court of Common Pleas shall have jurisdiction to enforce the provisions of the Stipulation and Protective Order beyond the conclusion of this Agreement.

IT IS SO STIPULATED.

Andrew J. Trevelise, Esquire
Henry F. Reichner, Esquire
**Reed Smith LLP**
2500 One Liberty Place
1650 Market Street
Philadelphia, PA 19103
(215) 851-8100
Attorney for Defendants DFT Inc. and David W. Moser
Dated: November 26, 2008

Benjamin Peter Shein, Esquire
John Kopesky, Esquire
**Shein Law Center, Ltd.**
121 South Broad Street, 21st Floor
Philadelphia, PA 19107
(215) 735-6677
Attorney for Plaintiffs
Dated: November 26, 2008

**PURSUANT TO STIPULATION, IT IS SO ORDERED:**

DATED: Dec 10th, 2008

J.



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**ATTACHMENT A**

AGREEMENT TO MAINTAIN CONFIDENTIALITY

I, _____ [Name - Print or Type], have been given and read a copy of Protective Order, dated_____, in this case. I understand and will strictly adhere to the contents of said order. I understand that produced material disclosed to me is subject to the order of this Court and that I am prohibited from copying, disclosing or otherwise using such material except as provided by said court order. I understand that unauthorized disclosure of the stamped confidential documents may constitute contempt of court and agree to be subject to personal jurisdiction of this Court for the purpose of enforcing my obligations under this Agreement, the order, and any contempt proceeding that may be instituted for alleged violation thereto. I understand also that my execution of this Agreement to maintain confidentiality, indicating my agreement to be bound by said order, is prerequisite to my review of any produced document and materials.

_____
[Date]

_____
[Name]

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# EXHIBIT C

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# EXHIBIT C

## Moser and DFT Motions for Summary Judgment re Plaintiffs' Alter Ego Liability Claims

| Plaintiff | Docket Number | Moving Party | Control Number |
|---|---|---|---|
| Adamkovic | 0712-00239 | Moser | 09085012 |
| Adamkovic | 0712-00239 | DFT | 09085011 |
| Llewellyn | 0612-03591 | Moser | 09085024 |
| Llewellyn | 0612-03591 | DFT | 09085023 |
| Love (Chapman) | 0612-03593 | DFT | 09085017 |
| Love (Chapman) | 0612-03593 | Moser | 09085018 |
| Novotny (Collier) | 0912-02240 | Moser | 09085026 |
| Novotny (Collier) | 0912-02240 | DFT | 09085025 |
| Pfeifer (Robb) | 0712-04574 | Moser | 09085019 |
| Pfeifer (Robb) | 0712-04574 | DFT | 09085020 |
| Privito | 0702-00011 | Moser | 09085013 |
| Privito | 0702-00011 | DFT | 09085014 |
| Smyth | 0712-02670 | Moser | 09085015 |
| Smyth | 0712-02670 | DFT | 09085016 |
| Stone (Ochs) | 0712-03604 | Moser | 09085021 |
| Stone (Ochs) | 0712-03604 | DFT | 09085022 |

# EXHIBIT D

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B 1 (Official Form 1) (1/08)

**United States Bankruptcy Court**

[redacted]

| | |
|---|---|
| Name of Debtor (if individual, enter Last, First, Middle): Durabla Manufacturing Company | Name of Joint Debtor (Spouse) (Last, First, Middle): |
| All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names): | All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names): |
| Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all): 13-5039230 | Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all): |
| Street Address of Debtor (No. and Street, City, and State): Beynard Bldg., STE 210, 3411 Silverside Road Wilmington, DE ZIP CODE 19810 | Street Address of Joint Debtor (No. and Street, City, and State): ZIP CODE |
| County of Residence or of the Principal Place of Business: New Castle County | County of Residence or of the Principal Place of Business: |
| Mailing Address of Debtor (if different from street address): ZIP CODE | Mailing Address of Joint Debtor (if different from street address): ZIP CODE |

Location of Principal Assets of Business Debtor (if different from street address above): Wilmington Trust, 5107 Concord Pike, Wilmington, DE ZIP CODE 19803

**Type of Debtor (Form of Organization) (Check one box.)**

- ☐ Individual (Includes Joint Debtors) *See Exhibit D on page 2 of this form.*
- ☑ Corporation (includes LLC and LLP)
- ☐ Partnership
- ☐ Other (If debtor is not one of the above entities, check this box and state type of entity below.)

**Nature of Business (Check one box.)**

- ☐ Health Care Business
- ☐ Single Asset Real Estate as defined in 11 U.S.C. § 101(51B)
- ☐ Railroad
- ☐ Stockbroker
- ☐ Commodity Broker
- ☐ Clearing Bank
- ☑ Other Former Sealing Prod. Distr.

**Tax-Exempt Entity (Check box, if applicable.)**

- ☐ Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).

**Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box.)**

- ☐ Chapter 7
- ☐ Chapter 9
- ☑ Chapter 11
- ☐ Chapter 12
- ☐ Chapter 13
- ☐ Chapter 15 Petition for Recognition of a Foreign Main Proceeding
- ☐ Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding

**Nature of Debts (Check one box.)**

- ☐ Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."
- ☑ Debts are primarily business debts.

**Filing Fee (Check one box.)**

- ☑ Full Filing Fee attached.
- ☐ Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A.
- ☐ Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.

**Chapter 11 Debtors**

Check one box:

- ☑ Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D).
- ☐ Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D).

Check if:

- ☑ Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than $2,190,000.

Check all applicable boxes:

- ☐ A plan is being filed with this petition.
- ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).

**Statistical/Administrative Information**

- ☑ Debtor estimates that funds will be available for distribution to unsecured creditors.
- ☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

THIS SPACE IS FOR COURT USE ONLY

| Estimated Number of Creditors | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| ☐ 1-49 | ☐ 50-99 | ☐ 100-199 | ☐ 200-999 | ☐ 1,000-5,000 | ☐ 5,001-10,000 | ☐ 10,001-25,000 | ☐ 25,001-50,000 | ☐ 50,001-100,000 | ☑ Over 100,000 |

| Estimated Assets | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| ☐ $0 to $50,000 | ☐ $50,001 to $100,000 | ☐ $100,001 to $500,000 | ☐ $500,001 to $1 million | ☑ $1,000,001 to $10 million | ☐ $10,000,001 to $50 million | ☐ $50,000,001 to $100 million | ☐ $100,000,001 to $500 million | ☐ $500,000,001 to $1 billion | ☐ More than $1 billion |

| Estimated Liabilities | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| ☐ $0 to $50,000 | ☐ $50,001 to $100,000 | ☐ $100,001 to $500,000 | ☐ $500,001 to $1 million | ☑ $1,000,001 to $10 million | ☐ $10,000,001 to $50 million | ☐ $50,000,001 to $100 million | ☐ $100,000,001 to $500 million | ☐ $500,000,001 to $1 billion | ☐ More than $1 billion |

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**Voluntary Petition**
*(This page must be completed and filed in every case.)*

Name of Debtor(s): Durable Manufacturing Company

**All Prior Bankruptcy Cases Filed Within Last 8 Years** (If more than two, attach additional sheet.)

| | | |
|---|---|---|
| Location Where Filed: | Case Number: | Date Filed: |
| Location Where Filed: | Case Number: | Date Filed: |

**Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor** (If more than one, attach additional sheet.)

| | | |
|---|---|---|
| Name of Debtor: | Case Number: | Date Filed: |
| District: | Relationship: | Judge: |

**Exhibit A**

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)

☐ Exhibit A is attached and made a part of this petition.

**Exhibit B**

(To be completed if debtor is an individual whose debts are primarily consumer debts.)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I have delivered to the debtor the notice required by 11 U.S.C. § 342(b).

X _____
Signature of Attorney for Debtor(s) (Date)

**Exhibit C**

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

☐ Yes, and Exhibit C is attached and made a part of this petition.

☑ No.

**Exhibit D**

(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)

☐ Exhibit D completed and signed by the debtor is attached and made a part of this petition.

If this is a joint petition:

☐ Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.

**Information Regarding the Debtor - Venue**
(Check any applicable box.)

☑ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

☐ Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.

**Certification by a Debtor Who Resides as a Tenant of Residential Property**
(Check all applicable boxes.)

☐ Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)

_____
(Name of landlord that obtained judgment)

_____
(Address of landlord)

☐ Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and

☐ Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.

☐ Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).

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**Voluntary Petition**
*(This page must be completed and filed in every case.)*



Name of Debtor(s):
Durabla Manufacturing Company

## Signatures

### Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Debtor

X _____
Signature of Joint Debtor

_____
Telephone Number (if not represented by attorney)

_____
Date

### Signature of Attorney*

X [signature]
Signature of Attorney for Debtor(s)

Thomas J. Francella, Jr.
Printed Name of Attorney for Debtor(s)

Whiteford Taylor Preston LLC
Firm Name

1220 N. Market St., Suite 608
Address

Wilmington, DE 19801

(302) 357-3252
Telephone Number

Date December 15, 2009

*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

### Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X [signature]
Signature of Authorized Individual

Printed Name of Authorized Individual
David W. Moser

Title of Authorized Individual
President

Date December 15, 2009

### Signature of a Foreign Representative

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only one box.)

☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 are attached.

☐ Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X _____
(Signature of Foreign Representative)

_____
(Printed Name of Foreign Representative)

_____
Date

### Signature of Non-Attorney Bankruptcy Petition Preparer

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

_____
Printed Name and title, if any, of Bankruptcy Petition Preparer

_____
Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social-Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

_____
Address

X _____

_____
Date

Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social-Security number is provided above.

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual.

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

*A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.*

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**RESOLUTIONS OF THE**
**BOARD OF DIRECTORS OF**
**DURABLA MANUFACTURING COMPANY**

The undersigned, being the sole member of the board of directors (the "Board") of Durabla Manufacturing Company, a Delaware corporation (the "Company"), hereby takes the following actions and adopts the following resolutions by signing the written consent hereto:

**WHEREAS,** the Board has reviewed and considered the financial and operational condition of the Company and the Company's business on the date hereof, including the historical performance of the Company, the assets of the Company, the current and long-term liabilities of the Company and credit market conditions; and

**WHEREAS,** the Board has had the opportunity to consult with the management and the financial and legal advisors to the Company and fully consider each of the strategic alternatives available to the Company.

**NOW, THEREFORE, BE IT RESOLVED,** that, in the judgment of the Board, it is desirable and in the best interests of the Company, its creditors, interest holders and other interested parties, that a voluntary petition (the "Petition") be filed by the Company under the provisions of Title 11 of the United States Code (the "Bankruptcy Code"); and it is further

**RESOLVED,** that the Company shall execute and file all petitions, schedules, lists and other papers or documents, and shall take any and all actions that are reasonable, advisable, expedient, convenient, necessary or proper to obtain such relief under the Bankruptcy Code; and it is further

**RESOLVED,** that Mr. David W. Moser (the "Authorized Officer") be, and hereby is, authorized, directed and empowered, on behalf of and in the name of the Company (i) to execute and file the Petition, as well as all other ancillary documents, in the United States Bankruptcy Court for the District of Delaware, and (ii) to execute and file or cause to be filed all petitions, schedules, lists, motions, applications and other papers or documents necessary or desirable in connection with the foregoing; and it is further

**RESOLVED,** that the Authorized Officer be, and hereby is, authorized and directed to employ any individual or firm as legal counsel, professionals or consultants to the Company as are deemed necessary to represent and assist the Company in carrying out its duties under Title 11 of the Bankruptcy Code, and in this Chapter 11 bankruptcy case, and in connection therewith, the officers and the director of the Company are hereby authorized and directed to execute appropriate retention agreements, pay appropriate retainers, if required, prior to and immediately upon the filing of the bankruptcy case, and to cause to be filed an appropriate application for authority to retain the services of such firms; and it is further

**RESOLVED,** that all acts lawfully done or actions lawfully taken by the Authorized Officer in connection with the reorganization of the Company or any matter related thereto, or by virtue of those resolutions are hereby in all respects ratified, confirmed and approved.



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**IN WITNESS WHEREOF**, these resolutions are adopted as of the latest date written below.

This Consent may be executed and delivered in multiple counterparts, which, when taken together, will constitute one instrument.

Dated: December 15, 2009



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**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

| | |
|---|---|
| In re:<br><br>DURABLA MANUFACTURING COMPANY,<br><br>Debtor. | Chapter 11<br><br>Case No. 09- (_____) |

## LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS (AS OF DECEMBER 15, 2009)

Other than the liquidated unsecured claims asserted by: (i) Cooney & Conway; (ii) Brayton & Purcell LLP; and (iii) Paul Reich & Myers, PC the creditor claims asserted against the Debtor are based on the approximately 108,000 known pending contingent, unliquidated and disputed asbestos cases as of December 15, 2009, naming the Debtor as a defendant. While the Debtor has all of the names of the individual plaintiffs, the Debtor does not have any addresses for the plaintiffs. These addresses are maintained by the plaintiffs' respective counsel through whom the Debtor would direct any communications to plaintiffs. Accordingly, the Debtor lists below the names and addresses of the respective plaintiffs' counsel representing the twenty largest groups of plaintiffs against the Debtor.

The list is prepared in accordance with Fed. R. Bankr. P. 1007(d) for filing in this chapter 11 case. The list does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. § 101, or (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the twenty (20) largest unsecured claims. The information presented in this list shall not constitute an admission by, nor is it binding on, the Debtor. The failure of the Debtor to list a claim as contingent, unliquidated or disputed does not constitute a waiver of the Debtor's right to contest the validity, priority, and/or amount of any such claim.

Law Firms Holding Liquidated Claims

Cooney & Conway
120 North La Salle Street
Chicago, IL 60602-2492

Brayton & Purcell LLP
222 Rush Landing Road
Novato, CA 94945

Paul Reich & Myers, PC
1608 Walnut Street
Philadelphia, PA 19103

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Twenty Law Firms Holding Largest Number of Unliquidated and Contingent Claims

Weitz & Luxenberg
700 Broadway
New York, New York 10003
(33,649)

Jaques Admiralty Law Firm
645 Griswold Street
Detroit, Michigan 48226-4192
(33,111)

Law Offices of Peter G. Angelos, PC
One Charles Center
100 N. Charles St.
Baltimore, MD 21201-3804
(7,756)

Law Office of Peter T. Nicholl
36 South Charles Street
Baltimore, MD 21201-3101
(6,820)

Morris, Sakalarios & Blackwell, PLLC
1817 Hardy Street
Hattiesburg, MS 39401
(5,000)

Brent Coon & Associates
5949 Sherry Lane, Suite 1550
Dallas, TX 75225
(3,342)

Wilentz, Goldman & Spitzer P.A.
110 William Street
26th Floor
New York, NY 10038-3901
(2,664)

Conway and Martin
1600 24th Avenue - Suite B
Gulfport, Mississippi 39502
(2,000)

LeBlanc & Waddell
5353 Essen Lane
Baton Rouge, LA 70809
(1,208)

Goldberg Persky White P.C.
1030 Fifth Avenue
Pittsburgh, PA 15219-6295
(1,083)



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Byrd & Associates
427 East Fortification Street
Jackson, MS 39202
(850)

F. Gerald Maples, P.A.
Canal Place
365 Canal Street, Suite 2650
New Orleans , LA 70130
(697)

Early Ludwick Sweeney & Strauss
360 Lexington Ave., 20th Floor
New York, NY 10017
(648)

Carlile Law Firm
400 South Alamo Blvd.
Marshall, TX. 75670
(641)

Kelley & Ferraro LLP
2200 Key Tower
127 Public Square
Cleveland, Ohio 44114
(618)

Reyes, O'Shea & Coloca, P.A.
283 Catalonia Avenue, Suite 100
Coral Gables, FL 33134
(600)

Foster Law Group
1019 Legion Lane
Ocean Springs, MS 39564
(500)

The Law Offices of Paul A. Weykamp
16 Stenersen Lane, Suite 2
Hunt Valley, MD 21030
(426)

Porter & Malouf
825 Ridgewood Road
Ridgeland, MS 39157-4419
(400)

Cascino Vaughan Law Office
220 S. Ashland Avenue
Chicago, IL 60607
(369)





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I declare under penalty of perjury that I have read the foregoing List of Creditors Holding 20 Largest Unsecured Claims (as of December 15, 2009) and it is true and correct to the best of my knowledge, information and belief.

David Moser, President



Case ID: 861000001
Control No.: 10031383

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

| | |
|---|---|
| In re:<br><br>DURABLA MANUFACTURING COMPANY,<br><br>Debtor. | Chapter 11<br><br>Case No. 09- (_____) |

**CREDITOR MATRIX**

Due to its voluminous nature, the Creditor Matrix is being submitted to the Court electronically as an attachment hereto.

[information provided in electronic format]

1882607

Case ID: 861000001
Control No.: 10031383

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

| | |
|---|---|
| In re:<br><br>DURABLA MANUFACTURING COMPANY,<br><br>Debtor. | Chapter 11<br><br>Case No. 09- (_____) |

**DECLARATION CONCERNING THE CREDITOR MATRIX**

I, David W. Moser, President of Durabla Manufacturing Company, a New York corporation, and the entity named as debtor in this case, declare under penalty of perjury under the laws of the United States of America that I have reviewed the Creditor Matrix submitted herewith and that the information contained herein is true and correct to the best of my information and belief.

Date: December 15, 2009

Name: David W. Moser
Title: President

Case ID: 861000001
Control No.: 10031383

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

| | |
|---|---|
| In re:<br><br>DURABLA MANUFACTURING COMPANY,<br><br>Debtor. | Chapter 11<br><br>Case No. 09- (_____) |

## LIST OF SECURITY HOLDERS
## PURSUANT TO FED. R. BANKR. P. 1007(a)(3)

The following is a list of equity security holders with an interest in the debtor Durabla Manufacturing Company. This list serves as the above captioned debtor's disclosure pursuant to Federal Rule of Bankruptcy Procedure 1007(a)(3).

| Name and Last Known Address or Place of Business of Holder | Security Class | Number of Shares/Kind of Interest |
|---|---|---|
| David W. Moser<br>Baynard Bldg., Ste 210<br>3411 Silverside Road<br>Wilmington DE, 19810 | Common Stock | 9,100 shares<br>78.6% interest |
| George Betts, III<br>Baynard Bldg., Ste 210<br>3411 Silverside Road<br>Wilmington DE, 19810 | Common Stock | 1,100 shares<br>9.5% interest |
| Derick Betts, Jr.<br>Baynard Bldg., Ste 210<br>3411 Silverside Road<br>Wilmington DE, 19810 | Common Stock | 1,072 shares<br>9.3% interest |
| Jarre Betts<br>Baynard Bldg., Ste 210<br>3411 Silverside Road<br>Wilmington DE, 19810 | Common Stock | 300 shares<br>2.6% interest |

1882615

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# EXHIBIT E

Case ID: 861000001
Control No.: 10031383

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

| | | |
|---|---|---|
| In re:<br><br>DURABLA MANUFACTURING COMPANY,<br><br>Debtor. | §<br>§<br>§<br>§<br>§<br>§<br>§ | Case No. 09-14415<br><br>Chapter 11 |
| DFT INC., DURABLA CANADA, LTD., AND DAVID W. MOSER,<br><br>Plaintiffs,<br><br>v.<br><br>DURABLA MANUFACTURING COMPANY,<br><br>Defendant. | §<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§ | Adversary Proceeding No. 09-_____ |

## COMPLAINT FOR DECLARATORY JUDGMENT

DFT INC. ("DFT"), DURABLA CANADA, LTD. ("Durabla Canada") and DAVID W. MOSER ("Moser" and, together with DFT and Durabla Canada, the "Plaintiffs"), file this Complaint for Declaratory Relief (the "Complaint") in this adversary proceeding (this "Adversary Proceeding") and, in support hereof, allege as follows:

## I. NATURE OF THIS ADVERSARY PROCEEDING AND RELIEF REQUESTED

1. This Adversary Proceeding arises out of a present and actual controversy between the Plaintiffs, on the one hand, and Durabla Manufacturing Company ( "DMC" or the "Debtor") on the other hand, regarding the purported liability of the Plaintiffs for claims against the Debtor, arising from alleged injuries from claimed exposure to asbestos and/or asbestos-containing products (the "Asbestos Claims").

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2. In the case of DMC, the majority of the Asbestos Claims allege exposure as a result of cutting and handling asbestos-containing gaskets and/or gasket materials sold by DMC. Over 100,000 such claims are currently pending in various parts of the United States (the "Current Actions"). In addition, potential asbestos claimants may assert claims in the future alleging personal injury, wrongful death, or other damage from the alleged exposure to, or the presence of, asbestos and/or asbestos-containing products (the "Future Actions"). The Current Actions and the Future Actions are collectively referred to as the "Asbestos Actions."

3. With DMC's insurance coverage nearly exhausted, beginning in 2008, numerous Asbestos Claimants against DMC began adding DFT, Durabla Canada, and/or Moser to their litigations alleging, under various legal theories, that all or some of them are liable to the claimants if DMC is liable for injuries allegedly caused by DMC's sale of asbestos-containing gaskets (the "Asbestos Litigations Against Plaintiffs"). A list of currently pending Asbestos Litigations Against Plaintiffs is set forth on Schedule A annexed hereto and incorporated herein by reference.

4. By way of example, such asbestos claimants have alleged, among other things that the courts should pierce the corporate veil between DMC and Mr. Moser because:

- Mr. Moser is or has been the president of DMC, Durabla Canada, and DFT, and owns over 50% of the issued stock of each company.
- In 1999, Durmanco Inc. ("Durmanco"), DMC's then parent company, caused DMC to pay Durmanco a dividend of $2.34 million.



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- That same year, Durmanco caused DMC to dividend to Durmanco real property DMC owned subject to a mortgage.[1]

5. DFT never manufactured or sold asbestos or asbestos-containing products. DFT has no direct liability for any materials or products manufactured or sold by DMC. Yet, this has not stopped certain asbestos claimants from naming DFT as defendant in numerous Current Actions against DMC.

6. Although a limited number of the Asbestos Claims are based on direct theories of liability against Durabla Canada because it manufactured asbestos-containing products which it sold to DMC, the majority of claims against Durabla Canada are derivative of claims against DMC in that they are incorrectly brought against Durabla Canada based upon its incorrectly alleged status as DMC's successor or alter ego or that Durabla Canada is liable for DMC's liabilities under some other theory.

7. Plaintiffs have had a growing number of claims brought against them asserting that they should be liable to asbestos claimants for the alleged direct liability of DMC based on a

---

[1] The minutes explain:

> The Chairman led a discussion regarding the structure of the Company [Durmanco] and its subsidiaries. The Company is intended to be a holding company, providing management services to its subsidiaries. It was noted that the real property and improvements thereon known as 140 Sheree Boulevard Exton, PA 19341 (the "Real Property") contains the assets and operations of the Company, and two of its subsidiaries, DFT and DMC, yet title to the Real Property is held in the name of DMC. DMC bears the cost of owning and maintaining the Real Property, and, although DFT is billed a portion of this cost, management believes that the current arrangement is not the optimal arrangement to accurately reflect the financial condition and results of operations of the Company and its subsidiaries. The Chairman stated his preference to have the Company hold title to all assets in the consolidated group which are not directly tied to the operations of a subsidiary company.

In 2000 Durmanco, sold the building to Lionville Properties Inc., an entity in which Mr. Moser has a controlling interest. In connection with a 2001 tax-free spin off of DFT from Durmanco, a note payable from Lionville Properties Inc. to Durmanco was distributed to DFT.



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number of theories, including, without limitation, denuding-the-corporation, single-business-enterprise, corporate trust funds, breach of fiduciary duty or conspiracy, allegations that Plaintiffs were the mere instrumentality, agent, or alter ego of DMC or that the corporate veil should be pierced, or that as a result of domination and control over the Debtor, directly or indirectly, Plaintiffs should be liable for asbestos-related claims or any other claims that have origins in acts or omissions of the Debtor, or any other theories alleging direct or indirect liability for the conduct of, claims against, or demands on the Debtor to the extent that such alleged liability arises by reason of any of the other circumstances enumerated in section 524(g)(4)(A)(ii) of the Bankruptcy Code (collectively, the "Alter Ego Theories").

8. Based on the Alter Ego Theories, asbestos claimants and/or DMC assert, or will assert, that Plaintiffs are liable for Asbestos Claims against the Debtor, despite facts unequivocally demonstrating that Moser, Durabla Canada, DFT and DMC have, at all times, maintained appropriate corporate separateness and respected all attributes of corporate business and accounting separateness, and only DMC sold asbestos-containing gaskets and/or sheet gasket material in the United States.

9. This Adversary Proceeding requests a declaratory judgment that Plaintiffs are not liable to the Debtor, its bankruptcy estate or any of its present or future creditors for any liability, asbestos-related or otherwise, under the Alter Ego Theories.

## II. FACTS

### A. DMC and Durabla Canada

10. In 1911, DMC was incorporated in New York to wholesale industrial products such as sealing products (gasket material containing asbestos) and gauge glass. At that time, the Von Kokeritz family controlled 50% of DMC; the remaining ownership was divided between three other families by the names of Hill, Hunt, and Betts. In 1921, DMC formed a valve



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division which was located in Pennsylvania; the sealing products division remained in New York City. The valves manufactured by DMC never contained asbestos. In or about 1922, Durabla Canada was formed under Canadian law to serve the Canadian market.

11. DMC and Durabla Canada have never had a parent or subsidiary relationship; they have always been stand alone entities with operations in different countries.

**B. DFT Was Incorporated in 1995 to Acquire DMC's Non-Asbestos Valve Division.**

12. From 1921 until 1995, DMC had two distinct and separate divisions: the Sealing Products Division, distributing sealing products such as gaskets (some of which contained asbestos); and the Valve Division, manufacturing pump valves and check valves (which contained ***no*** asbestos). The Sealing Products Division and the Valve Division each had its own separate operating facility with its own operating, administrative, and supporting staffs. Each division had its own customers. Even when both divisions moved into the same facility in 1979 (and again in 1985), they remained separate in terms of costs, operating personnel, and most staffing. In fact, while they occupied the same building, they had separate entrances.

13. At a DMC board meeting held on June 14, 1994, a discussion was held regarding a restructuring of the company. "Mr. David Moser advised the Board that in his opinion this was necessary and desirable in order to facilitate future growth, and to develop a management structure that would carry the business forward on a basis where it would be less dependent on one individual than it is at present."[2] At that time, DMC's board unanimously passed a resolution to effectuate the restructuring effective January 1, 1995.

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[2] The June 14, 1994 minutes explain:

> The valve business and sealing products business are, for the most part, separate and distinct operations now, each with its individual manufacturing, engineering and

Continued on following page



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14. Accordingly, on January 1, 1995, Durmanco Inc. ("Durmanco") was duly formed as a holding company for DMC and a new corporation, Durabla Fluid Technology Inc. (now known as DFT). The shareholders of DMC became shareholders of Durmanco and the board of DMC became the board of Durmanco. DFT purchased all the inventory and equipment and other assets associated with the manufacture of the valve product line from DMC for $2,490,880; the equipment was acquired at fair market value pursuant to an independent appraisal and the inventory was acquired at book value. Durmanco entered into a management agreement with DFT and DMC pursuant to which Durmanco provided certain management services to those companies.

15. The corporate structure was thus as of the beginning of 1995, some 14 years ago:

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Continued from previous page

administrative support staff, and each occupying a separate and distinct part of the Lionville building. Channels of distribution, which were at one time substantially common to both product lines, have evolved into almost entirely separate entities whereby only a few distributors remain that handle both product lines. This distinction adds merit to the concept of separate sales force to handle each product line.

Mr. Moser believes that each group (valve and sealing products) should be a separate profit center each ultimately managed by a General Manager. In order for a General Manager to have equity participation in the business unit for which he is solely responsible, it is necessary to restructure the company into two operating subsidiaries controlled by a parent corporation. This way, there will be no change in ownership insofar as current Durabla Manufacturing Company shareholders are concerned, but equity participation by key employees would be possible at the subsidiary level where there would be congruity with their area of responsibility.



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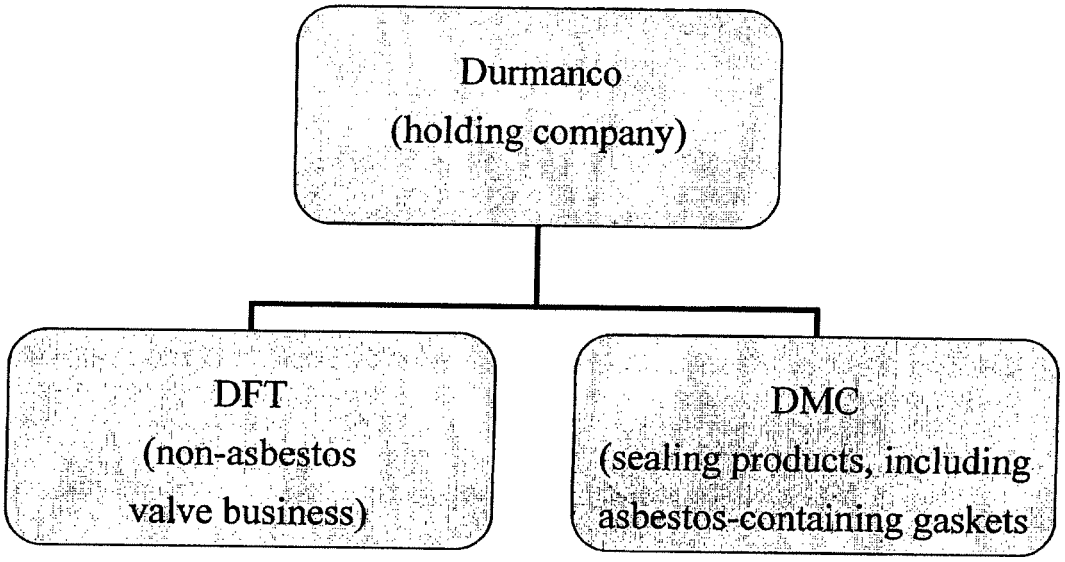


16. From 1995 forward, DMC continued to distribute sealing products as it had, without interruption, since its incorporation in 1911. In the years immediately following this restructuring, DMC remained the more profitable of Durmanco's two subsidiaries.

C. **Corporate Facts**

17. Durmanco, DMC, DFT, and Durabla Canada have, every year, held separate and regularly scheduled board and shareholder meetings. They have maintained corporate books and corporate minutes.[3] Each company has also maintained separate advertising promotional pieces. Each company has separate bank accounts. Each company has outside auditors and annual audit reports. Each company has maintained its own separate employees, separate office space and separate equipment, as well as separate customers.

18. At all times since 1994, Mr. David Moser has served on the board and/or as an officer of Durmanco, DMC, Durabla Canada, and DFT. At all times since 1995, Mr. Moser has owned over 50% of the shares of Durmanco and Durabla Canada and, since a 2001 spin off, of

[3] DMC's minutes were kept either by a non-shareholder corporate secretary or a legal counsel throughout this time period.



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DFT. Durabla Canada does not have identical shareholders with either DMC or DFT, although there have been some common shareholders over the years.

19. In mid-2002, Durabla Canada terminated a distributorship agreement between it and DMC relating to Durabla Canada's non-asbestos containing gasket product line. Durabla Canada then entered into a similar relationship with Gasket Resources Inc. ("GRI"), the shareholders of which included Mr. Moser as well as a number of individuals who had never had an ownership interest in DMC, Durabla Canada, or DFT.

**D. <u>DMC As Of and After 2002</u>**

20. DMC received its first asbestos claim in 1980. DMC's primary coverage of $8,500,000 lasted until September 14, 2002, some 22 years. At that time, DMC had remaining excess coverage totaling $19,999,500 ($6,999,500 with expenses outside of limits). As of September of 2002, DMC had made payments in 16,017 of its 77,567 closed asbestos cases, or approximately 20.7% of the cases, representing a dismissal rate of 79.3%. As of September of 2002, DMC had paid an average of approximately $531 per case on closed asbestos cases on which a payment had been made. As of September of 2002, DMC had 78,699 open asbestos cases. Accordingly, DMC's coverage remaining as of September of 2002 was over two times the product of multiplying the number of open asbestos claims, the percentage of claims that had been paid in the past, and the average payment per case.

21. As of the close of 2002 and according to the Durmanco audit report issued by its own outside auditors, DMC showed a profit, had cash and marketable securities totaling $925,304, and had retained earnings totaling $1,113,555. DMC showed a profit for 3 out of the next 4 years and in each of those years DMC had cash and marketable securities in a range from



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$555,437 to $1,034,159. DMC's retained earnings in those years ranged from $601,285 to $1,180,093.

22. DMC's sales dropped after 2002. In August of 2007, DMC ceased operations because its sales were not covering its overhead. As of December 31, 2007, DMC had $649,684 in cash and marketable securities on hand. Those funds have been used since then to help wind up the affairs of the company, defend litigation, and to protect insurance coverage. As of June 30, 2009, DMC still had $318,847 in cash.

23. DMC also suffered a number of reversals in the asbestos litigation after 2002. Now, in 2009, it has approximately $1,500,000 in remaining coverage limits.

## III. JURISDICTION AND VENUE

24. On December 15, 2009, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor continues to be authorized to operate its business and to manage its properties as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtor's bankruptcy case.

25. This Court is granted subject-matter jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. §§ 1334(b) and (e). This Adversary Proceeding is a core proceeding under 28 U.S.C. § 157(b)(2)(C), (E), (L), and (O), because it raises significant issues that implicate the administration of the Debtor's estate.

26. Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

27. Pursuant to 28 U.S.C. § 2201, this Court can enter the declaratory relief sought in this Complaint because this case presents an actual controversy and is within this Court's jurisdiction as stated above.



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28. To the extent that Asbestos Actions based on the Alter Ego Theories are valid, an assertion that Plaintiffs categorically deny, they constitute a right of action belonging to the Debtor -- the representatives for, and fiduciaries of, its bankruptcy estate -- which right of action is "property of the estate" within the meaning of section 541(a)(1) of the Bankruptcy Code, and as such, the Asbestos Actions that assert claims against the Plaintiffs based on the Alter Ego Theories are subject to the automatic stay of section 362(a)(3). In the non-bankruptcy context, actions based on any of the Alter Ego Theories could be separately asserted, and indeed have been asserted, by individual claimants of DMC.

29. The individual prosecution of Asbestos Actions that assert claims against the Plaintiffs based on the Alter Ego Theories would (i) frustrate the goal of equal distribution among the Debtor's creditors; (ii) abridge the general policy of giving the Debtor an opportunity to reorganize its finances; and (iii) result in a multi-jurisdictional rush to judgment that cuts against the fundamental policies of the Bankruptcy Code. Instead, this Adversary Proceeding seeks to collectively resolve all Asbestos Actions that assert claims against all of the Plaintiffs based on the Alter Ego Theories. The unified and orderly resolution of the matters set forth in this Complaint will benefit all parties-in-interest in the Debtor's bankruptcy case and is essential to the efficient administration of the Debtor's estate, as it will establish the framework for determining Plaintiffs' contributions to the trust under section 524(g) of the Bankruptcy Code.

## IV. THE PARTIES

### A. Plaintiffs

30. DFT is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 140 Sheree Boulevard, Exton, Pa. 19341.



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31. Durabla Canada is a corporation organized and existing under the laws of Canada with its principal place of business located at 293 University Avenue, Belleville, Ontario, Canada K8N 5B3.

32. David W. Moser is an individual who is a resident of the Commonwealth of Pennsylvania.

**B. Defendant**

33. DMC is the Debtor in the above-captioned bankruptcy proceeding and its bankruptcy estate. DMC is a New York corporation with its principal place of business at Baynard Building, Suite 210, 3411 Silverside Road, Wilmington, DE 19810.

## V. PLAINTIFFS ARE NOT LIABLE FOR ASBESTOS CLAIMS AGAINST DMC BASED ON THE ALTER EGO THEORIES.

34. None of the Alter Ego Theories that the Debtor has advanced (or is likely to advance in the future) in favor of using the assets of Plaintiffs to satisfy the liabilities of DMC are viable.

35. There is no valid reason for invoking any of the Alter Ego Theories. Analyses of the past and present operations, structure and conduct of DMC and the Plaintiffs will demonstrate that none of the Alter Ego Theories can succeed. Plaintiffs can, and will, demonstrate that:

(a) From its inception, and at all relevant times when corporate transactions and transfers took place, DMC was sufficiently capitalized and it never guaranteed, or pledged its assets for, any debt incurred by Plaintiffs;

(b) The capitalization noted above was reasonably deemed sufficient to handle all future liabilities because, in part, DMC's management had put into place a strong, comprehensive insurance coverage program that, by all indications at that time,



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appeared to be more than sufficient to cover all of DMC's present and future asbestos-related liabilities;

(c) DMC and the Plaintiffs observed appropriate corporate formalities, each of the corporate entities maintained a properly constituted board of directors, elected appropriate officers, had its own charter and bylaws, and maintained independent corporate records;

(d) From its inception, DMC had appropriate control over its own business operations and it operated as an autonomous business in that DMC had its own letterhead and signed and negotiated its own agreements. Before the 1995 restructuring, each division individually participated in trade organizations, produced its own marketing literature and invoices, and had its own cost centers;

(e) To the extent that Moser exercised any control over DMC, it was solely in the form of ordinary corporate governance procedures;

(f) Since 1995, DMC conducted its own separate business selling its asbestos-containing gaskets to independent entities, it managed its day-to-day operations, and engaged in its own and independent decision-making process as it related to financial and business strategies and otherwise;

(g) To the limited extent that Plaintiffs and DMC shared services, common functions and facilities, the entity providing such services, functions or facilities and/or the value of such services, functions or facilities was accounted for and reimbursed by the other company;



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(h) There was no centralized cash management system for DMC and any Plaintiff entity, instead, revenue was collected and accounted for by each entity separately;

(i) DMC maintained its own daily cash balance and had its own banking relationships with local banks;

(j) DMC had a completely separate accounting system, maintained by its own accounting personnel;

(k) At all relevant times, DMC generated its own revenue; and

(l) All corporate reorganizations, inter-company transfers of assets, and declarations of dividends were done for value and for valid business purposes.

## FIRST CAUSE OF ACTION

**(Declaratory Judgment that Plaintiffs are Not Liable for DMC's Asbestos Claims under Any of the Alter Ego Theories)**

36. Plaintiff incorporates by reference paragraphs 1-35 of this Complaint.

37. An actual controversy has arisen and now exists between the parties concerning the liability of the Plaintiffs for DMC's asbestos-related liability under any of the Alter Ego Theories, for which Plaintiffs desire a declaration of rights.

38. A declaratory judgment is necessary in that Defendant herein has contended, or is expected to contend, and Plaintiffs have denied and will continue to deny, that Plaintiffs are and should be held liable for DMC's asbestos-related liability under one or more of the Alter Ego Theories.

39. Accordingly, Plaintiffs seek declaratory relief to prevent the Defendant from improperly seeking to hold Plaintiffs liable for DMC's asbestos-related liability under one or more of the Alter Ego Theories.



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**WHEREFORE,** Plaintiffs respectfully request that the Court enter a judgment in their favor and against the Defendant as follows:

A. Declaring that Plaintiffs are not liable under any of the Alter Ego Theories for any Asbestos Actions against DMC;

B. Declaring that Plaintiffs' assets may not be used to satisfy any present and/or future Asbestos Claims or any other asbestos present and/or personal injury or any other present and/or future claims or demands of any kind against DMC;

C. Awarding Plaintiffs their costs, expenses and attorneys' fees; and

D. Granting such other and further relief to Plaintiffs as is just and proper.

[Remainder of Page Intentionally Left Blank]



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Control No.: 10031383

Dated: January 7, 2010
Wilmington, Delaware

Respectfully submitted,

**REED SMITH LLP**

By: /s/ Mark W. Eckard

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Wilmington, DE 19801
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- and -

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E-mail: pbreene@reedsmith.com

Counsel for Plaintiffs DFT Inc., Durabla Canada, Ltd., and David W. Moser



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Control No.: 10031383

# EXHIBIT F

Case ID: 861000001
Control No.: 10031383

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

| | | |
|---|---|---|
| In re: | § | |
| | § | |
| DURABLA MANUFACTURING COMPANY, | § | Case No. 09-14415 |
| | § | |
| Debtor. | § | Chapter 11 |
| | § | |
| DFT INC., DURABLA CANADA, LTD., AND DAVID W. MOSER, | § | |
| | § | Adversary Proceeding No. 10-50005 |
| Plaintiffs, | § | |
| v. | § | |
| DURABLA MANUFACTURING COMPANY, | § | |
| Defendant. | § | |

**FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT**

DFT INC. ("DFT"), DURABLA CANADA, LTD. ("Durabla Canada") and DAVID W. MOSER ("Moser" and, together with DFT and Durabla Canada, the "Plaintiffs"), file this Complaint for Declaratory Relief (the "Complaint") in this adversary proceeding (this "Adversary Proceeding") and, in support hereof, allege as follows:

## I. NATURE OF THIS ADVERSARY PROCEEDING AND RELIEF REQUESTED

1. This Adversary Proceeding arises out of a present and actual controversy between the Plaintiffs, on the one hand, and Durabla Manufacturing Company ( "DMC" or the "Debtor") on the other hand, regarding the purported liability of the Plaintiffs for claims against the Debtor, arising from alleged injuries from claimed exposure to asbestos and/or asbestos-containing products (the "Asbestos Claims").

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2. In the case of DMC, the majority of the Asbestos Claims allege exposure as a result of cutting and handling asbestos-containing gaskets and/or gasket materials sold by DMC. Over 100,000 such claims are currently pending in various parts of the United States (the "Current Actions"). In addition, potential asbestos claimants may assert claims in the future alleging personal injury, wrongful death, or other damage from the alleged exposure to, or the presence of, asbestos and/or asbestos-containing products (the "Future Actions"). The Current Actions and the Future Actions are collectively referred to as the "Asbestos Actions."

3. With DMC's insurance coverage nearly exhausted, beginning in 2008, numerous Asbestos Claimants against DMC began adding DFT, Durabla Canada, and/or Moser to their litigations alleging, under various legal theories, that all or some of them are liable to the claimants if DMC is liable for injuries allegedly caused by DMC's sale of asbestos-containing gaskets (the "Asbestos Litigations Against Plaintiffs"). A list of currently pending Asbestos Litigations Against Plaintiffs is set forth on Schedule A annexed hereto and incorporated herein by reference.

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- That same year, Durmanco caused DMC to dividend to Durmanco real property DMC owned subject to a mortgage.[1]

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6. Although a limited number of the Asbestos Claims are based on direct theories of liability against Durabla Canada because it manufactured asbestos-containing products which it sold to DMC, the majority of claims against Durabla Canada are derivative of claims against DMC in that they are incorrectly brought against Durabla Canada based upon its incorrectly alleged status as DMC's successor or alter ego or that Durabla Canada is liable for DMC's liabilities under some other theory.

7. Plaintiffs have had a growing number of claims brought against them asserting that they should be liable to asbestos claimants for the alleged direct liability of DMC based on a

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number of theories, including, without limitation, denuding-the-corporation, single-business-enterprise, corporate trust funds, breach of fiduciary duty or conspiracy, allegations that Plaintiffs were the mere instrumentality, agent, or alter ego of DMC or that the corporate veil should be pierced, or that as a result of domination and control over the Debtor, directly or indirectly, Plaintiffs should be liable for asbestos-related claims or any other claims that have origins in acts or omissions of the Debtor, or any other theories alleging direct or indirect liability for the conduct of, claims against, or demands on the Debtor to the extent that such alleged liability arises by reason of any of the other circumstances enumerated in section 524(g)(4)(A)(ii) of the Bankruptcy Code (collectively, the "Alter Ego Theories").

8. Based on the Alter Ego Theories, asbestos claimants and/or DMC assert, or will assert, that Plaintiffs are liable for Asbestos Claims against the Debtor, despite facts unequivocally demonstrating that Moser, Durabla Canada, DFT and DMC have, at all times, maintained appropriate corporate separateness and respected all attributes of corporate business and accounting separateness, and only DMC sold asbestos-containing gaskets and/or sheet gasket material in the United States.

9. This Adversary Proceeding requests a declaratory judgment that Plaintiffs are not liable to the Debtor, its bankruptcy estate or any of its present or future creditors for any liability, asbestos-related or otherwise, under the Alter Ego Theories.

## II. FACTS

### A. DMC and Durabla Canada

10. In 1911, DMC was incorporated in New York to wholesale industrial products such as sealing products (gasket material containing asbestos) and gauge glass. At that time, the Von Kokeritz family controlled 50% of DMC; the remaining ownership was divided between three other families by the names of Hill, Hunt, and Betts. In 1921, DMC formed a valve



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division which was located in Pennsylvania; the sealing products division remained in New York City. The valves manufactured by DMC never contained asbestos. In or about 1922, Durabla Canada was formed under Canadian law to serve the Canadian market.

11. DMC and Durabla Canada have never had a parent or subsidiary relationship; they have always been stand alone entities with operations in different countries.

**B. DFT Was Incorporated in 1995 to Acquire DMC's Non-Asbestos Valve Division.**

12. From 1921 until 1995, DMC had two distinct and separate divisions: the Sealing Products Division, distributing sealing products such as gaskets (some of which contained asbestos); and the Valve Division, manufacturing pump valves and check valves (which contained ***no*** asbestos). The Sealing Products Division and the Valve Division each had its own separate operating facility with its own operating, administrative, and supporting staffs. Each division had its own customers. Even when both divisions moved into the same facility in 1979 (and again in 1985), they remained separate in terms of costs, operating personnel, and most staffing. In fact, while they occupied the same building, they had separate entrances.

13. At a DMC board meeting held on June 14, 1994, a discussion was held regarding a restructuring of the company. "Mr. David Moser advised the Board that in his opinion this was necessary and desirable in order to facilitate future growth, and to develop a management structure that would carry the business forward on a basis where it would be less dependent on one individual than it is at present."[2] At that time, DMC's board unanimously passed a resolution to effectuate the restructuring effective January 1, 1995.

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[2] The June 14, 1994 minutes explain:

> The valve business and sealing products business are, for the most part, separate and distinct operations now, each with its individual manufacturing, engineering and

Continued on following page



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14. Accordingly, on January 1, 1995, Durmanco Inc. ("Durmanco") was duly formed as a holding company for DMC and a new corporation, Durabla Fluid Technology Inc. (now known as DFT). The shareholders of DMC became shareholders of Durmanco and the board of DMC became the board of Durmanco. DFT purchased all the inventory and equipment and other assets associated with the manufacture of the valve product line from DMC for $2,490,880; the equipment was acquired at fair market value pursuant to an independent appraisal and the inventory was acquired at book value. Durmanco entered into a management agreement with DFT and DMC pursuant to which Durmanco provided certain management services to those companies.

15. The corporate structure was thus as of the beginning of 1995, some 15 years ago:

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Continued from previous page

administrative support staff, and each occupying a separate and distinct part of the Lionville building. Channels of distribution, which were at one time substantially common to both product lines, have evolved into almost entirely separate entities whereby only a few distributors remain that handle both product lines. This distinction adds merit to the concept of separate sales force to handle each product line.

Mr. Moser believes that each group (valve and sealing products) should be a separate profit center each ultimately managed by a General Manager. In order for a General Manager to have equity participation in the business unit for which he is solely responsible, it is necessary to restructure the company into two operating subsidiaries controlled by a parent corporation. This way, there will be no change in ownership insofar as current Durabla Manufacturing Company shareholders are concerned, but equity participation by key employees would be possible at the subsidiary level where there would be congruity with their area of responsibility.



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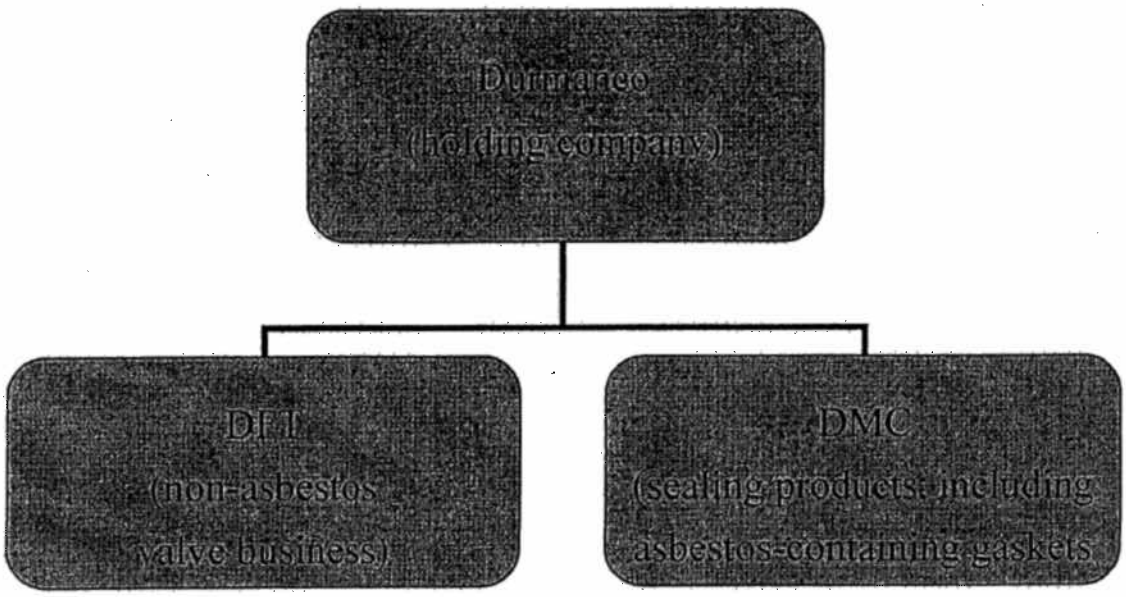


16. From 1995 forward, DMC continued to distribute sealing products as it had, without interruption, since its incorporation in 1911. In the years immediately following this restructuring, DMC remained the more profitable of Durmanco's two subsidiaries.

C. **Corporate Facts**

17. Durmanco, DMC, DFT, and Durabla Canada have, every year, held separate and regularly scheduled board and shareholder meetings. They have maintained corporate books and corporate minutes.[3] Each company has also maintained separate advertising promotional pieces. Each company has separate bank accounts. Each company has outside auditors and annual audit reports. Each company has maintained its own separate employees, separate office space and separate equipment, as well as separate customers.

18. At all times since 1994, Mr. David Moser has served on the board and/or as an officer of Durmanco, DMC, Durabla Canada, and DFT. At all times since 1995, Mr. Moser has owned over 50% of the shares of Durmanco and Durabla Canada and, since a 2001 spin off, of

[3] DMC's minutes were kept either by a non-shareholder corporate secretary or a legal counsel throughout this time period.



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DFT. Durabla Canada does not have identical shareholders with either DMC or DFT, although there have been some common shareholders over the years.

19. In mid-2002, Durabla Canada terminated a distributorship agreement between it and DMC relating to Durabla Canada's non-asbestos containing gasket product line. Durabla Canada then entered into a similar relationship with Gasket Resources Inc. ("GRI"), the shareholders of which included Mr. Moser as well as a number of individuals who had never had an ownership interest in DMC, Durabla Canada, or DFT.

**D. DMC As Of and After 2002**

20. DMC received its first asbestos claim in 1980. DMC's primary coverage of $8,500,000 lasted until September 14, 2002, some 22 years. At that time, DMC had remaining excess coverage totaling $19,999,500 ($6,999,500 with expenses outside of limits). As of September of 2002, DMC had made payments in 16,017 of its 77,567 closed asbestos cases, or approximately 20.7% of the cases, representing a dismissal rate of 79.3%. As of September of 2002, DMC had paid an average of approximately $531 per case on closed asbestos cases on which a payment had been made. As of September of 2002, DMC had 78,699 open asbestos cases. Accordingly, DMC's coverage remaining as of September of 2002 was over two times the product of multiplying the number of open asbestos claims, the percentage of claims that had been paid in the past, and the average payment per case.

21. As of the close of 2002 and according to the Durmanco audit report issued by its own outside auditors, DMC showed a profit, had cash and marketable securities totaling $925,304, and had retained earnings totaling $1,113,555. DMC showed a profit for 3 out of the next 4 years and in each of those years DMC had cash and marketable securities in a range from



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$555,437 to $1,034,159. DMC's retained earnings in those years ranged from $601,285 to $1,180,093.

22. DMC's sales dropped after 2002. In August of 2007, DMC ceased operations because its sales were not covering its overhead. As of December 31, 2007, DMC had $649,684 in cash and marketable securities on hand. Those funds have been used since then to help wind up the affairs of the company, defend litigation, and to protect insurance coverage. As of June 30, 2009, DMC still had $318,847 in cash.

23. DMC also suffered a number of reversals in the asbestos litigation after 2002. Now, in 2010, it has approximately $1,500,000 in remaining coverage limits.

## III. JURISDICTION AND VENUE

24. On December 15, 2009, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor continues to be authorized to operate its business and to manage its properties as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtor's bankruptcy case.

25. This Court is granted subject-matter jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. §§ 1334(b) and (e). This Adversary Proceeding is a core proceeding under 28 U.S.C. § 157(b)(2)(C), (E), (L), and (O), because it raises significant issues that implicate the administration of the Debtor's estate.

26. Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

27. Pursuant to 28 U.S.C. § 2201, this Court can enter the declaratory relief sought in this Complaint because this case presents an actual controversy and is within this Court's jurisdiction as stated above.



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28. To the extent that Asbestos Actions based on the Alter Ego Theories are valid, an assertion that Plaintiffs categorically deny, they constitute a right of action belonging to the Debtor -- the representatives for, and fiduciaries of, its bankruptcy estate -- which right of action is "property of the estate" within the meaning of section 541(a)(1) of the Bankruptcy Code, and as such, the Asbestos Actions that assert claims against the Plaintiffs based on the Alter Ego Theories are subject to the automatic stay of section 362(a)(3). In the non-bankruptcy context, actions based on any of the Alter Ego Theories could be separately asserted, and indeed have been asserted, by individual claimants of DMC.

29. The individual prosecution of Asbestos Actions that assert claims against the Plaintiffs based on the Alter Ego Theories would (i) frustrate the goal of equal distribution among the Debtor's creditors; (ii) abridge the general policy of giving the Debtor an opportunity to reorganize its finances; and (iii) result in a multi-jurisdictional rush to judgment that cuts against the fundamental policies of the Bankruptcy Code. Instead, this Adversary Proceeding seeks to collectively resolve all Asbestos Actions that assert claims against all of the Plaintiffs based on the Alter Ego Theories. The unified and orderly resolution of the matters set forth in this Complaint will benefit all parties-in-interest in the Debtor's bankruptcy case and is essential to the efficient administration of the Debtor's estate, as it will establish the framework for determining Plaintiffs' contributions to the trust under section 524(g) of the Bankruptcy Code.

## IV. THE PARTIES

### A. Plaintiffs

30. DFT is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 140 Sheree Boulevard, Exton, Pa. 19341.



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31. Durabla Canada is a corporation organized and existing under the laws of Canada with its principal place of business located at 293 University Avenue, Belleville, Ontario, Canada K8N 5B3.

32. David W. Moser is an individual who is a resident of the Commonwealth of Pennsylvania.

**B. Defendant**

33. DMC is the Debtor in the above-captioned bankruptcy proceeding and its bankruptcy estate. DMC is a New York corporation with its principal place of business at Baynard Building, Suite 210, 3411 Silverside Road, Wilmington, DE 19810.

## V. PLAINTIFFS ARE NOT LIABLE FOR ASBESTOS CLAIMS AGAINST DMC BASED ON THE ALTER EGO THEORIES.

34. None of the Alter Ego Theories that the Debtor has advanced (or is likely to advance in the future) in favor of using the assets of Plaintiffs to satisfy the liabilities of DMC are viable.

35. There is no valid reason for invoking any of the Alter Ego Theories. Analyses of the past and present operations, structure and conduct of DMC and the Plaintiffs will demonstrate that none of the Alter Ego Theories can succeed. Plaintiffs can, and will, demonstrate that:

(a) From its inception, and at all relevant times when corporate transactions and transfers took place, DMC was sufficiently capitalized and it never guaranteed, or pledged its assets for, any debt incurred by Plaintiffs;

(b) The capitalization noted above was reasonably deemed sufficient to handle all future liabilities because, in part, DMC's management had put into place a strong, comprehensive insurance coverage program that, by all indications at that time,



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appeared to be more than sufficient to cover all of DMC's present and future asbestos-related liabilities;

(c) DMC and the Plaintiffs observed appropriate corporate formalities, each of the corporate entities maintained a properly constituted board of directors, elected appropriate officers, had its own charter and bylaws, and maintained independent corporate records;

(d) From its inception, DMC had appropriate control over its own business operations and it operated as an autonomous business in that DMC had its own letterhead and signed and negotiated its own agreements. Before the 1995 restructuring, each division individually participated in trade organizations, produced its own marketing literature and invoices, and had its own cost centers;

(e) To the extent that Moser exercised any control over DMC, it was solely in the form of ordinary corporate governance procedures;

(f) Since 1995, DMC conducted its own separate business selling its asbestos-containing gaskets to independent entities, it managed its day-to-day operations, and engaged in its own and independent decision-making process as it related to financial and business strategies and otherwise;

(g) To the limited extent that Plaintiffs and DMC shared services, common functions and facilities, the entity providing such services, functions or facilities and/or the value of such services, functions or facilities was accounted for and reimbursed by the other company;



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(h) There was no centralized cash management system for DMC and any Plaintiff entity, instead, revenue was collected and accounted for by each entity separately;

(i) DMC maintained its own daily cash balance and had its own banking relationships with local banks;

(j) DMC had a completely separate accounting system, maintained by its own accounting personnel;

(k) At all relevant times, DMC generated its own revenue; and

(l) All corporate reorganizations, inter-company transfers of assets, and declarations of dividends were done for value and for valid business purposes.

## FIRST CAUSE OF ACTION

**(Declaratory Judgment that Plaintiffs are Not Liable for DMC's Asbestos Claims under Any of the Alter Ego Theories)**

36. Plaintiff incorporates by reference paragraphs 1-35 of this Complaint.

37. An actual controversy has arisen and now exists between the parties concerning the liability of the Plaintiffs for DMC's asbestos-related liability under any of the Alter Ego Theories, for which Plaintiffs desire a declaration of rights.

38. A declaratory judgment is necessary in that Defendant herein has contended, or is expected to contend, and Plaintiffs have denied and will continue to deny, that Plaintiffs are and should be held liable for DMC's asbestos-related liability under one or more of the Alter Ego Theories.

39. Accordingly, Plaintiffs seek declaratory relief to prevent the Defendant from improperly seeking to hold Plaintiffs liable for DMC's asbestos-related liability under one or more of the Alter Ego Theories.



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**WHEREFORE,** Plaintiffs respectfully request that the Court enter a judgment in their favor and against the Defendant as follows:

A. Declaring that Plaintiffs are not liable under any of the Alter Ego Theories for any Asbestos Actions against DMC;

B. Declaring that Plaintiffs' assets may not be used to satisfy any present and/or future Asbestos Claims or any other asbestos present and/or personal injury or any other present and/or future claims or demands of any kind against DMC;

C. Awarding Plaintiffs their costs, expenses and attorneys' fees; and

D. Granting such other and further relief to Plaintiffs as is just and proper.

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Control No.: 10031383

Dated: January 8, 2010
Wilmington, Delaware

Respectfully submitted,

**REED SMITH LLP**

By: /s/ Mark W. Eckard

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Counsel for Plaintiffs DFT Inc., Durabla Canada, Ltd., and David W. Moser



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# EXHIBIT G

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| | | |
|---|---|---|
| Gloria Llewellyn, Executrix of the Estate of John E. Llewellyn, Deceased and Gloria, Llewellyn, Widow in her Own Right, | : | PHILADELPHIA COUNTY COURT OF COMMON PLEAS |
| Plaintiff, | : | December Term, 2006 No. 3591 |
| v. | : | ASBESTOS CASE |
| Melrath Gasket, Inc., et al., | : | |
| Defendants. | : | 085024 |

**Motion for Summary Judgment of Defendant David W. Moser**

**Filed: August 3, 2009**

**Response Due: August 20, 2009**

**Opposing Counsel: Benjamin P. Shein, Esq.**

**Control Number:** _____

Case ID: 861000001
Control No.: 10031383

| | | |
|---|---|---|
| Gloria Llewellyn, Executrix of the Estate of John E. Llewellyn, Deceased and Gloria, Llewellyn, Widow in her Own Right, | : | PHILADELPHIA COUNTY<br>COURT OF COMMON PLEAS |
| Plaintiff, | : | December Term, 2006<br>No. 3591 |
| v. | : | ASBESTOS CASE |
| Melrath Gasket, Inc., et al., | : | |
| Defendants. | : | |

**ORDER**

**AND NOW**, this _____ day of _____, 2009, upon consideration of the Motion for Summary Judgment of Defendant David W. Moser and any responses thereto, it is hereby **ORDERED** that the motion is **GRANTED**, and summary judgment is entered in favor of Defendant David Moser on all claims asserted against him.

_____
J.

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Control No.: 10031383

ReedSmith

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August 3, 2009

**Motion for Summary Judgment of Defendant David W. Moser**

**Opposing Counsel: Benjamin P. Shein, Esq.**

**Filed: August 3, 2009**

**Response Due: August 20, 2009**

**Control No. _____**

***VIA HAND DELIVERY***

The Honorable Sandra Mazer Moss
Court of Common Pleas
of Philadelphia County
Complex Litigation Center
City Hall – Room 622
Philadelphia, PA 19107

**Re: ASBESTOS LITIGATION**

**Llewellyn v. David W. Moser, et al.**
**Phila. CCP, December Term 2006, No. 3591**

Dear Judge Moss:

Defendant David W. Moser ("Mr. Moser") respectfully moves this Court for the entry of summary judgment in his favor on all claims against him pursuant to Pa. R.C.P. 1035.2 and as contemplated by the Stipulation Regarding Alter Ego And Successor Liability Claims Against Defendants David W. Moser And DFT Inc. approved by the Court which effectuated a severance of – and confirmed a non-jury trial for – the claims asserted against Mr. Moser. *See **Exhibit A**.*



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## I. SUMMARY OF ARGUMENT

Because Plaintiff cannot overcome the "strong presumption" against piercing the corporate veil, this Court should grant summary judgment in favor of Mr. Moser now that discovery is over. *Lumax Indus., Inc. v. Aultman,* 543 Pa. 38, 41-42, 669 A.2d 893, 895 (1995).

Plaintiff asserts that Mr. Moser has alter ego liability with respect to the personal injury claims Plaintiff has brought against Defendant Durabla Manufacturing Company ("DMC"), a company that distributed asbestos-containing sheet gasket material and gaskets cut from this material, and Defendant Durabla Canada, Ltd. ("Durabla Canada"), a Canadian company that supplied product to DMC. Plaintiff also claims that Defendant DFT Inc. ("DFT") – a company that has never manufactured or distributed an asbestos-containing product – has successor liability with respect to the personal injury claims against DMC and that Mr. Moser has alter ego liability with respect to DFT. The Court should reject these claims against Mr. Moser.

As a matter of law, the fact that Mr. Moser has a majority interest in DMC, Durabla Canada, and DFT does not permit imposing on him the "extraordinary" and "extreme" remedy of alter ego liability. Indeed, a court will pierce the corporate veil ***only*** when "the entity is used to defeat public convenience, justify wrong, protect fraud or defend crime" ***and only*** after considering such factors as "undercapitalization, failure to adhere to corporate formalities, substantial intermingling of corporate and personal affairs and use of the corporate form to perpetrate a fraud." Thus, in deciding whether to pierce the corporate veil, the basic inquiry is whether the corporate form is merely a "sham" and a "façade" for the operations of the dominant shareholder. Such is not the case here.

DMC, Durabla Canada, and DFT strictly adhered to corporate formalities. For example, the three companies issued shares, had functioning boards and officers, held regular board and shareholder meetings, kept minutes and other corporate records, had their own bank accounts, and employed

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independent auditors. There has been no intermingling of corporate and personal affairs. There is no claim that any of these companies was grossly undercapitalized at inception and no claim that either DFT or Durabla Canada were ever undercapitalized. And there is no claim Mr. Moser used any of these companies to perpetrate a fraud.

Plaintiff's claim against Mr. Moser boils down to this: in 1994 DMC owned certain real estate and was a distributor of asbestos containing and non-asbestos containing products. As of the end of 2002 – years before this lawsuit was filed – Durmanco Inc. ("Durmanco") owned DMC and DMC operated a business limited to supplying asbestos-containing sheet gasket material. Essentially, Plaintiff accuses Mr. Moser of siphoning off DMC's non-asbestos assets to other corporations in which he had a majority interest. However, as of the end of 2002, DMC was profitable, had stockholders' equity totaling $1,074,981, and had $925,304 in cash and marketable securities. On top of that, DMC had almost $20,000,000 in remaining insurance coverage. Unfortunately, DMC suffered reversals in the asbestos litigation over the next several years while at the same time demand for its product dropped. DMC ultimately became unprofitable and was forced to cease operations in August of 2007; now, in 2009, its insurance coverage teeters on exhaustion. Tellingly, Mr. Moser was named as a defendant only after Plaintiff's counsel had learned that DMC now "has little or no" remaining insurance coverage. *See Plaintiffs' Opposition to Defendants' Motion to Sever, at 5, excerpt attached hereto as* ***Exhibit B***.

Against this backdrop, the evidence does not establish that any of these companies are "sham" corporations that constituted a "façade" used by Mr. Moser to perpetrate a "fraud" or justify a "wrong" such that Mr. Moser should be individually liable to this (or any other) Plaintiff with an asbestos personal injury claim against DMC. In short, Plaintiff simply cannot overcome the "strong

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presumption" against veil piercing. The Court should accordingly enter summary judgment in Mr. Moser's favor.

## II. FACTS

### A. DMC And Durabla Canada

In 1911, DMC was incorporated in New York to wholesale industrial products such as sealing products (gasket material containing asbestos) and gauge glass. *See Affidavit of David W. Moser ("Moser Aff."), ¶ 1, attached hereto as* ***Exhibit C***. At that time, the Von Kokeritz family controlled 50% of DMC; the remaining ownership was divided between three other families by the name of Hill, Hunt, and Betts. *See Deposition Transcript of David W. Moser ("Moser Dep.") at 33:1-34:5, attached hereto as* ***Exhibit D***. In 1921, DMC formed a valve division which was located in Pennsylvania; the sealing products division remained in New York City. *Moser Aff., ¶ 2.* The valves manufactured by DMC never contained asbestos. *Moser Aff., ¶ 3.* In or about 1922, Durabla Canada was formed under Canadian law to serve the Canadian market. *Moser Dep. at 48:10-24.* DMC and Durabla Canada have never had a parent or subsidiary relationship; they have always been stand alone entities with operations in different countries. *Moser Aff., ¶ 4.*

### B. The Incorporation Of DFT In 1995 To Acquire DMC's Non-Asbestos Valve Division

From 1921 until 1995, DMC had two distinct and separate divisions: the Sealing Products Division, distributing sealing products such as gaskets (some of which contained asbestos); and the Valve Division, manufacturing pump valves and check valves (which contained ***no*** asbestos). *Moser Aff., ¶ 5.* The Sealing Products Division and the Valve Division each had its own separate operating facility with its own operating, administrative, and supporting staffs. *Moser Aff., ¶ 6.* Each division had its own customers. *Moser Aff., ¶ 7.* Even when both divisions moved into the same facility in 1979 (and again in 1985), they remained separate in terms of costs, operating personnel, and most staffing.

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*Moser Aff.*, ¶ *8*. In fact, while they occupied the same building, they had separate entrances. *Moser Aff.*, ¶ *9*.

At a DMC board meeting held on June 14, 1994, a discussion was held regarding a restructuring of the company. *See June 14, 1994 DMC Board of Director Meeting Minutes, attached hereto as* ***Exhibit E***. "Mr. David Moser advised the Board that in his opinion this was necessary and desirable in order to facilitate future growth, and to develop a management structure that would carry the business forward on a basis where it would be less dependent on one individual than it is at present." *Id.*[1] At that time, DMC's board unanimously passed a resolution to effectuate the restructuring effective January 1, 1995. *Id.*

Accordingly, on January 1, 1995, Durmanco Inc. ("Durmanco") was duly formed as a holding company for DMC and a new corporation, Durabla Fluid Technology Inc. (now known as DFT). *Moser Aff.*, ¶ *11*. The shareholders of DMC became shareholders of Durmanco and the board of DMC became

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1 The June 14, 1994 minutes explain:

> The valve business and sealing products business are, for the most part, separate and distinct operations now, each with its individual manufacturing, engineering and administrative support staff, and each occupying a separate and distinct part of the Lionville building. Channels of distribution, which were at one time substantially common to both product lines, have evolved into almost entirely separate entities whereby only a few distributors remain that handle both product lines. This distinction adds merit to the concept of separate sales force to handle each product line.
>
> Mr. Moser believes that each group (valve and sealing products) should be a separate profit center each ultimately managed by a General Manager. In order for a General Manager to have equity participation in the business unit for which he is solely responsible, it is necessary to restructure the company into two operating subsidiaries controlled by a parent corporation. This way, there will be no change in ownership insofar as current Durabla Manufacturing Company shareholders are concerned, but equity participation by key employees would be possible at the subsidiary level where there would be congruity with their area of responsibility.

*Id.*

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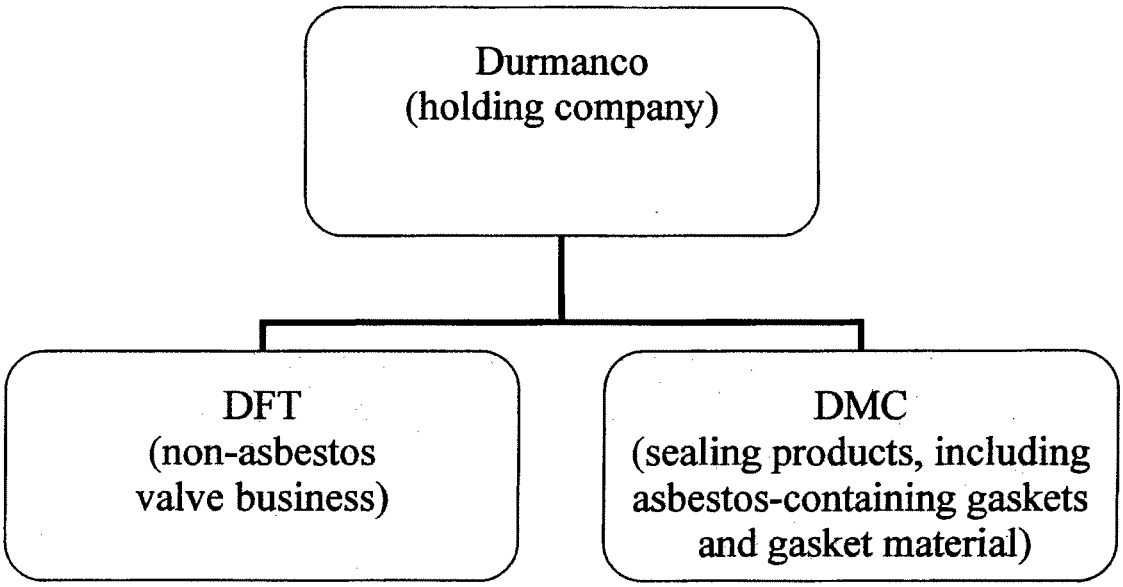
the board of Durmanco. *Moser Dep. at 308:2-20.* DFT purchased all the inventory and equipment and other assets associated with the manufacture of the valve product line from DMC for $2,490,880; the equipment was acquired at fair market value pursuant to an independent appraisal and the inventory was acquired at book value. *Moser Aff., ¶ 12.* Durmanco entered into management agreement with DFT and DMC pursuant to which Durmanco provided management services to those companies. *Moser Dep. at 392:8-22; 396:2-5.*

Accordingly, the corporate structure was thus as of the beginning of 1995, some 14 years ago:




From 1995 forward, DMC continued to distribute sealing products as it had, without interruption, since its incorporation in 1911. *Moser Aff., ¶ 13.* In fact, in the years immediately following this restructuring, DMC remained the more profitable of Durmanco's two subsidiaries. *Moser Aff., ¶ 14.*

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**C. Corporate Facts**

Durmanco, DMC, DFT, and Durabla Canada have, every year, held separate and regularly scheduled board and shareholder meetings. *Moser Aff.*, ¶ *15*. They have maintained corporate books and corporate minutes.[2] *Moser Aff.*, ¶ *16*. Each company has also maintained separate advertising promotional pieces. *Moser Aff.*, ¶ *18*. Each company has separate bank accounts. *Moser Aff.*, ¶ *19*. Each company has outside auditors and annual audit reports. *Moser Aff.*, ¶ *20*. Each company has maintained its own separate employees, separate office space and separate equipment, as well as separate customers. *Moser Aff.*, ¶ *21*.

At all times since 1994, Mr. Moser has served on the board and/or as an officer of Durmanco, DMC, Durabla Canada, and DFT. *Moser Aff.*, ¶ *22*. At all times since 1995, Mr. Moser has owned over 50% of the shares of Durmanco and Durabla Canada and, since a 2001 spin off, of DFT. *Moser Aff.*, ¶ *23*. Durabla Canada does not have identical shareholders with either DMC or DFT, although there have been some common shareholders over the years. *Moser Aff.*, ¶ *24*.

**D. The Facts Of Which Plaintiff Complains**

2 DMC's minutes were kept either by a non-shareholder corporate secretary or a legal counsel throughout this time period. *Moser Aff.*, ¶ *16*.

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E. **DMC As Of And After 2002**

DMC received its first asbestos claim in 1980. DMC's primary coverage of $8,500,000 lasted until September 14, 2002, some 22 years. At that time, DMC had remaining excess coverage totaling $19,999,500 ($6,999,500 with expenses outside of limits). *Moser Aff.*, ¶ *27*. As of September of 2002, DMC had made payments in 16,017 of its 77,567 closed asbestos cases, or approximately 20.7% of the cases, representing a dismissal rate of 79.3%. *Moser Aff.*, ¶ *28*. As of September of 2002, DMC had paid an average of approximately $531 per case on closed asbestos cases on which a payment had been made. *Moser Aff.*, ¶ *29*. As of September of 2002, DMC had 78,699 open asbestos cases. *Moser Aff.*, ¶ *30*. Accordingly, DMC's coverage remaining as of September of 2002 was over two times the product of multiplying the number of open asbestos claims, the percentage of claims that had been paid in the past, and the average payment per case. *Moser Aff.*, ¶ *31*.

As of the close of 2002 and according to the Durmanco audit report issued by its own outside auditors, DMC showed a profit, had cash and marketable securities totaling $925,304, and had retained earnings totaling $1,113,555. *Moser Aff.*, ¶ *32*. DMC showed a profit for 3 out of the next 4 years and in each of those years DMC had cash and marketable securities in a range from $555,437 and $1,034,159. *Moser Aff.*, ¶ *33*. DMC's retained earnings in those years ranged from $601,285 to $1,180,093. *Moser Aff.*, ¶ *34*.

DMC's sales dropped after 2002. *Moser Aff.*, ¶ *35*. In August of 2007, DMC ceased operations because its sales were not covering its overhead. *Moser Aff.*, ¶ *35*. As of December 31, 2007, DMC had $649,684 in cash and marketable securities on hand. *Moser Aff.*, ¶ *35*. Those funds have been used

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since then to help wind up the affairs of the company, defend litigation, and to protect insurance coverage. *Moser Aff.*, ¶ *35*. As of June 30, 2009, DMC still had $318,847 in cash. *Moser Aff.*, ¶ *35*.

DMC also suffered a number of reversals in the asbestos litigation after 2002. *Moser Aff.*, ¶ *36*. Now, in 2009, its coverage is virtually exhausted. *Moser Aff.*, ¶ *36*

## III. ARGUMENT

### A. Summary Judgment Standard

Summary judgment is appropriate "where the record clearly demonstrates that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *Atcovitz v. Gulph Mills Tennis Club, Inc.*, 571 Pa. 580, 585, 812 A.2d 1218, 1221 (2002). "In considering the motion, the trial court must examine the record in the light most favorable to the non-moving party, resolving all doubts against the moving party, who bears the burden of showing that there is no genuine issue of material fact." *Continental Ins. Co. v. Schneider, Inc.*, 810 A.2d 127, 131 (Pa. Super. 2002).

### B. The Alter Ego Remedy Is "Extreme," "Extraordinary," And Reserved For "Specific, Unusual Circumstances;" As Such, There Is A Strong Presumption Against It And Plaintiff Has A Heavy Burden To Overcome It

The Pennsylvania Supreme Court has (1) stressed the "sanctity of the corporate structure in Pennsylvania" and (2) emphasized that "there is a strong presumption in Pennsylvania against piercing the corporate veil." *Lumax Indus., Inc. v. Aultman*, 543 Pa. 38, 41-42, 669 A.2d 893, 895 (1995) (citation omitted) (sustaining demurrer to veil piercing claim). *See also Wedner v. Unemployment Board*, 449 Pa. 460, 464, 296 A.2d 792, 794 (1972) ("any court must start from the general rule that the corporate entity should be recognized and upheld, unless specific, unusual circumstances call for an exception. . . . Care should be taken on all occasions to avoid making the entire theory of corporate entity useless.") (citation omitted); *Village at Camelback Property Owners Ass'n, Inc. v. Carr*, 371 Pa.

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Super. 452, 538 A.2d 528, 533 (1988), *aff'd per curiam*, 524 Pa. 330, 572 A.2d 1 (1990) (alter ego theory is "an extraordinary remedy preserved for cases involving exceptional circumstances"); *First Realvest, Inc. v. Avery Builders, Inc.*, 410 Pa. Super. 572, 600 A.2d 601, 604 (1991) (alter ego remedy as "extreme").

Indeed, a Pennsylvania court will pierce the corporate veil "only when the entity is used to defeat public convenience, justify wrong, protect fraud or defend crime." *Kiehl v. Action Manufacturing Co.*, 517 Pa. 183, 190, 535 A.2d 571, 574 (1987), and only after considering such factors as "undercapitalization, failure to adhere to corporate formalities, substantial intermingling of corporate and personal affairs and use of the corporate form to perpetrate a fraud." *Lumax Indus., Inc. v. Aultman*, 543 Pa. at 42, 669 A.2d at 895 (citation omitted). *See also Miller v. Brass Rail Tavern, Inc.*, 702 A.2d 1072, 1075 (Pa. Super. 1997) (listing same 4 factors). Further, before concluding a corporation is the alter ego of another, a court must conclude that justice or public policy demands the use of such an extraordinary remedy, that the rights of innocent parties will not be prejudiced, and that the theory of the corporate entity will not be rendered useless. *First Realvest, Inc. v. Avery Builders, Inc.*, 410 Pa. Super. 572, 600 A.2d 601, 604 (1991) (quoted case omitted) (citation omitted). Under any analysis, this Court should not subject Mr. Moser to alter ego liability.

### C. Plaintiff Fails To Meet The Heavy Burden Of Proof As To Mr. Moser And This Court Should Accordingly Enter Summary Judgment In Favor Of Mr. Moser

At the close of discovery, Mr. Moser served interrogatories asking for the factual basis of the alter ego claims being asserted against him. The responses do not support use of the "extreme" and "extraordinary" alter ego theory remedy against Mr. Moser with respect to DMC, Durabla Canada, or DFT.

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**1. That Mr. Moser Was The Majority Shareholder And The President Of DMC, Durabla Canada, And DFT Is No Basis For Veil Piercing**

It is well established that the fact that a corporation has a majority shareholder has no bearing as such on an alter ego theory: "a corporation is to be regarded as an independent entity even if its stock is owned entirely by one person." *Lumax Indus., Inc. v. Aultman*, 543 Pa. at 42, 669 A.2d at 895 (citation omitted). Further, there is no claim here that the officers and directors of these entities were nonfunctioning and the mere existence of some common officers and directors does not create a basis for piercing the corporate veil. *Iron Worker's Savings and Loan Association v. IWS, Inc.*, 424 Pa. Super. 255, 271-72, 622 A.2d 367, 376 (1993) ("The evidence does not reveal that IWS, Inc. is merely a sham corporation, constituting a facade for the operation of Iron Worker's. Rather, the evidence of record reveals that the corporate formalities have been observed, and, although both companies share some directors and officers, IWS, Inc. acted as a separate corporate entity through the period in question.").

Accordingly, the Court can reject Mr. Moser's status as a majority shareholder and as an officer of the companies as a basis to impose alter ego liability on him.

**2. Durabla Canada**

Further, Plaintiff makes no claim that Durabla Canada has ever been undercapitalized, that corporate formalities were ignored, that there was substantial intermingling of corporate and personal affairs between it and Mr. Moser, or that the corporate form was used to perpetrate a fraud. *See*

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*Excerpts from Plaintiffs' Answers, Objections and other Responses to First Set of Interrogatories of Defendants David W. Moser and DFT Inc.* ***Exhibit H*** *hereto.* That should be the end of the inquiry as to any alter ego claim against Mr. Moser relating to Durabla Canada.

Because Plaintiff has not overcome the heavy presumption against piercing the corporate form as to Durabla Canada, the Court should enter summary judgment on the alter ego claims against Mr. Moser as they relate to that entity.

**3. DFT**

The same conclusion is required with respect to DFT. Again, Plaintiff makes no claim that DFT was ever undercapitalized, that corporate formalities were ignored, that there was substantial intermingling of corporate and personal affairs between it and Mr. Moser, or that the corporate form was used to perpetrate a fraud. *See Excerpts from Plaintiffs' Answers, Objections and other Responses to First Set of Interrogatories of Defendants David W. Moser and DFT Inc.* ***Exhibit H*** *hereto.* As was the

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case with Durabla Canada, this should be the end of the inquiry as to the alter ego claims against Mr. Moser with respect to DFT.

In short, the evidence demonstrates that DFT was a legitimate business and not some "sham" corporation and simply a "façade" for Mr. Moser. Because Plaintiff has not overcome the heavy presumption against piercing the corporate form as to DFT, the Court should enter summary judgment on the alter ego claim against Mr. Moser as it relates to DFT.

**4. DMC**

The Court should also enter summary judgment on the alter ego claim against Mr. Moser as it relates to DMC.

As a preliminary matter, Plaintiff does not even try to argue that there was any failure to adhere to corporate formalities with respect to DMC. Indeed, the documents produced in the course of discovery (including minutes of regular board and shareholder meetings and other corporate records) established strict adherence to corporate formalities. Similarly, there is no claim that DMC was formed and used to perpetrate a fraud and no claim that corporate and personal funds were intermingled. On the

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contrary, the documents produced in discovery demonstrate that there was no intermingling of corporate and personal affairs, much less the "substantial" intermingling required by *Lumax*. These facts in and of themselves demonstrate that DMC was not a sham corporation.

With respect to capitalization, the inquiry "is most relevant for the inference it provides into whether the corporation was **established** to defraud its creditors or other improper purpose such as avoiding the risks known to be attendant to a type of business." *Trustees of the National Elevator Indus. Pension, Health Benefit and Educational Fund v. Lutyk*, 332 F.3d 188, 198 (3d Cir. 2003) (emphasis added; citation omitted). Accordingly, "in conducting such an inquiry courts generally 'look to **initial** capitalization, asking whether a company was adequately capitalized at the time of its organization.'" *Id.* (quoted case omitted; emphasis added).

Plaintiff makes no claim that DMC was inadequately capitalized when formed; rather, Plaintiff appears to be arguing that DMC was inadequately capitalized starting in 1999 because, had DMC not distributed cash and real estate to Durmanco by way of dividend that year, there would have been more assets available for future asbestos plaintiffs. *See Excerpts from Plaintiffs' Answers, Objections and other Responses to First Set of Interrogatories of Defendants David W. Moser and DFT Inc.* ***Exhibit H*** *hereto.* First, the 1999 dividends do not support an alter ego claim against Mr. Moser in 2009: "All corporations are formed for the benefit of their shareholders and the shareholders draw out profits. **It is ridiculous to say that the corporate form should be abandoned because a shareholder drew out funds; such a conclusion would render the corporate form useless.**" *First Realvest, Inc. v. Avery Builders, Inc.*, 410 Pa. Super. 572, 578, 600 A.2d 601, 604 (1991) (emphasis added).

Second, this is not an argument the Court should entertain: "plaintiffs' argument is tantamount to a call for disregarding the limited liability of corporate organizations whenever a closely-held

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corporation becomes confronted with **potential** tort liabilities that could exceed its assets. No court has taken such an expansive view of the veil-piercing doctrine, and this court refuses to do so now." *In re Silicone Gel Breast Implants Products Liability Litigation*, 837 F. Supp. 1128, 1138 (N.D. Ala. 1993) (emphasis added). Further, DMC had remaining excess coverage totaling $19,999,500 ($6,999,500 with expenses outside of limits). *Moser Aff., ¶ 27.* As of September of 2002, DMC had made payments in 16,017 of its 77,567 closed asbestos cases, or approximately 20.7% of the cases, representing a dismissal rate of 79.3%. *Moser Aff., ¶ 28.* As of September of 2002, DMC had paid an average of approximately $531 per case on closed asbestos cases on which a payment had been made. *Moser Aff., ¶ 29.* That coverage was over two times the product of multiplying the number of open asbestos claims, the percentage of claims that had been paid in the past, and the average payment per case. *Moser Aff., ¶ 31* Thus, even were potential future claims a consideration, DMC's remaining insurance coverage undercuts any claim of gross undercapitalization.

Moreover, as of the close of 2002, DMC showed a profit, had cash and marketable securities totaling $925,304, and had retained earnings totaling $1,113,555. *Moser Aff., ¶ 32.* DMC showed a profit for 3 out of the next 4 years and in each of those years DMC had cash and marketable securities in a range from $555,437 and $1,034,159. *Moser Aff., ¶ 33.* DMC's retained earnings in those years ranged from $601,285 to $1,180,093. *Moser Aff., ¶ 34.*

There is little question that DMC suffered financial reversals following 2002 both in terms of sales of product and experience in the asbestos litigation. But a "corporation that was adequately capitalized when formed, but which subsequently suffers financial reverses is not undercapitalized." *See, generally, Fletcher, Cyclopedia Law of Private Corporations, § 41.33. See also Lutyk*, 332 F.3d at

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197 ("Though there is substantial overlap between these concepts, and they are often confused, as a matter of corporate law, mere insolvency is distinct from undercapitalization.").[4]

At the end of the day, Plaintiff is concerned that there will be nothing to collect should Plaintiff obtain a judgment against DMC and that is why Mr. Moser has been sued. However, "the possibility that a plaintiff may have difficulty enforcing a judgment against a defendant is not enough to justify piercing the corporate veil." *Arch v. American Tobacco Company, Inc.*, 984 F. Supp. 830, 840 (E.D. Pa. 1997) (citation omitted). *See also Skidmore, Owings & Merrill v. Canada Life Ass. Co.*, 907 F.2d 1026, 1028 (10th Cir. 1990) (possibility that plaintiffs may have difficulty enforcing judgment is not the type of injustice that warrants piercing corporate veil) (citation omitted); *Mason v. Network of Wilmington, Inc.*, 2005 WL 1653954, *3 (Del.Ch. July 1, 2005) ("If creditors could enter judgments against shareholders every time a corporation becomes unable to pay its debts as they become due, the limited liability characteristic of the corporate form would be meaningless").

In short, the Court should reject any alter ego claim against Mr. Moser as it relates to DMC.

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4 And, "[a] shortage of capital, as with all the factors of the alter ego doctrine, is not *per se* a reason to pierce the corporate veil." *Lutyk*, 332 F.3d at 197 (citation omitted).

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ReedSmith

## IV. CONCLUSION

For the reasons set forth above, the Court should enter an Order granting summary judgment in favor of Mr. Moser on all claims.

Respectfully submitted,

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*Attorneys for Defendants David Moser and DFT Inc.*

cc: Benjamin P. Shein, Esquire (w/encl. *via hand delivery*)

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| | | |
|---|---|---|
| Gloria Llewellyn, Executrix of the Estate of John E. Llewellyn, Deceased and Gloria, Llewellyn, Widow in her Own Right, | : | PHILADELPHIA COUNTY<br>COURT OF COMMON PLEAS |
| Plaintiff, | : | December Term, 2006<br>No. 3591 |
| v. | : | ASBESTOS CASE |
| Melrath Gasket, Inc., et al., | : | |
| Defendants. | : | |

**ATTORNEY CERTIFICATION OF GOOD FAITH**

The undersigned counsel for movant hereby certifies and attests that she has conferred with opposing counsel and has been unsuccessful in resolving the instant dispute.

CERTIFIED TO THE COURT BY:

Henry F. Reichner
**REED SMITH LLP**
2500 One Liberty Place
Philadelphia, PA 19103
(215) 851-8100

*Attorney for Defendants*
*David Moser and DFT Inc.*

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# EXHIBIT H

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**UNITED STATES DEPARTMENT OF JUSTICE**
**OFFICE OF THE UNITED STATES TRUSTEE**
**DISTRICT OF DELAWARE**

| | | |
|---|---|---|
| IN THE MATTER OF: | : | Chapter 11 |
| Durabla Manufacturing Company | : | Case No. 09-14415 (MFW) |
| Debtors. | : | NOTICE OF APPOINTMENT OF COMMITTEE OF UNSECURED CREDITORS |

Pursuant to Section 1102(a)(1) of the Bankruptcy Code, I hereby appoint the following persons to the Committee of Unsecured Creditors in connection with the above captioned case:

1. **Thomas M. James**, c/o Brayton Purcell, LLP, Attn: Alan R. Brayton, 222 Rush Landing Road, Novato, CA 94948, Phone: 415-898-1555, Fax: 415-898-1247

2. **Diane M. Allen**, c/o Weitz & Luxenberg, P.C., 700 Broadway, New York, NY 10003, Phone: 212-558-5500, Fax: 212-344-5461

3. **Peter Moreni**, c/o The Jaques Admiralty Law Firm, P.C., Attn: Alan Kellman, 645 Griswold, Ste. 1370, Detroit, MI 48226, Phone: 313-961-1080, Fax: 313-961-1819

4. **Joseph W. Canter**, c/o The Law Offices of Peter G. Angelos, P.C., Attn: Paul M. Matheny, One Charles Center, 100 N. Charles St., 21st Floor, Baltimore, MD 21201, Phone: 410-649-2000, Fax: 410-649-2111

5. **Thomas Williams**, c/o Wilentz Goldman & Spitzer, Attn: Deidre Pacheco, 90 Woodbridge Center Drive, Woodbridge, NJ 07095, Phone: 732-855-6189, Fax: 732-726-6627

6. **Dolores M. Brewer**, c/o Goldberg, Persky & White, P.C., Attn: Mark C. Meyer, 1030 Fifth Ave., Pittsburgh, PA 15219, Phone: 412-471-3980, Fax: 412-471-8308

7. **Donald E. McLaughlin**, c/o Kelly & Ferraro LLP, Attn: Thomas M. Wilson, 2200 Key Tower- 22 Public Square, Cleveland, OH 44114, Phone: 216-575-0777, Fax: 216-575-0799

8. **Rosalia Adelsflugel**, c/o Motley Rice LLC, 28 Bridgeside Blvd., Mt. Pleasant, SC 29464, Phone: 843-216-9000, Fax: 843-216-9430

9. **Jane F. Witkowski**, c/o Waters & Kraus LLP, Attn: Tracie Whetstone, 3219 McKinley Ave., Dallas, TX 75204, Phone: 214-357-6244, Fax: 214-357-7252

ROBERTA A. DEANGELIS
United States Trustee, Region 3

/s/ David M. Klauder for
WILLIAM K. HARRINGTON
ASSISTANT UNITED STATES TRUSTEE

DATED: January 21, 2010

Attorney assigned to this Case: David M. Klauder, Esquire, Phone: (302) 573-6491, Fax: (302) 573-6497
Debtors' Counsel: Chad J. Toms, Esquire, Phone: (302) 357-3253, Fax: (302) 357-3273

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