No. 131710

IN THE
SUPREME COURT OF ILLINOIS

GRIFFITH FOODS INTERNATIONAL INC., GRIFFITH FOODS GROUP INC., and STERIGENICS, U.S., LLC,
Plaintiffs-Appellees,

v.

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.,
Defendant-Appellant.

On Question of Law Certified by the United States Court of Appeals for the Seventh Circuit, Nos. 24-1223, 24-1217

There Heard on Appeal from the United States District Court for the Northern District of Illinois, Nos. 1:21-cv-4581, 1:21-cv-6403

OPENING BRIEF OF APPELLANT NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.

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NATURE OF THE ACTION

This is an insurance dispute originating in federal court between National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union"), the insurer, defendant, and appellant, and Griffith Foods International Inc., Griffith Foods Group Inc., and Sterigenics, U.S., LLC ("Griffith" and "Sterigenics"), the putative insureds, plaintiffs, and appellees.

Griffith and Sterigenics sued National Union in the U.S. District Court for the Northern District of Illinois seeking a declaration that National Union had a duty to defend them in hundreds of tort suits related to their emission of ethylene oxide from a medical-device-sterilization facility in Willowbrook, Illinois. National Union sought a declaration that it had no such duty. The district court granted Griffith and Sterigenics judgment on the pleadings under Federal Rule of Civil Procedure 12(c). On appeal, the United States Court of Appeals for the Seventh Circuit certified a question to this Court under Illinois Supreme Court Rule 20.

INTRODUCTION

The question in this case is whether the emission of a known carcinogenic gas into the air for thirty-five years could be anything other than traditional environmental pollution merely because the polluting companies had a permit to operate the facility from which they emitted the toxic gas. The answer is an unambiguous "no": pollution is pollution regardless of whether the polluter has a permit.

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The question arises in the context of a dispute over National Union's obligations under two materially identical commercial general liability ("CGL") policies National Union issued from 1983 to 1985. The policies contain a standard-form "pollution exclusion" providing that the "insurance does not apply … to bodily injury … arising out of the discharge, dispersal, release or escape of … toxic chemicals, liquids or gases, … contaminants or pollutants into or upon land, the atmosphere or any water course or body of water." A114. In *American States Insurance Co. v. Koloms*, 177 Ill. 2d 473, 494 (1997), this Court held that pollution exclusions bar coverage of "traditional environmental pollution."

Griffith and Sterigenics, the putative insureds, were sued by individuals who lived, worked, or attended school in Willowbrook, Illinois. Those underlying lawsuits allege that Griffith and Sterigenics intentionally emitted vast amounts of ethylene oxide—a known carcinogen—into the air in Willowbrook over a period of thirty-five years as part of their regular operation of a facility for sterilizing medical equipment. Those intentional, decades-long emissions allegedly caused illness and death. The overwhelming majority of the underlying lawsuits have since been settled, and Griffith and Sterigenics placed the funds to pay the victims in escrow more than two years ago. The issue in this case is not who will pay the victims, but who will pay Griffith's and Sterigenics' defense costs.

More specifically, the question before this Court is whether heartland traditional environmental pollution—like the toxic emissions at issue in this

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case—becomes something else when authorized by a permit or regulation. In its opinion certifying the question, the Seventh Circuit was skeptical. Its "own reading" of *Koloms* was that pollution is pollution—regardless of any government authorization—and that the pollution exclusion therefore applies in this case to preclude coverage. A2. But due to purported "uncertainty" created by one intermediate Illinois appellate court on that issue, *Erie Insurance Exchange v. Imperial Marble Corp.*, 2011 IL App (3d) 100380, the Seventh Circuit certified the question to this Court. *See* A16-19.

This Court should hold that it is irrelevant to the application of the pollution exclusion whether toxins were discharged into the environment pursuant to a permit or regulation. That conclusion follows from the pollution exclusion's text, this Court's precedent, and considerations of sound policy and common sense.

First, the text of the pollution exclusion, which is the best evidence of the parties' intent, unambiguously creates no exception for emissions pursuant to a permit or regulation. In the rare circumstances where exclusions in insurance policies turn on whether the excluded activity is authorized by a government, the policies say so expressly. But the pollution exclusion says nothing about government authorization, and the terms the exclusion uses, like "discharge" or "release," are regularly used to describe emissions under an environmental permit.

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Second, this Court's precedent likewise precludes a government-authorization exception. *Koloms* held that the pollution exclusion applies to "traditional environmental pollution." And the Court defined that term with reference to *where* the pollution occurs—"into the environment"—not *why* it occurs. That definition leaves no room for an exception for environmental discharges authorized by a permit or regulation, as courts have consistently understood.

Koloms' reasoning compels the same conclusion. *Koloms*' rationales for finding ambiguity in the pollution exclusion's application to a broken furnace in an apartment building—the exclusion's potentially limitless reach, its historical focus on environmental pollution, and disagreement among state courts on the issue—all confirm that the exclusion unambiguously applies to emissions authorized by a government. Here, a government-authorization exception would render the exclusion absurdly *narrow* by carving out paradigmatic pollution like the ethylene-oxide emissions in this case. It would contravene the exclusion's core historical purpose of protecting insurers that provide general commercial coverage from the risk of vast liabilities that flow from intentional toxic emissions under environmental permitting laws. And it would be unprecedented: National Union has not found a single case from any court outside Illinois holding that toxic emissions authorized by permit or regulation fall outside the pollution exclusion, and the only two other state high courts to consider the question (in New York and Hawaii) rejected such an exception.

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Third, creating an unwritten exception for government-authorized emissions would harm Illinois businesses and residents. It would incentivize pollution in Illinois by reducing its cost. And interpreting CGL policies to cover pollution could force insurers to raise prices on those policies in Illinois to account for both the costs of covering pollution-related liabilities and the uncertainty generated by interpreting seemingly clear exclusions in unpredictable ways.

The Court can avoid all of these problems by sticking to text, precedent, and common sense and holding that pollution is pollution—regardless of whether a government has authorized it.

STATEMENT OF THE ISSUES

This Court accepted the following question of law certified by the Seventh Circuit:

> In light of the Illinois Supreme Court's decision in *American States Insurance Co. v. Koloms*, 687 N.E.2d 72 (1997), and mindful of *Erie Insurance Exchange v. Imperial Marble Corp.*, 957 N.E.2d 1214 (2011), what relevance, if any, does a permit or regulation authorizing emissions (generally or at particular levels) play in assessing the application of a pollution exclusion within a standard-form commercial general liability policy?

JURISDICTIONAL STATEMENT

This Court has jurisdiction under Illinois Supreme Court Rule 20(a). In an opinion and order dated April 11, 2025, the U.S. Court of Appeals for the Seventh Circuit certified to this Court the question presented for review herein. This Court accepted certification on April 17, 2025.

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STATEMENT OF FACTS

I. Commercial General Liability Policies And The Pollution Exclusion.

The dispute in this case centers on the "pollution exclusion" in a CGL insurance policy. CGL insurance is routinely purchased by the vast majority of companies and nonprofits. *See* Robert M. Tyler, Jr. & Todd J. Wilcox, *Pollution Exclusion Clauses: Problems in Interpretation and Application Under the Comprehensive General Liability Policy*, 17 Idaho L. Rev. 497, 498 (1981) (CGL policies are "the instrument most often used to afford liability protection for commercial ventures of all types"); *see also Westfield Ins. Co. v. Sistersville Tank Works, Inc.*, 895 S.E.2d 142, 151 n.11 (W. Va. 2023) (same). A CGL policy is "designed to protect the insured from losses arising out of business operations"—specifically "tort liability for physical damages to others." 9A Couch on Ins. § 129:1.

CGL policies have two major components: insuring clauses and exclusions. 9A Couch on Ins. § 129:1. Insuring clauses typically provide coverage for liabilities due to "bodily injury," "property damage," "personal injury," or "advertising injury." *Id.* §§ 129:6-129:9. Exclusions remove coverage for certain kinds of liabilities, generally because those liabilities are covered elsewhere (*e.g.*, automobile-related liabilities), give rise to unique risks that require the purchase of supplemental insurance (*e.g.*, liabilities arising from pollution or workman's compensation laws), or are against public policy to insure (*e.g.*, unlawful liquor sales). *See, e.g.* A114 (exclusions b, f, h, and i). CGL

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policies also typically contain a duty-to-defend clause requiring the insurer "to defend any suit against the insured seeking damages on account of [covered] bodily injury or property damage" up to an "applicable limit." *E.g.*, A114; *see also* 14 Couch on Ins. § 200:1. Where there is no coverage under the policy (*i.e.*, no duty to indemnify some risk), there is no duty to defend. *Crum & Forster Managers Corp. v. Resolution Trust Corp.*, 156 Ill. 2d 384, 398 (1993).

The exclusion at issue here is the pollution exclusion. The pollution exclusion in the policies in this case provides that "insurance does not apply" to "bodily injury … arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water." A114; *see also Am. States Ins. Co. v. Koloms*, 177 Ill. 2d 473, 491 (1997) (analyzing materially identical pollution exclusion in "the standard-form CGL policy in 1970"). Although the language of the pollution exclusion has evolved over time, it continues to exclude the core conduct relevant here—the "discharge, dispersal, release or escape" of a wide range of substances.

The pollution exclusion was added to CGL policies in the 1970s in response to a rash of environmental disasters and new environmental legislation. *See Koloms*, 177 Ill. 2d at 489-90. In the highly publicized Love Canal disaster, for example, a chemical company and the City of Niagara Falls used an abandoned canal as "a chemical and municipal disposal site," which years later

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"infiltrat[ed] scores of nearby homes, posing a serious threat to human health." Robert P. Whalen, N.Y. Commissioner of Health, Love Canal: Public Health Time Bomb, at 3 (Aug. 2, 1978), https://bit.ly/4juSUzm. Disasters like this prompted new environmental legislation, such as the Clean Air Amendments of 1970, that "imposed greater economic burdens on insurance underwriters, particularly those drafting standard-form CGL policies." *Koloms*, 177 Ill. 2d at 490; Pub. L. No. 91-604, 84 Stat. 1676.

The way CGL policies were structured at the time would have left insurers on the hook for a "yawning extent of potential liability arising from the gradual or repeated discharge of hazardous substances into the environment." *Koloms*, 177 Ill. 2d at 493 (emphasis omitted). The Love Canal disaster, for example, resulted in more than $10 billion in claims. *Love Canal: A Special Report to the Governor & Legislature*, N.Y. Dep't of Health, at 42 (Apr. 1981), https://bit.ly/3FkZyKE. To avoid insolvency, insurers would have partially passed through that increased liability in the form of higher premiums to the many non-polluting businesses that need to purchase CGL policies.

The pollution exclusion solved that problem by carving out expensive pollution coverage from CGL policies. At first, the pollution exclusion contained an exception for "sudden and accidental" emissions. *Koloms*, 177 Ill. 2d at 491-92. (The policies in this case contain such an exception, though it is not at issue here.) But in response to "an enormous amount of litigation" over the

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scope of the sudden-and-accidental exception, the exception was removed in favor of an "absolute pollution exclusion." *Id.* at 492.

State regulators approved the pollution exclusion in CGL policies "because it was in the public's best interest to force businesses to incur the financial ramifications of polluting" by obtaining specialized pollution coverage. 9 Couch on Ins. § 127:3. Since the addition of the pollution exclusion, businesses in need of pollution coverage have been required to purchase separate "pollution legal liability insurance," which is priced in a different market and contains its own unique terms and conditions that differ from CGL insurance. *Current Insurance Policies for Insuring Against Environmental Risks*, SU035 ALI-CLE 1685 (2014).

II. This Court Has Interpreted The Pollution Exclusion To Apply To Traditional Environmental Pollution.

In the years after the creation of the pollution exclusion, courts across the country divided over whether it applies beyond traditional environmental pollution to more quotidian commercial hazards. *Compare, e.g.*, *Bernhardt v. Hartford Fire Ins. Co.*, 648 A.2d 1047, 1047 (Md. App. 1994) (pollution exclusion applied to injuries from a leaky central heating system in an apartment building), *with Weaver v. Royal Ins. Co. of Am.*, 674 A.2d 975, 976 (N.H. 1996) (pollution exclusion did not apply to injuries to child from lead-paint particles on father's clothing and paint tarps).

This Court addressed that issue in *Koloms*, a case involving "a furnace in a two-story commercial building" that "emit[ted] carbon monoxide and other

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noxious fumes." 177 Ill. 2d at 476. Several people working in the building "inhaled the fumes and became ill." *Id.* They sued Harvey and Nina Koloms, who beneficially owned the property. *Id.* The Kolomses sought defense from their insurer, which in turn sought "a declaration that it did not have a duty to defend or indemnify" because "the emission of carbon monoxide fumes constituted the 'release' of a gaseous 'irritant or contaminant'" within the meaning of the insurance policy's pollution exclusion. *Id.* at 477.

This Court began its analysis by articulating the eight-corners test for assessing an insurer's duty to defend. Under that test, the Court compares the four corners of the underlying complaint to the four corners of the insurance policy. If the "facts alleged in the complaint fall within, or potentially within, the language of the policy," the duty to defend is triggered. *Koloms*, 177 Ill. 2d at 479. "If the terms of the policy are clear and unambiguous, they must be given their plain and ordinary meaning." *Id.* "Conversely, if the terms of the policy are susceptible to more than one meaning, they are considered ambiguous" and are construed against the insurer. *Id.*

In applying that test, *Koloms* identified several reasons for finding an "ambiguity" as to whether the pollution exclusion's language applies beyond "hazards traditionally associated with environmental pollution." *Koloms*, 177 Ill. 2d at 488-89. The Court considered that the exclusion's operative words—"discharge," "dispersal," "release," and "escape"—were "terms of art which bespeak of environmental contamination." *Id.* at 493-94. In addition, the Court

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reasoned that a "purely literal interpretation" of the pollution exclusion would give it a "potentially limitless application" and "lead to some absurd results"—such as "bar[ring] coverage for bodily injuries suffered by one who slips and falls on the spilled contents of a bottle of Drano." *Id.* at 484, 488-89. The Court also looked to the history and purpose of the pollution exclusion and concluded that the "predominate motivation in drafting an exclusion … was the avoidance of the enormous expense and exposure resulting from the explosion of *environmental* litigation" that had arisen from then-recent environmental disasters and legislation. *Id.* at 492 (quotation marks omitted). And the Court relied on "the vast divergence of the jurisprudence from courts across the country which ha[d] already struggled with the question." *Id.* at 485.

Resolving that ambiguity against the insurer, *Koloms* held that the pollution exclusion "applies only to those injuries caused by traditional environmental pollution," which the Court defined as the "discharge of hazardous substances *into the environment*." 177 Ill. 2d at 493-94. By contrast, the "accidental release of carbon monoxide" within a building "due to a broken furnace," did "not constitute the type of environmental pollution contemplated by the clause." *Id.* at 494.

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III. Griffith's And Sterigenics' Decades-Long Pollution In Willowbrook Gives Rise To This Insurance Dispute.

A. Griffith And Sterigenics Face Hundreds Of Lawsuits For Allegedly Emitting A Known Carcinogen For Decades.

In September 2018, Willowbrook resident Susan Kamuda sued Sterigenics in the Circuit Court of Cook County, alleging that the company's medical-device-sterilization facility in Willowbrook, Illinois emitted ethylene oxide, an odorless and carcinogenic gas, for more than three decades, causing her to develop cancer. Other plaintiffs who lived, worked, or attended school in Willowbrook filed related suits (the "Underlying Lawsuits"). A217, A243. Those suits were eventually consolidated under a fourth amended "Master Complaint" for discovery and pretrial purposes. A237-355. "The gravamen of the Master Complaint is clear," as the Seventh Circuit explained in this case: "[F]or the 35 years the sterilization plant operated in Willowbrook, local residents unknowingly inhaled [ethylene oxide] on a regular and continuous basis, with many individuals coming to experience a range of illnesses, including cancer and other serious diseases." A4.

Specifically, the Master Complaint alleges that in April 1984, Griffith leased a facility in Willowbrook for purposes of sterilizing medical equipment using ethylene oxide. A251. According to the Master Complaint, "[t]he DNA-damaging properties of [ethylene oxide] have been studied since the 1940s," and "no safe levels of [ethylene oxide] exposure had been demonstrated" by

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1981. A279-80. By the 1990s, studies had established "links between exposure to [ethylene oxide] and increased mortality from … cancers." A280.

The Master Complaint further alleges that in June 1984, Griffith "applied for a construction and operating permit from" the Illinois Environmental Protection Agency ("IEPA") in order to construct and operate the Willowbrook facility. A253. Griffith allegedly made a number of misrepresentations in its permit application and during its operation of the facility, including about the predicted amount of ethylene-oxide emissions and the height of the exhaust stack the facility would use (which affected the concentration of ethylene oxide at ground level). A257-58, A274-75.

Even based on the allegedly misrepresented information, the IEPA expressed concerns. The Master Complaint alleges that in response to the permit application, the IEPA informed Griffith that "[t]he toxicity data provides evidence of human cancers … associated with [ethylene oxide] exposure," and that "animal studies have shown" that ethylene oxide has "carcinogenic, mutagenic, leukogenic and teratogenic effects." A254-55. Based on those risks, the IEPA allegedly informed Griffith that "the emissions from the … facility appear to be several magnitudes higher than desirable" and requested a meeting to "discuss steps that can be taken to minimize emissions." A254-55.

Despite its concerns, the IEPA allegedly issued Griffith a "Joint Construction and Operating Permit" allowing Griffith "to construct and operate sterilization chambers … at the Willowbrook facility." A260. But according to

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the Master Complaint, "[t]he 1984 permit, as well as all permits relating to the Willowbrook facility issued thereafter," "expressly warned Griffith" that "the permit did *not* release it from liability for harm to its neighbors." A260. Instead, the permit stated that it "'does not release the permittee from any liability for any loss due to damage to person or property caused by, resulting from, or arising out of, the design, installation, maintenance, or operation of' the Willowbrook facility." A260-61. The permit also carried conditions. It allegedly required Griffith "to conduct ambient air monitoring" and "to 'investigate the availability of emission reduction measures for ethylene oxide.'" A262. The Master Complaint alleges that Griffith did neither. *See* A262-64.

Construction and operating permit in hand, Griffith began to operate the Willowbrook facility—which allegedly came to be owned and operated by Sterigenics "[t]hrough a series of acquisitions, mergers, and name changes." A245. When operating the facility, Griffith and Sterigenics allegedly "decided not to use any emission controls whatsoever" even though they "knew such controls were available and necessary," and despite knowing that ethylene-oxide "emissions from [the] Willowbrook facility would make it significantly more likely that area residents, workers, and schoolchildren would contract cancer and other serious illnesses." A270, A283-85. They also allegedly failed to properly train their employees on how to minimize ethylene-oxide emissions. A311, A331. As a result, Griffith and Sterigenics allegedly emitted thousands

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of tons of ethylene oxide from the facility per year—including nearly 270,000 pounds between 1988 and 1989 alone. A287.

The Willowbrook facility closed in 2019 after Illinois enacted Public Act 101-0022, known as the Matt Haller Act. That Act "prohibits [ethylene oxide] sterilization facilities from operating in Illinois unless" those facilities reduce emissions to near zero. A308. The Master Complaint alleges that Sterigenics ceased operating and permanently closed the Willowbrook facility rather than "take measures to improve their emissions control systems." A308-09.

Based on this conduct, the plaintiffs in the Underlying Lawsuits sought damages under various tort theories, including willful and wanton conduct, negligence, negligent supervision, and public nuisance. A309-40. Following discovery, Susan Kamuda's case was selected as a bellwether, and in 2022 she won a $363 million jury verdict, including $325 million in punitive damages. *See Sterigenics, U.S., LLC v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 21-cv-4581, ECF 69-2 (N.D. Ill.) (hereinafter "*Sterigenics*"). Griffith and Sterigenics won a defense verdict in the second trial. *Sterigenics*, ECF 69-3. In 2023, Griffith and Sterigenics settled the overwhelming majority of the remaining Underlying Lawsuits for more than $400 million. *See Sterigenics*, ECF 72-1, at 32. The settlement fund has been fully funded since 2023. *See* Press Release, Sotera Health, *Sotera Health Announces Settlement of Ethylene Oxide Litigation* (Jan. 9, 2023), http://bit.ly/4njxs3w (Sterigenics' payment); Motion

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for Entry of Agreed Order at 2, *Kamuda v. Sterigenics, U.S., LLC*, 2018 L 10475 (Cook County Cir. Ct. Apr. 24, 2023) (Griffith's payment).

B. Griffith And Sterigenics Seek Defense Of The Underlying Lawsuits From National Union.

To try to recoup their losses, Griffith and Sterigenics turned to their insurers. Thirteen insurers issued CGL policies to Griffith and Sterigenics during the years in which the Willowbrook facility was operational. *Sterigenics*, ECF 72-1, at 2-4; ECF 72-2, at 4-9. National Union issued two such policies, each effective for one year between September 30, 1983 and September 30, 1985. A109, A134.

As relevant here, National Union's policies contain standard duty-to-defend and pollution-exclusion provisions. The duty-to-defend clause requires National Union to "defend any suit against the insured seeking damages on account of … bodily injury." A114. The pollution exclusion withdraws coverage for bodily injuries caused by "the discharge, dispersal, release or escape of … toxic chemicals, liquids or gases, … contaminants or pollutants into or upon land, the atmosphere or any water course or body of water." A114.

Based on these policies, Griffith and Sterigenics sued National Union in the U.S. District Court for the Northern District of Illinois in 2021. They sought judicial declarations that National Union had a duty to defend the Underlying Lawsuits and to indemnify them for any liability incurred in the suits. A170-72, A229-31. They also brought breach-of-contract claims under the policies. A169-70, A232-33.

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Griffith and Sterigenics opposed bringing the twelve other insurers into the case. *See Sterigenics*, ECF 55. Instead, Griffith later sued seeking similar relief in Illinois state court from the other insurers. Complaint, *Griffith Foods Int'l Inc. v. Zurich Am. Ins. Co.*, 2023 CH 00782 (Cook County Cir. Ct. Jan. 25, 2023). Sterigenics intervened in that suit, and other insurers impleaded National Union. Complaint in Intervention, *Griffith Foods Int'l Inc. v. Zurich Am. Ins. Co.*, 2023 CH 00782 (Cook County Cir. Ct. May 17, 2023); Answer at 86, *Griffith Foods Int'l Inc. v. Zurich Am. Ins. Co.*, 2023 CH 00782 (Cook County Cir. Ct. May 19, 2023). One of the central issues in that case, as in this one, is whether the pollution exclusion precludes coverage and any duty to defend. *See, e.g.*, Answer at 78, *Griffith Foods Int'l Inc. v. Zurich Am. Ins. Co.*, 2023 CH 00782 (Cook County Cir. Ct. May 19, 2023). As of June 2025, the state-court case remains at the pleading stage, and discovery is in its infancy.

C. The District Court Holds That National Union Has A Duty To Defend.

In the federal-court case, Griffith and Sterigenics moved for judgment on the pleadings on their duty-to-defend claims. A21. They argued that National Union has a duty to defend all of the Underlying Lawsuits based on the allegations in the Master Complaint. National Union cross-moved for judgment on the pleadings, arguing that because the allegations in the Master Complaint trigger the policies' pollution exclusion, National Union does not have a duty to defend any of the Underlying Lawsuits. *Sterigenics*, ECF 32.

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In August 2022, the district court held that National Union has a duty to defend. As most relevant here, the district court's duty-to-defend ruling rested on its conclusion that the pollution exclusion "is ambiguous as to whether" the intentional, decades-long emission of ethylene oxide "qualifies as a traditional environmental pollution" when it occurred "under an IEPA permit." A35. In so holding, the district court relied on *Erie Insurance Exchange v. Imperial Marble Corp.*, 2011 IL App (3d) 100380, ¶ 22, which the court read as having "found the pollution exclusion 'arguably ambiguous'" as applied to pollution authorized by permit. A34 (quoting *Imperial Marble*). The district court also held that National Union had a duty to defend because the Master Complaint's allegations triggered the sudden-and-accidental exception to the pollution exclusion and personal-injury coverage. A36, A38-39.

After further proceedings on issues not pertinent here, the district court allowed Griffith and Sterigenics to voluntarily dismiss their claims for indemnity without prejudice and entered judgments awarding approximately $124 million in total defense costs to Griffith and Sterigenics. *See* A49, A75, A77.

D. The Seventh Circuit Certifies The Question Presented To This Court.

In its decision on appeal, the Seventh Circuit began by rejecting the district court's alternative holdings that the Master Complaint triggered the sudden-and-accidental exception to the pollution exclusion and personal-injury coverage. A11-13. Those determinations are not at issue here.

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On the issue relevant here—the applicability of the pollution exclusion—the Seventh Circuit stated that its "own reading of *Koloms* suggests that the pollution exclusion applies" to the alleged ethylene-oxide emissions in this case. A2. The Seventh Circuit explained that "if *Koloms* stood in the Illinois Reports as the only pertinent authority on the question presented, we would hold that the pollution exclusion … applies to exclude the possibility of coverage for the bodily injuries alleged in the Master Complaint—thereby relieving National Union of any duty to defend Griffith and Sterigenics." A15. The Seventh Circuit reasoned that the "type of 'gradual' and 'repeated discharge of hazardous substances into the environment'" alleged in the Master Complaint is nothing like the "types of routine commercial hazards the *Koloms* Court thought absurd to include within the pollution exclusion." A15. Instead, it is "much more reminiscent of the 'well-publicized, environmental disasters' of Times Beach and Love Canal that prompted the exclusion's adoption." A16 (quoting *Koloms*, 177 Ill. 2d at 490).

Despite its own reading of *Koloms*, the Seventh Circuit stated that "*Imperial Marble* could be read" to reach the opposite conclusion. A16-17. The Seventh Circuit recognized that it had previously rejected *Imperial Marble*'s reasoning in *Scottsdale Indemnity Co. v. Village of Crestwood*, 673 F.3d 715 (7th Cir. 2012) (Posner J.), which applied *Koloms* to hold that the discharge of a carcinogen into well water within regulatory limits was traditional environmental pollution. A17. But the "tension" between *Scottsdale* and *Imperial*

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Marble and "the importance of how this question is resolved" led the Seventh Circuit to certify to this Court the question presented here: "what relevance, if any, does a permit or regulation authorizing emissions (generally or at particular levels) play in assessing the application of a pollution exclusion within a standard-form commercial general liability policy." A17-19.

STANDARD OF REVIEW

"Certified questions are questions of law that this court reviews *de novo*." *Martin v. Goodrich Corp.*, 2025 IL 130509, ¶ 11. The certified question here involves "the construction of an insurance policy" which "is a question of law subject to *de novo* review." *Koloms*, 177 Ill. 2d at 479-80.

ARGUMENT

The Pollution Exclusion Has No Unwritten Exception For Toxic Emissions Authorized By A Permit Or Regulation.

Whether emissions of toxins are authorized by a government permit or regulation is irrelevant to the application of the pollution exclusion. The exclusion's language is clear and leaves no room for a government-authorized-emissions exception. *Koloms*' "traditional environmental pollution" test and that decision's reasoning likewise foreclose such an exception. If anything, government-authorized emissions are *more* clearly traditional environmental pollution, because there is no question that such emissions are known to be pollution. And considerations of policy and common sense point the same way: An exception for government-authorized toxic emissions would incentivize

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pollution in Illinois and could raise insurance prices for non-polluting Illinois businesses and consumers.

A. The Text Of The Pollution Exclusion Forecloses An Exception For Government-Authorized Toxic Emissions.

As *Koloms* explained, it is blackletter insurance law that "whether the pollution exclusion applies … turns primarily upon the language of the exclusion itself." 177 Ill. 2d at 480. That is because the court's "primary objective" in interpreting an insurance policy is to "ascertain and give effect to the intent of the parties, as expressed in the policy language." *Acuity v. M/I Homes of Chi., LLC*, 2023 IL 129087, ¶ 30. Thus, "[i]f the terms of the policy are clear and unambiguous, they must be given their plain and ordinary meaning." *Koloms*, 177 Ill. 2d at 479 (citing *Outboard Marine Corp. v. Liberty Mut. Ins. Co.*, 154 Ill. 2d 90, 108 (1992)).

Here, the text of the pollution exclusion unambiguously ascribes no relevance to whether emissions are authorized by a government permit or regulation. A114. The pollution exclusion precludes coverage for "bodily injury … arising out of the discharge, dispersal, release or escape of" certain substances, including "toxic chemicals, liquids or gases … into or upon land, the atmosphere or any water course or body of water." A114. The pollution exclusion makes no exception for—nor even mentions—permits, regulations, or other forms of legal authorization. Grafting such an exception onto the exclusion thus would violate the "general and well-established rule that a court 'will not add terms to the contract of insurance which the parties have not included in

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the language of the policy.'" *Chatham Corp. v. Dann Ins.*, 351 Ill. App. 3d 353, 359 (1st Dist. 2004).

The words the exclusion uses to describe the acts of pollution—"discharge, dispersal, release or escape"—confirm that the exclusion covers emissions authorized by a permit or regulation. Ordinary English speakers understand those terms to encompass government-authorized emissions. Press coverage of the ethylene-oxide emissions from the Willowbrook facility, for example, refers to ethylene oxide "*released* … into the air for many years," despite noting the existence of a permit. *See, e.g.*, Mario Koran, *It's a Colorless, Toxic Gas. A U.S. Woman Won $363m After Years of Exposure*, The Guardian (Nov. 26, 2022), https://bit.ly/4mHQUGP (emphasis added); Sharon Lerner, *A Tale of Two Toxic Cities*, The Intercept (Feb. 24, 2019), ("ethylene oxide released into the air"), https://bit.ly/3Sy0H4w. Similarly, a U.S. Department of Health and Human Services letter to the U.S. EPA regarding the Willowbrook facility discussed "releases" from the facility. *See* Letter from Michelle Colledge, U.S. Dep't of Health & Hum. Servs., to Ed Nam, U.S. Env't Prot. Agency (July 26, 2018), https://bit.ly/4dL5Dwr. Even Sterigenics in this litigation has described its ethylene-oxide emissions pursuant to a permit as "discharges." *See Sterigenics*, ECF 25, at 2 ("Illinois law holds that pollution exclusions are set aside when, as here, the alleged discharges or emissions were made pursuant to a lawfully issued and valid permit.").

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Indeed, the words "discharge" and "release" are often the very terms used in environmental permitting regimes to describe government-authorized emissions. The Clean Water Act, for example, provides for "[p]ermits for discharge of pollutants." 33 U.S.C. § 1342(a); *id.* § 1344(a) ("The Secretary may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites."); *see also, e.g.*, *City & Cnty. of San Francisco v. U.S. EPA*, 75 F.4th 1074, 1085 (9th Cir. 2023) (NPDES permit stating "'the Discharger shall comply with the narrative water quality-based effluent limitations"). Similarly, CERCLA defines the "term 'federally permitted release'" as, among other things, "*discharges* in compliance with a legally enforceable permit under … the Federal Water Pollution Control Act," or "*releases* in compliance with a legally enforceable final permit issued pursuant to … the Solid Waste Disposal Act." 42 U.S.C. § 9601(10) (emphases added).

State and municipal environmental permitting regimes, including in Illinois, use similar language. *See, e.g.*, IEPA, Notice of Intent for General Permit to Discharge Wastewater, https://bit.ly/3Zo1EQJ; IEPA, Draft Permit for Chicago Dep't of Aviation, Permit No. 95110002 (May 21, 2025), https://bit.ly/3ZGMDcR (discussing "discharge or emission at the source authorized by this permit").[1] There is no basis to conclude that, in the pollution

[1] *See also, e.g.*, Ill. Admin. Code tit. 35, § 104.406(g) (referring to "emissions, discharges or releases that would be expected from compliance with the regulation of general applicability"); 6 CRR-NY 201-3.2(50) (exempting from certain permitting

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exclusion, these same words carry an implicit exception for emissions authorized by a permit or regulation.

Reading an unwritten government-authorization exception into the pollution exclusion would be particularly inappropriate because CGL coverage rarely turns on legal authorization. To price insurance accurately, insurers generally need know what risks they are assuming at the time the policy is issued, and legal authorizations can change unpredictably across time and jurisdiction. So, in the unusual situations in which a CGL policy does turn on legal authorization, it does so expressly. In one recent ethylene-oxide case, for example, a policy's pollution exclusion contained an exception for operations "cleared by any government health authority or regulatory body for marketing with a specific indication for medical, diagnostic, or therapeutic use." *Noetic Specialty Ins. Co. v. B. Braun Med., Inc.*, 2024 WL 4596244, at *2 (E.D. Pa. Oct. 28, 2024). Similarly, the CGL policies at issue in this case have an alcohol-sales exclusion that turns on whether the alcohol sales are lawful. *See* A114 (precluding coverage if "liability is imposed … by, or because of the violation of, any statute, ordinance or regulation pertaining to" alcoholic beverages).

Those exceptions demonstrate that when parties intend for insurance coverage to turn on whether the insured's conduct was authorized by a

requirements "[c]offee roasting processes … that are vented through an unobstructed, vertical stack that ensures proper dispersion of air contaminants"); South Coast Air Quality Management District, Permit to Construct/Operate for Las Virgenes Municipal Water District, Permit No. G76227, http://bit.ly/4eghLGc (requiring the "exhaust stack" to be "oriented and maintained to ensure emissions from this equipment are discharged vertically to the atmosphere without obstruction").

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governmental authority, the policies explicitly include language to that effect. That no such exception exists for the standard pollution exclusion reveals that the exclusion is meant to apply regardless of any government authorization. *See Thompson v. Gordon*, 241 Ill. 2d 428, 442 (2011) (court will not import a term from one provision of an insurance policy into another provision); *Ingraham v. Mariner*, 194 Ill. 269, 278 (1901) ("[O]ne part of the [contractual] agreement may be resorted to to explain the meaning of the language or expressions of another part."); *cf. People v. Hudson*, 228 Ill. 2d 181, 193 (2008) ("When the legislature uses certain language in one part of a statute and different language in another, we may assume different meanings were intended.").

In sum, the text of the pollution exclusion—the "express[ion]" of the parties' intent, *Acuity*, 2023 IL 129087, ¶ 30—is abundantly clear that the exclusion applies to government-authorized emissions of toxic substances.

B. *Koloms* Precludes An Exception For Government-Authorized Toxic Emissions.

In addition to having no basis in the text of the pollution exclusion, an exception for government-authorized toxic emissions is inconsistent with the holding and reasoning of *Koloms*—this Court's seminal precedent on the meaning of the pollution exclusion.

1. An Exception For Government-Authorized Toxic Emissions Is Inconsistent With *Koloms*' Holding.

Koloms held that the pollution exclusion's text was ambiguous as to whether it applies to "routine commercial hazards such as a faulty heating and

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ventilation system." 177 Ill. 2d at 483. To avoid the pollution exclusion's "otherwise potentially limitless application," the Court interpreted the exclusion to apply "only to those injuries caused by traditional environmental pollution." *Id.* at 489, 494. The Court adopted the "traditional environmental pollution" test to avoid the exclusion reaching everyday hazards like "[t]he accidental release of carbon monoxide … due to a broken furnace." *Id.* at 489-94.

To that end, *Koloms* defined traditional environmental pollution as the "discharge of hazardous substances *into the environment*." 177 Ill. 2d at 493. The Court reasoned that the words "discharge, dispersal, release, or escape" are "terms of art which bespeak of environmental contamination." *Id.* at 493-94 (quoting *W. Am. Ins. Co. v. Tufco Flooring E., Inc.*, 104 N.C. App. 312, 325, (1991)). Thus, what matters under *Koloms* is *where* the pollution occurs, not *why* it occurs. Nowhere did *Koloms* state or suggest that the applicability of the pollution exclusion turns in any way on whether the emission of toxins was authorized by a government.

Nearly all courts have understood *Koloms*' definition of "traditional environmental pollution" in just this way. In *Kim v. State Farm Fire and Casualty Co.*, 312 Ill. App. 3d 770 (1st Dist. 2000), for example, the First District considered whether the pollution exclusion precluded coverage for a cleaning company whose "dry cleaning machines released a chemical, tetrachloroethane (perc), into the environment." *Id.* at 771. The court rejected the insured's argument that the pollution exclusion does not apply merely because "the perc

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was legally and intentionally placed in the dry cleaning machine as part of the cleaning company's normal business activity." *Id.* at 776. The court reasoned that *Koloms* defined "traditional environmental pollution" as "hazardous material discharged into the land, atmosphere, or any watercourse or body of water." *Id.* And because "perc was hazardous material discharged into the land underneath the dry cleaning and laundry store," the pollution exclusion applied "regardless of whether the perc … was legally and intentionally placed in the dry cleaning machine." *Id.*

The First District and the U.S. Court of Appeals for the Seventh Circuit reached the same conclusion in cases involving allegations that the Village of Crestwood, a suburb of Chicago, mixed well water contaminated by discharges of perc into the community's tap water for decades. *See Village of Crestwood v. Ironshore Specialty Ins. Co.*, 2013 IL App (1st) 120112; *Scottsdale Indem. Co. v. Village of Crestwood*, 673 F.3d 715, 717 (7th Cir. 2012). The First District recognized that, under *Koloms*, "traditional environmental pollution occurs when hazardous material is discharged into the land, atmosphere, or water." *Village of Crestwood*, 2013 IL App (1st) 120112, ¶ 18. The court therefore "reject[ed] the Village's contention that the pollution exclusions do not apply when alleged emissions are within permitted legal standards." *Id.* ¶ 23.

The Seventh Circuit likewise understood "traditional environmental pollution" to encompass "pollution harms as ordinarily understood"—including "[g]roundwater contamination, with resulting contamination of drinking

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water." *Scottsdale*, 673 F.3d at 717, 721. The court thus rejected the argument that "this is not a pollution case at all, because the amount of perc in the Village's water supply was below the maximum level permitted by environmental regulations." *Id.* at 721. Instead, the court concluded, "[a]ll that counts" under *Koloms* "is that the suits are premised on a claim that the perc caused injuries for which the plaintiffs are seeking damages, and that claim triggers the pollution exclusion." *Id.* "[E]ither the perc caused injuries, maybe because the relevant regulations are too lax, or it did not and the tort suits will fail." *Id.*

The Seventh Circuit expressed the same view in this case. The court recognized that this case involves the "type of 'gradual' and 'repeated discharge of hazardous substances into the environment'" that falls within *Koloms*' heartland, notwithstanding any permit. A15. That is because Griffith and Sterigenics allegedly "operated an industrial sterilization plant and emitted thousands of pounds of [ethylene oxide] into the air of Willowbrook at a time when the exact and full dangers of the chemical remained unclear"—and thereby injured "hundreds of people living and working near the Willowbrook facility." A15. That conduct stood "in stark contrast to the types of routine commercial hazards the *Koloms* Court thought absurd to include within the pollution exclusion." A15. The Seventh Circuit thus stated that "if *Koloms* stood in the Illinois Reports as the only pertinent authority on the question presented, we would hold that the pollution exclusion in the CGL policies at issue here

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applies to exclude the possibility of coverage for the bodily injuries alleged in the Master Complaint." A15.

The case interpreting *Koloms* differently—and the only reason the Seventh Circuit withheld judgment and certified to this Court the question presented here—is the Third District's decision in *Erie Insurance Exchange v. Imperial Marble Corp.*, 2011 IL App (3d) 100380.

Imperial Marble involved allegations that a manufacturer of marble home products dispersed noxious chemicals "into the atmosphere"—an activity conducted under a "permit issued by the Illinois Environmental Protection Agency (IEPA)." 2011 IL App (3d) 100380, ¶ 3. Nearby residents sued alleging personal injuries and property damage from the emissions. Although the residents alleged emissions "in violation of IEPA regulations" and in "more than the amounts … allowed under its permit," *id.* ¶ 9, they also "alleg[ed] harm caused, at least in part, by permitted emissions," *id.* ¶ 19. Based on those allegations, the Third District held that it was "ambiguous" "whether the emission of hazardous materials in levels permitted by an IEPA permit constitute traditional environmental pollution." *Id.* ¶ 22.

That is simply incorrect under *Koloms*. *Imperial Marble*'s sole reason for finding ambiguity was *Koloms*' statement that "the pollution exclusion has a 'potentially limitless application.'" 2011 IL App (3d) 100380, ¶ 22 (quoting *Koloms*, 177 Ill. 2d at 489). But *Koloms resolved* the "potentially limitless application" of the pollution exclusion by limiting its application to traditional

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environmental pollution. *Imperial Marble* did not grapple with or even mention *Koloms*' definition of traditional environmental pollution—the "discharge of hazardous substances *into the environment*." *Koloms*, 177 Ill. 2d at 493. Nor did the court explain why applying the pollution exclusion to emissions authorized by a permit would result in its unbounded reach. *Imperial Marble*, in short, identified no basis in *Koloms* for omitting permitted emissions from the scope of "traditional environmental pollution."[2]

If anything, the fact that emissions were authorized by a permit is evidence that the emissions *are* traditional environmental pollution. The entire point of environmental permits is to regulate and limit pollution into the environment. Such a permit thus is typically necessary only when a business *is* engaged in traditional environmental pollution, as courts in other States have recognized. *See, e.g.*, *Prime Tanning Co. v. Liberty Mut. Ins. Co.*, 750 F. Supp. 2d 198, 212 (D. Me. 2010) (permitting requirements were evidence that insured's discharges were traditional environmental pollution); *see also infra* at 37-40.

2. An Exception For Government-Authorized Toxic Emissions Is Inconsistent With *Koloms*' Reasoning.

In addition to lacking any footing in *Koloms'* definition of traditional environmental pollution, an exception to the pollution exclusion for toxic

[2] National Union is aware of only two other cases following *Imperial Marble*. *See Country Mut. Ins. Co. v. Bible Pork, Inc.*, 2015 IL App (5th) 140211, ¶ 41; *Velsicol Chem., LLC v. Westchester Fire Ins. Co.*, 2017 WL 3922901, at *9 (N.D. Ill. Sept. 7, 2017). Neither decision provides any additional analysis supporting *Imperial Marble*'s result.

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emissions authorized by a permit or regulation is inconsistent with *Koloms*' reasoning. *Koloms* found an ambiguity in the pollution exclusion as applied to "routine commercial hazards" based on: (i) the exclusion's text, including the environmental connotations of words like "discharge" and "release"; (ii) the absurd results that the Court believed would follow from applying the pollution exclusion to, for example, a broken furnace; (iii) the exclusion's drafting history and purposes; and (iv) sharp disagreement among the courts of other States on similar facts. 177 Ill. 2d at 483, 488-94. Here, as already discussed, the first consideration—the text of the pollution exclusion—confirms that the exclusion unambiguously applies to government-authorized emissions. *Koloms*' remaining three considerations all compel the same result.

i. An Exception For Government-Authorized Toxic Emissions Would Create, Rather Than Avoid, Absurd Results.

One of *Koloms*' rationales for finding ambiguity in the pollution exclusion was that, if interpreted literally, the "breadth of the language renders application of the exclusion … absurd." 177 Ill. 2d at 487. If the pollution exclusion reached beyond "traditional environmental pollution," *Koloms* reasoned, the exclusion would have "potentially limitless application." *Id.* at 489. It would reach, for example, "bodily injuries suffered by one who slips and falls on the spilled contents of a bottle of Drano" or "caused by an allergic reaction to chlorine in a public pool." *Id.* at 484. Illinois courts generally "will not

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interpret language [in an insurance policy] in a way that produces an absurd result." *Founders Ins. Co. v. Walker*, 2015 IL App (1st) 141301, ¶ 50.

Here, the plain-text reading of the pollution exclusion as lacking an exception for government-authorized emissions would not give the exclusion potentially limitless application. *Contra Imperial Marble*, 2011 IL App (3d) 100380, ¶ 22. Instead, it is the converse reading that would create an absurdity in the opposite direction by giving the exclusion a vanishingly narrow scope. Given the extent of modern environmental regulations and permitting regimes, businesses often discharge toxic chemicals pursuant to a permit or consistent with a regulation—as the facts of this case, *Village of Crestwood*, and *Imperial Marble* demonstrate. At the federal level alone, for example, the Clean Air Act, Clean Water Act, and the Resource Conservation and Recovery Act require permits for the discharge of hundreds of chemicals into the air, water, and land, respectively. *See, e.g.*, 42 U.S.C. §§ 7412(b) (listing "hazardous air pollutants"), 7475 (requiring permits); 33 U.S.C. §§ 1311(b)(2) (referring to lists of water pollutants), 1342 (requiring permits); 42 U.S.C. § 6925 (requiring permits to store hazardous waste); 40 C.F.R. §§ 261.30-35 (listing hazardous wastes). All of that pollution would fall outside the exclusion if it does not apply to government-authorized emissions—not to mention the additional pollution separately regulated by state and local governments.

Indeed, even toxic emissions alleged to *exceed* limits imposed by permits or regulations, like those of Griffith and Sterigenics and the manufacturer in

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Imperial Marble, arguably would fall outside the exclusion so long as it is alleged (as it was in *Imperial Marble* and here) that the harm was caused "at least in part" by government-authorized emissions. 2011 IL App (3d) 100380, ¶ 19. That would leave the pollution exclusion an empty husk, applicable only to the rare scofflaw business that lacks any legal basis for any of its pollution.

Reading the pollution exclusion not to apply to government-authorized emissions also would lead to the absurdity of rendering the exclusion inapplicable to conduct that everyone would understand to be heartland "'pollution' in the conventional, or ordinary, sense of the word." *Koloms*, 177 Ill. 2d at 488. The facts of this case well illustrate the point: Griffith and Sterigenics allegedly "emitted thousands of pounds of [ethylene oxide] into the air of Willowbrook" for thirty-five years and thereby injured "hundreds of people living and working near the Willowbrook facility," including by "caus[ing] them to develop cancers and other serious diseases." A15. The idea that the decades-long emissions of a known carcinogenic gas into a neighborhood full of homes, jobs, and schools could be anything other than traditional environmental pollution is seriously misguided.

Thus, whereas the absurdity of applying the pollution exclusion to a broken furnace pointed to an ambiguity in *Koloms*, here the absurdities that would flow from grafting a government-authorized-emissions exception onto the pollution exclusion confirm that the exclusion's text unambiguously forecloses such an exception.

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ii. An Exception For Government-Authorized Toxic Emissions Would Be Inconsistent With The Pollution Exclusion's History And Purposes.

Koloms also found ambiguity in the pollution exclusion's application to "routine commercial hazards" based on a "review of the history of the pollution exclusion." 177 Ill. 2d at 483, 489-93. *Koloms* looked to the "events leading up to the insurance industry's adoption of the pollution exclusion" in order to understand the exclusion's purposes—including how the pollution exclusion was a response to large-scale environmental disasters and environmental legislation, and how its language changed in response to judicial decisions. *Id.* at 489-93. Here, those same considerations confirm that the exclusion unambiguously applies to emissions authorized by a permit or regulation.

First, the pollution exclusion was drafted in response to environmental disasters and follow-on legislation, which increased the likelihood that insurers would face enormous liability for government-authorized pollution.

In the 1970s, responding in part to high-profile environmental disasters, Congress passed new environmental laws that "imposed greater economic burdens on insurance underwriters," such as the Clean Air Amendments and the Clean Water Act. *Koloms*, 177 Ill. 2d at 490; Clean Air Amendments of 1970, Pub. L. No. 91-604, 84 Stat. 1676; Clean Water Act, Pub. L. No. 92-500, 86 Stat. 816 (1972). Those statutes made clear that "the insurance industry could reasonably contemplate that numerous intentional air and water discharges of pollutants could occur lawfully under permit." Robert D. Chesler et al.,

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Patterns of Judicial Interpretation of Insurance Coverage for Hazardous Waste Site Liability, 18 Rutgers L.J. 9, 35 (1986). After all, environmental statutes often do not "restrict any right which any person … may have under any statute or common law to … seek any other relief." *See* 42 U.S.C. § 7604(e) (Clean Air Act). That means States often may "impose higher standards" including "higher common-law" standards through tort law. *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 497 (1987) (analyzing equivalent provision of Clean Water Act).

Recognizing this, insurers drafted the pollution exclusion to ensure that they would *not* face a "yawning extent of potential [tort] liability" for emissions that were authorized by these new federal statutes and the permits and regulations issued under them. *Koloms*, 177 Ill. 2d at 493. Interpreting the pollution exclusion as inapplicable to emissions authorized by a permit or regulation would frustrate that core purpose of the exclusion.

Second, the drafting history reveals that the pollution exclusion was the culmination of iterative efforts over years to avoid insuring *intentional* emissions in the ordinary course of an insured's business—a category of emissions that substantially overlaps with government-authorized emissions.

As *Koloms* explained, in the 1960s issuers of CGL policies switched from "accident"-based coverage to "occurrence"-based coverage because courts were interpreting "accident" "to encompass pollution-related injuries." 177 Ill. 2d at 489. Occurrence-based coverage sought to avoid that problem by expressly carving out injuries that were "neither expected nor intended from the

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standpoint of the insured." *Id.* In other words, occurrence-based coverage was designed not "to cover commercial clients who knowingly polluted the environment." E. Joshua Rosenkranz, *The Pollution Exclusion Clause Through the Looking Glass*, 74 Geo. L.J. 1237, 1247 (1986). Nevertheless, courts held that these clauses "cover[ed] damages resulting from long-term, gradual exposure to environmental pollution," so long as "the ultimate *loss* was neither expected nor intended." *Koloms*, 177 Ill. 2d at 489 (emphasis added).

The pollution exclusion with a "sudden and accidental" exception was designed to patch that hole—again with the goal of ensuring that CGL policies "cover only damage that did not arise continuously from the normal business operations of the insured." Rosenkranz, *supra*, at 1252; *Outboard Marine Corp.*, 154 Ill. 2d at 123-24. And when litigation over the scope of the sudden-and-accidental exception threatened to re-expose insurers to liability for intentional pollution, that exception was jettisoned in favor of an "absolute pollution exclusion." *See Koloms*, 177 Ill. 2d at 492.

The upshot is that a core intended application of the pollution exclusion is to intentional emissions resulting "from the normal business operations of the insured." Rosenkranz, *supra*, at 1252. And those sorts of emissions are particularly likely to be government-authorized, as businesses generally do not intentionally pollute the environment without a permit or some other legal basis. *See supra* at 32-33. The drafting history therefore confirms that

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government-authorized emissions fit squarely within the historical heartland of the pollution exclusion.

iii. An Exception For Government-Authorized Toxic Emissions Would Make Illinois An Outlier.

The final factor *Koloms* relied on in finding ambiguity about whether the pollution exclusion extends beyond traditional environmental pollution was "the vast divergence of the jurisprudence from courts across the country" on that issue. 177 Ill. 2d at 485. Here, the opposite is true. National Union has been unable to find a single decision outside Illinois creating an exception to the pollution exclusion for government-authorized emissions or finding any ambiguity on that issue. Though the pollution exclusion has been used for more than 50 years and though many jurisdictions limit the pollution exclusion to traditional environmental pollution, apparently no court outside Illinois has adopted *Imperial Marble*'s rule. Instead, courts view environmental permits or regulations either as categorically irrelevant to the pollution exclusion or as affirmative evidence that the exclusion *applies*.

At least two state high courts have squarely rejected a government-authorization exception to the pollution exclusion. *See Aloha Petroleum, Ltd. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 155 Haw. 108, 126-27 (2024); *Technicon Elecs. Corp. v. Am. Home Assurance Co.*, 74 N.Y.2d 66 (1989). In *Technicon*, the New York Court of Appeals found "unpersuasive" the insured's argument that because its "discharge [of toxic chemicals] was legal," "the pollution

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exclusion provision is displaced from its policy." *Id.* at 76. The pollution exclusion, the court reasoned, "makes no mention of the legality of the discharge." *Id.*; *see also St. Paul Fire & Marine Ins. Co. v. Getty Props. Corp.*, 228 A.D.3d 979, 982 (N.Y. Sup. Ct. 2024) (applying *Technicon*). The court also pointed to contemporaneous understanding of the pollution exclusion's scope. The court noted that opponents of New York legislation requiring CGL policies to include pollution exclusions "stressed that even those who … discharge materials … only in strict conformity with … laws, regulation and permits" would lack CGL coverage under the legislation. *Technicon*, 74 N.Y.2d at 76 (quotation marks omitted). It thus did not matter that Technicon's discharges of toxic chemicals allegedly were made "in accordance" with "applicable permits and regulations." *Technicon Elecs. Corp. v. Am. Home Assurance Co.*, 141 A.D.2d 124, 127 (N.Y. Sup. Ct. 1988); *see Technicon*, 74 N.Y.2d at 75 (referencing these allegations).

Likewise in *Aloha Petroleum*, the Supreme Court of Hawaii considered whether the emission of greenhouse gases by fossil-fuel companies constitutes traditional environmental pollution. In holding that it does, the Court reasoned that the "legality, ordinariness, and intent of a product's use is irrelevant" to whether the discharge of the product constitutes traditional environmental pollution. 155 Haw. at 127. Instead, "the operative question is whether a substance causes pollution to the environment." *Id.*

Other courts have looked to the existence of environmental permitting and regulatory regimes as evidence that emissions *are* "traditional

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environmental pollution" covered by the pollution exclusion. One court, for instance, held that a tanning facility had engaged in "traditional environmental pollution" in part because the spreading of its sludge byproduct as fertilizer was subject to a state regulatory and permitting scheme. *Prime Tanning*, 750 F. Supp. 2d at 213, 216. The court explained that "[e]nvironmental monitoring and regulatory compliance requirements are consistent with a business traditionally associated with environmental pollution." *Id.* at 212. Another court similarly considered the fact that livestock feeding operations are "regulated through the Clean Water Act" as evidence that "noxious odors" emanating from a pig farm were "pollutants" that fall within the pollution exclusion. *Travelers Prop. Cas. Co. of Am. v. Chubb Custom Ins. Co.*, 864 F. Supp. 2d 301, 313–16 (E.D. Pa. 2012); *see also Aloha Petroleum*, 155 Haw. at 126 ("Hawai'i's regulation of [greenhouse gas] emissions confirms that GHGs are pollutants.").

Still other courts have pointed to environmental permits as evidence that the pollution exclusion applies because the insured cannot rely on the "sudden and accidental" exception. In a decision applying Oregon law, for example, a court held that the insured's permits for discharge of thorium into city sewers demonstrated that the discharge was "expected and intended." *Precision Castparts Corp. v. Hartford Accident & Indem. Co.*, 2008 WL 2446124, at *5 (D. Or. June 12, 2008). As a result, "the pollution exclusion applies and

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there is no coverage, [and] no duty to defend." *Id.* Courts across the country have reached the same conclusion.[3]

The fact that courts routinely view government authorization as evidence *favoring* application of the pollution exclusion—combined with the lack of any contrary precedent outside Illinois—is a strong indication that the pollution exclusion unambiguously lacks an exception for emissions authorized by a permit or regulation.

* * *

Koloms' definition of "traditional environmental pollution" and its reasoning thus confirm what is clear from the pollution exclusion's text: It has no exception for toxic emissions authorized by a permit or regulation. Government-authorized toxic emissions, like those in this case, are still traditional environmental pollution.

[3] *See, e.g.*, *Technicon Elecs. Corp.*, 74 N.Y.2d at 73-75 (insured's "concededly intentional discharges" pursuant to a permit precluded application of sudden-and-accidental exception); *Am. Ins. Co. v. Fairchild Indus., Inc.*, 852 F. Supp. 1173, 1180 (E.D.N.Y. 1994) (insured's release of chrome into sump was intentional, not accidental, because insured "had government issued permits for just that purpose"); *Dakhue Landfill, Inc. v. Emps. Ins. of Wausau*, 508 N.W.2d 798, 804 (Minn. Ct. App. 1993) (considering the fact that "Dakhue's president … was aware of the groundwater testing requirements of Dakhue's permit" as evidence that the groundwater contamination was expected and intended); *Prime Tanning*, 750 F. Supp. 2d at 216-17 (pollution was not "sudden" because permit evidenced "deliberate and frequent disposal of waste").

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C. An Exception For Government-Authorized Toxic Emissions Would Incentivize Pollution And Harm Illinois Residents.

Considerations of policy and common sense likewise counsel against creating an exception to the pollution exclusion for toxic emissions authorized by a permit or regulation. Creating such an exception would encourage pollution in Illinois and could disrupt insurance markets, all at the expense of non-polluting businesses and consumers in Illinois.

An exception for government-authorized toxic emissions would incentivize pollution in Illinois. CGL insurance policies are common and relatively inexpensive policies meant to cover basic risks. *See supra* at 6. Interpreting them to provide broad coverage for pollution would create a serious moral-hazard problem. Polluters in Illinois would know that as long as they have some permit or regulatory authorization for their activities, a low-cost CGL policy would all but guarantee that they will be reimbursed for the injuries their pollution causes. And because no other State has adopted a government-authorization exception to the pollution exclusion, this Court's doing so would make Illinois an unusually attractive location for polluting companies.

Recognizing a government-authorization exception to the pollution exclusion also could result in higher prices for CGL policies in Illinois, as those policies would cover the "yawning extent of potential liability" from many pollution-related injuries. *Koloms*, 177 Ill. 2d at 493. That would shift the costs of pollution to non-polluting Illinois businesses, nonprofit organizations, and

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other CGL policyholders—and, ultimately, to consumers already burdened by inflation. The uncertainty generated by a decision creating an unwritten, unexpected exception to the pollution exclusion likewise would compound the problem. Insurers might understandably fear that other seemingly clear provisions of insurance policies would be interpreted in an unexpected way, increasing their exposure.

An exception for emissions authorized by a permit or regulation also would lead to line-drawing problems about which permits and regulations qualify for the exception. The permits in this case, for example, allegedly did "'*not* release the permittee from any liability for any loss due to damage to person or property caused by, resulting from, or arising out of, the design, installation, maintenance, or operation of' the Willowbrook facility." A260-61 (emphasis added). The permits also allegedly made Griffith "responsible" for "emissions of [Ethylene Oxide] and other volatile organic materials from the facility," and emphasized the need for compliance with separate state and federal environmental-pollution laws. A260-61. It is therefore difficult to see how those permits would qualify for any government-authorization exception, especially when compared to permits with "permit shield[s]," like the one in *Imperial Marble*, which provide that compliance with the permit "shall be deemed compliance with applicable [legal] requirements." 2011 IL App (3d) 100380, ¶ 4. Varying gradations of government "authorization" likely fall in between

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those two poles, particularly given the individualized nature of the permitting process. The Court should not wade into that morass.

Instead of being given judicially created pollution insurance for government-authorized emissions, would-be polluters should be forced to bear the costly risks of their pollution by purchasing separate pollution legal liability insurance—a product that is designed to deal with the specific problems that pollution risk poses. Requiring polluters to turn to the bespoke market for insuring that risk would reduce the moral hazard to pollute by appropriately pricing that risk. As courts and commentators have recognized, the pollution exclusion's addition to CGL policies was "permitted" by state regulators "because it was in the public's best interest to force businesses to incur the financial ramifications of polluting." 9 Couch on Ins. § 127:3 & n.15 (collecting cases). Moreover, because pollution insurance is sold in a narrower and specialized market rather than broadly to all businesses, would-be polluters know that any harms from pollution will redound to their detriment in the form of higher premiums, and the polluters thus are properly incentivized to minimize the risk that their pollution will cause harm.

In sum, beyond being unfounded in law, creating an exception to the pollution exclusion for emissions authorized by a permit or regulation would be bad policy. The Court should avoid that problem by adhering to the policies' text and this Court's precedent.

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CONCLUSION

This Court should answer the certified question by holding that permits or regulations authorizing toxic emissions play no role in assessing the application of the pollution exclusion.

Dated: June 23, 2025

Respectfully submitted,

/s/ *Thomas H. Dupree Jr.*

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RULE 341(c) CERTIFICATE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 10,236 words.

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PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth herein are true and correct. On June 23, 2025, the foregoing Opening Brief of Defendant-Appellant National Union Fire Insurance Company of Pittsburgh Pa. was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following registered email address:

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Upon its acceptance by the court's electronic filing system, the undersigned will mail thirteen copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois, 62701.

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APPENDIX

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In the

United States Court of Appeals

For the Seventh Circuit

Nos. 24-1217 and 24-1223

GRIFFITH FOODS INTERNATIONAL INC., *et al.*,

Plaintiffs-Appellees,

v.

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA,

Defendant-Appellant.

Appeals from the United States District Court for
the Northern District of Illinois, Eastern Division.
Nos. 1:21-cv-06403 & 1:21-cv-04581 — **Mary M. Rowland,** *Judge.*

ARGUED SEPTEMBER 25, 2024 — DECIDED APRIL 11, 2025

Before SCUDDER, ST. EVE, and KIRSCH, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Before us is an important question of Illinois law about the meaning and scope of the pollution exclusion in standard-form commercial general liability policies. The exclusion owes its existence to the confounding risk of liability insurance companies faced in recent decades stemming from highly publicized environmental disasters (like the Love Canal crisis in Niagara Falls, New York and the

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Times Beach catastrophe in Missouri). In its 1997 decision in *American States Insurance Co. v. Koloms*, 687 N.E.2d 72 (Ill. 1997), the Illinois Supreme Court carefully recounted this history and interpreted the standard CGL pollution exclusion to exclude coverage for bodily injuries caused by traditional environmental pollution (essentially industrial emissions of pollutants), but not by more commonplace emissions—for example, a leak of carbon monoxide from a residential furnace or excess chlorine in a backyard swimming pool.

This appeal requires us to interpret and apply *Koloms* as part of determining whether an industrial pollutant discharged pursuant to a permit issued by an Illinois regulatory agency constitutes traditional environmental pollution subject to a CGL policy's pollution exclusion. The issue comes to us in an insurance dispute that accompanied highly publicized mass tort litigation arising out of substantial injuries, including cancer, allegedly caused by emissions of ethylene oxide over a 35-year period by Griffith Foods International and later Sterigenics U.S. in the suburban Chicago community of Willowbrook, Illinois.

Our own reading of *Koloms* suggests that the pollution exclusion applies. But a post-*Koloms* decision by an intermediate Illinois appellate court suggests that industrial emissions of a contaminant like ethylene oxide pursuant to a regulatory permit changes the analysis and renders the pollution exclusion not applicable, essentially on the theory that the injury-causing emissions were authorized by law and thus cannot constitute a form of traditional pollution otherwise excluded by a CGL pollution exclusion. So the question is unsettled in Illinois law. Mindful that the answer will have substantial consequences—for this case, others, and indeed the broader

insurance market—we believe the most appropriate path forward is to certify the question to the Illinois Supreme Court, the definitive authority on Illinois law.

I

All agree that Illinois law governs this dispute and establishes principles for deciding whether an insurer shoulders a duty to defend. Under those principles, we must compare the insurance policy in question with the underlying complaint an insured calls its insurer to defend. See *Koloms*, 687 N.E.2d at 75. So we begin by relaying the facts as alleged in the underlying complaint—in this case, what the parties refer to as the Master Complaint. See Plaintiffs' Fourth Amended Master Compl., *In re Willowbrook Ethylene Oxide Litig.*, No. 2018-L-010475 (Ill. Cir. Ct. filed Apr. 16, 2021).

In 2018 the U.S. Department of Health and Human Services released a public report revealing that Willowbrook, Illinois was experiencing "staggering and disproportionate" rates of cancer. MC ¶ 11. The believed cause: ethylene oxide, or EtO, emissions from a local medical supply sterilization plant opened by Griffith Foods and subsequently operated by Sterigenics. While this was the first that Willowbrook residents had heard of the toxic emissions, the companies' role in driving the excessive cancer rates allegedly began decades earlier.

In the early 1900s Griffith pioneered the use of EtO as an effective medical supply sterilant. MC ¶ 33. Griffith continued its sterilization business for years, and in 1984 sought a construction and operating permit from the Illinois Environmental Protection Agency to open a plant in Willowbrook. MC ¶¶ 33, 40. In its communications with the IEPA about the

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requested permit, Griffith informed the agency that its sterilization process produced significant EtO emissions that would be discharged into the air surrounding the plant. MC ¶¶ 39, 41. While the IEPA expressed concerns about the projected EtO emissions, it ultimately granted Griffith's request for a permit. MC ¶¶ 42, 44–45, 48, 57. And, as far as we can tell from the Master Complaint, the permit did not specify or otherwise limit the amount of EtO that Griffith could emit from its Willowbrook sterilization operations.

The Master Complaint alleged that Griffith proceeded to emit substantial and dangerous amounts of EtO while operating the plant from 1984 to 1999. MC ¶ 13, 143. When Sterigenics purchased the facility in 1999, it continued to emit EtO until shutting down in 2019, after the IEPA imposed a specific limit on the plant's EtO emissions. MC ¶¶ 4, 24, 210–14.

The gravamen of the Master Complaint is clear: for the 35 years the sterilization plant operated in Willowbrook, local residents unknowingly inhaled EtO on a regular and continuous basis, with many individuals coming to experience a range of illnesses, including cancer and other serious diseases. See, *e.g.*, MC ¶¶ 10, 13, 90–91, 300(a).

For much of that time, Willowbrook residents lacked information to connect their ailments to the sterilization plant's emissions. *Id.* But in the wake of the 2018 governmental report and floodtide of publicity that followed, over 800 people filed individual lawsuits against Griffith and Sterigenics in Illinois state court, asserting various claims under Illinois law. The complaints commonly alleged that Griffith intentionally located and operated its facility in a residential area despite knowing that its dangerously high EtO emissions would migrate to areas near the facilities, including to homes and

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neighboring schools, and eventually cause bodily injuries. To ease the administration of such a high volume of cases, the state court consolidated the matters for pre-trial and discovery purposes only, leading to the plaintiffs collectively producing the single Master Complaint.

Significant satellite insurance litigation commenced alongside the tort litigation. National Union Fire Insurance Company had issued commercial general liability insurance to Griffith over a two-year period, with one policy providing coverage between September 30, 1983 and September 30, 1984, and a second materially identical policy covering the following year and expiring on September 30, 1985. Each CGL policy requires National Union to "defend any suit against the insured seeking damages on account of … bodily injury" that "occur[ed] during the policy period" and "personal injury" arising out of "offenses committed during the policy period." The policies also contain an identical standard-form "pollution exclusion," which bars coverage for bodily injuries arising from the discharge of various pollutants, including toxic chemicals, into the atmosphere, unless the discharge was sudden and accidental.

In 2021 Griffith invoked the policies and demanded that National Union defend it in the ongoing Illinois litigation. National Union denied coverage and refused to defend. This litigation followed, with Griffith and Sterigenics separately going to federal court in Chicago and seeking declarations that National Union had a duty to defend the companies against the state court tort litigation. The two cases proceeded before the same district judge and, as we often see, the parties filed cross motions for judgment on the pleadings to resolve

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whether National Union had a duty to defend Griffith and Sterigenics based on the allegations in the Master Complaint.

The district court answered that question in the affirmative, applying Illinois law and determining that the Master Complaint's factual allegations could be read to trigger coverage for both bodily and personal injuries. The district court further concluded that the pollution exclusion did not apply because the companies emitted EtO pursuant to a permit issued by the IEPA. The district court reached this latter conclusion by applying *Erie Insurance Exchange v. Imperial Marble Corp.*, 957 N.E.2d 1214 (Ill. App. Ct. 2011), an Illinois intermediate appellate court decision finding it ambiguous whether a CGL policy's pollution exclusion bars coverage for emissions authorized by regulatory permit.

The district court resolved several other issues challenged on appeal, but we limit our discussion here to National Union's challenge to the district court's ruling on the pollution exclusion to the CGL's coverage for bodily injuries. If the pollution exclusion applies, Griffith and Sterigenics have no claim to coverage and no basis for requiring National Union to defend them against the allegations in the Master Complaint. Put more directly, the answer to the pollution exclusion question may eliminate all other issues pressed by National Union on appeal.

II

Before reaching the heart of the question we ultimately certify to the Illinois Supreme Court, we address National Union's contention that the district court committed a broad legal error in its duty to defend ruling.

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The error, National Union tells us, has major ramifications and came when the district court concluded that it owed Griffith and Sterigenics a duty to defend against the Master Complaint without then taking the necessary second step of discerning the scope of that duty. That second step was necessary, National Union urges, because, while the Master Complaint encompasses 35 years of alleged injuries (from 1984 to 2019), its CGL insurance policies extended coverage for just two years (from 1983 to 1985). Given this substantial mismatch (between the scope of the Master Complaint—which, recall, is a compendium of allegations in the 800 or so individual underlying complaints—and the scope of the insurance policies), National Union says it cannot possibly be on the hook for the entirety of the companies' costs incurred in defending the Master Complaint. The only way to determine and ultimately monetize its duty to defend, it insists, is to take some step to examine the 800 complaints used to create the Master Complaint—itself just a procedural tool to facilitate consolidated pretrial proceedings on common issues—and determine which ones contained allegations of injuries occurring between September 30, 1983 and September 30, 1985, the effective dates of National Union's policies.

National Union's contention has a lot to it, and very well may have prevailed had it been presented this way in the district court. But that never happened. Indeed, National Union waived the position in the district court.

The record leaves little doubt on the point. In response to Griffith's and Sterigenics's motions for judgment on the pleadings, National Union did not respond with a clear and express articulation of the position it presses on appeal. Take, for example, the briefs National Union filed on the Rule 12(c)

motions for judgment on the pleadings. Each refers only to one "Underlying Litigation" and directs the district court to consider the allegations in the Master Complaint. The briefs do not go the next step of explaining National Union's argument on appeal: that the motions were limited to threshold issues of coverage, leaving the more case-by-case issue of occurrence dates, which would require examination of each of the 800 underlying complaints, for a future judgment on the pleadings motion.

Not so, says National Union, because it included a footnote within its opposition to the companies' Rule 12(c) motions stating that the insurer "accept[ed] the plaintiffs' allegations only for the purposes of this motion" but reserved the "right to argue whether plaintiffs sustained 'bodily injury' caused by an 'occurrence' within the effective dates of the Policies." This footnote, though, fell short of clearly alerting the district court to National Union's position regarding the Master Complaint's role in determining the scope of its duty to defend. It asks too much of the district court to read that footnote and conclude that resolution of National Union's duty to defend required *both* evaluating the allegations in the Master Complaint *and* then—at a second step—analyzing each of the underlying 800 individual complaints to determine when each plaintiff's alleged injury occurred. See *Harmon v. Gordon*, 712 F.3d 1044, 1053 (7th Cir. 2013) (explaining that "[w]e have often said that a party can waive an argument by presenting it only in an undeveloped footnote"). At the very least, National Union's footnote left its position so opaque and underdeveloped as to amount to waiver. See, *e.g.*, *Puffer v. Allstate Ins. Co.*, 675 F.3d 709, 718 (7th Cir. 2012) ("[E]ven arguments that have been raised may still be waived on appeal if they are underdeveloped, conclusory, or unsupported by law.").

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We also recognize that National Union reacted to the district court's adverse ruling by attempting to relitigate the duty to defend issue. It did so by filing what it styled as a "status report" with the district court, asserting for the first time with any clarity that additional issues, such as the dates each individual plaintiff lived in Willowbrook, needed to be resolved before applying the district court's duty to defend ruling to the various individual state lawsuits.

This change of course was the epitome of too little, too late. On our reading of Sterigenics's and Griffith's motions for judgment on the pleadings, National Union had fair notice that the companies were treating the individual lawsuits as if they had all folded into and become governed by the Master Complaint. If that impression is off, National Union did nothing to clarify its position. The time for National Union to challenge the scope of its duty to defend by narrowing the relevant time period was *before* the district court granted judgment on the pleadings for the companies. Cf. *RCBA Nutraceuticals, LLC v. ProAmpac Holdings, Inc.*, 108 F.4th 997, 1005 (7th Cir. 2024) ("A party may not raise an argument for the first time in a motion for reconsideration."). National Union failed to do so.

We have taken pains with this part of the analysis because National Union's concern of overstated duty to defend liability has much to say for itself and has given us great pause. But, in our final analysis, no matter how many times we review what transpired below, we return to the same conclusion: National Union failed to preserve its contention in the district court.

III

That brings us to the crux of the issue we confront in this opinion—whether National Union owes a duty to defend Griffith and Sterigenics against the Master Complaint. Illinois courts interpret an insurer's duty to defend broadly. If the factual allegations in the Master Complaint fall "within or *potentially* within" the policies' scope of coverage, we must conclude that National Union has a duty to defend "even if the allegations are groundless, false, or fraudulent." See *United States Fid. & Guar. Co. v. Wilkin Insulation Co.*, 578 N.E.2d 926, 930 (Ill. 1991); accord *United Fire & Cas. Co. v. Prate Roofing & Installations, LLC*, 7 F.4th 573, 579–80 (7th Cir. 2021) (applying Illinois law).

Two dimensions of coverage are relevant to this appeal: National Union agreed to defend all suits against its insured seeking damages on account of (A) personal injury and (B) bodily injury. We address each in turn.

A

As relevant here, the policies define personal injury as the "wrongful entry or eviction or other invasion of the right of private occupancy." Griffith and Sterigenics contend that a private nuisance claim falls within that definition. For purposes of this appeal, we will assume that is so. But even on that assumption, we cannot read the Master Complaint, which everyone acknowledges contains no express claim for private nuisance, as pleading facts sufficient to raise the possibility of such a claim. See *Lexmark Int'l, Inc. v. Transp. Ins. Co.*, 761 N.E.2d 1214, 1221 (Ill. App. Ct. 2001) (explaining that courts look to "whether the alleged conduct arguably falls within at least one of the categories of wrongdoing listed in

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the policy," giving little weight to the "legal label that characterizes the underlying allegations").

Under Illinois law, a "private nuisance is a substantial invasion of another's interest in the use and enjoyment of his or her land." *In re Chi. Flood Litig.*, 680 N.E.2d 265, 277 (Ill. 1997); see also *Dobbs v. Wiggins*, 929 N.E.2d 30, 39 (Ill. App. Ct. 2010) ("An invasion constituting a nuisance can include noise, smoke, vibration, dust, fumes, and odors produced on the defendant's land and impairing the use and enjoyment of neighboring land."); *Schiller v. Mitchell*, 828 N.E.2d 323, 329 (Ill. App. Ct. 2005) ("The interference must consist of an invasion by something perceptible to the senses.").

While geographically focused on the residents and community of Willowbrook, the Master Complaint contains no allegations that the EtO emissions affected the way the sterilization plant's neighbors used or enjoyed their property. Indeed, to read the Master Complaint as potentially bringing a private nuisance claim (even if not expressly) would be at odds with the entire thrust of the underlying plaintiffs' allegations, which describe "invisible" and "odorless" emissions that Willowbrook residents "unknowingly" inhaled. MC ¶¶ 8, 10. We cannot see how the emissions were simultaneously unknown to residents yet substantially invaded the use and enjoyment of their property. At the very least, having reviewed the Master Complaint in great depth, we see insufficient factual allegations supporting a claim to recover for any loss of use and enjoyment of property—the lynchpin of any claim for private nuisance. The point need not detain us further.

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B

So that brings us to the Master Complaint's allegations of bodily injury and, by extension, the CGL policy's pollution exclusion. All agree that the Master Complaint contains allegations of bodily injuries. See, *e.g.*, MC ¶¶ 7, 13, 221, 226.

Under National Union's CGL insurance policies, bodily injuries are not covered if they fall within the scope of the standard-form pollution exclusion, which bars coverage for:

> bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental[.]

Pointing to the last clause, Griffith and Sterigenics invite us to avoid deciding whether its conduct falls within this exclusion because at least some of its EtO emissions were "sudden and accidental." But the plain focus of the Master Complaint belies such a theory. The Illinois Supreme Court has explained that the sudden-and-accidental exception "applies to unexpected and unintended releases of pollutants." *Outboard Marine Corp. v. Liberty Mut. Ins. Co.*, 607 N.E.2d 1204, 1221 (Ill. 1992). Yet the Master Complaint repeatedly alleges that Griffith and Sterigenics "intentionally," and therefore, expectedly, "emitted EtO into the air despite their knowledge that it would contact people who lived or worked near the facilities." See, *e.g.*, MC ¶¶ 9, 35, 81(j), 90, 153, 313.

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That some emissions may have been the result of frequent accidental spills or other negligent business acts does not change the analysis or our conclusion that the sudden-and-accidental exception to the pollution exclusion finds no application here. See *Fruit of the Loom, Inc. v. Travelers Indem. Co.*, 672 N.E.2d 278, 287–88 (Ill. App. Ct. 1996) (concluding that the sudden-and-accidental exception did not apply because "accidental spills" occurred "in the ordinary course of business"). What this means by extension, then, is that if the pollution exclusion applies, National Union does not owe Griffith and Sterigenics a duty to defend against the Master Complaint.

Griffith and Sterigenics nevertheless insist that the EtO emissions alleged in the Master Complaint do not fall under the pollution exclusion as interpreted by the Illinois Supreme Court because it is possible the emissions do not constitute "traditional environmental pollution." National Union sees the question the opposite way, telling us that this case presents a postcard example of where the pollution exclusion should apply to bar coverage for the bodily injuries alleged in the Master Complaint. With their positions staked out, both sides recognize that the answer turns on how to apply the Illinois Supreme Court's reasoning in *American States Insurance Co. v. Koloms* to the allegations in the Master Complaint. See 687 N.E.2d 72.

We, too, see *Koloms* as standing centerstage in this dispute, for the decision interprets Illinois law, comes from the State's highest court, and supplies essential guidance on the pollution exclusion within standard-form CGL policies. *Koloms* itself concerned whether injuries caused by carbon monoxide emissions from a defective furnace operating within a

residential home fell within a CGL policy's pollution exclusion for duty to defend purposes. See *id.* at 73. In the course of answering that question in the negative, the Court supplied substantial guidance on the meaning and scope of the standard CGL policy's pollution exclusion.

The Court underscored that the question was challenging—one on which courts across the country had "not reached a clear consensus." *Id*. at 78. Some courts, it observed, strictly construed the exclusion's plain language, finding that it barred coverage in a wide range of scenarios that would not normally be thought of as environmental pollution. See *id*. But other courts held that following the pollution exclusion's plain language would lead to absurd results, like excluding coverage when a person slips and falls on the spilled contents of a bottle of Drano or has an allergic reaction to chlorine in a swimming pool. See *id*. at 77–79 (citing *Pipefitters Welfare Educ. Fund v. Westchester Fire Ins. Co.*, 976 F.2d 1037, 1043 (7th Cir. 1992)).

In the end, the Illinois Supreme Court, "troubled" by an "overbreadth in the language of the exclusion as well as the manifestation of an ambiguity which results when the exclusion is applied to cases which have nothing to do with 'pollution' in the conventional, or ordinary, sense of the word," looked beyond the exclusion's plain language. *Id*. at 79. Recounting the "well-documented and relatively uncontroverted" events leading to the insurance industry's adoption of the pollution exclusion, see *id.* (quoting *Morton Int'l, Inc. v. General Accident Ins. Co.*, 629 A.2d 831, 848 (N.J. 1993)), the Court observed that "the predominate motivation in drafting an exclusion for pollution-related injuries was the avoidance of the 'enormous expense and exposure resulting from the

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"explosion" of *environmental* litigation.'" *Id.* at 81 (quoting *Weaver v. Royal Ins. Co. of Am.*, 674 A.2d 975, 977 (N.H. 1996)). So to give true meaning to the intent of its drafters, the Court read the pollution exclusion as applying only to "injuries caused by traditional environmental pollution." *Id.* at 82.

We recognize, to be sure, that the pollution exclusion in *Koloms*, unlike the one before us here, lacked an exception for sudden-and-accidental emissions. But that difference is not one the parties make anything of. Nor do we see the difference as having any significance, for the entirety of our reasoning turns on how the Illinois Supreme Court interpreted the core meaning of the pollution exclusion.

So if *Koloms* stood in the Illinois Reports as the only pertinent authority on the question presented, we would hold that the pollution exclusion in the CGL policies at issue here applies to exclude the possibility of coverage for the bodily injuries alleged in the Master Complaint—thereby relieving National Union of any duty to defend Griffith and Sterigenics. The companies operated an industrial sterilization plant and emitted thousands of pounds of EtO into the air of Willowbrook at a time when the exact and full dangers of the chemical remained unclear. Decades later, hundreds of people living and working near the Willowbrook facility alleged that continuously inhaling those emissions caused them to develop cancers and other serious diseases. See, *e.g.*, MC ¶¶ 7, 13, 221. This type of "gradual" and "repeated discharge of hazardous substances into the environment," in our view, stands in stark contrast to the types of routine commercial hazards the *Koloms* Court thought absurd to include within the pollution exclusion. 687 N.E.2d at 81 (emphasis omitted) (quoting *W. Am. Ins. Co. v. Tufco Flooring E., Inc.*, 409 S.E.2d

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692, 699 (N.C. Ct. App. 1991)). Instead, what the Master Complaint alleges happened in Willowbrook strikes us as much more reminiscent of the "well-publicized, environmental disasters" of Times Beach and Love Canal that prompted the exclusion's adoption and inclusion in the CGL policies. *Id.* at 80.

But Griffith and Sterigenics implore us to pause and consider an intermediate appellate court decision that came in the wake of and indeed interpreted and applied *Koloms*. That decision is *Erie Insurance Exchange v. Imperial Marble Corp.*, 957 N.E.2d 1214. There a marble manufacturer sought insurance coverage under its CGL policy after nearby residents sued the company for bodily injuries caused by its emission of odorous and toxic chemicals. See *id.* at 1217, 1220. The manufacturer had emitted the chemicals pursuant to a permit issued by the Illinois Environmental Protection Agency but allegedly discharged more than authorized by the permit. See *id.* at 1216–17.

Relying on *Koloms*, the trial court held that the pollution exclusion applied to bar coverage because the emissions were "traditional environmental pollution." See *id.* at 1221. But the Illinois intermediate appellate court, likewise applying *Koloms*, reversed, concluding that the exclusion was "arguably ambiguous as to whether the emission of hazardous materials in levels permitted by an IEPA permit constitute traditional environmental pollution excluded under the [CGL] policy." *Id.* Resolving the ambiguity in the insured-manufacturer's favor, the court held that the insurer had a duty to defend against the underlying claims. See *id.*

To our eye, then, *Imperial Marble* could be read to suggest that legally authorized emissions—those that occur pursuant to a regulatory permit—may not constitute the type of

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traditional environmental pollution that *Koloms* envisioned. The decision at least makes that conclusion possible.

Further muddying the waters is one of our own decisions applying Illinois law and interpreting a CGL pollution exclusion but coming after and taking an altogether different view than the one offered by *Imperial Marble*. In *Scottsdale Indemnity Co. v. Village of Crestwood*, an Illinois municipality asserted that its insurer had a duty to defend it against claims for bodily injuries resulting from its mixing of water contaminated with perc into the municipal drinking water. See 673 F.3d 715, 716 (7th Cir. 2012). Citing *Koloms* and undergoing a comprehensive analysis of the standard pollution exclusion in CGL insurance policies, we held that the exclusion applied to bar coverage. See *id.* at 718–21. In doing so, we rejected the municipality's contention that the perc-contaminated drinking water was not pollution "because the amount of perc in the Village's water supply was below the maximum level permitted by environmental regulations." *Id.* For purposes of the pollution exclusion, we explained, all that mattered was that the suits alleged the contaminated water caused the underlying injuries. See *id.*

Scottsdale, then, is in line with our own natural reading of *Koloms* but in tension with *Imperial Marble*. In many instances, a circumstance like this would call for us to decide whether to adhere to the reasoning in *Scottsdale* or to shift course and resolve whether *Imperial Marble* aligns with how we believe the Illinois Supreme Court would resolve the question presented. See *Agribusiness Ins. Co. v. Dugan*, 810 F.3d 446, 450 (7th Cir. 2015) ("Where the Illinois Supreme Court has not ruled on an issue, decisions of the Illinois Appellate Courts control, unless there are persuasive indications that the Illinois Supreme

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Court would decide the issue differently."). Given the importance of how this question is resolved and the uncertainty created by *Imperial Marble*, we are hesitant to take either approach here and believe the best path forward is to afford the Illinois Supreme Court an "opportunity to illuminate a clear path on th[is] issue." *Allstate Ins. Co. v. Menards, Inc.*, 285 F.3d 630, 639 n.18 (7th Cir. 2002) (quoting *In re Badger Lines, Inc.*, 140 F.3d 691, 698–99 (7th Cir. 1998)).

Under Illinois Supreme Court Rule 20, certification to the Illinois Supreme Court is proper if we have before us a question of Illinois law that "may be determinative" of the case, and there are "no controlling precedents" from the Illinois Supreme Court. Ill. Sup. Ct. R. 20(a). That criterion is satisfied here. *Koloms* goes a long way in telling us how to interpret a standard pollution exclusion in a CGL insurance policy, but, underscored by the tension between *Imperial Marble* and *Scottsdale*, the exact scope of traditional environmental pollution remains unclear, and leaves us "genuinely uncertain" as to how to proceed. *In re Hernandez*, 918 F.3d 563, 570 (7th Cir. 2019) ("In exercising our discretion to certify a question, 'the most important consideration is whether we find ourselves genuinely uncertain about a question of state law that is key to a correct disposition of the case.'" (quoting *Lyon Fin. Servs., Inc. v. Ill. Paper & Copier Co.*, 732 F.3d 755, 766 (7th Cir. 2013))).

Further pushing us toward certification is the significance this question has for Illinois insurance law and the broader insurance industry. See *Martin v. Goodrich Corp.*, 95 F.4th 475, 481 (7th Cir. 2024) ("[I]f it is 'an important issue of public concern' and 'likely to recur,' certification is a better bet." (quoting *Cutchin v. Robertson*, 986 F.3d 1012, 1028 (7th Cir. 2021))). Because federal law requires any company that emits large

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amounts of pollutants to obtain a permit, see 40 C.F.R. § 71.3, and environmental regulations are constantly evolving, the situation before us is likely to recur and our decision would have substantial ramifications for insurers and insureds alike. The stakes are just as high for the parties in this litigation—how the question is answered may be the difference between $150 million in defense costs and zero.

For these reasons we certify the following question to the Illinois Supreme Court:

> In light of the Illinois Supreme Court's decision in *American States Insurance Co. v. Koloms*, 687 N.E.2d 72 (1997), and mindful of *Erie Insurance Exchange v. Imperial Marble Corp.*, 957 N.E.2d 1214 (2011), what relevance, if any, does a permit or regulation authorizing emissions (generally or at particular levels) play in assessing the application of a pollution exclusion within a standard-form commercial general liability policy?

By framing our question this way, we do not intend to limit the scope of the Illinois Supreme Court's inquiry, and we welcome the Justices to reformulate the question as they see fit.

QUESTION CERTIFIED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Sterigenics, U.S., LLC, Plaintiff, v. National Union Fire Insurance Company Of Pittsburgh, P.A., Defendant.	Case No. 21-cv-4581 Judge Mary M. Rowland
Griffith Foods International, Inc., et al., Plaintiffs, v. National Union Fire Insurance Company of Pittsburgh, P.A., Defendant.	Case No. 21-cv-6403 Judge Mary M. Rowland

MEMORANDUM OPINION AND ORDER

In this insurance coverage dispute, Plaintiff Sterigenics U.S., LLC and Plaintiffs Griffith Foods International, Inc. and Griffith Foods Group, Inc. have brought separate but related lawsuits against their insurer, National Union Fire Insurance Company of Pittsburgh, P.A. Plaintiffs seek judgments declaring that National Union owes them duties to defend and indemnify them in an underlying

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action pending in Illinois state court. Sterigenics and the Griffith Plaintiffs have moved for partial judgment on the pleadings, requesting a judgment that National Union owes them a duty to defend. The Griffith Plaintiffs have also moved for judgment on their claims for breach of the duty to defend and estoppel. National Union has cross-moved for judgment on the pleadings. For the reasons explained below, this Court grants Sterigenics' and the Griffith Plaintiffs' motions as they pertain to the duty to defend, denies the Griffith Plaintiffs' motion as to estoppel, and denies National Union's motions except as it pertains to estoppel.

I. Background

This Court accepts as true the following facts from the amended complaint in the Sterigenics case and the complaint in the Griffith case. *See Wagner v. Teva Pharm. USA, Inc.*, 840 F.3d 355, 358 (7th Cir. 2016). Because Plaintiffs' complaints contain similar allegations and concern the same insurance policies, this Court will sometimes cite to one complaint for a proposition that applies to both Plaintiffs. Unless otherwise indicated, citations to docket numbers refer to filings in Sterigenics' case.

A. Underlying Litigation and the Policies

In Illinois state court, multiple plaintiffs have sued several defendants, including two of the Plaintiffs here—Sterigenics and Griffith Food International, Inc., formerly known as Griffith Laboratories U.S.A., Inc. (hereinafter Griffith Labs). [15] ¶¶ 13, 16. The underlying litigation, entitled *In re: Willowbrook Ethylene Oxide Litigation*, is currently pending in the Circuit Court of Cook County, Illinois. [15-1].

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In the (operative) fourth amended complaint, the underlying plaintiffs allege that they suffered bodily and personal injuries as a result of exposure to discharges of ethylene oxide (EtO) from sterilization facilities Sterigenics currently owns in Willowbrook, Illinois. [15] ¶ 14. The fourth amended complaint serves as the master complaint for hundreds of actions which the state court consolidated for pretrial and discovery purposes; its allegations concern each named plaintiff. *Id.* ¶ 14 & n.2.

The underlying plaintiffs assert that, in 1984, Griffith Labs "purposely directed" that an EtO sterilization facility be located in the plaintiffs' residential community, knowing the facility would endanger the community's health and safety; the plaintiffs also assert that Griffith Labs operated the facility for the next fifteen years without adequately protecting the plaintiffs from the facility's carcinogenic emissions. [15-1] ¶ 7. Griffith Labs operated the Willowbrook facility "[d]uring certain times prior to May 14, 1999," according to the underlying complaint. *Id.* ¶ 24.[1] The underlying complaint also alleges that "Defendant Sterigenics U.S., under its current name and previously under other names, operated EtO sterilization facilities at 7775 Quincy Street in Willowbrook, Illinois . . . and 830 Midway Drive in Willowbrook, Illinois, continuously and at all relevant times." *Id.* ¶ 22. The underlying complaint asserts state-law claims against Sterigenics and Griffith Labs for negligence, negligent training, negligent supervision, willful and wanton conduct, strict liability, civil battery, and public nuisance. [15-1].

[1] Prior iterations of the underlying complaint—the second and third amended complaints—named Griffith Foods Group Inc., the other Plaintiff in the Griffith suit (hereinafter Griffith Foods). Griffith [1] ¶¶ 19, 23. Griffith Foods is formerly known as Griffith Laboratories, Inc. *Id.* ¶ 1.

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B. Policies' Provisions

The parties' dispute centers around two commercial general liability policies that National Union insures. [15] ¶ 17. Policy number GLA-945-70-58RA was effective from September 30, 1983 to September 30, 1984; policy number GLA-194-00-11RA was effective from September 30, 1984 to September 30, 1985. *Id.*

The Policies' insuring agreement provides coverage for "bodily injury" or "property damage":

> The company will pay on behalf of the Insured all sums which the insured shall become legally obligated to pay as damages because of
>
> A. bodily injury or
> B. property damage
>
> to which this insurance applies, caused by an occurrence, and the company shall have the right and duty to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or judgment or to defend any suit after the applicable limit of the company's liability has been exhausted by payment of judgments or settlements.

[25-1] at 6; [25-2] at 12. Exclusion (f) of the Policies—the Pollution Exclusion—states:

> Coverage A and B are subject to exclusion (f), which precludes coverage for:
>
> [] bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental[.]

[25-1] at 6; [25-2] at 12.

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The Policies also provide coverage for "personal injury," as follows:

> Personal Injury and Advertising Injury Liability Coverage
>
> The company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of personal injury or advertising injury to which this insurance applies, sustained by any person or organization and arising out of the conduct of the named insured's business, within the policy territory, and the company shall have the right and duty to defend any suit against the insured seeking damages on account of such injury, even if any of the allegations of the suit are groundless, false or fraudulent. . .
>
> 'Personal injury,' in relevant part, means injury arising out of one or more of the following offenses committed during the policy period of the following offenses committed during the policy period:
>
> * * *
>
> 2. wrongful entry or eviction or other invasion of the right of private occupancy;

[25-1] at 7; [25-2] at 6.

The Policies contain an endorsement stating that the term "Named Insured" means:

> [T]he organization, including any subsidiary thereof, named in item 1 of the declarations and also includes any other company which is acquired or formed by the named insured during the policy period and over which the named insured maintains ownership or financial control, provided this insurance does not apply to any such newly acquired or formed company which is an insured under any other liability or indemnity policy or would be an insured under any such policy but for its termination upon exhaustion of its limits of liability. Such insurance as may be afforded and *[sic]* newly acquired or formed company shall terminate within sixty days of its acquisition of *[sic]* formation unless reported to the company within said sixty days.

[25-1] at 16; [25-2] at 15.

Item 1 of the Policies' declarations pages identifies "Griffith Laboratories, Inc."

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and "Griffith Laboratories U.S.A., Inc." (the Griffith Plaintiffs, under their former names) as the named insureds. *Id.* ¶ 20.

C. National Union Denies Coverage

In February 2021, Sterigenics tendered the underlying litigation to National Union for defense and indemnity coverage. [15] ¶ 52. National Union denied coverage on the grounds that Sterigenics is not insured under the Policies and that the Pollution Exclusion precludes coverage. *Id.* ¶¶ 53, 55. National Union similarly denied coverage to the Griffith Plaintiffs after they provided notice to it of the third amended underlying complaint. Griffith [1] ¶¶ 31, 34.

After National Union denied coverage, Sterigenics and the Griffith Plaintiffs brought separate suits against National Union in this district; the Sterigenics case was initially assigned to this Court. Upon National Union's unopposed motion, this Court deemed the suits related and the Executive Committee reassigned the case to this Court. [30]. In its amended complaint, Sterigenics seeks a judgment declaring that National Union possesses a duty to defend (Count I) and a duty to indemnify (Count II), as well as damages resulting from National Union's alleged breach of the Policies (Count III). [15] ¶¶ 57–82. The Griffith Plaintiffs assert claims for breach of contract based on National Union's refusal to defend (Counts I and II); they also a seek declaratory judgment ordering National Union to defend and indemnify and estopping National Union from asserting coverage defenses (Counts III and IV). Griffith [1] ¶¶ 49–78.

Sterigenics moves under Rule 12(c) for partial judgment on Counts I and III,

as to National Union's duty to defend, [24]; National Union cross-moves for entry of judgment on all counts against Sterigenics, [31]. In the Griffith case, the Griffith Plaintiffs move pursuant to Rule 12(c) for judgment on Counts I and II for breach of contract with respect to the duty to defend and on Counts III and IV for a declaration that National Union has a duty to defend and that National Union is estopped from raising coverage defenses. Griffith [15]. National Union cross-moves against the Griffith Plaintiffs for judgment on all counts. Griffith [23].

II. Legal Standard

Rule 12(c) permits a party to move for judgment solely on the pleadings. Fed. R. Civ. P. 12(c). Pleadings include the complaint, the answer, and any written instruments attached as exhibits. *Federated Mut. Ins. Co. v. Coyle Mech. Supply Inc.*, 983 F.3d 307, 312–13 (7th Cir. 2020). This Court reviews Rule 12(c) motions under the same standards as a motion to dismiss under Rule 12(b)(6). *Mesa Lab'ys, Inc. v. Fed. Ins. Co.*, 994 F.3d 865, 867 (7th Cir. 2021); *Lodholtz v. York Risk Servs. Grp., Inc.*, 778 F.3d 635, 639 (7th Cir. 2015). Accordingly, this Court takes all facts pleaded in the amended complaint as true and draws all reasonable inferences and facts in favor of the nonmoving party. *Mesa*, 994 F.3d at 867.

III. Analysis

Before addressing the parties' legal arguments, this Court notes that all parties agree that Illinois law applies to the construction of the Policies. Under Illinois law, the interpretation of an insurance policy, like any other contract, is a question of law. *Mashallah, Inc. v. W. Bend Mut. Ins. Co.*, 20 F.4th 311, 319 (7th Cir.

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2021). This Court construes insurance policies as a whole, "giving effect to every provision if possible." *Melcorp, Inc. v. W. Am. Ins. Co.*, No. 21-2448, --- F.4th ----, 2022 WL 2068256, at *1 (7th Cir. June 8, 2022) (quoting *Paradigm Care & Enrichment Center, LLC v. W. Bend Mut. Ins. Co.*, 33 F.4th 417, 420 (7th Cir. 2022)). Policy terms "that are 'clear and unambiguous' must be given their 'plain and ordinary meaning.'" *Mashallah*, 20 F.4th at 319 (quoting *Sanders v. Ill. Union Ins. Co.*, 157 N.E.3d 463, 467 (Ill. 2019)).

A. The Duty to Defend

This Court first considers whether National Union owes Sterigenics and the Griffith Plaintiffs a duty to defend in the underlying lawsuit. Illinois law "recognizes that the insurer's duty to defend arises when the facts alleged in the underlying complaint fall within, or potentially within, the policy's coverage provisions." *Liberty Mut. Fire Ins. Co. v. Clayton*, 33 F.4th 442, 447 (7th Cir. 2022) (internal quotation omitted). The duty to defend is generally broader than the duty to indemnify "because it arises in cases of arguable or potential coverage," while the duty to indemnify "arises only in circumstances of *actual* coverage." *Id.* (quoting *Keystone Consol. Indus., Inc. v. Emps. Ins. Co. of Wausau*, 456 F.3d 758, 762 (7th Cir. 2006)). To determine whether insurer's duty to defend has arisen, the Court compares the allegations of the underlying complaint to the policy language. *Thermoflex Waukegan, LLC v. Mitsui Sumitomo Ins. USA, Inc.*, No. 21 C 788, 2022 WL 954603, at *3 (N.D. Ill. Mar. 30, 2022) (citing *Metzger v. Country Mut. Ins. Co.*, 986 N.E.2d 756, 761 (Ill. App. Ct. 2013)). This is known as the "eight corners rule," meaning that the duty to

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defend depends on a comparison between the four corners of the insurance policy and the four corners of the complaint for which defense is sought. *United Fire & Cas. Co. v. Prate Roofing & Installations, LLC*, 7 F.4th 573, 579–80 (7th Cir. 2021).

The duty to defend arises where the "allegations of the underlying complaint potentially assert a claim within the liability coverage of the policy." *Id.* at 580; *see also Am. Bankers Ins. Co. of Fla. v. Shockley*, 3 F.4th 322, 327 (7th Cir. 2021) ("If the facts alleged in the complaint fall within, or potentially fall within, the policy coverage, the insurer must defend the insured."). This Court resolves any doubts about the duty to defend and liberally construes policy terms and the underlying complaint's allegations in the insured's favor. *Am Bankers*, 3 F.4th at 327; *Zurich Am. Ins. Co. v. Ocwen Fin. Corp.*, 990 F.3d 1073, 1078 (7th Cir. 2021).

1. Named Insured

Initially, there is no dispute that the Griffith Plaintiffs qualify as "named insureds" under the Policies. National Union argues that Sterigenics fails to qualify as an insured under the Policies and therefore cannot avail itself of their benefits. This Court disagrees; Sterigenics is a "named insured" for the purposes of National Union's duty to defend.

Both Policies contain an endorsement providing that the term "Named Insured" means:

> [T]he organization, including any subsidiary thereof, named in item 1 of the declarations and also includes any other company which is acquired or formed by the named insured during the policy period and over which the named insured maintains ownership or financial control, provided this insurance does not apply to any such newly acquired or formed company which is an insured under any other

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> liability or indemnity policy or would be an insured under any such policy but for its termination upon exhaustion of its limits of liability.

[15] ¶ 18. Item 1 of the Policies' declarations pages identifies Griffith Labs as one of the named insureds. *Id.* ¶ 20. Thus, under the Policies' plain language, any subsidiary of or any other company acquired or formed by Griffith Labs also qualifies as a named insured under the Policies.

The underlying fourth amended complaint's allegations trigger Sterigenics' status as a named insured because it attempts to hold Sterigenics liable for its own and its predecessor's acts. The complaint alleges that on "October 4, 1984, Griffith Labs formed a nominal corporate subsidiary, Micro Biotrol Company (MBC)," [15-1] ¶ 105. This allegation establishes that MBC is also a "named insured" under the Policies due to its status as a subsidiary of Griffith Labs. The underlying complaint next alleges that:

> 22. "Defendant Sterigenics U.S., under its current name and previously under other names, operated EtO sterilization facilities at 7775 Quincy Street in Willowbrook, Illinois . . . and 830 Midway Drive in Willowbrook, Illinois, continuously and at all relevant times.
>
> 23. Sterigenics U.S.'s predecessors who operated the Willowbrook facilities include: Micro-Biotrol Company, Micro-Biotrol, Inc., Griffith Micro Science, Inc., IBA S&I, Inc., and Sterigenics EO, Inc. Through a series of acquisitions, mergers, and name changes, Sterigenics U.S. has assumed the liabilities of these predecessor entities for their respective involvement in the operation of the Willowbrook facilities. (Sterigenics U.S. and its predecessors are referred to collectively herein as 'Sterigenics U.S.')

[15-1] ¶¶ 22, 23. Read in combination, these allegations establish that Sterigenics became the successor entity to MBC, a named insured, through a series of corporate

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transactions, including by acquisition, merger, and name change. The allegation that Sterigenics is MBC's successor raises at least the "possibility" that Sterigenics is covered as a "named insured." *Amerisure Mut. Ins. Co. v. Microplastics, Inc.*, 622 F.3d 806, 816 (7th Cir. 2010) (quoting *Health Care Industry Liability Ins. Program v. Momence Meadows,* 566 F.3d 689, 696 & n.9 (7th Cir.2009)); *see, e.g.*, *Am. Alternative Ins. Corp. v. Metro Paramedic Servs., Inc.*, 829 F.3d 509, 515 (7th Cir. 2016) (concluding that, under a reading of the underlying complaint, that a party qualified as a named insured).

This conclusion is supported by general principles of corporate law. Once "a merger is established, the successor corporation takes on the obligations and liabilities under the insurance policies." *Knoll Pharm. Co. v. Auto. Ins. Co.*, 167 F. Supp. 2d 1004, 1010 (N.D. Ill. 2001); *see also Kaleta v. Whittaker Corp.*, 583 N.E.2d 567, 570 (Ill. App. Ct. 1991) (noting that "the general rule is that a corporation that merges with another corporation takes on the latter corporation's obligations and liabilities"); *accord Cont'l Ins. Co. v. Daikin Applied Americas Inc.*, 998 F.3d 356, 361 (8th Cir. 2021) (noting that, under Minnesota law, "a surviving corporation may assert claims under insurance policies issued to an acquired company for pre-merger liabilities of the acquired company, even though the survivor was not named on the policy.") (quotation omitted). Similarly, "a corporation that simply changes its name retains the rights and liabilities it possessed prior to the identity switch." *Gen. Elec. Bus. Fin. Servs. Inc. v. Hedenberg*, No. 10 C 5094, 2011 WL 1337105, at *2 (N.D. Ill. Apr. 7, 2011).

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National Union argues that whether Sterigenics qualifies as an insured cannot be determined by the underlying complaint allegations and that "numerous fact issues" preclude judgment on this issue. [32] at 10–16. To that end, National Union dedicates much of its briefing questioning whether Sterigenics, in fact, is a corporate successor of MBC, and whether it in fact inherited MBC's insurance protections. These arguments are misplaced because "the duty to defend is gauged by the allegations of the complaint," and "what the facts subsequently show is immaterial." *Am. Alternative Ins. Corp. v. Metro Paramedic Servs., Inc.*, 75 F. Supp. 3d 833, 841 (N.D. Ill. 2014) (quoting *In re Country Mut. Ins. Co.*, 889 N.E.2d 209, 210 (Ill. 2007)), *aff'd*, 829 F.3d 509 (7th Cir. 2016). Even if the underlying complaint's allegations "are groundless, false or fraudulent, the insurer is obligated to defend." *United Fire & Cas. Co. v. Prate Roofing & Installations, LLC*, 7 F.4th 573, 581 (7th Cir. 2021) (quoting 14 Couch on Insurance § 200:20). The Seventh Circuit has emphasized that "the bar to finding a duty to defend is low." *Panfil v. Nautilus Ins. Co.*, 799 F.3d 716, 722 (7th Cir. 2015). The underlying complaint's allegations raise at least the possibility that Sterigenics constitutes a "named insured" under the Policies as MBC's successor.

2. Bodily Injury

Next, there is no dispute that the operative fourth amended complaint in the underlying litigation alleges a covered "bodily injury" as defined under the Policies.

The Policies provide:

> The company will pay on behalf of the Insured all sums which the insured shall become legally obligated to pay as damages because of
>
> A. bodily injury or

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> B. property damage
>
> to which this insurance applies, caused by an occurrence, and the company shall have the right and duty to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or judgment or to defend any suit after the applicable limit of the company's liability has been exhausted by payment of judgments or settlements.

[25-1] at 6; [25-2] at 12. The underlying complaint seeks damages from Griffith Labs and Sterigenics based on allegations that they caused the underlying plaintiffs to breathe excessive and dangerous amounts of EtO, causing them serious—and sometimes fatal—diseases or conditions. [15-1] ¶ 13. These allegations plainly trigger "bodily injury" coverage under the Policies—a point that National Union concedes. [32] at 6–7; Griffith [28] at 1.

3. Pollution Exclusion

Although National Union concedes that the underlying fourth amended complaint alleges "bodily injury" under the Policies, it argues that the Pollution exclusion excuses its obligation to defend Sterigenics and Griffith Labs from those allegations in the underlying litigation. An insured's claim can fall outside of a policy's coverage if it falls "*within* an exclusion." *Mesa Lab'ys, Inc. v. Fed. Ins. Co.*, 994 F.3d 865, 868 (7th Cir. 2021). But "a decision to excuse an insurer's duty to defend based on an exclusionary clause in the contract 'must be clear and free from doubt.'" *Zurich Am. Ins. Co. v. Ocwen Fin. Corp.*, 990 F.3d 1073, 1078 (7th Cir. 2021) (quoting *Evergreen Real Estate Servs., LLC v. Hanover Ins. Co.*, 142 N.E.3d 880, 887 (Ill. App. Ct. 2019)).

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Exclusion (f) of the Policies—the Pollution Exclusion—states:

> Coverage A and B are subject to exclusion (f), which precludes coverage for:
>
> [] *bodily injury or property damage* arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; *but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental*[.]

[25-1] at 6 (emphasis added); [25-2] at 12 (emphasis added).

In Illinois, courts restrict pollution exclusions to "only hazards traditionally associated with environmental pollution." *AFM Mattress Co., LLC v. Motorists Com. Mut. Ins. Co.*, 37 F.4th 440, 444 (7th Cir. 2022) (citing *Am. States Ins. Co. v. Koloms*, 687 N.E.2d 72 (Ill. 1997)). National Union argues that the Pollution Exclusion bars coverage because the underlying fourth amended complaint asserts that the plaintiffs have sustained severe injuries stemming from traditional environmental pollution—namely, the emissions of EtO, a toxic and poisonous chemical that has been classified as a carcinogenic and a "priority pollutant." [15-1] ¶¶ 13, 44, 46, 128. This Court disagrees and concludes that the Pollution Exclusion is inapplicable for two reasons.

First, the Pollution Exclusion is ambiguous as to whether it applies to permitted emissions like the ones alleged in the underlying complaint. In *Erie Insurance Exchange v. Imperial Marble Corp.*, the Illinois Appellate Court construed a similar pollution exclusion to the one here barring coverage for bodily injury of property damage "arising out the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants." 957 N.E.2d 1214,

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1220 (Ill. App. Ct. 2011) (internal quotation marks omitted). The policy in *Imperial Marble* defined "pollutants" as any "solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemical, and waste." *Id.* at 1220–21. The insured argued that the alleged emissions it made did not qualify as traditional environmental pollution because those emissions were made pursuant to a permit issued by the Illinois Environmental Protection Agency (IEPA). *Id.* at 1221. Reasoning that pollution exclusions have "potentially limitless application," the appellate court found the pollution exclusion "arguably ambiguous as to whether the emission of hazardous materials in levels permitted by an IEPA permit constitute traditional environmental pollution excluded under the policy." *Id.* at 1221 (internal quotation omitted). Thus, construing the ambiguity in favor of the insured, the court held that the pollution exclusion did not apply and that the insurer owed the insured a duty to defend. *Id.*; *see also Country Mut. Ins. Co. v. Bible Pork, Inc.,* 42 N.E.3d 958, 961, 970 (Ill. App. Ct. 2015) (finding a similar pollution exclusion ambiguous as to whether it applied to emissions from a hog factory which operated under state regulations and permits).

The same reasoning applies here. The underlying fourth amended complaint alleges that the IEPA issued Griffith Labs a two-year permit, beginning in July 1984 (during the first Policy period) and expiring on July 31, 1986 (after the expiration of the Policies' periods). [15-1] ¶¶ 57–58. According to the underlying complaint, the IEPA permit made Griffith Labs responsible for "sterilization processes for the six chambers for which it received a permit," "emissions of EtO

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and other volatile organic materials from the facility," and "ensuring that its emissions and emission controls were compliant with local, state and federal law." *Id.* ¶ 60. The underlying complaint similarly attempts to hold Sterigenics liable for negligence due its management of the Willowbrook facilities, including for its emission of "massive and unnecessary amounts of" the permitted "EtO into the air from the Willowbrook facilities." *Id.* ¶ 220. As in *Imperial Marble*, this Court finds that the Pollution Exclusion is ambiguous as to whether emission of EtO under an IEPA permit qualifies as a traditional environmental pollution under the Policies. Because the Pollution Exclusion's application is not "clear and free from doubt," it cannot excuse National Union from its defense obligations. *Panfil v. Nautilus Ins. Co.*, 799 F.3d 716, 719 (7th Cir. 2015) (quoting *Hurst–Rosche Eng'rs, Inc. v. Commercial Union Ins. Co.,* 51 F.3d 1336, 1342 (7th Cir. 1995)).

In addition, even if EtO emissions qualify as the type of traditional environmental pollution recognized under Illinois jurisprudence, the Pollution Exclusion itself contains an exception that reinstates coverage for Sterigenics. That is, the Pollution Exclusion "does not apply if such discharge, discharge dispersal, release or escape is sudden and accidental." [25-1] at 6; [25-2] at 12. In interpreting a similar "sudden" and "accidental" pollution exception to a pollution exclusion, the Illinois Supreme Court has held that the term "sudden" in pollution exclusions to be ambiguous and has construed the term "in favor of the insured to mean unexpected or unintended." *Outboard Marine Corp. v. Liberty Mut. Ins. Co.*, 607 N.E.2d 1204, 1220 (Ill. 1992). Additionally, courts construe the term "accident" in the context of

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CGL policies as "an unforeseen occurrence, usually of an untoward or disastrous character or an undesigned, sudden, or unexpected event of an inflictive or unfortunate character." *Lyerla v. AMCO Ins. Co.*, 536 F.3d 684, 688–89 (7th Cir. 2008) (quoting *Westfield Nat'l Ins. Co. v. Cont'l Cmty. Bank & Trust Co.,* 804 N.E.2d 601, 605 (Ill. App. Ct. 2003)); *see also Westfield Ins. Co. v. Zaremba Builders II LLC*, No. 19-CV-00794, 2022 WL 614938, at *5 (N.D. Ill. Mar. 2, 2022) (using the same definition). The underlying fourth amended complaint triggers the "sudden and accidental" exception to the Pollution Exclusion for Sterigenics because it alleges that Sterigenics' negligence resulted in "unintended leaks, spills, or emissions." [15-1] ¶¶ 225, 230. The "unintended" nature of the alleged leaks, spills, or emissions fit squarely within the definitions of "sudden" and "accidental," as interpreted by Illinois courts.

National Union counters that the underlying complaint, read as a whole, paints the picture that the "EtO emissions were a common, recurring, expected and intended aspect of the business," rather than sudden and accidental occurrences. [32] at 23. True, the underlying plaintiffs allege that the Willowbrook facilities' failure to control emissions resulted in "unnecessary emission of EtO into the surrounding community of at least 25,000 pounds each year of at least 400,000 pounds between 1984 and 1999," and that the facilities "operated 24 hours a day, emitting toxic, cancerous gas on a steady and continuous basis." [15-1] ¶¶ 86, 141. These allegations suggest, as National Union argues, that the emissions were routine and recurring, and not "sudden" nor "accidental." But "if several theories of

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recovery are alleged in the underlying complaint against the insured, the insurer's duty to defend arises even if only one of several theories is within the potential coverage of the policy." *Cincinnati Ins. Co. v. H.D. Smith, L.L.C.*, 829 F.3d 771, 774 (7th Cir. 2016) (quoting *Gen. Agents Ins. Co. of Am. v. Midwest Sporting Goods Co.*, 828 N.E.2d 1092, 1098 (Ill. 2005)). Here, in addition to alleging that EtO emissions were continuous and routine, the underlying plaintiffs also allege that the emissions were unintended and unexpected. The latter theory is all that is needed to trigger the "sudden and accidental" exception.

National Union's citation to *Fruit of the Loom, Inc. v. Travelers Indemnity Co.* does not alter this Court's conclusion. *Contra* [38] at 6. In *Fruit of the Loom*, the Illinois appellate court considered the "sudden and accidental" exception in the context of an insured's discharge of liquid polychlorinated biphenyls (PCBs) in the mid-1950s to the late 1970s. 672 N.E.2d 278, 280 (Ill. App. Ct. 1996). There, the court held that the exception did not apply where the undisputed facts showed that, even though accidental spills occurred, those accidents occurred with regularity and were expected by the insured in the "ordinary course of business." *Id.* at 287–88. An employee testified, for example, that "PDB drippage occurred all the time; it was an ongoing problem to keep certain areas clean." *Id.* at 281. Unlike this case, the *Fruit of the Loom* court determined coverage on a full evidentiary record and determined that, although accidents occurred, they were not unexpected. Here, in contrast, this Court construes only the allegations of the underlying complaint in considering the duty to defend and it does so liberally in favor of coverage. *Am Bankers*, 3 F.4th at

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327; *Zurich Am. Ins.*, 990 F.3d at 1078. Because the underlying complaint contains allegations that Sterigenics is liable for "unintended leaks, spills, or emissions," [15-1] ¶¶ 225, 230, it triggers the "sudden and accidental" exception to the Pollution Exclusion for Sterigenics.

4. Personal Injury Coverage

Sterigenics and the Griffith Labs also contend that National Union must defend them under the "personal injury" coverage provision of the Policies, to which the Pollution Exclusion does not apply. [25] at 26; Griffith [25] at 14–16. National Union does not dispute that the Pollution Exclusion is inapplicable to "personal injury" coverage. *See generally* [32]; [38]. Instead, National Union disputes that the underlying complaint does not allege any covered "personal injury."

The personal injury coverage provision provides:

> The company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of personal injury or advertising injury to which this insurance applies, sustained by any person or organization and arising out of the conduct of the named insured's business, within the policy territory. . . .
>
> "Personal injury," in relevant part, means injury arising out of one or more of the following offenses committed during the policy period of the following offenses committed during the policy period:
>
> * * *
> 2. wrongful entry or eviction or other invasion of the right of private occupancy;

[25-1] at 7; [25-2] at 6.

This Court agrees with Plaintiffs that the underlying fourth amended complaint alleges injuries that fall under the definition of "personal injury" under

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the Policies. Under Illinois law, private nuisance claims trigger "personal injury" coverage because they entail a "wrongful entry or eviction or other invasion of the right of private occupancy." *Admiral Indem. Co. v. 899 Plymouth Ct. Condo. Ass'n D&kK Real Est. Serv. Corp.*, No. 16 C 5085, 2017 WL 345559, at *7 (N.D. Ill. Jan. 24, 2017) (quoting *Great Am. Ins. Co. of N.Y. v. Helwig*, 419 F. Supp. 2d 1017, 1025 (N.D. Ill. 2006)). A private nuisance "is a substantial invasion of another's interest in the use and enjoyment of his or her land." *Martinez v. City of Chicago*, 534 F. Supp. 3d 936, 953 (N.D. Ill. 2021) (quoting *In re Chicago Flood Litig.*, 176 Ill. 2d 179, 204 (Ill. 1997)). Allegations "that the defendant's conduct threatens the plaintiff's land with environmental contamination . . . sufficiently state a nuisance claim." *City of Evanston v. Texaco, Inc.*, 19 F. Supp. 3d 817, 825 (N.D. Ill. 2014); *see also Lewis v. 300 W. LLC.*, No. 18-CV-50186, 2019 WL 4750313, at *11 (N.D. Ill. Sept. 30, 2019) (allegations that environmental contamination substantially interfered with the plaintiffs' reasonable use, development, and enjoyment of their property adequately stated a private nuisance claim).

The underlying complaint asserts that Sterigenics and Griffith Labs have threatened the underlying plaintiffs' land with environmental contamination. In Counts VII, the underlying plaintiffs assert that Sterigenics' "use and emission of EtO from the facilities . . . caused those who lived and worked in the area surrounding the facilities to inhale high levels of EtO on a routine and constant basis, and further, to be exposed to air causing a substantially elevated risk of cancer." [15-1] ¶ 253. Similarly, Count XVIII alleges that the activities of "Griffith

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Labs . . . caus[ed] those who lived and worked in the area surrounding the facilities to inhale high levels of EtO on a routine and constant basis, and further, to be exposed to air causing a substantially elevated risk of cancer." *Id.* ¶ 318. These allegations that Sterigenics and Griffith Labs have threatened the underlying Plaintiffs' enjoyment and use of land with environmental contamination state a private nuisance claim and thus fall under the definition of "personal injury" under the Policies. *See, e.g.*, *Millers Mut. Ins. Ass'n of Ill. v. Graham Oil Co.*, N.E.2d 223, 231 (Ill. App. Ct. 1996) (concluding that facts alleging "the unauthorized seepage and migration of gasoline onto the property of an adjoining neighbor[] were sufficient to bring the underlying complaint within the personal injury coverage of the policies").

National Union argues that the underlying complaint does not trigger "personal injury" coverage because the underlying plaintiffs have labeled Counts VII and XVIII "public nuisance" and not "private nuisance." [32] at 24. Legal labels are not dispositive. *See Santa's Best Craft, LLC v. St. Paul Fire & Marine Ins. Co.*, 611 F.3d 339, 347 (7th Cir. 2010) (noting that the court's inquiry on a duty to defend claim "is based on the allegations in the complaint, not the legal labels attached to them"). Further, when the "nuisance, in addition to interfering with the public right, also interferes with the use and enjoyment of the plaintiff's land, it is a private nuisance as well as a public one." *Willmschen v. Trinity Lakes Improvement Ass'n*, 840 N.E.2d 1275, 1282–83 (Ill. App. Ct. 2005) (quoting Restatement (Second) of Torts § 821C, Comment *e,* at 96 (1979)). As discussed, the underlying complaint contains

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allegations that Sterigenics and Griffith Labs emitted carcinogenics onto the plaintiffs' private property. Thus, even though the underlying plaintiffs have labeled those counts as "public nuisance" claims, the facts they have alleged also "potentially give rise to" a private nuisance claim, and thus fall within the Policies' "personal injury" coverage. *Santa's Best Craft*, 611 F.3d at 346; *see Liberty Mut.*, 33 F.4th at 447 (instructing that the duty to defend arises when the facts alleged in the underlying complaint fall within, or potentially within, the policy's coverage provisions).

National Union also argues that the Policies preclude coverage for "personal injury" arising out of the willful violation of a penal statute or ordinance committed by or with the knowledge or consent of the insured. [32] at 28; *see* [25-1] at 7 (excluding from coverage "personal injury or advertising injury arising out of the willful violation of a penal statute or ordinance committed by or with the knowledge or consent of the insured"); [25-2] at 6 (same). This argument is unpersuasive. The underlying complaint does not allege any statutory violation; it alleges common law causes of action. *See generally* [15-1]. To be sure, the underlying fourth amended complaint contains a reference to the Illinois Environmental Protection Act. *See* [15-1] ¶ 72 (alleging that "Griffith Labs was obligated to comply with the Illinois Environmental Protection Act and its supporting regulations, which prohibited 'the emission of any contaminant into the environment so as to cause or tend to cause air pollution in Illinois. . . '"). But the Act is not the basis for any of the plaintiffs' claims. National Union has not demonstrated that an exclusion to the "personal injury"

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coverage provision applies. In sum, the underlying complaint's private nuisance allegations trigger the "personal injury" coverage provisions in the Policies, thus providing another independent basis for National Union's duty to defend. *See Title Indus. Assurance Co., R.R.G. v. First Am. Title Ins. Co.*, 853 F.3d 876, 884 (7th Cir. 2017) (observing that "where insurer has duty to defend against at least one count of underlying lawsuit, it must then defend against all counts").

5. National Union Owes a Duty to Defend

As explained above, the underlying fourth amended complaint alleges bodily injury and personal injury that triggers coverage under the Policies, and National Union has not met its burden in demonstrating that any exclusions apply. Accordingly, this Court concludes that National Union owes Sterigenics and Griffith Labs a duty to defend based on the underlying fourth amended complaint.

The Griffith Plaintiffs also point out that although Griffith Foods is not named as a defendant in the fourth amended underlying complaint, it was named as a defendant in a prior iteration of the underlying complaint—the second amended underlying complaint. Griffith [19] at 15–16. Griffith Foods argues that, at a minimum, National Union owes it defense costs for the time that Griffith Foods was on the hook in the underlying case. *Id.* But this argument is undeveloped (indeed, Griffith Foods devotes only two sentences to it), and neither side engages in any substantive analysis regarding National Union's defense obligations under prior versions of the underlying complaint; instead, the parties' briefs focus on National Union's defense obligations under the fourth amended complaint. "When a party has

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more than ample opportunity to present an argument but raises it in a perfunctory manner, it should not expect more than perfunctory consideration from the district court." *Williams v. Dieball*, 724 F.3d 957, 963 (7th Cir. 2013). Because the parties have not sufficiently raised these issues before this Court, this this Court denies without prejudice Griffith Foods' request for defense costs arising from prior versions of the underlying complaint.[2]

B. Estoppel

The Griffith Plaintiffs also ask this Court to enter judgment declaring that National Union is estopped from asserting policy defenses to coverage. National Union, for its part, requests a determination that estoppel is inapplicable.

Under Illinois law, when "an insurer learns of a claim against its insured, the ball is in the insurer's court." *Title Indus.*, 853 F.3d at 891. When a complaint against an insured alleges facts within or potentially within the coverage of the insurance policy, and the insurer takes the position that the policy does not cover the underlying complaint, the insurer must: (1) defend the suit under a reservation of rights; or (2) seek a declaratory judgment of non-coverage. *Essex Ins. Co. v. Blue Moon Lofts Condo. Ass'n*, 927 F.3d 1007, 1012 (7th Cir. 2019). If the insurer fails to take either of these steps and is later found to have wrongfully denied coverage, the insurer breaches its duty to defend and is estopped from asserting policy defenses to

[2] This Court also notes that, although Griffith Foods relies on the second amended complaint in arguing that National Union owed it a defense, the insurer's duty to defend only arises upon "actual notice of the underlying suit." *Cincinnati Cos. v. W. Am. Ins. Co.*, 701 N.E.2d 499, 505 (Ill. 1998). Here, Griffith Foods alleges that National Union received actual notice when it received the *third* amended complaint, not the second amended complaint. Griffith [1] ¶ 31. Thus, to the extent National Union owes Griffith Foods any defense costs, those costs ostensibly would arise only after Griffith Foods provided notice to National Union of the *third* amended complaint.

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coverage. *Santa's Best Craft*, 611 F.3d at 349; *Emps. Ins. of Wausau v. Ehlco Liquidating Tr.*, 708 N.E.2d 1122, 1135 (Ill. 1999); *see also Title Indus.*, 853 F.3d at 892 (observing that an "insurer that breaches its duty to defend and abandons its insured is estopped from later invoking policy defenses to indemnity"). To avoid estoppel, the insurer must take one of the above steps—defend under a reservation of rights or seek declaratory judgment—"within a reasonable time of a demand by the insured." *Nautilus Ins. Co. v. Bd. of Directors of Regal Lofts Condo. Ass'n*, 764 F.3d 726, 733 (7th Cir. 2014) (quoting *Korte Constr. Co. v. Am. States Ins.*, 750 N.E.2d 764, 770 (Ill. App. Ct. 2001)).

On January 29, 2021, the Griffith Plaintiffs provided National Union with notice of the underlying suit and provided copies of the (then-operative) third amended complaint. Griffith Compl. [1] ¶ 31.[3] On February 17, 2021, National Union acknowledged receipt of the notice and requested copies of the Policies, which the Griffith Plaintiffs provided the same day. *Id.* ¶ 32. National Union ultimately denied coverage on October 12, 2021. *Id.* ¶ 33. Shortly after, on November 30, 2021, the Griffith Plaintiffs filed this declaratory judgment action, and shortly after that, on January 31, 2022, National Union answered and asserted affirmative defenses. *See* Griffith [1]; [11]. In its answer and affirmative defenses, National Union explicitly denies coverage and "requests that this Court find and declare that Plaintiffs are not entitled to any relief." [11] at 11. Thus, about one year transpired between the

[3] The parties assume, without discussing, that the third amended complaint's allegations were sufficiently similar to the fourth amended complaint's allegations, such that if the latter triggered National Union's duty to defend, the former would have, too.

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Griffith Plaintiffs' tender of the underlying litigation and National Union's request for a declaration of non-coverage. *See Sentinel Ins. Co. v. Walsh Constr. Co.*, 298 F. Supp. 3d 1165, 1176 (N.D. Ill. 2018) (noting that to avoid estoppel, "an insurer need not be the one to have filed the action in which it seeks a declaration of no coverage").

Illinois courts have generally applied one of three standards to measure an insurer's promptness in requesting declaratory judgment. *L.A. Connection v. Penn-Am. Ins. Co.*, 843 N.E.2d 427, 432 (Ill. App. Ct. 2006); *Nat'l Cas. Co. v. S. Shore Iron Works, Inc.*, 341 F. Supp. 3d 884, 893 (N.D. Ill. 2018). One approach deems a declaratory judgment action timely requested "as long as it was filed before the underlying lawsuit ends," and another approach focuses on whether the insurer requested declaratory judgment before trial or settlement was imminent. *Id.* The third approach asks simply whether "the insurer filed the declaratory action within a reasonable amount of time after receiving notification of the underlying action." *Allied World Specialty Ins. Co. v. John Sexton Sand & Gravel Corp.*, 2019 IL App (1st) 182468-U, ¶ 66. Here, it is undisputed that the underlying suit remains ongoing, and there is nothing in the present record suggesting that trial or settlement is imminent. Thus, National Union clearly discharged its duty to act with reasonable promptness under the first two approaches.

Under the third approach, which is the one now favored by Illinois courts, the Court asks whether National Union requested declaratory judgment within a "reasonable time" of being on notice of the underlying suit, regardless of the posture of the underlying suit. *State Auto. Mut. Ins. Co. v. Kingsport Dev., LLC*, 960, 846

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N.E.2d 974, 987 (Ill. App. Ct. 2006); *see also Zurich Specialties London Ltd. v. Vill. of Bellwood*, No. 07 CV 2171, 2011 WL 248444, at *10 (N.D. Ill. Jan. 26, 2011) (noting that although the "Illinois Supreme Court has not yet decided the issue, this court agrees with those courts that have adopted the third approach"); *Sentinel*, 298 F. Supp. 3d at 1175 ("This Court agrees with these decisions . . . that the proper inquiry is whether Sentinel sought a declaratory judgment of no coverage within a reasonable time."). This Court finds that National Union did not unreasonably delay in requesting declaratory judgment. Illinois courts have not adopted a bright line rule as to what constitutes a "reasonable time." *Nat'l Cas. Co. v. S. Shore Iron Works, Inc.*, 341 F. Supp. 3d 884, 894 (N.D. Ill. 2018). In *South Shore Iron Works*, the district court found that a thirteen-month delay between an initial tender and filing a declaratory judgment action was reasonable because of the "protracted procedural history" of the underlying suit—including that it involved multiple amended complaints, one of which was filed just four months prior to the insurer's filing of a declaratory judgment action. 341 F. Supp. 3d at 894.

Similarly, there is protracted history here in the underlying case. And while "delays of *over a* year have been found unreasonable by courts employing the reasonable time test," *Zurich*, 2011 WL 248444, at *10 (emphasis added), the delay here between the time the Griffith Plaintiffs provided actual notice of the underlying suit and when National Union first requested a declaration of non-coverage was just about one year. Particularly given the complex nature of the underlying dispute (which involves hundreds of consolidated complaints) and the fact that the

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underlying dispute is nowhere near completion nor settlement, this Court concludes that National Union sought declaratory relief within a reasonable time of receiving actual notice of the underlying suit. Therefore, this Court denies the Griffith Plaintiffs' motion as to estoppel, and grants National Union's motion as to estoppel.

IV. Conclusion

For the reasons explained above, this Court concludes that National Union owes Sterigenics and Griffith Labs a duty to defend the underlying fourth amended complaint and that National Union is not estopped from asserting coverage defenses. As a result, this Court grants Sterigenics' partial motion for judgment on the pleadings and denies National Union's cross-motion for judgment; and grants in part the Griffith Plaintiffs' partial motion for judgment on the pleadings, and grants in part National Union's cross-motion for judgment. This Court sets a telephonic status hearing for August 25, 2022 at 10:00 a.m. Parties shall call 866-434-5269; access code 3751971. Counsel shall be prepared to report on what substantive issues remain in this case, given that this Court has adjudicated National Union's defense obligations (at least with respect to the underlying fourth amended complaint), and questions regarding National Union's duty to indemnify are unripe and subject to dismissal pending the outcome of the underlying litigation. *See Am. Bankers*, 3 F.4th at 331.

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E N T E R:

Dated: August 3, 2022

MARY M. ROWLAND
United States District Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Sterigenics, U.S., LLC, Plaintiff, v. National Union Fire Insurance Company Of Pittsburgh, P.A., Defendant.	Case No. 21-cv-4581 Judge Mary M. Rowland
Griffith Foods International, Inc., et al., Plaintiffs, v. National Union Fire Insurance Company of Pittsburgh, P.A., Defendant.	Case No. 21-cv-6403 Judge Mary M. Rowland

MEMORANDUM OPINION AND ORDER

In this insurance coverage dispute, Plaintiffs Griffith Foods International, Inc. and Griffith Foods Group, Inc. (collectively, "Griffith") and Plaintiff Sterigenics U.S., LLC brought separate but related lawsuits against their insurer, National Union Fire Insurance Company of Pittsburgh, P.A. related to an underlying action pending in Illinois state court. The underlying suit claims that individuals were harmed by

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exposure to discharges of ethylene oxide (EtO) from sterilization facilities in Willowbrook, Illinois. Previously, this Court granted Sterigenics' and the Griffith Plaintiffs' motions for judgment on the pleadings regarding the duty to defend, ruling that National Union owes Sterigenics and Griffith Labs a duty to defend the underlying state court complaint.

I. Background

The following is a brief summary of the factual and procedural background in this case. This order otherwise presumes familiarity with the history of this case.

A. Underlying Litigation and the Policies

In Illinois state court in the Circuit Court of Cook County, multiple plaintiffs sued several defendants, including two of the Plaintiffs here—Sterigenics and Griffith Food International, Inc., formerly known as Griffith Laboratories U.S.A., Inc. (hereinafter Griffith Labs). [Case No. 21-cv-4581, [15] ¶¶ 13, 16; 15-1].[1] *In re: Willowbrook Ethylene Oxide Litigation,* 18 L 10475. In the (operative) fourth amended complaint, the underlying plaintiffs allege that they suffered bodily and personal injuries as a result of exposure to discharges of ethylene oxide (EtO) from sterilization facilities Sterigenics currently owns in Willowbrook, Illinois. [15] ¶ 14. The fourth amended complaint serves as the master complaint for hundreds of actions which the state court consolidated for pretrial and discovery purposes. *Id.* ¶ 14 & n.2.

[1] Because Plaintiffs' complaints contain similar allegations, concern the same insurance policies, and the briefings contain largely similar arguments, this Court cites to the Sterigenics operative complaint (21-cv-4581 at Dkt. 15) for propositions that apply to both Plaintiffs and to the Sterigenics docket entries, unless the Court notes that it is referring to the Griffith docket. (21-cv-6403).

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The underlying complaint asserts state-law claims against Sterigenics and Griffith Labs for negligence, negligent training, negligent supervision, willful and wanton conduct, strict liability, civil battery, and public nuisance. [15-1].

This dispute centers around two commercial general liability policies that National Union insures. [15] ¶ 17. Policy number GLA-945-70-58RA was effective from September 30, 1983 to September 30, 1984; policy number GLA-194-00-11RA was effective from September 30, 1984 to September 30, 1985. *Id.*

B. National Union Denies Coverage

After National Union denied coverage to Sterigenics and the Griffith Plaintiffs, Sterigenics and the Griffith Plaintiffs brought separate suits against National Union in this Court. In its amended complaint, Sterigenics sought a judgment declaring that National Union has a duty to defend (Count I) and a duty to indemnify (Count II), as well as damages resulting from National Union's alleged breach of the Policies (Count III). [15] ¶¶ 57–82. The Griffith Plaintiffs asserted claims for breach of contract based on National Union's refusal to defend (Counts I and II); they also sought declaratory judgment ordering National Union to defend and indemnify and estopping National Union from asserting coverage defenses (Counts III and IV). Griffith [1] ¶¶ 49–78.

C. This Court's Order and Subsequent Coverage Litigation

On August 3, 2022, this Court ruled that National Union owes Sterigenics and Griffith Labs a duty to defend based on the underlying fourth amended complaint. [40]. The Court also ruled that National Union was not estopped from asserting coverage defenses. *Id.* (hereafter, "Duty to Defend Order"). In light of the status of

the underlying action, however, the issue of indemnity was not ripe. In January and February 2023, Plaintiffs each moved to recover past defenses costs.

In January 2023, Griffith filed in state court an action against other insurers (not National Union) ((Cook Cnty. Cir. Ct. No. 2023-CH-00782, hereafter, "Illinois State Coverage Action"). In February 2023, another insurer, Zurich American Insurance Company, filed an action in the Superior Court of the State of Delaware (the "Delaware State Action"). *See* [Griffith, 69-2]. In May 2023, Sterigenics filed a petition to intervene in the Illinois State Coverage Action. *See* [96 at 4].

D. Pending Motions

Now pending before this Court are multiple motions filed by National Union, the Griffith Plaintiffs, and Sterigenics. For the following reasons, National Union's motion for leave to file counterclaims [Griffith [32]], motion for leave to file a third-party complaint [Griffith [34]], and Rule 12(b)(7) motion to dismiss [Griffith [68]] are denied; the Griffith Plaintiffs' motion to dismiss the remaining non-duty to defend claims [Griffith [65]] is granted; and the Griffith Plaintiffs' motion for past defense costs [Griffith [59]] is granted as modified in their reply brief. Further, National Union's motion for leave to file counterclaims [42], motion for leave to file a third-party complaint [44], and National Union's motion to dismiss [71] are denied; Sterigenics' motion to dismiss the remaining non-duty to defend claims [86] is granted, and Sterigenics' motion for past defense costs [69] is granted as modified in its reply brief.

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II. Analysis

A. National Union's Motion for Leave to File Counterclaims

The Court begins with National Union's motion for leave to file counterclaims in both cases. In its proposed counterclaims, National Union seeks "to obtain declaratory relief from [the Griffith Plaintiffs and Sterigenics] relative to this Court's finding that National Union owes a duty to defend Griffith and Sterigenics U.S., LLC ('Sterigenics') against underlying litigation." [33-1 at 2; 43-1 at 2]. National Union's counterclaims seek a declaration, among other things, that the "Policies do not provide coverage to [Griffith and Sterigenics] for the Underlying Litigation." [33-1 at 18, 43-1 at 20].

It is well-established that under Rule 15, the court should "freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). However, leave to amend is not automatically granted; instead it is in the court's discretion. *Crest Hill Land Dev., LLC v. City of Joliet*, 396 F.3d 801, 804 (7th Cir. 2005).

National Union argues that its proposed Counterclaims are compulsory under Rule 13(a) because they arise out of the same facts and subject matter as the complaints in this case and do not require adding another party. National Union contends that "there have been no coverage determinations outside of the Court's limited interlocutory ruling on the duty to defend, a decision subject to revision after the completion of discovery." [33 at 9; 43 at 9]. Plaintiffs respond that National Union must comply with this Court's Duty to Defend Order and its proposed counterclaims "are futile because they seek to relitigate issues this Court already decided for duty

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to defend purposes and are untimely." [47 at 2].

First, the Court agrees with Plaintiffs that National Union cannot avoid the Duty to Defend Order via newly proposed counterclaims. While this Court did not rule on National Union's duty to indemnify because that issue was not ripe, it ruled that National Union owes Plaintiffs a duty to defend. It is well-settled under Illinois law that "[i]f the underlying complaint alleges facts within or potentially within policy coverage, an insurer is obligated to defend its insured." *Gen. Agents Ins. Co. of Am. v. Midwest Sporting Goods Co.*, 828 N.E.2d 1092, 1098 (Ill. 2005). Illinois law is also clear that "an insured contracts for and has a right to expect two *separate and distinct duties* from an insurer: (1) the duty to defend him if a claim is made against him; and (2) the duty to indemnify him if he is found legally liable for the occurrence of a covered risk." *Chandler v. Doherty*, 702 N.E.2d 634, 637 (4th Dist. 1998) (emphasis added); *see also Title Indus. Assurance Co., R.R.G. v. First Am. Title Ins. Co.*, 853 F.3d 876, 891 (7th Cir. 2017). As the court in *Tokio Marine Specialty Ins. Co. v. Altom Transp., Inc.*, No. 20 C 7006, 2021 WL 1962403 (N.D. Ill. May 17, 2021) explained, "[t]he question of whether an insurer must indemnify is not ripe until the underlying litigation ends [while] the duty to defend [] depends on reading the underlying complaint and can thus be determined on the pleadings." *Id.* at *4.

In its Duty to Defend Order this Court expressly stated that it had "adjudicated National Union's defense obligations" with respect to the underlying master complaint [40], so National Union "*must* defend an action even though it may not ultimately be obligated to indemnify the insured." *Illinois Mun. League Risk Mgmt.*

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Ass'n v. City of Genoa, 51 N.E.3d 1133, 1136 (2016) (emphasis added); *see also Am. Serv. Ins. Co. v. China Ocean Shipping Co. (Americas) Inc.*, 2014 IL App (1st) 121895, ¶ 19, 7 N.E.3d 161, 170 (holding that plaintiff owed defendants a duty to defend was the law of the case). National Union did not and does not challenge the Duty to Defend Order through a request for appeal or reconsideration motion.

Next, as Plaintiffs point out, Rule 13(a) requires that "a pleading must state as a counterclaim any claim that—at the time of its service—the pleader has against an opposing party…." Fed. R. Civ. P. 13(a). The Court is not persuaded by National Union's argument that "the Counterclaims did not become relevant until the Court determined that the Fourth Amended Master Complaint potentially implicated a duty to defend as a threshold matter." [Griffith, 51 at 4]. In November 2021 and January 2022, National Union filed answers in these cases, asserting in its affirmative defenses that, among other things, "the Policies do not provide coverage to an Insured for damages sought in [the Underlying Litigation] that are not damages because of 'bodily injury'"; "the Pollution Exclusions preclude coverage for the damages sought in the Underlying Litigation"; and each Plaintiff failed to establish it qualified as a Named Insured. [19; Griffith [11]]. Although National Union maintains that its proposed counterclaims did not "become relevant" until this Court's Duty to Defend Order in August 2022, National Union raised the same issues in its affirmative defenses in late 2021 and early 2022. *See id.* and [43, Griffith [33]].

National Union relies on *Life Plans, Inc. v. Sec. Life of Denver Ins. Co.*, 800 F.3d 343 (7th Cir. 2015) to argue that this Court should grant it leave to amend. But *Life*

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Plans was decided at a different procedural posture, and the plaintiff there sought amendment "promptly after discovering a factual basis for its new claims." *Id.* at 358. This case does not involve a defendant discovering new facts, prompting new claims.[2] This is not a situation where the counterclaim matured only after National Union served its answer. *See Burlington N. R.R. Co. v. Strong*, 907 F.2d 707, 710 (7th Cir. 1990).

National Union also contends that this Court did not decide whether Sterigenics is not a "named insured" under the Policies. [43 at 5, 9]. But the Court concluded that Sterigenics is a "named insured" for the purposes of National Union's duty to defend. [40 at 9]. Finally, National Union argues that "[t]he Master Complaint forms only a portion of the operative factual allegations in some of the lawsuits in the Underlying Litigation. [It] does not operate as a complete pleading in any underlying lawsuit." [51 at 3]. This Court determined the duty to defend based on the underlying Fourth Amended Master Complaint. That was the subject of the parties' dispute before this Court.[3] Moreover, National Union raised this argument for the first time in its reply briefs. *See* [58]; Griffith, [51]. *See White v. United States*, 8 F.4th 547, 552 (7th Cir. 2021) ("arguments raised for the first time in a reply brief are waived.")

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[2] National Union also argues that it is "seek[ing] discovery" on the Policies' pollution exclusion and personal injury coverage. [Griffith, 33 at 5]. But this Court determined duty to defend, as required in Illinois, by "compar[ing] the allegations in the underlying complaint to the policy language in order to determine whether the insurer's duty to defend has arisen." *Gen. Agents Ins. Co. of Am.,* 828 N.E.2d at 1098.

[3] In the prior briefing, National Union discussed the Underlying Suits as a single "Underlying Litigation" and did not assert that the master complaint was not a "complete pleading" or distinguish between underlying claimants. *See* [24].

For these reasons, National Union's motions for leave to file counterclaims [32], [42] are denied.

B. National Union's Rule 12(b)(7) Motions to Dismiss

The Court next addresses National Union's motion to dismiss Griffith's Complaint and Sterigenics's Amended Complaint pursuant to Rule 12(b)(7). According to National Union, both lawsuits lack all necessary parties. National Union says that in Griffith's Illinois State Coverage Action Griffith seeks insurance coverage from at least eleven insurance carriers under more than 70 insurance policies in effect between 1983 to 2019 for the same underlying torts Griffith seeks coverage from National Union in this proceeding (National Union issued two of the 72 policies at issue).

Under Rule 12(b)(7), a party may seek to dismiss a lawsuit for failure to join a party under Rule 19. Rule 19(a)(1) provides that a party "must be joined" if (1) without that person, the court cannot provide "complete relief among existing parties"; (2) the person claims an interest in the action and proceeding with the case without that person may "impair or impede the person's ability to protect the interest" or leave an "existing party" subject to "inconsistent obligations." Fed. R. Civ. P. 19(a)(1)). "The purpose of Rule 19 under the Federal Rules of Civil Procedure is to permit joinder of all materially interested parties to a single lawsuit so as to protect interested parties and avoid waste of judicial resources." *Davis Companies v. Emerald Casino, Inc.*, 268 F.3d 477, 481 (7th Cir. 2001) (quotation omitted). However, dismissal "is not the preferred outcome," *Ochs v. Hindman*, 984 F. Supp.

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2d 903, 908 (N.D. Ill. 2013) and the movant "bears the burden of demonstrating that the absent party is a necessary and indispensable party that must be joined." *Id*. at 906.

National Union argues that the existence of other primary insurers means that this suit should be dismissed because "the scope of coverage provided by the Absent Insurers are necessary to determine proper trigger and allocation issues presented by Plaintiffs' claims, including defense damage claims." [Griffith, 69 at 9]. To support its position, National Union relies on *Sta-Rite Industries, Inc. v. Allstate Ins. Co.*, 96 F.3d 281 (7th Cir. 1996). *Sta-Rite* is distinguishable on a number of grounds, however. It involved a parallel state court proceeding in Wisconsin. 96 F.3d at 283. The *Sta-Rite* plaintiffs sued a number of insurers in federal court and the *same day* sued another insurer in state court alleging the same claims. *Id*. Here, Sterigenics filed its suit in August 2021 and Griffith filed in November 2021. Griffith filed the state court action in January 2023. The Seventh Circuit in *Sta-Rite* concluded that the district court's dismissal under Rule 12(b)(7) was correct because of the risk of duplicative litigation given the parallel state court action and "issues of first impression under Wisconsin insurance law." 96 F.3d at 285. *See CXA Corp. v. Am. Fam. Ins. Co.*, No. 15 CV 11412, 2016 WL 6582577, at *4 (N.D. Ill. Nov. 7, 2016) (distinguishing *Sta-Rite* in part because it was based on Wisconsin substantive law). And importantly, unlike here, in *Sta-Rite*, there was no duty to

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defend ruling. To the contrary in *Sta-Rite* the only progress in federal court had been the exchange of mandatory discovery. *Id*. at 287.[4]

Plaintiffs counter that National Union's duty to defend under the Policies was "triggered…regardless of whether National Union may have rights to later seek contribution from other insurers *after* it has paid Griffith's defense costs." [Griffith, 83 at 2]. For its part, National Union is concerned about potential inconsistent rulings, but courts have addressed this concern before. *See Tokio Marine Specialty Ins. Co.*, 2021 WL 1962403, at *3 ("to the extent there is some risk of an inconsistent judgment, a future contribution action would remedy that concern.") (citing *Rhone–Poulenc Inc. v. Int'l Ins. Co.*, 71 F.3d 1299, 1301 (7th Cir. 1995)).

Plaintiffs also argue that Rule 19(a)'s requirements are not met because this Court can accord "complete relief among existing parties." [73 at 7]. *See First Pros. Ins. Co. v. Florendo*, No. 11-CV-197-DRH, 2011 WL 5325710, at *4 (S.D. Ill. Nov. 3, 2011) ("[T]he term 'complete relief' refers only to 'relief between the persons already parties, and not as between a party and the absent person whose joinder is sought.'") (quoting *Davis Companies*, 268 F.3d at 484). National Union does not directly address this argument other than to argue that this Court could resolve the coverage dispute "in a single, complete action, with all insurers present." [76 at 6]. However this Court determined the rights and duties of the parties in this case as it relates to duty to defend the underlying master complaint. And for the reasons explained further below, the Court will grant Plaintiffs' motions to voluntarily

[4] Moreover, the Seventh Circuit ultimately affirmed on an alternative ground, lack of subject matter jurisdiction, that became evident on appeal. 96 F.3d 281.

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dismiss the non-duty-to-defend claims. Thus the Court finds that National Union has not met its burden to show that dismissal under Rule 12(b)(7) is warranted. Therefore National Union's Rule 12(b)(7) motions to dismiss [68] [71] are denied.

C. National Union's Motions to File a Third-Party Complaint

In the alternative to dismissal under Rule 12(b)(7), National Union requests that the Court grant its motion for leave to file its third party complaint under Rule 14 so it can implead the Absent Insurers as third-party defendants. [Griffith, 69 at 12]. It argues that it has a "valid contribution action" against Zurich and other insurers, and seeks a declaration that this Court's Duty to Defend Order applies equally to Zurich and other insurers. [45 at 2, 6].

Equitable contribution "as it pertains to insurance law is an equitable principle arising among coinsurers which permits one insurer who has paid the entire loss, or greater than its share of the loss, to be reimbursed from other insurers who are also liable for the same loss." *Home Ins. Co. v. Cincinnati Ins. Co.*, 821 N.E.2d 269, 276 (Ill. 2004). National Union recently reiterated that it seeks to implead other insurers "for purposes of obtaining contribution predicated on this Court's duty to defend ruling." [96 at 2]. Notably, National Union does not contend that it cannot bring a separate contribution action against Absent Insurers.

In its motion to dismiss, National Union argued that "Griffith's joinder of the other primary insurers would destroy diversity jurisdiction" [69 at 2]. Anticipating this issue as it relates to its Rule 14 motion, National Union stated on the other hand that its "motion to implead the other insurers will not destroy diversity jurisdiction

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because the Court has supplemental jurisdiction over the third-party claim pursuant to 28 U.S.C. § 1367(a)." *Id.* n. 1. National Union does not cite authority for this proposition. And the language of the statute, 28 U.S.C. § 1367(b) and the case law compels a different result. *See* 28 U.S.C. § 1367(b) (explaining limits on supplemental jurisdiction under subsection (a)); *see also Stromberg Metal Works, Inc. v. Press Mech., Inc.,* 77 F.3d 928, 932 (7th Cir. 1996); *Wisconsin Dep't of Corr. v. Schacht*, 524 U.S. 381, 387-89 (1998).[5]

Even if jurisdiction were secure, for the reasons explained more fully below related to Plaintiffs' motion for voluntary dismissal, the Court finds that permitting National Union to implead Absent Insurers at this stage is not warranted. Therefore, National Union's motions for leave to file a third-party complaint [34], [44] are denied.

D. Plaintiffs' motions to dismiss the remaining non-duty to defend claims

Plaintiffs move under Rule 41(a)(2) to voluntarily dismiss without prejudice their non-duty to defend claims. Under Fed. R. Civ. P. 41(a)(2), "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." A district court has discretion to allow a motion to dismiss under Rule 41(a)(2). *Stern v. Barnett*, 452 F.2d 211, 213 (7th Cir. 1971). Dismissal "should be allowed unless the defendant will suffer some plain legal prejudice other than the mere prospect of a second lawsuit." *Id.* It is defendant's burden to show "plain legal prejudice" would result from the dismissal. *See Simons v. Fox*, 725 F. App'x 402, 406

[5] The Court has an independent obligation to ensure the existence of federal subject matter jurisdiction. *See Smith v. Am. Gen. Life & Acc. Ins. Co.*, 337 F.3d 888, 892 (7th Cir. 2003); *Craig v. Ont. Corp.*, 543 F.3d 872, 875 (7th Cir. 2008).

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(7th Cir. 2018).

To narrow the issues and facilitate judicial economy, Griffith now "seeks to voluntarily dismiss all outstanding claims not decided in the Duty to Defend Order or sought as ancillary relief (defense costs) thereto, namely, Counts I and II (breach of contract) of its Complaint, and the portion of Counts III and IV (declaratory judgment) relating to National Union's duty to indemnify." [65 at 4]. Sterigenics similarly moved to voluntarily dismiss its declaratory judgment claim addressing the duty to indemnify (Count II) and breach of contract claim (Count III) [86]. Plaintiffs argue that National Union will not be prejudiced by the voluntary dismissal of all remaining claims since the Court already decided that it owes Griffith a duty to defend, and dismissing the remaining claims allows the Court and parties to reach the damages claims and conclude this action.

National Union responds that Plaintiffs delayed in seeking dismissal of these claims, Plaintiffs' attempt to separate duty to defend and duty to indemnify claims is improper claim splitting, and dismissal of the claims could prejudice National Union if the state court applies differing interpretations to, for example, the pollution exclusion, which could prevent National Union from seeking contribution from Griffith's other insurers.

First, as discussed, treating the duty to defend and duty to indemnify separately is well-established under Illinois law. *See Gen. Agents Ins. Co. of Am.,* 828 N.E.2d at 1098. Further, this Court's Duty to Defend Order did not address contribution nor could it have. *See Greenwich Ins. Co. v. John Sexton Sand & Gravel Corp.*, 2016 IL

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App (1st) 151606-U, P42 (issue of contribution was "a different issue that could not have been raised until the determination of the Insurers' duty to defend."). With the duty to defend claim decided, equitable contribution then "permits an insurer who has paid for an entire loss to be reimbursed by other insurers who are also liable for the loss, and it is applied where one insurer has paid a debt equally owed by other insurers." *Employers Ins. of Wausau v. James McHugh Constr., Co.*, 144 F.3d 1097, 1107 (7th Cir. 1998) (citation omitted).

The cases cited by National Union for the proposition that Plaintiffs are engaged in improper claim splitting are not persuasive. *Piagentini v. Ford Motor Co.*, 901 N.E.2d 986 (Ill. App. Ct. 2009), *Elmhurst Lincon-Mercury, Inc. Emps. 401(k) Profit Sharing Plan & Tr. v. Mears*, 215 F. Supp. 3d 659 (N.D. Ill. 2016), *Baird & Warner, Inc. v. Addison Indus. Park, Inc.*, 387 N.E.2d 831 (1st Dist. 1979) [96 at 6], were, respectively, a negligent design case, involved a brokerage contract, and an ERISA suit. They did not discuss an insurer's duties to defend and indemnify. On the other hand, courts have explained that "[a] victim of wrongdoing is not generally required to sue all the wrongdoers...." *Varlen Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, No. 09-CV-7915, 2011 WL 3664796, at *4 (N.D. Ill. Aug. 17, 2011) (quoting *Rhone–Poulenc Inc.*, 71 F.3d at 1301). So in the case of "multiple, overlapping coverage the insurers who are not sued will not be bound by determinations made in a suit to which they are not parties, and the insurers who are sued can if they lose seek contribution afterward from the others." *Id.*

According to National Union, it will be prejudiced by being prevented from

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adjudicating "the allocation of Sterigenics' defense and potential indemnity in a consistent fashion in this forum" and it could be prevented from seeking contribution from other insurers. [96 at 7; 70 at 6]. But National Union does not cite any authority that this Court's Duty to Defend Order will bar it from seeking contribution from other insurers in another action. *Cf. Varlen Corp.*, 2011 WL 3664796, at *4. ("In a case of multiple, overlapping coverage the insurers who are not sued will not be bound by determinations made in a suit to which they are not parties, and the insurers who are sued can if they lose seek contribution afterward from the others."). Although excessive delay is one factor for the Court to consider (*Pace v. S. Exp. Co.*, 409 F.2d 331 (7th Cir. 1969)), the Court does not find that Plaintiffs excessively delayed in moving to voluntarily dismiss certain claims.[6] And National Union has not shown it will suffer "plain legal prejudice."

This is a complex and protracted suit, both in the underlying case and the insurance coverage actions. As often happens, multiple coverage suits have emerged. National Union says it is litigating coverage for these claims in three separate actions. [96 at 5]. Considering the posture of the case before this Court, the multiple coverage disputes, and the stage of the Illinois State Coverage Action, the Court finds that continued litigation in this Court would not serve the parties or facilitate judicial efficiency. Finally, the Court does not agree with National Union that dismissal should be with prejudice. *See Am. Bankers Ins. Co. of Fla. v. Shockley*, 3 F.4th 322, 332 (7th Cir. 2021) (dismissal without prejudice of indemnity claim).

[6] *Pace*, 409 F.2d 331, cited by National Union, involved an automobile accident; it was not an insurance coverage case.

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Accordingly, the Court in its discretion concludes that dismissal of Plaintiff's non duty-to-defend claims is warranted. Plaintiffs' motions for voluntary dismissal [65] [86] of the remaining non duty to defend claims are granted.

E. Griffith's Motion for Past Defense Costs

The Court now turns to Plaintiffs' motions for past defense costs. District courts "have wide discretion in determining the appropriate amount of attorneys' fees and costs." *Spegon v. Cath. Bishop of Chi.*, 175 F.3d 544, 550 (7th Cir. 1999). Under *Taco Bell Corp. v. Continental Cas. Co.*, 388 F.3d 1069 (7th Cir. 2004), where "there are market incentives [for the party seeking fees] to economize, there is no occasion for painstaking judicial review." *Id.* at 1076. *See also USA Gymnastics v. Liberty Ins. Underwriters, Inc.*, 46 F.4th 571, 581 (7th Cir. 2022) ("The market-tested presumption applies when, following an insurer's breach of the duty to defend, a policyholder has supervised and *incurred* legal fees without any expectation of payment by the insurer."). Further, under Illinois law, if a lawsuit "pleads several theories of recovery, even if only one theory falls within the insurance policy's coverages, the insurer owes a duty to defend the entire lawsuit." *Farmers Auto. Ins. Ass'n v. Neumann*, 2015 IL App (3d) 140026, ¶ 11, 28 N.E.3d 830, 834 (2015); *see also Pekin Ins. Co. v. Wilson*, 930 N.E.2d 1011, 1015 n. 2 (2010).

Griffith requests that this Court enforce its Duty to Defend Order against National Union by awarding Griffith past defense costs for the Underlying Suits. Griffith moves for a judgment for past defense costs from January 29, 2021 through August 31, 2022. In its reply brief, Griffith reduced the total amount it seeks to

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$16,017,702.62. In support of its request for defense costs, Griffith submitted sworn Declarations of its General Counsel David Kim. [Griffith [59], Exh. A ("Kim Declaration"); 80]. Kim is familiar with and reviewed the legal expenses Griffith incurred in defending the Underlying Suits. [59 at 7]. Griffith attaches invoices, checks and ACH receipts, as well as a summary spreadsheet of the defense invoices, amounts written-off, amounts paid to date, and sum of amounts remaining to be paid. *Id*. at 8. Kim attests that he believes these legal expenses to be reasonable in light of the allegations and magnitude of the Underlying Suits. (Kim Declaration, ¶ 16).

Griffith argues that under *Taco Bell Corp*. 388 F.3d 1069, this Court need not scrutinize its defense costs because where "there are market incentives [for the party seeking fees] to economize, there is no occasion for painstaking judicial review." *Id*. at 1076. National Union counters that *Taco Bell*'s presumption of reasonableness applies only to covered claims. However National Union's objections to the defense costs motions largely seek to relitigate the Duty to Defend Order. As explained, the duty to defend applies to the entire lawsuit (*Farmers Auto. Ins. Ass'n*, 28 N.E.3d 830; *Pekin Ins. Co*., 930 N.E.2d 1011), and National Union may seek contribution separately. In light of this Court's Duty to Defend Order, National Union cannot delay paying defense costs. *See Gen. Agents Ins. Co. of Am. v. Midwest Sporting Goods Co*., 828 N.E.2d 1092 (Ill. 2005).

National Union also objects to certain of Griffith's costs for clerical or data entry or management work, as well as some vague entries. However generally the Court is not required to "scrutin[ize] [] line-item entries". *Metavante Corp. v. Emigrant Sav.*

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Bank, 619 F.3d 748, 774 (7th Cir. 2010). And National Union does not make any specific objections to attorney hourly rates. Finally, National Union contends that Griffith has not paid 100% of the defense costs. But as Griffith points out, the Seventh Circuit recently clarified that "payment in full is not a requirement for the presumption of reasonableness to apply." *USA Gymnastics,* 46 F.4th at 581.

Therefore, this Court grants in large part Griffith's motion for past defense costs.

F. Sterigenics' Motion for Past Defense Costs

Sterigenics requests that this Court enforce its Duty to Defend Order against National Union by awarding Sterigenics past defense costs incurred from February 1, 2021 to September 30, 2022 for the Underlying Litigation. In its reply brief Sterigenics requests an adjusted total amount of $75,502,938.25.

Sterigenics submits sworn declarations of Assistant General Counsel Martha Stevens Sullivan. [69-1; 94-1]. Sullivan is the Assistant General Counsel to Sotera Health Company, providing shared legal services to all parts of Sotera Health, including Sterigenics U.S., LLC. [69-1 at ¶ 2]. She attests that Sterigenics incurred over $75 million in approved defense fees, costs, and other expenses in connection with the Underlying Litigation. *Id.* ¶ 4. She further attests that these expenses are correct and have been necessarily incurred in defending the underlying litigation, and were not out of proportion to the stakes in the underlying litigation. *Id.* ¶¶ 5, 8.

National Union's response, similar to its response to the Griffith motion, largely seeks to relitigate the Duty to Defend Order. National Union objects arguing Sterigenics' motion is supported by insufficient documentation, but Sterigenics points

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out its motion was supported by documentation showing paid or soon-to-be paid amounts vendor-by-vendor and invoice-by-invoice, and Sterigenics submitted further supporting documentation attached its reply. *See* [67, 92, 94-1]. Sullivan also specified cost-saving measures: "Sterigenics negotiated discounts on certain fees, including discounted hourly rates and alternate fee agreements with outside counsel, discounted rates with other service providers, cost-sharing with other parties where appropriate, and engaged lower-cost providers where appropriate." [69-1 at ¶ 6]. National Union also objects to invoices to Sotera, Sterigenics' holding company. However Sterigenics' reply and supplemental declaration affirm that all the Reimbursable Expenses were incurred and paid by Sterigenics. [94-1 ¶ 4].

The Court finds that Sterigenics submitted sworn declarations and supporting documentation sufficient for the presumption of reasonableness to apply. *See Taco Bell Corp.* 388 F.3d 1069; *USA Gymnastics*, 46 F.4th 571. Therefore, this Court grants in large part Sterigenics' motion for past defense costs.

IV. Conclusion

For the reasons explained above, in Griffith, 21-cv-06403, National Union's motion for leave to file counterclaims [32], motion for leave to file a third-party complaint [34], and Rule 12(b)(7) motion to dismiss [68] are denied; the Griffith Plaintiffs' motion to dismiss the remaining non-duty to defend claims [65] is granted; and the Griffith Plaintiffs' motion for past defense costs [59] is granted as modified in their reply brief. Further, in Sterigenics, 21-cv-04581, National Union's motion for leave to file counterclaims [42], motion for leave to file a third-party complaint [44], and

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National Union's motion to dismiss [71] are denied; Sterigenics' motion to dismiss the remaining non-duty to defend claims [86] is granted, and Sterigenics' motion for past defense costs [69] is granted as modified in its reply brief.

The Court has declared that National Union owes Griffith and Sterigenics a duty to defend the underlying fourth amended complaint and owes Griffith $16,017,702.62 in past defense costs and owes Sterigenics $75,502,938.25 in past defense costs. The Clerk is directed to enter judgment accordingly. Civil case terminated.

E N T E R:

Dated: July 25, 2023

MARY M. ROWLAND
United States District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

STERIGENICS, U.S., LLC, Plaintiff, v. NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., Defendant.	CASE NO. 1:21-CV-04581 JUDGE: MARY M. ROWLAND

NOTICE OF APPEAL

Notice is hereby given that Defendant National Union Fire Insurance Company of Pittsburgh, Pa. hereby appeals to the United States Court of Appeals for the Seventh Circuit from the final judgment entered on January 11, 2024 (ECF No. 134), and all other prior orders that have merged into the final judgment, including, without limitation, the Memorandum Opinion and Order entered on August 3, 2022 (ECF No. 40), the Memorandum Opinion and Order entered on July 25, 2023 (ECF No. 98), and the judgment entered on July 25, 2023 (ECF No. 100).

Dated: February 9, 2024

Respectfully submitted,

/s/ *Thomas H. Dupree Jr.*

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Attorneys for Defendant National Union Fire Insurance Company of Pittsburgh, Pa.

CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ *Thomas H. Dupree Jr.*
Thomas H. Dupree Jr.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GRIFFITH FOODS INTERNATIONAL INC. F/K/A GRIFFITH LABORATORIES U.S.A., INC., and GRIFFITH FOODS GROUP INC. F/K/A GRIFFITH LABORATORIES, INC., Plaintiffs, v. NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., Defendant.	CASE NO. 1:21-CV-06403 JUDGE: MARY M. ROWLAND

NOTICE OF APPEAL

Notice is hereby given that Defendant National Union Fire Insurance Company of Pittsburgh, Pa. hereby appeals to the United States Court of Appeals for the Seventh Circuit from the final judgment entered on January 11, 2024 (ECF No. 119), and all other prior orders that have merged into the final judgment, including, without limitation, the Memorandum Opinion and Order entered on August 3, 2022 (ECF No. 30), the Memorandum Opinion and Order entered on July 25, 2023 (ECF No. 89), and the judgment entered on July 25, 2023 (ECF No. 91).

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Dated: February 9, 2024

Respectfully submitted,

/s/ *Thomas H. Dupree Jr.*

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Attorneys for Defendant National Union Fire Insurance Company of Pittsburgh, Pa.

CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ *Thomas H. Dupree Jr.*
Thomas H. Dupree Jr.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

STERIGENICS U.S., LLC, Plaintiff, v. NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., Defendant.	No. 1:21-cv-04581 Honorable Mary M. Rowland

AMENDED JUDGMENT ENTRY

This matter coming to be heard on presentment of Plaintiff, Sterigenics U.S., LLC's ("Sterigenics") Motions for Additional Defense Costs and Prejudgment and Postjudgment Interest [Dkt. Nos. 116 & 103], and the briefing of the parties, due notice having been given, the Court being fully advised in the premises, the Court amends its July 25, 2023 Judgment [Dkt. No. 100] as follows:

1. Consistent with the Court's August 3, 2022 Memorandum Opinion and Order [Dkt. No. 40] and the Minute Entry confirming that Order [Dkt. No. 39], the Court enters judgment for Sterigenics and against Defendant National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union") on Sterigenics' claim for declaratory judgment as to National Union's duty to defend Sterigenics in the underlying litigation (Count I of Sterigenics' First Amended Complaint, *see* Dkt. No. 15). The Court declared that National Union owes Sterigenics a duty to defend the fourth amended complaint and that National Union is not estopped from asserting coverage defenses.

2. Consistent with the reasoning stated in the Court's July 25, 2023 Memorandum Opinion and Order that found National Union owed Sterigenics $75,502,938.25 of past defense

costs [Dkt. No. 98], the Court grants Sterigenics' Motion for Additional Defense Costs [Dkt. No. 116].

3. The Court also grants Sterigenics' Motion for Prejudgment and Postjudgment Interest on the July 25, 2023 Judgment [Dkt. No. 103].

4. In so doing, the Court holds that: (i) Sterigenics is entitled to the additional past defense costs in the amount of $26,170,910.89; and (ii) Sterigenics is entitled to prejudgment interest on the defense cost invoices at issue in Sterigenics' Motions for Past Defense Costs and for Additional Defense Costs [Dkt. Nos. 69 & 116] (collectively, the "Defense Costs Motions") from the date of payment until January 11, 2024 in the amount of $8,568,938.87.

5. The Court, accordingly, declares that Sterigenics shall recover from National Union: (i) the principal amount of $101,673,849.14; plus (ii) an additional $8,568,938.87 in prejudgment interest, which includes prejudgment interest at the rate of 5% per annum running from the date each defense cost invoice at issue in the Defense Costs Motions was paid until January 11, 2024; plus (iii) postjudgment interest on both the principal amount stated in paragraph 4(i) and the prejudgment interest amount stated in paragraph 4(ii) at the rate of 4.825% per annum from January 11, 2024 until paid in full, along with costs.

Dated: January 11, 2024

REVIEWED, APPROVED, AND
ENTERED BY:

Mary M Rowland

Honorable Mary M. Rowland
United States District Judge

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

GRIFFITH FOODS INTERNATIONAL INC. F/K/A GRIFFITH LABORATORIES U.S.A., INC., AND GRIFFITH FOODS GROUP INC. F/K/A GRIFFITH LABORATORIES, INC., Plaintiff, v. NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., Defendant.	No. 1:21-cv-6403 Honorable Mary M. Rowland

AMENDED JUDGMENT ENTRY

This matter coming to be heard on presentment of Plaintiffs Griffith Foods International Inc. f/k/a Griffith Laboratories U.S.A., Inc. and Griffith Foods Group Inc. f/k/a Griffith Laboratories, Inc.'s (collectively, "Griffith") Second and Final Motion for Defense Costs and Interest [Dkt. No. 92] and the briefing of the parties, due notice having been given, the Court being fully advised in the premises, the Court amends its July 25, 2023 Judgment [Dkt. No. 89] as follows:

1. Consistent with the Court's August 3, 2022 Memorandum Opinion and Order [Dkt. No. 30] and the Minute Entry confirming its Order [Dkt. No. 29], the Court enters judgment for Griffith and against Defendant National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union") on Griffith's claim for declaratory judgment as to National Union's duty to defend against the underlying litigation [Count III and IV of Griffith's Complaint, see Dkt. No. 1]. The Court declared that National Union owes Griffith a duty to defend the fourth amended complaint and that National Union is not estopped from asserting coverage defenses.

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2. Consistent with the reasoning stated in the Court's July 25, 2023 Memorandum Opinion and Order that found National Union owed Griffith $16,017,702.62 of past defense costs [Dkt. No. 89], the Court grants Griffith's Second and Final Motion for Defense Costs and Interest [Dkt. No. 92]. In so doing, the Court holds that: (i) Griffith is entitled to additional past defense costs incurred from September 1, 2022 to July 31, 2023 in the amount of $6,224,117.73; and (ii) Griffith is entitled to pre-judgment interest on all paid amounts from the date of payment until January 11, 2024 in the amount of $1,086,943.

3. The Court, accordingly, declares that National Union owes Griffith the following amounts: (i) the principal amount of $22,241,820.35; plus (ii) an additional $1,086,943 in prejudgment interest, which includes prejudgment interest at the rate of 5% per annum running from the date of payment of each defense cost invoice as explained in the Second and Final Motion for Defense Costs and Interest until January 11, 2024; plus (iii) post-judgment interest on both the principal amount stated in paragraph 3(i) and the prejudgment interest amount stated in paragraph 3(ii) at the rate of 4.825% per annum from January 11, 2024 until paid in full, along with costs.

Dated: January 11, 2024

REVIEWED, APPROVED, AND ENTERED BY:

Mary M Rowland

Honorable Mary M. Rowland
United States District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GRIFFITH FOODS INTERNATIONAL INC. F/K/A GRIFFITH LABORATORIES U.S.A., INC., and GRIFFITH FOODS GROUP INC. F/K/A GRIFFITH LABORATORIES, INC.,	)	
Plaintiffs,	)	CASE NO.: 1:21-cv-6403
v.	)	
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.,	)	
Defendant.	)	

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' COMPLAINT

Defendant, National Union Fire Insurance Company of Pittsburgh, PA ("National Union"), states as follows for its Answer and Affirmative Defenses to Plaintiffs', Griffith Foods International Inc. and Griffith Foods Group Inc. (collectively, "Griffith"), Complaint:

THE PARTIES

1. Plaintiff Griffith Foods International Inc. f/k/a Griffith Laboratories U.S.A., Inc. ("GFI") is a corporation incorporated under the laws of Delaware with its principal place of business in Illinois. Plaintiff Griffith Foods Group Inc. f/k/a Griffith Laboratories, Inc. ("GFG") is a corporation incorporated under the laws of Illinois with its principal place of business in Illinois. Plaintiffs shall be referred to collectively herein as "Griffith."

ANSWER: National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1.

2. Defendant National Union Fire Insurance Company of Pittsburgh, PA. ("AIG") is

an AIG member company incorporated in Pennsylvania with its principal place of business in New York.

ANSWER: National Union admits it is a Pennsylvania corporation with its principal place of business in New York. National Union further admits it is a direct wholly-owned subsidiary of AIG Property Casualty U.S., Inc., which is a wholly-owned subsidiary of AIG Property Casualty Inc., which is a wholly-owned subsidiary of American International Group, Inc. National Union denies any remaining allegations of Paragraph 2.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(a) because there is complete diversity of citizenship among the parties and the amount in controversy exceeds $75,000, exclusive of interest and costs. The Court additionally has jurisdiction under 28 U.S.C. § 2201 because there is an actual controversy between the parties concerning the parties' rights and obligations under the insurance policies at issue.

ANSWER: Paragraph 3 asserts a legal conclusion to which no response is required. To the extent a response is required, National Union admits the allegations of Paragraph 3.

4. Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial part of property that is the subject of this action is situated in this district. AIG is subject to this Court's personal jurisdiction with respect to this action, because at all relevant times, AIG was registered with the Illinois Department of Insurance to transact insurance business within the Stateof Illinois and transacted insurance business within the State, including selling to Griffith the insurance policies at issue in this action.

ANSWER: Paragraph 4 assert legal conclusions to which no response is required. To the extent a response is required, National Union admits the first sentence of Paragraph 4. National

Union also admits it is subject to this Court's personal jurisdiction with respect to this action, and that, at all relevant times, it was registered with the Illinois Department of Insurance to transact insurance business within the Stateof Illinois and transacted insurance business within the State. National Union further admits that it issued to first named insured Griffith Laboratories, Inc. Policy No. GLA-945-70-58RA, effective September 30, 1983 to September 30, 1984 and Policy No. GLA-194-00-11RA, effective September 30, 1984 to September 30, 1985 (collectively, the "Policies"). National Union denies all remaining allegations in Paragraph 4.

NATURE OF THE ACTION

5. This is a civil action for breach of contract and declaratory relief arising out of AIG's wrongful failure and refusal to defend and indemnify Griffith with respect to hundreds of pending suits alleging bodily injuries, which for purposes of discovery have been consolidated and captioned *In re: Willowbrook Ethlyene Oxide Litigation*, Circuit Court of Cook County, Illinois Consolidated Case No. 18-L-010475 (the "Underlying Suits") under two commercial general liability insurance policies issued by National Union to Griffith (among other insureds) ("Policies").

ANSWER: The allegations of Paragraph 5 constitute Plaintiffs' characterization of this lawsuit to which no answer is required. To the extent any response is required, National Union denies the allegations of Paragraph 5.

6. AIG denied coverage in full for the Underlying Suits for two alleged reasons: (1) Griffith Foods International Inc. and Griffith Foods Group Inc. purportedly do not qualify as "insureds" under the Policies; and (2) the Underlying Suits purportedly run afoul of the "sudden and accidental" pollution exclusions in the Policies. For the reasons explained in detail below, AIG's denial is wrongful. Moreover, due to AIG's failure to file a declaratory judgment action

concurrently with its denial of a duty to defend Griffith in the Underlying Suits, AIG is estopped under Illinois law from asserting defenses to coverage.

ANSWER: National Union admits that it denied coverage for Griffith relative to the hundreds of pending bodily injury lawsuits, which have been consolidated and captioned *In re: Willowbrook Ethlyene Oxide Litigation*, Circuit Court of Cook County, Illinois, Consolidated Case No. 18-L-010475 (the "Underlying Litigation"), on the basis that the pollution exclusion of the Policies applies to preclude coverage. National Union denies the remaining allegations of Paragraph 6.

GENERAL ALLEGATIONS

The Policies

7. AIG issued General Liability-Automobile Policy No. GLA9457058RA to GFI (then known as Griffith Laboratories U.S.A., Inc.) and GFG (then known as Griffith Laboratories, Inc.) for the policy period of September 30, 1983 to September 30, 1984 (the "83-84 Policy"). A true and correct copy of the 83-84 Policy is attached as **Exhibit A**.

ANSWER: National Union admits that it issued to first named insured Griffith Laboratories, Inc. Policy No. GLA9457058RA, effective September 30, 1983 to September 30, 1984 (the "1983 Policy"). National Union admits that Exhibit A of Plaintiffs' Complaint purports to be a copy of the 1983 Policy. The 1983 Policy is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of 1983 Policy in Paragraph 7 to the extent they are inconsistent with the contents of the policy.

8. AIG issued General Liability-Automobile Policy No. GLA1940011RA to GFI (then known as Griffith Laboratories U.S.A., Inc.) and GFG (then known as Griffith Laboratories, Inc.) for the policy period of September 30, 1984 to September 30, 1985 (the "84-85 Policy"). A

true and correct copy of the 84-85 Policy is attached as **Exhibit B**.

ANSWER: National Union admits that it issued to first named insured Griffith Laboratories, Inc. Policy No. GLA1940011RA, effective September 30, 1984 to September 30, 1985 (the "1984 Policy"). National Union admits that Exhibit B of Plaintiffs' Complaint purports to be a copy of the 1984 Policy. The 1984 Policy is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of 1984 Policy in Paragraph 8 to the extent they are inconsistent with the contents of the policy.

9. The Policies define the "Named Insured" as:

> the organization, including any subsidiary thereof, named in item 1 of the declarations [Griffith Laboratories U.S.A., Inc. and Griffith Laboratories, Inc.] and also includes any other company which is acquired or formed by the named insured during the policy period and over which the named insured maintains ownership or financial control, provided this insurance does not apply to any such newly acquired or formed company which is an insured under any other liability or indemnity policy or would be an insured under any such policy but for its termination upon exhaustion of its limits of liability. Such insurance as may be afforded and newly acquired or formed company shall terminate within sixty days of its acquisition of formation unless reported to the company within said sixty days.

Ex. A, Endt. 3; Ex. B, Endt. 3.

ANSWER: National Union admits that the Policies each contain an endorsement that includes the language cited by Griffith in Paragraph 9. However, the language cited by Griffith in Paragraph 9 forms a part of the Policies, which must each be read as a whole.

10. The Policies each provide a $1 million limit of liability for "each occurrence" and in the aggregate, and obligate AIG to "pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of … bodily injury … to which this insurance applies, caused by an occurrence…" See Ex. A, Comprehensive General Liability Insurance Coverage Part at 2; Ex. B, Comprehensive General Liability Insurance Coverage Part at 2.

ANSWER: National Union admits that the Policies provide limits of $1 million per occurrence and in the aggregate, and include the language cited by Griffith in Paragraph 10. However, the language cited by Griffith in Paragraph 10 forms a part of the Policies, which must each be read as a whole.

11. Under the Policies, AIG has "the right and duty to defend any suit against the insured seeking damages on account of such bodily injury … even if any of the allegations of the suit are groundless, false or fraudulent…" *Id.*

ANSWER: National Union admits that the Policies include the language cited by Griffith in Paragraph 11. However, the language cited by Griffith in Paragraph 11 forms a part of the Policies, which must each be read as a whole.

12. The Policies do not contain any deductible or retention that an insured must satisfy before AIG is obligated to defend a suit.

ANSWER: National Union admits that the Policies do not contain any applicable deductible or retention. Answering further, National Union states that the terms and conditions of each of the Policies must be read as a whole.

13. Amounts incurred by AIG pursuant to Policies' defense obligations do not erode the Policies' respective limits of liability.

ANSWER: National Union admits the allegations of Paragraph 13. Answering further, National Union states that the terms and conditions of each of the Policies must be read as a whole.

14. The Policies contain several exclusions, including exclusion (f) (hereinafter, the "Sudden and Accidental Pollution Exclusion") which states as follows:

> This insurance does not apply:
> * * *
> (f) to **bodily injury** or **property damage** arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals,

> liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental[.]

Id.

ANSWER: National Union admits that the Policies each contain an exclusion that includes the language cited by Griffith in Paragraph 14 (the "Pollution Exclusion"). However, the language cited by Griffith in Paragraph 14 forms a part of the Policies, which must each be read as a whole.

The Underlying Suits

15. On September 26, 2018, underlying plaintiffs Susan Kamuda and Edward Kamuda filed a Complaint at Law in the Circuit Court of Cook County, Illinois against STERIGENICS INTERNATIONAL, INC.; STERIGENICS INTERNATIONAL LLC; STERIGENICS U.S., LLC; BOB NOVAK; DANIEL GIBALA; and GTCR, LLC to initiate the Underlying Suits. A true and correct copy of the Kamuda's Complaint is attached hereto as **Exhibit C**.

ANSWER: National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 15. National Union admits only that Exhibit C of Plaintiffs' Complaint purports to be a copy of a Complaint filed by Susan and Edward Kamuda (the "Kamuda Complaint") in the Underlying Litigation. The Kamuda Complaint is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of the Kamuda Complaint in Paragraph 15 to the extent they are inconsistent with the document itself.

16. The Kamuda's Complaint alleges that underlying plaintiffs suffered bodily injury due to the inhalation of ethylene oxide ("EtO") purportedly emitted from a sterilization facility in

Willowbrook, Illinois operated by the underlying defendants since at least 1984. *See generally* Ex. C.

ANSWER: The Kamuda Complaint is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of the Kamuda Complaint in Paragraph 16 to the extent they are inconsistent with the document itself.

17. Following the Kamuda's Complaint, there were dozens of additional lawsuits making substantially allegations filed in 2018 and 2019, leading the Circuit Court of Cook County to consolidate the Underlying Suits for discovery and pretrial purposes.

ANSWER: National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17.

18. Since October 24, 2019, the Underlying Suits have been guided by a Master Complaint filed by the underlying plaintiffs, which has been amended several times.

ANSWER: National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18.

19. On August 18, 2020, plaintiffs in the Underlying Suits filed their Second Amended Master Complaint ("SAMC") which, for the first time, named as defendants GFG, GFI, and related entities Griffith Foods Inc. and Griffith Foods Worldwide Inc. ("Griffith Defendants"). A true and correct copy of the SAMC in the Underlying Suits is attached hereto as **Exhibit D**.

ANSWER: National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 19. National Union admits only that Exhibit D of Plaintiffs' Complaint purports to be a copy of a Second Amended Master Complaint filed in the Underlying Litigation. The Second Amended Master Complaint is a written document that speaks for itself and is the best evidence of its contents. National Union denies any

characterizations of the Second Amended Master Complaint in Paragraph 19 to the extent they are inconsistent with the document itself.

20. The SAMC alleges that each of the plaintiffs suffered bodily injury due to inhalation of EtO emitted from the Willowbrook facility. *See generally* Ex. D.

ANSWER: The Second Amended Master Complaint is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of the Second Amended Master Complaint in Paragraph 20 to the extent they are inconsistent with the document itself.

21. The SAMC also alleges, among other things, that the Griffith Defendants "designed and operated the Willowbrook facilities from inception in or about 1984, and directly participated in the operation of the Willowbrook facilities at all relevant times through at least April 15, 1999." *Id.* at ¶ 17. The underlying plaintiffs subsequently filed a Plaintiffs' Third Amended Master Complaint ("TAMC") on October 30, 2020 that named the same Griffith Defendants and made similar allegations. **Exhibit E.**

ANSWER: The Second Amended Master Complaint is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of the Second Amended Master Complaint in Paragraph 21 to the extent they are inconsistent with the document itself. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the last sentence of Paragraph 21. National Union admits only that Exhibit E of Plaintiffs' Complaint purports to be a copy of a Third Amended Master Complaint filed in the Underlying Litigation. The Third Amended Master Complaint is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of the Third Amended Master Complaint in Paragraph 21 to the extent they are

inconsistent with the document itself.

22. The TAMC alleges that each of the plaintiffs suffered bodily injury due to inhalation of EtO emitted from the Willowbrook facility. *See generally* Ex. E.

ANSWER: The Third Amended Master Complaint is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of the Third Amended Master Complaint in Paragraph 22 to the extent they are inconsistent with the document itself.

23. The TAMC also alleges, among other things, that the Griffith Defendants "under their previously used names Griffith Laboratories, U.S.A., Inc. and Griffith Laboratories, International, Inc., designed and operated the Willowbrook facilities from inception in or about 1984, and directly participated in the operation of the Willowbrook facilities at all relevant times through at least April 15, 1999." *Id.* at ¶ 17.

ANSWER: The Third Amended Master Complaint is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of the Third Amended Master Complaint in Paragraph 23 to the extent they are inconsistent with the document itself.

24. On April 16, 2020, filed Plaintiffs' Fourth Amended Master Complaint ("FAMC"). **Exhibit F.**

ANSWER: National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 24. National Union admits only that Exhibit F of Plaintiffs' Complaint purports to be a copy of a Fourth Amended Master Complaint filed in the Underlying Litigation. The Fourth Amended Master Complaint is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of

the Fourth Amended Master Complaint in Paragraph 24 to the extent they are inconsistent with the document itself.

25. The FAMC names only GFI, which the underlying plaintiffs refer to throughout as "Griffith Labs." Ex. E ¶ 1. The FAMC notes that GFI "was formerly known as 'Griffith Laboratories U.S.A., Inc.'" *Id.*

ANSWER: The Fourth Amended Master Complaint is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of the Fourth Amended Master Complaint in Paragraph 25 to the extent they are inconsistent with the document itself.

26. The FAMC alleges that the underlying plaintiffs suffered bodily injuries due to, among other things, GFI's "independent acts and omissions throughout the entirety of the period between 1984 and 1999, which caused or contributed to Plaintiffs' injuries." *Id.* at ¶ 5 (listing alleged wrongful acts and omissions).

ANSWER: The Fourth Amended Master Complaint is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of the Fourth Amended Master Complaint in Paragraph 26 to the extent they are inconsistent with the document itself.

27. The Griffith Defendants have denied – and continue to deny – any liability to the underlying plaintiffs.

ANSWER: National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 27.

28. A list of suits filed against Griffith that have previously been consolidated as part of the Underlying Suits is attached hereto as **Exhibit G**.

ANSWER: National Union admits only that Exhibit G of Plaintiffs' Complaint purports to be a list of cases and plaintiffs/decedents. Exhibit G is a written document that speaks for itself and is the best evidence of its contents. National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 28.f.

AIG's Denial of Coverage

29. Following the underlying plaintiffs' filing of the SAMC on August 18, 2020, Griffith conducted a search of its historical records for potentially responsive insurance policies.

ANSWER: National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 29.

30. Griffith located the AIG policies near the end of 2020.

ANSWER: National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 30.

31. On January 29, 2021, Griffith, by and through its coverage counsel, provided AIG with notice of the Underlying Suits, including copies of the Policies and the TAMC. A true and correct copy of Griffith's January 29, 2021 correspondence, including all exhibits, is attached hereto as **Exhibit H**.

ANSWER: National Union admits it received a letter dated January 29, 2021 from Griffith's counsel that included a list of cases, the Kamuda Complaint, and a Third Amended Master Complaint filed in the Underlying Litigation. National Union admits that Exhibit H of Plaintiffs' Complaint purports to be a copy of the January 29, 2021 letter. National Union denies that Exhibit H includes any of the enclosures attached to the January 29, 2021 letter. The January 29, 2021 letter is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of the January 29, 2021 letter in Paragraph 31 to the

extent they are inconsistent with the contents of the document itself.

32. On February 17, 2021, AIG acknowledged receipt of this notice and requested, among other things, copies of the Policies, which Griffith's counsel immediately provided on the same day.

ANSWER: National Union admits that it issued a letter to Griffith's counsel on February 17, 2021, acknowledging Griffith's January 29, 2021 letter. The February 17, 2021 letter is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of the February 17, 2021 letter in Paragraph 32 to the extent they are inconsistent with the contents of the document itself. National Union admits that it received an email from Griffith's counsel on February 17, 2021, which attached two documents purporting to be copies of the Policies.

33. After months of silence, AIG sent a letter to Griffith on October 12, 2021 denying that it had a duty to defend and otherwise denying coverage for Underlying Suits under the Policies. A true and correct copy of AIG's October 12, 2021 correspondence, including all exhibits, is attached hereto as **Exhibit I**.

ANSWER: National Union admits that it sent a letter dated October 12, 2021 to Griffith's counsel. National Union admits that Exhibit I of Plaintiffs' Complaint purports to be a copy of the October 12, 2021 letter. The October 12, 2021 letter is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of the October 12, 2021 letter in Paragraph 33 to the extent they are inconsistent with the contents of the document itself. National Union denies all remaining allegations of Paragraph 33.

34. Thus, at all times relevant, AIG has failed and refused to provide Griffith with a defense to the Underlying Suits. AIG has also failed and refused to acknowledge a duty to

indemnify Griffith for any damages (whether by settlement, judgment, or otherwise) that Griffith may incur with respect to the Underlying Suits.

ANSWER: National Union denies the allegations of Paragraph 34.

35. AIG's October 12, 2021 letter asserts two bases for denying Griffith's claim:

A. "[t]o the extent that Griffith Foods Group, Inc, Griffith Foods, Inc., Griffith Foods International, Inc., and/or Griffith Foods Worldwide, Inc. were not acquired or formed by the named insured during the policy period; were not owned or financially controlled by Griffith Labs and/or Griffith USA; and/or, were not reported to National Union within 60 days of acquisition or formation, they would not qualify as insureds under the Policies. National Union reserves its rights to limit or deny coverage on these grounds"; and

B. because the Underlying Suits purportedly fall within the scope of the Sudden and Accidental Pollution Exclusion.

See Ex. H at 3-5.

ANSWER: The October 12, 2021 letter is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of the October 12, 2021 letter in Paragraph 35 to the extent they are inconsistent with the contents of the document itself.

The Underlying Suits Covered Under the Policies

Griffith is a Named Insured

36. GFI and GFG both qualify as a "Named Insured" under the Policies.

ANSWER: National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 36.

37. Item 1 of the Policies' declarations, as amended by Endorsement 3, identifies Griffith Laboratories, Inc. and Griffith Laboratories U.S.A., Inc. as a "Named Insured."

ANSWER: National Union admits that Item 1 of the Policies' declarations, as amended by Endorsement #3 of the respective policies, identifies Griffith Laboratories, Inc. and Griffith

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Laboratories U.S.A., Inc. as a "Named Insured." However, the portion of the Policies cited by Griffith in Paragraph 37 forms a part of the Policies, which must each be read as a whole.

38. On March 9, 2016, Griffith Laboratories, Inc.'s shareholders adopted an amendment to its Articles of Incorporation changing the name of the corporation to Griffith Foods Group Inc. **See Exhibit J.**

ANSWER: National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 38. National Union admits only that Exhibit J of Plaintiffs' Complaint purports to contain Articles of Amendment filed with the Illinois Secretary of State. The Articles of Amendment are written documents that speaks for themselves and are the best evidence of their contents. National Union denies any characterizations of the Articles of Amendment in Paragraph 38 to the extent they are inconsistent with the contents of the documents themselves.

39. Griffith Laboratories U.S.A., Inc. has similarly undergone several corporate name changes to GFI as reflected in **Exhibit K**:

A. on September 27, 1990, Griffith Laboratories U.S.A., Inc. filed a Certificate of Amendment with the Delaware Secretary of State amending its corporatename to Griffith Laboratories Worldwide, Inc.;

B. on October 22, 1997, Griffith Laboratories Worldwide, Inc. filed a Certificate of Amendment with the Delaware Secretary of State amending its corporate name to Griffith Laboratories International, Inc.;

C. on January 15, 2016, Griffith Laboratories International, Inc. filed a Certificate of Amendment with the Delaware Secretary of State amending its corporate name to Griffith Foods International Inc.

ANSWER: National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 39. National Union admits only that Exhibit K of

Plaintiffs' Complaint purports to contain Certificates of Amendment filed with the Delaware Secretary of State. The Certificates of Amendment are written documents that speaks for themselves and are the best evidence of their contents. National Union denies any characterizations of the Certificates of Amendment in Paragraph 39 to the extent they are inconsistent with the contents of the documents themselves.

40. These corporate name changes did not impair any rights that Griffith has under the Policies as GFG and GFI are continuations of the Named Insured organizations in the Policies.

ANSWER: Paragraph 40 asserts legal conclusions to which no response is required. To the extent a response is required, National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 40.

The Underlying Suits Trigger, Or At Least Potentially Trigger, the Policies and Are Not Excluded

41. The Policies obligate AIG to "pay on behalf of [an] insured all sums which the insured shall become legally obligated to pay as damages because of … bodily injury … to which this insurance applies, caused by an occurrence…" *See* Ex. A, Comprehensive General Liability Insurance Coverage Part at 2; Ex. B, Comprehensive General Liability Insurance Coverage Part at [sic]

ANSWER: National Union admits that the Policies each contain the language cited by Griffith in Paragraph 41. However, the language cited by Griffith in Paragraph 41 forms a part of the Policies, which must each be read as a whole.

42. The Policies also obligate AIG to defend any "suit" against an insured "seeking damages on account of such bodily injury … even if any of the allegations of the suit are groundless, false or fraudulent…" Ex. A, Comprehensive General Liability Insurance Coverage Part at 2; Ex. B, Comprehensive General Liability Insurance Coverage Part at 2.

ANSWER: National Union admits that the Policies each contain the language cited by Griffith in Paragraph 42. However, the language cited by Griffith in Paragraph 42 forms a part of the Policies, which must each be read as a whole.

43. The Underlying Suits are each "suit" that seeks damages because of alleged "bodily injury" caused by one or more "occurrences" arising out of Griffith's business during the periods of the Policies.

ANSWER: National Union denies the allegations of Paragraph 43.

44. The Sudden and Accidental Pollution Exclusion is inapplicable here because, among other things:

A. Illinois law holds that the Sudden and Accidental Pollution Exclusion is inapplicable to the alleged "discharge, dispersal, release or escape" of any purported "irritants, contaminants or pollutants" where such "discharge, dispersal, release or escape" was made pursuant to a lawfully issued permitand the Underlying Suits allege at least in part that the Willowbrook facilityreleased EtO while operating under a lawfully issued permit from the Illinois Environmental Protection Agency, *see, e.g.*, FAMC ¶¶ 57-58, 60, 62, 71-104, 109, 277-78, 286-88; and

B. the Underlying Suits at least potentially allege that any "discharge, dispersal, release or escape" of EtO was "sudden and accidental" as that term is interpreted under Illinois law, *see* FAMC ¶¶ 71-104 (generally alleging that GFI negligently breached various duties through their operation of the Willowbrook facility via negligent and improperownership, maintenance, training, and control and that those breachesproximately caused the underlying injuries.)

ANSWER: Paragraph 44 asserts legal conclusions to which no response is required. To the extent a response is required, National Union denies the allegations of Paragraph 44.

45. No other exclusions or limitations in the Policies apply here.

ANSWER: National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 46.

46. Griffith has complied in all material respects with the conditions and requirements

of the Policies, or such conditions and requirements have been waived or their satisfaction otherwise excused by operation of law or by the conduct of AIG.

ANSWER: National Union denies the allegations of Paragraph 46.

47. Therefore, pursuant to the terms and conditions of the Policies, AIG's duty to defend was triggered by the Underlying Suits, including the TAMC and FAMC.

ANSWER: National Union denies the allegations of Paragraph 47.

48. Moreover, [p]ursuant to the terms and conditions of the Policies, AIG is obligated to indemnify Griffith in the event that Griffith incurs "damages" (including but not limited to any settlement(s) or judgment(s)) in connection with the Underlying Suits.

ANSWER: National Union denies the allegations of Paragraph 48.

COUNT ONE
(Breach of Contract – AIG's Duty to Defend Under the 83-84 Policy)

49. Griffith realleges and incorporates by reference the allegations of the foregoing paragraphs as if fully set forth herein.

ANSWER: National Union restates and incorporates by reference the answers contained in the foregoing paragraphs as if fully rewritten here.

50. Griffith and AIG entered into a legally binding written contract when AIG issued the 83-84 Policy.

ANSWER: Paragraph 50 asserts legal conclusions to which no response is required. To the extent a response is required, National Union admits that the 1983 Policy is an enforceable written contract, but denies the remaining allegations of Paragraph 50.

51. Griffith provided notice of the Underlying Suits to AIG under the 83-84 Policy.

ANSWER: National Union admits it received a letter dated January 29, 2021 from Griffith's counsel, which attached a list of cases, a copy of the Kamuda Complaint, and a Third

Amended Master Complaint filed in the Underlying Litigation. The January 29, 2021 letter and its enclosures are written documents that speak for themselves and are the best evidence of their contents. National Union denies any characterizations of the documents in Paragraph 51 to the extent they are inconsistent with the contents of the documents themselves.

52. By failing and refusing to perform its duty to defend Griffith with respect to the Underlying Suits as set forth above, AIG has breached the 83-84 Policy.

ANSWER: National Union denies the allegations of Paragraph 52.

53. As a direct and proximate result of such breach of contract, Griffith has been deprived of the benefit of its commercial general liability and has incurred direct damage on account thereof in excess of $75,000.

ANSWER: National Union denies the allegations of Paragraph 53.

COUNT TWO
(Breach of Contract – AIG's Duty to Defend Under the 84-85 Policy)

54. Griffith realleges and incorporates by reference the allegations of the foregoing paragraphs as if fully set forth herein.

ANSWER: National Union restates and incorporates by reference the answers contained in the foregoing paragraphs as if fully rewritten here.

55. Griffith and AIG entered into a legally binding written contract when AIG issued the 84-85 Policy.

ANSWER: Paragraph 55 asserts legal conclusions to which no response is required. To the extent a response is required, National Union admits that the 1984 Policy is an enforceable written contract, but denies the remaining allegations of Paragraph 55.

56. Griffith provided notice of the Underlying Suits to AIG under the 84-85 Policy.

ANSWER: National Union admits it received a letter dated January 29, 2021 from

Griffith's counsel, which attached a list of cases, a copy of the Kamuda Complaint, and the Third Amended Master Complaint filed in the Underlying Litigation. The January 29, 2021 letter and its enclosures are written document that speak for themselves and are the best evidence of their contents. National Union denies any characterizations of the documents in Paragraph 56 to the extent they are inconsistent with the contents of the documents themselves.

57. By failing and refusing to perform its duty to defend Griffith with respect to the Underlying Suits as set forth above, AIG has breached the 84-85 Policy.

ANSWER: National Union denies the allegations of Paragraph 57.

58. As a direct and proximate result of such breach of contract, Griffith has been deprived of the benefit of its commercial general liability and has incurred direct damage on account thereof in excess of $75,000.

ANSWER: National Union denies the allegations of Paragraph 58.

COUNT THREE
(Declaratory Judgment Pursuant to 28 U.S.C. § 2201 – 83-84 Policy)

59. Griffith realleges and incorporates by reference the allegations of the foregoing paragraphs as if fully set forth herein.

ANSWER: National Union restates and incorporates by reference the answers contained in the foregoing paragraphs as if fully rewritten here.

60. AIG has a duty to defend Griffith with respect to any suit that is at least potentially covered under the 83-84 Policy.

ANSWER: Paragraph 60 asserts legal conclusions to which no response is required. To the extent a response is required, National Union denies the allegations of Paragraph 60.

61. An insurer in doubt over whether a suit against its insured is at least potentially covered under its policy must either: (1) defend its insured under a reservation of rights; or (2)

promptly file a declaratory judgment action to resolve any questions concerning its duty to defend.

ANSWER: Paragraph 61 asserts legal conclusions to which no response is required. To the extent a response is required, National Union denies the allegations of Paragraph 61.

62. Where a suit against an insured is at least potentially covered under an insurer's policy, but the insurer fails to take either of the foregoing courses of action, that insurer is estopped from asserting defenses to coverage.

ANSWER: Paragraph 62 asserts legal conclusions to which no response is required. To the extent a response is required, National Union denies the allegations of Paragraph 62.

63. For the reasons set forth in detail above, the Underlying Suits are covered or, at a minimum, at least potentially covered, under the 83-84 Policy.

ANSWER: National Union denies the allegations of Paragraph 63.

64. AIG failed and refused to defend Griffith in the Underlying Suits under a reservation of rights and did not promptly file a declaratory judgment action with respect to its duty to defend.

ANSWER: National Union denies the allegations of Paragraph 64.

65. AIG is, therefore, estopped from asserting defenses to coverage.

ANSWER: National Union denies the allegations of Paragraph 65.

66. Moreover, AIG has denied any duty to indemnify Griffith with respect to the Underlying Suits.

ANSWER: National Union admits the allegations of Paragraph 66.

67. An actual and justiciable controversy thus exists between Griffith and AIG as the parties' rights and obligations under the 83-84 Policy, including without limitation whether: (1) AIG has a duty to defend Griffith in the Underlying Suits; (2) AIG is estopped from asserting

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defenses to coverage; and (3) whether AIG has a duty to indemnify Griffith for any "damages" Griffith may incur in the Underlying Suits.

ANSWER: Paragraph 67 asserts legal conclusions to which no response is required. To the extent a response is required, National Union admits only that there is an actual and justiciable controversy between National Union and Griffith regarding the rights and obligations, if any, regarding insurance coverage under the 1983 Policy for the Underlying Litigation. National Union denies all remaining allegations of Paragraph 67.

68. Accordingly, Griffith seeks an order pursuant to 28 U.S.C. § 2201 declaring the parties respective rights and obligations with respect to the 83-84 Policy, including that: (a) AIG has a duty to defend Griffith in the Underlying Suits under the 83-84 Policy, (b) as a result of its breach of its duty to defend Griffith, AIG is estopped from raising defenses to coverage under the 83-84 Policy, and (c) AIG has a duty to indemnify Griffith under the 83-84 Policy for any damages Griffith may incur in the Underlying Suits.

ANSWER: The allegations of Paragraph 68 constitute Plaintiffs' characterization of this lawsuit to which no answer is required. To the extent any response is required, National Union admits Griffith seeks the relief set forth in Paragraph 68 but denies that Griffith is entitled to the relief sought. National Union denies all remaining allegations of Paragraph 68.

COUNT FOUR
(Declaratory Judgment Pursuant to 28 U.S.C. § 2201 – 84-85 Policy)

69. Griffith realleges and incorporates by reference the allegations of the foregoing paragraphs as if fully set forth herein.

ANSWER: National Union restates and incorporates by reference the answers contained in the foregoing paragraphs as if fully rewritten here.

70. AIG has a duty to defend Griffith with respect to any suit that is at least potentially

covered under the 84-85 Policy.

ANSWER: Paragraph 70 asserts legal conclusions to which no response is required. To the extent a response is required, National Union denies the allegations of Paragraph 70.

71. An insurer in doubt over whether a suit against its insured is at least potentially covered under its policy must either: (1) defend its insured under a reservation of rights; or (2) promptly file a declaratory judgment action to resolve any questions concerning its duty to defend.

ANSWER: Paragraph 71 asserts legal conclusions to which no response is required. To the extent a response is required, National Union denies the allegations of Paragraph 71.

72. Where a suit against an insured is at least potentially covered under an insurer's policy, but the insurer fails to take either of the foregoing courses of action, that insurer is estopped from asserting defenses to coverage.

ANSWER: Paragraph 72 asserts legal conclusions to which no response is required. To the extent a response is required, National Union denies the allegations of Paragraph 72.

73. For the reasons set forth in detail above, the Underlying Suits are covered or, at a minimum, at least potentially covered, under the 84-85 Policy.

ANSWER: National Union denies the allegations of Paragraph 73.

74. AIG failed and refused to defend Griffith in the Underlying Suits under a reservation of rights and did not promptly file a declaratory judgment action with respect to its duty to defend.

ANSWER: National Union denies the allegations of Paragraph 74.

75. AIG is, therefore, estopped from asserting defenses to coverage.

ANSWER: National Union denies the allegations of Paragraph 75.

76. Moreover, AIG has denied any duty to indemnify Griffith with respect to the

Underlying Suits.

ANSWER: National Union admits the allegations of Paragraph 76.

77. An actual and justiciable controversy thus exists between Griffith and AIG as the parties' rights and obligations under the 84-85 Policy, including without limitation whether: (1) AIG has a duty to defend Griffith in the Underlying Suits; (2) AIG is estopped from asserting defenses to coverage; and (3) whether AIG has a duty to indemnify Griffith for any "damages" Griffith may incur in the Underlying Suits.

ANSWER: Paragraph 77 asserts legal conclusions to which no response is required. To the extent a response is required, National Union admits only that there is an actual and justiciable controversy between National Union and Griffith regarding the rights and obligations, if any, regarding insurance coverage under the 1984 Policy for the Underlying Litigation. National Union denies all remaining allegations of Paragraph 77.

78. Accordingly, Griffith seeks an order pursuant to 28 U.S.C. § 2201 declaring the parties respective rights and obligations with respect to the 84-85 Policy, including that: (a) AIG has a duty to defend Griffith in the Underlying Suits under the 84-85 Policy, (b) as a result of its breach of its duty to defend Griffith, AIG is estopped from raising defenses to coverage under the 84-85 Policy, and (c) AIG has a duty to indemnify Griffith under the 84-85 Policy for any damages Griffith may incur in the Underlying Suits.

ANSWER: The allegations of Paragraph 78 constitute Plaintiffs' characterization of this lawsuit to which no answer is required. To the extent any response is required, National Union admits Griffith seeks the relief set forth in Paragraph 78 but denies that Griffith is entitled to the relief sought. National Union denies all remaining allegations of Paragraph 78.

GENERAL DENIAL

Any and all allegations of Plaintiffs' Complaint that are not specifically admitted herein are denied.

WHEREFORE, Defendant National Union Fire Insurance Company of Pittsburgh, Pa. respectfully requests that this Court find and declare that Plaintiffs are not entitled to any relief or remedies sought against National Union in Plaintiffs' Complaint and dismiss Plaintiffs' claims against National Union with prejudice, awarding National Union costs of this action and all further relief that this Court deems just and proper.

NATIONAL UNION'S AFFIRMATIVE DEFENSES

National Union hereby sets forth its separate and distinct Affirmative Defenses to Plaintiffs' Complaint. National Union sets forth the following matters to apprise Plaintiffs of certain potentially applicable defenses. By listing any matters as an affirmative defense, National Union does not assume the burden of proving any matter upon which Plaintiffs bear the burden of proof under applicable law. National Union specifically reserves all rights to amend, withdraw, or assert any additional affirmative defense as continuing discovery in this matter may dictate.

FIRST AFFIRMATIVE DEFENSE

National Union issued to Griffith Laboratories, Inc. and Griffith Laboratories U.S.A., Inc. Policy No. GLA 945 70 58RA, effective September 30, 1983 to September 30, 1984, and Policy No. GLA 194 00 11RA, effective September 30, 1984 to September 30, 1985 (collectively, the "Policies"). The Policies only provide coverage to an Insured, as defined.

In relevant part, the Policies provide that "Named Insured" means the organization, including any subsidiary thereof, named in item 1 of the declarations and also includes any other company which is acquired or formed by the named insured during the policy period and over

which the named insured maintains ownership or financial control, provided this insurance does not apply to any such newly acquired or formed company which is an insured under any other liability or indemnity policy or would be an insured under any such policy but for its termination upon exhaustion of its limits of liability. Such insurance as may be afforded and newly acquired or formed company shall terminate within sixty days of its acquisition of formation unless reported to the company within said sixty days.

The Policies also provide that "insured" includes as "named insured" any organization which is acquired or formed by the "named insured" and over which the named insured maintains ownership or majority interest, other than a joint venture, provided this insurance does not apply to "bodily injury," "property damage," "personal injury or advertising injury" with respect to which such new organization under this policy is also an insured under any other similar liability or indemnity policy or would be an insured under any such policy but for exhaustion of its limits of liability. The insurance afforded hereby shall terminate 90 days from the date any such organization is acquired or formed by the named insured.

Item 1 of the Policies, as amended by endorsement, identifies Griffith Laboratories U.S.A., Inc. and Griffith Laboratories, Inc. as Named Insureds.

Griffith Foods International Inc. ("GFII") and Griffith Foods Group Inc. ("GFGI"), bear the burden to establish that they qualify as Named Insureds. National Union does not owe coverage to GFII and GFGI under the Policies, because GFII and GFGI have not met their burden as they have not presented evidence sufficient to establish that they were acquired or formed by Griffith Laboratories U.S.A., Inc. and/or Griffith Laboratories, Inc. during the effective dates of the Policies. Further, National Union does not owe coverage to GFII and GFGI, because their formation or acquisition was not timely reported to National Union.

SECOND AFFIRMATIVE DEFENSE

The Policies only provide coverage to entities that qualify as an Insured. GFII and GFGI have the burden to establish that they qualify as insureds. GFII and GFGI have not established that they are, in fact, the corporate successors to the Named Insureds of the Policies, Griffith Laboratories U.S.A., Inc. and Griffith Laboratories, Inc.

THIRD AFFIRMATIVE DEFENSE

The Policies provide coverage for an Insured, in relevant part, for damages sought because of "bodily injury." The Policies define "bodily injury" as bodily injury, sickness or disease sustained by any person which occurs during the policy period, including death at any time resulting therefrom. The Policies do not provide coverage to an Insured for damages sought in the consolidated lawsuits pending under the caption *In re: Willowbrook Ethlyene Oxide Litigation*, Case No. 18 L 10475, Circuit Court of Cook County, Illinois, County Department, Law Division ("the Underlying Litigation") that are not damages because of "bodily injury."

FOURTH AFFIRMATIVE DEFENSE

The Policies do not provide coverage for an Insured, in relevant part, for damages sought in the Underlying Litigation because of "bodily injury" that did not take place during the effective dates of the Policies.

FIFTH AFFIRMATIVE DEFENSE

The Policies provide coverage for an Insured, in relevant part, for damages sought because of "bodily injury" caused by an "occurrence." The Policies define an "occurrence" as an accident, including continuous or repeated exposure to conditions, which results in "bodily injury" neither expected nor intended from the standpoint of the Insured. The Underlying Litigation alleges that the historical operations of the Willowbrook facilities emissions of Ethylene Oxide ("EtO") were

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permitted and tracked. Emissions of EtO were not accidental, but rather were expected and intended and, therefore, damages sought for "bodily injury" were not caused by an "occurrence."

SIXTH AFFIRMATIVE DEFENSE

Pursuant to Exclusion (f), the Policies do not apply to "bodily injury" or "property damage" arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental (the "Pollution Exclusion"). The Underlying Litigation alleges liability arising out of EtO emissions for decades at the Willowbrook facilities. EtO emissions constitute a discharge, dispersal, release or escape of vapors, fumes, toxic chemicals, gases, other irritants, contaminants, and/or pollutants into the atmosphere. EtO is toxic and is a known carcinogen. Consequently, the Pollution Exclusions preclude coverage for the damages sought in the Underlying Litigation.

The sudden and accidental exception to the Pollution Exclusions does not reinstate coverage under the Policies. Decades of EtO emissions were expected and intended. Under operating permits and routine business operations, air-borne emission of EtO was planned and expected. The discharge, dispersal, release or escape of EtO was not sudden and accidental.

SEVENTH AFFIRMATIVE DEFENSE

National Union's coverage obligations, if any, under the Policies, with respect to the Underlying Litigation may be limited by those amounts of other insurance policies available to provide coverage for an Insured relative to the Underlying Litigation.

JURY DEMAND

Defendant National Union Insurance Company of Pittsburgh, Pa. hereby demands a trial by jury of all triable issues in this case.

Dated: January 31, 2022

Respectfully Submitted,
NICOLAIDES FINK THORPE
MICHAELIDES SULLIVAN LLP

By: /s Joseph P. Lang

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of January, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following email addresses:

James M. Davis
Perkins Coie LLP
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/s Joseph P. Lang

4857-9521-6392.3

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No. GLA— 9457058 RA
GLA 945 66 32 RA
RENEWAL OF NUMBER

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.

A CAPITAL STOCK COMPANY

70 Pine Street, New York, N.Y. 10270

DECLARATIONS

Item 1. Named Insured and Address: (No., Street, Town or City, County, State)

Griffith Laboratories, Inc.
1220 S. Central Ave.
Alsip, IL 60650

Alexander & Alexander Inc.
130 E. Randolph Drive
Chicago, Illinois 60601
Telephone 312 565-6000

Item 2. Policy Period: (No. Day Yr.)
From September 30, 1983 to September 30, 1984
12:01 A.M., standard time at the address of the named insured as stated herein.

The named insured is:
☐ Individual ☐ Partnership ☒ Corporation ☐ Joint Venture ☐ Other:

Business of the named insured is: (ENTER BELOW)

Audit Period: Annual, unless otherwise stated. (ENTER BELOW)

Item 3. The insurance afforded is only with respect to the Coverage Part(s) indicated below by specific premium charge(s) and attached to and forming a part of this policy.

Advance Premiums	Coverage Part No(s).	Coverage Part(s)	Advance Premiums	Coverage Part No(s).	Coverage Part(s)
$		Automobile Medical Payments Insurance	$		Hospital Professional Liability Insurance
$		Automobile Physical Damage Insurance (Dealers)	$		Manufacturers' and Contractors' Liability Insurance
$		Automobile Physical Damage Insurance (Fleet Automatic)	$		Owner's and Contractor's Protective Liability Insurance
$		Automobile Physical Damage Insurance (Non-Fleet)	$		Owners', Landlords' and Tenants' Liability Insurance
$		Basic Automobile Liability Insurance	$		Personal Injury Liability Insurance
$		Completed Operations and Products Liability Insurance	$		Physicians', Surgeons' and Dentists' Professional Liability Insurance
$		Comprehensive Automobile Liability Insurance	$		Premises Medical Payments Insurance
$ 29,342	L6394a	Comprehensive General Liability Insurance	$		Special Protective and Highway Liability Insurance New York Department of Transportation
$		Comprehensive Personal Insurance			
$		Contractual Liability Insurance	$		Storekeeper's Insurance
$		Druggists' Liability Insurance	$		Uninsured Motorists Insurance
$		Elevator Collision Insurance	$		
$		Farm Employers' Liability and Farm Employees' Medical Payments Insurance	$		
$		Farmer's Comprehensive Personal Insurance			
$		Farmer's Medical Payments Insurance	$		
$		Garage Insurance			
$					Form numbers of endorsements, other than those entered on Coverage Part(s), attached at issue
$ 29,342	Total Advance Premium for this policy.				

* If the Policy Period is more than one year and the premium is to be paid in installments, premium is payable on:

Effective Date	1st Anniversary	2nd Anniversary
$	$	$

Item 4. During the past three years no insurer has cancelled insurance, issued to the named insured, similar to that afforded hereunder, unless otherwise stated herein:

Dec. 29, 1983 JMCF

Countersigned:

*Not applicable in Texas

By James A. Fowler
Authorized Representative

OKP6300-X-F
(1-1-73)
Ptd. in U.S.A.

Order by 33837 (6/81)

SUBMITTED - 25587 - Lauri McDonald - 6/23/2025 12:28 PM
CONFIDENTIAL
GRIFFOODS000006460

NATIONAL UNION FIRE INSURANCE COMPANY
OF PITTSBURGH, PA.

(A stock insurance company, herein called the company)

In consideration of the payment of the premium, in reliance upon the statements in the declarations made a part hereof and subject to all of the terms of this policy, agrees with the **named insured** as follows:

DEFINITIONS

When used in this policy (including endorsements forming a part hereof):

"**automobile**" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto), but does not include **mobile equipment**;

"**bodily injury**" means bodily injury, sickness or disease sustained by any person which occurs during the policy period, including death at any time resulting therefrom;

"**collapse hazard**" includes "structural property damage" as defined herein and **property damage** to any other property at any time resulting therefrom. "Structural property damage" means the collapse of or structural injury to any building or structure due to (1) grading of land, excavating, borrowing, filling, back-filling, tunnelling, pile driving, cofferdam work or caisson work or (2) moving, shoring, underpinning, raising or demolition of any building or structure or removal or rebuilding of any structural support thereof. The **collapse hazard** does not include **property damage** (1) arising out of operations performed for the **named insured** by independent contractors, or (2) included within the **completed operations hazard** or the **underground property damage hazard**, or (3) for which liability is assumed by the **insured** under an **incidental contract**;

"**completed operations hazard**" includes **bodily injury** and **property damage** arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the **bodily injury** or **property damage** occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the **named insured**. "Operations" include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

(1) when all operations to be performed by or on behalf of the **named insured** under the contract have been completed,

(2) when all operations to be performed by or on behalf of the **named insured** at the site of the operations have been completed, or

(3) when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

The **completed operations hazard** does not include **bodily injury** or **property damage** arising out of

(a) operations in connection with the transportation of property, unless the **bodily injury** or **property damage** arises out of a condition in or on a vehicle created by the loading or unloading thereof,

(b) the existence of tools, uninstalled equipment or abandoned or unused materials, or

(c) operations for which the classification stated in the policy or in the company's manual specifies "including completed operations";

"**elevator**" means any hoisting or lowering device to connect floors or landings, whether or not in service, and all appliances thereof including any car, platform, shaft, hoistway, stairway, runway, power equipment and machinery; but does not include an **automobile** servicing hoist, or a hoist without a platform outside a building if without mechanical power or if not attached to building walls, or a hod or material hoist used in alteration, construction or demolition operations, or an inclined conveyor used exclusively for carrying property or a dumbwaiter used exclusively for carrying property and having a compartment height not exceeding four feet;

"**explosion hazard**" includes **property damage** arising out of blasting or explosion. The **explosion hazard** does not include **property damage** (1) arising out of the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment, or (2) arising out of operations performed for the **named insured** by independent contractors, or (3) included within the **completed operations hazard** or the **underground property damage hazard**, or (4) for which liability is assumed by the **insured** under an **incidental contract**;

"**incidental contract**" means any written (1) lease of premises, (2) easement agreement, except in connection with construction or demolition operations on or adjacent to a railroad, (3) undertaking to indemnify a municipality required by municipal ordinance, except in connection with work for the municipality, (4) sidetrack agreement, or (5) **elevator** maintenance agreement;

"**insured**" means any person or organization qualifying as an insured in the "Persons Insured" provision of the applicable insurance coverage. The insurance afforded applies separately to each **insured** against whom claim is made or suit is brought, except with respect to the limits of the company's liability;

"**mobile equipment**" means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled, (1) not subject to motor vehicle registration, or (2) maintained for use exclusively on premises owned by or rented to the **named insured**, including the ways immediately adjoining, or (3) designed for use principally off public roads, or (4) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers (other than the mix-in-transit type); graders, scrapers, rollers and other road construction or repair equipment; air-compressors, pumps and generators, including spraying, welding and building cleaning equipment; and geophysical exploration and well servicing equipment;

"**named insured**" means the person or organization named in Item 1. of the declarations of this policy;

"**named insured's products**" means goods or products manufactured, sold, handled or distributed by the **named insured** or by others trading under his name, including any container thereof (other than a vehicle), but "**named insured's products**" shall not include a vending machine or any property other than such container, rented to or located for use of others but not sold;

"**occurrence**" means an accident, including continuous or repeated exposure to conditions, which results in **bodily injury** or **property damage** neither expected nor intended from the standpoint of the **insured**;

"**policy territory**" means:

(1) the United States of America, its territories or possessions, or Canada, or

(2) international waters or air space, provided the **bodily injury** or **property damage** does not occur in the course of travel or transportation to or from any other country, state or nation, or

(3) anywhere in the world with respect to damages because of **bodily injury** or **property damage** arising out of a product which was sold for use or consumption within the territory described in paragraph (1) above, provided the original suit for such damages is brought within such territory;

"**products hazard**" includes **bodily injury** and **property damage** arising out of the **named insured's products** or reliance upon a representation or warranty made at any time with respect thereto, but only if the **bodily injury** or **property damage** occurs away from premises owned by or rented to the **named insured** and after physical possession of such products has been relinquished to others;

"**property damage**" means (1) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an **occurrence** during the policy period;

"**underground property damage hazard**" includes underground property damage as defined herein and **property damage** to any other property at any time resulting therefrom. "Underground property damage" means **property damage** to wires, conduits, pipes, mains, sewers, tanks, tunnels, any similar property, and any apparatus in connection therewith, beneath the surface of the ground or water, caused by and occurring during the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, borrowing, filling, back-filling or pile driving. The **underground property damage hazard** does not include **property damage** (1) arising out of operations performed for the **named insured** by independent contractors, or (2) included within the **completed operations hazard**, or (3) for which liability is assumed by the **insured** under an **incidental contract**.

SUPPLEMENTARY PAYMENTS

The company will pay, in addition to the applicable limit of liability:

(a) all expenses incurred by the company, all costs taxed against the **insured** in any suit defended by the company and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the company's liability thereon;

(b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the **insured** because of accident or traffic law violation arising out of the use of any vehicle to which this policy applies, not to exceed $250 per bail bond, but the company shall have no obligation to apply for or furnish any such bonds;

(c) expenses incurred by the **insured** for first aid to others at the time of an accident, for **bodily injury** to which this policy applies;

(d) reasonable expenses incurred by the **insured** at the company's request in assisting the company in the investigation or defense of any claim or suit, including actual loss of earnings not to exceed $25 per day.

Case: 1:21-cv-04581 Document #: 25-1 Filed: 12/15/21 Page 3 of 25 PageID #:453

Attach Coverage Part(s) and Endorsement(s) If Any Here

CONDITIONS

1. **Premium:** All premiums for this policy shall be computed in accordance with the company's rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein.

Premium designated in this policy as "advance premium" is a deposit premium only which shall be credited to the amount of the earned premium due at the end of the policy period. At the close of each period (or part thereof terminating with the end of the policy period) designated in the declarations as the audit period the earned premium shall be computed for such period and, upon notice thereof to the **named insured**, shall become due and payable. If the total earned premium for the policy period is less than the premium previously paid, the company shall return to the **named insured** the unearned portion paid by the **named insured**.

The **named insured** shall maintain records of such information as is necessary for premium computation, and shall send copies of such records to the company at the end of the policy period and at such times during the policy period as the company may direct.

2. **Inspection and Audit:** The company shall be permitted but not obligated to inspect the **named insured's** property and operations at any time. Neither the company's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the **named insured** or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

The company may examine and audit the **named insured's** books and records at any time during the policy period and extensions thereof and within three years after the final termination of this policy, as far as they relate to the subject matter of this insurance.

3. **Financial Responsibility Laws:** When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for **bodily injury** liability or for **property damage** liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law. The **insured** agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

4. **Insured's Duties in the Event of Occurrence, Claim or Suit:**

(a) In the event of an **occurrence**, written notice containing particulars sufficient to identify the **insured** and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the **insured** to the company or any of its authorized agents as soon as practicable.

(b) If claim is made or suit is brought against the **insured**, the **insured** shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

(c) The **insured** shall cooperate with the company and, upon the company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **insured** because of injury or damage with respect to which insurance is afforded under this policy; and the **insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **insured** shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of accident.

5. **Action Against Company:** No action shall lie against the company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the **insured's** obligation to pay shall have been finally determined either by judgment against the **insured** after actual trial or by written agreement of the **insured**, the claimant and the company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the company as a party to any action against the **insured** to determine the **insured's** liability, nor shall the company be impleaded by the **insured** or his legal representative. Bankruptcy or insolvency of the **insured** or of the **insured's** estate shall not relieve the company of any of its obligations hereunder.

6. **Other Insurance:** The insurance afforded by this policy is primary insurance, except when stated to apply in excess of or contingent upon the absence of other insurance. When this insurance is primary and the **insured** has other insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the company's liability under this policy shall not be reduced by the existence of such other insurance.

When both this insurance and other insurance apply to the loss on the same basis, whether primary, excess or contingent, the company shall not be liable under this policy for a greater proportion of the loss than that stated in the applicable contribution provision below:

(a) **Contribution by Equal Shares.** If all of such other valid and collectible insurance provides for contribution by equal shares, the company shall not be liable for a greater proportion of such loss than would be payable if each insurer contributes an equal share until the share of each insurer equals the lowest applicable limit of liability under any one policy or the full amount of the loss is paid, and with respect to any amount of loss not so paid the remaining insurers then continue to contribute equal shares of the remaining amount of the loss until each such insurer has paid its limit in full or the full amount of the loss is paid.

(b) **Contribution by Limits.** If any of such other insurance does not provide for contribution by equal shares, the company shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

7. **Subrogation:** In the event of any payment under this policy, the company shall be subrogated to all the **insured's** rights of recovery therefor against any person or organization and the **insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **insured** shall do nothing after loss to prejudice such rights.

8. **Changes:** Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

9. **Assignment:** Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon; if, however, the **named insured** shall die, such insurance as is afforded by this policy shall apply (1) to the **named insured's** legal representative, as the **named insured**, but only while acting within the scope of his duties as such, and (2) with respect to the property of the **named insured**, to the person having proper temporary custody thereof, as **insured**, but only until the appointment and qualification of the legal representative.

10. **Three Year Policy:** If this policy is issued for a period of three years any limit of the company's liability stated in this policy as "aggregate" shall apply separately to each consecutive annual period thereof.

11. **Cancellation:** This policy may be cancelled by the **named insured** by surrender thereof to the company or any of its authorized agents or by mailing to the company written notice stating when thereafter the cancellation shall be effective. This policy may be cancelled by the company by mailing to the **named insured** at the address shown in this policy, written notice stating when not less than ten days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the **named insured** or by the company shall be equivalent to mailing.

If the **named insured** cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

12. **Declarations:** By acceptance of this policy, the **named insured** agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

IN WITNESS WHEREOF, the National Union Fire Insurance Company has caused this policy to be signed by its president and secretary and countersigned on the declarations page by a duly authorized agent of the company.

Marion E. Taylor
Secretary

President

SUBMITTED 33258879 - Lauri McDonald - 6/23/2025 12:28 PM

Nuclear Energy Liability Exclusion Endorsement--Broad Form

It is agreed that:

I. The policy does not apply:

A. Under any Liability Coverage, to **bodily injury** or **property damage**

(1) with respect to which an **insured** under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(2) resulting from the **hazardous properties** of **nuclear material** and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the **insured** is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to first aid, to expenses incurred with respect to **bodily injury** resulting from the **hazardous properties** of **nuclear material** and arising out of the operation of a **nuclear facility** by any person or organization.

C. Under any Liability Coverage, to **bodily injury** or **property damage** resulting from the **hazardous properties** of **nuclear material**, if

(1) the **nuclear material** (a) is at any **nuclear facility** owned by, or operated by or on behalf of, an **insured** or (b) has been discharged or dispersed therefrom;

(2) the **nuclear material** is contained in **spent fuel** or **waste** at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an **insured**; or

(3) the **bodily injury** or **property damage** arises out of the furnishing by an **insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to **property damage** to such **nuclear facility** and any property thereat.

II. As used in this endorsement:

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means **source material**, **special nuclear material** or **byproduct material**;

"source material", **"special nuclear material"**, and **"byproduct material"** have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a **nuclear reactor**;

"waste" means any waste material

(a) containing **by-product material** other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its **source material** content, and

(b) resulting from the operation by any person or organization of any **nuclear facility** included under the first two paragraphs of the definition of **nuclear facility**;

"nuclear facility" means

(a) any **nuclear reactor**,

(b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing **spent fuel**, or (3) handling, processing or packaging **waste**,

(c) any equipment or device used for the processing, fabricating or alloying of **special nuclear material** if at any time the total amount of such material in the custody of the **insured** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,

(d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of **waste**,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"property damage" includes all forms of radioactive contamination of property.

NEW YORK—It is agreed that the provisions of the "Nuclear Energy Liability Exclusion Endorsement— Broad Form", printed above, do not apply in New York with respect to any Automobile Bodily Injury Liability and Automobile Property Damage Liability coverage afforded by this policy.

Alexander & Alexander Inc.
130 E. Randolph Drive
Chicago, Illinois 60601
Telephone 312 565-6000

COVERAGE PART

L 6394a
(Ed. 1-73)

COMPREHENSIVE GENERAL LIABILITY INSURANCE

For attachment to Policy No. GLA 945 70 58 RA, to complete said policy.

ADDITIONAL DECLARATIONS

Location of all premises owned by, rented to or controlled by the named insured (ENTER "SAME" IF SAME LOCATION AS ADDRESS SHOWN IN ITEM 1 OF DECLARATIONS)

Interest of named insured in such premises (CHECK BELOW)

☐ Owner ☐ General Lessee ☐ Tenant ☐ Other _____

Part occupied by named insured (ENTER BELOW)

The following discloses all hazards insured hereunder known to exist at the effective date of this policy, unless otherwise stated herein.

SCHEDULE

The insurance afforded is only with respect to such of the following Coverages as are indicated by specific premium charge or charges. The limit of the company's liability against each such Coverage shall be as stated herein, subject to all the terms of this policy having reference thereto.

Advance Premiums	Limits of Liability		Coverages
	each occurrence	aggregate	
$ 19,045	$ See Endt.	$ #1	A—Bodily Injury Liability
$ 10,297	$	$	B—Property Damage Liability
$			Form numbers of endorsements attached at issue
$ 29,342	Total Advance Premium		

General Liability Hazards

Advance Premiums		Rates		Premium Bases	Code No.	Description of Hazards
Bodily Injury	Property Damage	B.I.	P.D.			
	Included	In	Composite	Rate		Premises - Operations Endorsement #2
		(a) Per 100 Sq. Ft. of Area (b) Per Linear Foot (c) Per $100 of Remuneration (d) Per $100 of Receipts (e) Per Unit (f) Per 100 Admissions		(a) Area (Sq. Ft.) (b) Frontage (c) Remuneration (d) Receipts (e) Units (f) Admissions		
Included	Included	Per Landing		Number Insured		Escalators (Number at Premises)
Included	Included	Per $100 of Cost		Cost		Independent Contractors
Included	Included	(a) Per $1,000 of Receipts		(a) Receipts		Completed Operations
Included	Included	(b) Per $1,000 of Sales		(b) Sales		Products
$ 19,045	$ 10,297	Total Advance B.I. and P.D. Premiums				

When used as a premium basis:

1. "admissions" means the total number of persons, other than employees of the named insured, admitted to the event insured or to events conducted on the premises whether on paid admission tickets, complimentary tickets or passes;
2. "cost" means the total cost to the named insured with respect to operations performed for the named insured during the policy period by independent contractors of all work let or sub-let in connection with each specific project, including the cost of all labor, materials and equipment furnished, used or delivered for use in the execution of such work, whether furnished by the owner, contractor or subcontractor, including all fees, allowances, bonuses or commissions made, paid or due;
3. "receipts" means the gross amount of money charged by the named insured for such operations by the named insured or by others during the policy period as are rated on a receipts basis other than receipts from telecasting, broadcasting or motion pictures, and includes taxes, other than taxes which the named insured collects as a separate item and remits directly to a governmental division;
4. "remuneration" means the entire remuneration earned during the policy period by proprietors and by all employees of the named insured, other than chauffeurs (except operators of mobile equipment) and aircraft pilots and co-pilots, subject to any overtime earnings or limitation of remuneration rule applicable in accordance with the manuals in use by the company;
5. "sales" means the gross amount of money charged by the named insured or by others trading under his name for all goods and products sold or distributed during the policy period and charged during the policy period for installation, servicing or repair, and includes taxes, other than taxes which the named insured and such others collect as a separate item and remit directly to a governmental division.

(over)

SUBMITTED 33258879 - Lauri McDonald - 6/23/2025 12:28 PM
CONFIDENTIAL
GRIFFOODS000006464

I. COVERAGE A—BODILY INJURY LIABILITY
COVERAGE B—PROPERTY DAMAGE LIABILITY

The company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of

A. bodily injury or
B. property damage

to which this insurance applies, caused by an occurrence, and the company shall have the right and duty to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the company's liability has been exhausted by payment of judgments or settlements.

Exclusions

This insurance does not apply:

(a) to liability assumed by the insured under any contract or agreement except an incidental contract; but this exclusion does not apply to a warranty of fitness or quality of the named insured's products or a warranty that work performed by or on behalf of the named insured will be done in a workmanlike manner;

(b) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of
(1) any automobile or aircraft owned or operated by or rented or loaned to any insured, or
(2) any other automobile or aircraft operated by any person in the course of his employment by any insured;
but this exclusion does not apply to the parking of an automobile on premises owned by, rented to or controlled by the named insured or the ways immediately adjoining, if such automobile is not owned by or rented or loaned to any insured;

(c) to bodily injury or property damage arising out of (1) the ownership, maintenance, operation, use, loading or unloading of any mobile equipment while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity or (2) the operation or use of any snowmobile or trailer designed for use therewith;

(d) to bodily injury or property damage arising out of and in the course of the transportation of mobile equipment by an automobile owned or operated by or rented or loaned to any insured;

(e) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of
(1) any watercraft owned or operated by or rented or loaned to any insured, or
(2) any other watercraft operated by any person in the course of his employment by any insured;
but this exclusion does not apply to watercraft while ashore on premises owned by, rented to or controlled by the named insured;

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

(g) to bodily injury or property damage due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing, with respect to
(1) liability assumed by the insured under an incidental contract, or
(2) expenses for first aid under the Supplementary Payments provision;

(h) to bodily injury or property damage for which the insured or his indemnitee may be held liable
(1) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or
(2) if not so engaged, as an owner or lessor of premises used for such purposes,
if such liability is imposed
(i) by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage, or
(ii) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person;
but part (ii) of this exclusion does not apply with respect to liability of the insured or his indemnitee as an owner or lessor described in (2) above;

(i) to any obligation for which the insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(j) to bodily injury to any employee of the insured arising out of and in the course of his employment by the insured or to any obligation of the insured to indemnify another because of damages arising out of such injury; but this exclusion does not apply to liability assumed by the insured under an incidental contract;

(k) to property damage to
(1) property owned or occupied by or rented to the insured,
(2) property used by the insured, or
(3) property in the care, custody or control of the insured or as to which the insured is for any purpose exercising physical control;
but parts (2) and (3) of this exclusion do not apply with respect to liability under a written sidetrack agreement and part (3) of this exclusion does not apply with respect to property damage (other than to elevators) arising out of the use of an elevator at premises owned by, rented to or controlled by the named insured;

(l) to property damage to premises alienated by the named insured arising out of such premises or any part thereof;

(m) to loss of use of tangible property which has not been physically injured or destroyed resulting from
(1) a delay in or lack of performance by or on behalf of the named insured of any contract or agreement, or
(2) the failure of the named insured's products or work performed by or on behalf of the named insured to meet the level of performance, quality, fitness or durability warranted or represented by the named insured;
but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the named insured's products or work performed by or on behalf of the named insured after such products or work have been put to use by any person or organization other than an insured;

(n) to property damage to the named insured's products arising out of such products or any part of such products;

(o) to property damage to work performed by or on behalf of the named insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;

(p) to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the named insured's products or work completed by or for the named insured or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;

(q) to property damage included within:
(1) the explosion hazard in connection with operations identified in this policy by a classification code number which includes the symbol "x",
(2) the collapse hazard in connection with operations identified in this policy by a classification code number which includes the symbol "c",
(3) the underground property damage hazard in connection with operations identified in this policy by a classification code number which includes the symbol "u".

II. PERSONS INSURED

Each of the following is an insured under this insurance to the extent set forth below:

(a) if the named insured is designated in the declarations as an individual, the person so designated but only with respect to the conduct of a business of which he is the sole proprietor, and the spouse of the named insured with respect to the conduct of such a business;

(b) if the named insured is designated in the declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;

(c) if the named insured is designated in the declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his duties as such;

(d) any person (other than an employee of the named insured) or organization while acting as real estate manager for the named insured; and

(e) with respect to the operation, for the purpose of locomotion upon a public highway, of mobile equipment registered under any motor vehicle registration law,
(i) an employee of the named insured while operating any such equipment in the course of his employment, and
(ii) any other person while operating with the permission of the named insured any such equipment registered in the name of the named insured and any person or organization legally responsible for such operation, but only if there is no other valid and collectible insurance available, either on a primary or excess basis, to such person or organization;
provided that no person or organization shall be an insured under this paragraph (e) with respect to:
(1) bodily injury to any fellow employee of such person injured in the course of his employment, or
(2) property damage to property owned by, rented to, in charge of or occupied by the named insured or the employer of any person described in subparagraph (ii).

This insurance does not apply to bodily injury or property damage arising out of the conduct of any partnership or joint venture of which the insured is a partner or member and which is not designated in this policy as a named insured.

III. LIMITS OF LIABILITY

Regardless of the number of (1) insureds under this policy, (2) persons or organizations who sustain bodily injury or property damage, or (3) claims made or suits brought on account of bodily injury or property damage, the company's liability is limited as follows:

Coverage A—The total liability of the company for all damages, including damages for care and loss of services, because of bodily injury sustained by one or more persons as the result of any one occurrence shall not exceed the limit of bodily injury liability stated in the schedule as applicable to "each occurrence".

Subject to the above provision respecting "each occurrence", the total liability of the company for all damages because of (1) all bodily injury included within the completed operations hazard and (2) all bodily injury included within the products hazard shall not exceed the limit of bodily injury liability stated in the schedule as "aggregate".

Coverage B—The total liability of the company for all damages because of all property damage sustained by one or more persons or organizations as the result of any one occurrence shall not exceed the limit of property damage liability stated in the schedule as applicable to "each occurrence".

Subject to the above provision respecting "each occurrence", the total liability of the company for all damages because of all property damage to which this coverage applies and described in any of the numbered subparagraphs below shall not exceed the limit of property damage liability stated in the schedule as "aggregate":
(1) all property damage arising out of premises or operations rated on a remuneration basis or contractor's equipment rated on a receipts basis, including property damage for which liability is assumed under any incidental contract relating to such premises or operations, but excluding property damage included in subparagraph (2) below;
(2) all property damage arising out of and occurring in the course of operations performed for the named insured by independent contractors and general supervision thereof by the named insured, including any such property damage for which liability is assumed under any incidental contract relating to such operations, but this subparagraph (2) does not include property damage arising out of maintenance or repairs at premises owned by or rented to the named insured or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;
(3) all property damage included within the products hazard and all property damage included within the completed operations hazard.

Such aggregate limit shall apply separately to the property damage described in subparagraphs (1), (2) and (3) above, and under subparagraphs (1) and (2), separately with respect to each project away from premises owned by or rented to the named insured.

Coverages A and B—For the purpose of determining the limit of the company's liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

IV. POLICY TERRITORY

This insurance applies only to bodily injury or property damage which occurs within the policy territory.

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(The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy.)

LIABILITY GL 04 04 (Ed. 05 81) L 6111 (Ed. 5-81)

BROAD FORM COMPREHENSIVE GENERAL LIABILITY ENDORSEMENT

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:
COMPREHENSIVE GENERAL LIABILITY INSURANCE

This endorsement, effective September 30, 1983 (12:01 A. M., standard time), forms a part of policy No. GLA 945 70 58 RA

issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

James A. Fowler
Authorized Representative

SCHEDULE

Personal Injury and Advertising Injury Liability
Aggregate Limit shall be the per occurrence bodily injury liability limit unless otherwise indicated herein.
Limit of Liability $_____ Aggregate

Limit of Liability—Premises Medical Payments Coverage:
$1,000 each person. unless otherwise indicated herein $_____ each person.

Limit of Liability—Fire Legal Liability Coverage:
$50,000 per occurrence unless otherwise indicated herein: $_____ per occurrence.

Advance Premium	Premium Basis
$	_____% OF THE TOTAL COMPREHENSIVE GENERAL LIABILITY BODILY INJURY AND PROPERTY DAMAGE PREMIUM AS OTHERWISE DETERMINED
$	MINIMUM PREMIUM

I. CONTRACTUAL LIABILITY COVERAGE

(A) The definition of **incidental contract** is extended to include any oral or written contract or agreement relating to the conduct of the **named insured's** business.

(B) The insurance afforded with respect to liability assumed under an **incidental contract** is subject to the following additional exclusions:

(1) to **bodily injury** or **property damage** for which the **insured** has assumed liability under any **incidental contract**, if such injury or damage occurred prior to the execution of the **incidental contract**;

(2) if the **insured** is an architect, engineer or surveyor, to **bodily injury** or **property damage** arising out of the rendering of or the failure to render professional services by such **insured**, including
(a) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, and
(b) supervisory, inspection or engineering services;

(3) if the indemnitee of the **insured** is an architect, engineer or surveyor, to the liability of the indemnitee, his agents or employees, arising out of
(a) the preparation or approval of or the failure to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or
(b) the giving of or the failure to give directions or instructions by the indemnitee, his agents or employees, provided such giving or failure to give is the primary cause of the **bodily injury** or **property damage**;

(4) to any obligation for which the **insured** may be held liable in an action on a contract by a third party beneficiary for **bodily injury** or **property damage** arising out of a project for a public authority; but this exclusion does not apply to an action by the public authority or any other person or organization engaged in the project;

(5) to **bodily injury** or **property damage** arising out of construction or demolition operations, within 50 feet of any railroad property, and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing; but this exclusion does not apply to sidetrack agreements.

(C) The following exclusions applicable to Coverages A (Bodily Injury) and B (Property Damage) do not apply to this Contractual Liability Coverage: (b), (c) (2), (d) and (e).

(D) The following additional condition applies:

Arbitration
The company shall be entitled to exercise all of the **insured's** rights in the choice of arbitrators and in the conduct of any arbitration proceeding.

II. PERSONAL INJURY AND ADVERTISING INJURY LIABILITY COVERAGE

(A) The company will pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as damages because of **personal injury** or **advertising injury** to which this insurance applies, sustained by any person or organization and arising out of the conduct of the **named insured's** business, within the **policy territory**, and the company shall have the right and duty to defend any suit against the **insured** seeking damages on account of such injury, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the company's liability has been exhausted by payment of judgments or settlements.

(B) This insurance does not apply:

(1) to liability assumed by the **insured** under any contract or agreement;

(2) to **personal injury** or **advertising injury** arising out of the wilful violation of a penal statute or ordinance committed by or with the knowledge or consent of the **insured**;

(3) to **personal injury** or **advertising injury** arising out of a publication or utterance of a libel or slander, or a publication or utterance in violation of an individual's right of privacy, if the first injurious publication or utterance of the same or similar material by or on behalf of the **named insured** was made prior to the effective date of this insurance;

(4) to **personal injury** or **advertising injury** arising out of libel or slander or the publication or utterance of defamatory or disparaging material concerning any person or organization or goods, products or services, or in violation of an individual's right of privacy, made by or at the direction of the **insured** with knowledge of the falsity thereof;

(5) to **personal injury** or **advertising injury** arising out of the conduct of any partnership or joint venture of which the **insured** is a partner or member and which is not designated in the declarations of the policy as a **named insured**;

(6) to **advertising injury** arising out of
(a) failure of performance of contract, but this exclusion does not apply to the unauthorized appropriation of ideas based upon alleged breach of implied contract, or
(b) infringement of trademark, service mark or trade name, other than titles or slogans, by use thereof on or in connection with goods, products or services sold, offered for sale or advertised, or
(c) incorrect description or mistake in advertised price of goods, products or services sold, offered for sale or advertised;

(7) with respect to **advertising injury**
(a) to any **insured** in the business of advertising, broadcasting, publishing or telecasting, or
(b) to any injury arising out of any act committed by the **insured** with actual malice.

(C) **Limits of Liability**
Regardless of the number of (1) **insureds** hereunder, (2) persons or organizations who sustain injury or damage, or (3) claims made or suits brought on account of **personal injury** or **advertising injury**, the total limit of the company's liability under this coverage for all damages shall not exceed the limit of liability stated in this endorsement as "aggregate".

(D) **Additional Definitions**
"**Advertising Injury**" means injury arising out of an offense committed during the **policy period** occurring in the course of the **named insured's** advertising activities, if such injury arises out of libel, slander, defamation, violation of right of privacy, piracy, unfair competition, or infringement of copyright, title or slogan.
"**Personal Injury**" means injury arising out of one or more of the following offenses committed during the policy period:

1. false arrest, detention, imprisonment, or malicious prosecution;
2. wrongful entry or eviction or other invasion of the right of private occupancy;
3. a publication or utterance
(a) of a libel or slander or other defamatory or disparaging material, or
(b) in violation of an individual's right of privacy;
except publications or utterances in the course of or related to advertising, broadcasting, publishing or telecasting activities conducted by or on behalf of the **named insured** shall not be deemed **personal injury**.

III. PREMISES MEDICAL PAYMENTS COVERAGE

The company will pay to or for each person who sustains **bodily injury** caused by accident all reasonable **medical expense** incurred within one year from the date of the accident on account of such **bodily injury**, provided such **bodily injury** arises out of (a) a condition in the **insured premises** or (b) operations with respect to which the **named insured** is afforded coverage for **bodily injury** liability under the policy.

This insurance does not apply:

(A) to **bodily injury**

(1) arising out of the ownership, maintenance, operation, use, loading or unloading of
(a) any **automobile** or aircraft owned or operated by or rented or loaned to any **insured**, or
(b) any other **automobile** or aircraft operated by any person in the course of his employment by any **insured**;
but this exclusion does not apply to the parking of an **automobile** on the **insured premises**, if such **automobile** is not owned by or rented or loaned to any **insured**;

(2) arising out of
(a) the ownership, maintenance, operation, use, loading or unloading of any **mobile equipment** while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity, or
(b) the operation or use of any snowmobile or trailer designed for use therewith;
(i) owned or operated by or rented or loaned to any **insured**, or
(ii) operated by any person in the course of his employment by any **insured**;

(3) arising out of the ownership, maintenance, operation, use, loading or unloading of
(a) any watercraft owned or operated by or rented or loaned to any **insured**, or
(b) any other watercraft operated by any person in the course of his employment by any **insured**;
but this exclusion does not apply to watercraft while ashore on the **insured premises**;

(over)

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(4) arising out of and in the course of the transportation of **mobile equipment** by an **automobile** owned or operated by or rented or loaned to the **named insured**;

(B) to **bodily injury**

(1) included within the **completed operations hazard** or the **products hazard**;

(2) arising out of operations performed for the **named insured** by independent contractors other than

(a) maintenance and repair of the **insured premises**, or

(b) structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;

(3) resulting from the selling, serving or giving of any alcoholic beverage

(a) in violation of any statute, ordinance or regulation,

(b) to a minor,

(c) to a person under the influence of alcohol, or

(d) which causes or contributes to the intoxication of any person,

if the **named insured** is a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or if not so engaged, is an owner or lessor of premises used for such purposes, but only part (a) of this exclusion (B) (3) applies when the **named insured** is such an owner or lessor;

(4) due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;

(C) to **bodily injury**

(1) to the **named insured**, any partner thereof, any tenant or other person regularly residing on the **insured premises** or any employee of any of the foregoing if the **bodily injury** arises out of and in the course of his employment therewith;

(2) to any other tenant if the **bodily injury** occurs on that part of the **insured premises** rented from the **named insured** or to any employee of such a tenant if the **bodily injury** occurs on the tenant's part of the **insured premises** and arises out of and in the course of his employment for the tenant;

(3) to any person while engaged in maintenance and repair of the **insured premises** or alteration, demolition or new construction at such premises;

(4) to any person if any benefits for such **bodily injury** are payable or required to be provided under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(5) to any person practicing, instructing or participating in any physical training, sport, athletic activity or contest whether on a formal or informal basis;

(6) if the **named insured** is a club, to any member of the **named insured**;

(7) if the **named insured** is a hotel, motel, or tourist court, to any guest of the **named insured**;

(D) to any **medical expense** for services by the **named insured**, any employee thereof or any person or organization under contract to the **named insured** to provide such services.

LIMITS OF LIABILITY

The limit of liability for Premises Medical Payments Coverage is $1,000 each person unless otherwise stated in the schedule of this endorsement. The limit of liability applicable to "each person" is the limit of the company's liability for all **medical expense** for **bodily injury** to any one person as the result of any one accident; but subject to the above provision respecting "each person", the total liability of the company under Premises Medical Payments Coverage for all **medical expense** for **bodily injury** to two or more persons as the result of any one accident shall not exceed the limit of **bodily injury** liability stated in the policy as applicable to "each **occurrence**".

When more than one **medical payments** coverage afforded by the policy applies to the loss, the company shall not be liable for more than the amount of the highest applicable limit of liability.

ADDITIONAL DEFINITIONS

When used herein:

"**insured premises**" means all premises owned by or rented to the **named insured** with respect to which the **named insured** is afforded coverage for **bodily injury** liability under this policy, and includes the ways immediately adjoining on land;

"**medical expense**" means expenses for necessary medical, surgical, x-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services.

ADDITIONAL CONDITION

Medical Reports; Proof and Payment of Claim

As soon as practicable the injured person or someone on his behalf shall give to the company written proof of claim, under oath if required, and shall, after each request from the company, execute authorization to enable the company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the company when and as often as the company may reasonably require. The company may pay the injured person or any person or organization rendering the services and the payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of the company.

IV. HOST LIQUOR LAW LIABILITY COVERAGE

Exclusion (h) does not apply with respect to liability of the **insured** or his indemnitee arising out of the giving or serving of alcoholic beverages at functions incidental to the **named insured's** business, provided the **named insured** is not engaged in the business of manufacturing, distributing, selling or serving of alcoholic beverages.

V. FIRE LEGAL LIABILITY COVERAGE—REAL PROPERTY

With respect to **property damage** to structures or portions thereof rented to or leased to the **named insured**, including fixtures permanently attached thereto, if such **property damage** arises out of fire

(A) All of the exclusions of the policy, other than the Nuclear Energy Liability Exclusion (Broad Form), are deleted and replaced by the following:

This insurance does not apply to liability assumed by the **insured** under any contract or agreement.

(B) The limit of **property damage** liability as respects this Fire Legal Liability Coverage—Real Property is $50,000 each **occurrence** unless otherwise stated in the Schedule of this endorsement.

(C) The Fire Legal Liability Coverage—Real Property shall be excess insurance over any valid and collectible property insurance (including any deductible portion thereof), available to the **insured**, such as, but not limited to, Fire, Extended Coverage, Builder's Risk Coverage or Installation Risk Coverage, and the Other Insurance Condition of the policy is amended accordingly.

VI. BROAD FORM PROPERTY DAMAGE LIABILITY COVERAGE (Including Completed Operations)

The insurance for **property damage** liability applies, subject to the following additional provisions:

(A.) Exclusions (k) and (o) are replaced by the following:

(1) to property owned or occupied by or rented to the **insured**, or, except with respect to the use of elevators, to property held by the **insured** for sale or entrusted to the **insured** for storage or safekeeping;

(2) except with respect to liability under a written sidetrack agreement or the use of **elevators**

(a) to property while on premises owned by or rented to the **insured** for the purpose of having operations performed on such property by or on behalf of the **insured**,

(b) to tools or equipment while being used by the **insured** in performing his operations,

(c) to property in the custody of the **insured** which is to be installed, erected or used in construction by the **insured**,

(d) to that particular part of any property, not on premises owned by or rented to the **insured**,

(i) upon which operations are being performed by or on behalf of the **insured** at the time of the **property damage** arising out of such operations, or

(ii) out of which any **property damage** arises, or

(iii) the restoration, repair or replacement of which has been made or is necessary by reason of faulty workmanship thereon by or on behalf of the **insured**;

(3) with respect to the **completed operations hazard** and with respect to any classification stated in the policy or in the company's manual as "including completed operations", to **property damage** to work performed by the **named insured** arising out of such work or any portion thereof, or out of such materials, parts or equipment furnished in connection therewith.

(B.) The Broad Form Property Damage Liability Coverage shall be excess insurance over any valid and collectible property insurance (including any deductible portion thereof) available to the **insured**, such as, but not limited to, Fire, Extended Coverage, Builder's Risk Coverage or Installation Risk Coverage, and the Other Insurance Condition of the policy is amended accordingly.

VII. INCIDENTAL MEDICAL MALPRACTICE LIABILITY COVERAGE

The definition of **bodily injury** is amended to include Incidental Medical Malpractice Injury.

Incidental Medical Malpractice Injury means injury arising out of the rendering of or failure to render, during the policy period, the following services:

(A) medical, surgical, dental, x-ray or nursing service or treatment or the furnishing of food or beverages in connection therewith; or

(B) the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances.

This coverage does not apply to:

(1) expenses incurred by the **insured** for first-aid to others at the time of an accident and the "Supplementary Payments" provision and the "Insured's Duties in the Event of Occurrence, Claim or Suit" Condition are amended accordingly;

(2) any **insured** engaged in the business or occupation of providing any of the services described under VII (A) and (B) above;

(3) injury caused by any indemnitee if such indemnitee is engaged in the business or occupation of providing any of the services described under VII (A) and (B) above.

VIII. NON-OWNED WATERCRAFT LIABILITY COVERAGE (under 26 feet in length)

Exclusion (e) does not apply to any watercraft under 26 feet in length provided such watercraft is neither owned by the **named insured** nor being used to carry persons or property for a charge.

Where the **insured** is, irrespective of this coverage, covered or protected against any loss or claim which would otherwise have been paid by the company under this endorsement, there shall be no contribution or participation by this company on the basis of excess, contributing, deficiency, concurrent, or double insurance or otherwise.

IX. LIMITED WORLDWIDE LIABILITY COVERAGE

The definition of **policy territory** is amended to include the following:

4. Anywhere in the world with respect to **bodily injury**, **property damage**, **personal injury** or **advertising injury** arising out of the activities of any **insured** permanently domiciled in the United States of America, its territories and possessions or Canada, provided the original suit for damages because of any such injury or damage is brought within the United States of America, its territories or possessions or Canada.

Such insurance as is afforded by paragraph 4. above shall not apply:

(a) to **bodily injury** or **property damage** included within the **completed operations hazard** or the **products hazard**;

(b) to Premises Medical Payments Coverage.

X. ADDITIONAL PERSONS INSURED

As respects **bodily injury**, **property damage** and **personal injury** and **advertising injury** coverages, under the provision "Persons Insured", the following are added as **insureds**:

(A) Spouse—Partnership—If the **named insured** is a partnership, the spouse of a partner but only with respect to the conduct of the business of the **named insured**;

(B) Employee—Any employee (other than executive officers) of the **named insured** while acting within the scope of his duties as such, but the insurance afforded to such employee does not apply:

(1) to **bodily injury** or **personal injury** to another employee of the **named insured** arising out of or in the course of his employment;

(2) to **personal injury** or **advertising injury** to the **named insured** or, if the **named insured** is a partnership or joint venture, any partner or member thereof, or the spouse of any of the foregoing;

(3) to **property damage** to property owned, occupied or used by, rented to, in the care, custody or control of or over which physical control is being exercised for any purpose by another employee of the **named insured**, or by the **named insured** or, if the **named insured** is a partnership or joint venture, by any partner or member thereof or by the spouse of any of the foregoing.

XI. EXTENDED BODILY INJURY COVERAGE

The definition of **occurrence** includes any intentional act by or at the direction of the **insured** which results in **bodily injury**, if such injury arises solely from the use of reasonable force for the purpose of protecting persons or property.

XII. AUTOMATIC COVERAGE—NEWLY ACQUIRED ORGANIZATIONS (90 DAYS)

The word **insured** shall include as **named insured** any organization which is acquired or formed by the **named insured** and over which the **named insured** maintains ownership or majority interest, other than a joint venture, provided this insurance does not apply to **bodily injury**, **property damage**, **personal injury** or **advertising injury** with respect to which such new organization under this policy is also an **insured** under any other similar liability or indemnity policy or would be an **insured** under any such policy but for exhaustion of its limits of liability. The insurance afforded hereby shall terminate 90 days from the date any such organization is acquired or formed by the **named insured**.

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COVERAGE PART — ELEVATOR COLLISION INSURANCE — L 9282 (Ed. 1-73)

For attachment to Policy No. GLA 945 70 58RA, to complete said policy.

SCHEDULE

The insurance afforded is only with respect to the following Coverage as indicated by specific premium charge. The limit of the company's liability against such Coverage shall be as stated herein, subject to all the terms of this policy having reference thereto. See Endt.

Coverage	#1 Limits of Liability
Q — Elevator Collision	thousand dollars each elevator collision

Designation of Elevators	Number of Elevators	Rate per Elevator	Premium
Included in Composite Rate Endorsement		$	$

Form numbers of endorsements attached at issue

$

Total Premium $ Included

I. COVERAGE Q—ELEVATOR COLLISION

The company will pay for loss

(1) to any elevator designated in the schedule for this insurance, or

(2) to any other property owned, occupied or used by, or rented to, or in the care, custody or control of the named insured or as to which the named insured is for any purpose exercising physical control,

caused by an elevator collision.

Exclusions

This insurance does not apply to any loss:

(a) caused by an elevator collision arising out of fire or caused by fire arising out of an elevator collision;

(b) caused by an elevator collision arising out of the breaking, burning out or disrupting of any electrical machine not located within the car of the elevator;

(c) due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing;

(d) with respect to which insurance is afforded by the policy under the Property Damage Liability Coverage or the Contractual Property Damage Liability Coverage.

II. LIMITS OF LIABILITY

The limit of the company's liability for all loss as the result of any one accident shall not exceed the limit of liability stated in the schedule as applicable to "each elevator collision", nor what it would cost at the time of loss to repair or replace the property with other of like kind and quality. The company may pay for the loss in money or may repair or replace the property and may settle any claim for loss of property either with the named insured or the owner thereof. Any property so paid for or replaced shall, at the option of the company, become the property of the company. The above limit of liability applies separately to each elevator designated in the declaration or schedule for this insurance.

III. ADDITIONAL DEFINITIONS

"elevator collision" means the collision of any part of an elevator designated in the schedule for this insurance, or of anything carried thereon, with another part of such elevator or with another object;

"loss" means direct and accidental injury or destruction.

IV. APPLICATION OF INSURANCE

This insurance applies only to collisions which occur during the policy period.

V. NAMED INSURED'S DUTIES WHEN LOSS OCCURS; ACTION AGAINST COMPANY

The conditions of the policy designated "Insured's Duties in the Event of Occurrence, Claim or Suit" and "Action Against Company" are replaced by the following:

4. Named Insured's Duties When Loss Occurs

Upon knowledge of loss which may give rise to a claim for loss, the named insured shall:

(a) give notice thereof as soon as practicable to the company or any of its authorized agents, and

(b) file detailed proof of loss, duly sworn to, with the company within 60 days after the occurrence of loss.

Upon the company's request, the named insured and every claimant hereunder shall submit to examination by the company, subscribe to the same, under oath if required, and produce for the company's examination all pertinent records, all at such reasonable times and places as the company shall designate, and shall cooperate with the company in all matters pertaining to loss or claims with respect thereto.

The named insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense. The company agrees to reimburse the named insured for any expense incurred at its request.

5. Action Against Company

No action shall lie against the company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy nor until 60 days after the required proofs of loss have been filed with the company, nor at all unless commenced within two years from the date when the named insured has first knowledge of the loss. If any limitation of time for notice of loss or any legal proceeding herein contained is shorter than that permitted to be fixed by agreement under any statute controlling the construction of this insurance, the shortest permissible statutory limitation of time shall govern and shall supersede the time limitation herein stated.

VI. APPRAISAL

If the named insured and the company fail to agree as to the amount of loss, each shall, on the written demand of either made within 60 days after receipt of proof of loss by the company, select a competent and disinterested appraiser, and the appraisal shall be made at a reasonable time and place. The appraisers shall first select a competent and disinterested umpire, and failing for fifteen days to agree upon such umpire, on the request of the named insured or the company such umpire shall be selected by a judge of a court of record in the county and state in which the appraisal is pending. The appraisers shall then appraise the loss, stating separately the actual cash value at time of loss and the amount of the loss, and failing to agree shall submit their differences to the umpire. An award in writing by the umpire and any or both appraisers, or by both appraisers, shall determine the amount of loss. The named insured and the company shall each pay his or its chosen appraiser and shall bear equally the expenses of the umpire and the other expenses of appraisal.

The company shall not be held to have waived any of its rights by any act relating to appraisal.

AMENDED DEFINITION

It is agreed that when used in reference to this insurance "elevator" means any hoisting or lowering device to connect floors or landings, whether or not in service, and all appliances thereof including any car, platform, shaft, hoistway, stairway, runway, power equipment and machinery, or any hydraulic or mechanical hoist used for raising or lowering automobiles for lubricating and servicing or for dumping material from trucks; but does not include a hoist without a platform outside a building if without mechanical power or if not attached to building walls, or a hod or material hoist used in alteration, construction or demolition operations, or an inclined conveyor used exclusively for carrying property or a dumbwaiter used exclusively for carrying property and having a compartment height not exceeding four feet.

AUTHENTIC

SUBMITTED - 25583784 - Lauri McDonald - 6/23/2025 12:28 PM
CONFIDENTIAL
GRIFFOODS000006468

(The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy.)

LIABILITY

GL 20 11 (Ed. 07 66)
G 109

L 9109
(Ed. 7-66)

ADDITIONAL INSURED

(Premises Leased to the Named Insured)

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:
COMPREHENSIVE GENERAL LIABILITY INSURANCE
MANUFACTURERS' AND CONTRACTORS' LIABILITY INSURANCE
OWNERS', LANDLORDS' AND TENANTS' LIABILITY INSURANCE
STOREKEEPER'S INSURANCE

This endorsement, effective September 30, 1983 (12:01 A. M., standard time), forms a part of policy No. GLA 945 70 58 RA

issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

James A. Fowler
Authorized Representative

SCHEDULE

Premiums: Bodily Injury Liability	Premiums: Property Damage Liability	Designation of Premises (Part Leased to Named Insured)	Name of Person or Organization (Additional Insured)
Incl.	Incl.	As May Appear	As May Appear

It is agreed that the "Persons Insured" provision is amended to include as an **insured** the person or organization designated above, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises designated above leased to the **named insured**, and subject to the following additional exclusions:

The insurance does not apply:

1. to any **occurrence** which takes place after the **named insured** ceases to be a tenant in said premises;
2. to structural alterations, new construction or demolition operations performed by or on behalf of the person or organization designated above.

AUTHENTIC

SUBMITTED: 63298879 - Lauri McDonald - 6/23/2025 12:28 PM
CONFIDENTIAL
GRIFFOODS000006469

(The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy.)

LIABILITY

GL 20 15 (Ed. 07 66)
G 113

L 9113a
(Ed. 7-66)

ADDITIONAL INSURED

(Vendors—Broad Form)

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:
COMPREHENSIVE GENERAL LIABILITY INSURANCE
COMPLETED OPERATIONS AND PRODUCTS LIABILITY INSURANCE

This endorsement, effective September 30, 1983 (12:01 A. M., standard time), forms a part of policy No. GLA 945 70 58 RA

issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

James A. Fowler
Authorized Representative

SCHEDULE

Name of Vendor(s)	Description of Product(s)
All Vendors used by the Named Insured.	

It is agreed that the "Persons Insured" provision is amended to include any person or organization designated above (herein referred to as "vendor"), as an **insured**, but only with respect to the distribution or sale in the regular course of the vendor's business of the **named insured's products** designated above subject to the following additional provisions:

1. The insurance with respect to the vendor does not apply to:
   (a) any express warranty unauthorized by the **named insured**;
   (b) **bodily injury** or **property damage** arising out of
      (i) any physical or chemical change in the form of the product made intentionally by the vendor,
      (ii) repacking, unless unpacked solely for the purpose of inspection, demonstration, testing or the substitution of parts under instruction from the manufacturer and then repacked in the original container,
      (iii) demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product, or
      (iv) products which after distribution or sale by the **named insured** have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.
2. The insurance does not apply to any person or organization, as **insured**, from whom the **named insured** has acquired such products or any ingredient, part or container, entering into, accompanying or containing such products.

UNIFORM PRINTING CORPORATION AUTHENTIC FORM AND SUPPLY DIVISION

SUBMITTED IN CONFIDENTIAL Lauri McDonald - 6/23/2025 12:28 PM

ENDORSEMENT #1

Griffith Laboratories GLA 945 70 58 RA

This endorsement modifies such insurance as is afforded by the provision of the policy relating to the following:

COMPREHENSIVE GENERAL LIABILITY INSURANCE
COMPLETED OPERATIONS AND PRODUCTS LIABILITY INSURANCE
CONTRACTUAL LIABILITY INSURANCE
MANUFACTURERS AND CONTRACTORS LIABILITY INSURANCE
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY INSURANCE
OWNERS, LANDLORDS AND TENANTS LIABILITY INSURANCE

Amendment - LIMITS OF LIABILITY
(Single Limit)

(Individual Coverage Aggregate Limit)

SCHEDULE

COVERAGE	LIMITS OF LIABILITY
Bodily Injury Liability and Property Damage Liability	$ 1,000,000 each occurrence
	$ 1,000,000 aggregate

It is agreed that the provisions of the policy captioned "LIMITS OF LIABILITY" relating to Bodily Injury Liability and Property Damage Liability are amended to read as follows:

LIMITS OF LIABILITY

Regardless of the number of (1) insureds under this policy, (2) persons or organizations who sustain bodily injury or property damage, or (3) claims made or suits brought on account of bodily injury or property damage, the company's liability is limited as follows:

Bodily Injury Liability and Property Damage Liability:

(a) The limit of liability stated in the Schedule of this endorsement as applicable to "each occurrence" is the total limit of the company's liability for all damages including damages for care and loss of services because of bodily injury and property damage sustained by one or more persons or organizations as a result of any one occurrence, provided that with respect to any occurrence for which notice of this policy is given in lieu of security or when this policy is certified as proof of financial responsibility under the provisions of the Motor Vehicle Financial Responsibility Law of any state or province such limit of liability shall be applied to provide the separate limits required by such law for Bodily Injury Liability and Property Damage Liability to the extent of the coverage required by such law, but the separate application of such limit shall not increase the total limit of the company's liability.

SUBMITTED 03259879 - Lauri McDonald - 6/23/2025 12:28 PM
CONFIDENTIAL
GRIFFOODS000006471

(b) Subject to the above provision respecting "each occurrence", the total liability of the company for all damages because of all bodily injury and property damage which occurs during each annual period while this policy is in force commencing from its effective date and which is described in any of the numbered subparagraphs below shall not exceed the limit of liability stated in the Schedule of this endorsement as "aggregate":

(1) all property damage arising out of premises or operations rated on a remuneration basis or Contractor's equipment rated on a receipts basis, including property damage for which liability is assumed under any incidental contract relating to such premises or operations, but excluding property damage included in subpara graph (2) below:

(2) all property damage arising out of and occuring in the course of operations performed for the named insured by independent contractors and general supervision thereof by the named insured, including any such property damage for which liability is assumed under any incidental contract relating to such operations, but this subparagraph (2) does not include property damage arising out of maintenance or repairs at premises owned by or rented to the named insured or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;

(3) if Products - Completed Operations insurance is afforded, all bodily injury and property damage included within the completed operations, hazard and all bodily injury and property damage included within the products hazard;

(4) if Contractual Liability Insurance is afforded, all property damage for which liability is assumed under any contract to which the Contractual Liability Insurance applies.

Such aggregate limit shall apply separately:

(i) to the property damage described in subparagraphs (1) and (2) and separately with respect to each project away from premises owned by or rented to the named insured;

(ii) to the sum of the damages for all bodily injury and property damage described in subparagraph (3); and

(iii) to the property damage described in subparagraph (4) and separately with respect to each project away from premises owned by or rented to the named insured.

(c) For the purpose of determining the limit of the company's liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general condition shall be considered as arising out of one occurrence.

James A. Fowler
AUTHORIZED REPRESENTATIVE

SUBMITTED - 25583784 - Lauri McDonald - 6/23/2025 12:28 PM
CONFIDENTIAL

ENDORSEMENT #2

This endorsement, effective 12:01 A. M. September 30, 1983 forms a part of Policy No. GLA 945 70 58 RA issued to Griffith Laboratories, Inc. by National Union Fire Insurance Company of Pittsburgh, Pa.

Additional Declarations

EMPLOYEE BENEFITS LIABILITY INSURANCE

COVERAGE	LIMIT OF LIABILITY		DEDUCTIBLE	
Employee Benefits Liability Insurance	$1,000,000 $1,000,000	Each Occurrence Annual Aggregate	$1,000	Each Occurrence

PREMIUM COMPUTATION

Est. No. of Employees	Rate Per Employee	Advance Premium
To Be Determined	First 5,000 ~~Incl.~~ Next 5,000 Incl. Over 10,000 Incl.	$Incl. in $Composite $Rate Endorsement
	Total Advance Premium	$Incl.

In consideration of the payment of the premium, this Company agrees with the Insured named in the Declarations to afford the coverage set forth herein. The other terms, conditions and limits of liability in other sections of the policy to which this endorsement is attached shall not apply to insurance afforded hereunder.

INSURING AGREEMENTS

1. Employee Benefits Liability

The Company will indemnify the Insured for all sums which the Insured shall become legally obligated to pay as damages because of any claim made against the Insured due to any negligent act, error or omission of the Insured, or any other person for whose acts the Insured is legally liable, in the administration of the Insured's Employee Benefits Programs, as defined herein, and this Company shall have the right and duty to defend any suit against the Insured seeking damages on account of such negligent act, error or omission, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient; but this Company shall not be obligated to defend any suit after the applicable limit of this Company's liability has been exhausted by payment of judgments or settlements.

DEFINITIONS

1. Definition of "Insured"

With respect to the insurance afforded by this endorsement the unqualified word "Insured" includes the Named Insured; provided that (a) if the Named Insured is designated as an individual, the insurance applies only to the conduct of a business of which he is the sole proprietor and (b) the unqualified word "Insured" also includes the following:

(i) if the Named Insured is or includes a partnership or joint venture, any partner or member thereof but only with respect to his liability as such;

(ii) any executive officer, director or stockholder of the Named Insured while acting within the scope of his duties as such;

(iii) any employee, provided such employee is authorized to act in the administration of the Named Insured's Employee Benefits Programs.

2. "Employee Benefits Programs"

The term "Employee Benefits Programs" means (a) group life insurance, group accident or health insurance, profit sharing plans, pension plans, employee stock subscription plans, workmen's compensation, unemployment insurance, social benefits, disability benefits, and (b) any other similar employee benefits instituted after the effective date of this endorsement provided this Company is notified within thirty days after the institution of such benefits.

3. "Administration"

The unqualified word "administration" wherever used shall mean:

(a) Giving counsel to employees with respect to the Employee Benefits Programs;

(b) Interpreting the Employee Benefits Programs;

(c) Handling of records in connection with the Employee Benefits Programs;

(d) Effective enrollment, termination or cancellation of employees under the Employee Benefits Programs; provided all such acts are authorized by the Named Insured.

4. "Occurrence"

The word "occurrence" shall mean any negligent act, error or omission of the Insured in the Administration (as defined herein) of the Insured's Employee Benefits Program (as defined herein) occurring during the term of coverage provided by this endorsement.

Form C-956 Rev. (11/1/75)

SUBMITTED 33258879 - Lauri McDonald - 6/23/2025 12:28 PM

CONFIDENTIAL

EXCLUSIONS

This endorsement does not apply to:

1. any dishonest, fraudulent, criminal or malicious act, libel, slander, discrimination or humiliation;
2. bodily injury to or sickness, disease or death, of any person, or to injury to or destruction of any tangible property, including the loss of use thereof;
3. any claim for failure of performance of contract by an insurer;
4. any claim based upon the Insured's failure to comply with any law concerning workmen's compensation, unemployment insurance, social security or disability benefits;
5. any claim based upon:
   (a) failure of stock to perform as represented by an Insured;
   (b) advice given by an Insured to an employee to participate or not to participate in stock subscription plans.
6. all sums which the Insured shall become legally obligated to pay as loss because of any Breach of Fiduciary Duty (as defined below) or because of any Breach of Fiduciary Duty by any other person for which the Insured is legally responsible and arising out of the Insured's activity as a fiduciary of any Plan covered by this endorsement. The term "Breach of Fiduciary Duty" shall mean the violation of any of the responsibilities, obligations of duties imposed upon fiduciaries by the EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 or amendments thereto with respect to any Plan covered by this endorsement.
7. any claim made against the Insured based on or attributable to any failure or omission on the part of the Insured to effect and maintain insurance or bonding for Plan Property or Assets.

CONDITIONS

1. Application of this Endorsement

   This endorsement applies to damages resulting from claim or suit brought against the Insured during the endorsement period, provided the Insured, at the effective date of this endorsement, had no knowledge or could not have reasonably foreseen any circumstances which might result in a claim or suit.

2. Limits of Liability

   Regardless of the number of (a) Insureds under under this policy (b) persons who sustain damage, or (c) claims made or suits brought for such damage; the limit of liability stated in the Additional Declarations as applicable to "each occurrence" is the limit of this Company's liability for all damages incurred on account of any claim covered hereunder; the limit of liability stated in the Additional Declarations as "annual aggregate" is, subject to the above provision respecting each claim, the total limit of this Company's liability for all claims covered hereunder and occurring during each annual period this endorsement is in force.

3. Premium

   The premium stated in the Additional Declarations is an estimated premium only. Upon termination of each annual period of this endorsement the Insured, on request, will furnish this Company a statement of the total number of employees at the end of the period. The earned premium shall be computed on the average of the number of employees at the end of the coverage period and that stated in the Additional Declarations. If the earned premium thus computed exceeds the estimated premium paid, the Insured shall pay the excess to this Company; if less, this Company shall return to the Insured the unearned portion paid by such Insured.

4. Deductible

   The deductible amount indicated in the Additional Declarations shall be subtracted from the total amount of all sums which this Company is obligated to pay or incur on behalf of the Insured on account of each occurrence. This Company shall be liable only for the difference between each deductible amount and the limit of this Company's liability for each occurrence as stated in the Additional Declarations. The terms of this endorsement including those with respect to notice of claim or suit and this Company's right to investigate and negotiate any such claim or suit, apply irrespective of the application of the deductible amount.

5. Other Insurance

   With respect to negligent acts, errors or omissions which occur prior to the effective date of this endorsement, the insurance hereunder shall apply only as excess insurance over any other valid and collectible insurance and shall then apply only in the amount by which the applicable limit of liability of this endorsement exceeds the sum of the applicable limits of liability of all such other insurance.

6. Conformity with Statute

   Terms of this endorsement which are in conflict with the statutes of the State wherein this endorsement is issued are hereby amended to conform to such statutes.

James A. Fowler

Authorized Representative

SUBMITTED 33258879 - Lauri McDonald - 6/23/2025 12:28 PM

ENDORSEMENT #3

This endorsement, effective 12:01 A. M. September 30, 1983 forms a part of

policy No. GLA 945 70 58 RA issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

Item 1 - Named Insured

Griffith Laboratories U.S.A., Inc.
Griffith Laboratories, Inc.

"Named Insured" means the organization, including any subsidiary thereof, named in item 1 of the declarations and also includes any other company which is acquired or formed by the named insured during the policy period and over which the named insured maintains ownership or financial control, provided this insurance does not apply to any such newly acquired or formed company which is an insured under any other liability or indemnity policy or would be an insured under any such policy but for its termination upon exhaustion of its limits of liability. Such insurance as may be afforded and newly acquired or formed company shall terminate within sixty days of its acquisition of formation unless reported to the company within said sixty days.

James A. Fowler

Authorized Representative

SUBMITTED BY Lauri McDonald - 6/23/2025 12:28 PM

ENDORSEMENT #4

This endorsement, effective 12:01 A. M. September 30, 1983 forms a part of

policy No. GLA 945 70 58 RA issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

Section V111 Non-Owned Watercraft, of the Broad Form Comprehensive General Liability endorsement #GL0404, is Amended to exclude the 26 feet limitation.

James A. Fowler

Authorized Representative

SUBMITTED FINAL Lauri McDonald - 6/23/2025 12:28 PM
CONFIDENTIAL

ENDORSEMENT #5

This endorsement, effective 12:01 A. M. September 30, 1983 forms a part of policy No GLA 945 70 58RA issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

FIRE AND EXPLOSION LEGAL LIABILITY COVERAGE

It is agreed that the Property Damage Liability Coverage applies to Property Damage to structures or portions thereof not owned by the Named Insured, but which are rented to or occupied by the Named Insured, including fixtures permanently attached thereto, if such property damage arises out of Fire and/or Explosion, subject to the following additional provisions:

1. with respect to the insurance provided by this endorsement all of the exclusions of the policy, other than the Nuclear Energy Exclusion (Broad Form), are replaced by the following:

   (a) This insurance does not apply to Liability assumed by the Insured under any contract or agreement;

   (b) Coverage for explosion afforded by this endorsement does not apply to property damage arising out of explosion of steam boilers, steam pipes, steam turbines or steam engines.

2. The following is not explosion within the intent or meaning of explosion coverage afforded by this endorsement:

   Explosion arising out of vacugas operations or any gases used, stored, or handled in connection with such operations.

James A. Fowler

AUTHORIZED REPRESENTATIVE

SUBMITTED - 25587 - Lauri McDonald - 6/23/2025 12:28 PM
CONFIDENTIAL
GRIFFOODS000006477

ENDORSEMENT #6

This endorsement, effective 12:01 A. M. September 30, 1983 forms a part of

policy No. GLA 945 70 58 RA issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

COMPREHENSIVE GENERAL LIABILITY COVERAGE IS PROVIDED FOR THE FOLLOWING

"That part of Lot 12 lying South of a line 150' South of and parallel with the North Line of said Lot 12 and Chinquopin Hills, Being a subdivision of lots 9 to 16 both inclusive, in Stephenson Subdivision of the South Southeastern 1/4 of section 30, Township 37N Range 12, East Third Principal meridian in Cook County, Illinois".

James A. Fowler

Authorized Representative

SUBMITTED - 25587741 - Lauri McDonald - 6/23/2025 12:28 PM

CONFIDENTIAL

ENDORSEMENT #7

This endorsement, effective 12:01 A. M. September 30, 1983 forms a part of

policy No. GLA 945 70 58 RA issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

ADDITIONAL INSURED

It is understood and agreed that development authority of De Kalb County and Trust Company Bank as Trustee is hereby added as an additional insured relating to Industrial Revenue Bonds for Construction of a plant addition in Lithonia, GA.

James A. Fowler

Authorized Representative

SUBMITTED BY Lauri McDonald - 6/23/2025 12:28 PM
CONFIDENTIAL
GRIFFOODS000006479

ENDORSEMENT #8

This endorsement, effective 12:01 A. M. September 30, 1983 forms a part of

policy No. GLA 945 70 58 RA issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

ADDITIONAL INSURED

It is hereby agreed that LaSalle National Bank, not individually, but as Trustee under Trust # 43922 its beneficiaries and agents, as their interests may appear, is named as an additional insured.

James A. Fowler

Authorized Representative

SUBMITTED BY Lauri McDonald - 6/23/2025 12:28 PM

CONFIDENTIAL

ENDORSEMENT #9

This endorsement, effective 12:01 A. M. September 30, 1983 forms a part of

policy No. GLA 945 70 58 RA issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

ADDITIONAL INSURED

It is understood and agreed that the

First National Leasing Corporation
Box 456
161 North Wisconsin Avenue
Milwaukee, Wisconsin 53201

is an additional insured as their interest may appear in equipment leased by them.

James A. Fowler
Authorized Representative

SUBMITTED: 63258879 - Lauri McDonald - 6/23/2025 12:28 PM
CONFIDENTIAL

ENDORSEMENT #10

This endorsement, effective 12:01 A. M. September 30, 1983 forms a part of

policy No. GLA 945 70 58 RA issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

AMENDED NOTICE OF CANCELLATION OR MATERIAL CHANGE

It is agreed that in the event of cancellation or any material change of this policy, except cancellation for non-payment of premium, the company shall give to the Named Insured at the address indicated in the declarations THIRTY (30) days written notice of such cancellation or material change.

James A. Fowler

Authorized Representative

ENDORSEMENT #11

This endorsement, effective 12:01 A. M. September 30, 1983 forms a part of

policy No GLA 945 70 58 RA issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

It is agreed that this policy is hereby amended as indicated. All other terms and conditions of this policy remain unchanged.

SUBJECT AND NON-SUBJECT PREMIUMS

It is agreed that, pursuant to the provisions of the Premium Agreement, the following symbols, appearing in schedules or endorsements attached to and forming part of this policy, designate premium subject or not subject to adjustment under the Premium Agreement, as shown below:

PREMIUM	SYMBOL
Subject to Adjustment	S
Not Subject to Adjustment	E

James A. Fowler

Authorized Representative

CONFIDENTIAL
SUBMITTED - 35258879 - Lauri McDonald - 6/23/2025 12:28 PM

ENDORSEMENT #12

This endorsement, effective 12:01 A. M. September 30, 1983 forms a part of policy No. GLA 945 7058RA issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

COMPOSITE RATING PLAN
Premium Endorsement

It is agreed that the premium for the policy to which this endorsement is attached shall be computed upon a composite basis in accordance with the company's rules, rates, rating plans, premium and minimum premiums and the other terms of the policy.

When used as a premium basis:

Sales		Rate Per $1,000 Sales BI	Rate Per $1,000 Sales PD		Estimated Premium BI	Estimated Premium PD		Deposit Premium BI	Deposit Premium PD
121,000,000	S	.112	.063	S	13,552	7,623	S	9,486	5,336
	E	.079	.041	E	9,559	4,961	E	9,559	4,961

Nothing herein contained shall be held to waive, vary, alter or extend any condition or provision of the policy other than as above stated.

This endorsement is attached to the policy indicated above and is effective on the date stated herein at 12:01 A.M. standard time at the address of the insured as described in the declarations.

James A. Fowler
AUTHORIZED REPRESENTATIVE

SUBMITTED 3/25/2025 Lauri McDonald - 6/23/2025 12:28 PM CONFIDENTIAL GRIFFOODS000006484

Case: 1:21-cv-04581 Document #: 25-2 Filed: 12/15/21 Page 1 of 26 PageID #:476

No. GLA 194 00 11RA
GLA 945 70 58RA
RENEWAL OF NUMBER

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.

A CAPITAL STOCK COMPANY

70 PINE STREET, NEW YORK, N. Y. 10270

DECLARATIONS

Item 1. Named Insured and Address: (No., Street, Town or City, County, State)

Griffith Laboratories, Inc.
12200 S. Central Ave.
Alsip, IL 60658

Alexander & Alexander, Inc.
130 E. Randolph Drive
Chicago, IL 60601

Item 2. Policy Period: (Mo. Day Yr.)
From September 30, 1984 to September 30, 1985
12:01 A.M., standard time at the address of the named insured as stated herein.

The named insured is:
☐ Individual ☐ Partnership ☑ Corporation ☐ Joint Venture ☐ Other: _____

Business of the named insured is: (ENTER BELOW)
Mfg. & Blender of Food Additives & Food Products

Audit Period: Annual, unless otherwise stated. (ENTER BELOW)

Item 3. The insurance afforded is only with respect to the Coverage Part(s) indicated below by specific premium charge(s) and attached to and forming a part of this policy.

Advance Premiums	Coverage Part No(s).	Coverage Part(s)	Advance Premiums	Coverage Part No(s).	Coverage Part(s)
$		Automobile Medical Payments Insurance	$		Hospital Professional Liability Insurance
$		Automobile Physical Damage Insurance (Dealers)	$		Manufacturers' and Contractors' Liability Insurance
$		Automobile Physical Damage Insurance (Fleet Automatic)	$		Owner's and Contractor's Protective Liability Insurance
$		Automobile Physical Damage Insurance (Non-Fleet)	$		Owners', Landlords' and Tenants' Liability Insurance
$		Basic Automobile Liability Insurance	$		Personal Injury Liability Insurance
$		Completed Operations and Products Liability Insurance	$		Physicians', Surgeons' and Dentists' Professional Liability Insurance
$		Comprehensive Automobile Liability Insurance	$		Premises Medical Payments Insurance
$ 46,188	L6394a	Comprehensive General Liability Insurance	$		Special Protective and Highway Liability Insurance New York Department of Transportation
$		Comprehensive Personal Insurance			
$		Contractual Liability Insurance	$		Storekeeper's Insurance
$		Druggists' Liability Insurance	$		Uninsured Motorists Insurance
$		Elevator Collision Insurance	$		
$		Farm Employers' Liability and Farm Employees' Medical Payments Insurance	$		
$		Farmer's Comprehensive Personal Insurance			
$		Farmer's Medical Payments Insurance	$		
$		Garage Insurance			
$					Form numbers of endorsements, other than those entered on Coverage Part(s), attached at issue
$ 46,188		Total Advance Premium for this policy.			

* If the Policy Period is more than one year and the premium is to be paid in installments, premium is payable on:

Effective Date	1st Anniversary	2nd Anniversary
$	$	$

Item 4. During the past three years no insurer has cancelled insurance, issued to the named insured, similar to that afforded hereunder, unless otherwise stated herein:

May 6, 1985 JMCF

Countersigned:

*Not applicable in Texas

28321 (1/80)

By James A. Fowler
Authorized Representative

Ptd. in U.S.A.

SUBMITTED 33258879 - Lauri McDonald - 6/23/2025 12:28 PM

NATIONAL UNION FIRE INSURANCE COMPANY
OF PITTSBURGH, PA.

(A stock insurance company, herein called the company)

In consideration of the payment of the premium, in reliance upon the statements in the declarations made a part hereof and subject to all of the terms of this policy, agrees with the **named insured** as follows:

DEFINITIONS

When used in this policy (including endorsements forming a part hereof):

"automobile" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto), but does not include **mobile equipment**;

"bodily injury" means bodily injury, sickness or disease sustained by any person which occurs during the policy period, including death at any time resulting therefrom;

"collapse hazard" includes "structural property damage" as defined herein and **property damage** to any other property at any time resulting therefrom. "Structural property damage" means the collapse of or structural injury to any building or structure due to (1) grading of land, excavating, borrowing, filling, back-filling, tunnelling, pile driving, cofferdam work or caisson work or (2) moving, shoring, underpinning, raising or demolition of any building or structure or removal or rebuilding of any structural support thereof. The **collapse hazard** does not include **property damage** (1) arising out of operations performed for the **named insured** by independent contractors, or (2) included within the **completed operations hazard** or the **underground property damage hazard**, or (3) for which liability is assumed by the **insured** under an **incidental contract**;

"completed operations hazard" includes **bodily injury** and **property damage** arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the **bodily injury** or **property damage** occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the **named insured**. "Operations" include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

(1) when all operations to be performed by or on behalf of the **named insured** under the contract have been completed,

(2) when all operations to be performed by or on behalf of the **named insured** at the site of the operations have been completed, or

(3) when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

The **completed operations hazard** does not include **bodily injury** or **property damage** arising out of

(a) operations in connection with the transportation of property, unless the **bodily injury** or **property damage** arises out of a condition in or on a vehicle created by the loading or unloading thereof,

(b) the existence of tools, uninstalled equipment or abandoned or unused materials, or

(c) operations for which the classification stated in the policy or in the company's manual specifies "including completed operations";

"elevator" means any hoisting or lowering device to connect floors or landings, whether or not in service, and all appliances thereof including any car, platform, shaft, hoistway, stairway, runway, power equipment and machinery; but does not include an **automobile** servicing hoist, or a hoist without a platform outside a building if without mechanical power or if not attached to building walls, or a hod or material hoist used in alteration, construction or demolition operations, or an inclined conveyor used exclusively for carrying property or a dumbwaiter used exclusively for carrying property and having a compartment height not exceeding four feet;

"explosion hazard" includes **property damage** arising out of blasting or explosion. The **explosion hazard** does not include **property damage** (1) arising out of the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment, or (2) arising out of operations performed for the **named insured** by independent contractors, or (3) included within the **completed operations hazard** or the **underground property damage hazard**, or (4) for which liability is assumed by the **insured** under an **incidental contract**;

"incidental contract" means any written (1) lease of premises, (2) easement agreement, except in connection with construction or demolition operations on or adjacent to a railroad, (3) undertaking to indemnify a municipality required by municipal ordinance, except in connection with work for the municipality, (4) sidetrack agreement, or (5) **elevator** maintenance agreement;

"insured" means any person or organization qualifying as an insured in the "Persons Insured" provision of the applicable insurance coverage. The insurance afforded applies separately to each **insured** against whom claim is made or suit is brought, except with respect to the limits of the company's liability;

"mobile equipment" means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled, (1) not subject to motor vehicle registration, or (2) maintained for use exclusively on premises owned by or rented to the **named insured**, including the ways immediately adjoining, or (3) designed for use principally off public roads, or (4) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers (other than the mix-in-transit type); graders, scrapers, rollers and other road construction or repair equipment; air-compressors, pumps and generators, including spraying, welding and building cleaning equipment; and geophysical exploration and well servicing equipment;

"named insured" means the person or organization named in Item 1. of the declarations of this policy;

"named insured's products" means goods or products manufactured, sold, handled or distributed by the **named insured** or by others trading under his name, including any container thereof (other than a vehicle), but **"named insured's products"** shall not include a vending machine or any property other than such container, rented to or located for use of others but not sold;

"occurrence" means an accident, including continuous or repeated exposure to conditions, which results in **bodily injury** or **property damage** neither expected nor intended from the standpoint of the **insured**;

"policy territory" means:

(1) the United States of America, its territories or possessions, or Canada, or

(2) international waters or air space, provided the **bodily injury** or **property damage** does not occur in the course of travel or transportation to or from any other country, state or nation, or

(3) anywhere in the world with respect to damages because of **bodily injury** or **property damage** arising out of a product which was sold for use or consumption within the territory described in paragraph (1) above, provided the original suit for such damages is brought within such territory;

"products hazard" includes **bodily injury** and **property damage** arising out of the **named insured's products** or reliance upon a representation or warranty made at any time with respect thereto, but only if the **bodily injury** or **property damage** occurs away from premises owned by or rented to the **named insured** and after physical possession of such products has been relinquished to others;

"property damage" means (1) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an **occurrence** during the policy period;

"underground property damage hazard" includes underground property damage as defined herein and **property damage** to any other property at any time resulting therefrom. "Underground property damage" means **property damage** to wires, conduits, pipes, mains, sewers, tanks, tunnels, any similar property, and any apparatus in connection therewith, beneath the surface of the ground or water, caused by and occurring during the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, borrowing, filling, back-filling or pile driving. The **underground property damage hazard** does not include **property damage** (1) arising out of operations performed for the **named insured** by independent contractors, or (2) included within the **completed operations hazard**, or (3) for which liability is assumed by the **insured** under an **incidental contract**.

SUPPLEMENTARY PAYMENTS

The company will pay, in addition to the applicable limit of liability:

(a) all expenses incurred by the company, all costs taxed against the **insured** in any suit defended by the company and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the company's liability thereon;

(b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the **insured** because of accident or traffic law violation arising out of the use of any vehicle to which this policy applies, not to exceed $250 per bail bond, but the company shall have no obligation to apply for or furnish any such bonds;

(c) expenses incurred by the **insured** for first aid to others at the time of an accident, for **bodily injury** to which this policy applies;

(d) reasonable expenses incurred by the **insured** at the company's request in assisting the company in the investigation or defense of any claim or suit, including actual loss of earnings not to exceed $25 per day.

Attach Coverage Part(s) and Endorsement(s) (If Any) Here

CONDITIONS

1. **Premium:** All premiums for this policy shall be computed in accordance with the company's rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein.

Premium designated in this policy as "advance premium" is a deposit premium only which shall be credited to the amount of the earned premium due at the end of the policy period. At the close of each period (or part thereof terminating with the end of the policy period) designated in the declarations as the audit period the earned premium shall be computed for such period and, upon notice thereof to the named insured, shall become due and payable. If the total earned premium for the policy period is less than the premium previously paid, the company shall return to the named insured the unearned portion paid by the named insured.

The named insured shall maintain records of such information as is necessary for premium computation, and shall send copies of such records to the company at the end of the policy period and at such times during the policy period as the company may direct.

2. **Inspection and Audit:** The company shall be permitted but not obligated to inspect the named insured's property and operations at any time. Neither the company's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the named insured or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

The company may examine and audit the named insured's books and records at any time during the policy period and extensions thereof and within three years after the final termination of this policy, as far as they relate to the subject matter of this insurance.

3. **Financial Responsibility Laws:** When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law. The insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

4. **Insured's Duties in the Event of Occurrence, Claim or Suit:**

(a) In the event of an occurrence, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to the company or any of its authorized agents as soon as practicable.

(b) If claim is made or suit is brought against the insured, the insured shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

(c) The insured shall cooperate with the company and, upon the company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of injury or damage with respect to which insurance is afforded under this policy; and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of accident.

5. **Action Against Company:** No action shall lie against the company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the company as a party to any action against the insured to determine the insured's liability, nor shall the company be impleaded by the insured or his legal representative. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the company of any of its obligations hereunder.

6. **Other Insurance:** The insurance afforded by this policy is primary insurance, except when stated to apply in excess of or contingent upon the absence of other insurance. When this insurance is primary and the insured has other insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the company's liability under this policy shall not be reduced by the existence of such other insurance.

When both this insurance and other insurance apply to the loss on the same basis, whether primary, excess or contingent, the company shall not be liable under this policy for a greater proportion of the loss than that stated in the applicable contribution provision below:

(a) **Contribution by Equal Shares.** If all of such other valid and collectible insurance provides for contribution by equal shares, the company shall not be liable for a greater proportion of such loss than would be payable if each insurer contributes an equal share until the share of each insurer equals the lowest applicable limit of liability under any one policy or the full amount of the loss is paid, and with respect to any amount of loss not so paid the remaining insurers then continue to contribute equal shares of the remaining amount of the loss until each such insurer has paid its limit in full or the full amount of the loss is paid.

(b) **Contribution by Limits.** If any of such other insurance does not provide for contribution by equal shares, the company shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

7. **Subrogation:** In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

8. **Changes:** Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

9. **Assignment:** Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon; if, however, the named insured shall die, such insurance as is afforded by this policy shall apply (1) to the named insured's legal representative, as the named insured, but only while acting within the scope of his duties as such, and (2) with respect to the property of the named insured, to the person having proper temporary custody thereof, as insured, but only until the appointment and qualification of the legal representative.

10. **Three Year Policy:** If this policy is issued for a period of three years any limit of the company's liability stated in this policy as "aggregate" shall apply separately to each consecutive annual period thereof.

11. **Cancellation:** This policy may be cancelled by the named insured by surrender thereof to the company or any of its authorized agents or by mailing to the company written notice stating when thereafter the cancellation shall be effective. This policy may be cancelled by the company by mailing to the named insured at the address shown in this policy, written notice stating when not less than ten days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the named insured or by the company shall be equivalent to mailing.

If the named insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

12. **Declarations:** By acceptance of this policy, the named insured agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

IN WITNESS WHEREOF, the National Union Fire Insurance Company has caused this policy to be signed by its president and secretary and countersigned on the declarations page by a duly authorized representative of the company.

Marion E. Fajen Secretary

President

This endorsement modifies the provisions of the policy relating to ALL AUTOMOBILE LIABILITY, GENERAL LIABILITY AND MEDICAL PAYMENTS INSURANCE OTHER THAN COMPREHENSIVE PERSONAL AND FARMER'S COMPREHENSIVE PERSONAL INSURANCE.

Nuclear Energy Liability Exclusion Endorsement--Broad Form

It is agreed that:

I. The policy does not apply:

A. Under any Liability Coverage, to **bodily injury** or **property damage**

(1) with respect to which an **insured** under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(2) resulting from the **hazardous properties** of **nuclear material** and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the **insured** is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to first aid, to expenses incurred with respect to **bodily injury** resulting from the **hazardous properties** of **nuclear material** and arising out of the operation of a **nuclear facility** by any person or organization.

C. Under any Liability Coverage, to **bodily injury** or **property damage** resulting from the **hazardous properties** of **nuclear material**, if

(1) the **nuclear material** (a) is at any **nuclear facility** owned by, or operated by or on behalf of, an **insured** or (b) has been discharged or dispersed therefrom;

(2) the **nuclear material** is contained in **spent fuel** or **waste** at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an **insured**; or

(3) the **bodily injury** or **property damage** arises out of the furnishing by an **insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to **property damage** to such **nuclear facility** and any property thereat.

II. As used in this endorsement:

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means **source material**, **special nuclear material** or **byproduct material**;

"source material", **"special nuclear material"**, and **"byproduct material"** have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a **nuclear reactor**;

"waste" means any material

(a) containing **by-product material** other than the tailings or **wastes** produced by the extraction or concentration or uranium or thorium from any ore processed primarily for its **source material** content, and

(b) resulting from the operation by any person or organization of any **nuclear facility** included under the first two paragraphs of the definition of **nuclear facility**;

"nuclear facility" means

(a) any **nuclear reactor**,

(b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing **spent fuel**, or (3) handling, processing or packaging **waste**,

(c) any equipment or device used for the processing, fabricating or alloying of **special nuclear material** if at any time the total amount of such material in the custody of the **insured** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,

(d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of **waste**,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"property damage" includes all forms of radioactive contamination of property.

NEW YORK—It is agreed that the provisions of the "Nuclear Energy Liability Exclusion Endorsement— Broad Form", printed above, do not apply in New York with respect to any Automobile Bodily Injury Liability and Automobile Property Damage Liability coverage afforded by this policy.

COVERAGE PART — **ELEVATOR COLLISION INSURANCE** — L 9282 (Ed. 1-73)

For attachment to Policy No. GLA 194 00 11RA, to complete said policy.

SCHEDULE

The insurance afforded is only with respect to the following Coverage as indicated by specific premium charge. The limit of the company's liability against such Coverage shall be as stated herein, subject to all the terms of this policy having reference thereto. See Endt.

Coverage	#1 Limits of Liability
Q — Elevator Collision	thousand dollars each elevator collision

Designation of Elevators	Number of Elevators	Rate per Elevator	Premium
Included in Composite Rate Endorsement		$	$

Form numbers of endorsements attached at issue

$

Total Premium $ Included

I. **COVERAGE Q—ELEVATOR COLLISION**

The company will pay for loss

(1) to any elevator designated in the schedule for this insurance, or

(2) to any other property owned, occupied or used by, or rented to, or in the care, custody or control of the named insured or as to which the named insured is for any purpose exercising physical control,

caused by an elevator collision.

Exclusions

This insurance does not apply to any loss:

(a) caused by an elevator collision arising out of fire or caused by fire arising out of an elevator collision;

(b) caused by an elevator collision arising out of the breaking, burning out or disrupting of any electrical machine not located within the car of the elevator;

(c) due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing;

(d) with respect to which insurance is afforded by the policy under the Property Damage Liability Coverage or the Contractual Property Damage Liability Coverage.

II. **LIMITS OF LIABILITY**

The limit of the company's liability for all loss as the result of any one accident shall not exceed the limit of liability stated in the schedule as applicable to "each elevator collision", nor what it would cost at the time of loss to repair or replace the property with other of like kind and quality. The company may pay for the loss in money or may repair or replace the property and may settle any claim for loss of property either with the named insured or the owner thereof. Any property so paid for or replaced shall, at the option of the company, become the property of the company. The above limit of liability applies separately to each elevator designated in the declaration or schedule for this insurance.

III. **ADDITIONAL DEFINITIONS**

"elevator collision" means the collision of any part of an elevator designated in the schedule for this insurance, or of anything carried thereon, with another part of such elevator or with another object;

"loss" means direct and accidental injury or destruction.

IV. **APPLICATION OF INSURANCE**

This insurance applies only to collisions which occur during the policy period.

V. **NAMED INSURED'S DUTIES WHEN LOSS OCCURS; ACTION AGAINST COMPANY**

The conditions of the policy designated "Insured's Duties in the Event of Occurrence, Claim or Suit" and "Action Against Company" are replaced by the following:

4. Named Insured's Duties When Loss Occurs

Upon knowledge of loss which may give rise to a claim for loss, the named insured shall:

(a) give notice thereof as soon as practicable to the company or any of its authorized agents, and

(b) file detailed proof of loss, duly sworn to, with the company within 60 days after the occurrence of loss.

Upon the company's request, the named insured and every claimant hereunder shall submit to examination by the company, subscribe to the same, under oath if required, and produce for the company's examination all pertinent records, all at such reasonable times and places as the company shall designate, and shall cooperate with the company in all matters pertaining to loss or claims with respect thereto.

The named insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense. The company agrees to reimburse the named insured for any expense incurred at its request.

5. Action Against Company

No action shall lie against the company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy nor until 60 days after the required proofs of loss have been filed with the company, nor at all unless commenced within two years from the date when the named insured has first knowledge of the loss. If any limitation of time for notice of loss or any legal proceeding herein contained is shorter than that permitted to be fixed by agreement under any statute controlling the construction of this insurance, the shortest permissible statutory limitation of time shall govern and shall supersede the time limitation herein stated.

VI. **APPRAISAL**

If the named insured and the company fail to agree as to the amount of loss, each shall, on the written demand of either made within 60 days after receipt of proof of loss by the company, select a competent and disinterested appraiser, and the appraisal shall be made at a reasonable time and place. The appraisers shall first select a competent and disinterested umpire, and failing for fifteen days to agree upon such umpire, on the request of the named insured or the company such umpire shall be selected by a judge of a court of record in the county and state in which the appraisal is pending. The appraisers shall then appraise the loss, stating separately the actual cash value at time of loss and the amount of the loss, and failing to agree shall submit their differences to the umpire. An award in writing by the umpire and any or both appraisers, or by both appraisers, shall determine the amount of loss. The named insured and the company shall each pay his or its chosen appraiser and shall bear equally the expenses of the umpire and the other expenses of appraisal.

The company shall not be held to have waived any of its rights by any act relating to appraisal.

AMENDED DEFINITION

It is agreed that when used in reference to this insurance "elevator" means any hoisting or lowering device to connect floors or landings, whether or not in service, and all appliances thereof including any car, platform, shaft, hoistway, stairway, runway, power equipment and machinery, or any hydraulic or mechanical hoist used for raising or lowering automobiles for lubricating and servicing or for dumping material from trucks; but does not include a hoist without a platform outside a building if without mechanical power or if not attached to building walls, or a hod or material hoist used in alteration, construction or demolition operations, or an inclined conveyor used exclusively for carrying property or a dumbwaiter used exclusively for carrying property and having a compartment height not exceeding four feet.

AUTHENTIC

SUBMITTED - 25583774 - Lauri McDonald - 6/23/2025 12:28 PM
CONFIDENTIAL
GRIFFOODS000006424

(The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy.)

LIABILITY GL 04 04 (Ed. 05 81) L 6111 (Ed. 5-81)

BROAD FORM COMPREHENSIVE GENERAL LIABILITY ENDORSEMENT

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:
COMPREHENSIVE GENERAL LIABILITY INSURANCE

This endorsement, effective September 30, 1984 (12:01 A. M., standard time), forms a part of policy No. GLA 194 00 11 RA

issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

James A. Fowler
Authorized Representative

SCHEDULE

Personal Injury and Advertising Injury Liability
Aggregate Limit shall be the per occurrence bodily injury liability limit unless otherwise indicated herein.
Limit of Liability $_____ Aggregate

Limit of Liability—Premises Medical Payments Coverage:
$1,000 each person unless otherwise indicated herein $_____ each person.

Limit of Liability—Fire Legal Liability Coverage:
$50,000 per occurrence unless otherwise indicated herein: $_____ per occurrence.

Advance Premium	Premium Basis
$	_____% OF THE TOTAL COMPREHENSIVE GENERAL LIABILITY BODILY INJURY AND PROPERTY DAMAGE PREMIUM AS OTHERWISE DETERMINED
$	MINIMUM PREMIUM

I. CONTRACTUAL LIABILITY COVERAGE

(A) The definition of **incidental contract** is extended to include any oral or written contract or agreement relating to the conduct of the **named insured's** business.

(B) The insurance afforded with respect to liability assumed under an **incidental contract** is subject to the following additional exclusions:

(1) to **bodily injury** or **property damage** for which the **insured** has assumed liability under any **incidental contract**, if such injury or damage occurred prior to the execution of the **incidental contract**;

(2) if the **insured** is an architect, engineer or surveyor, to **bodily injury** or **property damage** arising out of the rendering of or the failure to render professional services by such **insured**, including
(a) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, and
(b) supervisory, inspection or engineering services;

(3) if the indemnitee of the **insured** is an architect, engineer or surveyor, to the liability of the indemnitee, his agents or employees, arising out of
(a) the preparation or approval of or the failure to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or
(b) the giving of or the failure to give directions or instructions by the indemnitee, his agents or employees, provided such giving or failure to give is the primary cause of the **bodily injury** or **property damage**;

(4) to any obligation for which the **insured** may be held liable in an action on a contract by a third party beneficiary for **bodily injury** or **property damage** arising out of a project for a public authority; but this exclusion does not apply to an action by the public authority or any other person or organization engaged in the project;

(5) to **bodily injury** or **property damage** arising out of construction or demolition operations, within 50 feet of any railroad property, and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing; but this exclusion does not apply to sidetrack agreements.

(C) The following exclusions applicable to Coverages A (Bodily Injury) and B (Property Damage) do not apply to this Contractual Liability Coverage: (b), (c) (2), (d) and (e).

(D) The following additional condition applies:
Arbitration
The company shall be entitled to exercise all of the **insured's** rights in the choice of arbitrators and in the conduct of any arbitration proceeding.

II. PERSONAL INJURY AND ADVERTISING INJURY LIABILITY COVERAGE

(A) The company will pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as damages because of **personal injury** or **advertising injury** to which this insurance applies, sustained by any person or organization and arising out of the conduct of the **named insured's** business, within the **policy territory**, and the company shall have the right and duty to defend any suit against the **insured** seeking damages on account of such injury, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the company's liability has been exhausted by payment of judgments or settlements.

(B) This insurance does not apply:

(1) to liability assumed by the **insured** under any contract or agreement;

(2) to **personal injury** or **advertising injury** arising out of the wilful violation of a penal statute or ordinance committed by or with the knowledge or consent of the **insured**;

(3) to **personal injury** or **advertising injury** arising out of a publication or utterance of a libel or slander, or a publication or utterance in violation of an individual's right of privacy, if the first injurious publication or utterance of the same or similar material by or on behalf of the **named insured** was made prior to the effective date of this insurance;

(4) to **personal injury** or **advertising injury** arising out of libel or slander or the publication or utterance of defamatory or disparaging material concerning any person or organization or goods, products or services, or in violation of an individual's right of privacy, made by or at the direction of the **insured** with knowledge of the falsity thereof;

(5) to **personal injury** or **advertising injury** arising out of the conduct of any partnership or joint venture of which the **insured** is a partner or member and which is not designated in the declarations of the policy as a **named insured**;

(6) to **advertising injury** arising out of
(a) failure of performance of contract, but this exclusion does not apply to the unauthorized appropriation of ideas based upon alleged breach of implied contract, or
(b) infringement of trademark, service mark or trade name, other than titles or slogans, by use thereof on or in connection with **goods**, products or services sold, offered for sale or advertised, or
(c) incorrect description or mistake in advertised price of goods, products or services sold, offered for sale or advertised;

(7) with respect to **advertising injury**
(a) to any **insured** in the business of advertising, broadcasting, publishing or telecasting, or
(b) to any injury arising out of any act committed by the **insured** with actual malice.

(C) **Limits of Liability**
Regardless of the number of (1) **insureds** hereunder, (2) persons or organizations who sustain injury or damage, or (3) claims made or suits brought on account of **personal injury** or **advertising injury**, the total limit of the company's liability under this coverage for all damages shall not exceed the limit of liability stated in this endorsement as "aggregate".

(D) **Additional Definitions**
"**Advertising Injury**" means injury arising out of an offense committed during the policy period occurring in the course of the **named insured's** advertising activities, if such injury arises out of libel, slander, defamation, violation of right of privacy, piracy, unfair competition, or infringement of copyright, title or slogan.
"**Personal Injury**" means injury arising out of one or more of the following offenses committed during the policy period:
1. false arrest, detention, imprisonment, or malicious prosecution;
2. wrongful entry or eviction or other invasion of the right of private occupancy;
3. a publication or utterance
(a) of a libel or slander or other defamatory or disparaging material, or
(b) in violation of an individual's right of privacy;
except publications or utterances in the course of or related to advertising, broadcasting, publishing or telecasting activities conducted by or on behalf of the **named insured** shall not be deemed **personal injury**.

III. PREMISES MEDICAL PAYMENTS COVERAGE

The company will pay to or for each person who sustains **bodily injury** caused by accident all reasonable **medical expense** incurred within one year from the date of the accident on account of such **bodily injury**, provided such **bodily injury** arises out of (a) a condition in the **insured premises** or (b) operations with respect to which the **named insured** is afforded coverage for **bodily injury** liability under the policy.

This insurance does not apply:

(A) to **bodily injury**

(1) arising out of the ownership, maintenance, operation, use, loading or unloading of
(a) any **automobile** or aircraft owned or operated by or rented or loaned to any **insured**, or
(b) any other **automobile** or aircraft operated by any person in the course of his employment by any **insured**;
but this exclusion does not apply to the parking of an **automobile** on the **insured premises**, if such **automobile** is not owned by or rented or loaned to any **insured**;

(2) arising out of
(a) the ownership, maintenance, operation, use, loading or unloading of any **mobile equipment** while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity, or
(b) the operation or use of any snowmobile or trailer designed for use therewith;
(i) owned or operated by or rented or loaned to any **insured**, or
(ii) operated by any person in the course of his employment by any **insured**;

(3) arising out of the ownership, maintenance, operation, use, loading or unloading of
(a) any watercraft owned or operated by or rented or loaned to any **insured**, or
(b) any other watercraft operated by any person in the course of his employment by any **insured**;
but this exclusion does not apply to watercraft while ashore on the **insured premises**;

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(4) arising out of and in the course of the operation or use of equipment by an automobile owned or operated by or rented or loaned to the named insured;

(B) to bodily injury

(1) included within the completed operations hazard or the products hazard;

(2) arising out of operations performed for the named insured by independent contractors other than
(a) maintenance and repair of the insured premises, or
(b) structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;

(3) resulting from the selling, serving or giving of any alcoholic beverage
(a) in violation of any statute, ordinance or regulation,
(b) to a minor,
(c) to a person under the influence of alcohol, or
(d) which causes or contributes to the intoxication of any person,
if the named insured is a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or if not so engaged, is an owner or lessor of premises used for such purposes, but only part (a) of this exclusion (B) (3) applies when the named insured is such an owner or lessor;

(4) due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;

(C) to bodily injury

(1) to the named insured, any partner thereof, any tenant or other person regularly residing on the insured premises or any employee of any of the foregoing if the bodily injury arises out of and in the course of his employment therewith;

(2) to any other tenant if the bodily injury occurs on that part of the insured premises rented from the named insured or to any employee of such a tenant if the bodily injury occurs on the tenant's part of the insured premises and arises out of and in the course of his employment for the tenant;

(3) to any person while engaged in maintenance and repair of the insured premises or alteration, demolition or new construction at such premises;

(4) to any person if any benefits for such bodily injury are payable or required to be provided under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(5) to any person practicing, instructing or participating in any physical training, sport, athletic activity or contest whether on a formal or informal basis;

(6) if the named insured is a club, to any member of the named insured;

(7) if the named insured is a hotel, motel, or tourist court, to any guest of the named insured;

(D) to any medical expense for services by the named insured, any employee thereof or any person or organization under contract to the named insured to provide such services.

LIMITS OF LIABILITY

The limit of liability for Premises Medical Payments Coverage is $1,000 each person unless otherwise stated in the schedule of this endorsement. The limit of liability applicable to "each person" is the limit of the company's liability for all medical expense for bodily injury to any one person as the result of any one accident; but subject to the above provision respecting "each person", the total liability of the company under Premises Medical Payments Coverage for all medical expense for bodily injury to two or more persons as the result of any one accident shall not exceed the limit of bodily injury liability stated in the policy as applicable to "each occurrence".

When more than one medical payments coverage afforded by the policy applies to the loss, the company shall not be liable for more than the amount of the highest applicable limit of liability.

ADDITIONAL DEFINITIONS

When used herein:

"insured premises" means all premises owned by or rented to the named insured with respect to which the named insured is afforded coverage for bodily injury liability under this policy, and includes the ways immediately adjoining on land;

"medical expense" means expenses for necessary medical, surgical, x-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services.

ADDITIONAL CONDITION

Medical Reports; Proof and Payment of Claim

As soon as practicable the injured person or someone on his behalf shall give to the company written proof of claim, under oath if required, and shall, after each request from the company, execute authorization to enable the company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the company when and as often as the company may reasonably require. The company may pay the injured person or any person or organization rendering the services and the payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of the company.

IV. HOST LIQUOR LAW LIABILITY COVERAGE

Exclusion (h) does not apply with respect to liability of the insured or his indemnitee arising out of the giving or serving of alcoholic beverages at functions incidental to the named insured's business, provided the named insured is not engaged in the business of manufacturing, distributing, selling or serving of alcoholic beverages.

V. FIRE LEGAL LIABILITY COVERAGE—REAL PROPERTY

With respect to property damage to structures or portions thereof rented to or leased to the named insured, including fixtures permanently attached thereto, if such property damage arises out of fire

(A) All of the exclusions of the policy, other than the Nuclear Energy Liability Exclusion (Broad Form), are deleted and replaced by the following:

This insurance does not apply to liability assumed by the insured under any contract or agreement.

(B) The limit of property damage liability as respects this Fire Legal Liability Coverage—Real Property is $50,000 each occurrence unless otherwise stated in the Schedule of this endorsement.

(C) The Fire Legal Liability Coverage—Real Property shall be excess insurance over any valid and collectible property insurance (including any deductible portion thereof), available to the insured, such as, but not limited to, Fire, Extended Coverage, Builder's Risk Coverage or Installation Risk Coverage, and the Other Insurance Condition of the policy is amended accordingly.

VI. BROAD FORM PROPERTY DAMAGE LIABILITY COVERAGE (Including Completed Operations)

The insurance for property damage liability applies, subject to the following additional provisions:

(A.) Exclusions (k) and (o) are replaced by the following:

except with respect to the use of elevators, to property held by the insured for sale or entrusted to the insured for storage or safekeeping;

(2) except with respect to liability under a written sidetrack agreement or the use of elevators
(a) to property while on premises owned by or rented to the insured for the purpose of having operations performed on such property by or on behalf of the insured,
(b) to tools or equipment while being used by the insured in performing his operations,
(c) to property in the custody of the insured which is to be installed, erected or used in construction by the insured,
(d) to that particular part of any property, not on premises owned by or rented to the insured,
(i) upon which operations are being performed by or on behalf of the insured at the time of the property damage arising out of such operations, or
(ii) out of which any property damage arises, or
(iii) the restoration, repair or replacement of which has been made or is necessary by reason of faulty workmanship thereon by or on behalf of the insured;

(3) with respect to the completed operations hazard and with respect to any classification stated in the policy or in the company's manual as "including completed operations", to property damage to work performed by the named insured arising out of such work or any portion thereof, or out of such materials, parts or equipment furnished in connection therewith.

(B.) The Broad Form Property Damage Liability Coverage shall be excess insurance over any valid and collectible property insurance (including any deductible portion thereof) available to the insured, such as, but not limited to, Fire, Extended Coverage, Builder's Risk Coverage or Installation Risk Coverage, and the Other Insurance Condition of the policy is amended accordingly.

VII. INCIDENTAL MEDICAL MALPRACTICE LIABILITY COVERAGE

The definition of bodily injury is amended to include Incidental Medical Malpractice Injury.

Incidental Medical Malpractice Injury means injury arising out of the rendering of or failure to render, during the policy period, the following services:

(A) medical, surgical, dental, x-ray or nursing service or treatment or the furnishing of food or beverages in connection therewith; or

(B) the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances.

This coverage does not apply to:

(1) expenses incurred by the insured for first-aid to others at the time of an accident and the "Supplementary Payments" provision and the "Insured's Duties in the Event of Occurrence, Claim or Suit" Condition are amended accordingly;

(2) any insured engaged in the business or occupation of providing any of the services described under VII (A) and (B) above;

(3) injury caused by any indemnitee if such indemnitee is engaged in the business or occupation of providing any of the services described under VII (A) and (B) above.

VIII. NON-OWNED WATERCRAFT LIABILITY COVERAGE (under 26 feet in length)

Exclusion (e) does not apply to any watercraft under 26 feet in length provided such watercraft is neither owned by the named insured nor being used to carry persons or property for a charge.

Where the insured is, irrespective of this coverage, covered or protected against any loss or claim which would otherwise have been paid by the company under this endorsement, there shall be no contribution or participation by this company on the basis of excess, contributing, deficiency, concurrent, or double insurance or otherwise.

IX. LIMITED WORLDWIDE LIABILITY COVERAGE

The definition of policy territory is amended to include the following:

4. Anywhere in the world with respect to bodily injury, property damage, personal injury or advertising injury arising out of the activities of any insured permanently domiciled in the United States of America though temporarily outside the United States of America, its territories and possessions or Canada, provided the original suit for damages because of any such injury or damage is brought within the United States of America, its territories or possessions or Canada.

Such insurance as is afforded by paragraph 4. above shall not apply:

(a) to bodily injury or property damage included within the completed operations hazard or the products hazard;

(b) to Premises Medical Payments Coverage.

X. ADDITIONAL PERSONS INSURED

As respects bodily injury, property damage and personal injury and advertising injury coverages, under the provision "Persons Insured", the following are added as insureds:

(A) Spouse—Partnership—If the named insured is a partnership, the spouse of a partner but only with respect to the conduct of the business of the named insured;

(B) Employee—Any employee (other than executive officers) of the named insured while acting within the scope of his duties as such, but the insurance afforded to such employee does not apply:

(1) to bodily injury or personal injury to another employee of the named insured arising out of or in the course of his employment;

(2) to personal injury or advertising injury to the named insured or, if the named insured is a partnership or joint venture, any partner or member thereof, or the spouse of any of the foregoing;

(3) to property damage to property owned, occupied or used by, rented to, in the care, custody or control of or over which physical control is being exercised for any purpose by another employee of the named insured, or by the named insured or, if the named insured is a partnership or joint venture, by any partner or member thereof or by the spouse of any of the foregoing.

XI. EXTENDED BODILY INJURY COVERAGE

The definition of occurrence includes any intentional act by or at the direction of the insured which results in bodily injury, if such injury arises solely from the use of reasonable force for the purpose of protecting persons or property.

XII. AUTOMATIC COVERAGE—NEWLY ACQUIRED ORGANIZATIONS (90 DAYS)

The word insured shall include as named insured any organization which is acquired or formed by the named insured and over which the named insured maintains ownership or majority interest, other than a joint venture, provided this insurance does not apply to bodily injury, property damage, personal injury or advertising injury with respect to which such new organization under this policy is also an insured under any other similar liability or indemnity policy or would be an insured under any such policy but for exhaustion of its limits of liability. The insurance afforded hereby shall terminate 90 days from the date any such organization is acquired or formed by the named insured.

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(The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy.)

LIABILITY

GL 99 17 (Ed. 03 81)

L 6108
(Ed. 3-81)

AMENDMENT — LIMITS OF LIABILITY

(Single Limit)

(Individual Coverage Aggregate Limit)

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

COMPREHENSIVE GENERAL LIABILITY INSURANCE
COMPLETED OPERATIONS AND PRODUCTS LIABILITY INSURANCE
CONTRACTUAL LIABILITY INSURANCE
MANUFACTURERS' AND CONTRACTORS' LIABILITY INSURANCE
OWNERS' AND CONTRACTORS' PROTECTIVE LIABILITY INSURANCE
OWNERS', LANDLORDS' AND TENANTS' LIABILITY INSURANCE

This endorsement, effective September 30, 1984 (12:01 A.M., standard time), forms a part of policy No. GLA 194 00 11 RA

issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

James A. Fowler
Authorized Representative

SCHEDULE

Coverages	Limits of Liability
Bodily Injury Liability and Property Damage Liability	$ 1,000 ,000 each occurrence $ 1,000 ,000 aggregate

It is agreed that the provisions of the policy captioned "LIMITS OF LIABILITY" relating to Bodily Injury Liability and Property Damage Liability are amended to read as follows:

LIMITS OF LIABILITY

Regardless of the number of (1) **insureds** under this policy, (2) persons or organizations who sustain **bodily injury** or **property damage**, or (3) claims made or suits brought on account of **bodily injury** or **property damage**, the company's liability is limited as follows:

Bodily Injury Liability and Property Damage Liability:

(a) The limit of liability stated in the Schedule of this endorsement as applicable to "each **occurrence**" is the total limit of the company's liability for all damages including damages for care and loss of services because of **bodily injury** and **property damage** sustained by one or more persons or organizations as a result of any one **occurrence**, provided that with respect to any **occurrence** for which notice of this policy is given in lieu of security or when this policy is certified as proof of financial responsibility under the provisions of the Motor Vehicle Financial Responsibility Law of any state or province such limit of liability shall be applied to provide the separate limits required by such law for Bodily Injury Liability and Property Damage Liability to the extent of the coverage required by such law, but the separate application of such limit shall not increase the total limit of the company's liability.

(b) Subject to the above provision respecting "each **occurrence**", the total liability of the company for all damages because of all **bodily injury** and **property damage** which occurs during each annual period while this policy is in force commencing from its effective date and which is described in any of the numbered subparagraphs below shall not exceed the limit of liability stated in the Schedule of this endorsement as "aggregate":

(1) all **property damage** arising out of premises or operations rated on a remuneration basis or Contractor's equipment rated on a receipts basis, including **property damage** for which liability is assumed under any **incidental contract** relating to such premises or operations, but excluding **property damage** included in subparagraph (2) below;

(2) all **property damage** arising out of and occurring in the course of operations performed for the **named insured** by independent contractors and general supervision thereof by the **named insured**, including any such **property damage** for which liability is assumed under any **incidental contract** relating to such operations, but this subparagraph (2) does not include **property damage** arising out of maintenance or repairs at premises owned by or rented to the **named insured** or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;

(3) if Products — Completed Operations insurance is afforded, all **bodily injury** and **property damage** included within the **completed operations hazard** and all **bodily injury** and **property damage** included within the **products hazard**;

(4) if Contractual Liability Insurance is afforded, all **property damage** for which liability is assumed under any contract to which the Contractual Liability Insurance applies.

Such aggregate limit shall apply separately:

(i) to the **property damage** described in subparagraphs (1) and (2) and separately with respect to each project away from premises owned by or rented to the **named insured**;

(ii) to the sum of the damages for all **bodily injury and property damage** described in subparagraph (3); and

(iii) to the **property damage** described in subparagraph (4) and separately with respect to each project away from premises owned by or rented to the **named insured**.

(c) For the purpose of determining the limit of the company's liability, all **bodily injury** and **property damage** arising out of continuous or repeated exposure to substantially the same general condition shall be considered as arising out of one **occurrence**.

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(The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy.)

LIABILITY

GL 20 11 (Ed. 07 66)
G 109

L 9109
(Ed. 7-66)

ADDITIONAL INSURED

(Premises Leased to the Named Insured)

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:
COMPREHENSIVE GENERAL LIABILITY INSURANCE
MANUFACTURERS' AND CONTRACTORS' LIABILITY INSURANCE
OWNERS', LANDLORDS' AND TENANTS' LIABILITY INSURANCE
STOREKEEPER'S INSURANCE

This endorsement, effective September 30, 1984 (12:01 A. M., standard time), forms a part of policy No. GLA 194 00 11 RA

issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

James A. Fowler
Authorized Representative

SCHEDULE

Premiums: Bodily Injury Liability	Premiums: Property Damage Liability	Designation of Premises (Part Leased to Named Insured)	Name of Person or Organization (Additional Insured)
Incl.	Incl.	As May Appear	As May Appear

It is agreed that the "Persons Insured" provision is amended to include as an **insured** the person or organization designated above, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises designated above leased to the **named insured**, and subject to the following additional exclusions:

The insurance does not apply:

1. to any **occurrence** which takes place after the **named insured** ceases to be a tenant in said premises;
2. to structural alterations, new construction or demolition operations performed by or on behalf of the person or organization designated above.

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(The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy.)

LIABILITY

GL 20 15 (Ed. 07 66)
G 113

L 9113a
(Ed. 7-66)

ADDITIONAL INSURED

(Vendors—Broad Form)

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:
COMPREHENSIVE GENERAL LIABILITY INSURANCE
COMPLETED OPERATIONS AND PRODUCTS LIABILITY INSURANCE

This endorsement, effective September 30, 1984 (12:01 A. M., standard time), forms a part of policy No. GLA 194 00 11 RA

issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

James C. Fowler
Authorized Representative

SCHEDULE

Name of Vendor(s)	Description of Product(s)
All Vendors used by the Named Insured.	

It is agreed that the "Persons Insured" provision is amended to include any person or organization designated above (herein referred to as "vendor"), as an **insured**, but only with respect to the distribution or sale in the regular course of the vendor's business of the **named insured's products** designated above subject to the following additional provisions:

1. The insurance with respect to the vendor does not apply to:
   (a) any express warranty unauthorized by the **named insured**;
   (b) **bodily injury** or **property damage** arising out of
      (i) any physical or chemical change in the form of the product made intentionally by the vendor,
      (ii) repacking, unless unpacked solely for the purpose of inspection, demonstration, testing or the substitution of parts under instruction from the manufacturer and then repacked in the original container,
      (iii) demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product, or
      (iv) products which after distribution or sale by the **named insured** have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.
2. The insurance does not apply to any person or organization, as **insured**, from whom the **named insured** has acquired such products or any ingredient, part or container, entering into, accompanying or containing such products.

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COVERAGE PART

L 6394a
(Ed. 1-73)

COMPREHENSIVE GENERAL LIABILITY INSURANCE

For attachment to Policy No. GLA 194 00 11 RA to complete said policy.

ADDITIONAL DECLARATIONS

Location of all premises owned by, rented to or controlled by the named insured (ENTER "SAME" IF SAME LOCATION AS ADDRESS SHOWN IN ITEM 1 OF DECLARATIONS)

Interest of named insured in such premises (CHECK BELOW)

☐ Owner ☐ General Lessee ☐ Tenant ☐ Other _____

Part occupied by named insured (ENTER BELOW)

The following discloses all hazards insured hereunder known to exist at the effective date of this policy, unless otherwise stated herein.

SCHEDULE

The insurance afforded is only with respect to such of the following Coverages as are indicated by specific premium charge or charges. The limit of the company's liability against each such Coverage shall be as stated herein, subject to all the terms of this policy having reference thereto.

Advance Premiums	Limits of Liability: each occurrence	Limits of Liability: aggregate	Coverages
$ 29,523	$ See Endt.	$ L6108	A—Bodily Injury Liability
$ 16,665	$	$	B—Property Damage Liability
$			Form numbers of endorsements attached at issue
$ 46,188	Total Advance Premium	L9282, L9109, L9113	

General Liability Hazards

Advance Premiums: Bodily Injury	Advance Premiums: Property Damage	Rates: B.I.	Rates: P.D.	Premium Bases	Code No.	Description of Hazards
	Included	In	Composite	Rate		Premises - Operations Endorsement
		(a) Per 100 Sq. Ft. of Area (b) Per Linear Foot (c) Per $100 of Remuneration (d) Per $100 of Receipts (e) Per Unit (f) Per 100 Admissions		(a) Area (Sq. Ft.) (b) Frontage (c) Remuneration (d) Receipts (e) Units (f) Admissions		
Included	Included	Per Landing		Number Insured		Escalators (Number at Premises)
Included	Included	Per $100 of Cost		Cost		Independent Contractors
Included	Included	(a) Per $1,000 of Receipts		(a) Receipts		Completed Operations
Included	Included	(b) Per $1,000 of Sales		(b) Sales		Products
$29,523	$ 16,665	Total Advance B.I. and P.D. Premiums				

When used as a premium basis:

1. "admissions" means the total number of persons, other than employees of the named insured, admitted to the event insured or to events conducted on the premises whether on paid admission tickets, complimentary tickets or passes;
2. "cost" means the total cost to the named insured with respect to operations performed for the named insured during the policy period by independent contractors of all work let or sub-let in connection with each specific project, including the cost of all labor, materials and equipment furnished, used or delivered for use in the execution of such work, whether furnished by the owner, contractor or subcontractor, including all fees, allowances, bonuses or commissions made, paid or due;
3. "receipts" means the gross amount of money charged by the named insured for such operations by the named insured or by others during the policy period as are rated on a receipts basis other than receipts from telecasting, broadcasting or motion pictures, and includes taxes, other than taxes which the named insured collects as a separate item and remits directly to a governmental division;
4. "remuneration" means the entire remuneration earned during the policy period by proprietors and by all employees of the named insured, other than chauffeurs (except operators of mobile equipment) and aircraft pilots and co-pilots, subject to any overtime earnings or limitation of remuneration rule applicable in accordance with the manuals in use by the company;
5. "sales" means the gross amount of money charged by the named insured or by others trading under his name for all goods and products sold or distributed during the policy period and charged during the policy period for installation, servicing or repair, and includes taxes, other than taxes which the named insured and such others collect as a separate item and remit directly to a governmental division.

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I. COVERAGE A—BODILY INJURY LIABILITY
COVERAGE B—PROPERTY DAMAGE LIABILITY

The company will pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as damages because of

A. **bodily injury** or

B. **property damage**

to which this insurance applies, caused by an **occurrence**, and the company shall have the right and duty to defend any suit against the **insured** seeking damages on account of such **bodily injury** or **property damage**, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the company's liability has been exhausted by payment of judgments or settlements.

Exclusions

This insurance does not apply:

(a) to liability assumed by the **insured** under any contract or agreement except an **incidental contract**; but this exclusion does not apply to a warranty of fitness or quality of the **named insured's products** or a warranty that work performed by or on behalf of the **named insured** will be done in a workmanlike manner;

(b) to **bodily injury** or **property damage** arising out of the ownership, maintenance, operation, use, loading or unloading of
(1) any **automobile** or aircraft owned or operated by or rented or loaned to any **insured**, or
(2) any other **automobile** or aircraft operated by any person in the course of his employment by any **insured**;
but this exclusion does not apply to the parking of an **automobile** on premises owned by, rented to or controlled by the **named insured** or the ways immediately adjoining, if such **automobile** is not owned by or rented or loaned to any **insured**;

(c) to **bodily injury** or **property damage** arising out of (1) the ownership, maintenance, operation, use, loading or unloading of any **mobile equipment** while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity or (2) the operation or use of any snowmobile or trailer designed for use therewith;

(d) to **bodily injury** or **property damage** arising out of and in the course of the transportation of **mobile equipment** by an **automobile** owned or operated by or rented or loaned to any **insured**;

(e) to **bodily injury** or **property damage** arising out of the ownership, maintenance, operation, use, loading or unloading of
(1) any watercraft owned or operated by or rented or loaned to any **insured**, or
(2) any other watercraft operated by any person in the course of his employment by any **insured**;
but this exclusion does not apply to watercraft while ashore on premises owned by, rented to or controlled by the **named insured**;

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

(g) to **bodily injury** or **property damage** due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing, with respect to
(1) liability assumed by the **insured** under an **incidental contract**, or
(2) expenses for first aid under the Supplementary Payments provision;

(h) to **bodily injury** or **property damage** for which the **insured** or his indemnitee may be held liable
(1) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or
(2) if not so engaged, as an owner or lessor of premises used for such purposes,
if such liability is imposed
(i) by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage, or
(ii) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person;
but part (ii) of this exclusion does not apply with respect to liability of the **insured** or his indemnitee as an owner or lessor described in (2) above;

(i) to any obligation for which the **insured** or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(j) to **bodily injury** to any employee of the **insured** arising out of and in the course of his employment by the **insured** or to any obligation of the **insured** to indemnify another because of damages arising out of such injury; but this exclusion does not apply to liability assumed by the **insured** under an **incidental contract**;

(k) to **property damage** to
(1) property owned or occupied by or rented to the **insured**,
(2) property used by the **insured**, or
(3) property in the care, custody or control of the **insured** or as to which the **insured** is for any purpose exercising physical control;
but parts (2) and (3) of this exclusion do not apply with respect to liability under a written sidetrack agreement and part (3) of this exclusion does not apply with respect to **property damage** (other than to **elevators**) arising out of the use of an **elevator** at premises owned by, rented to or controlled by the **named insured**;

(l) to **property damage** to premises alienated by the **named insured** arising out of such premises or any part thereof;

(m) to loss of use of tangible property which has not been physically injured or destroyed resulting from
(1) a delay in or lack of performance by or on behalf of the **named insured** of any contract or agreement, or
(2) the failure of the **named insured's products** or work performed by or on behalf of the **named insured** to meet the level of performance, quality, fitness or durability warranted or represented by the **named insured**;
but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the **named insured's products** or work performed by or on behalf of the **named insured** after such products or work have been put to use by any person or organization other than an **insured**;

(n) to **property damage** to the **named insured's products** arising out of such products or any part of such products;

(o) to **property damage** to work performed by or on behalf of the **named insured** arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;

(p) to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the **named insured's products** or work completed by or for the **named insured** or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;

(q) to **property damage** included within
(1) the **explosion hazard** in connection with operations identified in this policy by a classification code number which includes the symbol "x",
(2) the **collapse hazard** in connection with operations identified in this policy by a classification code number which includes the symbol "c",
(3) the **underground property damage hazard** in connection with operations identified in this policy by a classification code number which includes the symbol "u".

II. PERSONS INSURED

Each of the following is an **insured** under this insurance to the extent set forth below:

(a) if the **named insured** is designated in the declarations as an individual, the person so designated but only with respect to the conduct of a business of which he is the sole proprietor, and the spouse of the **named insured** with respect to the conduct of such a business;

(b) if the **named insured** is designated in the declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;

(c) if the **named insured** is designated in the declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his duties as such;

(d) any person (other than an **employee** of the **named insured**) or organization while acting as real estate manager for the **named insured**; and

(e) with respect to the operation, for the purpose of locomotion upon a public highway, of **mobile equipment** registered under any motor vehicle registration law,
(i) an employee of the **named insured** while operating any such equipment in the course of his employment, and
(ii) any other person while operating with the permission of the **named insured** any such equipment registered in the name of the **named insured** and any person or organization legally responsible for such operation, but only if there is no other valid and collectible insurance available, either on a primary or excess basis, to such person or organization;
provided that no person or organization shall be an **insured** under this paragraph (e) with respect to:
(1) **bodily injury** to any fellow employee of such person injured in the course of his employment, or
(2) **property damage** to property owned by, rented to, in charge of or occupied by the **named insured** or the employer of any person described in subparagraph (ii).

This insurance does not apply to **bodily injury** or **property damage** arising out of the conduct of any partnership or joint venture of which the **insured** is a partner or member and which is not designated in this policy as a **named insured**.

III. LIMITS OF LIABILITY

Regardless of the number of (1) **insureds** under this policy, (2) persons or organizations who sustain **bodily injury** or **property damage**, or (3) claims made or suits brought on account of **bodily injury** or **property damage**, the company's liability is limited as follows:

Coverage A—The total liability of the company for **all** damages, including damages for care and loss of services, because of **bodily injury** sustained by one or more persons as the result of any one **occurrence** shall not exceed the limit of **bodily injury** liability stated in the schedule as applicable to "each occurrence".

Subject to the above provision respecting "each **occurrence**", the total liability of the company for all damages because of (1) all **bodily injury** included within the **completed operations hazard** and (2) all **bodily injury** included within the **products hazard** shall not exceed the limit of **bodily injury** liability stated in the schedule as "aggregate".

Coverage B—The total liability of the company for all damages because of all **property damage** sustained by one or more persons or organizations as the result of any one **occurrence** shall not exceed the limit of **property damage** liability stated in the schedule as applicable to "each occurrence".

Subject to the above provision respecting "each occurrence", the total liability of the company for all damages because of all **property damage** to which this coverage applies and described in any of the numbered subparagraphs below shall not exceed the limit of **property damage** liability stated in the schedule as "aggregate":
(1) all **property damage** arising out of premises or operations rated on a remuneration basis or contractor's equipment rated on a receipts basis, including **property damage** for which liability is assumed under any **incidental contract** relating to such premises or operations, but excluding **property damage** included in subparagraph (2) below;
(2) all **property damage** arising out of and occurring in the course of operations performed for the **named insured** by independent contractors and general supervision thereof by the **named insured**, including any such **property damage** for which liability is assumed under any **incidental contract** relating to such operations, but this subparagraph (2) does not include **property damage** arising out of maintenance or repairs at premises owned by or rented to the **named insured** or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;
(3) all **property damage** included within the **products hazard** and all **property damage** included within the **completed operations hazard**.

Such aggregate limit shall apply separately to the **property damage** described in subparagraphs (1), (2) and (3) above, and under subparagraphs (1) and (2), separately with respect to each project away from premises owned by or rented to the **named insured**.

Coverages A and B—For the purpose of determining the limit of the company's liability, all **bodily injury** and **property damage** arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence**.

IV. POLICY TERRITORY

This insurance applies only to **bodily injury** or **property damage** which occurs within the **policy territory**.

AUTHENTIC

ENDORSEMENT #2

This endorsement, effective 12:01 A. M. September 30, 1984 forms a part of Policy No. GLA 194 00 11 RA issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

Additional Declarations

EMPLOYEE BENEFITS LIABILITY INSURANCE

COVERAGE	LIMIT OF LIABILITY	DEDUCTIBLE
Employee Benefits Liability Insurance	$ 1,000,000 Each Occurrence $ 1,000,000 Annual Aggregate	$ 1,000 Each Occurrence

PREMIUM COMPUTATION

Est. No. of Employees	Rate Per Employee	Advance Premium
TBD	First 5,000 Incl. Next 5,000 Incl. Over 10,000 Incl.	$ Incl. in $ Composite $ Rate Endt.
	Total Advance Premium	$ Included

In consideration of the payment of the premium, this Company agrees with the Insured named in the Declarations to afford the coverage set forth herein. The other terms, conditions and limits of liability in other sections of the policy to which this endorsement is attached shall not apply to insurance afforded hereunder.

INSURING AGREEMENTS

1. **Employee Benefits Liability**

The Company will indemnify the Insured for all sums which the Insured shall become legally obligated to pay as damages because of any claim made against the Insured due to any negligent act, error or omission of the Insured, or any other person for whose acts the Insured is legally liable, in the administration of the Insured's Employee Benefits Programs, as defined herein, and this Company shall have the right and duty to defend any suit against the Insured seeking damages on account of such negligent act, error or omission, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient; but this Company shall not be obligated to defend any suit after the applicable limit of this Company's liability has been exhausted by payment of judgments or settlements.

DEFINITIONS

1. **Definition of "Insured"**

With respect to the insurance afforded by this endorsement the unqualified word "Insured" includes the Named Insured; provided that (a) if the Named Insured is designated as an individual, the insurance applies only to the conduct of a business of which he is the sole proprietor and (b) the unqualified word "Insured" also includes the following:

(i) if the Named Insured is or includes a partnership or joint venture, any partner or member thereof but only with respect to his liability as such;

(ii) any executive officer, director or stockholder of the Named Insured while acting within the scope of his duties as such;

(iii) any employee, provided such employee is authorized to act in the administration of the Named Insured's Employee Benefits Programs.

2. **"Employee Benefits Programs"**

The term "Employee Benefits Programs" means (a) group life insurance, group accident or health insurance, profit sharing plans, pension plans, employee stock subscription plans, workmen's compensation, unemployment insurance, social benefits, disability benefits, and (b) any other similar employee benefits instituted after the effective date of this endorsement provided this Company is notified within thirty days after the institution of such benefits.

3. **"Administration"**

The unqualified word "administration" wherever used shall mean:

(a) Giving counsel to employees with respect to the Employee Benefits Programs;

(b) Interpreting the Employee Benefits Programs;

(c) Handling of records in connection with the Employee Benefits Programs;

(d) Effective enrollment, termination or cancellation of employees under the Employee Benefits Programs; provided all such acts are authorized by the Named Insured.

4. **"Occurrence"**

The word "occurrence" shall mean any negligent act, error or omission of the Insured in the Administration (as defined herein) of the Insured's Employee Benefits Program (as defined herein) occurring during the term of coverage provided by this endorsement.

Form C-956 Rev. (11/1/75) Order By 33268 (2/82)

SUBMITTED 33258879 - Laura McDonald - 6/23/2025 12:28 PM

EXCLUSIONS

This endorsement does not apply to:

1. any dishonest, fraudulent, criminal or malicious act, libel, slander, discrimination or humiliation;
2. bodily injury to or sickness, disease or death, of any person, or to injury to or destruction of any tangible property, including the loss of use thereof;
3. any claim for failure of performance of contract by an insurer;
4. any claim based upon the Insured's failure to comply with any law concerning workmen's compensation, unemployment insurance, social security or disability benefits;
5. any claim based upon:
   (a) failure of stock to perform as represented by an Insured;
   (b) advice given by an Insured to an employee to participate or not to participate in stock subscription plans.
6. all sums which the Insured shall become legally obligated to pay as loss because of any Breach of Fiduciary Duty (as defined below) or because of any Breach of Fiduciary Duty by any other person for which the Insured is legally responsible and arising out of the Insured's activity as a fiduciary of any Plan covered by this endorsement. The term "Breach of Fiduciary Duty" shall mean the violation of any of the responsibilities, obligations of duties imposed upon fiduciaries by the EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 or amendments thereto with respect to any Plan covered by this endorsement.
7. any claim made against the Insured based on or attributable to any failure or omission on the part of the Insured to effect and maintain insurance or bonding for Plan Property or Assets.

CONDITIONS

1. **Application of this Endorsement**

   This endorsement applies to damages resulting from claim or suit brought against the Insured during the endorsement period, provided the Insured, at the effective date of this endorsement, had no knowledge or could not have reasonably foreseen any circumstances which might result in a claim or suit.

2. **Limits of Liability**

   Regardless of the number of (a) Insureds under under this policy (b) persons who sustain damage, or (c) claims made or suits brought for such damage; the limit of liability stated in the Additional Declarations as applicable to "each occurrence" is the limit of this Company's liability for all damages incurred on account of any claim covered hereunder; the limit of liability stated in the Additional Declarations as "annual aggregate" is, subject to the above provision respecting each claim, the total limit of this Company's liability for all claims covered hereunder and occurring during each annual period this endorsement is in force.

3. **Premium**

   The premium stated in the Additional Declarations is an estimated premium only. Upon termination of each annual period of this endorsement the Insured, on request, will furnish this Company a statement of the total number of employees at the end of the period. The earned premium shall be computed on the average of the number of employees at the end of the coverage period and that stated in the Additional Declarations. If the earned premium thus computed exceeds the estimated premium paid, the Insured shall pay the excess to this Company; if less, this Company shall return to the Insured the unearned portion paid by such Insured.

4. **Deductible**

   The deductible amount indicated in the Additional Declarations shall be subtracted from the total amount of all sums which this Company is obligated to pay or incur on behalf of the Insured on account of each occurrence. This Company shall be liable only for the difference between each deductible amount and the limit of this Company's liability for each occurrence as stated in the Additional Declarations. The terms of this endorsement including those with respect to notice of claim or suit and this Company's right to investigate and negotiate any such claim or suit, apply irrespective of the application of the deductible amount.

5. **Other Insurance**

   With respect to negligent acts, errors or omissions which occur prior to the effective date of this endorsement, the insurance hereunder shall apply only as excess insurance over any other valid and collectible insurance and shall then apply only in the amount by which the applicable limit of liability of this endorsement exceeds the sum of the applicable limits of liability of all such other insurance.

6. **Conformity with Statute**

   Terms of this endorsement which are in conflict with the statutes of the State wherein this endorsement is issued are hereby amended to conform to such statutes.

Authorized Representative

SUBMITTED 33258879 - Laun McDonald - 6/23/2025 12:28 PM CONFIDENTIAL GRIFFOODS000006433

ENDORSEMENT #3

This endorsement, effective 12:01 A. M. September 30, 1984 forms a part of

policy No. GLA 194 00 11 RA issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

Item 1 - Named Insured

Griffith Laboratories U.S.A., Inc.
Griffith Laboratories, Inc.

"Named Insured" means the organization, including any subsidiary thereof, named in item 1 of the declarations and also includes any other company which is acquired or formed by the named insured during the policy period and over which the named insured maintains ownership or financial control, provided this insurance does not apply to any such newly acquired or formed company which is an insured under any other liability or indemnity policy or would be an insured under any such policy but for its termination upon exhaustion of its limits of liability. Such insurance as may be afforded and newly acquired or formed company shall terminate within sixty days of its acquisition of formation unless reported to the company within said sixty days.

James A. Fowler

Authorized Representative

SUBMITTED - 25587 - Lauri McDonald - 6/23/2025 12:28 PM
CONFIDENTIAL

ENDORSEMENT #4

This endorsement, effective 12:01 A. M. September 30, 1984 forms a part of policy No. GLA 194 00 11 RA issued to Griffith Laboratories, Inc. by National Union Fire Insurance Company of Pittsburgh, Pa.

Section V111 Non-Owned Watercraft, of the Broad Form Comprehensive General Liability endorsement #GL0404, is Amended to exclude the 26 feet limitation.

James A. Fowler

Authorized Representative

SUBMITTED BY Lauri McDonald - 6/23/2025 12:28 PM

CONFIDENTIAL

ENDORSEMENT #5

This endorsement, effective 12:01 A. M. September 30, 1984 forms a part of policy No. GLA 194 00 11RA issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

FIRE AND EXPLOSION LEGAL LIABILITY COVERAGE

It is agreed that the Property Damage Liability Coverage applies to Property Damage to structures or portions thereof not owned by the Named Insured, but which are rented to or occupied by the Named Insured, including fixtures permanently attached thereto, if such property damage arises out of Fire and/or Explosion, subject to the following additional provisions:

1. with respect to the insurance provided by this endorsement all of the exclusions of the policy, other than the Nuclear Energy Exclusion (Broad Form), are replaced by the following:

   (a) This insurance does not apply to Liability assumed by the Insured under any contract or agreement;

   (b) Coverage for explosion afforded by this endorsement does not apply to property damage arising out of explosion of steam boilers, steam pipes, steam turbines or steam engines.

2. The following is not explosion within the intent or meaning of explosion coverage afforded by this endorsement:

   Explosion arising out of vacugas operations or any gases used, stored, or handled in connection with such operations.

James A. Fowler
AUTHORIZED REPRESENTATIVE

CONFIDENTIAL
SUBMITTED - 38258879 - Lauri McDonald - 6/23/2025 12:28 PM
GRIFFOODS000006436

ENDORSEMENT #6

This endorsement, effective 12:01 A. M. September 30, 1984 forms a part of

policy No. GLA 194 00 11 RA issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

COMPREHENSIVE GENERAL LIABILITY COVERAGE IS PROVIDED FOR THE FOLLOWING

"That part of Lot 12 lying South of a line 150' South of and parallel with the North Line of said Lot 12 and Chinquopin Hills, Being a subdivision of lots 9 to 16 both inclusive, in Stephenson Subdivision of the South Southeastern 1/4 of section 30, Township 37N Range 12, East Third Principal meridian in Cook County, Illinois".

James A. Fowler

Authorized Representative

SUBMITTED - 33259879 - Lauri McDonald - 6/23/2025 12:28 PM
CONFIDENTIAL
GRIFFOODS000006437

ENDORSEMENT #7

This endorsement, effective 12:01 A. M. September 30, 1984 forms a part of

policy No. GLA 194 00 11 RA issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

ADDITIONAL INSURED

It is understood and agreed that development authority of De Kalb County and Trust Company Bank as Trustee is hereby added as an additional insured relating to Industrial Revenue Bonds for Construction of a plant addition in Lithonia, GA.

James A. Fowler

Authorized Representative

SUBMITTED BY Lauri McDonald - 6/23/2025 12:28 PM

ENDORSEMENT #8

This endorsement, effective 12:01 A. M. September 30, 1984 forms a part of

policy No. GLA 194 00 11 RA issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

ADDITIONAL INSURED

It is understood and agreed that Industrial Development Authority of Wayne County, Missouri and Mercantile Trust Company, not individually but as Trustee for Industrial Revenue Bonds, Series 1983, are added as Additional Insureds with respects to the Manufacturing Plant in Greenville, Missouri.

James A. Fowler

Authorized Representative

SUBMITTED - 38258879 - Lauri McDonald - 6/23/2025 12:28 PM
CONFIDENTIAL
GRIFFOODS000006439

ENDORSEMENT #9

This endorsement, effective 12:01 A. M. September 30, 1984 forms a part of

policy No. GLA 194 00 11 RA issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

ADDITIONAL INSURED

It is hereby agreed that LaSalle National Bank, not individually, but as Trustee under Trust # 43922 its beneficiaries and agents, as their interests may appear, is named as an additional insured.

James A. Fowler

Authorized Representative

SUBMITTED BY Lauri McDonald - 6/23/2025 12:28 PM

ENDORSEMENT #10

This endorsement, effective 12:01 A. M. September 30, 1984 forms a part of

policy No. GLA 194 00 11 RA issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

ADDITIONAL INSURED

It is understood and agreed that the

First National Leasing Corporation
Box 456
161 North Wisconsin Avenue
Milwaukee, Wisconsin 53201

is an additional insured as their interest may appear in equipment leased by them.

James A. Fowler

Authorized Representative

SUBMITTED BY Lauri McDonald - 6/23/2025 12:28 PM

ENDORSEMENT #11

This endorsement, effective 12:01 A. M. September 30, 1984 forms a part of

policy No. GLA 194 00 11 RA issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

NOTICE OF CANCELLATION

It is agreed that in the event of cancellation of this policy, the company shall give to the Named Insured at the address indicated in the declarations SIXTY (60) days written notice of such cancellation, except for non-payment of premium, wherein only ten (10) days notice will be given.

James A. Fowler

Authorized Representative

SUBMITTED BY Lauri McDonald - 6/23/2025 12:28 PM

CONFIDENTIAL

ENDORSEMENT #12

This endorsement, effective 12:01 A. M. September 30, 1984 forms a part of

policy No. GLA 194 00 11 RA issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

It is agreed that this policy is hereby amended as indicated. All other terms and conditions of this policy remain unchanged.

SUBJECT AND NON-SUBJECT PREMIUMS

It is agreed that, pursuant to the provisions of the Premium Agreement, the following symbols, appearing in schedules or endorsements attached to and forming part of this policy, designate premium subject or not subject to adjustment under the Premium Agreement, as shown below:

PREMIUM	SYMBOL
Subject to Adjustment	S
Not Subject to Adjustment	E

James A. Fowler

Authorized Representative

SUBMITTED TO Lauri McDonald - 6/23/2025 12:28 PM
CONFIDENTIAL

ENDORSEMENT #13

This endorsement, effective 12:01 A. M. September 30, 1984 forms a part of policy No. GLA 194 0011RA issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

COMPOSITE RATING PLAN
Premium Endorsement

It is agreed that the premium for the policy to which this endorsement is attached shall be computed upon a composite basis in accordance with the company's rules, rates, rating plans, premium and minimum premiums and the other terms of the policy.

When used as a premium basis:

Sales		Rate Per $1,000 Sales BI	Rate Per $1,000 Sales PD		Estimated Premium BI	Estimated Premium PD		Deposit Premium BI	Deposit Premium PD
165,163,000	S	.1450	.0820	S	23,949	13,543	S	15,567	8,803
	E	.0845	.0476	E	13,956	7,862	E	13,956	7,862

Nothing herein contained shall be held to waive, vary, alter or extend any condition or provision of the policy other than as above stated.

This endorsement is attached to the policy indicated above and is effective on the date stated herein at 12:01 A.M. standard time at the address of the insured as described in the declarations.

James A. Fowler
AUTHORIZED REPRESENTATIVE

SUBMITTED BY Lauri McDonald - 6/23/2025 12:28 PM
CONFIDENTIAL
GRIFFOODS000006444

ENDORSEMENT #14

This endorsement, effective 12:01 A. M. September 30, 1984 forms a part of

policy No. GLA 194 00 11 RA issued to Griffith Laboratories, Inc.

by National Union Fire Insurance Company of Pittsburgh, Pa.

ADDITIONAL INSURED

It is understood and agreed that First National Leasing Corp. is hereby added as an Additional Insured, but only as respects to Equipment Leased to the Named Insured.

James A. Fowler

Authorized Representative

SUBMITTED BY Lauri McDonald - 6/23/2025 12:28 PM

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GRIFFITH FOODS INTERNATIONAL INC. F/K/A GRIFFITH LABORATORIES U.S.A., INC., and GRIFFITH FOODS GROUP INC. F/K/A GRIFFITH LABORATORIES, INC.,	)	
Plaintiffs,	)	Case No.: 1:21-cv-6403
v.	)	
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.,	)	
Defendant.	)	

COMPLAINT

Plaintiffs Griffith Foods International Inc. f/k/a Griffith Laboratories U.S.A., Inc. and Griffith Foods Group Inc. f/k/a Griffith Laboratories, Inc., by and through its attorneys, Perkins Coie LLP, for its Complaint for breach of contract and declaratory judgment pursuant to 28 U.S.C. § 2201 against National Union Fire Insurance Company of Pittsburgh, PA states as follows:

THE PARTIES

1. Plaintiff Griffith Foods International Inc. f/k/a Griffith Laboratories U.S.A., Inc. ("GFI") is a corporation incorporated under the laws of Delaware with its principal place of business in Illinois. Plaintiff Griffith Foods Group Inc. f/k/a Griffith Laboratories, Inc. ("GFG") is a corporation incorporated under the laws of Illinois with its principal place of business in Illinois. Plaintiffs shall be referred to collectively herein as "Griffith."

2. Defendant National Union Fire Insurance Company of Pittsburgh, PA. ("AIG") is an AIG member company incorporated in Pennsylvania with its principal place of business in New York.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(a) because there is complete diversity of citizenship among the parties and the amount in controversy exceeds $75,000, exclusive of interest and costs. The Court additionally has jurisdiction under 28 U.S.C. § 2201 because there is an actual controversy between the parties concerning the parties' rights and obligations under the insurance policies at issue.

4. Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial part of property that is the subject of this action is situated in this district. AIG is subject to this Court's personal jurisdiction with respect to this action, because at all relevant times, AIG was registered with the Illinois Department of Insurance to transact insurance business within the State of Illinois and transacted insurance business within the State, including selling to Griffith the insurance policies at issue in this action.

NATURE OF THE ACTION

5. This is a civil action for breach of contract and declaratory relief arising out of AIG's wrongful failure and refusal to defend and indemnify Griffith with respect to hundreds of pending suits alleging bodily injuries, which for purposes of discovery have been consolidated and captioned *In re: Willowbrook Ethlyene Oxide Litigation*, Circuit Court of Cook County, Illinois Consolidated Case No. 18-L-010475 (the "Underlying Suits") under two commercial general liability insurance policies issued by National Union to Griffith (among other insureds) ("Policies").

6. AIG denied coverage in full for the Underlying Suits for two alleged reasons: (1) Griffith Foods International Inc. and Griffith Foods Group Inc. purportedly do not qualify as "insureds" under the Policies; and (2) the Underlying Suits purportedly run afoul of the "sudden

and accidental" pollution exclusions in the Policies. For the reasons explained in detail below, AIG's denial is wrongful. Moreover, due to AIG's failure to file a declaratory judgment action concurrently with its denial of a duty to defend Griffith in the Underlying Suits, AIG is estopped under Illinois law from asserting defenses to coverage.

GENERAL ALLEGATIONS

The Policies

7. AIG issued General Liability-Automobile Policy No. GLA9457058RA to GFI (then known as Griffith Laboratories U.S.A., Inc.) and GFG (then known as Griffith Laboratories, Inc.) for the policy period of September 30, 1983 to September 30, 1984 (the "83-84 Policy"). A true and correct copy of the 83-84 Policy is attached as **Exhibit A**.

8. AIG issued General Liability-Automobile Policy No. GLA1940011RA to GFI (then known as Griffith Laboratories U.S.A., Inc.) and GFG (then known as Griffith Laboratories, Inc.) for the policy period of September 30, 1984 to September 30, 1985 (the "84-85 Policy"). A true and correct copy of the 84-85 Policy is attached as **Exhibit B**.

9. The Policies define the "Named Insured" as:

> the organization, including any subsidiary thereof, named in item 1 of the declarations [Griffith Laboratories U.S.A., Inc. and Griffith Laboratories, Inc.] and also includes any other company which is acquired or formed by the named insured during the policy period and over which the named insured maintains ownership or financial control, provided this insurance does not apply to any such newly acquired or formed company which is an insured under any other liability or indemnity policy or would be an insured under any such policy but for its termination upon exhaustion of its limits of liability. Such insurance as may be afforded and newly acquired or formed company shall terminate within sixty days of its acquisition of formation unless reported to the company within said sixty days.

Ex. A, Endt. 3; Ex. B, Endt. 3.

10. The Policies each provide a $1 million limit of liability for "each occurrence" and in the aggregate, and obligate AIG to "pay on behalf of the insured all sums which the insured

shall become legally obligated to pay as damages because of … bodily injury … to which this insurance applies, caused by an occurrence…" *See* Ex. A, Comprehensive General Liability Insurance Coverage Part at 2; Ex. B, Comprehensive General Liability Insurance Coverage Part at 2.

11. Under the Policies, AIG has "the right and duty to defend any suit against the insured seeking damages on account of such bodily injury … even if any of the allegations of the suit are groundless, false or fraudulent…" *Id.*

12. The Policies do not contain any deductible or retention that an insured must satisfy before AIG is obligated to defend a suit.

13. Amounts incurred by AIG pursuant to Policies' defense obligations do not erode the Policies' respective limits of liability.

14. The Policies contain several exclusions, including exclusion (f) (hereinafter, the "Sudden and Accidental Pollution Exclusion") which states as follows:

> This insurance does not apply:
> * * *
> (f) to **bodily injury** or **property damage** arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental[.]

Id.

The Underlying Suits

15. On September 26, 2018, underlying plaintiffs Susan Kamuda and Edward Kamuda filed a Complaint at Law in the Circuit Court of Cook County, Illinois against STERIGENICS INTERNATIONAL, INC.; STERIGENICS INTERNATIONAL LLC; STERIGENICS U.S., LLC; BOB NOVAK; DANIEL GIBALA; and GTCR, LLC to initiate the Underlying Suits. A

true and correct copy of the Kamuda's Complaint is attached hereto as **Exhibit C**.

16. The Kamuda's Complaint alleges that underlying plaintiffs suffered bodily injury due to the inhalation of ethylene oxide ("EtO") purportedly emitted from a sterilization facility in Willowbrook, Illinois operated by the underlying defendants since at least 1984. *See generally* Ex. C.

17. Following the Kamuda's Complaint, there were dozens of additional lawsuits making substantially allegations filed in 2018 and 2019, leading the Circuit Court of Cook County to consolidate the Underlying Suits for discovery and pretrial purposes.

18. Since October 24, 2019, the Underlying Suits have been guided by a Master Complaint filed by the underlying plaintiffs, which has been amended several times.

19. On August 18, 2020, plaintiffs in the Underlying Suits filed their Second Amended Master Complaint ("SAMC") which, for the first time, named as defendants GFG, GFI, and related entities Griffith Foods Inc. and Griffith Foods Worldwide Inc. ("Griffith Defendants"). A true and correct copy of the SAMC in the Underlying Suits is attached hereto as **Exhibit D**.

20. The SAMC alleges that each of the plaintiffs suffered bodily injury due to inhalation of EtO emitted from the Willowbrook facility. *See generally* Ex. D.

21. The SAMC also alleges, among other things, that the Griffith Defendants "designed and operated the Willowbrook facilities from inception in or about 1984, and directly participated in the operation of the Willowbrook facilities at all relevant times through at least April 15, 1999." *Id.* at ¶ 17.The underlying plaintiffs subsequently filed a Plaintiffs' Third Amended Master Complaint ("TAMC") on October 30, 2020 that named the same Griffith Defendants and made similar allegations. **Exhibit E.**

22. The TAMC alleges that each of the plaintiffs suffered bodily injury due to

inhalation of EtO emitted from the Willowbrook facility. *See generally* Ex. E.

23. The TAMC also alleges, among other things, that the Griffith Defendants "under their previously used names Griffith Laboratories, U.S.A., Inc. and Griffith Laboratories, International, Inc., designed and operated the Willowbrook facilities from inception in or about 1984, and directly participated in the operation of the Willowbrook facilities at all relevant times through at least April 15, 1999." *Id.* at ¶ 17.

24. On April 16, 2020, filed Plaintiffs' Fourth Amended Master Complaint ("FAMC"). **Exhibit F**.

25. The FAMC names only GFI, which the underlying plaintiffs refer to throughout as "Griffith Labs." Ex. E ¶ 1. The FAMC notes that GFI "was formerly known as 'Griffith Laboratories U.S.A., Inc.'" *Id.*

26. The FAMC alleges that the underlying plaintiffs suffered bodily injuries due to, among other things, GFI's "independent acts and omissions throughout the entirety of the period between 1984 and 1999, which caused or contributed to Plaintiffs' injuries." *Id.* at ¶ 5 (listing alleged wrongful acts and omissions).

27. The Griffith Defendants have denied – and continue to deny – any liability to the underlying plaintiffs.

28. A list of suits filed against Griffith that have previously been consolidated as part of the Underlying Suits is attached hereto as **Exhibit G**.

AIG's Denial of Coverage

29. Following the underlying plaintiffs' filing of the SAMC on August 18, 2020, Griffith conducted a search of its historical records for potentially responsive insurance policies.

30. Griffith located the AIG policies near the end of 2020.

31. On January 29, 2021, Griffith, by and through its coverage counsel, provided AIG with notice of the Underlying Suits, including copies of the Policies and the TAMC. A true and correct copy of Griffith's January 29, 2021 correspondence, including all exhibits, is attached hereto as **Exhibit H**.

32. On February 17, 2021, AIG acknowledged receipt of this notice and requested, among other things, copies of the Policies, which Griffith's counsel immediately provided on the same day.

33. After months of silence, AIG sent a letter to Griffith on October 12, 2021 denying that it had a duty to defend and otherwise denying coverage for Underlying Suits under the Policies. A true and correct copy of AIG's October 12, 2021 correspondence, including all exhibits, is attached hereto as **Exhibit I**.

34. Thus, at all times relevant, AIG has failed and refused to provide Griffith with a defense to the Underlying Suits. AIG has also failed and refused to acknowledge a duty to indemnify Griffith for any damages (whether by settlement, judgment, or otherwise) that Griffith may incur with respect to the Underlying Suits.

35. AIG's October 12, 2021 letter asserts two bases for denying Griffith's claim:

A. "[t]o the extent that Griffith Foods Group, Inc, Griffith Foods, Inc., Griffith Foods International, Inc., and/or Griffith Foods Worldwide, Inc. were not acquired or formed by the named insured during the policy period; were not owned or financially controlled by Griffith Labs and/or Griffith USA; and/or, were not reported to National Union within 60 days of acquisition or formation, they would not qualify as insureds under the Policies. National Union reserves its rights to limit or deny coverage on these grounds"; and

B. because the Underlying Suits purportedly fall within the scope of the Sudden and Accidental Pollution Exclusion.

See Ex. H at 3-5.

The Underlying Suits Covered Under the Policies

Griffith is a Named Insured

36. GFI and GFG both qualify as a "Named Insured" under the Policies.

37. Item 1 of the Policies' declarations, as amended by Endorsement 3, identifies Griffith Laboratories, Inc. and Griffith Laboratories U.S.A., Inc. as a "Named Insured."

38. On March 9, 2016, Griffith Laboratories, Inc.'s shareholders adopted an amendment to its Articles of Incorporation changing the name of the corporation to Griffith Foods Group Inc. **See Exhibit J.**

39. Griffith Laboratories U.S.A., Inc. has similarly undergone several corporate name changes to GFI as reflected in **Exhibit K**:

A. on September 27, 1990, Griffith Laboratories U.S.A., Inc. filed a Certificate of Amendment with the Delaware Secretary of State amending its corporate name to Griffith Laboratories Worldwide, Inc.;

B. on October 22, 1997, Griffith Laboratories Worldwide, Inc. filed a Certificate of Amendment with the Delaware Secretary of State amending its corporate name to Griffith Laboratories International, Inc.;

C. on January 15, 2016, Griffith Laboratories International, Inc. filed a Certificate of Amendment with the Delaware Secretary of State amending its corporate name to Griffith Foods International Inc.

40. These corporate name changes did not impair any rights that Griffith has under the Policies as GFG and GFI are continuations of the Named Insured organizations in the Policies.

The Underlying Suits Trigger, Or At Least Potentially Trigger, the Policies and Are Not Excluded

41. The Policies obligate AIG to "pay on behalf of [an] insured all sums which the insured shall become legally obligated to pay as damages because of … bodily injury … to which this insurance applies, caused by an occurrence…" *See* Ex. A, Comprehensive General Liability Insurance Coverage Part at 2; Ex. B, Comprehensive General Liability Insurance Coverage Part at

42. The Policies also obligate AIG to defend any "suit" against an insured "seeking damages on account of such bodily injury … even if any of the allegations of the suit are groundless, false or fraudulent…" Ex. A, Comprehensive General Liability Insurance Coverage Part at 2; Ex. B, Comprehensive General Liability Insurance Coverage Part at 2.

43. The Underlying Suits are each "suit" that seeks damages because of alleged "bodily injury" caused by one or more "occurrences" arising out of Griffith's business during the periods of the Policies.

44. The Sudden and Accidental Pollution Exclusion is inapplicable here because, among other things:

A. Illinois law holds that the Sudden and Accidental Pollution Exclusion is inapplicable to the alleged "discharge, dispersal, release or escape" of any purported "irritants, contaminants or pollutants" where such "discharge, dispersal, release or escape" was made pursuant to a lawfully issued permit and the Underlying Suits allege at least in part that the Willowbrook facility released EtO while operating under a lawfully issued permit from the Illinois Environmental Protection Agency, *see, e.g.*, FAMC ¶¶ 57-58, 60, 62, 71-104, 109, 277-78, 286-88; and

B. the Underlying Suits at least potentially allege that any "discharge, dispersal, release or escape" of EtO was "sudden and accidental" as that term is interpreted under Illinois law, *see* FAMC ¶¶ 71-104 (generally alleging that GFI negligently breached various duties through their operation of the Willowbrook facility via negligent and improper ownership, maintenance, training, and control and that those breaches proximately caused the underlying injuries.)

45. No other exclusions or limitations in the Policies apply here.

46. Griffith has complied in all material respects with the conditions and requirements of the Policies, or such conditions and requirements have been waived or their satisfaction otherwise excused by operation of law or by the conduct of AIG.

47. Therefore, pursuant to the terms and conditions of the Policies, AIG's duty to defend was triggered by the Underlying Suits, including the TAMC and FAMC.

48. Moreover, [p]ursuant to the terms and conditions of the Policies, AIG is obligated to indemnify Griffith in the event that Griffith incurs "damages" (including but not limited to any settlement(s) or judgment(s)) in connection with the Underlying Suits.

COUNT ONE
(Breach of Contract – AIG's Duty to Defend Under the 83-84 Policy)

49. Griffith realleges and incorporates by reference the allegations of the foregoing paragraphs as if fully set forth herein.

50. Griffith and AIG entered into a legally binding written contract when AIG issued the 83-84 Policy.

51. Griffith provided notice of the Underlying Suits to AIG under the 83-84 Policy.

52. By failing and refusing to perform its duty to defend Griffith with respect to the Underlying Suits as set forth above, AIG has breached the 83-84 Policy.

53. As a direct and proximate result of such breach of contract, Griffith has been deprived of the benefit of its commercial general liability and has incurred direct damage on account thereof in excess of $75,000.

COUNT TWO
(Breach of Contract – AIG's Duty to Defend Under the 84-85 Policy)

54. Griffith realleges and incorporates by reference the allegations of the foregoing paragraphs as if fully set forth herein.

55. Griffith and AIG entered into a legally binding written contract when AIG issued the 84-85 Policy.

56. Griffith provided notice of the Underlying Suits to AIG under the 84-85 Policy.

57. By failing and refusing to perform its duty to defend Griffith with respect to the Underlying Suits as set forth above, AIG has breached the 84-85 Policy.

58. As a direct and proximate result of such breach of contract, Griffith has been deprived of the benefit of its commercial general liability and has incurred direct damage on account thereof in excess of $75,000.

COUNT THREE
(Declaratory Judgment Pursuant to 28 U.S.C. § 2201 – 83-84 Policy)

59. Griffith realleges and incorporates by reference the allegations of the foregoing paragraphs as if fully set forth herein.

60. AIG has a duty to defend Griffith with respect to any suit that is at least potentially covered under the 83-84 Policy.

61. An insurer in doubt over whether a suit against its insured is at least potentially covered under its policy must either: (1) defend its insured under a reservation of rights; or (2) promptly file a declaratory judgment action to resolve any questions concerning its duty to defend.

62. Where a suit against an insured is at least potentially covered under an insurer's policy, but the insurer fails to take either of the foregoing courses of action, that insurer is estopped from asserting defenses to coverage.

63. For the reasons set forth in detail above, the Underlying Suits are covered or, at a minimum, at least potentially covered, under the 83-84 Policy.

64. AIG failed and refused to defend Griffith in the Underlying Suits under a reservation of rights and did not promptly file a declaratory judgment action with respect to its duty to defend.

65. AIG is, therefore, estopped from asserting defenses to coverage.

66. Moreover, AIG has denied any duty to indemnify Griffith with respect to the Underlying Suits.

67. An actual and justiciable controversy thus exists between Griffith and AIG as the parties' rights and obligations under the 83-84 Policy, including without limitation whether: (1) AIG has a duty to defend Griffith in the Underlying Suits; (2) AIG is estopped from asserting defenses to coverage; and (3) whether AIG has a duty to indemnify Griffith for any "damages" Griffith may incur in the Underlying Suits.

68. Accordingly, Griffith seeks an order pursuant to 28 U.S.C. § 2201 declaring the parties respective rights and obligations with respect to the 83-84 Policy, including that: (a) AIG has a duty to defend Griffith in the Underlying Suits under the 83-84 Policy, (b) as a result of its breach of its duty to defend Griffith, AIG is estopped from raising defenses to coverage under the 83-84 Policy, and (c) AIG has a duty to indemnify Griffith under the 83-84 Policy for any damages Griffith may incur in the Underlying Suits.

COUNT FOUR
(Declaratory Judgment Pursuant to 28 U.S.C. § 2201 – 84-85 Policy)

69. Griffith realleges and incorporates by reference the allegations of the foregoing paragraphs as if fully set forth herein.

70. AIG has a duty to defend Griffith with respect to any suit that is at least potentially covered under the 84-85 Policy.

71. An insurer in doubt over whether a suit against its insured is at least potentially covered under its policy must either: (1) defend its insured under a reservation of rights; or (2) promptly file a declaratory judgment action to resolve any questions concerning its duty to defend.

72. Where a suit against an insured is at least potentially covered under an insurer's policy, but the insurer fails to take either of the foregoing courses of action, that insurer is estopped from asserting defenses to coverage.

73. For the reasons set forth in detail above, the Underlying Suits are covered or, at a minimum, at least potentially covered, under the 84-85 Policy.

74. AIG failed and refused to defend Griffith in the Underlying Suits under a reservation of rights and did not promptly file a declaratory judgment action with respect to its duty to defend.

75. AIG is, therefore, estopped from asserting defenses to coverage.

76. Moreover, AIG has denied any duty to indemnify Griffith with respect to the Underlying Suits.

77. An actual and justiciable controversy thus exists between Griffith and AIG as the parties' rights and obligations under the 84-85 Policy, including without limitation whether: (1) AIG has a duty to defend Griffith in the Underlying Suits; (2) AIG is estopped from asserting defenses to coverage; and (3) whether AIG has a duty to indemnify Griffith for any "damages" Griffith may incur in the Underlying Suits.

78. Accordingly, Griffith seeks an order pursuant to 28 U.S.C. § 2201 declaring the parties respective rights and obligations with respect to the 84-85 Policy, including that: (a) AIG has a duty to defend Griffith in the Underlying Suits under the 84-85 Policy, (b) as a result of its breach of its duty to defend Griffith, AIG is estopped from raising defenses to coverage under the 84-85 Policy, and (c) AIG has a duty to indemnify Griffith under the 84-85 Policy for any damages Griffith may incur in the Underlying Suits.

PRAYERS FOR RELIEF

WHEREFORE, Griffith prays for the following relief:

A. Enter a judgment in favor of Griffith and against AIG, as requested herein, on each of the Counts in Griffith's Complaint;

B. Award Griffith its actual and consequential damages sustained as a result of AIG's breach of the Policies as set forth in Count One and Count Two in an amount to be established through proof, including but not limited to, Griffith's attorneys' fees, expenses, and costs to defend the Underlying Suits;

C. Enter a declaration pursuant to Count Three that: (a) AIG has a duty to defend Griffith in the Underlying Suits under the 83-84 Policy, (b) as a result of its breach of its duty to defend Griffith, AIG is estopped from raising defenses to coverage under the 83-84 Policy, and (c) AIG has a duty to indemnify Griffith under the 83-84 Policy for any damages Griffith may incur in the Underlying Suits;

D. Enter a declaration pursuant to Count Four that: (a) AIG has a duty to defend Griffith in the Underlying Suits under the 84-85 Policy, (b) as a result of its breach of its duty to defend Griffith, AIG is estopped from raising defenses to coverage under the 84-85 Policy, and (c) AIG has a duty to indemnify Griffith under the 84-85 Policy for any damages Griffith may incur in the Underlying Suits;

E. Enter a judgment awarding Griffith its reasonable attorney fees and expenses incurred in connection with this action;

F. Enter a judgment awarding Griffith any pre-judgment interest and post-judgment interest under applicable law; and

G. Enter a judgment awarding Griffith its costs of court and any other and further relief to which it may justly be entitled.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38, Griffith demands a trial by jury on all matters so triable.

Dated: November 30, 2021

Respectfully submitted,

By: */s/ James M. Davis*

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

STERIGENICS U.S., LLC, Plaintiff, v. NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, Defendant.	CASE NO.: 1:21-cv-04581 JUDGE: MARY M. ROWLAND

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S FIRST AMENDED COMPLAINT

Defendant, National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union"), states as follows for its Answer and Affirmative Defenses to Plaintiff, Sterigenics U.S., LLC's ("Sterigenics"), First Amended Complaint:

NATURE OF THE CASE

1. This is an insurance coverage dispute.

ANSWER: The allegations of Paragraph 1 constitute Plaintiff's characterization of this lawsuit to which no answer is required. To the extent any response is required, National Union admits the allegations of Paragraph 1.

2. Sterigenics U.S. is owed defense and indemnity coverage for hundreds of pending bodily injury and personal injury lawsuits, which for purposes of discovery have been consolidated and captioned *Susan Kamuda, et al. v. Sterigenics U.S., LLC, et al.*, Circuit Court of Cook County, Illinois Consolidated Case No. 18 L 10475 (the "Underlying Litigation") under two commercial

general liability insurance policies issued by National Union to, among other insureds, Sterigenics U.S.'s predecessor.

ANSWER: National Union denies the allegations of Paragraph 2.

3. National Union improperly denied coverage for the Underlying Litigation on two erroneous bases: (1) Sterigenics U.S. purportedly does not qualify as an insured under the National Union policies; and (2) the pollution exclusion in the National Union policies.

ANSWER: National Union denies the allegations of Paragraph 3.

4. As further detailed below, neither of these are accurate nor legitimate bases for denying coverage.

ANSWER: National Union denies the allegations of Paragraph 4.

5. Regarding the insured status issue, Sterigenics U.S. is the clear successor by merger to Micro-Biotrol Company, an entity that qualifies as a named insured under the plain language of the subject National Union insurance policies. As a matter of Illinois law, a successor by merger, such as Sterigenics U.S. in this instance, succeeds to the insurance rights of the non-surviving merged entity. This approach by Illinois makes common sense, because a successor by merger likewise succeeds to the non-surviving merged entity's liabilities.

ANSWER: National Union lack lacks knowledge or information sufficient to form a belief as to the truth of the first sentence of Paragraph 5. The remaining allegations of Paragraph 5 assert legal conclusions to which no response is required. To the extent any response is required, National Union denies the remaining allegations in Paragraph 5.

6. Regarding the pollution exclusion issue, National Union is wrong for at least three reasons. First, as a matter of Illinois law — which governs this dispute — Illinois courts have established a common-law doctrine holding that a pollution exclusion such as that relied on by

National Union does not apply when, as here, the alleged discharges or emissions constituting the pollution were made pursuant to a lawfully valid permit. The allegations in the Underlying Litigation make plain that the alleged emissions causing the plaintiffs' alleged harm during the National Union policy periods were made pursuant to lawfully valid permits. Second, not only does that Illinois common-law doctrine govern, but the pollution exclusion in the subject policies contains a "sudden and accidental" exception that negates any potential applicability of the exclusion anyway. Indeed, Illinois courts have held that a sudden and accidental exception such as this is ambiguous and construed against the insurer and in favor of the insured such that the exception to the exclusion applies whenever the alleged harmful discharge is unintendedly or unexpectedly harmful — even if the alleged discharges occurred over several years. Third, the allegations in the Underlying Litigation also trigger the Policies' Personal Injury and Advertising Liability insuring agreement, to which the pollution exclusion does not apply at all.

ANSWER: National Union denies the allegations in the first and last sentences of Paragraph 6. The remainder of Paragraph 6 asserts legal conclusions to which no response is required. To the extent a response is required, National Union denies the allegations in the remainder of Paragraph 6.

7. Notwithstanding, National Union declined to honor its duty to defend and indemnity Sterigenics U.S.

ANSWER: National Union denies the allegation of Paragraph 7.

8. Consequently, Sterigenics U.S. brings this action for declaratory judgment and money damages.

ANSWER: The allegations of Paragraph 8 constitute Plaintiff's characterization of this lawsuit to which no answer is required. To the extent any response is required, National Union

denies the allegations of Paragraph 8.

PARTIES, JURISDICTION, AND VENUE

9. National Union is a corporation organized under the laws of Pennsylvania with its principal place of business in New York.

ANSWER: National Union admits the allegations of Paragraph 9.

10. Sterigenics U.S. is a limited liability company organized under the laws of Delaware. Sterigenics U.S.'s sole member is Sotera Health LLC, which is a limited liability company organized under the laws of Delaware. Sotera Health LLC's sole member is Sotera Health Holdings, LLC, which is a limited liability company organized under the laws of Delaware. Sotera Health Holdings, LLC's sole member is Sotera Health Company, which is a corporation organized under the laws of Delaware with its principal place of business in Ohio. None of Sterigenics U.S.'s members is a citizen of New York or Pennsylvania.

ANSWER: National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10.

11. This Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1332(a) because there is complete diversity of citizenship among the parties and the amount in controversy exceeds $75,000, exclusive of interest and costs.

ANSWER: Paragraph 11 asserts a legal conclusion to which no response is required. To the extent a response is required, National Union admits the allegations of Paragraph 11.

12. Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial part of property that is the subject of this action is situated in this district and National Union is otherwise subject to this Court's personal jurisdiction with respect to this action.

ANSWER: Paragraph 12 asserts a legal conclusion to which no response is required. To the extent a response is required, National Union admits the allegations of Paragraph 12.

FACTUAL ALLEGATIONS

A. The Underlying Litigation.

13. In 2018, the first lawsuit in the Underlying Litigation was filed against, among several other defendants, Sterigenics U.S.

ANSWER: National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13.

14. The plaintiffs in the Underlying Litigation generally allege that they suffered bodily injuries and personal injuries as a result of exposure to discharges of ethylene oxide ("EtO") from a sterilization facility in Willowbrook, Illinois currently owned by Sterigenics U.S. A true, accurate, and authentic copy of the currently operative Fourth Amended Master Complaint in the *Kamuda* lawsuit in the Underlying Litigation is attached as **Ex. A**.[1]

ANSWER: National Union admits only that Ex. A of Plaintiff's First Amended Complaint purports to be a copy of the Fourth Amended Master Complaint in the lawsuit entitled *Susan Kamuda, et al. v. Sterigenics U.S., LLC, et al.*, Consolidated Case No. 18 L 10475, pending in the Circuit Court of Cook County, Illinois (the "Underlying Litigation"). The Fourth Amended Master Complaint in the Underlying Litigation is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of the Fourth Amended

[1] As noted above, hundreds of plaintiffs filed actions similar to *Kamuda* against Sterigenics U.S. and others, and Sterigenics U.S. seeks in this action defense and indemnity coverage from National Union for each such plaintiff's claims. All of these plaintiffs' claims were consolidated for pretrial and discovery purposes with the first-filed *Kamuda* lawsuit, and the operative allegations as to each plaintiff for purposes of insurance coverage are contained in the operative Master Complaint attached here. For ease of reference, Sterigenics U.S. refers to these consolidated cases as the Underlying Litigation. But for the avoidance of doubt, Sterigenics U.S. seeks defense and indemnity coverage as to each of these plaintiffs' claims and lawsuits.

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Master Complaint in Paragraph 14 to the extent they are inconsistent with the document itself.

15. Sterigenics U.S. denied — and denies — liability to the plaintiffs in the Underlying Litigation.

ANSWER: National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 15.

16. In addition to Sterigenics U.S. and others, the plaintiffs named as a defendant in the Fourth Amended Master Complaint an entity now known as Griffith Foods International,Inc., which was formerly known as Griffith Laboratories U.S.A., Inc.

ANSWER: The Fourth Amended Master Complaint in the Underlying Litigation is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of the Fourth Amended Master Complaint in Paragraph 16 to the extent they are inconsistent with the document itself. To the extent any further answer is required, National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 16.

B. The relevant insurance policies.

17. As relevant to this action, National Union issued two commercial general liability policies to two named insureds that were then known as Griffith Laboratories, Inc. and Griffith Laboratories U.S.A., Inc.:

Policy Number	Policy Period	Policy Limits
GLA-945-70-58RA	9/30/83-9/30/84	$1 million per occurrence and in the aggregate; Defense in addition to limits

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GLA-194-00-11RA	9/30/84-9/30/85	$1 million per occurrence and in the aggregate; Defense in addition to limits

Collectively, the insurance policies in the above table are referenced herein as the "Policies."[2]

ANSWER: National Union admits that it issued to first named insured Griffith Laboratories, Inc. Policy No. GLA-945-70-58RA, effective September 30, 1983 to September 30, 1984 and Policy No. GLA-194-00-11RA, effective September 30, 1984 to September 30, 1985 (collectively, the "Policies"). National Union admits that the Policies provide limits of $1 million per occurrence and in the aggregate, and defense costs are in addition to the limits of the Policies. The Policies are written documents that speak for themselves, are the best evidence of their contents, and must be read as a whole. National Union denies any characterizations of the Policies in Paragraph 17 to the extent they are inconsistent with the contents of the Policies.

18. The Policies each contain an endorsement providing that the term "Named Insured" under the policy means:

> [T]he organization, including any subsidiary thereof, named in item 1 of the declarations and also includes any other company which is acquired or formed by the named insured during the policy period and over which the named insured maintains ownership or financial control, provided this insurance does not apply to any such newly acquired or formed company which is an insured under any other liability or indemnity policy or would be an insured under any such policy but for its termination upon exhaustion of its limits of liability. Such insurance as may be afforded and *[sic]* newly acquired or formed company shall terminate within sixty days of its acquisition of *[sic]* formation unless reported to the company within said sixty days."

[2] Sterigenics U.S. does not attach the Policies to this First Amended Complaint because the copies of the Policies in Sterigenics U.S.'s possession were produced pursuant to a protective order in the Underlying Litigation and because National Union already has copies of the Policies. Sterigenics U.S. will provide the Policies in its possession upon request and in accordance with an appropriate sealing order or, alternatively, National Union could be directed to file copies not subject to the underlying protective order.

ANSWER: National Union admits that the Policies each contain an endorsement that includes the language cited by Sterigenics in Paragraph 18. However, the language cited by Sterigenics in Paragraph 18 forms a part of the Policies, which must each be read as a whole.

19. In similar fashion, Section XII of the Policies sets forth a newly acquired organizations provision providing as follows:

> **XII. AUTOMATIC COVERAGE—NEWLY ACQUIRED ORGANIZATIONS**
>
> The word **insured** shall include as **named insured** any organization which is acquired or formed by the **named insured** and over which the **named insured** maintains ownership or majority interest, other than a joint venture, provided this insurancedoes not apply to **bodily injury**, **property damage**, **personal injury**, or **advertising injury** with respect to which such new organization under this policy is also an **insured** under any other similar liability or indemnity policy or would be an **insured** under any such policy but for exhaustion of its limits of liability. The insurance afforded hereby shall terminate 90 days from the date any such organization is acquired or formed by the **named insured**.

ANSWER: National Union admits that the Policies each contain a Broad Form Comprehensive General Liability Endorsement, which contains the language cited by Sterigenics in Paragraph 19. However, the language cited by Sterigenics in Paragraph 19 forms a part of the Policies, which must each be read as a whole.

C. Sterigenics U.S. is an insured under the Policies.

20. Item 1 of the Policies' declarations pages identifies Griffith Laboratories, Inc. and Griffith Laboratories U.S.A., Inc. as named insureds. Consequently, any subsidiary of those two entities, as well as any other company acquired or formed by them during the policy period and over which either of them maintains ownership, financial control, and/or a majority interest, qualifies as an insured under the above-referenced endorsement and Section XII in the Policies.

ANSWER: National Union admits that Policies each contain an endorsement that identifies Griffith Laboratories, Inc. and Griffith Laboratories U.S.A., Inc. as Named Insureds under the Policies. However, the Policies are written documents which must each be read as a whole. The remaining allegations in Paragraph 20 assert a legal conclusion to which no response is required. To the extent a response is required, National Union denies the allegations of Paragraph 20.

21. The operative Fourth Amended Master Complaint in the *Kamuda* lawsuit of the Underlying Litigation alleges that on April 12, 1984, the then-unincorporated division of Griffith Laboratories U.S.A., Inc. — known as Micro-Biotrol Co. — leased the facility in Willowbrook, Illinois at the center of the plaintiffs' claims and operated the facility at all relevant times during the Policies' periods.

ANSWER: The Fourth Amended Master Complaint in the Underlying Litigation is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of the Fourth Amended Master Complaint in Paragraph 21 to the extent they are inconsistent with the document itself. To the extent any response is required, National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 21.

22. Around October 4, 1984, the entity then known as Griffith Laboratories U.S.A., Inc., a Named Insured under the Policies, incorporated Micro-Biotrol Company by filing a Certificate of Incorporation with the Delaware Secretary of State. A true, accurate, and authentic copy of the Certificate of Incorporation of Micro-Biotrol Company is attached as **Ex. B**.

ANSWER: National Union admits only that Ex. B of Plaintiff's First Amended Complaint purports to be a copy of the Certificate of Incorporation of Micro-Biotrol Company. Ex. B is a

written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of Ex. B to the extent they are inconsistent with the contents of document. National Union lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 22.

23. As reflected in the Deed, Assignment, and Bill of Sale dated October 4, 1984 attached as **Ex. C** and Assumption of Obligations and Liabilities dated October 4, 1984 attached as **Ex. D**, Griffith Laboratories U.S.A., Inc. contributed and transferred many of the assets used in the gas sterilization business which had previously been conducted by Griffith Laboratories U.S.A., Inc.'s Micro-Biotrol Co. division to its wholly-owned subsidiary, Micro-Biotrol Company. The transfer included the lease and assets related to the Willowbrook, Illinois sterilization facility.

ANSWER: National Union admits that Ex. C of Plaintiff's First Amended Complaint purports to be a copy of a Deed, Assignment, and Bill of Sale dated October 4, 1984. National Union admits that Ex. D of Plaintiff's First Amended Complaint purports to be an Assumption of Obligations and Liabilities dated October 4, 1984. Exs. C and D are written documents that speak for themselves and are the best evidence of their contents. National Union denies any characterizations of Exs. C and D to the extent they are inconsistent with the contents of the documents. National Union lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 23.

24. At all relevant times during the Policies' periods, Griffith Laboratories U.S.A., Inc. was Micro-Biotrol Company's direct parent and Micro-Biotrol Company was Griffith Laboratories U.S.A., Inc.'s wholly-owned subsidiary. Moreover, Micro-Biotrol Company was not an insured under any other liability or indemnity policy. So, under the plain language of the

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Policies, Micro-Biotrol Company is a Named Insured.

ANSWER: National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 24 and therefore denies the same.

25. The Fourth Amended Master Complaint in the *Kamuda* lawsuit of the Underlying Litigation alleges that from April 1984 to April 1999, Micro-Biotrol and its successor entities "operated" the Willowbrook facility, including during the Policies' periods. *See, e.g.*, 4th Am. Master Compl. ¶ 23. Accordingly, Micro-Biotrol Company — or its successor by merger, which, as detailed below, is Sterigenics U.S. — is entitled to defense and indemnity coverage under the Policies.

ANSWER: The Fourth Amended Master Complaint in the Underlying Litigation is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of the Fourth Amended Master Complaint in Paragraph 25 to the extent they are inconsistent with the contents of the document itself. The remaining allegations of Paragraph 25 assert a legal conclusion to which no response is required. To the extent a response is required, National Union denies the remaining allegations of Paragraph 25.

26. For ease of understanding the path by which Sterigenics U.S. ultimately became the successor by merger to Micro-Biotrol Company and the owner of Micro-Biotrol Company's insurance rights under the Policies, Sterigenics U.S. notes that Micro-Biotrol Company underwent several name changes over the years. On October 16, 1984, Micro-Biotrol Company filed a Certificate of Amendment to change its name to Micro-Biotrol, Inc. On July 11, 1986, Micro-Biotrol, Inc. filed a Certificate of Amendment to change its name to Griffith Micro Science, Inc. On December 18, 2002, Griffith Micro Science, Inc. filed a Certificate of Amendment to change its name to IBA S&I, Inc. On July 7, 2004, IBA S&I, Inc. filed a Certificate of Amendment to

change its name to Sterigenics EO, Inc. Importantly, each of these name changes was merely that: a name change. True, accurate, and authentic copies of charter documents from the Delaware Secretary of State tracing this corporate history are attached as **Exs. E through H**.

ANSWER: National Union admits that Ex. E of Plaintiff's First Amended purports to be a Certificate of Amendment of Certificate of Incorporation of Micro-Biotrol Company, filed October 16, 1984. National Union admits that Ex. F of Plaintiff's First Amended purports to be a Certificate of Amendment of Certificate of Incorporation of Micro-Biotrol, Inc., filed July 11, 1986. National Union admits that Ex. G of Plaintiff's First Amended purports to be a Certificate of Amendment of Certificate of Incorporation of Griffith Micro Science, Inc., filed December 18, 2002. National Union admits that Ex. H of Plaintiff's First Amended purports to be a Certificate of Amendment of Certificate of Incorporation of IBA S&I, Inc., filed July 7, 2004. Exs. E through H are written documents that speak for themselves and are the best evidence of their contents. National Union denies any characterizations of Exs. E through D to the extent they are inconsistent with the contents of the documents. National Union lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 26.

27. In 1994, Griffith Laboratories Worldwide, Inc.(f/k/a Griffith Laboratories U.S.A., Inc.), the then-common parent of Griffith Micro Science, Inc. (f/k/a Micro-Biotrol Company) and Griffith Micro Science International, Inc., contributed its ownership interest in Griffith Micro Science, Inc. to Griffith Micro Science International, Inc., resulting in Griffith Micro Science, Inc. becoming a direct subsidiary of Griffith Micro Science International, Inc. and an indirect subsidiary of Griffith Laboratories Worldwide, Inc. A true, accurate, and authentic copy of certain 1994 stock transfer documentation is attached as **Ex. I**. In addition, the stock of Griffith Micro Science, Inc.'s parent companies was sold in certain subsequent transactions.

ANSWER: National Union admits only that Ex. I of Plaintiff's First Amended Complaint purports to be a letter dated February 24, 1994, along with enclosures. Ex. I is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of Ex. I to the extent they are inconsistent with the contents of the document. National Union lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 27.

28. Any change in ownership of the stock of Micro-Biotrol Company or its parent company did not transfer or affect Micro-Biotrol Company's legal rights, including its contract and insurance rights. *See, e.g.*, *Texaco Refining and Mktg., Inc. v. Del. River Basin Comm'n*, 824 F. Supp. 500, 507 (D. Del. 1993) ("A sale of all of the stock of a corporation, or of a controlling interest, is not a sale of the physical properties or assets of the corporation… The purchaser holds shares in the corporation, but has no right to the assets, rights, and privileges of the corporation."). Indeed, Micro-Biotrol Company's contract and insurance rights remained with Micro-Biotrol Company until they were assumed by Sterigenics U.S. in the below-detailed December 2005 mergers, which resulted in Micro-Biotrol Company being merged into Sterigenics U.S.

ANSWER: Paragraph 28 asserts legal conclusions to which no response is required. To the extent a response is required, National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 28.

29. Sterigenics U.S. became the successor to Micro-Biotrol Company via two December 2005 merger transactions. Effective December 1, 2005 at 12:03 a.m. Eastern Standard Time, the entity then known as Sterigenics EO, Inc. (and originally known as Micro- Biotrol Company) was merged into its then-direct parent, Sterigenics S&I Holding, Corp. (previously known as Griffith Micro Science International, Inc.), with Sterigenics S&I Holding, Corp. as the

surviving corporation of the merger. Then, effective December 1, 2005 at 12:04 a.m. Eastern Standard Time, Sterigenics S&I Holding Corp. was merged into Sterigenics U.S., with Sterigenics U.S. as the surviving entity of the merger. True, accurate, and genuine copies ofthe relevant merger documents are attached as **Exs. J through M**.

ANSWER: National Union admits that Ex. J purports to be a Certificate of Merger Merging Sterigenics EO, Inc. into Sterigenics S&I Holding Corp., filed November 30, 2005. National Union admits that Ex. K purports to be an Agreement and Plan of Merger dated November 15, 2015. National Union admits that Ex. L purports to be a Certificate of Merger Merging Sterigenics S&I Holding Corp. with and into Sterigenics U.S., LLC, filed November 30, 2005. National Union admits that Ex. M purports to be an Agreement and Plan of Merger dated November 15, 2015. Exs. J through M are written documents that speak for themselves and are the best evidence of their contents. National Union denies any characterizations of Exs. J through M to the extent they are inconsistent with the contents of the documents. National Union lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 29.

30. Pursuant to Delaware law (the state in which the mergers occurred), Section 2 of each Agreement and Plan of Merger for these transactions provides that "at the Effective Time, the separate corporate existence of [the non-surviving merged entity] shall cease; the corporate identity, existence, powers, rights and immunities of… the Surviving Entity shall continue unimpaired by the Merger; and [the Surviving Entity] shall succeed to and shall possess all the assets, properties, rights, privileges, powers, franchises, immunities and purposes, and be subject to all the debts, liabilities, obligations, restrictions and duties of [the non-surviving merged entity], all without further act or deed." *See* **Exs. K and M**, § 2.

ANSWER: Exs. K and M are written documents that speak for themselves and are the best evidence of their contents. National Union denies any characterizations of Exs. K and M to the extent they are inconsistent with the contents of the documents. The allegations of Paragraph 30 assert legal conclusions to which no response is required. To the extent a response is required, National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 30.

31. The following timeline visually recaps the foregoing succession of name changes and mergers ultimately tracing up to Sterigenics U.S.:

Filing Date	Event
10/16/84	Micro-Biotrol Company changes name to Micro-Biotrol Inc.
7/11/86	Micro-Biotrol Inc. changes name to Griffith Micro Science, Inc.
12/18/02	Griffith Micro Science, Inc. changes name to IBA S&I, Inc.
7/7/04	IBA S&I, Inc. changes name to Sterigenics EO, Inc.
12/1/05, effective at12:03 a.m. Eastern	Sterigenics EO, Inc. merged into Sterigenics S&I Holding Corp.
12/1/05, effective at12:04 a.m. Eastern	Sterigenics S&I Holding Corp. merged into Sterigenics U.S.

ANSWER: National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 31.

32. In Illinois, it is well-settled that in the context of statutory mergers, the surviving entity — Sterigenics U.S. — inherits the predecessor entity's rights to insurance benefits for pre-merger occurrences.[3] This makes sense because under Illinois law, the surviving entity in a merger

[3] Illinois law applies to the interpretation of the Policies because, among other things, the named insureds were domiciled in Illinois, the insured risks were located in Illinois, and the Policies were delivered in Illinois.

assumes all obligations and liabilities of the non-surviving merged entity. *Gray v. Mundelein Coll.*, 695 N.E.2d 1379, 1388 (Ill. Ct. App. 1998); *Myers v. Putzmeister, Inc.,* 596 N.E.2d 754, 755 (Ill. Ct. App. 1992); *Ill. Ins. Guar. Fund v. Priority Transp., Inc.*, 146 N.E.3d 155, 171 (Ill. Ct App. 2019).

ANSWER: Paragraph 32 asserts legal conclusions to which no response is required. To the extent a response is required, National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 32.

33. "In fact, the assumption of liabilities is often considered to be the distinguishing factor between a merger and an asset purchase agreement." *Knoll Pharm. Co. v. Auto. Ins. Co.*, 167 F. Supp. 2d 1004, 1010 (N.D. Ill. 2001) (citing *Chaveriat v. Williams Pipe Line Co.*, 11 F.3d 1420, 1425 (7th Cir. 1993)). Consequently, and by the same token, the surviving entity in a merger succeeds not only to the liabilities and obligations of the non-surviving merged entity, but also to the non-surviving merged entity's contractual rights, including insurance policy rights. *Knoll*, 167 F. Supp. 2d at 1010-11.

ANSWER: Paragraph 33 asserts legal conclusions to which no response is required. To the extent a response is required, National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 33.

34. Therefore, as the successor by merger to Micro-Biotrol Company, Sterigenics U.S. is the successor to Micro-Biotrol Company's rights under the Policies.

Emerson Elec. Co. v. Aetna Cas. & Sur. Co., 743 N.E.2d 629, 639-40 (Ill. Ct. App. 2001). In any event, Delaware, the statein which the relevant mergers occurred, likewise provides that "the surviving entity of a merger absorbs all rightsand responsibilities of the parties to a merger," including the non-surviving merged entity's contract rights. *Cornell Univ. v. Illumina, Inc.*, No. 10–433–LPS–MPT, 2013 WL 3216087, at *12 (D. Del. June 25, 2013); *Texaco Refining and Mktg., Inc.*, 824 F. Supp. at 507 ("A statutory merger… results in a combination of the two corporations withthe surviving corporation attaining the property, rights, and privileges of the absorbed corporation, as well as retaining its own property, rights, and privileges."); *P.C. Connection, Inc. v. Synygy Ltd.*, No. 2020-0869-JTL, 2021 WL 57016, at *15 (Del. Ch. Jan. 7, 2021) ("As a result of the merger, any contractual rights and obligations that [thenon-surviving merged entity] possessed under [its contracts] survived as contractual rights and obligations of the [surviving entity of the merger].").

ANSWER: Paragraph 34 asserts a legal conclusion to which no response is required. To the extent a response is required, National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 34.

D. The Policies' pollution exclusion does not apply here.

35. Insuring Agreement I of the Policies provides as follows:

> **I. COVERAGE A – BODILY INJURY LIABILITY**
> **COVERAGE B – PROPERTY DAMAGE LIABILITY**
>
> The company will pay on behalf of the **insured** all sums which the insured shall become legally obligated to pay as damages because of
>
> A. **bodily injury** or
> B. **property damage**
>
> to which this insurance applies, caused by an **occurrence**, and the company shall have the right and duty to defend any suit against the insured seeking damages on account of such **bodily injury** or **property damage**, even if any of the allegations of the suit are groundless, false or fraudulent…

ANSWER: National Union admits that the Policies each contain the language cited by Sterigenics in Paragraph 35. However, the language cited by Sterigenics in Paragraph 35 forms a part of the Policies, which must each be read as a whole. National Union denies that the language cited by Sterigenics in Paragraph 35 are part of "Insuring Agreement I."

36. The Policies contain a pollution exclusion, which provides as follows:

> This insurance does not apply:
>
> ***
> (f) to **bodily injury** or **property damage** arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental.

See Policies, § 1(f) (the "Pollution Exclusion").

ANSWER: National Union admits that the Policies each have an Exclusions section, which contains the language cited by Sterigenics in Paragraph 36. However, the language cited by Sterigenics in Paragraph 36 forms a part of the Policies, which must each be read as a whole.

37. This "standard pollution exclusion provision contains two parts: (1) the insurer excludes coverage for the release of environmentally toxic materials into any part of our natural environment and (2) the insurer makes an exception from this broad exclusion for toxic releases which are sudden and accidental. In other words, the pollution exclusion exception reinstates coverage for toxic releases which are sudden and accidental." *Outboard Marine Corp. v. Liberty Mut. Ins. Co.*, 607 N.E.2d 1204, 1217 (Ill. 1992).

ANSWER: The Policies are written documents that speak for themselves, are the best evidence of their contents, and must be read as a whole. National Union denies any characterizations of the Policies in Paragraph 37 to the extent they are inconsistent with the contents of the Policies. The remaining allegations in Paragraph 37 assert legal conclusions to which no response is required. To the extent a response is required, National Union denies the remaining allegations of Paragraph 37.

38. As discussed above, Illinois courts have established a common-law doctrine holding that this "standard" Pollution Exclusion is set aside when the emissions are made pursuant to a lawfully issued permit.

ANSWER: Paragraph 38 asserts legal conclusions to which no response is required. To the extent a response is required, National Union denies the allegations of Paragraph 38.

39. Consequently, when the allegations in the underlying claim are that at least some of the alleged emissions were made pursuant to a lawfully issued permit, the exclusion is not

triggered, and the insurer is obligated to defend. *See, e.g.*, *Erie Ins. Exch. v. Imperial Marble Corp.*, 957 N.E.2d 1214, 1219-21 (Ill. Ct. App. 2011); *Country Mut. Ins. Co. v. Bible Pork, Inc.*, 42 N.E.3d 958 (Ill. Ct. App. 2015).

ANSWER: Paragraph 39 asserts a legal conclusion to which no response is required. To the extent a response is required, National Union denies the allegations of Paragraph 39.

40. So too here. As alleged in the Fourth Amended Master Complaint, the Willowbrook Facility was operated during the Policies' periods pursuant to a Joint Construction and Operating Permit issued by the Illinois Environmental Protection Agency ("IEPA"). *See, e.g.*, 4th Am. Master Compl. ¶¶ 57, 58, 60, 62, 109, 277. Thus, the plaintiffs in the Underlying Litigation allege, at least in part, that their alleged injuries were the result of the Willowbrook Facility's operators' normal business operations pursuant to the lawfully issued IEPA permit. *See, e.g.*, *id.* at ¶¶ 58, 60, 62, 277-78.

ANSWER: The Fourth Amended Master Complaint in the Underlying Litigation is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of the Fourth Amended Master Complaint in Paragraph 40 to the extent they are inconsistent with the contents of the document itself. The remaining allegations of Paragraph 40 assert legal conclusions to which no response is required. To the extent a response is required, National Union denies the allegations of Paragraph 40.

41. Indeed, Counts 12-14 of the Fourth Amended Master Complaint allege that certain injuries occurred during the Policies' periods because of lawfully permitted operations at the Willowbrook facility. *See, e.g.*, *id.* at ¶¶ 286-88 and 290-92 (generally alleging that Griffith entities, including Micro-Biotrol, breached various duties through their operation of the Willowbrook facility via negligent and improper ownership, maintenance, training, and control

and that those breaches proximately caused the underlying injuries).

ANSWER: The Fourth Amended Master Complaint in the Underlying Litigation is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of the Fourth Amended Master Complaint in Paragraph 41 to the extent they are inconsistent with the contents of the document itself. To the extent any response is required, National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 41.

42. Thus, as regards claims for bodily injury or property damage under Insuring Agreement I of the Policies, the Pollution Exclusion does not apply at all or at least does not apply to claims arising from permitted emissions. *Indem. Ins. Co. of N. Am. v. Silver Creek Pig, Inc.*, No. 13-CV-1440, 2015 WL 1910019, at *7 (C.D. Ill. Feb. 13, 2015) (holding that duty to defend triggered by similar allegations that "underlying defendants, breached various duties through their negligent and improper ownership, maintenance, training and control" and declining to apply pollution exclusion).

ANSWER: Paragraph 42 asserts legal conclusions to which no response is required. To the extent a response is required, National Union denies the allegations of Paragraph 42.

43. Moreover, and separate and distinct from the permitted-emissions doctrine, the "sudden and accidental" exception to the Pollution Exclusion reinstates coverage under Insuring Agreement I of the Policies here. Illinois courts hold that this sudden and accidental exception is ambiguous and construed against the insurer and in favor of the insured such that the exception applies whenever the alleged harmful discharge is unintendedly or unexpectedly harmful — even if the alleged discharges occurred over several years.

ANSWER: Paragraph 43 asserts legal conclusions to which no response is required. To

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the extent a response is required, National Union denies the allegations of Paragraph 43.

44. In that vein, plaintiffs in the Underlying Litigation repeatedly allege that there were negligent or "unintended" alleged leaks of dangerously high levels of EtO, in turn resulting in alleged injuries to the plaintiffs. *See, e.g.*, 4th Am. Master Compl. ¶¶ 290-92 (generally alleging that Griffith entities, including Micro-Biotrol, negligently breached various duties through their operation of the Willowbrook facility via negligent and improper ownership, maintenance, training, and control and that those breaches proximately caused the underlying injuries); *see also id.* at ¶ 230(a)-(f) (alleging that Sterigenics U.S. allegedly negligently breached certain duties, which led to "unintended leaks, spills, or emissions").

ANSWER: The Fourth Amended Master Complaint in the Underlying Litigation is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of the Fourth Amended Master Complaint in Paragraph 44 to the extent they are inconsistent with the contents of the document itself. To the extent any response is required, National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 44.

45. Thus, "at least some counts in the underlying complaint are devoid of any allegation" that any defendant "intended or expected to build and maintain" a facility that "directly caused such injuries to its surrounding neighbors." *Silver Creek Pig, Inc.*, 2015 WL 1910019 at *7. Consequently, even if the Pollution Exclusion were triggered (and it is not given the allegations of permitted emissions), the sudden and accidental exception would reinstate coverage and obligate National Union to defend and indemnify Sterigenics U.S.

ANSWER: Paragraph 45 asserts legal conclusions to which no response is required. To the extent a response is required, National Union denies the allegations of Paragraph 45.

46. Additionally, Insuring Agreement II of the Policies sets forth separate and distinct Personal and Advertising Injury Coverage as follows:

> **II. PERSONAL INJURY AND ADVERTISING INJURY LIABILITY COVERAGE**
>
> (A) The company will pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as damages because of **personal injury** or **advertising injury** to which this insurance applies, sustained by any person or organization and arising out of the conduct of the **named insured's** business, within the **policy territory**, and the company shall have the right and duty to defend any suit against the **insured** seeking damages on account of such injury, even if any of the allegations of the suit are groundless, false or fraudulent…

ANSWER: National Union admits that the Policies each contain a Broad Form Comprehensive General Liability Endorsement, which includes the language cited by Sterigenics in Paragraph 46. However, the language cited by Sterigenics in Paragraph 46 forms a part of the Policies, which must each be read as a whole.

47. The Policies define **personal injury** as follows:

> "**Personal injury**" means injury arising out of one or more of the following offenses committed during the policy period.
>
> ***
>
> 2. wrongful entry or eviction or other invasion of the right of private occupancy;
>
> ***

ANSWER: National Union admits that the Policies each contain a Broad Form Comprehensive General Liability Endorsement, which includes the language cited by Sterigenics in Paragraph 47. However, the language cited by Sterigenics in Paragraph 47 forms a part of the Policies, which must each be read as a whole.

48. The Underlying Litigation alleges covered personal injury, including allegations

that Sterigenics U.S. created a nuisance by allegedly causing EtO to wrongfully enter the area surrounding Sterigenics U.S.'s facilities and to invade the alleged right of private occupancy with respect to these areas. *See, e.g.*, 4th Am. Master Compl. ¶¶ 251-255.

ANSWER: The Fourth Amended Master Complaint in the Underlying Litigation is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of the Fourth Amended Master Complaint in Paragraph 48 to the extent they are inconsistent with the contents of the document itself. Answering further, National Union denies the allegations of Paragraph 48.

49. By its plain terms, the Pollution Exclusion does not apply to the Personal and Advertising Injury coverage afforded under Insuring Agreement II because the Pollution Exclusion does not apply to **personal injury** but rather applies only to **bodily injury** or **property damage** to which the exclusion otherwise applies.

ANSWER: The Policies are written documents that speak for themselves, are the best evidence of their contents, and must be read as a whole. National Union denies any characterizations of the Policies in Paragraph 49 to the extent they are inconsistent with the contents of the Policies. To the extent any response is required, National Union denies the allegations of Paragraph 49.

50. Consequently, irrespective of the permitted operations doctrine and sudden and accidental exception that each negate the Pollution Exclusion in connection with bodily injury coverage under Insuring Agreement I, National Union is independently obligated to fully defend, and also indemnify, Sterigenics U.S. against the Underlying Litigation under Insuring Agreement II without regard to the Pollution Exclusion. *See, e.g., Millers Mut. Ins. Ass'n v. Graham Oil Co.,* 668 N.E.2d 223 (Ill. Ct. App. 1996) (finding pollution exclusion inapplicable in face of allegations

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of trespass or nuisance that triggered personal injury coverage grant).

ANSWER: Paragraph 50 asserts legal conclusions to which no response is required. To the extent a response is required, National Union denies the allegations of Paragraph 50.

E. National Union improperly denied coverage.

51. Sterigenics U.S. recently became aware of the existence of the Policies when Griffith produced them in discovery in the Underlying Litigation.

ANSWER: National Union lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 51.

52. In February 2021, soon after becoming aware of the Policies, Sterigenics U.S. tendered the Underlying Litigation to National Union for defense and indemnity coverage.

ANSWER: National Union lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 52.

53. In April 2021, National Union responded to Sterigenics U.S.'s initial tender letter, denying coverage based on the above-detailed insured status and pollution exclusion grounds.

ANSWER: National Union admits it issued a letter dated April 13, 2021, to Sterigenics's counsel. The April 13, 2021 letter is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of the April 13, 2021 letter in Paragraph 53 to the extent they are inconsistent with the contents of the document itself.

54. In May 2021, Sterigenics U.S. responded to National Union's initial coverage denial with a detailed rebuttal and explanation, supported by case law, as to why National Union was obligated to defend and indemnify Sterigenics U.S. against the Underlying Litigation.

ANSWER: National Union admits Sterigenics's counsel issued a letter dated May 25, 2021, to National Union. The May 25, 2021 letter is a written document that speaks for itself and

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is the best evidence of its contents. National Union denies any characterizations of the May 25, 2021 letter in Paragraph 54 to the extent they are inconsistent with the contents of the document itself.

55. In response, National Union retained outside insurance coverage counsel, who responded with a letter dated June 25, 2021 confirming that National Union would not defend or indemnify Sterigenics U.S. against the Underlying Litigation.

ANSWER: National Union admits its counsel issued a letter dated June 25, 2021, to Sterigenics's counsel. The June 25, 2021 letter is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of the June 25, 2021 letter in Paragraph 55 to the extent they are inconsistent with the contents of the document itself.

56. Consequently, declaratory relief is necessary to resolve the parties' disagreement.

ANSWER: The allegations of Paragraph 56 constitute Plaintiff's characterization of this lawsuit to which no answer is required. To the extent any response is required, National Union admits the allegations of Paragraph 56.

COUNT I
Declaratory Judgment
Duty to Defend

57. Sterigenics U.S. incorporates by reference the allegations contained in paragraphs 1 through 56 of this Complaint as if fully rewritten here.

ANSWER: National Union incorporates by reference the answers contained in paragraphs 1 through 56 of this Answer as if fully rewritten here.

58. Pursuant to 28 U.S.C. § 2201, Sterigenics U.S. is entitled to a declaration by this Court of the parties' rights and obligations under the Policies.

ANSWER: National Union denies the allegations of Paragraph 58.

59. An actual and justiciable controversy exists between Sterigenics U.S. and National Union concerning the parties' rights and obligations under the Policies.

ANSWER: Paragraph 59 asserts legal conclusions to which no response is required. To the extent a response is required, National Union admits only that there is an actual and justiciable controversy between National Union and Sterigenics regarding the rights and obligations, if any, regarding insurance coverage under the Policies for the Underlying Litigation. National Union denies all remaining allegations of Paragraph 59.

60. The issuance of declaratory relief will terminate the existing controversy between Sterigenics U.S. and National Union.

ANSWER: National Union denies the allegations of Paragraph 60.

61. Under Insuring Agreement I of the Policies, National Union agreed to "pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as damages because of A. **bodily injury**… to which this insurance applies, caused by an **occurrence**." National Union further agreed that it "shall have the right and duty to defend any suit against the **insured** seeking damages on account of such **bodily injury** or **property damage**, even if any of the allegations of the suit are groundless, false or fraudulent… [until] the applicable limit of [National Union's] liability has been exhausted by payment of judgments or settlements." In other words, National Union's duty to defend under Insuring Agreement I is in addition to the Policies' limits and exists until and unless the limits are exhausted by payments of judgments or settlements.

ANSWER: The Policies are written documents that speak for themselves, are the best evidence of their contents, and must be read as a whole. National Union denies any characterizations of the Policies in Paragraph 61 to the extent they are inconsistent with the contents of the Policies.

62. Under Insuring Agreement II of the Policies, National Union agreed to "pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as damages because of **personal injury**… to which this insurance applies, sustained by any person or organization and arising out of the conduct of the **named insured's** business, within the **policy territory**." National Union further agreed that it "shall have the right and duty to defend any suit against the **insured** seeking damages on account of such injury, even if any of the allegations of the suit are groundless, false or fraudulent… [until] the applicable limit of [National Union's] liability has been exhausted by payment of judgments or settlements." In other words, National Union's duty to defend under Insuring Agreement II is in addition to the Policies' limits and exists until and unless the limits are exhausted by payments of judgments or settlements.

ANSWER: The Policies are written documents that speak for themselves, are the best evidence of their contents, and must be read as a whole. National Union denies any characterizations of the Policies in Paragraph 62 to the extent they are inconsistent with the contents of the Policies.

63. The plaintiffs in the Underlying Litigation allege that they suffered bodily injury and personal injury allegedly caused by, and seek to recover damages from, Sterigenics U.S. and/or its predecessors.

ANSWER: The Fourth Amended Master Complaint is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of the allegations in the Underlying Litigation in Paragraph 63 to the extent they are inconsistent with the contents of the complaint.

64. As detailed above, Sterigenics U.S., as the successor by merger to Micro-Biotrol Company, qualifies as a named insured under the Policies.

ANSWER: National Union lack lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 64.

65. As also detailed above, the Pollution Exclusion does not apply to the allegations in the Underlying Litigation under Illinois law.

ANSWER: National Union denies the allegations of Paragraph 65.

66. Accordingly, Sterigenics U.S. is entitled to an order declaring that National Union is obligated to defend Sterigenics U.S. against the Underlying Litigation until and unless the Policies' limits are exhausted by payments of judgments or settlements.

ANSWER: National Union denies the allegations of Paragraph 66.

COUNT II
Declaratory Judgment
Duty to Indemnify

67. Sterigenics U.S. incorporates by reference the allegations contained in paragraphs 1 through 66 of this Complaint as if fully rewritten here.

ANSWER: National Union incorporates by reference the answers contained in paragraphs 1 through 66 of this Answer as if fully rewritten here.

68. Pursuant to 28 U.S.C. § 2201, Sterigenics U.S. is entitled to a declaration by this Court of the parties' rights and obligations under the Policies.

ANSWER: National Union denies the allegations of Paragraph 68.

69. An actual and justiciable controversy exists between Sterigenics U.S. and National Union concerning the parties' rights and obligations under the Policies.

ANSWER: Paragraph 69 asserts legal conclusions to which no response is required. To the extent a response is required, National Union admits only that there is an actual and justiciable controversy between National Union and Sterigenics regarding the rights and obligations, if any,

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regarding insurance coverage under the Policies for the Underlying Litigation. National Union denies all remaining allegations of Paragraph 69.

70. The issuance of declaratory relief will terminate the existing controversy between Sterigenics U.S. and National Union.

ANSWER: National Union denies the allegations of Paragraph 70.

71. The plaintiffs in the Underlying Litigation allege that they suffered bodily injury and personal injury allegedly caused by, and seek to recover damages from, Sterigenics U.S. and/or its predecessors.

ANSWER: The Fourth Amended Master Complaint is a written document that speaks for itself and is the best evidence of its contents. National Union denies any characterizations of the allegations in the Underlying Litigation in Paragraph 71 to the extent they are inconsistent with the contents of the complaint.

72. Under Insuring Agreement I of the Policies, National Union agreed to "pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as damages because of A. **bodily injury**… to which this insurance applies, caused by an **occurrence**."

ANSWER: The Policies are written documents that speak for themselves, are the best evidence of their contents, and must be read as a whole. National Union denies any characterizations of the Policies in Paragraph 72 to the extent they are inconsistent with the contents of the Policies.

73. Under Insuring Agreement II of the Policies, National Union agreed to "pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as damages because of **personal injury**… to which this insurance applies, sustained by any person or organization and arising out of the conduct of the **named insured's** business, within the **policy**

territory."

ANSWER: The Policies are written documents that speak for themselves, are the best evidence of their contents, and must be read as a whole. National Union denies any characterizations of the Policies in Paragraph 73 to the extent they are inconsistent with the contents of the Policies.

74. As detailed above, Sterigenics U.S., as the successor by merger to Micro-Biotrol Company, qualifies as a named insured under the Policies.

ANSWER: National Union lack lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 74.

75. As also detailed above, the Pollution Exclusion does not apply to the allegations in the Underlying Litigation under Illinois law.

ANSWER: National Union denies the allegations of Paragraph 75.

76. To the extent Sterigenics U.S. is found liable in whole or in part to any of the plaintiffs in the Underlying Litigation or settles any such claims, National Union would be obligated to indemnify Sterigenics U.S. against any such liability or settlement.

ANSWER: National Union denies the allegations of Paragraph 76.

77. Accordingly, Sterigenics U.S. is entitled to an order declaring that National Union is obligated to indemnify Sterigenics U.S. against the Underlying Litigation.

ANSWER: National Union denies the allegations of Paragraph 77.

COUNT III
Breach of Contract

78. Sterigenics U.S. incorporates by reference the allegations contained in paragraphs 1 through 77 of this First Amended Complaint as if fully rewritten here.

ANSWER: National Union incorporates by reference the answers contained in paragraphs

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1 through 77 of this Answer as if fully rewritten here.

79. The Policies are enforceable contracts.

ANSWER: Paragraph 79 asserts a legal conclusion to which no response is required. To the extent a response is required, National Union admits the allegations of Paragraph 79.

80. Under Insuring Agreement I of the Policies, National Union agreed to "pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as damages because of A. **bodily injury**… to which this insurance applies, caused by an **occurrence**." National Union further agreed that it "shall have the right and duty to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent…"

ANSWER: The Policies are written documents that speak for themselves, are the best evidence of their contents, and must be read as a whole. National Union denies any characterizations of the Policies in Paragraph 80 to the extent they are inconsistent with the contents of the Policies.

81. Under Insuring Agreement II of the Policies, National Union agreed to "pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as damages because of **personal injury**… to which this insurance applies, sustained by any person or organization and arising out of the conduct of the **named insured's** business, within the **policy territory.**" National Union further agreed that it "shall have the right and duty to defend any suit against the **insured** seeking damages on account of such injury , even if any of the allegations of the suit are groundless, false or fraudulent… [until] the applicable limit of [National Union's] liability has been exhausted by payment of judgments or settlements."

ANSWER: The Policies are written documents that speak for themselves, are the best

evidence of their contents, and must be read as a whole. National Union denies any characterizations of the Policies in Paragraph 81 to the extent they are inconsistent with the contents of the Policies.

82. By improperly denying defense and indemnity coverage for the Underlying Litigation, National Union materially breached the terms of the Policies.

ANSWER: National Union denies the allegations of Paragraph 82.

83. Because of these breaches, Sterigenics U.S. suffered damages in excess of $75,000.

ANSWER: National Union denies the allegations of Paragraph 83.

GENERAL DENIAL

Any and all allegations of Plaintiff's Complaint that are not specifically admitted herein are denied.

WHEREFORE, Defendants National Union Fire Insurance Company of Pittsburgh, Pa. respectfully requests that this Court find and declare that Plaintiff is not entitled to any relief or remedies sought against National Union in Plaintiff's Complaint and dismiss Plaintiff's claims against National Union with prejudice, awarding National Union costs of this action and all further relief that this Court deems just and proper.

NATIONAL UNION'S AFFIRMATIVE DEFENSES

National Union hereby sets forth its separate and distinct Affirmative Defenses to Plaintiff's Complaint. National Union sets forth the following matters to apprise Plaintiff of certain potentially applicable defenses. By listing any matters as an affirmative defense, National Union does not assume the burden of proving any matter upon which Plaintiff bears the burden of

proof under applicable law. National Union specifically reserves all rights to amend, withdraw, or assert any additional affirmative defense as continuing discovery in this matter may dictate.

FIRST AFFIRMATIVE DEFENSE

National Union issued to Griffith Laboratories, Inc. and Griffith Laboratories U.S.A., Inc. Policy No. GLA 945 70 58RA, effective September 30, 1983 to September 30, 1984, and Policy No. GLA 194 00 11RA, effective September 30, 1984 to September 30, 1985 (collectively, the "Policies"). The Policies only provide coverage to an Insured, as defined.

In relevant part, the Policies provide that "Named Insured" means the organization, including any subsidiary thereof, named in item 1 of the declarations and also includes any other company which is acquired or formed by the named insured during the policy period and over which the named insured maintains ownership or financial control, provided this insurance does not apply to any such newly acquired or formed company which is an insured under any other liability or indemnity policy or would be an insured under any such policy but for its termination upon exhaustion of its limits of liability. Such insurance as may be afforded and newly acquired or formed company shall terminate within sixty days of its acquisition of formation unless reported to the company within said sixty days.

The Policies also provide that "insured" includes as "named insured" any organization which is acquired or formed by the "named insured" and over which the named insured maintains ownership or majority interest, other than a joint venture, provided this insurance does not apply to "bodily injury," "property damage," "personal injury or advertising injury" with respect to which such new organization under this policy is also an insured under any other similar liability or indemnity policy or would be an insured under any such policy but for exhaustion of its limits of liability. The insurance afforded hereby shall terminate 90 days from the date any such organization is acquired or formed by the named insured.

Item 1 of the Policies, as amended by endorsement, identifies Griffith Laboratories U.S.A., Inc. and Griffith Laboratories, Inc. as Named Insureds.

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Sterigenics U.S., LLC ("Sterigenics") bears the burden to establish that it qualifies as a Named Insured. National Union does not owe coverage to Sterigenics under the Policies, because Sterigenics has not meet its burden as it has not presented evidence sufficient to establish that it was acquired or formed by Griffith Laboratories U.S.A., Inc. and/or Griffith Laboratories, Inc. during the effective dates of the Policies. Further, National Union does not owe coverage to Sterigenics, because the formation or acquisition of Sterigenics was not timely reported to National Union.

SECOND AFFIRMATIVE DEFENSE

The Policies only provide coverage to entities that qualify as an Insured. Sterigenics has the burden to establish that it qualifies as an insured. Sterigenics has not established that it is, in fact, the corporate successor to the Named Insureds of the Policies, Griffith Laboratories U.S.A., Inc. and Griffith Laboratories, Inc.

THIRD AFFIRMATIVE DEFENSE

The Policies provide coverage for an Insured, in relevant part, for damages sought because of "bodily injury." The Policies define "bodily injury" as bodily injury, sickness or disease sustained by any person which occurs during the policy period, including death at any time resulting therefrom. The Policies do not provide coverage to an Insured for damages sought in the consolidated lawsuits pending under the caption *Susan Kamuda v. Sterigenics U.S., LLC; et al.*, Case No. 18 L 10475, Circuit Court of Cook County, Illinois, County Department, Law Division ("the Underlying Litigation") that are not damages because of "bodily injury."

FOURTH AFFIRMATIVE DEFENSE

The Policies do not provide coverage for an Insured, in relevant part, for damages sought in the Underlying Litigation because of "bodily injury" that did not take place during the effective dates of the Policies.

FIFTH AFFIRMATIVE DEFENSE

The Policies provide coverage for an Insured, in relevant part, for damages sought because of "bodily injury" caused by an "occurrence." The Policies define an "occurrence" as an accident, including continuous or repeated exposure to conditions, which results in "bodily injury" neither expected nor intended from the standpoint of the Insured. The Underlying Litigation alleges that the historical operations of the Willowbrook facilities emissions of Ethylene Oxide ("EtO") were permitted and tracked. Emissions of EtO were not accidental, but rather were expected and intended and, therefore, damages sought for "bodily injury" were not caused by an "occurrence."

SIXTH AFFIRMATIVE DEFENSE

Pursuant to Exclusion (f), the Policies do not apply to "bodily injury" or "property damage" arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental (the "Pollution Exclusion"). The Underlying Litigation alleges liability arising out of EtO emissions for decades at the Willowbrook facilities. EtO emissions constitute a discharge, dispersal, release or escape of vapors, fumes, toxic chemicals, gases, other irritants, contaminants, and/or pollutants into the atmosphere. EtO is toxic and is a known carcinogen. Consequently, the Pollution Exclusions preclude coverage for the damages sought in the Underlying Litigation.

The sudden and accidental exception to the Pollution Exclusions does not reinstate coverage under the Policies. Decades of EtO emissions were expected and intended. Under operating permits and routine business operations, air-borne emission of EtO was planned and expected. The discharge, dispersal, release or escape of EtO was not sudden and accidental.

SEVENTH AFFIRMATIVE DEFENSE

The Policies provide coverage for an Insured, in relevant part, for damages because of "personal injury" sustained by any person or organization and arising out of the conduct of the named insured's business. The Policies define "personal injury," in relevant part, to include wrongful entry or eviction or other invasion of the right of private occupancy during the policy period. The Policies do not provide "personal injury" coverage for the Underlying Litigation because the damages sought in the Underlying Litigation are not because of the wrongful entry or eviction or other invasion of the right of private occupancy during the policy period and do not arise out of the Named Insured's business.

EIGHTH AFFIRMATIVE DEFENSE

The Policies preclude coverage for "personal injury" arising out of the willful violation of a penal statute or ordinance committed by or with the knowledge or consent of the insured. The Underlying Litigation alleges expected and intended exceedance of EtO permitted emissions, including allegations that emission parameters and monitoring were altered. The Policies do not provide "personal injury" coverage arising from the willful violation of a statute or ordinance with the knowledge of consent of an Insured.

NINTH AFFIRMATIVE DEFENSE

National Union's coverage obligations, if any, under the Policies, with respect to the Underlying Litigation may be limited by those amounts of other insurance policies available to provide coverage for an Insured relative to the Underlying Litigation.

JURY DEMAND

Defendant National Union Insurance Company of Pittsburgh, Pa. hereby demands a trial by jury of all triable issues in this case.

Dated: November 18, 2021

Respectfully Submitted,
NICOLAIDES FINK THORPE
MICHAELIDES SULLIVAN LLP

By: /s Joseph P. Lang

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of November, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following email addresses:

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I hereby certify that I have mailed or served the foregoing document or paper to the following non-CM/ECF participants in the manner (mail, hand-delivery, etc.) indicated by the nonparticipant's name:

None.

/s Joseph P. Lang

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

STERIGENICS U.S., LLC,	)	CASE NO. 1:21-CV-04581
	)	
Plaintiff,	)	JUDGE MARY M. ROWLAND
	)	
v.	)	**FIRST AMENDED COMPLAINT**
	)	
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA,	)	**(DEMAND FOR JURY TRIAL)**
	)	
Defendant.	)	

Plaintiff, Sterigenics U.S., LLC ("Sterigenics U.S."), states as follows for its First Amended Complaint against Defendant, National Union Fire Insurance Company of Pittsburgh, PA ("National Union"):[1]

NATURE OF THE CASE

1. This is an insurance coverage dispute.

2. Sterigenics U.S. is owed defense and indemnity coverage for hundreds of pending bodily injury and personal injury lawsuits, which for purposes of discovery have been consolidated and captioned *Susan Kamuda, et al. v. Sterigenics U.S., LLC, et al.*, Circuit Court of Cook County, Illinois Consolidated Case No. 18 L 10475 (the "Underlying Litigation") under two commercial general liability insurance policies issued by National Union to, among other insureds, Sterigenics U.S.'s predecessor.

3. National Union improperly denied coverage for the Underlying Litigation on two erroneous bases: (1) Sterigenics U.S. purportedly does not qualify as an insured under the National Union policies; and (2) the pollution exclusion in the National Union policies.

[1] Federal Rule of Civil Procedure 15(a)(2) provides that "a party may amend its pleading . . . with the opposing party's written consent . . . ." Through its counsel, National Union has consented in writing to Sterigenics U.S. filing this First Amended Complaint, without admitting the allegations asserted against National Union.

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4. As further detailed below, neither of these are accurate nor legitimate bases for denying coverage.

5. Regarding the insured status issue, Sterigenics U.S. is the clear successor by merger to Micro-Biotrol Company, an entity that qualifies as a named insured under the plain language of the subject National Union insurance policies. As a matter of Illinois law, a successor by merger, such as Sterigenics U.S. in this instance, succeeds to the insurance rights of the non-surviving merged entity. This approach by Illinois makes common sense, because a successor by merger likewise succeeds to the non-surviving merged entity's liabilities.

6. Regarding the pollution exclusion issue, National Union is wrong for at least three reasons. First, as a matter of Illinois law — which governs this dispute — Illinois courts have established a common-law doctrine holding that a pollution exclusion such as that relied on by National Union does not apply when, as here, the alleged discharges or emissions constituting the pollution were made pursuant to a lawfully valid permit. The allegations in the Underlying Litigation make plain that the alleged emissions causing the plaintiffs' alleged harm during the National Union policy periods were made pursuant to lawfully valid permits. Second, not only does that Illinois common-law doctrine govern, but the pollution exclusion in the subject policies contains a "sudden and accidental" exception that negates any potential applicability of the exclusion anyway. Indeed, Illinois courts have held that a sudden and accidental exception such as this is ambiguous and construed against the insurer and in favor of the insured such that the exception to the exclusion applies whenever the alleged harmful discharge is unintendedly or unexpectedly harmful — even if the alleged discharges occurred over several years. Third, the allegations in the Underlying Litigation also trigger the Policies' Personal Injury and Advertising Liability insuring agreement, to which the pollution exclusion does not apply at all.

7. Notwithstanding, National Union declined to honor its duty to defend and indemnify Sterigenics U.S.

8. Consequently, Sterigenics U.S. brings this action for declaratory judgment and money damages.

PARTIES, JURISDICTION, AND VENUE

9. National Union is a corporation organized under the laws of Pennsylvania with its principal place of business in New York.

10. Sterigenics U.S. is a limited liability company organized under the laws of Delaware. Sterigenics U.S.'s sole member is Sotera Health LLC, which is a limited liability company organized under the laws of Delaware. Sotera Health LLC's sole member is Sotera Health Holdings, LLC, which is a limited liability company organized under the laws of Delaware. Sotera Health Holdings, LLC's sole member is Sotera Health Company, which is a corporation organized under the laws of Delaware with its principal place of business in Ohio. None of Sterigenics U.S.'s members is a citizen of New York or Pennsylvania.

11. This Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1332(a) because there is complete diversity of citizenship among the parties and the amount in controversy exceeds $75,000, exclusive of interest and costs.

12. Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial part of property that is the subject of this action is situated in this district and National Union is otherwise subject to this Court's personal jurisdiction with respect to this action.

FACTUAL ALLEGATIONS

A. The Underlying Litigation.

13. In 2018, the first lawsuit in the Underlying Litigation was filed against, among several other defendants, Sterigenics U.S.

14. The plaintiffs in the Underlying Litigation generally allege that they suffered bodily injuries and personal injuries as a result of exposure to discharges of ethylene oxide ("EtO") from a sterilization facility in Willowbrook, Illinois currently owned by Sterigenics U.S. A true, accurate, and authentic copy of the currently operative Fourth Amended Master Complaint in the *Kamuda* lawsuit in the Underlying Litigation is attached as **Ex. A**.[2]

15. Sterigenics U.S. denied — and denies — liability to the plaintiffs in the Underlying Litigation.

16. In addition to Sterigenics U.S. and others, the plaintiffs named as a defendant in the Fourth Amended Master Complaint an entity now known as Griffith Foods International, Inc., which was formerly known as Griffith Laboratories U.S.A., Inc.

[2] As noted above, hundreds of plaintiffs filed actions similar to *Kamuda* against Sterigenics U.S. and others, and Sterigenics U.S. seeks in this action defense and indemnity coverage from National Union for each such plaintiff's claims. All of these plaintiffs' claims were consolidated for pretrial and discovery purposes with the first-filed *Kamuda* lawsuit, and the operative allegations as to each plaintiff for purposes of insurance coverage are contained in the operative Master Complaint attached here. For ease of reference, Sterigenics U.S. refers to these consolidated cases as the Underlying Litigation. But for the avoidance of doubt, Sterigenics U.S. seeks defense and indemnity coverage as to each of these plaintiffs' claims and lawsuits.

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B. The relevant insurance policies.

17. As relevant to this action, National Union issued two commercial general liability policies to two named insureds that were then known as Griffith Laboratories, Inc. and Griffith Laboratories U.S.A., Inc.:

Policy Number	Policy Period	Policy Limits
GLA-945-70-58RA	9/30/83-9/30/84	$1 million per occurrence and in the aggregate; Defense in addition to limits
GLA-194-00-11RA	9/30/84-9/30/85	$1 million per occurrence and in the aggregate; Defense in addition to limits

Collectively, the insurance policies in the above table are referenced herein as the "Policies."[3]

18. The Policies each contain an endorsement providing that the term "Named Insured" under the policy means:

> [T]he organization, including any subsidiary thereof, named in item 1 of the declarations and also includes any other company which is acquired or formed by the named insured during the policy period and over which the named insured maintains ownership or financial control, provided this insurance does not apply to any such newly acquired or formed company which is an insured under any other liability or indemnity policy or would be an insured under any such policy but for its termination upon exhaustion of its limits of liability. Such insurance as may be afforded and *[sic]* newly acquired or formed company shall terminate within sixty days of its acquisition of *[sic]* formation unless reported to the company within said sixty days."

[3] Sterigenics U.S. does not attach the Policies to this First Amended Complaint because the copies of the Policies in Sterigenics U.S.'s possession were produced pursuant to a protective order in the Underlying Litigation and because National Union already has copies of the Policies. Sterigenics U.S. will provide the Policies in its possession upon request and in accordance with an appropriate sealing order or, alternatively, National Union could be directed to file copies not subject to the underlying protective order.

19. In similar fashion, Section XII of the Policies sets forth a newly acquired organizations provision providing as follows:

> **XII. AUTOMATIC COVERAGE—NEWLY ACQUIRED ORGANIZATIONS**
>
> The word **insured** shall include as **named insured** any organization which is acquired or formed by the **named insured** and over which the **named insured** maintains ownership or majority interest, other than a joint venture, provided this insurance does not apply to **bodily injury**, **property damage**, **personal injury**, or **advertising injury** with respect to which such new organization under this policy is also an **insured** under any other similar liability or indemnity policy or would be an **insured** under any such policy but for exhaustion of its limits of liability. The insurance afforded hereby shall terminate 90 days from the date any such organization is acquired or formed by the **named insured**.

C. Sterigenics U.S. is an insured under the Policies.

20. Item 1 of the Policies' declarations pages identifies Griffith Laboratories, Inc. and Griffith Laboratories U.S.A., Inc. as named insureds. Consequently, any subsidiary of those two entities, as well as any other company acquired or formed by them during the policy period and over which either of them maintains ownership, financial control, and/or a majority interest, qualifies as an insured under the above-referenced endorsement and Section XII in the Policies.

21. The operative Fourth Amended Master Complaint in the *Kamuda* lawsuit of the Underlying Litigation alleges that on April 12, 1984, the then-unincorporated division of Griffith Laboratories U.S.A., Inc. — known as Micro-Biotrol Co. — leased the facility in Willowbrook, Illinois at the center of the plaintiffs' claims and operated the facility at all relevant times during the Policies' periods.

22. Around October 4, 1984, the entity then known as Griffith Laboratories U.S.A., Inc., a Named Insured under the Policies, incorporated Micro-Biotrol Company by filing a

Certificate of Incorporation with the Delaware Secretary of State. A true, accurate, and authentic copy of the Certificate of Incorporation of Micro-Biotrol Company is attached as **Ex. B**.

23. As reflected in the Deed, Assignment, and Bill of Sale dated October 4, 1984 attached as **Ex. C** and Assumption of Obligations and Liabilities dated October 4, 1984 attached as **Ex. D**, Griffith Laboratories U.S.A., Inc. contributed and transferred many of the assets used in the gas sterilization business which had previously been conducted by Griffith Laboratories U.S.A., Inc.'s Micro-Biotrol Co. division to its wholly-owned subsidiary, Micro-Biotrol Company. The transfer included the lease and assets related to the Willowbrook, Illinois sterilization facility.

24. At all relevant times during the Policies' periods, Griffith Laboratories U.S.A., Inc. was Micro-Biotrol Company's direct parent and Micro-Biotrol Company was Griffith Laboratories U.S.A., Inc.'s wholly-owned subsidiary. Moreover, Micro-Biotrol Company was not an insured under any other liability or indemnity policy. So, under the plain language of the Policies, Micro-Biotrol Company is a Named Insured.

25. The Fourth Amended Master Complaint in the *Kamuda* lawsuit of the Underlying Litigation alleges that from April 1984 to April 1999, Micro-Biotrol and its successor entities "operated" the Willowbrook facility, including during the Policies' periods. *See, e.g.*, 4th Am. Master Compl. ¶ 23. Accordingly, Micro-Biotrol Company — or its successor by merger, which, as detailed below, is Sterigenics U.S. — is entitled to defense and indemnity coverage under the Policies.

26. For ease of understanding the path by which Sterigenics U.S. ultimately became the successor by merger to Micro-Biotrol Company and the owner of Micro-Biotrol Company's insurance rights under the Policies, Sterigenics U.S. notes that Micro-Biotrol Company

underwent several name changes over the years. On October 16, 1984, Micro-Biotrol Company filed a Certificate of Amendment to change its name to Micro-Biotrol, Inc. On July 11, 1986, Micro-Biotrol, Inc. filed a Certificate of Amendment to change its name to Griffith Micro Science, Inc. On December 18, 2002, Griffith Micro Science, Inc. filed a Certificate of Amendment to change its name to IBA S&I, Inc. On July 7, 2004, IBA S&I, Inc. filed a Certificate of Amendment to change its name to Sterigenics EO, Inc. Importantly, each of these name changes was merely that: a name change. True, accurate, and authentic copies of charter documents from the Delaware Secretary of State tracing this corporate history are attached as **Exs. E through H**.

27. In 1994, Griffith Laboratories Worldwide, Inc.(f/k/a Griffith Laboratories U.S.A., Inc.), the then-common parent of Griffith Micro Science, Inc. (f/k/a Micro-Biotrol Company) and Griffith Micro Science International, Inc., contributed its ownership interest in Griffith Micro Science, Inc. to Griffith Micro Science International, Inc., resulting in Griffith Micro Science, Inc. becoming a direct subsidiary of Griffith Micro Science International, Inc. and an indirect subsidiary of Griffith Laboratories Worldwide, Inc. A true, accurate, and authentic copy of certain 1994 stock transfer documentation is attached as **Ex. I**. In addition, the stock of Griffith Micro Science, Inc.'s parent companies was sold in certain subsequent transactions.

28. Any change in ownership of the stock of Micro-Biotrol Company or its parent company did not transfer or affect Micro-Biotrol Company's legal rights, including its contract and insurance rights. *See, e.g.*, *Texaco Refining and Mktg., Inc. v. Del. River Basin Comm'n*, 824 F. Supp. 500, 507 (D. Del. 1993) ("A sale of all of the stock of a corporation, or of a controlling interest, is not a sale of the physical properties or assets of the corporation… The purchaser holds shares in the corporation, but has no right to the assets, rights, and privileges of

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the corporation."). Indeed, Micro-Biotrol Company's contract and insurance rights remained with Micro-Biotrol Company until they were assumed by Sterigenics U.S. in the below-detailed December 2005 mergers, which resulted in Micro-Biotrol Company being merged into Sterigenics U.S.

29. Sterigenics U.S. became the successor to Micro-Biotrol Company via two December 2005 merger transactions. Effective December 1, 2005 at 12:03 a.m. Eastern Standard Time, the entity then known as Sterigenics EO, Inc. (and originally known as Micro-Biotrol Company) was merged into its then-direct parent, Sterigenics S&I Holding, Corp. (previously known as Griffith Micro Science International, Inc.), with Sterigenics S&I Holding, Corp. as the surviving corporation of the merger. Then, effective December 1, 2005 at 12:04 a.m. Eastern Standard Time, Sterigenics S&I Holding Corp. was merged into Sterigenics U.S., with Sterigenics U.S. as the surviving entity of the merger. True, accurate, and genuine copies of the relevant merger documents are attached as **Exs. J through M**.

30. Pursuant to Delaware law (the state in which the mergers occurred), Section 2 of each Agreement and Plan of Merger for these transactions provides that "at the Effective Time, the separate corporate existence of [the non-surviving merged entity] shall cease; the corporate identity, existence, powers, rights and immunities of… the Surviving Entity shall continue unimpaired by the Merger; and [the Surviving Entity] shall succeed to and shall possess all the assets, properties, rights, privileges, powers, franchises, immunities and purposes, and be subject to all the debts, liabilities, obligations, restrictions and duties of [the non-surviving merged entity], all without further act or deed." *See* **Exs. K and M**, § 2.

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31. The following timeline visually recaps the foregoing succession of name changes and mergers ultimately tracing up to Sterigenics U.S.:

Filing Date	Event
10/16/84	Micro-Biotrol Company changes name to Micro-Biotrol Inc.
7/11/86	Micro-Biotrol Inc. changes name to Griffith Micro Science, Inc.
12/18/02	Griffith Micro Science, Inc. changes name to IBA S&I, Inc.
7/7/04	IBA S&I, Inc. changes name to Sterigenics EO, Inc.
12/1/05, effective at 12:03 a.m. Eastern	Sterigenics EO, Inc. merged into Sterigenics S&I Holding Corp.
12/1/05, effective at 12:04 a.m. Eastern	Sterigenics S&I Holding Corp. merged into Sterigenics U.S.

32. In Illinois, it is well-settled that in the context of statutory mergers, the surviving entity — Sterigenics U.S. — inherits the predecessor entity's rights to insurance benefits for pre-merger occurrences.[4] This makes sense because under Illinois law, the surviving entity in a merger assumes all obligations and liabilities of the non-surviving merged entity. *Gray v. Mundelein Coll.*, 695 N.E.2d 1379, 1388 (Ill. Ct. App. 1998); *Myers v. Putzmeister, Inc.*, 596 N.E.2d 754, 755 (Ill. Ct. App. 1992); *Ill. Ins. Guar. Fund v. Priority Transp., Inc.*, 146 N.E.3d 155, 171 (Ill. Ct App. 2019).

[4] Illinois law applies to the interpretation of the Policies because, among other things, the named insureds were domiciled in Illinois, the insured risks were located in Illinois, and the Policies were delivered in Illinois. *Emerson Elec. Co. v. Aetna Cas. & Sur. Co.*, 743 N.E.2d 629, 639-40 (Ill. Ct. App. 2001). In any event, Delaware, the state in which the relevant mergers occurred, likewise provides that "the surviving entity of a merger absorbs all rights and responsibilities of the parties to a merger," including the non-surviving merged entity's contract rights. *Cornell Univ. v. Illumina, Inc.*, No. 10–433–LPS–MPT, 2013 WL 3216087, at *12 (D. Del. June 25, 2013); *Texaco Refining and Mktg., Inc.*, 824 F. Supp. at 507 ("A statutory merger… results in a combination of the two corporations with the surviving corporation attaining the property, rights, and privileges of the absorbed corporation, as well as retaining its own property, rights, and privileges."); *P.C. Connection, Inc. v. Synygy Ltd.*, No. 2020-0869-JTL, 2021 WL 57016, at *15 (Del. Ch. Jan. 7, 2021) ("As a result of the merger, any contractual rights and obligations that [the non-surviving merged entity] possessed under [its contracts] survived as contractual rights and obligations of the [surviving entity of the merger].").

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33. "In fact, the assumption of liabilities is often considered to be the distinguishing factor between a merger and an asset purchase agreement." *Knoll Pharm. Co. v. Auto. Ins. Co.*, 167 F. Supp. 2d 1004, 1010 (N.D. Ill. 2001) (citing *Chaveriat v. Williams Pipe Line Co.*, 11 F.3d 1420, 1425 (7th Cir. 1993)). Consequently, and by the same token, the surviving entity in a merger succeeds not only to the liabilities and obligations of the non-surviving merged entity, but also to the non-surviving merged entity's contractual rights, including insurance policy rights. *Knoll*, 167 F. Supp. 2d at 1010-11.

34. Therefore, as the successor by merger to Micro-Biotrol Company, Sterigenics U.S. is the successor to Micro-Biotrol Company's rights under the Policies.

D. The Policies' pollution exclusion does not apply here.

35. Insuring Agreement I of the Policies provides as follows:

> **I. COVERAGE A—BODILY INJURY LIABILITY**
> **COVERAGE B—PROPERTY DAMAGE LIABILITY**
>
> The company will pay on behalf of the **insured** all sums which the insured shall become legally obligated to pay as damages because of
>
> A. **bodily injury** or
> B. **property damage**
>
> to which this insurance applies, caused by an **occurrence**, and the company shall have the right and duty to defend any suit against the insured seeking damages on account of such **bodily injury** or **property damage**, even if any of the allegations of the suit are groundless, false or fraudulent…

36. The Policies contain a pollution exclusion, which provides as follows:

> This insurance does not apply:
>
> ***
>
> (f) to **bodily injury** or **property damage** arising out of the discharge, dispersal, release or escape of smoke, vapors, soot,

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> fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental.

See Policies, § 1(f) (the "Pollution Exclusion").

37. This "standard pollution exclusion provision contains two parts: (1) the insurer excludes coverage for the release of environmentally toxic materials into any part of our natural environment and (2) the insurer makes an exception from this broad exclusion for toxic releases which are sudden and accidental. In other words, the pollution exclusion exception reinstates coverage for toxic releases which are sudden and accidental." *Outboard Marine Corp. v. Liberty Mut. Ins. Co.*, 607 N.E.2d 1204, 1217 (Ill. 1992).

38. As discussed above, Illinois courts have established a common-law doctrine holding that this "standard" Pollution Exclusion is set aside when the emissions are made pursuant to a lawfully issued permit.

39. Consequently, when the allegations in the underlying claim are that at least some of the alleged emissions were made pursuant to a lawfully issued permit, the exclusion is not triggered, and the insurer is obligated to defend. *See, e.g.*, *Erie Ins. Exch. v. Imperial Marble Corp.*, 957 N.E.2d 1214, 1219-21 (Ill. Ct. App. 2011); *Country Mut. Ins. Co. v. Bible Pork, Inc.*, 42 N.E.3d 958 (Ill. Ct. App. 2015).

40. So too here. As alleged in the Fourth Amended Master Complaint, the Willowbrook Facility was operated during the Policies' periods pursuant to a Joint Construction and Operating Permit issued by the Illinois Environmental Protection Agency ("IEPA"). *See, e.g.*, 4th Am. Master Compl. ¶¶ 57, 58, 60, 62, 109, 277. Thus, the plaintiffs in the Underlying Litigation allege, at least in part, that their alleged injuries were the result of the Willowbrook

Facility's operators' normal business operations pursuant to the lawfully issued IEPA permit. *See, e.g.*, *id.* at ¶¶ 58, 60, 62, 277-78.

41. Indeed, Counts 12-14 of the Fourth Amended Master Complaint allege that certain injuries occurred during the Policies' periods because of lawfully permitted operations at the Willowbrook facility. *See, e.g.*, *id.* at ¶¶ 286-88 and 290-92 (generally alleging that Griffith entities, including Micro-Biotrol, breached various duties through their operation of the Willowbrook facility via negligent and improper ownership, maintenance, training, and control and that those breaches proximately caused the underlying injuries).

42. Thus, as regards claims for bodily injury or property damage under Insuring Agreement I of the Policies, the Pollution Exclusion does not apply at all or at least does not apply to claims arising from permitted emissions. *Indem. Ins. Co. of N. Am. v. Silver Creek Pig, Inc.*, No. 13-CV-1440, 2015 WL 1910019, at *7 (C.D. Ill. Feb. 13, 2015) (holding that duty to defend triggered by similar allegations that "underlying defendants, breached various duties through their negligent and improper ownership, maintenance, training and control" and declining to apply pollution exclusion).

43. Moreover, and separate and distinct from the permitted-emissions doctrine, the "sudden and accidental" exception to the Pollution Exclusion reinstates coverage under Insuring Agreement I of the Policies here. Illinois courts hold that this sudden and accidental exception is ambiguous and construed against the insurer and in favor of the insured such that the exception applies whenever the alleged harmful discharge is unintendedly or unexpectedly harmful — even if the alleged discharges occurred over several years.

44. In that vein, plaintiffs in the Underlying Litigation repeatedly allege that there were negligent or "unintended" alleged leaks of dangerously high levels of EtO, in turn resulting

in alleged injuries to the plaintiffs. *See, e.g.*, 4th Am. Master Compl. ¶¶ 290-92 (generally alleging that Griffith entities, including Micro-Biotrol, negligently breached various duties through their operation of the Willowbrook facility via negligent and improper ownership, maintenance, training, and control and that those breaches proximately caused the underlying injuries); *see also id.* at ¶ 230(a)-(f) (alleging that Sterigenics U.S. allegedly negligently breached certain duties, which led to "unintended leaks, spills, or emissions").

45. Thus, "at least some counts in the underlying complaint are devoid of any allegation" that any defendant "intended or expected to build and maintain" a facility that "directly caused such injuries to its surrounding neighbors." *Silver Creek Pig, Inc.*, 2015 WL 1910019 at *7. Consequently, even if the Pollution Exclusion were triggered (and it is not given the allegations of permitted emissions), the sudden and accidental exception would reinstate coverage and obligate National Union to defend and indemnify Sterigenics U.S.

46. Additionally, Insuring Agreement II of the Policies sets forth separate and distinct Personal and Advertising Injury Coverage as follows:

> **II. PERSONAL INJURY AND ADVERTISING INJURY LIABILITY COVERAGE**
>
> (A) The company will pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as damages because of **personal injury** or **advertising injury** to which this insurance applies, sustained by any person or organization and arising out of the conduct of the **named insured's** business, within the **policy territory**, and the company shall have the right and duty to defend any suit against the **insured** seeking damages on account of such injury, even if any of the allegations of the suit are groundless, false or fraudulent…

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47. The Policies define **personal injury** as follows:

> "**Personal injury**" means injury arising out of one or more of the following offenses committed during the policy period:
>
> ***
>
> 2. wrongful entry or eviction or other invasion of the right of private occupancy;
>
> ***

48. The Underlying Litigation alleges covered personal injury, including allegations that Sterigenics U.S. created a nuisance by allegedly causing EtO to wrongfully enter the area surrounding Sterigenics U.S.'s facilities and to invade the alleged right of private occupancy with respect to these areas. *See, e.g.,* 4th Am. Master Compl. ¶¶ 251-255.

49. By its plain terms, the Pollution Exclusion does not apply to the Personal and Advertising Injury coverage afforded under Insuring Agreement II because the Pollution Exclusion does not apply to **personal injury** but rather applies only to **bodily injury** or **property damage** to which the exclusion otherwise applies.

50. Consequently, irrespective of the permitted operations doctrine and sudden and accidental exception that each negate the Pollution Exclusion in connection with bodily injury coverage under Insuring Agreement I, National Union is independently obligated to fully defend, and also indemnify, Sterigenics U.S. against the Underlying Litigation under Insuring Agreement II without regard to the Pollution Exclusion. *See, e.g., Millers Mut. Ins. Ass'n v. Graham Oil Co.*, 668 N.E.2d 223 (Ill. Ct. App. 1996) (finding pollution exclusion inapplicable in face of allegations of trespass or nuisance that triggered personal injury coverage grant).

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E. National Union improperly denied coverage.

51. Sterigenics U.S. recently became aware of the existence of the Policies when Griffith produced them in discovery in the Underlying Litigation.

52. In February 2021, soon after becoming aware of the Policies, Sterigenics U.S. tendered the Underlying Litigation to National Union for defense and indemnity coverage.

53. In April 2021, National Union responded to Sterigenics U.S.'s initial tender letter, denying coverage based on the above-detailed insured status and pollution exclusion grounds.

54. In May 2021, Sterigenics U.S. responded to National Union's initial coverage denial with a detailed rebuttal and explanation, supported by case law, as to why National Union was obligated to defend and indemnify Sterigenics U.S. against the Underlying Litigation.

55. In response, National Union retained outside insurance coverage counsel, who responded with a letter dated June 25, 2021 confirming that National Union would not defend or indemnify Sterigenics U.S. against the Underlying Litigation.

56. Consequently, declaratory relief is necessary to resolve the parties' disagreement.

COUNT I
Declaratory Judgment
Duty to Defend

57. Sterigenics U.S. incorporates by reference the allegations contained in paragraphs 1 through 56 of this First Amended Complaint as if fully rewritten here.

58. Pursuant to 28 U.S.C. § 2201, Sterigenics U.S. is entitled to a declaration by this Court of the parties' rights and obligations under the Policies.

59. An actual and justiciable controversy exists between Sterigenics U.S. and National Union concerning the parties' rights and obligations under the Policies.

60. The issuance of declaratory relief will terminate the existing controversy between Sterigenics U.S. and National Union.

61. Under Insuring Agreement I of the Policies, National Union agreed to "pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as damages because of A. **bodily injury**… to which this insurance applies, caused by an **occurrence**." National Union further agreed that it "shall have the right and duty to defend any suit against the **insured** seeking damages on account of such **bodily injury** or **property damage**, even if any of the allegations of the suit are groundless, false or fraudulent… [until] the applicable limit of [National Union's] liability has been exhausted by payment of judgments or settlements." In other words, National Union's duty to defend under Insuring Agreement I is in addition to the Policies' limits and exists until and unless the limits are exhausted by payments of judgments or settlements.

62. Under Insuring Agreement II of the Policies, National Union agreed to "pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as damages because of **personal injury** . . . to which this insurance applies, sustained by any person or organization and arising out of the conduct of the **named insured's** business, within the **policy territory**." National Union further agreed that it "shall have the right and duty to defend any suit against the **insured** seeking damages on account of such injury, even if any of the allegations of the suit are groundless, false, or fraudulent… [until] the applicable limit of [National Union's] liability has been exhausted by payment of judgments or settlements." In other words, National Union's duty to defend under Insuring Agreement II is in addition to the Policies' limits and exists until and unless the limits are exhausted by payments of judgments or settlements.

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63. The plaintiffs in the Underlying Litigation allege that they suffered bodily injury and personal injury allegedly caused by, and seek to recover damages from, Sterigenics U.S. and/or its predecessors.

64. As detailed above, Sterigenics U.S., as the successor by merger to Micro-Biotrol Company, qualifies as a named insured under the Policies.

65. As also detailed above, the Pollution Exclusion does not apply to the allegations in the Underlying Litigation under Illinois law.

66. Accordingly, Sterigenics U.S. is entitled to an order declaring that National Union is obligated to defend Sterigenics U.S. against the Underlying Litigation until and unless the Policies' limits are exhausted by payments of judgments or settlements.

COUNT II
Declaratory Judgment
Duty to Indemnify

67. Sterigenics U.S. incorporates by reference the allegations contained in paragraphs 1 through 66 of this First Amended Complaint as if fully rewritten here.

68. Pursuant to 28 U.S.C. § 2201, Sterigenics U.S. is entitled to a declaration by this Court of the parties' rights and obligations under the Policies.

69. An actual and justiciable controversy exists between Sterigenics U.S. and National Union concerning the parties' rights and obligations under the Policies.

70. The issuance of declaratory relief will terminate the existing controversy between Sterigenics U.S. and National Union.

71. The plaintiffs in the Underlying Litigation allege that they suffered bodily injury and personal injury allegedly caused by, and seek to recover damages from, Sterigenics U.S. and/or its predecessors.

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72. Under Insuring Agreement I of the Policies, National Union agreed to "pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as damages because of A. **bodily injury**… to which this insurance applies, caused by an **occurrence**."

73. Under Insuring Agreement II of the Policies, National Union agreed to "pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as damages because of **personal injury** . . . to which this insurance applies, sustained by any person or organization and arising out of the conduct of the **named insured's** business, within the **policy territory**."

74. As detailed above, Sterigenics U.S., as the successor by merger to Micro-Biotrol Company, qualifies as a named insured under the Policies.

75. As also detailed above, the Pollution Exclusion does not apply to the allegations in the Underlying Litigation under Illinois law.

76. To the extent Sterigenics U.S. is found liable in whole or in part to any of the plaintiffs in the Underlying Litigation or settles any such claims, National Union would be obligated to indemnify Sterigenics U.S. against any such liability or settlement.

77. Accordingly, Sterigenics U.S. is entitled to an order declaring that National Union is obligated to indemnify Sterigenics U.S. against the Underlying Litigation.

COUNT III
Breach of Contract

78. Sterigenics U.S. incorporates by reference the allegations contained in paragraphs 1 through 77 of this First Amended Complaint as if fully rewritten here.

79. The Policies are enforceable contracts.

80. Under Insuring Agreement I of the Policies, National Union agreed to "pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as damages because of A. **bodily injury**… to which this insurance applies, caused by an **occurrence**." National Union further agreed that it "shall have the right and duty to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent…"

81. Under Insuring Agreement II of the Policies, National Union agreed to "pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as damages because of **personal injury** . . . to which this insurance applies, sustained by any person or organization and arising out of the conduct of the **named insured's** business, within the **policy territory**." National Union further agreed that it "shall have the right and duty to defend any suit against the **insured** seeking damages on account of such injury, even if any of the allegations of the suit are groundless, false, or fraudulent… [until] the applicable limit of [National Union's] liability has been exhausted by payment of judgments or settlements."

82. By improperly denying defense and indemnity coverage for the Underlying Litigation, National Union materially breached the terms of the Policies.

83. Because of these breaches, Sterigenics U.S. suffered damages in excess of $75,000.

STERIGENICS U.S.'s PRAYER FOR RELIEF

WHEREFORE, Sterigenics U.S. prays this Court for the following relief:

a) On Count I, an order declaring that National Union is obligated to defend Sterigenics U.S. against the Underlying Litigation (including all the individual plaintiffs' cases consolidated for discovery and pretrial purposes);

b) On Count II, an order declaring that National Union is obligated to indemnify Sterigenics U.S. against the Underlying Litigation (including all the individual plaintiffs' cases consolidated for discovery and pretrial purposes);

c) On Count III, monetary damages in an amount to be proven at trial but which in any event exceed $75,000;

d) The reasonable costs and attorneys' fees that Sterigenics U.S. incurs here;

e) Prejudgment and postjudgment interest at the maximum rates permitted by law; and

f) Such other or further relief that this Court deems just and proper.

Respectfully submitted,

/s/ *K. James Sullivan*
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JURY DEMAND

Pursuant to Fed. R. Civ. P. 38, Sterigenics demands a trial by jury of all issues triable of right by jury.

/s/ K. James Sullivan
K. James Sullivan

One of the Attorneys for Plaintiff,
Sterigenics U.S., LLC

CERTIFICATE OF SERVICE

I, K. James Sullivan, an attorney, certify that on October 29, 2021, I caused a true and correct copy of the foregoing *First Amended Complaint* to be served via the Court's ECF system upon all counsel of record.

/s/ *K. James Sullivan*
K. James Sullivan

One of the Attorneys for Plaintiff,
Sterigenics U.S., LLC

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4/16/2021 2:00 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL

FILED DATE: 4/16/2021 2:00 PM 2018L010475

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

IN RE: WILLOWBROOK ETHYLENE OXIDE LITIGATION	**Consolidated for Pretrial and Discovery Purposes Under:**
	No. 2018-L-010475 2018L010475
This filing applies to: ALL ACTIONS CONSOLIDATED FOR PRETRIAL AND DISCOVERY PURPOSES	**Judge Christopher E. Lawler**

PLAINTIFFS' FOURTH AMENDED MASTER COMPLAINT

Plaintiffs, by and through their attorneys, for their Complaint at Law[1] against Defendants STERIGENICS U.S., LLC, SOTERA HEALTH, LLC, BOB NOVAK, ROGER CLARK, GTCR, LLC, and GRIFFITH FOODS INTERNATIONAL, INC.,[2] allege as follows:

[1] Plaintiffs submit this Fourth Amended Master Complaint in accordance with prior Court orders, including CMO-1. In so doing, Plaintiffs maintain their position that this consolidated matter is not a mass action under 28 U.S.C. § 1332. In no way should this complaint be taken to mean that any Plaintiff is proposing any joint trials and/or joint decision of one or more issues in one or more cases. These matters have been consolidated for discovery and pretrial only based on certain Defendants' motion and the Court's own orders. Plaintiffs further submit this Fourth Amended Master Complaint in accordance with the Court's August 17, 2020 Order on Defendants' Motions to Dismiss, which dismissed certain counts of Plaintiffs' First Amended Complaint without prejudice. Plaintiffs hereby preserve Counts X (Sotera-Negligent Supervision), XII (Sotera-Strict Liability), XIII (Sotera-Battery), XXI (GTCR-Strict Liability), and XXII (GTCR-Battery) from their First Amended Master Complaint previously dismissed on August 17, 2020 for appeal, disclaim any waiver, and explicitly reserve the right to amend those counts as provided by the Court's dismissal without prejudice.

[2] Plaintiffs previously named Griffith Foods, Inc., Griffith Foods Worldwide, Inc., and Griffith Foods Group, Inc. as defendants in their Third Amended Master Complaint. The first two entities moved to dismiss that complaint pursuant to 735 ILCS 5/2-619 and produced a Declaration from William Frost stating, in relevant part, that these two entities never possessed any ownership interest in the Willowbrook facilities or in any entity owning any interest in the Willowbrook facilities, and that neither entity had any involvement with EtO sterilization services. *See* Frost Decl. at ¶¶ 17-18. Mr. Frost also attested that Griffith Foods Group, Inc. was merely the parent to Griffith Foods International, Inc., formerly known as Griffith Laboratories, U.S.A., Inc. *Id.* at ¶¶ 3-4. Plaintiffs have no reason to believe that Griffith's and Mr. Frost's representations to this effect are untrue and Plaintiffs are reasonably relying upon these representations

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I. Prefatory Statement on Griffith Foods

1. In this Fourth Amended Complaint, Plaintiffs sue ***only one Griffith entity***, referred to herein as "Griffith Labs." Today, Griffith Labs is known as "Griffith Foods International, Inc."; it was formerly known as "Griffith Laboratories U.S.A., Inc."

2. Plaintiffs sue Griffith Labs ***only for its own independent acts and omissions*** between 1984 and 1999, detailed extensively in this complaint. Plaintiffs do not sue Griffith Labs for the conduct of any other entity.

3. Sterigenics ***has not assumed liability for the conduct of Griffith Labs.*** (This is contrary to the Court's understanding at page 6 of its March 16, 2021 dismissal order). Indeed, in Stipulation No. 1, entered on June 12, 2020, Sterigenics assumed the liabilities of certain entities explicitly identified in the Stipulation, ***but Griffith Labs is not one of them***.[3]

4. In this complaint, Plaintiffs specifically allege that Griffith Labs' misconduct persisted throughout the entirety of the period from 1984 to May 14, 1999, when Griffith Labs sold its sterilization business. *See* Paragraphs 33 – 104. Plaintiffs further describe how Griffith Labs' misconduct satisfies the elements of Plaintiffs various causes of action. *See* Paragraphs 275 – 324.

5. In summary, as alleged in this complaint, Griffith Labs' independent acts and omissions throughout the entirety of the period between 1984 and 1999, which caused or contributed to Plaintiffs' injuries, include:

---

in electing not to name Griffith Foods, Inc. Griffith Foods Worldwide, Inc. and Griffith Foods Group, Inc. in their Fourth Amended Master Complaint.

[3] Stipulation No. 1 only applies to the approximate 70 plaintiffs who had filed suit at the time the stipulation was entered on June 12, 2020; it does not apply to the hundreds of plaintiffs who filed suit after, all of whom expressly disclaimed that stipulation in their respective complaints.

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a. Locating, and then for the next 16 years operating, controlling and/or maintaining, an EtO sterilization facility in the residential community of Willowbrook despite knowing at all times that EtO is very dangerous to human health and that area residents, workers, and schoolchildren would be unknowingly breathing daily the facility's EtO emissions, significantly increasing their risk of contracting cancer and other serious illnesses.

b. Never warning its neighbors that they were in danger because of the Willowbrook facility's EtO emissions, even though Griffith Labs knew that the emissions threatened their health and that they had no ability to protect themselves because they had no idea that EtO was even being emitted into their community. Griffith Labs failed to warn the Willowbrook community even though it provided warnings to residents living near other Griffith Labs' EtO sterilization facilities in other states.

c. Deciding and mandating that the Willowbrook facility operate without essentially any emission control equipment whatsoever for its first four years of operation (1984 – 1988), even though Griffith Labs knew that this violated the standard of care and would result in its neighbors being unnecessarily exposed to more than 500,000 pounds of EtO emissions during that time.

d. Deciding to operate the Willowbrook facility for the entirety of the 1984 – 1999 time period without any control over EtO emissions from, e.g., the facility's back-vents, aeration rooms, and work aisles, even though Griffith Labs knew that this too violated the standard of care and would result in its neighbors being unnecessarily exposed to at least 400,000 pounds of EtO emissions (in addition to those emissions alleged in subparagraph (c), above) during that time.

e. Designing in 1984, and then from 1984 to 1999 mandating the use of, a sterilization/emissions process that Griffith Labs knew violated the standard of care and was inadequate to protect the health of its neighbors against EtO emissions from the facility.

f. Throughout the period from 1984 to 1999, itself directly purchasing, using, and mandating the use of sterilization and emission control equipment that Griffith Labs knew violated the standard of care and was inadequate to protect the health of its neighbors against EtO emissions from the facility.

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g. Failing to use emission control equipment in Willowbrook that it (Griffith Labs) was using in its other EtO facilities in the United States and other countries. This resulted in EtO emissions from the Willowbrook facilities that were sometimes as much as 100x higher, and more dangerous, than those at Griffith Labs' other facilities.

h. Failing to test the air outside the Willowbrook facility (ambient air) to determine the concentrations of EtO that had been emitted from the facility and would be inhaled by Griffith Labs' neighbors, even though Griffith Labs knew those concentrations would be health threatening, and IEPA had specifically and directly required Griffith Labs to conduct extensive ambient air testing in 1984 to 1986 as a special condition for granting Griffith Labs' permit to operate the Willowbrook facility.

i. Misleading the State's regulator, IEPA, by, *inter alia*, failing to inform IEPA as to what it (Griffith Labs) knew about the dangers of EtO to human health; planning to emit more EtO from the Willowbrook facility than it had represented to induce IEPA to grant it (Griffith Labs) the initial Willowbrook permit; failing to advise IEPA that it was not using the same caliber equipment and processes in Willowbrook that it was using at its other facilities; and reporting to IEPA EtO emissions that were based on assumptions Griffith Labs knew had no basis or were false.

j. Failing to train its employees and failing to audit the Willowbrook facility to ensure that the facility's operations were not endangering its neighbors even though such training and auditing were Griffith Labs' responsibilities.

k. Working independently and through an EtO industry lobbyist to improperly dispute conclusions concerning the health dangers of EtO that had been reached by independent scientists and health agencies in order to understate those health dangers and create a justification for emissions it knew endangered the health of those living near the Willowbrook (and other) sterilization facilities.

6. The above misconduct of Griffith Labs persisted well past its October 1984 nominal transfer to Micro Biotrol Company of certain (though far from all) assets and liabilities and at least until May 14, 1999. Indeed, as alleged above and throughout this complaint, this

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October 1984 transaction did nothing to diminish Griffith Labs' substantive participation in the Willowbrook facility's operations and emissions.

7. In summary, Plaintiffs sue Griffith Labs because its actions and failures to act caused them to suffer the cancers and other serious illnesses that Griffith Labs specifically foresaw, when, in 1984, it purposely directed that an EtO sterilization facility be located in Plaintiffs' residential community that it (Griffith Labs) knew would endanger the community's health and safety, and then, for the next 15 years, directed that the facility be operated without the means necessary—indeed, for many years without any means at all—to protect the unsuspecting Plaintiffs against the facility's nearly one million pounds of carcinogenic emissions during that time. Griffith Labs may be held liable for this conduct, despite the fact that its subsidiaries were nominally operating the Willowbrook facility for portions of that 15 year period because, as the Illinois Supreme Court has determined, "[i]f a parent company specifically directs an activity, where injury is foreseeable, that parent could be held liable. Similarly, if a parent company mandates an overall course of action and then authorizes the manner in which specific activities contributing to that course of action are undertaken, it can be liable for foreseeable injuries." *Forsythe v. Clark USA, Inc.*, 224 Ill. 2d 274, 290 (2007).

II. Introduction

8. For decades, tens of thousands of people have lived in the quiet but densely populated suburbs of Cook and DuPage Counties—Willowbrook, Burr Ridge, Darien, and Hinsdale—believing that their neighborhoods were safe and their air free from dangerous toxins. Not so. Defendants' Willowbrook sterilization facilities were emitting massive and unnecessary amounts of ethylene oxide ("EtO")—an invisible, odorless carcinogen—into their air.

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9. There is no safe level of EtO; its carcinogenic effects have been widely known since the 1940s and known to Defendants since at least 1984. Notwithstanding, Defendants chose to operate their business and emit EtO in a densely populated area full of children, houses, parks, schools, and businesses.

10. Even further, although technologies to control EtO have been available—and widely used—since the 1980s, Defendants operated for years in Willowbrook without using the best practices and control technologies available to reduce their emissions; and as a direct and proximate result, the Willowbrook area has become one of the most toxic in the U.S. The people who have lived and worked in the area have inhaled EtO on a routine and continuous basis for years, unknowingly. Defendants never warned them about the danger it posed.

11. In August 2018, the U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry ("ATSDR") released to the public a report titled "Evaluation of Potential Health Impacts for Ethylene Oxide Emissions."[4] That report, documenting the public health impacts of Defendants' emissions on the Willowbrook area, revealed the area's staggering and disproportionate risks of cancer.

12. In February 2019, the Illinois Environmental Protection Agency ("IEPA") ordered Defendants' Willowbrook facilities to stop using EtO. In the months that followed, Sterigenics U.S. announced a plan to install equipment to reduce emissions of EtO to 85 lbs. per year — a *drastic* reduction from the thousands of pounds of EtO emitted in the years prior. Before

[4] https://www.atsdr.cdc.gov/HAC/pha/sterigenic/Sterigenics_International_Inc-508.pdf

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implementing the plan, however, Sterigenics U.S. announced the permanent closure of its Willowbrook facilities effective September 30, 2019.

13. Plaintiffs lived and/or worked near Defendants' Willowbrook facilities. They unknowingly breathed the excessive and dangerous amounts of EtO emitted from the facilities on a routine and continuous basis for years. As a result, they have been diagnosed with serious — sometimes fatal — diseases or conditions, and/or have sustained severe personal injuries causing them to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, and loss of normal life.

14. Plaintiffs bring these personal injury claims against Sterigenics U.S., LLC ("Sterigenics U.S."), Sotera Health, LLC ("Sotera"), Griffith Labs, two managers, and a private equity firm GTCR, LLC ("GTCR).

15. In addition, since 2016, Sterigenics U.S. and Sotera, and their corporate investors and parents (including GTCR), have pursued a plan to escape accountability to those who have been sickened or have lost their lives, and thereby to cynically render this Court proceeding a sham. That is, they have funneled nearly $1.3 billion in cash out of the Sterigenics U.S. / Sotera companies in just the last 34 months for distribution to wealthy venture-capitalist investors, such that the funds could never be used to compensate the victims who have come to this Court to seek justice. And they have made certain that even those assets not siphoned away would never be available to those victims, by pledging the assets to banks to guarantee repayment of billions in corporate borrowings, so that even if the companies failed, they would be used to pay the banks, not the plaintiffs who had proven their cases.

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16. By these actions, Sterigenics U.S., Sotera, and GTCR *admit* culpability for the toxic exposure suffered by Plaintiffs, but intend never to be held accountable for it.

III. Parties and Venue

17. This is an Illinois controversy. This Complaint is brought by or on behalf of individuals who are or were citizens of Illinois, for injuries that occurred in Illinois, as a result of ethylene oxide emissions in Illinois, that were caused by Illinois Defendants' negligence and other wrongful conduct, all of which took place in the State of Illinois. This court is a proper venue under 735 ILCS 5/2-101.

18. Greater than two-thirds of Plaintiffs to this Complaint are Illinois citizens.

19. All Plaintiffs to this Complaint were exposed to and inhaled EtO from Defendants' Willowbrook facilities on a routine and continuous basis.

20. Plaintiffs did not have notice that the injuries and damages at issue were wrongfully caused or that they were caused by Defendants' emissions of EtO until, at the earliest, August 21, 2018, when the ATSDR report was issued.

21. Defendant Sterigenics U.S., LLC, is a wholly-owned subsidiary of Sotera Health, LLC, and is a limited liability company organized under the laws of Delaware with its headquarters and principal place of business at 2015 Spring Road, Suite 650, Oak Brook, Illinois 60523.

22. Defendant Sterigenics U.S., under its current name and previously under other names, operated EtO sterilization facilities at 7775 Quincy Street in Willowbrook, Illinois (the "Willowbrook facility") and 830 Midway Drive in Willowbrook, Illinois, continuously and at all

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relevant times. (The two facilities are referred to collectively herein as "the Willowbrook facilities" or "the facilities.")

23. Sterigenics U.S.'s predecessors who operated the Willowbrook facilities include: Micro-Biotrol Company, Micro-Biotrol, Inc., Griffith Micro Science, Inc., IBA S&I, Inc., and Sterigenics EO, Inc. Through a series of acquisitions, mergers, and name changes, Sterigenics U.S. has assumed the liabilities of these predecessor entities for their respective involvement in the operation of the Willowbrook facilities. (Sterigenics U.S. and its predecessors are referred to collectively herein as "Sterigenics U.S.".)

24. Defendant Griffith Foods International, Inc., was previously known as Griffith Laboratories U.S.A, Inc. ("Griffith Labs"). During certain times prior to May 14, 1999, which are detailed below, Griffith Labs operated the Willowbrook facilities. At all times prior to May 14, 1999, Griffith Labs directed and controlled the sterilization operations at the Willowbrook facilities. Further, at all times prior to May 14, 1999, Griffith Labs directly participated in the operation of the Willowbrook facilities. Defendant Griffith Foods International, Inc. is responsible for all acts and omissions of Griffith Labs as alleged herein. At all relevant times, Griffith Labs, now Griffith Foods International, Inc., had its headquarters and principal place of business in Alsip, Illinois, which is in Cook County. To be clear, Plaintiffs allege that Griffith Labs committed independent injurious acts and omissions separate and apart from, though alongside of, Sterigenics' acts and omissions.

25. Defendant Sotera Health, LLC, under its current name and previously under other names (first as Sterigenics International, Inc. and then as Sterigenics International, LLC), and as the sole owner, member, and "manager" of Sterigenics U.S., operated, managed, and/or

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maintained and otherwise participated directly in Sterigenics U.S.'s operation of the Willowbrook facilities. (Defendant Sotera Health, LLC and its predecessors are referred to collectively herein as "Sotera.")

26. For example, Sotera took responsibility for, and participated directly in, the following functions in connection with the facilities' operations:

a. Preparing and implementing risk management plans regarding health, safety, and other risks posed by the facilities' use and storage of EtO to human health and the environment;

b. Conducting hazard reviews at the facilities;

c. Developing written operating procedures for training and guiding the work of operators;

d. Training operations employees;

e. Evaluating whether the facilities' systems and equipment were in proper working condition;

f. Implementing a program to monitor the physical condition of process equipment;

g. Investigating incidents;

h. Conducting safety audits;

i. Determining potential impacts on the surrounding community from worst-case and alternative-case releases of EtO;

j. Evaluating the facilities' accident history;

k. Developing procedures for notifying local, state and federal emergency planning and response agencies about chemical spills;

l. Developing an incident prevention program that includes the following:

i. Process Safety Information;
ii. Process Hazard Analysis;

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iii. Employee Training;
iv. Mechanical Integrity;
v. Pre-Startup Review;
vi. Compliance Audits;
vii. Employee Participation; and
viii. Hot Work Permit.

m. Developing plans to address accidental release that includes the following:

i. Computer controls;
ii. Door interlock system;
iii. EtO leak detection monitors;
iv. Emission Control Systems to destroy residual EtO;
v. Pressure Relief Valves;
vi. Process Safety Information for employees;
vii. Written SOPs for training and instructions to employees; and
viii. New hire and annual refresher training.

n. Applying for IEPA construction permits to allow structural modifications at the facilities, including modifications impacting the volume of EtO emitted;

o. Holding the facilities' construction permit, as permittee, authorizing it to:

i. Modify EtO emissions controls including sterilization chamber exhaust vents;
ii. Operate the sterilization chamber exhaust vents without any EtO emissions controls; and
iii. Modify the operation of its sterilization equipment, such as aeration rooms, by allowing EtO emissions controls to be bypassed.

p. Holding the facilities' construction permit, as permittee, requiring it to:

i. Operate EtO emission controls in a manner that complies with local, state and federal law;
ii. Conduct operational monitoring for the EtO emissions controls to ensure compliance with plans previously submitted to EPA;
iii. Enhance operational monitoring to address the effects of modification of EtO emissions controls;
iv. Keeping records for operational monitoring for the EtO emissions controls affecting certain aeration rooms; and
v. Notifying IEPA promptly of permit deviations including identifying the date, time, duration, description of the deviation, its

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probable cause, corrective actions, if taken, and preventative measures, if taken.

q. Certifying the facilities' permit compliance (or non-compliance) to the IEPA;

r. Communicating with IEPA regarding permit violations and uncontrolled emissions events;

s. Communicating with IEPA about its emission control equipment, including its plans to exhaust EtO from its chamber back vents to the atmosphere;

t. Monitoring and reviewing of the facilities' emission data to analyze the duration and quantity of EtO emissions released, including any excess emissions;

u. Reporting to IEPA on the volume of the facilities' EtO emissions;

v. Monitoring the facilities' emissions control equipment;

w. Assessing the capacity of the EtO sterilization chambers at the Willowbrook facilities as compared to customer demand for its sterilization services;

x. Deciding to add EtO sterilization chambers at the facilities to meet customers' demand;

y. Inventorying hazardous chemicals stored at the facilities, including EtO; and

z. Communicating with state and local emergency response groups about such hazardous chemicals, including EtO.

27. Sotera undertook these responsibilities and functions even though, as alleged elsewhere in this complaint, it failed to ensure implementation adequate to keep the community safe.

28. With respect to the Willowbrook facilities, the activities of Sterigenics U.S. and Sotera have been intertwined. Sterigenics U.S. and Sotera have routinely and publicly held

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themselves out as a single entity – "Sterigenics" – engaged in operating EtO sterilization facilities throughout the country, including the Willowbrook facilities; and others, including Moody's Investor Services, for example, has always treated the Sterigenics entities as a single entity and issued them a single "Corporate Family Rating." Indeed, Sterigenics U.S. and Sotera have shared the same Chairman and CEO, the same Vice President, the same General Counsel & Secretary, the same President and COO, and the same Vice President for Environmental, Health & Safety. And they have shared a complete unity of interest, with Sterigenics U.S. acting as an instrumentality of Sotera to accomplish Sotera's business mission.

29. Defendant Bob Novak was the Operations Manager at the Willowbrook facilities since August 2003. He was responsible throughout this period for coordinating and overseeing the operation of the facilities, directing personnel at the facilities, implementing procedures, and ensuring overall safety at the facilities. Upon information and belief, Mr. Novak resides in Illinois.

30. Defendant Roger Clark was the Maintenance Supervisor at the Willowbrook facilities from the late 1980s until approximately 2015. Mr. Clark was responsible throughout this period for calibrating the internal EtO monitors and overseeing the maintenance activities at the facilities which included, among other responsibilities, monitoring and replacing emissions systems equipment. Mr. Clark resides in Cook County, Illinois.

31. In 2011, a private equity trust managed by GTCR acquired Sterigenics International, LLC (now Sotera), along with its subsidiaries (including Sterigenics U.S.) and parent companies, for $675 million.[5] From 2011 through the present, GTCR, with its principal

[5] https://www.gtcr.com/gtcr-announces-agreement-to-acquire-sterigenics-international-inc/

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place of business at 300 N. LaSalle Street, Suite 5600, Chicago, Illinois, has owned, operated, managed, and/or maintained Sterigenics U.S. and Sotera.

32. Defendants Sterigenics U.S., Griffith Labs, Sotera, and GTCR do regular and substantial business in Cook County, Illinois.

IV. Griffith Labs is responsible for EtO emissions from the Willowbrook facility up until at least May 14, 1999, when it sold its sterilization business

A. Griffith Labs decided to locate an EtO Sterilization facility in Willowbrook notwithstanding its knowledge that exposure to EtO is harmful to human health and can cause cancer

33. Griffith Labs claims to have pioneered the development and use of EtO as a sterilant in the 1930s. In the 1940s, Griffith Labs received patents for the EtO sterilization of hospital and medical supplies. Beginning in the 1950s, Griffith Labs began offering contract EtO sterilization to third-party customers. Griffith Labs continued its contract sterilization business for decades, and in or around 1984, it opened and operated an EtO sterilization facility in the Village of Willowbrook — a suburban community located roughly 20 miles southwest of Chicago with a population of approximately 8,500.

34. Before 1984, Griffith Labs knew or should have known that it was too dangerous to locate an EtO sterilization facility in or near a residential community, and indeed that any sterilization facility anywhere should be equipped with emission control equipment adequate to ensure that no one outside the facility was exposed to EtO.

35. Griffith Labs' decision to locate its EtO sterilization facility in Willowbrook was driven by logistical and financial self-interest, such as Griffith Labs' belief that Willowbrook would be an optimal location because it is centrally located in the Midwest near highways and

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railroads and because it was able to secure favorable lease terms. Griffith Labs' decision was also driven by a desire to expand its ethylene oxide sterilization services to the commercial sterilization of medical supplies. In making its decision, Griffith Labs ignored its knowledge that placing an EtO sterilization facility in or near a residential community would cause significant risk to human health. Griffith Labs could have secured a facility far enough away from a residential population to drastically reduce and/or minimize the danger to residents, but consciously chose not to.

36. On or about April 12, 1984, Griffith Labs, through its unincorporated division, Micro-Biotrol, Co[6]., leased a 44,939 square foot facility at 7775 Quincy Street in Willowbrook for the stated purpose of: "Sterilization process of various products." The lease terms were originally for five years, with multiple options to renew for another five years thereafter. In this way, Griffith Labs ensured that a dangerous EtO sterilization facility would operate next to a residential neighborhood in Willowbrook for many years to come.

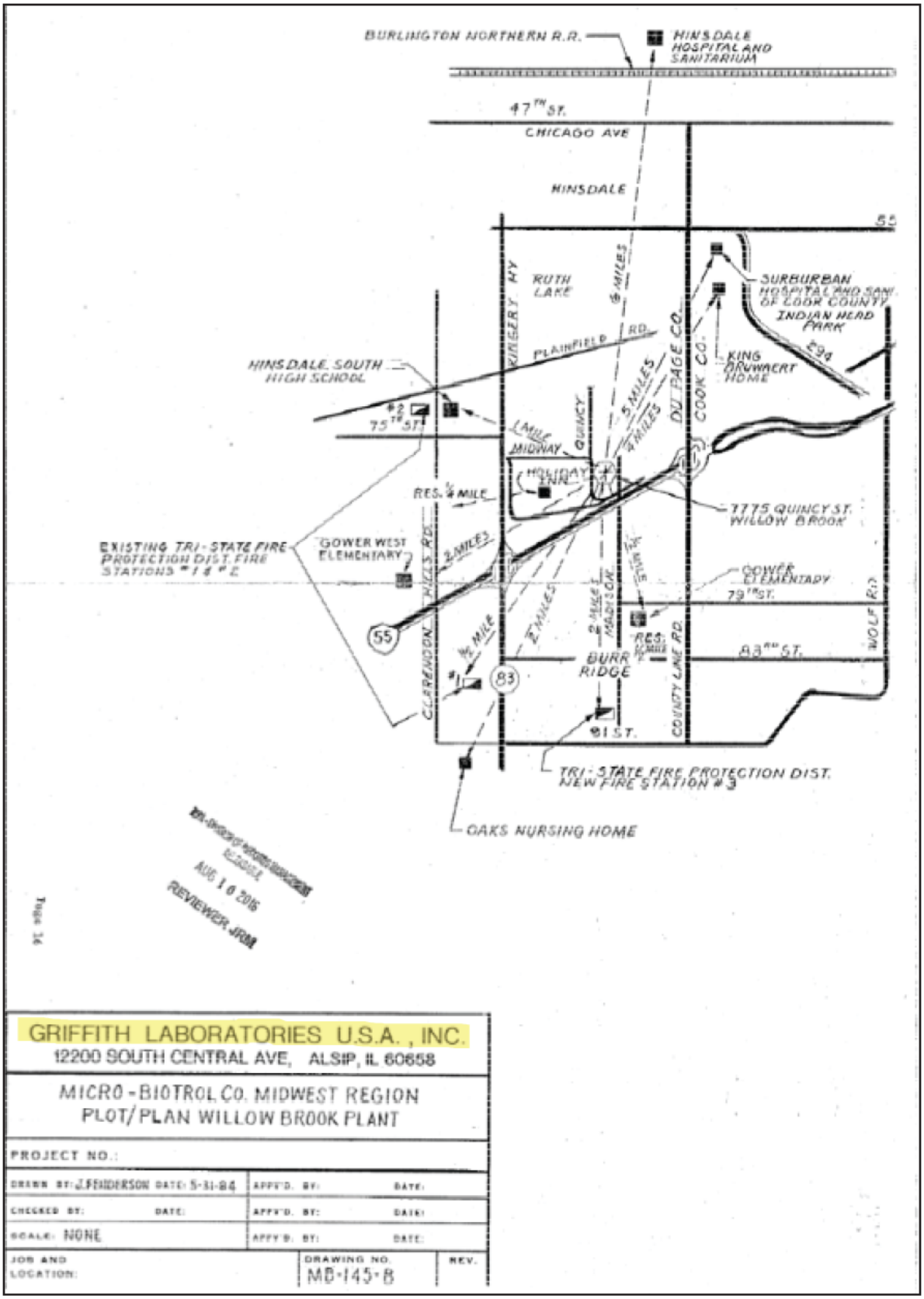
B. Griffith Labs' dealings with IEPA in securing a permit to operate an EtO sterilization facility in Willowbrook

37. On or about May 31, 1984, in anticipation of constructing and operating the sterilization facility in Willowbrook, Griffith Labs created the plot below:

[6] Sterigenics U.S. has also not assumed the liabilities for Micro-Biotrol, Co. Because Micro-Biotrol Co., was an unincorporated division of Griffith Labs, Griffith Labs is directly responsible for its conduct.

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38. In making this plot, Griffith Labs marked off the distances from its EtO facility in Willowbrook to various schools, and therefore knew its facility would be located within ½ mile of Gower Elementary; one mile of Hinsdale South High School; two miles of Gower West Elementary; ¼ mile of the nearest residence to the west; ½ mile of the nearest residence to the south; and otherwise in the immediate proximity of many homes, parks, schools, and small businesses.

39. Griffith Labs further knew that EtO emissions from its Willowbrook facility could and would migrate to each of the locations on the plot, including those listed on the plot, in concentrations that would endanger human health.

40. Notwithstanding this knowledge, Griffith Labs elected to move forward with its plans to open an EtO sterilization facility in Willowbrook and, on or about June 1, 1984, applied for a construction and operating permit from IEPA.

41. Griffith Labs' permit application to IEPA included the above plot and also included a representation to IEPA that its maximum emissions of EtO would be 40 tons (80,000 lbs.) per year.

42. On or about July 6, 1984, Griffith Labs received the following letter from IEPA concerning the environmental impact of its proposed EtO emissions (highlighting added):

***

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Illinois Environmental Protection Agency · 2200 Churchill Road, Springfield, IL 62706

217/782-2113

I.D. No.: 043110AAC
Application No.: 84060002

July 6, 1984

Griffith Laboratories
12200 South Central Avenue
Alsip, Illinois 60658

Attention: John Kjellstrand

This is in response to a telephone call from Mr. Dickinson to Mr. Cobb on July 3, 1984, concerning the environmental impact of ethylene oxide emissions from the six proposed sterilizers included in the above mentioned construction permit application.

According to the information provided by your company in the application, the maximum emissions of ethylene oxide were 40 tons per year during 1983. The data you provided included a building which may cause a downwash effect, therefore, the ISCST model was used in the analysis. ISCST utilized one year of meteorology (1975 Midway), the urban dispersion mode and the building downwash option. Model results were obtained at 180 receptors located on five rings surrounding the source. Each ring contained 36 receptors spaced at 10° intervals. The rings were spaced at radial distances of 100, 400, 810, 1205, and 1609 meters from the source. According to the modeling run, the maximum annual ground level concentrations of ethylene oxide will vary from 3.120 micrograms per cubic meter at 100 meters to 0.09883 micrograms per cubic meter at one mile outside the plant boundary line. A copy of the modeled annual concentrations is attached.

The ethylene oxide (ETO) toxicity data was derived from different literature references. One such document is a USEPA draft publication -- "Health Assessment Document - Ethylene Oxide - EPA 600-8-84-009A." A copy of this document can be obtained by calling USEPA at phone number 513/684-7562.

The toxicity data provides evidence of human cancers of the pancreas, bladder, brain, central nervous system and stomach associated with ETO exposure. Various animal studies have shown carcinogenic, mutagenic, leukogenic and teratogenic effects. These studies indicate that the acceptable ground level concentrations of ETO is 0.007 micrograms per cubic meter. While the Agency does not have any established standards for ETO at this time, nor are we suggesting that the acceptable concentrations referenced above are necessarily the numbers that we are committed to using, in our opinion the emissions from the Micro Biotrol facility appear to be several magnitudes higher than desirable.

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We request a meeting as soon as possible to be able to better explain our evaluation and concerns. In our opinion, there are several methods by which emissions of ETO at this facility can be reduced. At our meeting, we wish to also discuss steps that can be taken to minimize emissions in order to reduce the ambient impacts to an acceptable level.

We are looking forward to hearing from you in the near future. In the meantime, should you have any questions, please feel free to call Jim Cobb, Harish Desai or me at 217/782-2113.

Very truly yours,

Bharat Mathur, P.E.
Manager, Permit Section
Division of Air Pollution Control

BM:JDC:sd/1392d/24-25

cc: Warren Dickinson, Griffith Laboratories
Dennis Lawler
Permit File
Region 1

43. This July 6, 1984 letter from IEPA specifically addressed the ***"environmental impact"*** of ethylene oxide emissions from the sterilization chambers Griffith Labs sought to operate in Willowbrook. As Griffith Labs' Project Engineer for the Willowbrook facility later testified, the "environmental impact" from the facility included the neighboring residents' exposure to EtO and their resulting risk of contracting cancer.

44. By way of this July 6, 1984 letter, Griffith Labs was expressly advised by the state regulatory authority that its EtO sterilization operation posed significant adverse health risks to humans in that: (i) EtO exposure is associated with human cancers; and (ii) EtO has carcinogenic, mutagenic, leukogenic, and teratogenic effects. Griffith Labs thus had knowledge that its EtO

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emissions would cause harm to humans in neighboring communities long before it exposed any Plaintiff or Plaintiff's decedent to EtO emissions.

45. As Griffith Labs' Project Engineer later testified, IEPA was warning Griffith Labs by this letter that at least two of the schools and two residential areas on the plot (*see* Paragraph 37) were within the area where IEPA had determined that EtO concentrations from the Willowbrook facility would be "several magnitudes higher than desirable".

46. Indeed, Griffith Labs was already aware of the toxic and deadly effects of EtO when it received the July 6, 1984 letter from IEPA. Even before that date, and before any Plaintiff or Plaintiff's decedent was exposed to EtO emissions, Griffith Labs knew that:

a. there was "no safe level" of EtO, *i.e.*, there was no concentration of EtO that could be safely breathed without risk of serious damage to health;

b. "ethylene oxide has also been found to pose a serious health risk";

c. the very attribute which made EtO so lethally effective as a sterilant—*e.g.*, its ability to inactivate DNA—also made EtO very dangerous for human beings exposed to it;

d. the state of Illinois recognized EtO as one of the 19 most dangerous chemicals (a "priority" pollutant);

e. EtO was suspected to cause cancer in humans, and threaten reproductive harm;

f. "the highly toxic nature of ethylene oxide and its classification as a suspect carcinogen";

g. any exposure to EtO that threatened to cause even one additional cancer in a population of 1,000,000 was unacceptable;

h. those exposed to EtO emitted from a sterilization facility were significantly more likely to contract cancer and other serious illnesses;

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i. EtO was a "mutagen", *i.e.*, that it damaged human DNA in a way that promoted the development of cancer;

j. "[t]here has been widespread recognition of the mutagenic potential of ethylene oxide";

k. once emitted from a sterilization facility, EtO would be breathed by those living, working, and attending school near the facility; and

l. "human receptors outside of the building may unknowingly come into contact with ethylene oxide before it has been sufficiently dispersed in the ambient atmosphere."

47. As a result, and well before it began operations in Willowbrook, Griffith Labs was acutely aware of the catastrophic risk to human health that inhalation exposure to EtO would create.

48. In addition to warning Griffith Labs about the health risks of EtO, the IEPA letter expressly told Griffith Labs that IEPA's air modeling raised substantial concerns that the surrounding Willowbrook community would be adversely impacted by Griffith Labs' EtO emissions. In particular, it informed Griffith Labs that: (i) emissions from the Willowbrook facility appear to be ***"several magnitudes higher than desirable"***; and (ii) steps should be taken to "minimize emissions in order to reduce the ambient impacts to an acceptable level."

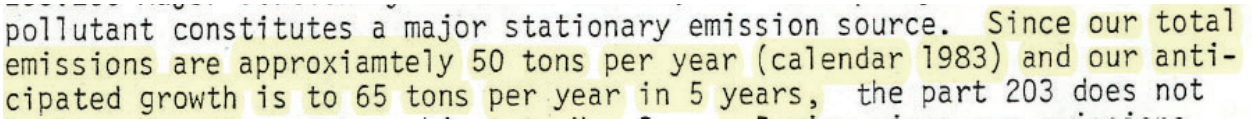
49. Moreover, Griffith Labs knew or should have known when it received IPEA's letter that IEPA's modeling results vastly understated the risk to Griffith Labs' neighbors that the Willowbrook emissions would pose. According to the letter, IEPA had based its EtO modeling in part on Griffith Labs' representation that its maximum emissions would be 40 tons (80,000 lbs.) per year. Upon information and belief, Griffith Labs knew that its emissions going forward would be significantly more than 80,000 pounds per year. In fact, in 1985, the Willowbrook facility

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emitted more than 125,000 pounds of EtO. In each of 1986 and 1987, it emitted more than 160,000 pounds of EtO.

50. Further, Griffith Labs' representation to IEPA that it had emitted 40 tons of EtO during the year of 1983 was itself understated. In an internal memorandum dated May 3, 1984, Griffith Labs discloses that it had actually emitted approximately 50 tons in 1983. Griffith Labs never corrected its misrepresentation to IEPA.


pollutant constitutes a major stationary emission source. Since our total emissions are approxiamtely 50 tons per year (calendar 1983) and our anti-cipated growth is to 65 tons per year in 5 years, the part 203 does not

51. The same internal memo also predicted that Griffith Labs would grow to emit 65 tons per year. Griffith Labs did not disclose this fact to IEPA either.

52. As a result, Griffith Labs knew or should have known that IEPA's opinion that its emissions would be "several magnitudes higher than desirable" was based on modeling that only accounted for about half of what Griffith Labs actually intended to emit. Griffith Labs never corrected IEPA's modeling assumptions at any point prior to receiving its permit.

53. Separately, upon information and belief, Griffith Labs misinformed IEPA about the height of the stack it would use at Willowbrook to release EtO emissions. The height of the stack is important because, in general, the higher the stack, the greater the EtO concentrations will be diminished before they descend to the zone in which they are breathed by, e.g., residents, workers, and schoolchildren. In connection with its 1984 permit application, Griffith Labs told IEPA that the stack exhaust point would be 40-50 feet above grade. However, upon information and belief, the actual exhaust point was only 28 feet above grade.

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54. As a result, Griffith Labs knew or should have known that IEPA's opinion that its emissions would be "several magnitudes higher than desirable" was based upon modeling that used a falsely inflated stack height. Griffith Labs never corrected IEPA's modeling assumptions at any point prior to receiving its permit.

55. Even further, Griffith Labs took essentially no action in connection with IEPA's stated concerns about its "minimiz[ing] emissions in order to reduce the ambient impacts to an acceptable level." Instead, once Griffith Labs received its permit, it operated without any emission controls designed to remove or eliminate EtO from emissions and thereby caused massive unfiltered emissions of EtO into the Willowbrook community 24 hours a day, 7 days a week, 365 days a year. Griffith Labs did so notwithstanding its knowledge that: (a) toxicity data showed that EtO exposure was associated with human cancers and other harms; (b) the facility was located within the immediate proximity of homes, parks, schools, and small businesses; and (c) IEPA's (understated) modeling predicted emissions "several magnitudes higher than desirable."

56. Indeed, by no later than 1982, Griffith Labs knew that emission control technology was available that could remove up to 99% of EtO from the Willowbrook facility's exhaust before it was allowed to enter Willowbrook's air. Despite knowing of the availability of this technology before operating in Willowbrook, Griffith Labs specifically declined to use it for essentially the first four years of Willowbrook operations.

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C. Griffith Labs' received an operating permit for the Willowbrook facility that was subject to special conditions with which Griffith Labs failed to comply

57. On July 30, 1984, IEPA issued Griffith Labs a Joint Construction and Operating Permit to construct and operate sterilization chambers 1, 3, 4, 5, 9, and 10 at the Willowbrook facility.

Illinois Environmental Protection Agency · 2200 Churchill Road, Springfield, IL 62706

217/782-2113

JOINT CONSTRUCTION AND OPERATING PERMIT

PERMITTEE

Griffith Laboratories, U.S.A., Inc.
2200 S. Central Avenue
Alsip, Illinois 60658

Attention: John Kjellstrand

Application No.: 84060002
Applicant's Designation: STERILIZER
Subject: Gas Sterilization System
Date Issued: July 30, 1984

I.D. No.: 043110AAC
Date Received: June 1, 1984

Operating Permit Expiration Date: July 31, 1986

Location: 7775 Quincy St., Willowbrook, Illinois

58. The permit was issued to "Griffith Laboratories, U.S.A., Inc." (i.e., Griffith Labs) for its operation of the Willowbrook facility. The permit had a two-year term, expiring on July 31, 1986. Griffith Labs never attempted to amend or correct this permit in any way, including to substitute any other entity as the permit holder.

59. The 1984 permit, as well as all permits relating to the Willowbrook facility issued thereafter, expressly warned Griffith Labs the permit did *not* release it from liability for harm to its neighbors. They stated:

a. the permit "does not release the permittee from any liability for any loss due to damage to person or property caused by, resulting from, or arising out

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of, the design, installation, maintenance, or operation of" the Willowbrook facility.

b. the permit "in no manner implies or suggests that the [IEPA] . . . assumes any liability, directly or indirectly, for any loss due to damage, installation, maintenance or operation" of the Willowbrook facility.

c. the Willowbrook facility could not be operated in such a manner as to "cause a violation of the Environmental Protection Act or Regulations promulgated thereunder," all of which forbid air pollution in the State of Illinois.

60. As the permittee for the Willowbrook facility, Griffith Labs was responsible for the following operations:

a. sterilization processes for the six chambers for which it received a permit;

b. emissions of EtO and other volatile organic materials from the facility;

c. the acquisition, installation, and operation of pollution controls at the facility;

d. testing and monitoring for levels of EtO both in the facility and the environment;

e. monitoring, testing, maintenance, and repair of all equipment involved in the sterilization processes at the facility;

f. maintaining emission records and reporting to IEPA and as otherwise required by law;

g. ensuring that its emissions and emission controls were compliant with local, state, and federal law;

h. monitoring and reviewing the facility's emission data to analyze the duration and quantity of EtO emissions released, including any excess emissions;

i. assessing the capacity of the EtO sterilization chambers at the Willowbrook facility as compared to customer demand for its sterilization services;

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j. inventorying hazardous chemicals stored at the facilities, including EtO; and

k. communicating with state and local emergency response groups about such hazardous chemicals, including EtO.

61. Griffith Labs undertook these responsibilities and functions even though, as alleged elsewhere in this complaint, it failed in its duty to ensure that its implementation of these responsibilities and functions was adequate to keep the community safe.

62. In addition, as part of the 1984 operating permit issued to Griffith Labs by IEPA, several special conditions were imposed on Griffith Labs to address IEPA's concerns about the environmental impact of Griffith Labs' EtO emissions, including that:

a. Griffith Labs was required to conduct ambient air monitoring for a one-year period and submit a final report by December 1, 1985; and

b. Griffith Labs was required to "investigate the availability of emission reduction measures for ethylene oxide."

63. Griffith Labs failed to comply with either special condition and, upon information and belief, misled IEPA as to both.

64. Griffith Labs' obligation to monitor EtO concentrations in the ambient air outside the Willowbrook facility required that monitoring be conducted at locations in between the facility and the local residents, workers, and schoolchildren. The plain intent of this requirement was so that Griffith Labs and IEPA would know the concentrations of EtO that were being emitted from the facility and carried by air currents into the surrounding neighborhoods. Ultimately, the monitoring would determine the extent of the threat to the health of Griffith Labs' neighbors posed by the facility's EtO emissions.

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65. Despite its obligation to conduct such monitoring, and its knowledge that the purpose of the monitoring was to provide critical information about the seriousness of threats posed to its neighbors' health by its EtO emissions, Griffith Labs never monitored the ambient air nor ever made any effort to determine the ambient air EtO concentrations, such as by modeling them.

66. Instead, Griffith Labs told IEPA that the monitoring equipment it purchased was not dependable and was malfunctioning. But instead of trouble-shooting the equipment with the supplier or getting new equipment (which was readily available), Griffith Labs simply ignored the requirement that it conduct ambient air monitoring, thereby also ignoring the serious threat to human health posed to those who lived and worked near its Willowbrook facility.

67. Due to Griffith Labs' initial failure to comply with the ambient air monitoring requirement and submit a final report by December 1, 1985, IEPA "extended" Griffith Labs' deadline to do so until July 31, 1986. Griffith Labs, however, did not perform ambient air monitoring or submit a final report by that date, either. Throughout Griffith Labs' 15-year control of facility operations, it ***never*** performed the ambient air monitoring it had been told was necessary to perform back in 1984.

68. Upon information and belief, Griffith Labs made a decision not to conduct ambient air monitoring because (i) it did not care about the harm its EtO emissions would cause those who lived and worked in the Willowbrook community; and (ii) it knew that actual monitoring would reveal to regulators that its EtO emissions were too dangerously high to warrant continued operation of the facility—either at all, or without installing significant and expensive emission control equipment.

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69. Griffith Labs' decision in this regard – a classic example of "profits over people" – exhibited reckless indifference and conscious disregard for the health and safety of its neighbors in the Willowbrook community.

70. Griffith Labs also failed to comply with and/or misled IEPA about the requirement that it "investigate the availability of emission reduction measures for ethylene oxide." Griffith Labs was told in March 1983 – over one year before it submitted its permit application for the Willowbrook facility – that a Deoxx emission reduction system was certified as "Best Available Control Technology" and that the system was available for about $118,000. Even though Griffith Labs was well aware of the availability of this emission reduction technology for ethylene oxide when it applied for and received its permit, it stalled compliance with the requirement to purchase and implement it by falsely telling IEPA that it would have to "investigate [its] availability."

D. Griffith Labs' own independent acts and omissions contributed to cause Plaintiffs' injuries

71. Illinois law recognizes that multiple parties may contribute to cause a given injury. 735 ILCS 5/2-1117; *Sperl v. Henry*, 2018 IL 123132, ¶¶ 24-25 (2018).

72. At all times between 1984 and May 14, 1999, Griffith Labs was obligated to comply with the Illinois Environmental Protection Act and its supporting regulations, which prohibited "the emission of any contaminant into the environment so as to cause or tend to cause air pollution in Illinois;" defined as "emissions sufficient "to be injurious to human life [or] health."

73. Griffith Labs' conduct, as detailed in the paragraphs immediately below, breached its duty in this regard and was a substantial contributing factor in causing injury to every Plaintiff

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or Plaintiff's decedent who lived and/or worked in the immediate vicinity of the Willowbrook facility up until May 14, 1999, when Griffith Labs sold the company.

Griffith Labs greatly enhanced the danger to its neighbors by expanding its EtO operations in Willowbrook

74. As discussed above, in 1984, Griffith Labs located an EtO sterilization facility in a residential community, knowing that area residents, workers, and schoolchildren would be exposed to the facility's EtO emissions, and as a result would be significantly more likely to contract cancer and other serious illnesses.

75. In 1999, Griffith Labs authorized and funded the establishment, construction, and operation of an additional EtO sterilization facility in Willowbrook (Willowbrook II), despite knowing that the first Willowbrook facility had never been operated safely, and that Willowbrook II could not be operated safely. The impact of Willowbrook II was to further inundate the Willowbrook area and its residents with thousands of pounds of unnecessary and dangerous EtO emissions, in addition to the EtO emitted from the first Willowbrook facility.

76. Griffith Labs also authorized and funded the use of several "off-site" facilities in the Willowbrook area, including facilities at: (i) 407 Heathrow Court in Burr Ridge; (ii) 417 Heathrow Court in Burr Ridge; (iii) 261 Shore Drive in Burr Ridge; (iv) 7409 Quincy Street in Burr Ridge; and (v) 16 W 151 Shore Court in Burr Ridge. Upon information and belief, these facilities were used to store or treat sterilized products that were still off-gassing EtO. Upon further information and belief, these facilities had no emission controls such that all residual EtO from the off-gassing products at those facilities was emitted directly into the atmosphere.

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Griffith Labs failed to monitor and model ambient air concentrations

77. Griffith Labs never monitored or modelled to determine the concentrations of EtO from the Willowbrook facility that those in the Willowbrook area would be breathing, even though Griffith Labs was obligated to do so by its permit, as described in Paragraphs 62 – 67, above.

78. Griffith Labs knew that these monitoring results were very important to provide to IEPA so that it could do its job and determine whether the company was operating safely or unnecessarily dangerously.

79. In fact, it had conducted and/or authorized ambient air modeling and monitoring at other of its EtO facilities.

80. Griffith Labs consciously chose ***not*** to do the same in Willowbrook.

Griffith Labs failed to timely or reasonably implement emission controls

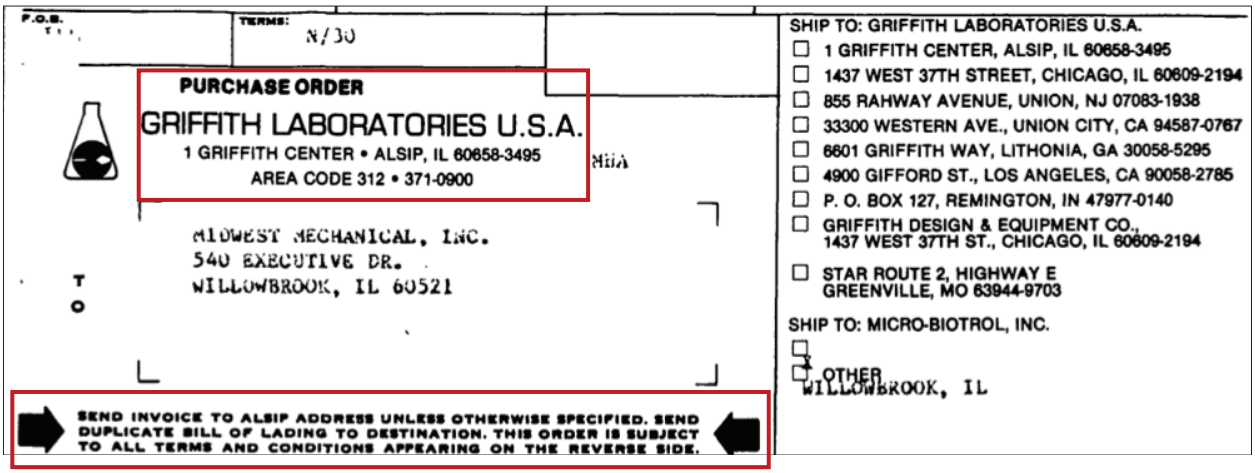
81. At all times between July 1984 and May 14, 1999, Griffith Labs owned and controlled the sterilization and emission control equipment that was utilized at the Willowbrook facility. By participating in and authorizing the Willowbrook facility's decisions about the use of that equipment, Griffith Labs had the responsibility to ensure the adequacy of such equipment to protect its neighbors in the Willowbrook community. This is demonstrated, *inter alia,* by the following:

a. All expenditures for sterilization and emission control equipment used in the operation of the Willowbrook facility had to be authorized before purchase by Griffith Labs. Without such authorization, the equipment could not have been purchased or used at the Willowbrook facility. Simply, the facility could not have operated without Griffith Labs' specific authorization.

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b. Griffith Labs purchased and authorized for use at the Willowbrook facility sterilization and emission control equipment without which the facility could not function. Griffith Labs accomplished this via "Griffith Laboratories U.S.A. Purchase Order[s]" which it directed to specific Griffith Labs' vendors. An example of the purchase orders used by Griffith Labs is depicted immediately below, with emphasis added to show that the entity ordering and paying for the equipment was Griffith Labs:


F.O.B.

TERMS: N/30

PURCHASE ORDER

GRIFFITH LABORATORIES U.S.A.
1 GRIFFITH CENTER • ALSIP, IL 60658-3495
AREA CODE 312 • 371-0900

MIDWEST MECHANICAL, INC.
540 EXECUTIVE DR.
WILLOWBROOK, IL 60521

T
O

SEND INVOICE TO ALSIP ADDRESS UNLESS OTHERWISE SPECIFIED. SEND DUPLICATE BILL OF LADING TO DESTINATION. THIS ORDER IS SUBJECT TO ALL TERMS AND CONDITIONS APPEARING ON THE REVERSE SIDE.

SHIP TO: GRIFFITH LABORATORIES U.S.A.
☐ 1 GRIFFITH CENTER, ALSIP, IL 60658-3495
☐ 1437 WEST 37TH STREET, CHICAGO, IL 60609-2194
☐ 855 RAHWAY AVENUE, UNION, NJ 07083-1938
☐ 33300 WESTERN AVE., UNION CITY, CA 94587-0767
☐ 6601 GRIFFITH WAY, LITHONIA, GA 30058-5295
☐ 4900 GIFFORD ST., LOS ANGELES, CA 90058-2785
☐ P. O. BOX 127, REMINGTON, IN 47977-0140
☐ GRIFFITH DESIGN & EQUIPMENT CO., 1437 WEST 37TH ST., CHICAGO, IL 60609-2194
☐ STAR ROUTE 2, HIGHWAY E GREENVILLE, MO 63944-9703

SHIP TO: MICRO-BIOTROL, INC.
☐
☐ OTHER WILLOWBROOK, IL

c. Under its own "Griffith Laboratories U.S.A. Purchase Order[s]," Griffith Labs ordered equipment from its vendors, and directed the vendors to invoice Griffith Labs for payment thereon. Griffith Labs, in turn, paid the vendors for the equipment. For example:

i. In 1986, Griffith Labs direct its vendor, Phillips Electric, Inc., to supply and install one complete computer control system for the 12-pallet EtO sterilization chamber No. 2 at the Willowbrook facility.

ii. In 1986, Griffith Labs directed its vendor, Midwest Mechanical, Inc., to install one complete ventilation system for EtO sterilization chamber No. 2 at the Willowbrook facility.

iii. In 1986, Griffith Labs directed its vendor Midwest Mechanical, Inc., to install all mechanical equipment and pipe that equipment according to a specific drawing for EtO sterilization chamber No. 2 at the Willowbrook facility.

iv. In 1990, Griffith Labs direct its vendor, Midwest Mechanical, Inc., to install one complete nitrogen system for

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sterilization chamber No. 2 with piping and mechanical work at the Willowbrook facility.

v. In 1991, Griffith Labs directed its vendor Midwest Mechanical, Inc., to supply labor and material and install purging systems for gassing stations 1, 2, 3, 5, 6, 7, 8, 9, and 10 at the Willowbrook facility.

d. At all times between 1984 and 1999, Griffith Labs owned all sterilization and emission control equipment utilized at the Willowbrook facility.

e. On multiple occasions during the 1980s and 1990s, and after October 1984, Griffith Labs-affiliated entities and/or Griffith Labs itself, while seeking permits to construct or operate the Willowbrook facility, represented to IEPA that Griffith Labs was the "Plant Owner." For example, a 1988 application for a permit to construct and operate the EtO sterilizer system in Willowbrook identifies Griffith Labs as the Willowbrook "Plant Owner."

f. On multiple occasions during the 1980s and 1990s, and after October 1984, Griffith Labs-affiliated entities and/or Griffith Labs itself, while seeking permits to construct or operate the sterilization system at the Willowbrook facility, represented to IEPA that the "Owner" of the sterilization system was Griffith Labs. The same 1988 application to IEPA referenced above identifies Griffith Labs as the owner of the EtO sterilizer system which needed the IEPA permission for construction and operation.

g. It was the Board of Directors of Griffith Labs which, on multiple occasions in the 1980s and 1990s, and after October 1984, supplied IEPA with the corporate resolution authorizing the operation of the Willowbrook sterilization system. Such authorization was legally required before IEPA could award a permit for the operation of a sterilization system at the Willowbrook facility. Indeed, the application specifically provides that:

THIS APPLICATION MUST BE SIGNED IN ACCORDANCE WITH PCB REGS., CHAPTER 2, PART 1, RULE 103(a)(4) OR 103(b)(5) WHICH STATES: "ALL APPLICATIONS AND SUPPLEMENTS THERETO SHALL BE SIGNED BY THE OWNER AND OPERATOR OF THE EMISSION SOURCE OR AIR POLLUTION CONTROL EQUIPMENT, OR THEIR AUTHORIZED AGENT, AND SHALL BE ACCOMPANIED BY EVIDENCE OF AUTHORITY TO SIGN THE APPLICATION."

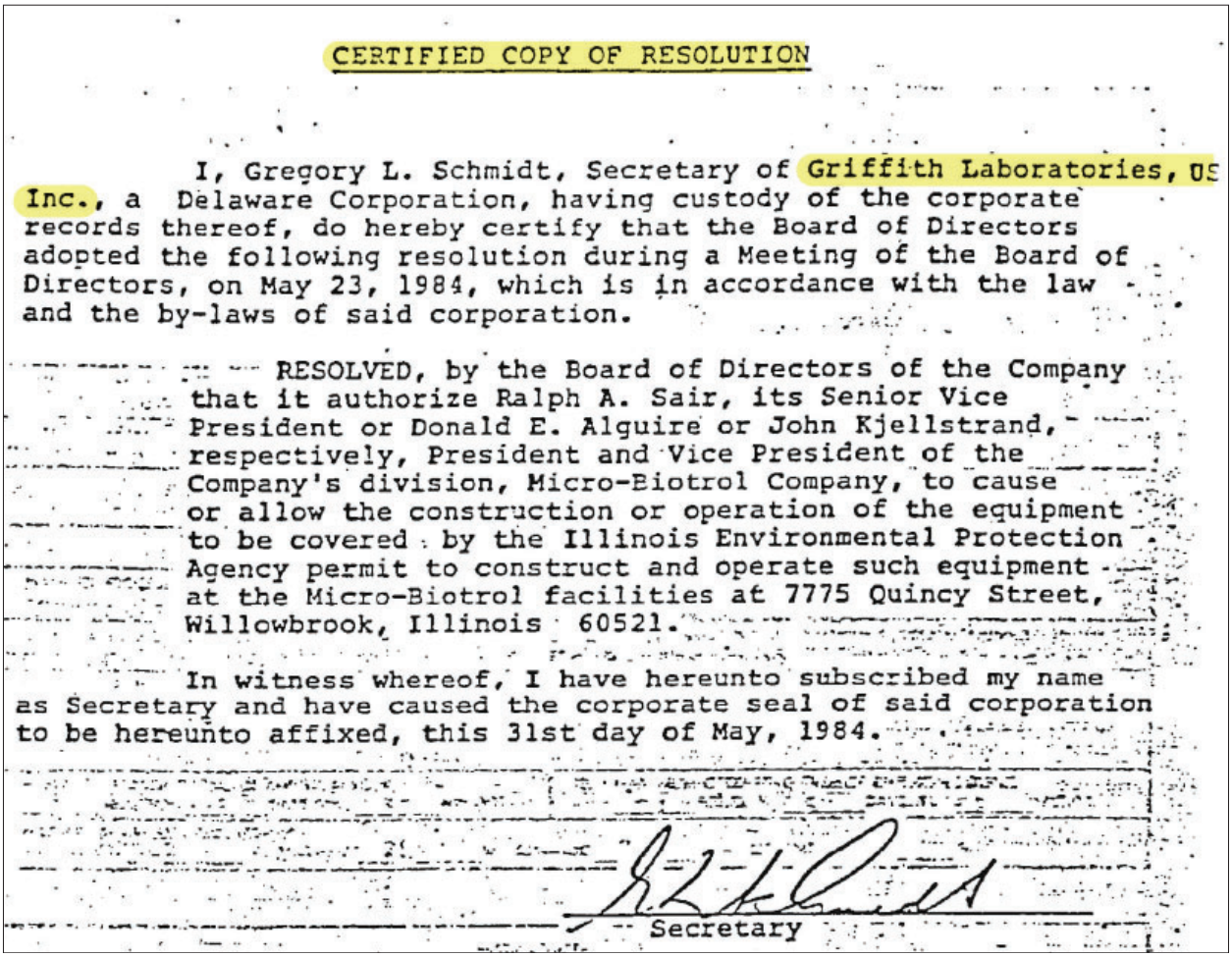
IF THE OWNER OR OPERATOR IS A CORPORATION, SUCH CORPORATION MUST HAVE ON FILE WITH THE AGENCY A CERTIFIED COPY OF A RESOLUTION OF THE CORPORATION'S BOARD OF DIRECTORS AUTHORIZING THE PERSONS SIGNING THIS APPLICATION TO CAUSE OR ALLOW THE CONSTRUCTION OR OPERATION OF THE EQUIPMENT TO BE COVERED BY THE PERMIT.

Thus, pursuant to the legal requirements set forth in the permit application, any corporation that owned or operated "the emission source or air pollution control equipment," had to file a certified copy of a board resolution authorizing the construction or operation of the equipment. The ***only*** board of directors to supply such a resolution, or authorize the use of

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the sterilization equipment at the Willowbrook facility, was Griffith Labs' (see below).



CERTIFIED COPY OF RESOLUTION

I, Gregory L. Schmidt, Secretary of Griffith Laboratories, US Inc., a Delaware Corporation, having custody of the corporate records thereof, do hereby certify that the Board of Directors adopted the following resolution during a Meeting of the Board of Directors, on May 23, 1984, which is in accordance with the law and the by-laws of said corporation.

RESOLVED, by the Board of Directors of the Company that it authorize Ralph A. Sair, its Senior Vice President or Donald E. Alguire or John Kjellstrand, respectively, President and Vice President of the Company's division, Micro-Biotrol Company, to cause or allow the construction or operation of the equipment to be covered by the Illinois Environmental Protection Agency permit to construct and operate such equipment at the Micro-Biotrol facilities at 7775 Quincy Street, Willowbrook, Illinois 60521.

In witness whereof, I have hereunto subscribed my name as Secretary and have caused the corporate seal of said corporation to be hereunto affixed, this 31st day of May, 1984.

Secretary

Applications submitted to IEPA for Willowbrook facility permits in the 1980s and 1990s — and after October 1984 — included the above Griffith Lab's board resolution. No operator — not Micro-Biotrol or Griffith Micro Science — supplied such a board resolution.

h. On multiple occasions during the 1980s and 1990s, and after October 1984, Griffith Labs-affiliated entities and/or Griffith Labs itself, while seeking permits to construct or operate the Willowbrook facility, represented to IEPA that the design of the facility's sterilization system was that of Griffith Labs'. Indeed, in the 1988 application to the IEPA for example, Griffith Labs' Process Flow Diagram, illustrating the EtO sterilization system process in order to obtain the permit, was submitted.

i. Griffith Labs paid all permit and other regulatory fees relating to Willowbrook operations thereby, on each occasion, authorizing and

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funding the Willowbrook facility's continued operation and emission of dangerous amounts of EtO into the Willowbrook community.

j. Griffith Labs mandated an operating strategy of seeking a competitive advantage by purchasing and directing the use of sterilization equipment designed to protect its workers and customers from exposure to EtO at the expense of exposing neighboring residents to even more EtO. Specifically, EtO concentrations inside the Willowbrook facility that were too dangerous for workers and customers to breathe were intentionally vented into the Willowbrook community, where they were breathed by area residents, workers, and schoolchildren.

82. When the Willowbrook facility first began operating, Griffith Labs decided not to use any emission controls whatsoever even though it knew such controls were available and necessary. Thus, despite its knowledge that EtO emissions from its Willowbrook facility would make it significantly more likely that area residents, workers, and schoolchildren would contract cancer and other serious illnesses, Griffith Labs designed the Willowbrook facility without the emission controls that Griffith Labs knew were necessary to prevent such catastrophic outcomes.

83. After about three years of operating without any controls, Griffith connected one of nine chambers to emission controls in July 1987. But, for the next nine months, until April 1988, Griffith Labs continued to operate eight of its sterilization chambers without any emission controls. As a result, for approximately the first four years of operation, close to 100% of all EtO used at the Willowbrook facility was emitted into the atmosphere.

84. Griffith Labs made this decision despite its knowledge that it would result in the unnecessary emission of hundreds of thousands of pounds of EtO during over these four years, and gravely endanger its neighbors' health.

85. Further, at all times between 1984 and May 14, 1999, Griffith Labs made a decision not to control EtO emissions from the Willowbrook facility's back-vents, aeration rooms, and

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work aisles—three principal areas within the facility where EtO would collect after the products were sterilized.

86. As Griffith Labs knew or should have known, this failure to control emissions from, e.g., back-vents, aeration rooms, and work aisles resulted in the unnecessary emission of EtO into the surrounding community of at least 25,000 pounds each year, or a total of at least 400,000 pounds between 1984 and 1999.

87. Griffith Labs knew that these emissions, too, would gravely endanger its neighbors' health, but allowed them to occur anyway.

88. As a result of Griffith Labs' decisions, at no time between 1984 and 1999 was the emission control equipment at Griffith Labs' Willowbrook facility adequate to protect the health of its neighbors.

Griffith Labs' failure to warn those in the Willowbrook community that they were being exposed to a deadly carcinogen

89. As detailed above, Griffith Labs knew before it opened the Willowbrook facility that (a) toxicity data showed that EtO exposure was associated with human cancers and other harms; (b) the facility was located within the immediate proximity of homes, parks, schools, and small business; and (c) IEPA's (understated) modeling showed emissions were "several magnitudes higher than desirable."

90. Nevertheless, Griffith Labs made the conscious and purposeful decision not to warn those living and working in the Willowbrook community that they would be exposed to and caused to inhale a carcinogen on a routine and continuous basis.

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91. As a result of Griffith Labs' failure in this regard, those who lived and worked in the Willowbrook community were not able to adequately protect themselves or avoid the emissions and were forced to unknowingly inhale a potent human carcinogen for years on end.

Griffith Labs failed to adhere to its own standard of care

92. Between 1984 and 1999, Griffith Labs made decisions at other EtO sterilization facilities in both the Unites States and other countries to use emissions control equipment far more effective at protecting the facilities' neighbors than the equipment it authorized for use at its Willowbrook facility.

93. As examples, in 1996 and 1997, Griffith Labs' EtO facilities in Willowbrook and Santa Teresa, NM, used roughly the same amount of EtO, but the emissions in Willowbrook were about 90-100x higher:

1996	Chambers	Aeration Rooms	Back Vents	EtO Used	Eto Emitted
Willowbrook	Controlled	Atmosphere	Atmosphere	423,721 lbs.	21,567 lbs.
Santa Teresa	Controlled	Controlled	Controlled	401,875 lbs.	239 lbs.
1997	Chambers	Aeration Rooms	Back Vents	EtO Used	Eto Emitted
Willowbrook	Controlled	Atmosphere	Atmosphere	516,187 lbs.	25,985 lbs.
Santa Teresa	Controlled	Controlled	Controlled	442,726 lbs.	260 lbs.

94. In 1998, Griffith Labs' EtO facility in Willowbrook used a little more than twice as much EtO as its facilities in Charlotte, NC, Glen Falls, NY, and Ontario, CA, but emitted 50 to 80 times more EtO into the atmosphere.

1998	Chambers	Aeration Rooms	Back Vents	EtO Used	Eto Emitted
Willowbrook	Controlled	Atmosphere	Atmosphere	595,203 lbs.	30,829 lbs.
Charlotte	Controlled	Controlled	Controlled	234,572 lbs.	562 lbs.
Glen Falls	Controlled	Controlled	Controlled	262,318 lbs.	380 lbs.
Charlotte	Controlled	Controlled	Controlled	277,249 lbs.	401 lbs.

95. These actions by Griffith Labs prove that, between 1984 and 1999, Griffith Labs was not only aware of technology that would dramatically reduce the EtO to which the neighbors

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of its sterilization facilities would be exposed, but was already using that technology at its own facilities. There was no legitimate justification for its failure to use the same technology at Willowbrook.

Griffith Labs failed to properly consider science and medicine in making operational decisions

96. Throughout the entirety of the 1980s and 1990s, Griffith Labs continued to learn that respected public health agencies and organizations had concluded that EtO was extremely dangerous to human health. For example:

a. Between 1981 and 1994, the National Institute for Occupational Safety and Health ("NIOSH"); the US Department of Health and Human Services ("HHS"); US EPA; State of California; and World Health Organization ("WHO") concluded that EtO was, respectively, a potential occupational human carcinogen, with no safe level; "reasonably anticipated to be a human carcinogen"; "probably carcinogenic to humans"; "a carcinogen"; and "carcinogenic to humans".

b. In 1986, Griffith Labs learned that the state of California had modelled EtO emissions from Griffith Labs' facility in Southern California, and concluded that those emissions would cause a significant increase in EtO-related cancers for residents in the LA Basin.

97. Despite this information about the human health dangers associated with EtO, Griffith Labs took no significant precautions to protect its Willowbrook neighbors. To the contrary, throughout the 1980s and 1990s, Griffith Labs worked—independently and through EtO industry organizations, lobbyists, lawyers, and public relations agents—to improperly dispute and distort independent studies showing the dangers of EtO, and to cause EtO to appear to be less dangerous than it really was. These efforts resulted in the allowance of greater emissions from the Willowbrook facility, further endangering the area's residents, workers, and schoolchildren. Among other tactics, Griffith Labs and the EtO industry:

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a. successfully opposed implementation of back vent emission controls that would reduce EtO emissions;

b. opposed limits on the EtO concentrations to which workers in sterilization facilities could be exposed; such workplace concentrations impact the health of the workers, of course, but also serve as the source of "fugitive" EtO emissions, which escape the facility, and expose the facility's neighbors; and

c. funded scientifically baseless "studies," aimed at influencing independent public health studies on the health dangers of EtO with the ultimate purpose being to make EtO appear less dangerous to human health than Griffith Labs knew it to be.

Griffith Labs misled IEPA

98. Between 1984 and May 14, 1999, Griffith Labs misrepresented to IEPA, or omitted from disclosing to IEPA, the following significant information:

a. what Griffith Labs knew to be the dangers to human health caused by EtO emissions from sterilization facilities;

b. that Griffith Labs had emitted more EtO in 1983 than it told IEPA;

c. that Griffith Labs intended on emitting more EtO from the Willowbrook facility than IEPA modeled for;

d. that Griffith Labs' stack height where EtO would be released into the community was lower that what it told EPA;

e. that emissions control equipment to reduce EtO emissions were available to Griffith Labs when the Willowbrook facility was opened and for years thereafter before such equipment was installed;

f. that Griffith Labs was using emissions control equipment at its other EtO facilities that was far more protective of neighboring communities than the equipment its board of directors authorized for use at Willowbrook;

g. that the reporting of emissions from the Willowbrook facility was based on false assumptions about the effectiveness of Griffith Labs' emissions control equipment;

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h. that fugitive EtO emissions from the Willowbrook facility were far greater than reported;

i. that Griffith Labs was working with the EtO industry to improperly influence science and make EtO appear less dangerous to human health than it actually is, with the purpose of influencing regulators to permit unsafe levels of EtO emissions.

99. By misleading IEPA on these issues, Griffith Labs was able to evade further regulatory scrutiny of the Willowbrook facility and its operations such that far more EtO was emitted into the Willowbrook community.

Griffith Labs failed to properly train the operators of the Willowbrook Facility

100. Between 1984 and May 14, 1999, Griffith Labs mandated that all EtO operations at the Willowbrook facility be conducted in strict compliance with its procedures and activity engaged with Willowbrook facility employees to ensure that those procedures were being followed.

101. As a result, up until the point where it sold the company on May 14, 1999, it was incumbent upon Griffith Labs to train on-site employees at the Willowbrook facility how to properly operate the facility so as to minimize EtO emissions to the Willowbrook community.

102. Griffith Labs failed to train those employees on how to operate the Willowbrook facility in a manner that would protect Willowbrook area residents, workers, and schoolchildren from the extraordinary health dangers posed by exposure to EtO emissions. Among other things, Griffith :abs:

a. failed to train employees to run aeration room emissions through the emission control system;

b. failed to train employees to run back-vent emissions through the emission control system;

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c. failed to train employees to keep chamber doors, aeration doors, and exterior doors closed and sealed so as to prevent EtO from escaping directly into the atmosphere; and

d. failed to train employees to prevent and/or minimize off-gassing of sterilized products in areas that were not ventilated to emission controls.

Griffith Labs failed to responsibly audit the Willowbrook Facility

103. Between 1984 and May 14, 1999, Griffith Labs was responsible for conducting safety audits of the Willowbrook facility, and did in fact conduct such audits.

104. Griffith Labs, however, failed to conduct those safety audits in a manner that ensured that Willowbrook area residents, workers, and schoolchildren would be protected from the extraordinary health dangers posed by exposure to EtO emissions.

E. Micro-Biotrol Company's involvement at the Willowbrook facility does not negate Griffith Labs' liability.

105. On October 4, 1984, Griffith Labs formed a nominal corporate subsidiary, Micro Biotrol Company ("MBC"). On that date, Griffith Labs also purported to transfer certain, but not all, assets to MBC.

106. However, these events of October 4, 1984 do not negate Griffith Labs' liability for its own conduct as set forth above. Instead, Griffith Labs may be held liable as a joint tortfeasor under Illinois law.

107. The formation of MBC did not lead or cause Griffith Labs to reduce its involvement in the operations of the Willowbrook facility, or in the decision-making that caused and authorized the EtO emissions that in turn caused and contributed to Plaintiffs' cancers and other

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illnesses. ***Indeed, the great majority of the Griffith Labs' conduct described in Paragraphs 33 – 104, occurred after October 4, 1984.***

108. Further, Griffith Labs' purported asset transfer agreement with MBC did ***not*** transfer either (i) Griffith Labs' status or obligations relative to any permit issued by IEPA; or (ii) any liability for injury to Willowbrook area residents caused by emissions from the Willowbrook facility.

109. While MBC and its successors nominally operated the Willowbrook facility (hereinafter "Operators"), Griffith Labs' participation in facility operations exceeded the accepted norms of parental oversight, and Griffith Labs mandated and directed an overall course of action for the facility's operators which surpassed the control exercised as a normal incident of ownership. Facts relevant to this conclusion include, *inter alia:*

a. Griffith Labs' independent obligations and tortious conduct set forth above.

b. At all times through May 14, 1999, Griffith Labs was the 100% owner of the facility's operators.

c. While the facility's operators were nominally corporations themselves, upon information and belief, the boards of directors of these operators never met to consider matters related to the Willowbrook facility. Instead, all such board-level decisions were made by the Griffith Labs' board of directors.

d. There was no separate identity between Griffith Labs and the facility's operators. There was no arms-length relationship between them, including the fact that there was no documentation of the contracts and agreements between them, and no separate bank accounts. Griffith Labs and the facility's operators commingled funds in bank accounts that Griffith Labs controlled.

e. Griffith Labs required the facility's operators to conduct Willowbrook sterilization operations in strict compliance with Griffith Labs' procedures,

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which, as stated above, were grossly deficient in protecting Willowbrook area residents from exposure to health endangering EtO concentrations, violated emissions standards established by the State of Illinois and Village of Willowbrook, and indeed caused and contributed to cause Plaintiffs' cancers and other illnesses.

f. Griffith Labs provided the facility's operators its intellectual property, trade-secrets, and sterilization know-how to operate the Willowbrook facility.

g. Griffith Labs directly participated in operational decisions that impact environmental health and safety.

h. Griffith Labs controlled all operating funds; the facility's operators had no funds of their own, and could not have existed independently of Griffith Labs. The facility's operators had no access to funds without first requesting them, or borrowing them, from Griffith Labs.

i. Griffith Labs paid for, or had to approve payment of, any expenditure related to the Willowbrook facility.

j. Griffith Labs provided the facility's operators with financial and administrative services for essentially every aspect of Willowbrook operations, including information systems, finance and accounting, treasury, legal, insurance and risk management, taxation, human resources and employee benefits, strategic planning, management services, and systems and procedures.

110. Griffith Labs even dealt with regulators on behalf of the operators when it was determined sterilization facilities were not in compliance with statute or regulation. For example, in 1993, Griffith Labs' Chairman, Dean Griffith, *personally* corresponded with the FDA regarding Griffith Labs' New Mexico EtO sterilization facility's failure to meet FDA regulations. Mr. Griffith personally directed operator employees on how to respond to the regulatory issues and informed the FDA that he was personally involved, personally directing the operator's plan of action to remedy violations, and requiring that operator personnel report to him directly regarding progress.

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V. Ethylene Oxide as a Known Carcinogen

111. At the center of this case is that from approximately July 1984 to February 2019, Defendants emitted EtO, a known carcinogen, into the Willowbrook community. Before the Willowbrook facility ever began operation, Griffith Labs knew that its EtO emissions would be harmful to the communities surrounding its facility whose residents and workers would breathe the ambient air.

112. The DNA-damaging properties of EtO have been studied since the 1940s. For more than 40 years, EtO has been consistently recognized as dangerous, toxic, and carcinogenic.

113. In a 1977 report, the National Institute for Occupational Safety and Health ("NIOSH") concluded that occupational exposure to EtO may increase the frequency of genetic mutations in human populations. The report recommended that EtO be considered as mutagenic and potentially carcinogenic to humans and therefore that alternative sterilization processes be used whenever available. Occupational exposure studies like this one and others were and are relied upon by medical, scientific, and industry experts to determine the risk of harm of inhalation exposure to non-workers, like Plaintiffs and their decedents. Similarly, studies involving animals were and are relied upon by medical, scientific, and industry experts to determine the risk of harm of inhalation exposure to humans, like Plaintiffs and their decedents. Griffith Labs was or should have been aware of such studies which gave them the knowledge long before opening the Willowbrook facility that its EtO emissions would foreseeably harm persons in the neighboring communities.

114. In 1981, NIOSH released a new bulletin focusing on new evidence of the carcinogenic, mutagenic, and reproductive hazards associated with EtO, reiterated that EtO was

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a potential occupational carcinogen, and reported that no safe levels of EtO exposure had been demonstrated.

115. In 1985, the U.S. Department of Health and Human Services ("U.S. HHS") Fourth Annual Report on Carcinogens classified EtO as "reasonably anticipated to be a human carcinogen."

116. Also beginning in 1985, the U.S. Environmental Protection Agency ("U.S. EPA") categorized EtO as "probably carcinogenic to humans."

117. In 1987, the State of California (home to at least two Sterigenics EtO sterilization facilities) officially designated EtO a carcinogen.

118. In the early 1990s, NIOSH published a high quality, long-term research study on EtO's carcinogenic impacts on humans. It tracked the mortality of 18,254 U.S. workers who had been exposed to EtO between the 1940s and the 1980s at sterilizer facilities much like the Willowbrook facilities. (According to Sterigenics Senior Vice President of Global Environmental, Health, and Safety, Kathleen Hoffman, the studied facilities included more than one operated by Sterigenics.[7])

119. The study found causal links between exposure to EtO and increased mortality from lymphatic, hematopoietic, and breast cancers. It has since been heavily cited and relied on by major regulatory organizations including the World Health Organization ("WHO") and the U.S. EPA.

[7] https://yosemite.epa.gov/Sab/Sabproduct.nsf/B839FA45582C200185257D9500496B0E/$File/EPA-+Sterigenics+Speaking+Points+for+IRIS+SAB+Review-Nov+2014.pdf

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120. In 1994, the WHO International Agency for Research on Cancer ("IARC") found that "Ethylene Oxide is carcinogenic to humans," designating EtO as a Group 1 human carcinogen (the agency's highest risk classification for cancer).

121. In 2000, the U.S. HHS Ninth Annual Report on Carcinogens classified EtO as "known to be a human carcinogen."

122. In 2002, a U.S. Department of Labor's Occupational Safety and Health Administration ("OSHA") fact sheet on EtO stated that "[b]oth human and animal studies show that EtO is a carcinogen" and requires employers to provide clear signs and labels notifying workers of EtO's "carcinogenic and reproductive hazards."[8]

123. In 2016, the EPA's Integrated Risk Information System ("IRIS") reclassified EtO as "carcinogenic to humans," and increased its estimate of EtO's cancer potency by 30 times.[9] The U.S. EPA concluded that EtO is carcinogenic to humans by the *inhalation route of exposure* with a stated confidence level of "HIGH."

124. Acute exposure to EtO can result in nausea, vomiting, neurological disorders, bronchitis, pulmonary edema, and emphysema.

125. Chronic exposure to EtO can irritate the eyes, skin, nose, throat, lungs, and can cause harm to the brain and nervous system leading to headaches, nausea, memory loss, and numbness.

126. Chronic inhalation exposure to EtO can also cause reproductive and developmental impairments. Evidence recognized by the U.S. EPA indicates that inhalation

[8] https://www.osha.gov/OshDoc/data_General_Facts/ethylene-oxide-factsheet.pdf
[9] https://cfpub.epa.gov/ncea/iris/iris_documents/documents/toxreviews/1025tr.pdf

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exposure to EtO can cause an increased rate of miscarriages in females. Evidence also indicates that EtO inhalation exposure can cause decreased sperm concentration and testicular degeneration in males.

127. Additionally, inhalation exposure to EtO can cause mutations and chromosomal damage that can lead to birth defects and cancer. Even when exposure to EtO diminishes or ceases, the frequency of sister chromatid exchanges (mutations/chromosomal alterations) have been found to remain elevated.

128. Chronic inhalation exposure to EtO also causes cancer. Evidence recognized by the U.S. EPA indicates that inhalation exposure to EtO causes various cancers including but not limited to lymphatic cancers, leukemia, and breast cancer. There is also evidence that EtO causes tumors in the body and reproductive issues in both men and women, as well as birth defects.

129. At all relevant times during their respective operations and/or direct participation with the Willowbrook facilities, Defendants knew or should have known that EtO is toxic and dangerous to human health and well-being. In addition, Defendants knew or should have known that EtO is classified as a carcinogen and has been determined to cause the various illnesses and ailments described above.

130. At all relevant times during their respective tenures at Sterigenics, Defendants Bob Novak and Roger Clark knew or should have known that EtO is toxic and dangerous to human health and well-being. In addition, Mr. Novak and Mr. Clark knew or should have known that EtO is classified as a carcinogen and has been determined to cause the various illnesses and ailments described above.

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131. As described above, as early as in July 1984, Griffith was told by the IEPA that "the toxicity data provides evidence of human cancers of the pancreas, bladder, brain, central nervous system and stomach associated with EtO exposure. Various animal studies have shown carcinogenic, mutagenic, leukogenic, and teratogenic effects." In the same letter, the IEPA opined that there were "several methods" to reduce EtO emissions and requested a meeting to "discuss steps that can be taken to minimize emissions in order to reduce the ambient impacts to an acceptable level." That same information was known or should have been known by all Operators of the Willowbrook Facilities and all Defendants.

132. Accordingly, based on Griffith Labs' industry expertise as the pioneer of EtO sterilization, and all Defendants' knowledge of medical and scientific studies and reports dating back to the 1940s relating to the effects of EtO inhalation exposure (all of which scientific, medical, and industry professionals relied and rely upon to determine the risk of harm to persons like Plaintiffs and their decedents from inhalation exposure to EtO), and direct communications and warnings from IEPA, it was reasonably foreseeable to Defendants that their EtO emissions would far exceed levels safe for those in neighboring communities. Therefore, it was at all times reasonably foreseeable to Defendants that their Willowbrook operations would pose an unreasonable risk of harm to Plaintiffs and their decedents.

133. Notwithstanding Defendants' respective knowledge concerning the dangers of the sterilization operations in Willowbrook and the adverse health impacts of chronic inhalation exposure to EtO, Defendants chose to operate the facilities in a densely populated residential area and emitted hundreds of thousands of pounds of EtO into the environment without so much as

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warning those who lived and worked in the Willowbrook area that they were being exposed to and inhaling EtO on a routine and continuous basis.

VI. Defendants' Operations and Conduct in Willowbrook

134. At all relevant times, the Willowbrook sterilization facilities were operated in a densely populated metropolitan area with 19,271 people living within one mile. Dense residential areas are located within approximately 0.3 miles to the immediate west, 0.6 miles to the southeast, 0.9 miles to the southwest, 0.7 miles to the north, 0.8 miles to the northeast, and 1.0 miles to the east.

135. At all relevant times, the Willowbrook facilities were close to numerous schools, daycare facilities, parks, government buildings, and businesses, including, at some point during operations, the following:

a. **Schools:** Gower Middle School (0.42 miles); Conev's Cradle Infant Care, Inc. (0.70 miles); St. Mark Christian Montessori (0.70 miles); Hinsdale South High School (0.76 miles); Gower West Elementary School (0.79 miles); Kingswood Academy (0.87 miles); KinderCare (1.0 mile); Our Lady of Peace School (1.22 miles); Concord Elementary (1.62 miles); Ready Set Grow (1.76 miles); Burr Ridge Middle School (1.86 miles).

b. **Parks and Government Buildings:** Willowbrook Police Department and Mayor's Office (0.07 miles); Willowbrook Community Park (0.45 miles); Indian Prairie Library (0.97 miles); Harvester Park (1.0 mile); Whittaker Park (1.03 miles); Burr Ridge Police Department (1.19 miles).

c. **Businesses:** Dance Duo Studio (0.1 miles); Dell Rhea's Chicken Basket (0.16 miles); Denny's (0.18 miles); Target (0.19 miles); La Quinta Inn (0.29 miles); Red Roof PLUS+ (0.3 miles); Diamond Edge Training (0.3 miles); BIG Gymnastics (0.68 miles); Darien Sportsplex (1.0 mile).

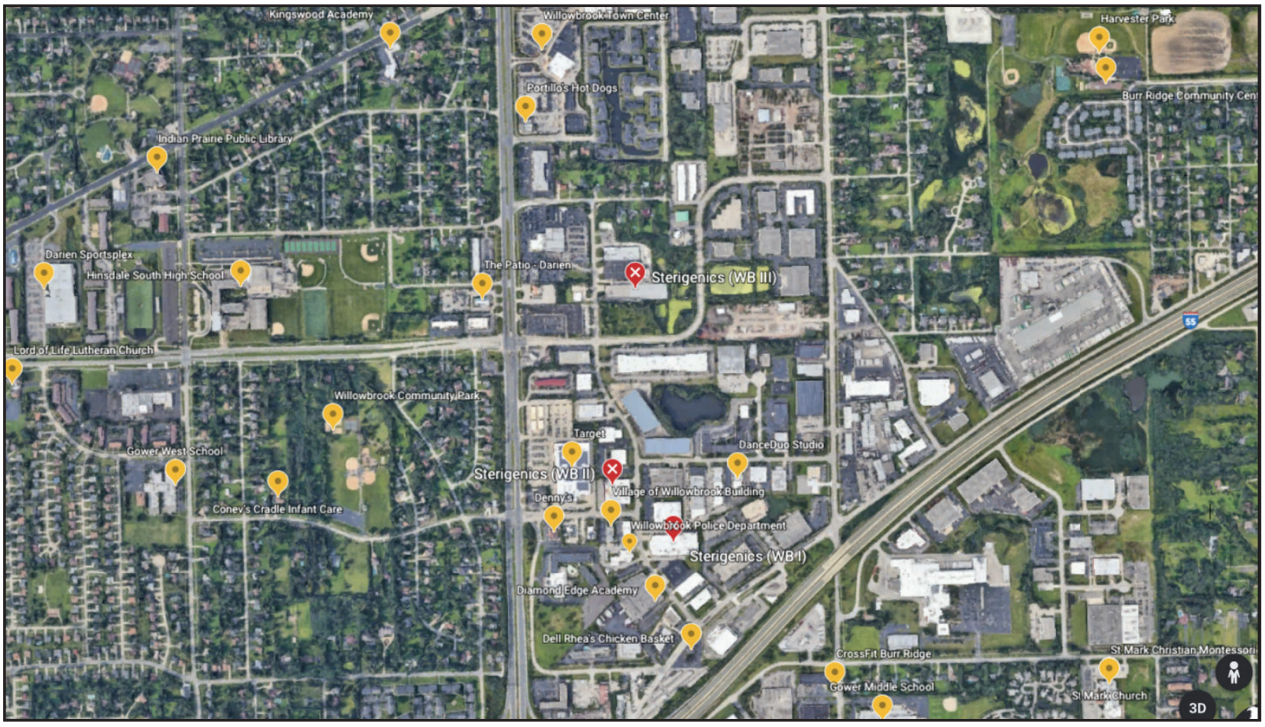
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136. In addition, Willowbrook Town Center, which has nearly 200,000 square feet of retail stores, restaurants, and other businesses, is located 1.1 miles from the Willowbrook facilities.

137. Figure 1, below, depicts the area surrounding the Willowbrook facilities, in addition to a third facility that Defendants used for aerating products, and a lab Defendants used to test its sterilization process.

Figure 1



138. Upon information and belief, the aeration facility Defendants used, which was located at 7409 Quincy Street in Willowbrook and referred to as "Willowbrook III," did not have any pollution controls and, therefore, all EtO emissions from the facility went directly into the atmosphere. Further, upon information and belief, Defendants did not include their emissions from Willowbrook III in their reporting to the government.

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139. Upon information and belief, the lab Defendants used, which was located at 16 W. 151 Shore Court in Burr Ridge, was used to test sterilization runs and, accordingly, involved the use of EtO. Upon information and belief, the lab did not have any pollution controls and, therefore, all EtO emissions from the lab went directly into the atmosphere. Further, upon information and belief, Defendants did not include its emissions from the lab in their reporting to the government.

140. From 1984 through their permanent closure in 2019, the Willowbrook facilities released EtO into the air in the Willowbrook area. The facilities stored EtO and sprayed it into gas chambers to sterilize medical equipment and pharmaceuticals. The Willowbrook facility on Quincy Street (built in 1984) holds fifteen gas chambers. The facility on Midway Drive holds four chambers (some built during the facility's original construction in 1999, some later in 2012).

141. The facilities operated 24 hours per day, emitting toxic, cancerous gas on a steady and continuous basis. As a result, EtO has been a constant element in the air inhaled by those who lived and worked near the facilities.

142. The half-life of EtO in the atmosphere has been reported at up to 211 days.[10] Neither rain nor absorption into aqueous aerosols is capable of removing EtO from the atmosphere.

143. Table 1 depicts the facilities' *self-reported* EtO emissions from point sources and *self-reported* amounts of EtO treated on site:

[10] https://publications.iarc.fr/115

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Table 1

Year	Pounds of EtO Emissions	Pounds of EtO Treated On-site
1984	Unreported	Unreported
1985	Unreported	Unreported
1986	Unreported	Unreported
1987	Unreported	Unreported
1988	169,996	Unreported
1989	97,518	Unreported
1990	Unreported	Unreported
1991	Unreported	Unreported
1992	Unreported	Unreported
1993	Unreported	Unreported
1994	18,407	420,069
1995	18,423	420,441
1996	22,000	400,000
1997	27,000	480,000
1998	31,000	560,000
1999	2,700	598,000
2000	7,627	565,086
2001	8,113	521,257
2002	6,686	535,109
2003	6,909	550,984
2004	5,313	540,797
2005	2,910	572,547
2006	4,280	573,961
2007	3,965	532,245
2008	3,858	517,941
2009	3,690	493,418
2010	6,595	512,570
2011	7,160	557,437
2012	7,091	553,083
2013	6,121	470,159
2014	5,241	404,681
2015	4,899	381,213
2016	4,205	388,288

144. There is little emissions data publicly available from before 1995. However, the ATSDR report notes that the available data suggests that "substantially higher ambient releases

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prior to 1995 were likely." Indeed, emissions from 1988 and 1989 – approximately 170,000 pounds and 100,000 pounds respectively—are far more than the highest amount recorded in the contiguous 1995 – 2016 data set (31,000 pounds in 1998) and over 20 times more than emissions levels in 2016 (4,205 pounds). It is therefore reasonable to infer that the pre-1995 emissions of EtO were, at best, similar to those from 1998 and, at worst, closer to the colossal emissions in 1988 and 1989.

145. In addition to the reported point source emissions (EtO emitted through stacks), the facilities released significant volumes of fugitive (nonpoint source) emissions into the air.

146. Effective technologies to reduce EtO emissions to levels low enough to make the emissions a "non-significant contributor" to cancer risk have been available, cost-effective, and widely known since the 1980s; and on information and belief, Defendants have known it.

147. Despite the availability of these technologies, on information and belief, there have been periods during which the Willowbrook facilities had no pollution controls in place, had inadequate controls in place, and/or had pollution controls in place that failed to work due to the acts and omissions of the defendants.

148. On information and belief, there have also been periods during which the Willowbrook facilities, despite having some pollution controls in place, vented EtO directly into the air. Upon information and belief, since at least 2006 and up until July 27, 2018, the facilities allowed uncontrolled emissions of EtO from backvent valves in the sterilization chambers.

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VII. A Pattern of Reckless Conduct

149. Sotera predecessor Sterigenics International, Inc. ("Sterigenics International") has been the subject of regulatory and administrative enforcement action relative to its EtO emissions in Europe. Beginning in 1992, Sterigenics International (now Sotera) operated a sterilization facility in Zoetermeer, a city in the western Netherlands. The Zoetermeer facility was located in an area with residential housing and numerous small business. In 2009, it was determined that Sterigenics International had been knowingly releasing amounts of EtO that exceeded the local Maximum Permissible Risk concentration into the air for years, was penalized, yet continued with its excessive emissions until it ultimately relocated its facility in 2010. According to the Public Prosecutor, Sterigenics International knew the emissions were unauthorized, but failed to act or even warn local residents about them or the associated dangers.

150. Sterigenics has also been faulted for neglecting safety in the United States. For example, after a major explosion in August 2004 at a sterilizing plant in Ontario, California, injuring four employees and forcing the evacuation of the plant and neighboring facilities, the U.S. Chemical Safety and Hazard Investigation Board (hereinafter "CSB") found that Sterigenics had failed to ensure its maintenance employees understood the hazards associated with EtO-based processes, which led them to manually override safety devices, causing the explosion. And it faulted Sterigenics management for not implementing "company-wide engineering control recommendations that could have prevented this explosion" and failing to follow recommendations on EtO concentrations disseminated by NIOSH.

151. Current and former Sterigenics employees elsewhere have raised safety concerns. For example, on the company's Glassdoor page, one former employee noted on June 25, 2013 that

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"[t]here is a minimum attention to quality & safety which will backfire eventually."[11] Another stated on October 9, 2015 that "you're working with Ethylene Oxide which is extremely dangerous and the company seems to cut corners around safety at times."[12] Similarly, an "EtO A Operator" in the Charlotte, North Carolina facility reported on February 24, 2015 that "The maintenance team cuts a lot of corners."[13]

152. Former employees at the Willowbrook facilities have raised the same concerns, reporting, among other things, that Sterigenics and its predecessors:

a. routinely permitted chamber doors, aeration doors, and exterior doors to be left open, thereby allowing EtO to escape directly into the environment;

b. manipulated the EtO detection systems in the facilities to allow for an increased tolerance of EtO;

c. told employees to ignore warning lights in the facilities indicating high levels of EtO, and fired employees who complained about the warning lights;

d. directed employees to dump or wash toxic chemicals, including EtO and ethylene glycol, into the sewer system;

e. told an employee to take a leaking drum of EtO outside the facilities;

f. used off-site warehouse facilities without any pollution control or ventilation systems to store sterilized products that were still off-gassing EtO while, at the same time, leaving the exterior doors of those facilities open, causing the off-gassing EtO to go directly into the environment.

153. Key operational managers at the Willowbrook facilities actively participated in dangerous and harmful activities, which resulted in extraordinary uncontrolled emissions of EtO into the environment.

[11] https://www.glassdoor.com/Reviews/Employee-Review-Sterigenics-RVW2768416.htm.
[12] https://www.glassdoor.com/Reviews/Employee-Review-Sterigenics-RVW8236300.htm.
[13] https://www.glassdoor.com/Reviews/Employee-Review-Sterigenics-RVW5987616.htm.

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154. Defendant Novak routinely ignored warning systems in the Willowbrook facilities indicating the presence of unsafe levels of EtO. When Mr. Novak received employee complaints regarding such warning systems, he ignored them and instructed employees to ignore them as well. Mr. Novak permitted and/or directed chamber doors, aeration doors, and exterior doors in the Willowbrook facilities to remain open allowing uncontrolled EtO emissions into the environment. Mr. Novak also approved of inaccurate EtO monitoring and testing results, effectively hiding the actual EtO emissions within the facilities and into the environment and ensuring that the facilities would continue to operate in dangerous fashion.

155. In addition, Defendant Roger Clark recalibrated EtO monitoring systems at the Willowbrook facilities to permit increased tolerance of EtO. As a result, Mr. Clark caused and/or permitted consistently elevated levels of EtO in the facilities. Mr. Clark did this knowing that doors within the facilities as well as exterior doors were routinely left open and thereby caused or permitted uncontrolled EtO emissions into the environment.

156. Mr. Clark and Mr. Novak also routinely participated in and/or directed the operation of all chamber sterilization units in the facilities at the same time, which they knew or reasonably should have known would overload emissions control systems. As a result, both Mr. Clark and Mr. Novak caused excessive uncontrolled EtO emissions into the environment.

157. Mr. Clark and Mr. Novak also bore responsibility for monitoring, maintenance, and replacement of emissions systems equipment. They routinely failed to replace emissions system equipment, including filters, such that they caused excessive levels of EtO emissions into the environment.

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158. Taken together, these facts demonstrate a pattern of Defendants consistently failing to implement company-wide safety measures across all their facilities despite research, NIOSH bulletins, regulatory interventions, and problematic incidents demonstrating their need. This willingness to "cut corners" and lack of oversight may explain why Defendants failed for decades to install available emission control technology to limit emissions of EtO from their Willowbrook facilities.

VIII. EtO's Human Impact

159. EtO is a highly potent human carcinogen relative even to other carcinogens. For example, chronically inhaled EtO is 385 times more potent a carcinogen in comparison with benzene (pound for pound), and 231 times more potent in comparison with formaldehyde.[14] In terms of excess cancer risk effect, 6,000 pounds per year of EtO air emissions are roughly as harmful to humans as 2,300,000 pounds of benzene or 1,380,000 pounds of formaldehyde.

160. The Willowbrook area has an extremely high cancer risk relative to other parts of the country. U.S. EPA's 2014 update to the National Air Toxics Assessment documented cancer risks in 76,727 census tracts across the country. Of these, 106 had cancer risk scores above U.S. EPA's acceptable limits. The area surrounding the Willowbrook facilities was among those tracts. Most of the remaining 106 tracts were located in "Cancer Alley" (the notoriously polluted, highly industrial area along the Mississippi River between Baton Rouge and New Orleans).

161. Figure 2 lists the top 19 tracts, which also include the Willowbrook area tract—Tract No. 17043845902.

[14] https://www.epa.gov/sites/production/files/2014-05/documents/table1.pdf

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Figure 2

	A	B	C	D	E	F	G
1	State	EPA Region	County	FIPS	Tract	Population	Total Cancer Risk (per million)
2	LA	EPA Region 6	St. John the Baptist	22095	22095070800	2,537	1,505.1167
3	LA	EPA Region 6	St. Charles	22089	22089060100	1,937	808.7227
4	LA	EPA Region 6	St. John the Baptist	22095	22095070900	3,115	616.6193
5	PA	EPA Region 3	Lehigh	42077	42077005902	1,571	596.4609
6	CO	EPA Region 8	Jefferson	08059	08059010902	2,310	525.5596
7	LA	EPA Region 6	St. John the Baptist	22095	22095070700	4,348	511.3240
8	LA	EPA Region 6	St. John the Baptist	22095	22095071000	2,840	490.2785
9	LA	EPA Region 6	St. John the Baptist	22095	22095000000	45,924	413.3152
10	WV	EPA Region 3	Kanawha	54039	54039013400	2,222	366.6597
11	LA	EPA Region 6	St. John the Baptist	22095	22095071100	3,398	363.1912
12	TX	EPA Region 6	Harris	48201	48201343100	4,629	348.2016
13	PA	EPA Region 3	Lehigh	42077	42077000101	3,661	346.5181
14	LA	EPA Region 6	St. John the Baptist	22095	22095070500	6,229	329.2657
15	LA	EPA Region 6	St. John the Baptist	22095	22095070100	2,685	303.0079
16	LA	EPA Region 6	St. John the Baptist	22095	22095070300	6,258	296.3112
17	TX	EPA Region 6	Harris	48201	48201343200	4,944	296.1831
18	LA	EPA Region 6	St. John the Baptist	22095	22095070400	4,381	286.5417
19	LA	EPA Region 6	St. Charles	22089	22089062700	4,753	284.5145
20	IL	EPA Region 5	DuPage	17043	17043845902	3,411	281.8075

Twelve of these top 19 tracts are located in Cancer Alley. Another five, like the Willowbrook area tract, have sterilization facilities that emitted massive amounts of EtO. The Assessment shows that sterilization facilities were responsible for the extraordinarily high cancer risks reported for three of the top 19: DuPage County, Illinois, Jefferson County, Colorado, and Lehigh County, Pennsylvania.

162. For the Willowbrook area tract, the U.S. EPA assessment found a cancer risk of 281.8075 in 1 million—nearly three times higher than U.S. EPA's acceptable upper limit and the highest in Illinois. The Willowbrook area tract is in the top 99.98% tracts in terms of cancer risk in the country.

163. The U.S. EPA assessment attributed 88.98% of the elevated cancer risk to EtO emissions. Thus, the Willowbrook facilities—the sole emitter of EtO anywhere in the

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Willowbrook area tract—were almost entirely responsible for the Willowbrook area tract having the 19th highest cancer risk in the country.

164. Later data revealed an even higher risk. The August 2018 ATSDR report, based on air measurements collected from 29 discrete locations around the Willowbrook facilities, concluded that the facilities' emissions were exposing Willowbrook-area residents and workers to elevated airborne EtO concentrations, and that these concentrations created a cancer risk of 6,400 in 1 million (or 64 in 10 thousand)—64 times the U.S. EPA acceptable limit of just 1 in 10 thousand.[15] The report also concluded that these elevated risks created a public health hazard and called for Sterigenics to reduce emissions immediately.

165. According to U.S. EPA, each year of exposure to EtO creates even higher cancer risk for children than it does for adults because EtO can damage DNA and children have more years ahead of them to develop other cancer risk factors that lead to the formation of malignant cells.[16] Children are also at greater risk than adults because children receive larger doses per body weight compared to adults, so they have greater lung surface area and increased lung volume per body weight and they inhale in more air per body weight.

166. According to U.S. Census data, 3,494 children ages five and under lived within three miles of the facilities in 2010, including 250 children who lived within one mile of the facilities.

[15] https://www.epa.gov/national-air-toxics-assessment/nata-frequent-questions
[16] https://www.epa.gov/hazardous-air-pollutants-ethylene-oxide/frequent-questions-ethylene-oxide

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167. Neither the volume of the facilities' EtO emissions nor their impact on Willowbrook-area residents and workers was made known to the general public until the release of the ATSDR report on August 21, 2018.

168. In February 2019, IEPA issued a seal order against Sterigenics U.S. "to prevent the commencement of any new sterilization cycles using EtO until measures are in place to prevent emissions of EtO . . . which present a public health hazard to residents and off-site workers . . . in the Willowbrook community."

IX. Sterigenics Under GTCR's Control and Leadership

169. GTCR knew of the inherently dangerous nature of the EtO sterilization business: that this danger was driving medical companies to outsource sterilization to firms like Sterigenics is what made Sterigenics attractive for investment.

170. Indeed, GTCR knew, from its pre-acquisition due diligence of the Sterigenics purchase, about of the risks and dangers posed by EtO.

171. GTCR also knew that medical companies were beginning to outsource sterilization to firms like Sterigenics in order to avoid the risks of injury and potential for liability EtO posed; and this trend is what made Sterigenics an attractive target for investment to GTCR.

172. All of this — the inherent risk, the danger, and the outsourcing trend — was publicly available as early as 1998 (well before GTCR's 2011 acquisition of Sterigenics), when Sterigenics U.S. and Sotera's predecessors, Griffith and Sterigenics International disclosed it in prospectuses they filed with the United States Securities and Exchange Commission in anticipation of issuing publicly traded securities.

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173. The Griffith prospectus warned that "[e]thylene oxide is a toxic and hazardous chemical which is flammable and explosive. It has been identified as a cancer and reproductive hazard" and that "[t]he cancer and reproductive hazards associated with exposure to ethylene oxide subject the Company to the risk of liability claims being made against it by workers and others who are exposed to ethylene oxide."[17]

174. Both prospectuses expressly identified the dangers, potential liabilities and new government regulations concerning EtO as catalysts for a sterilization outsourcing trend that was increasing demand for services from medical sterilization contractors like Sterigenics.

175. The Sterigenics International prospectus stated that "[b]eginning in the 1970's, several governmental limitations were placed on gas fumigation due to the discovery that EtO was a mutagenic substance with possible carcinogenic properties…" and that "increased costs" and "exposure" concerns led many device manufacturers to outsource their sterilization processes.[18]

176. The Griffith prospectus stated that "the significant capital required to construct and maintain an in-house sterilization facility and the need to comply with dynamic environmental and health and safety regulations" has contributed to "increased volume of outsourced sterilization to contract processors."[19]

177. On information and belief, GTCR learned both as part of its pre-acquisition due diligence investigation of Sterigenics' business and in the course of providing management services after the acquisition, about Sterigenics' use of EtO in its sterilization process, Sterigenics'

[17] https://www.sec.gov/Archives/edgar/data/1066622/0000950124-98-006256.txt
[18] https://www.sec.gov/Archives/edgar/data/1009988/0000891618-98-000926.txt
[19] *Id.*

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permitting history, the levels of its emissions of EtO, alternative sterilization processes, methodologies to capture EtO emissions and the cancer risks Sterigenics' EtO emissions posed to the neighboring community. GTCR also learned that the use of emissions control equipment required to reduce emissions of EtO was expensive and required substantial amounts of capital to operate.

178. GTCR purchased Sterigenics to capitalize on the risk-avoidant trend of companies outsourcing sterilization to outfits like Sterigenics. GTCR's website admits this: "Based on extensive diligence, GTCR believed that Sterigenics was well positioned to capitalize on the consistent industry growth fueled by increasing med tech procedure volumes and continued outsourced sterilization trends." In other words, GTCR chose to capitalize on the potential for growth fueled by danger—the danger of EtO and client-companies' fear of liability.

179. GTCR in turn used Sterigenics to execute a GTCR-focused investment strategy favoring growth and acquisition at the expense of safety.

180. GTCR did this utilizing a hand-picked executive team it had worked with many times in the past. This was GTCR's core business strategy, which it has actually trademarked as "The Leaders Strategy."[20]

181. GTCR's pitch books for the GTCR Funds it would use for the Sterigenics investment make the Leaders Strategy clear: "As in previous GTCR funds, [the Fund's] investment strategy is to team with strong executive teams to build companies in fragmented industries. These 'management startups' – where GTCR will first team up with a management

[20] https://www.gtcr.com/the-leaders-strategy/

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group and then purchase a platform on which to build the company – are expected to make up approximately 60% of the deals in [the Fund]."

182. Consistent with the Leaders Strategy, GTCR viewed its involvement with Sterigenics as a partnership with the new Sterigenics CEO and executive team to grow the Sterigenics business and profits.

183. Thus, as part of the Sterigenics transaction, GTCR hand-picked Michael Mulhern, whom GTCR had worked with in the past, to serve as Sterigenics CEO.[21] "Together, GTCR and Mr. Mulhern identified several initiatives to improve Sterigenics' operational and growth initiatives, enhance its market leadership and drive incremental earnings growth."[22]

184. In pursuit of the strategy, GTCR directed Sterigenics' free cash flow to be used to pay interest on high yield bonds, acquire other companies, and only be used for capital investments that drove incremental earnings growth – *not* investments in safety and/or the maintenance or installation of emissions control equipment. GTCR knew or should have reasonably foreseen that the high yield bonds used in the leveraged buyout acquisitions left Sterigenics with extremely high interest expenses that would deplete its free cash flow and prevent its investing in emissions capture and control systems. Indeed, GTCR directed Sterigenics to borrow up, increasing the debt that required high interest payments.

185. In other words, GTCR acquired Sterigenics in order to actively expand the Sterigenics' geographic footprint through acquisitions that depleted its free cash flow and

[21] https://www.prnewswire.com/news-releases/amri-names-michael-mulhern-as-chief-executive-officer-300577662.html

[22] https://www.gtcr.com/leadership-stories/sterigenics-transformation-through-organic-growth-and-strategic-acquisitions/

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required it to pledge its assets as collateral for high yield debt financed leveraged buy-outs, including the acquisition of two sterilization facility add-ons and "the transformative acquisition" of Nordion, a key supplier to Sterigenics.[23]

186. In a March 8, 2011 report following the GTCR buy-out, Moody's expressed concerns about Sterigenics' free cash flow, capital expenditures, high interest expenses and EtO liability. It assigned Sterigenics debt and probability of default as "B2" or "highly speculative," explaining that "Sterigenics has very high fixed operating costs and capital expenditures, which limits free cash flow and can lead to significant volatility in profit margins based on variation in revenue," and specifically noting that "[t]he ratings also reflect the potential for event risk associated with the highly sensitive nature of the company's raw materials, including radioactive isotopes and toxic gases." "Because of some of the inherent risks in the business," Moody's wrote, "Moody's believes available liquidity, such as cash balances and revolver access, is of particular importance to Sterigenics."[24]

187. Despite Sterigenics' struggles with free cash flow and its expensive capital structure, however, GTCR was determined to use Sterigenics as a platform to earn high returns through acquisitions of companies in the commercial sterilization industry. By using Sterigenics' free cash flow and assets to finance a leveraged buy-out of Nordion, the world's largest supplier of Cobalt 60, making Sterigenics the only vertically integrated commercial sterilization company

[23] https://www.gtcr.com/leadership-stories/sterigenics-transformation-through-organic-growth-and-strategic-acquisitions/

[24] https://www.moodys.com/research/Moodys-assigns-B2-CFR-to-STHI-Holdings-Sterigenics-outlook-stable--PR_215182

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in the world, in combination with its cost cutting and incremental earnings growth strategy, GTCR was able to begin selling its interest in Sterigenics at a higher price.

188. Sterigenics CEO, Michael Mulhern, crows about the Nordion acquisition on the GTCR website, explaining: "It came to our knowledge that a company was about to come to market to be sold. If that company got into the wrong hands, it would put at risk our source of supply. GTCR just kicked it into high gear and said we must own this asset, and today we're the only vertically integrated sterilization company in the world and in large part because GTCR made the decision and committed the resources [i.e., *Sterigenics*' resources] to get it done."

189. Thus, the Nordion acquisition further depleted Sterigenics free cash flow and forced Sterigenics to cut costs. After the acquisition, Sterigenics was forced to pay the interest on the high interest junk bond debt that GTCR had secured with Sterigenics' and Nordion's assets. On July 17, 2015 Moody's wrote "[t]he total transaction is valued at $826 million and will be funded using a combination of new debt facilities and Nordion and Sterigenics' cash on hand"[25] and that most of the "cash on hand" was Sterigenics'. Moody's observed, "Nordion's business profile is weak" and "that around two-thirds of the combined company's gross profit will be generated by the legacy Sterigenics sterilization business."[26]

190. The degree of control GTCR exercised over Sterigenics – in service of GTCR's own interests and disregard of Sterigenics interests and potential liability – surpassed the control exercised as a normal incident of ownership.

[25] https://www.moodys.com/research/Moodys-assigns-B2-to-STHIs-new-bank-debt-confirms-B2--PR_304313
[26] https://www.moodys.com/research/Moodys-assigns-B2-to-STHIs-new-bank-debt-confirms-B2--PR_304313

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191. GTCR's relationship with Sterigenics executive team is evidence of this. At least four of GTCR's ten managing directors served as Sterigenics directors, acting (upon information and belief) for the protection of GTCR's interest.[27] Mulhern, GTCR's designated Sterigenics CEO, had previously been hired by GTCR as CEO of at least four GTCR-controlled portfolio companies.[28] The others had worked with GTCR as well.

192. Indeed, during an Illinois Venture Capital Association (IVCA) award ceremony on May 7, 2015, GTCR Managing Director Sean Cunningham made these connections clear when he thanked the new Sterigenics executives team for their work in the past. He thanked "long time management collaborator, Phil McNabb, who has been in several GTCR deals" for his role at Sterigenics. He thanked Kevin Theriot, stating "I don't know what your title is at Sterigenics but you played just about every role in now three GTCR portfolio companies. He is our [GTCR's] client problem solver."[29] He waxed on about GTCR's long employment relationship with Mulhern: "Michael and GTCR have a very long history together. We actually initially recruited Michael in 2002 to run AmSan [American Sanitary]." "We partnered with Michael [again] in 2008 and asked him to become the CEO of Fairmont Food Group, which he did with Phil and Kevin nearly tripling the EBITDA from 2008 to 2011." "The very same week we sold Fairmont Food … we acquired Sterigenics with Michael, Phil and Kevin and the team." And he thanked the team

[27] https://www.gtcr.com/team-member/sean-l-cunningham/;
https://www.gtcr.com/gtcr-promotes-aaron-d-cohen-and-sean-l-cunningham-to-principal/;
https://www.gtcr.com/team-member/benjamin-j-daverman/;
https://www.bloomberg.com/research/stocks/private/person.asp?personId=66077&privcapId=20801;
https://www.gtcr.com/team-member/david-a-donnini/;
https://www.bloomberg.com/research/stocks/private/person.asp?personId=1155789&privcapId=20801
https://www.gtcr.com/team-member/constantine-s-mihas/

[28] https://www.prnewswire.com/news-releases/amri-names-michael-mulhern-as-chief-executive-officer-300577662.html

[29] https://drive.google.com/file/d/0B1vewN8DYsfDei1nM2diWnJ1X28/view?pref=2&pli=1

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for growing Sterigenics EBITDA (profitability ratio) from $90 million to $250 million, allowing GTCR to recapitalize Sterigenics and recoup its investment.

193. Mulhern, at the same award ceremony, in turn acknowledged his long-term working relationship with GTCR: "I've had the great pleasure to work with [GTCR], as Sean pointed out, for thirteen years;" "Sterigenics is the third company that I have run for GTCR;" "I've described [GTCR] as very forward leaning in terms of doing acquisitions to grow the company and move it forward."

194. GTCR operated, managed, and controlled Sterigenics U.S. through its hand-picked team of Mulhern, McNabb and Theriot, whose interests and loyalty were to GTCR, which had provided them with executive employment for almost two decades, not Sterigenics. Based on their past experiences with GTCR, Mulhern, McNabb, and Theriot could expect that if they were able to drastically cut costs and invest in incremental earnings growth to increase Sterigenics' EBITDA in the short run, GTCR would be able to sell the company at a higher price, and they would have new employment opportunities to lead new GTCR projects.

195. Sterigenics U.S.' own employees raised concerns about the safety of its operations under GTCR's management, budgetary, and operational control. On Sterigenics U.S.' Glassdoor page one employee on June 25, 2013 wrote, after GTCR made Mulhern CEO, that: "Since new management was installed by the investment company that owns them, doubling customer prices and massive cost cutting are paramount. There is minimum attention to quality & safety which

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will backfire eventually. Only profitability counts to boost the company's value. Btw, new CEO was installed some time ago."[30]

196. Another employee expressed his concerns with Sterigenics U.S.' lack of independence under GTCR's control, writing on February 21, 2012, that: "No education is given. No chance to expand kno[w]ledge. Owned by capital investment f[u]nd meaning that Sterigenics can [m]ake no independent decisions."[31]

197. Another wrote on February 24, 2015 that: "Safety is an issue sometimes regarding procedures. The maintenance team cuts a lot of corners. Managers aren't involved in what goes on during off shifts. A lot of our training is just a paperwork exercise. We learn very quickly how to cover our butts." That employee further addressed his concerns about safety under GTCR's management and recommended "[l]ock out the overrides for equipment. Fire any maintenance manager that shows operators how to manually operate equipment without it showing on the computer system." On October 9, 2015 another employee wrote "you're working with Ethylene Oxide which is extremely dangerous and the company seems to cut corners around safety at times."

198. GTCR knew that the only feasible way to acquire other companies in the commercial sterilization industry, like Nordion, without investing additional capital, would be to implement budget cuts or invest in projects that would drive incremental earnings growth to increase Sterigenics' free cash flow and EBITDA. GTCR also knew or should have reasonably foreseen that the budget cuts and investment in projects that only drove incremental earnings

[30] https://www.glassdoor.com/Reviews/Employee-Review-Sterigenics-RVW2768416.htm
[31] https://www.glassdoor.com/Reviews/Sterigenics-Reviews-E107174_P3.htm

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would stop Sterigenics from spending on safety, maintenance and training and prevent Sterigenics' use, addition and/or maintenance of EtO emission control equipment, and cause continued injury to Plaintiffs and others exposed to the facilities' toxic emissions of EtO.

X. Systematic Distribution of Money to Shareholders to Avoid Accountability to Creditors

199. As discussed above, GTCR knew about the dangers of EtO and the liability risks before and after acquiring Sterigenics. One of the ways GTCR sought to limit its own investment risk and recoup its investment was by using dividend recapitalizations to pay itself dividends.

200. GTCR knew that if it continually pulled cash out of Sterigenics with dividend recapitalizations and pledged any increase in the value of Sterigenics' assets for bonds used to fund acquisitions of other companies in the commercial sterilization industry, it could limit any liability stemming from Sterigenics' EtO emissions.

201. Investopedia states: "A dividend recapitalization (also known as a dividend recap) happens when a company incurs a new debt in order to pay a special dividend to private investors or shareholders. This usually involves a company owned by a private investment firm, which can authorize a dividend recapitalization as an alternative to the company declaring regular dividends, based on earnings." "The dividend recap has seen explosive growth, primarily as an avenue for private equity firms to recoup some or all of the money they used to purchase their stake in a business. The practice is generally not looked upon favorably by creditors or common shareholders as it reduces the credit quality of the company, while benefiting only a select few." "The dividend reduces risk for PE firms by providing early and immediate returns to shareholders but increases debt on the portfolio company's balance sheet."

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202. Shortly after it acquired Sterigenics in March of 2011, GTCR issued $95 million in additional debt as part of a dividend recapitalization, pulling $95 million out of Sterigenics.

203. After the buy-out, GTCR continually sought to increase Sterigenics' EBITDA by investing capital in projects that would drive incremental earnings growth and acquiring other companies using high yield debt. Between 2011 and 2016, acquisitions included Food Technology Service, Inc[32]; Gammarad[33]; Companhia Brasileira de Esterilização[34]; Nordion; Gibraltar Laboratories; Nelson Laboratories; and REVISS Services[35].

204. In December 2016, when the US EPA altered EtO's cancer weight of evidence descriptor from "probably carcinogenic to humans" to "carcinogenic to humans" and changed its adult based inhalation unit risk to 0.0001 μg/m³ from 0.003 μg/m³ (a thirty fold increase), GTCR recognized that its investment in Sterigenics had become substantially more risky and drastically increased its efforts to recover its money.

205. Sterigenics U.S., Sotera and GTCR each played indispensable roles in a carefully-orchestrated funneling of nearly $1.3 billion to shareholders over 27 months beginning in 2016, with the intention of ensuring that these funds will not be available to compensate Plaintiffs when they secure judgments against them in this Court. By these transfers, Sterigenics U.S. and Sotera effectively admit, but hope to avoid accountability for, their culpability in exposing Willowbrook

[32]https://www.businesswire.com/news/home/20131206005135/en/Food-Technology-Service-Acquired-Sterigenics-International-LLC
[33]https://www.businesswire.com/news/home/20141031005705/en/Sterigenics-International-Continues-Growth-Acquisition-Leading-Italian
[34] https://sterigenics.com/sterigenics-acquires-companhia-brasileira-de-esterilizacao-cbe/
[35]https://www.ots.at/presseaussendung/OTE_20160816_OTE0004/sterigenics-international-and-its-subsidiary-nordion-enter-into-agreement-to-acquire-reviss-services

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area residents (including Plaintiffs) to the extraordinarily dangerous EtO, which seriously damaged the health of many, and even claimed the lives of some.

206. Specifically, during those 27 months, Sterigenics U.S. and Sotera executives were learning:

a. in 2016, that the US EPA would reclassify ethylene oxide as a "known" (from "probable") human carcinogen, and that the chemical was 30 times more likely to cause cancer than US EPA had previously recognized;

b. in 2018, that this information would soon be reported to the public, including and especially Willowbrook area residents;

c. in 2018, that cancer-stricken plaintiffs had begun to file lawsuits, some of them wrongful death lawsuits; and

d. in 2019, that the first of these plaintiffs had successfully obtained the remand to this Court of their lawsuits which had been baselessly removed by defendants to federal court.

207. Yet, throughout these months, Sterigenics U.S. and Sotera executives were working with their corporate parents to make sure that virtually all available cash and other assets would be funneled away from these unsecured-creditor-Plaintiffs — and instead to their venture-capitalist investors and their banks in the form of massive distributions, pledged assets, and hundreds of millions in interest payments on borrowings undertaken to fund these payments. For example:

a. In October 2016, Sterigenics-Nordion Topco, LLC ("Topco"), a parent of defendants Sterigenics U.S. and Sotera, borrowed $350 million, for the purpose of funding a $340 million cash distribution to GTCR and other shareholders. Sterigenics U.S. and Sotera were necessary to this borrowing, upon information and belief, as they each guaranteed its repayment by granting the lender group a security interest in their tangible and intangible assets, thus making these assets unavailable to Plaintiffs, as Sterigenics U.S.' and Sotera's unsecured creditors.

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b. In October 2017, Sotera Health Holdings, LLC ("Health Holdings"), also a parent of Sterigenics U.S. and Sotera, with Topco, together increased their borrowings by $175 million and added to these increased borrowings some $28 million in free cash to fund a $203 million distribution to their shareholders, including GTCR. As with the October 16 transactions, upon information and belief, the repayment of these borrowings was guaranteed by Sterigenics U.S. and Sotera, thus granting the lender group a security interest in their tangible and intangible assets, making the pledged assets unavailable to pay the judgments Plaintiffs will secure.

c. In August 2018, Sotera itself made a $95 million cash distribution to investors, including GTCR, thus making this cash unavailable to Plaintiffs.

d. In July 2019, Health Holdings borrowed an additional $320 million, which was used in its entirety to fund a $320 million cash distribution to Sterigenics' investors (including GTCR). Upon information and belief, once again, Sterigenics U.S. and Sotera each facilitated this distribution by guaranteeing repayment of Health Holdings' borrowing, thus granting the lender group a security interest in their tangible and intangible assets, thus making these assets unavailable to Plaintiffs as Sterigenics U.S. and Sotera's unsecured creditors.

e. Just last month, in December 2019, Health Holdings completed a refinancing of, *inter alia*, previous borrowings, obtaining nearly $3.28 billion in new debt financing. This borrowing was used, in part, to fund a $309 cash million distribution to investors in December of 2019. As with previous borrowings by their parents, Sterigenics U.S. and Sotera guaranteed the repayment of this new borrowing, thus granting to the lender group security interests in their tangible and intangible assets.

208. Sterigenics U.S., Sotera and GTCR's central role in this orchestrated and intentional effort has effectively placed the companies' cash and other assets out of Plaintiffs' reach, prevented Sterigenics from investing in emission control equipment, and dangerously de-stabilized the Sterigenics companies, thereby jeopardizing the companies' viability and the likelihood that Plaintiffs will receive just compensation for their injuries. As Moody's has observed, after the 2019 transactions noted above, these companies have "a high degree of

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environmental risk[,]" and will have "limited ability to absorb unforeseen setbacks or cash demands on the business…"

209. Neither Sterigenics U.S. nor Sotera received reasonably equivalent value for any of the guarantees they gave to enable dividends to be paid to GTCR to facilitate the dividend recapitalizations, notwithstanding that the guarantees increased their debt load and/or placed additional assets out of the reach of Plaintiffs as their unsecured creditors. The dividend recapitalizations and secured debt financing benefited only GTCR.

210. On June 21, 2019, Illinois enacted Public Act 101-0022. Public Act 101-0022 prohibits EtO sterilization facilities from operating in Illinois unless: (a) the facility captures 100 percent of all fugitive EtO emissions within the facility; and (b) the facility reduces EtO emissions to the atmosphere from each exhaust point by at least 99.9 percent or to 0.2 parts per million.

211. On June 24, 2019, Sterigenics applied to the IEPA for a construction permit to install or update its emissions control systems to ensure that it satisfies Public Act 101-0022's EtO emission requirements.

212. In September of 2019, Sterigenics entered into an agreed final consent order prohibiting the operation of its Willowbrook EtO sterilization facilities before installing and testing new emissions capture and control equipment to reduce its EtO emissions in compliance with Public Act 101-0022 and reduce its EtO emissions below 85 pounds a year.

213. Other companies in the commercial sterilization industry have limited their EtO emissions with capital investments. In 2019, Medline, a competing EtO commercial sterilization company, invested several million dollars in equipment to comply with Illinois Public Act 101-

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0022, and on January 7, 2020, Medline released a press report stating that it was in compliance with the regulation.

214. Sterigenics U.S. and Sotera declined to take measures to improve their emissions control systems due to the debt and dividend payments orchestrated by GTCR and on October 2019, when faced with the cost of capital improvement to reduce emissions, decided not to reopen the Willowbrook facilities.[36]

COUNT 1
Negligence – Sterigenics U.S., LLC

215. Plaintiffs incorporate by reference all allegations contained herein.

216. Sterigenics U.S. owned and operated the facilities during a material portion of time since 1984.

217. Sterigenics U.S. managed, controlled, and supervised sterilization operations at the facilities during a material portion of time since 1984.

218. Sterigenics U.S. had a duty to exercise ordinary care for the health, safety, and well-being of Plaintiffs, their decedents, and others living and working near the Willowbrook facilities.

219. At all relevant times, Sterigenics U.S. knew that the EtO emitting from the facilities would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it.

220. Sterigenics U.S. breached its duty and failed to exercise ordinary care in one or more of the following ways:

[36] https://www2.illinois.gov/epa/topics/community-relations/sites/ethylene-oxide/Documents/04OCT19.cvrltr.pdf

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a. by choosing to operate within a densely populated residential area and thereby expose Plaintiffs, their decedents, and others to unsafe levels EtO and a heightened cancer risk;

b. by emitting massive and unnecessary amounts of EtO into the air from the Willowbrook facilities;

c. by using EtO as part of its sterilization process when safer alternatives could accomplish the same or similar business purpose without presenting the same level of risk to human health and well-being;

d. by placing its own economic interests above the health and well-being of those who lived or worked near the facilities;

e. by failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were being exposed to EtO;

f. by failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were inhaling EtO;

g. by failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that it was emitting a known carcinogen into the air from the facilities;

h. by failing to employ safe methods to adequately control, reduce, minimize, and/or mitigate EtO emissions from the facilities;

i. by failing to adequately study and test the effect of its EtO emissions from the facilities on the quality of air; and

j. by failing to adequately study and test the effect of its EtO emissions from the facilities on the health and well-being of people who lived or worked near the facilities.

221. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

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WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Sterigenics U.S., LLC in an amount to be determined by a trier of fact.

COUNT 2
Negligent Training – Sterigenics U.S., LLC

222. Plaintiffs incorporate by reference all allegations contained herein.

223. Sterigenics U.S. had a duty to properly train its employees to control and dispose of hazardous substances including EtO and its byproducts, including but not limited to ethylene glycol.

224. At all relevant times, Sterigenics U.S. knew that failing to properly train its employees to control, monitor, and dispose of hazardous materials would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons exposed to it.

225. Sterigenics U.S. breached its duty to properly train its employees in one or more of the following ways:

a. by failing to train its employees about the carcinogenic effects of EtO;

b. by failing to train its employees about the proper procedures to control and store EtO and its byproducts such that it would prevent unintended leaks, spills, or emissions;

c. by failing to train its employees about the proper procedures to monitor EtO emissions;

d. by failing to train its employees about the proper procedures for recording EtO emissions;

e. by failing to train its employees about the proper procedures to adequately control, reduce, minimize, and/or mitigate EtO emissions from the facilities;

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f. by failing to train its employees about the proper procedures for repairing and/or replacing defective EtO emissions equipment;

g. by failing to train its employees about the proper procedures for reporting uncontrolled emissions; and

h. by failing to properly train its employees about the proper procedures for disposing of EtO and its byproducts.

226. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Sterigenics U.S., LLC in an amount to be determined by a trier of fact.

COUNT 3
Negligent Supervision – Sterigenics U.S., LLC

227. Plaintiffs incorporates by reference all allegations contained herein.

228. Sterigenics U.S. had a duty to properly supervise its employees to prevent a creation of danger or harm to others.

229. At all relevant times, Sterigenics U.S. knew that failing to properly supervise its employees in their control, monitoring, and disposal of hazardous materials including EtO and its byproducts would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it.

230. Sterigenics U.S., LLC breached its duty to supervise its employees in one or more of the following ways:

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a. by failing to recognize when the proper procedures to control and store EtO and its byproducts were violated, resulting in unintended leaks, spills, or emissions;

b. by failing to reprimand and/or discipline employees when the proper procedures to control and store EtO and its byproducts were violated, resulting in unintended leaks, spills, or emissions;

c. by retaining employees who repeatedly violated the proper procedures to control and store EtO and its byproducts, resulting in unintended leaks, spills, or emissions;

d. by failing to recognize when the proper procedures to adequately control, reduce, minimize, and/or mitigate EtO emissions from the facilities were violated, resulting in unintended leaks, spills, or emissions;

e. by failing to reprimand and/or discipline employees when the proper procedures to adequately control, reduce, minimize, and/or mitigate EtO emissions from the facilities were violated, resulting in unintended leaks, spills, or emissions;

f. by retaining employees who repeatedly violated the proper procedures to adequately control, reduce, minimize, and/or mitigate EtO emissions from the facilities, resulting in unintended leaks, spills, or emissions;

g. by failing to recognize when the proper procedures for repairing and/or replacing defective EtO emissions equipment were violated;

h. by failing to reprimand and/or discipline employees when the proper procedures for repairing and/or replacing defective EtO emissions equipment were violated;

i. by retaining employees who repeatedly violated the proper procedures for repairing and/or replacing defective EtO emissions equipment;

j. by failing to recognize when the proper procedures for reporting uncontrolled emissions were violated;

k. by failing to reprimand and/or discipline employees when the proper procedures for reporting uncontrolled emissions were violated;

l. by retaining employees who repeatedly violated the proper procedures for reporting uncontrolled emissions;

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m. by failing to recognize when the proper procedures for disposing of EtO or its byproducts were violated;

n. by failing to reprimand and/or discipline employees when the proper procedures for disposing of EtO or its byproducts were violated;

o. by retaining employees who repeatedly violated the proper procedures for disposing of EtO or its products;

p. by failing to recognize when the proper procedures to monitor EtO emissions were violated;

q. by failing to reprimand and/or discipline employees when the proper procedures to monitor EtO emissions were violated;

r. by retaining employees who repeatedly violated the proper procedures to monitor EtO emissions;

s. by failing to recognize when the proper procedures for recording EtO emissions were violated;

t. by failing to reprimand and/or discipline employees when the proper procedures for recording EtO emissions were violated; and

u. by retaining employees who repeatedly violated the proper procedures for recording EtO emissions.

231. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Sterigenics U.S., LLC in an amount to be determined by a trier of fact.

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COUNT 4
Willful and Wanton Conduct – Sterigenics U.S., LLC

232. Plaintiffs incorporate by reference all allegations contained herein.

233. Sterigenics U.S. had a duty to refrain from willful and wanton conduct and/or conduct that exhibits an utter indifference and/or conscious disregard to the health, safety, and well-being of Plaintiffs, their decedents, and others living and working in the area surrounding the facilities.

234. At all relevant times, Sterigenics U.S. knew that EtO emitting from the facilities would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it.

235. Sterigenics U.S. breached its duty and was guilty of willful and wanton conduct in one or more of the following ways:

a. by choosing to operate within a densely populated residential area and thereby expose Plaintiffs, their decedents, and others to unsafe levels EtO and a heightened cancer risk;

b. by emitting massive and unnecessary volumes EtO into the air from the Willowbrook facilities notwithstanding its knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer;

c. by placing its own economic interests above the health, safety, and well-being of Plaintiffs, their decedents, and others who lived or worked near the facilities;

d. by failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were being exposed to EtO notwithstanding its knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer;

e. by failing to a warn or advise Plaintiffs, their decedents, and others who lived and worked in the Willowbrook area that they were inhaling EtO

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notwithstanding its knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer;

f. by emitting EtO, a known carcinogen, into the air from the facilities before fully studying, researching, or understanding the deleterious impact that EtO inhalation exposure has on the health, safety, and well-being of those in the surrounding area; and

g. by deliberately concealing its knowledge concerning the deleterious impact that EtO inhalation exposure has on Plaintiffs, their decedents, and others who lived or worked near the facilities.

236. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Sterigenics U.S., LLC in an amount to be determined by a trier of fact.

COUNT 5
Ultrahazardous Activity / Strict Liability – Sterigenics U.S., LLC

237. Plaintiffs incorporate by reference all allegations contained herein.

238. Sterigenics U.S. use and emission of EtO from the facilities constitutes an ultra-hazardous activity.

239. Sterigenics U.S.'s use and emission of EtO created a high degree of risk to Plaintiffs, their decedents, and others who lived or worked near the facilities such that the likelihood of cancer caused by its use and emission of EtO is as much as 64 times the level of acceptable risk.

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240. Sterigenics U.S.'s use and emission of EtO is especially inappropriate given the area in which it is located; namely, within a densely populated residential area.

241. While the activities conducted by Sterigenics U.S. are exceedingly dangerous, it offers little to no value to the surrounding community.

242. Because the activities of Sterigenics U.S. are ultrahazardous, it is strictly liable for any injuries proximately resulting therefrom.

243. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Sterigenics U.S., LLC in an amount to be determined by a trier of fact.

COUNT 6
Civil Battery – Sterigenics U.S., LLC

244. Plaintiffs incorporate by reference all allegations contained herein.

245. At all relevant times, Sterigenics U.S. knew that EtO emitting from the facilities would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it.

246. Notwithstanding this knowledge, Sterigenics U.S. caused and/or set in motion events that caused EtO to come in contact with Plaintiffs and their decedents.

247. Plaintiffs and their decedents' contact with EtO was offensive and harmful.

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248. Sterigenics U.S. intended to emit EtO into the air despite its knowledge that it would contact people who lived or worked near the facilities.

249. Plaintiffs and their decedents did not consent to contact with EtO emitted from the facilities.

250. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Sterigenics U.S., LLC in an amount to be determined by a trier of fact.

COUNT 7
Public Nuisance – Sterigenics U.S., LLC

251. Plaintiffs incorporate by reference all allegations contained herein.

252. The general public has a common right to breathe in clean air without dangerous levels of carcinogens such as EtO. The Illinois Constitution guarantees these rights to its citizens. Article XI of the Illinois Constitution of 1970, Environment, Section 1, Public Policy - Legislative Responsibility, provides that:

> The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.

Article XI of the Illinois Constitution of 1970, Environment, Section 2, Rights of Individuals, provides that:

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> Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.

253. Sterigenics U.S.'s use and emission of EtO from the facilities substantially and unreasonably infringed upon and/or transgresses this public right. In particular, the activities of Sterigenics U.S. caused those who lived and worked in the area surrounding the facilities to inhale high levels of EtO on a routine and constant basis, and further, to be exposed to air causing a substantially elevated risk of cancer.

254. Sterigenics U.S.'s use and emission of EtO is especially inappropriate given the area in which it is located; namely, within a densely populated residential area.

255. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Sterigenics U.S., LLC in an amount to be determined by a trier of fact.

COUNT 8
Negligence – Sotera Health, LLC

256. Plaintiffs incorporate by reference all allegations contained herein.

257. Sotera wholly owned, managed, controlled, supervised and otherwise participated directly in the sterilization operations at the Willowbrook facilities. With respect to

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those operations, Sotera shared a complete unity of interest with Sterigenics U.S., with Sterigenics U.S. operating as an instrumentality of Sotera.

258. At all relevant times, Sotera knew that the EtO emitting from the facilities would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it.

259. Sotera had a duty to ensure that the facilities were operated with ordinary care for the health, safety, and well-being of Plaintiffs, their decedents, and others living and working near the facilities.

260. Sotera breached this duty by failing to ensure that the facilities were operated with ordinary care for the health, safety, and well-being of Plaintiffs, their decedents, and others living and working near the facilities with respect to one or more of the following:

a. by conducting operations in a densely populated residential area, exposing Plaintiffs, their decedents, and others to unsafe levels EtO and a heightened cancer risk;

b. by emitting massive and unnecessary amounts of EtO into the air from the facilities;

c. using of EtO as part of its sterilization process when safer alternatives could accomplish the same or similar business purpose without presenting the same level of risk to human health and well-being;

d. placing of its own economic interests and the interest of Sterigenics U.S. above the health and well-being of those who lived or worked near the facilities;

e. failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were being exposed to EtO;

f. failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were inhaling EtO;

g. failing to warn or advise Plaintiffs, their decedents, and others who

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lived or worked near the facilities that it was emitting a known carcinogen into the air from the facilities;

h. failing to employ safe methods to adequately control, reduce, minimize, and/or mitigate EtO emissions from the facilities;

i. failing to adequately study and test the effect of its EtO emissions from the facilities on the quality of air; and

j. failing to adequately study and test the effect of its EtO emissions from the facilities on the health and well-being of people who lived or worked near the facilities.

261. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Sotera Health, LLC in an amount to be determined by a trier of fact.

COUNT 9
Negligent Training – Sotera Health, LLC

262. Plaintiffs incorporate by reference all allegations contained herein.

263. As a direct participant in the facilities' sterilization operations, including but not limited to developing written operating procedures for training and guiding the work of operators and training operations employees, Sotera had a duty to ensure that the facilities' employees were properly trained on conducting sterilization operations, the use, control, storage, and disposal of hazardous substances including EtO and its byproducts, and the operation and maintenance of equipment used in the sterilization process, to prevent a creation of danger or

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harm to others.

264. Sotera, knowing that that a failure to ensure the facilities' employees were properly trained would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons exposed to it, breached this duty.

265. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Sotera Health, LLC in an amount to be determined by a trier of fact.

COUNT 10
Willful and Wanton Conduct – Sotera Health, LLC

266. Plaintiffs incorporate by reference all allegations contained herein.

267. At all relevant times, Sotera knew that EtO emitting from the facilities would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it.

268. Sotera had a duty to refrain from willful and wanton conduct and/or conduct that exhibits an utter indifference and/or conscious disregard to the health, safety, and well-being of Plaintiffs, their decedents, and others living and working in the area surrounding the facilities.

269. Sotera breached its duty and was guilty of willful and wanton conduct with respect to one or more of the following:

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a. conducting operations in a densely populated residential area, exposing Plaintiffs, their decedents, and others to unsafe levels EtO and a heightened cancer risk;

b. emitting massive and unnecessary volumes EtO into the air from the facilities notwithstanding its knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer;

c. placing its own economic interests above the health, safety, and well-being of Plaintiffs, their decedents, and others who lived or worked near the facilities;

d. failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were being exposed to EtO notwithstanding Sotera's knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer;

e. failing to warn or advise Plaintiffs, their decedents, and others who lived and worked in the Willowbrook area that they were inhaling EtO notwithstanding Sotera's knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer;

f. emitting EtO, a known carcinogen, into the air from the facilities before fully studying, researching, or understanding the deleterious impact that EtO inhalation exposure has on the health, safety, and well-being of those in the surrounding area; and

g. deliberately concealing its knowledge concerning the deleterious impact that EtO inhalation exposure has on Plaintiffs, their decedents, and others who lived or worked near the facilities.

270. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Sotera Health, LLC in an amount to be determined by a trier of fact.

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COUNT 11
Public Nuisance – Sotera Health, LLC

271. Plaintiffs incorporate by reference all allegations contained herein.

272. The general public has a common right to breathe in clean air without dangerous levels of carcinogens such as EtO. The Illinois Constitution guarantees these rights to its citizens. Article XI of the Illinois Constitution of 1970, Environment, Section 1, Public Policy - Legislative Responsibility, provides that:

> The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.

Article XI of the Illinois Constitution of 1970, Environment, Section 2, Rights of Individuals, provides that:

> Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.

273. The activities of Sotera as described above unreasonably infringed upon and/or transgressed this public right by causing those who lived and worked in the area surrounding the facilities to inhale high levels of EtO on a routine and constant basis, and further, to be exposed to air causing a substantially elevated risk of cancer.

274. Sotera's use and emission of EtO is especially inappropriate given the area in which it is located; namely, within a densely populated residential area.

275. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and

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conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Sotera Health, LLC in an amount to be determined by a trier of fact.

COUNT 12
Negligence – Griffith Foods International, Inc. (Griffith Labs)

276. Plaintiffs incorporate by reference all allegations contained herein.

277. From July 30, 1984 to July 31, 1986, Griffith Labs was the permittee and thus operator of the Willowbrook facilities.

278. From July 30, 1984 to May 14, 1999, as set forth in the paragraphs above, Griffith Labs was a direct participant of operations at the Willowbrook facilities such that it both actively participated in, directed, and/or exercised control over operations, and it mandated an overall course of action and authorized the manner in which specific activities were conducted.

279. Additionally, from July 30, 1984 to April 15, 1999, as set forth in the paragraphs above, the relationship between Griffith Labs and the Operators was such that was no true separate identity between them.

280. The "touchstone" of the duty analysis in Illinois "is whether a plaintiff and a defendant stood in such a relationship to one another that the law imposed on defendant an obligation of reasonable conduct for the benefit of the plaintiff." *Marshall v. Burger King Corp.*, 222 Ill.2d 422, 436 (2006). The existence of such a "relationship" is determined by consideration of four factors, including: (a) the reasonable foreseeability of the injury; (b) the likelihood of the

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injury; (c) the magnitude of the burden of guarding against the injury; and (d) the consequences of placing that burden on the defendant. *Id.* at 436-37.

281. At all relevant times, Griffith Labs knew that the EtO emitting from the facilities would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it. Accordingly, at all relevant times, it was reasonably foreseeable to Griffith Labs that emitting EtO from the Willowbrook facilities would injure Plaintiffs. Numerous facts set forth demonstrate that such injury was reasonably foreseeable, including in Paragraphs 5, 7, 9-10, 33-35, 37-56, 68-70, 74-76, 82-88, 96-99, 111-129, 131-141, 144-148, and 159-166.

282. At all relevant times, the likelihood of injury to Plaintiffs was exceedingly high as set forth above in Paragraphs 5, 7, 9-10, 34, 37-39, 42-56, 82-91, 111-129, 131-141, and 159-166.

283. Griffith Labs not only knew that it was emitting a known carcinogen into the Willowbrook community and that it would be inhaled by neighboring residents, but Griffith Labs also knew that conservative modeling performed by IEPA showed that its emissions were "several magnitudes higher than desirable."

284. The magnitude of the burden on Griffith Labs of guarding against such injury was minimal as set forth above in paragraphs 35, 56, 70, 82-95, 100-102, and 146-147, particularly for a self-espoused pioneer and expert in the field of EtO. Griffith Labs could have, but did not, control the emissions from the Willowbrook facility by using state of the art equipment or even the same equipment used at its other facilities during the same timeframe.

285. The consequences of placing such a burden on Griffith Labs would be appropriate, such that the expert in the field—with superlative knowledge and expertise with EtO and the sterilization process, the opportunity to select and update sterilization sites, emissions controls,

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operational actions and processes, and financial incentive and ability—would have the obligation to prevent foreseeable injury to residents who, on the other hand, have no such expertise or knowledge, no such opportunity, and no such corresponding financial ability.

286. Accordingly, at all relevant times, Griffith Labs had a duty to ensure that the facilities were operated with ordinary care for the health, safety, and well-being of Plaintiffs, their decedents, and others living and working near the facilities.

287. Griffith Labs breached this duty by failing to ensure that the facilities were operated with ordinary care for the health, safety, and well-being of Plaintiffs, their decedents, and others living and working near the facilities with respect to one or more of the following:

a. Locating, and then for the next 16 years operating, controlling and/or maintaining, an EtO sterilization facility in the residential community of Willowbrook despite knowing at all times that EtO is very dangerous to human health and that area residents, workers, and schoolchildren would be unknowingly breathing daily the facility's EtO emissions, significantly increasing their risk of contracting cancer and other serious illnesses.

b. Operating the Willowbrook facility with virtually no emission control equipment designed to remove or eliminate EtO from emissions for its first four years of operation (1984-1988), even though Griffith Labs knew that this violated the standard of care and would result in its neighbors being unnecessarily exposed to more than 500,000 pounds of EtO emissions during that time;

c. Operating the Willowbrook facility for the entirety of the 1984 – 1999 time period without any control designed to remove or eliminate EtO from emissions from the facility's back-vents, aeration rooms, and work aisles, even though Griffith Labs knew that this too violated the standard of care and would result in its neighbors being unnecessarily exposed to at least 400,000 pounds of EtO emissions (in addition to those alleged in subparagraph (b), above) during that time;

d. Designing in 1984, and then from 1984 to 1999, mandating the use of, a sterilization/emissions process that Griffith Labs knew violated the

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standard of care and was inadequate to protect the health of its neighbors against EtO emissions from the facility;

e. Purchasing, using, and mandating the use of sterilization and emission control equipment that Griffith Labs knew violated the standard of care and was inadequate to protect the health of its neighbors against EtO emissions from the facility;

f. Failing to use emission control equipment in Willowbrook and otherwise comply with the standard of care that Griffith Labs was in fact using in its other EtO facilities in the United States and other countries, which resulted in EtO emissions from the Willowbrook facilities that were sometimes hundreds of times higher, and more dangerous, than those at Griffith Labs' other facilities;

g. Failing to employ safe methods to adequately control, reduce, minimize, and/or mitigate EtO emissions from the facilities;

h. Using EtO as part of its sterilization process when safer alternatives could accomplish the same or similar business purpose without presenting the same level of risk to human health and well-being;

i. Conducting operations which exposed Plaintiffs, their decedents, and others to unsafe levels EtO and a heightened cancer risk;

j. Emitting massive and unnecessary amounts of EtO into the air from the facilities;

k. Failing to heed IEPA's warning that emissions into the Willowbrook community based on Griffith's operational design would be "several magnitudes higher than desirable";

l. Failing to heed IEPA's advisement that steps "can be taken to minimize emissions in order to reduce the ambient impacts to an acceptable level";

m. Failing to warn the Willowbrook community, including Plaintiffs, that the toxicity data reviewed by the IEPA and communicated to Griffith "provides evidence of human cancers of the pancreas, bladder, brain, central nervous system and stomach associated with EtO exposure";

n. Failing to warn the Willowbrook community, including Plaintiffs, that "various animal studies have shown carcinogenic, mutagenic, leukogenic and teratogenic effects" of EtO exposure;

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o. Failing to warn its neighbors that they were in danger because of the Willowbrook facility's EtO emissions, even though Griffith Labs: (A) knew that the emissions threatened its neighbors' health and that its neighbors had no idea that EtO was even being emitted into their community, and (B) provided warnings to residents living near some of Griffith Labs' *other* EtO sterilization facilities outside of Illinois;

p. Failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were being exposed to EtO;

q. Failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were inhaling EtO;

r. Failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that it was emitting a known carcinogen into the air from the facilities;

s. Failing to test the air outside the Willowbrook facility (ambient air) to determine the concentrations of EtO that had been emitted from the facility and would be inhaled by Griffith Labs' neighbors, even though Griffith Labs was specifically required to conduct extensive ambient air testing in 1984-1986 as a special condition for its permit to operate the Willowbrook facility;

t. Failing to adequately study and test the effect of its EtO emissions from the facilities on the quality of air;

u. Failing to adequately study and test the effect of its EtO emissions from the facilities on the health and well-being of people who lived or worked near the facilities;

v. Misleading the State's regulator, Illinois EPA, by, *inter alia*, failing to inform the agency as to what Griffith Labs knew about the dangers of EtO to human health; planning to emit more EtO from the Willowbrook facility than it had represented to induce IEPA into granting Griffith Labs the initial Willowbrook permit; failing to advise IEPA that it was not using the same caliber equipment and processes in Willowbrook that it was using at its other facilities; and reporting to IEPA EtO emissions from Willowbrook that were based on assumptions which Griffith Labs knew had no basis or were false;

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w. Failing to train its employees and failing to audit the Willowbrook facility to ensure that the facility's operations were not endangering its neighbors even though such training and auditing were Griffith Labs' responsibilities;

x. Placing its own economic interests above the health and well-being of those who lived or worked near the facilities;

y. Failing to provide the Operators with capital to invest in reasonable emission control systems even though such capital was available;

z. Failing to provide the Operators with capital to invest in reasonable equipment upgrades and maintenance even though such capital was available; and

aa. Working independently and through an EtO industry lobbyist to improperly dispute conclusions concerning the health dangers of EtO that had been reached by independent scientists and health agencies with the purpose of understating those health dangers and ultimately creating a justification for emissions that endangered the health of those living near the Willowbrook (and other) sterilization facilities.

288. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Griffith Foods International, Inc. in an amount to be determined by a trier of fact.

COUNT 13
Negligent Training – Griffith Foods International, Inc. (Griffith Labs)

289. Plaintiffs incorporate by reference all allegations contained herein.

290. As a direct participant in the facilities' sterilization operations, including but not

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limited to developing written operating procedures for training and guiding the work of operators and training operations employees, Griffith Labs had a duty to ensure that the facilities' employees were properly trained on the following to prevent a creation of danger or harm to others:

a. conducting sterilization operations;

b. the use, control, storage, and disposal of hazardous substances including EtO and its byproducts;

c. the operation and maintenance of equipment used in the sterilization process;

d. running aeration room and back-vent emissions through the emission control system;

e. keeping chamber doors, aeration doors, and exterior doors closed and sealed so as to prevent EtO from escaping directly into the atmosphere;

f. preventing and/or minimizing off-gassing of sterilized products in areas that were not ventilated to emission controls; and

g. auditing the Willowbrook facility to ensure that the facility's operations were not endangering its neighbors.

291. Griffith Labs, knowing that that a failure to ensure the facilities' employees were properly trained would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons exposed to it, breached this duty.

292. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

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WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Griffith Foods International, Inc. in an amount to be determined by a trier of fact.

COUNT 14
Negligent Supervision – Griffith Foods International, Inc. (Griffith Labs)

293. Plaintiffs incorporate by reference all allegations contained herein.

294. As a direct participant in the facilities' sterilization operations, including but not limited to preparing and implementing the facilities' risk management plans, developing written operating procedures for training and guiding the work of operators, training operations employees, investigating incidents, conducting safety audits, and evaluating the facilities' accident history, Griffith Labs had a duty to ensure the facilities' employees were properly supervised on conducting sterilization operations, the use, control, storage, and disposal of hazardous substances including EtO and its byproducts, and the operation and maintenance of equipment used in the sterilization process, to prevent a creation of danger or harm to others.

295. Griffith Labs, knowing that that a failure to ensure the facilities' employees were properly supervised would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons exposed to it, breached this duty.

296. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

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WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Griffith Foods International, Inc. in an amount to be determined by a trier of fact.

COUNT 15
Willful and Wanton – Griffith Foods International, Inc. (Griffith Labs)

297. Plaintiffs incorporate by reference all allegations contained herein.

298. At all relevant times, Griffith Labs knew that EtO emitting from the facilities would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it.

299. Griffith Labs had a duty to refrain from willful and wanton conduct and/or conduct that exhibits an utter indifference and/or conscious disregard to the health, safety, and well-being of Plaintiffs, their decedents, and others living and working in the area surrounding the facilities.

300. Griffith Labs breached its duty and was guilty of willful and wanton conduct with respect to one or more of the following:

a. Locating, and for then for next 16 years, operating, controlling and/or maintaining, an EtO sterilization facility in the residential community of Willowbrook despite knowing that all times that EtO is very dangerous to human health and that area residents, workers, and schoolchildren would be unknowingly breathing daily the facility's EtO emissions, significantly increasing their risk of contracting cancer and other serious illnesses;

b. Operating the Willowbrook facility with virtually no emission control equipment designed to remove or eliminate EtO from emissions for its first four years of operation (1984-1988), even though Griffith Labs knew that this violated the standard of care and would result in its neighbors being unnecessarily exposed to more than 500,000 pounds of EtO emissions during that time;

c. Operating the Willowbrook facility for the entirety of the 1984 – 1999 time period without any control designed to remove or eliminate EtO from

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emissions from the facility's back-vents and aeration rooms, even though Griffith Labs knew that this too violated the standard of care and would result in its neighbors being unnecessarily exposed to at least 400,000 pounds of EtO emissions (in addition to those alleged in subparagraph (b), above) during that time;

d. Designing and requiring the use of a sterilization/emissions process that Griffith Labs knew violated the standard of care and was inadequate to protect the health of its neighbors against EtO emissions from the facility;

e. Purchasing, using, and authorizing the use of sterilization and emission control equipment that Griffith Labs knew violated the standard of care and was inadequate to protect the health of its neighbors against EtO emissions from the facility;

f. Failing to use emission control equipment in Willowbrook and otherwise comply with the standard of care that Griffith Labs was in fact using in its other EtO facilities in the United States and other countries, which resulted in EtO emissions from the Willowbrook facilities that were sometimes hundreds of times higher, and more dangerous, than those at Griffith Labs' other facilities;

g. Failing to employ safe methods to adequately control, reduce, minimize, and/or mitigate EtO emissions from the facilities;

h. Using EtO as part of its sterilization process when safer alternatives could accomplish the same or similar business purpose without presenting the same level of risk to human health and well-being;

i. Conducting operations which exposed Plaintiffs, their decedents, and others to unsafe levels EtO and a heightened cancer risk;

j. Emitting massive and unnecessary amounts of EtO into the air from the facilities;

k. Failing to heed IEPA's warning that emissions into the Willowbrook community based on Griffith's operational design would be "several magnitudes higher than desirable";

l. Failing to heed IEPA's advisement that steps "can be taken to minimize emissions in order to reduce the ambient impacts to an acceptable level";

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m. Failing to warn the Willowbrook community, including Plaintiffs, that the toxicity data reviewed by the IEPA and communicated to Griffith "provides evidence of human cancers of the pancreas, bladder, brain, central nervous system and stomach associated with EtO exposure";

n. Failing to warn the Willowbrook community, including Plaintiffs, that "various animal studies have shown carcinogenic, mutagenic, leukogenic and teratogenic effects" of EtO exposure;

o. Failing to warn its neighbors that they were in danger because of the Willowbrook facility's EtO emissions, even though Griffith Labs: (A) knew that the emissions threatened its neighbors' health and that its neighbors had no idea that EtO was even being emitted into their community, and (B) provided warnings to residents living near some of Griffith Labs' *other* EtO sterilization facilities outside of Illinois;

p. Failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were being exposed to EtO;

q. Failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were inhaling EtO;

r. Failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that it was emitting a known carcinogen into the air from the facilities;

s. Failing to test the air outside the Willowbrook facility (ambient air) to determine the concentrations of EtO that had been emitted from the facility and would be inhaled by Griffith Labs' neighbors, even though Griffith Labs was specifically required to conduct extensive ambient air testing in 1984-1986 as a special condition for its permit to operate the Willowbrook facility;

t. Failing to adequately study and test the effect of its EtO emissions from the facilities on the quality of air;

u. Failing to adequately study and test the effect of its EtO emissions from the facilities on the health and well-being of people who lived or worked near the facilities;

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v. Misleading the State's regulator, Illinois EPA, by, *inter alia*, failing to inform the agency as to what Griffith Labs knew about the dangers of EtO to human health; planning to emit more EtO from the Willowbrook facility than it had represented to induce IEPA into granting Griffith Labs the initial Willowbrook permit; failing to advise IEPA that it was not using the same caliber equipment and processes in Willowbrook that it was using at its other facilities; and reporting to IEPA EtO emissions from Willowbrook that were based on assumptions which Griffith Labs knew had no basis or were false;

w. Failing to train its employees and failing to audit the Willowbrook facility to ensure that the facility's operations were not endangering its neighbors even though such training and auditing were Griffith Labs' responsibilities;

x. Placing its own economic interests above the health and well-being of those who lived or worked near the facilities;

y. Failing to provide the Operators with capital to invest in reasonable emission control systems even though such capital was available;

z. Failing to provide the Operators with capital to invest in reasonable equipment upgrades and maintenance even though such capital was available;

aa. Working independently and through an EtO industry lobbyist to improperly dispute conclusions concerning the health dangers of EtO that had been reached by independent scientists and health agencies with the purpose of understating those health dangers and ultimately creating a justification for emissions that endangered the health of those living near the Willowbrook (and other) sterilization facilities;

bb. Emitting EtO, a known carcinogen, into the air from the facilities before fully studying, researching, or understanding the deleterious impact that EtO inhalation exposure has on the health, safety, and well-being of those in the surrounding area; and

cc. deliberately concealing its knowledge concerning the deleterious impact that EtO inhalation exposure has on Plaintiffs, their decedents, and others who lived or worked near the facilities.

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301. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Griffith Foods International, Inc. in an amount to be determined by a trier of fact.

COUNT 16
Ultrahazardous Activity / Strict Liability – Griffith Foods International, Inc. (Griffith Labs)

302. Plaintiffs incorporate by reference all allegations contained herein.

303. The use and emission of EtO from the facilities constitutes an ultrahazardous activity.

304. The use and emission of EtO created a high degree of risk to Plaintiffs, their decedents, and others who lived or worked near the facilities such that the likelihood of cancer caused by its use and emission of EtO is as much as 64 times the level of acceptable risk.

305. The use and emission of EtO is especially inappropriate given the area in which it is located; namely, within a densely populated residential area.

306. While the activities conducted at the facilities are exceedingly dangerous, they offer little to no value to the surrounding community.

307. Griffith Labs is strictly liable for any injuries proximately resulting therefrom.

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308. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Griffith Foods International, Inc. in an amount to be determined by a trier of fact.

COUNT 17
Civil Battery – Griffith Foods International, Inc. (Griffith Labs)

309. Plaintiffs incorporate by reference all allegations contained herein.

310. At all relevant times, Griffith Labs knew that EtO emitted from the facilities would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it.

311. Notwithstanding this knowledge, Griffith Labs caused and/or set in motion events that caused EtO to come in contact with Plaintiffs and their decedents.

312. Plaintiffs and their decedents' contact with EtO was offensive and harmful.

313. Griffith Labs intentionally emitted EtO into the air despite its knowledge that it would contact people who lived or worked near the facilities.

314. Plaintiffs and their decedents did not consent to contact with EtO emitted from the facilities.

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315. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Griffith Foods International, Inc. in an amount to be determined by a trier of fact.

COUNT 18
Public Nuisance – Griffith Foods International, Inc. (Griffith Labs)

316. Plaintiffs incorporate by reference all allegations contained herein.

317. The general public has a common right to breathe in clean air without dangerous levels of carcinogens such as EtO. The Illinois Constitution guarantees these rights to its citizens. Article XI of the Illinois Constitution of 1970, Environment, Section 1, Public Policy - Legislative Responsibility, provides that:

> The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.

Article XI of the Illinois Constitution of 1970, Environment, Section 2, Rights of Individuals, provides that:

> Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.

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318. The activities of Griffith Labs as described above unreasonably infringed upon and/or transgressed this public right by causing those who lived and worked in the area surrounding the facilities to inhale high levels of EtO on a routine and constant basis, and further, to be exposed to air causing a substantially elevated risk of cancer.

319. Griffith Labs' use and emission of EtO is especially inappropriate given the area in which it is located; namely, within a densely populated residential area.

320. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Griffith Foods International, Inc. in an amount to be determined by a trier of fact.

COUNT 19
In Concert Liability – Griffith Foods International, Inc. (Griffith Labs)

321. Plaintiffs incorporate by reference all allegations contained herein.

322. Illinois law has adopted section 876 of the Restatement (Second) of Torts, entitled "Persons Acting In Concert," which holds liable persons who act "in concert" with another tortfeasor to cause harm. *E.g.*, *Woods v. Cole*, 181 Ill.2d 512 (1998).

323. Specifically, for harm resulting to a third person for the tortious conduct of another, one is subject to liability if he (a) does a tortious act in concert with the other or pursuant

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to a common design with him, or (b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other to so conduct himself, or (c) gives substantial assistance to the other in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to the third person.

324. The activities of Griffith Labs as described above, including those occurring subsequent to its October 1984 asset transfer to Micro-Biotrol Company: (a) were done in concert with the operators of the Willowbrook facility or pursuant to a common design with the operators, namely, to operate an ethylene oxide sterilization facility in a residential community with insufficient pollution controls and without warning to the community; (b) gave substantial assistance or encouragement to the Willowbrook facility operators knowing that such operators were breaching duties to Plaintiffs; and (c) gave substantial assistance to the Willowbrook facility operators to accomplish such tortious result and, when separately considered, Griffith Labs' conduct constituted an independent breach of duty to Plaintiffs.

325. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Griffith Foods International, Inc. in an amount to be determined by a trier of fact.

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COUNT 20
Negligence – Bob Novak

326. Plaintiffs incorporate by reference all allegations contained herein.

327. Beginning in August 2003, Mr. Novak was the Operations Manager at the Willowbrook facilities.

328. In that capacity, Mr. Novak was responsible for the operation of the facilities, coordinating and overseeing all activities in facility operations, which included testing and analysis to determine the nature and extent of EtO emissions.

329. At all relevant times, Mr. Novak had a duty to exercise ordinary care for the health, safety, and well-being of Plaintiffs, their decedents, and others who lived and worked in the area surrounding the facilities.

330. At all relevant times, Mr. Novak knew or should have known that the EtO emitted from the facilities would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it.

331. Mr. Novak breached his duty and failed to exercise ordinary care in one or more of the following ways:

a. by permitting chamber doors to remain open during and/or after the sterilization process and thereby allowing dangerous amounts of EtO to escape the chamber area in the facilities;

b. by permitting products that have been sterilized and are still off-gassing to be placed and stored in areas without pollution control and/or adequate ventilation system in the facilities;

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c. by allowing at least six chambers to run at the same time and thereby overloading the vacuum system such that pollution control for one or more chambers was inoperable and/or ineffective in the facilities;

d. by allowing exterior doors to remain open for unreasonable lengths of time in the facilities;

e. by failing to timely order and/or replace filters for the dry system and thereby allowing excess amounts of EtO emissions therefrom in the facilities;

f. by failing to properly monitor EtO emissions and/or document EtO emissions resulting in an inaccurate report on pollution relating to the facilities;

g. by failing to employ safe methods to adequately control, reduce, minimize, and/or mitigate EtO emissions from the facilities;

h. by permitting emissions of excessive, unnecessary, and/or dangerous volumes of EtO into air from the facilities;

i. by subjecting Plaintiffs, their decedents, and others who lived and worked near the facilities to an elevated cancer risk;

j. by failing to warn or advise Plaintiffs, their decedents, and others who lived and worked in the Willowbrook area that they were being exposed to EtO notwithstanding his knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer; and

k. by failing to a warn or advise Plaintiffs, their decedents, and others who lived and worked in the Willowbrook area that they were inhaling EtO notwithstanding his knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer.

332. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur

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and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Bob Novak in an amount to be determined by a trier of fact.

COUNT 21
Willful and Wanton Conduct – Bob Novak

333. Plaintiffs incorporate by reference all allegations contained herein.

334. At all relevant times, Mr. Novak had a duty to refrain from willful and wanton conduct and/or conduct that exhibits an utter indifference and/or conscious disregard to the health, safety, and well-being of Plaintiffs, their decedents, and others who lived and worked in the area surrounding the facilities.

335. At all relevant times, Mr. Novak knew that EtO emitting from the facilities would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it.

336. Mr. Novak breached his duty and was guilty of willful and wanton conduct in one or more of the following ways:

a. by approving test results and/or monitoring systems which provided misleading and inaccurate report on pollution relating to the facilities;

b. by permitting emissions of massive and unnecessary amounts of EtO into the air from the Facility notwithstanding his knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer;

c. by failing to warn or advise Plaintiffs, their decedents, and others who lived and worked in the Willowbrook area that they were being exposed

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to EtO notwithstanding his knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer;

d. by failing to a warn or advise Plaintiffs, their decedents, and others who lived and worked in the Willowbrook area that they were inhaling EtO notwithstanding his knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer;

e. by deliberately concealing his knowledge concerning the deleterious impact that EtO inhalation exposure has on people who lived or worked near the facilities; and

f. by subjecting Plaintiffs, their decedents, and others who lived and worked near the facilities to an elevated cancer risk without warning them of the same.

337. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Bob Novak in an amount to be determined by a trier of fact.

COUNT 22
Negligence – Roger Clark

338. Plaintiffs incorporate by reference all allegations contained herein.

339. Mr. Clark was the Maintenance Supervisor at the Willowbrook facilities from the late 1980s until approximately 2015.

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340. In that capacity, Mr. Clark was responsible for calibrating the internal EtO monitors and overseeing the sterilization process at the facilities.

341. At all relevant times, Mr. Clark had a duty to exercise ordinary care for the health, safety, and well-being of Plaintiffs, their decedents, and others who lived and worked in the area surrounding the facilities.

342. At all relevant times, Mr. Clark knew or should have known that the EtO emitting from the facilities would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it.

343. Mr. Clark breached his duty and failed to exercise ordinary care in one or more of the following ways:

a. by inaccurately calibrating and/or manipulating internal EtO monitors to allow for erroneous monitoring results and excessive levels of EtO in the facilities;

b. by failing to properly monitor EtO emissions and/or document EtO emissions resulting in an inaccurate report on pollution relating to the facilities;

c. by permitting chamber doors to remain open during and/or after the sterilization process and thereby allowing dangerous amounts of EtO to escape the chamber area in the facilities;

d. by permitting products that have been sterilized and are still off-gassing to be placed and stored in areas without pollution control and/or adequate ventilation system in the facilities;

e. by allowing at least six chambers to run at the same time and thereby overloading the vacuum system such that pollution control for one or more chambers was inoperable and/or ineffective in the facilities;

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f. by allowing exterior doors in the warehouse to remain open for unreasonable lengths of time in the facilities;

g. by failing to timely order and/or replace filters for the dry system and thereby allowing excess amounts of EtO emissions therefrom in the facilities;

h. by failing to employ safe methods to adequately control, reduce, minimize, and/or mitigate EtO emissions from the facilities;

i. by permitting emissions of excessive, unnecessary, and/or dangerous volumes of EtO into air from the facilities;

j. by subjecting Plaintiffs, their decedents, and others who lived or worked near the facilities to an elevated cancer risk;

k. by failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were being exposed to EtO notwithstanding his knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer; and

l. by failing to a warn or advise Plaintiffs, decedents, and others who lived or worked near the facilities that they were inhaling EtO notwithstanding his knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer.

344. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Roger Clark in an amount to be determined by a trier of fact.

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COUNT 23
Willful and Wanton Conduct – Roger Clark

345. Plaintiffs incorporate by reference all allegations contained herein.

346. At all relevant times, Mr. Clark had a duty to refrain from willful and wanton conduct and/or conduct that exhibits an utter indifference and/or conscious disregard to the health, safety, and well-being of Plaintiffs, their decedents, and others who lived and worked in the area surrounding the facilities.

347. At all relevant times, Mr. Clark knew that EtO emitting from the facilities would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it.

348. Mr. Clark breached his duty and was guilty of willful and wanton conduct in one or more of the following ways:

a. by deliberately falsifying test results and/or inaccurately calibrating and/or manipulating the monitoring systems to provide a misleading and inaccurate report on pollution relating to the facilities;

b. by permitting emissions of EtO into the air from the facilities notwithstanding his knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer;

c. by failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were being exposed to EtO notwithstanding his knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer;

d. by failing to a warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were inhaling EtO notwithstanding his knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer;

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e. by deliberately concealing his knowledge concerning the deleterious impact that EtO inhalation exposure had on people who lived or worked near the facilities; and

f. by subjecting Plaintiffs, their decedents, and others who lived or worked near the facilities to an elevated cancer risk without warning them of the same.

349. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against Roger Clark in an amount to be determined by a trier of fact.

COUNT 24
Negligence – GTCR

350. Plaintiffs incorporate by reference all allegations contained herein.

351. Along with Sterigenics, GTCR owned and operated the facilities since 2011.

352. In that capacity, GTCR had a duty to exercise ordinary care for the health, safety, and well-being of Plaintiffs, the decedents, and all those living and working in the area surrounding the facilities.

353. At all relevant times, GTCR knew or should have known that the EtO emitting from the facilities would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it.

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354. GTCR breached its duty and failed to exercise ordinary care in one or more of the following ways:

a. by emitting massive and unnecessary amounts of EtO into air from the facilities;

b. by using EtO as part of its sterilization process when safer alternatives could accomplish the same or similar business purpose without presenting the same level of risk to human health and well-being;

c. by placing its own economic interests above the health and well-being of Plaintiffs, their decedents, and others who lived or worked near the facilities;

d. by failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were being exposed to EtO;

e. by failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were inhaling EtO;

f. by failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that it was emitting a known carcinogen into the air from the facilities;

g. by failing to employ safe methods to adequately control, reduce, minimize, and/or mitigate EtO emissions from the facilities;

h. by failing to adequately study and test the effect of its EtO emissions from the facilities on the quality of air;

i. by failing to adequately study and test the effect of its EtO emissions from the facilities on the health and well-being of people who lived or worked near the facilities; and

j. by subjecting Plaintiffs, their decedents, and others who lived and worked near the facilities to an elevated cancer risk.

355. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and

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conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against GTCR, LLC in an amount to be determined by a trier of fact.

COUNT 25
Willful and Wanton Conduct – GTCR

356. Plaintiffs incorporate by reference all allegations contained herein.

357. At all relevant times, GTCR had a duty to refrain from willful and wanton conduct and/or conduct that exhibits an utter indifference and/or conscious disregard to the health, safety, and well-being of Plaintiffs, their decedents, and all those living and working in the area surrounding the facilities.

358. At all relevant times, GTCR knew that EtO emitting from the facilities would have a toxic, poisonous, and highly deleterious effect upon the health, safety, and well-being of persons inhaling it.

359. GTCR breached its duty and was guilty of willful and wanton conduct in one or more of the following ways:

a. by permitting emissions of massive and unnecessary amounts of EtO into the air from the facilities notwithstanding its knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer;

b. by failing to warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were being exposed to EtO

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notwithstanding its knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer;

c. by failing to a warn or advise Plaintiffs, their decedents, and others who lived or worked near the facilities that they were inhaling EtO notwithstanding its knowledge that EtO is toxic, poisonous, and causes adverse medical issues including, but not limited to, cancer;

d. by permitting emissions of EtO, a known carcinogen, into the air from the facilities before fully studying, researching, or understanding the deleterious impact that EtO inhalation exposure has on the health, safety, and well-being of those in the surrounding area;

e. by deliberately concealing its knowledge concerning the deleterious impact that EtO inhalation exposure has on people who lived or worked near the facilities; and

f. by subjecting Plaintiffs, their decedents, and others who lived or worked near the facilities to an elevated cancer risk without warning them of the same.

360. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against GTCR, LLC in an amount to be determined by a trier of fact.

COUNT 26
Public Nuisance - GTCR

361. Plaintiffs incorporate by reference all allegations contained herein.

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362. The general public has a common right to breathe in clean air without dangerous levels of carcinogens such as EtO. The Illinois Constitution guarantees these rights to its citizens. Article XI of the Illinois Constitution of 1970, Environment, Section 1, Public Policy - Legislative Responsibility, provides that:

> The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.

Article XI of the Illinois Constitution of 1970, Environment, Section 2, Rights of Individuals, provides that:

> Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.

363. GTCR's use and emission of EtO from the facilities substantially and unreasonably infringed upon and/or transgresses this public right. In particular, the activities of GTCR caused those who lived and worked in the area surrounding the facilities to inhale high levels of EtO on a routine and constant basis, and further, to be exposed to air causing a substantially elevated risk of cancer.

364. GTCR's use and emission of EtO is especially inappropriate given the area in which it is located; namely, within a densely populated residential area.

365. As a direct and proximate result of one or more of the foregoing acts or omissions, Plaintiffs and their decedents inhaled dangerous amounts of EtO and developed the diseases and

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conditions identified in their Short Form Complaints and, as a result, have been caused to incur and endure medical bills, lost wages, pain and suffering, mental anguish, disability, disfigurement, reduced life expectancy, loss of normal life, and death.

WHEREFORE Plaintiffs respectfully request that judgment be entered in their favor and against GTCR in an amount to be determined by a trier of fact.

Date: April 16, 2021

Respectfully submitted,

/s/ *Antonio M. Romanucci*
Antonio M. Romanucci

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APPEAL,PROTO,TERMED,VALDEZ

United States District Court
Northern District of Illinois - CM/ECF NextGen 1.8 (rev. 1.8.3) (Chicago)
CIVIL DOCKET FOR CASE #: 1:21-cv-04581

Sterigenics U.S., LLC v. National Union Fire Insurance Company of Pittsburgh, PA
Assigned to: Honorable Mary M. Rowland
Demand: $75,000
related Case: 1:21-cv-06403
Case in other court: 23-02670
24-01223
Cause: 28:1332 Diversity-Breach of Contract

Date Filed: 08/27/2021
Date Terminated: 07/25/2023
Jury Demand: Both
Nature of Suit: 110 Contract: Insurance
Jurisdiction: Diversity

Plaintiff

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Date Filed	#	Docket Text
08/27/2021	1	COMPLAINT filed by Sterigenics U.S., LLC; Jury Demand. Filing fee $ 402, receipt number 0752-18610597. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M)(Berkeley, Jill) (Entered: 08/27/2021)
08/27/2021	2	CIVIL Cover Sheet (Berkeley, Jill) (Entered: 08/27/2021)
08/27/2021	3	ATTORNEY Appearance for Plaintiff Sterigenics U.S., LLC by Jill B. Berkeley (Berkeley, Jill) (Entered: 08/27/2021)
08/27/2021	4	NOTIFICATION of Affiliates pursuant to Local Rule 3.2 by Sterigenics U.S., LLC (Berkeley, Jill) (Entered: 08/27/2021)
08/27/2021	5	ATTORNEY Appearance for Plaintiff Sterigenics U.S., LLC by Andrew Gordon May (May, Andrew) (Entered: 08/27/2021)
08/27/2021	6	ATTORNEY Appearance for Plaintiff Sterigenics U.S., LLC by Paul R. Walker Bright (Walker Bright, Paul) (Entered: 08/27/2021)
08/27/2021		CASE ASSIGNED to the Honorable Mary M. Rowland. Designated as Magistrate Judge the Honorable Maria Valdez. Case assignment: Random assignment. (cp,) (Entered: 08/27/2021)
08/28/2021	7	MOTION for Leave to Appear Pro Hac Vice Filing fee $ 150, receipt number 0752-18614312. (Chiricosta, Matthew) (Entered: 08/28/2021)
08/30/2021	8	MINUTE entry before the Honorable Mary M. Rowland: Motion to appear pro hac vice by Matthew A. Chiricosta 7 is granted. Counsel is reminded to become familiar with this court's local rules (including the rules requiring local counsel and describing this court's trial bar). Mailed notice. (dm,) (Entered: 08/30/2021)
08/31/2021	9	MOTION for Leave to Appear Pro Hac Vice Filing fee $ 150, receipt number 0752-18623770. (Sullivan, Kerry) (Entered: 08/31/2021)
09/01/2021	10	MINUTE entry before the Honorable Mary M. Rowland: Motion to appear pro hac vice by Kerry James Sullivan 9 is granted. Counsel is reminded to become familiar with this

		court's local rules (including the rules requiring local counsel and describing this court's trial bar). Mailed notice. (dm,) (Entered: 09/01/2021)
09/07/2021	11	WAIVER OF SERVICE returned executed by Sterigenics U.S., LLC. National Union Fire Insurance Company of Pittsburgh, PA waiver sent on 9/3/2021, answer due 11/2/2021. (Chiricosta, Matthew) (Entered: 09/07/2021)
09/09/2021	12	ATTORNEY Appearance for Defendant National Union Fire Insurance Company of Pittsburgh, PA by Joseph Peter Lang (Lang, Joseph) (Entered: 09/09/2021)
09/09/2021	13	ATTORNEY Appearance for Defendant National Union Fire Insurance Company of Pittsburgh, PA by Matthew J Fink (Fink, Matthew) (Entered: 09/09/2021)
09/30/2021	14	MINUTE entry before the Honorable Mary M. Rowland: On or before 11/23/21, the parties shall file a joint initial status report. A template for the Initial Status Report, setting forth the information required, may be found at http://www.ilnd.uscourts.gov/Judges.aspx by clicking on Judge Rowland's name and then again on the link entitled 'Initial Status Conference.' The litigants are further ordered to review all of Judge Rowland's standing orders and the information available on her webpage. The court will enter a scheduling order in response. Mailed notice. (dm,) (Entered: 09/30/2021)
10/29/2021	15	*First* AMENDED complaint by Sterigenics U.S., LLC against National Union Fire Insurance Company of Pittsburgh, PA (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M)(Chiricosta, Matthew) (Entered: 10/29/2021)
11/02/2021	16	MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA for extension of time to file answer *or to otherwise plead, Unopposed* (Attachments: # 1 Text of Proposed Order)(Lang, Joseph) (Entered: 11/02/2021)
11/03/2021	17	MINUTE entry before the Honorable Mary M. Rowland: Defendant's unopposed motion for extension of time to answer or otherwise plead 16 is granted. Defendant shall answer or otherwise plead by 11/19/21. Mailed notice. (dm,) (Entered: 11/03/2021)
11/11/2021	18	ATTORNEY Appearance for Defendant National Union Fire Insurance Company of Pittsburgh, PA by Samuel Yiran Chen (Chen, Samuel) (Entered: 11/11/2021)
11/18/2021	19	ANSWER to amended complaint *and Affirmative Defenses* by National Union Fire Insurance Company of Pittsburgh, PA(Lang, Joseph) (Entered: 11/18/2021)
11/18/2021	20	NOTIFICATION of Affiliates pursuant to Local Rule 3.2 by National Union Fire Insurance Company of Pittsburgh, PA (Lang, Joseph) (Entered: 11/18/2021)
11/23/2021	21	Joint Initial Status Report by National Union Fire Insurance Company of Pittsburgh, PA (Lang, Joseph) (Entered: 11/23/2021)
11/30/2021	22	MINUTE entry before the Honorable Mary M. Rowland: The court has reviewed the joint initial status report. Rule 26(a)(1) disclosures should be exchanged by December 10, 2021. Telephonic status set for 12/13/21 at 9:30am. Counsel shall call 866-434-5269; access code 3751971. Mailed notice. (dm,) (Entered: 11/30/2021)
12/13/2021	23	MINUTE entry before the Honorable Mary M. Rowland: Telephonic status hearing held. Counsel appeared telephonically. Plaintiff's motion for judgment on the pleadings is due 12/16/21. Plaintiff is granted leave to file a brief of 25 pages. Telephonic status hearing set for 12/22/21 at 10:00am to discuss whether any discovery is appropriate on motion as to the duty to defend claim. Counsel shall call 866-434-5269; access code 3751971. Mailed notice. (dm,) (Entered: 12/13/2021)

12/15/2021	24	MOTION by Plaintiff Sterigenics U.S., LLC for judgment on the pleadings *on Counts I and III of Sterigenics U.S., LLC's First Amended Complaint* (Sullivan, Kerry) (Entered: 12/15/2021)
12/15/2021	25	MEMORANDUM by Sterigenics U.S., LLC in support of motion for judgment on the pleadings 24 (Attachments: # 1 Exhibit A -- National Union Policy No. GLA-945-70-58RA, # 2 Exhibit B -- National Union Policy No. GLA-194-00-11RA)(Sullivan, Kerry) (Entered: 12/15/2021)
12/22/2021	26	MINUTE entry before the Honorable Mary M. Rowland: Telephonic status hearing held. Counsel appeared telephonically. Based on discussions held regarding Plaintiff's motion for partial judgment on the pleadings 24 , the court will set a briefing schedule. Defendant's response limited to 25 pages is due 2/4/22. Plaintiff's reply, limited to 15 pages, is due 2/25/22. Mailed notice. (dm,) (Entered: 12/22/2021)
01/27/2022	27	MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA for extension of time to file response/reply *Unopposed* (Attachments: # 1 Text of Proposed Order)(Lang, Joseph) (Entered: 01/27/2022)
01/28/2022	28	MINUTE entry before the Honorable Mary M. Rowland: Defendant's unopposed motion for extension of time and leave to file reply 27 is granted. National Union's Cross-Motion for Judgment on the Pleadings and Response to Sterigenics's Motion for Partial Judgment on the Pleadings is due February 11, 2022; Sterigenics's Reply in Support of its own Motion and Response to National Union's Cross-Motion is due March 4, 2022; and, National Union's Reply in Support of its Cross-Motion is due March 18, 2022 and is limited to 5 pages. Mailed notice. (dm,) (Entered: 01/28/2022)
02/02/2022	29	MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA to reassign case *Unopposed* (Attachments: # 1 Exhibit Complaint, # 2 Exhibit Answer and Affirmative Defenses)(Lang, Joseph) (Entered: 02/02/2022)
02/04/2022	30	MINUTE entry before the Honorable Mary M. Rowland: Defendant's unopposed motion to reassign case as related pursuant to LR 40.4 29 is granted. The Court requests the Executive Committee reassign the case captioned, Griffith Foods International Inc. f/k/a Griffith Laboratories U.S.A., Inc., et al. v. National Union Fire Insurance Company of Pittsburgh, Pa., 21 cv 6403 (the "Griffith Lawsuit") currently pending before the Honorable Robert Gettleman, to this Court. Both the Griffith Lawsuit and the Sterigenics case arise out of hundreds of cases, consolidated in state court, that allege Sterigenics, Griffith Foods International, Inc. and related entities conduct sterilization operations that emit ethylene oxide exposing hundreds of people to carcinogens. Both defendants in the underlying actions deny the allegations. The federal cases are declaratory judgment actions seeking defense and coverage from National Union Fire Insurance Co. The two cases have common questions of law. The Plaintiffs in the federal cases are seeking declaratory judgments coverage under the same Policies. Both plaintiffs seek a declaration that the "pollution" exception does not apply. Both cases are pending in this court and having one judge handle them will promote judicial efficiency. The Sterigenics case is in the early pleading stages, as is the Griffith Lawsuit. Finally, the cases are susceptible to resolution in a single case. The Court believes the factors contained in LR 40.3(a) and (b) are met. Mailed notice. (dm,) (Entered: 02/04/2022)
02/11/2022	31	MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA for judgment on the pleadings (Lang, Joseph) (Entered: 02/11/2022)
02/11/2022	32	RESPONSE by National Union Fire Insurance Company of Pittsburgh, PAin Support of MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA for judgment on the pleadings 31 , MOTION by Plaintiff Sterigenics U.S., LLC for judgment on the pleadings *on Counts I and III of Sterigenics U.S., LLC's First Amended Complaint*

		24 (Attachments: # 1 Exhibit Third Amended Master Complaint)(Lang, Joseph) (Entered: 02/11/2022)
02/28/2022	33	MOTION by Plaintiff Sterigenics U.S., LLC for extension of time to file response/reply *Unopposed* (Attachments: # 1 Text of Proposed Order)(Chiricosta, Matthew) (Entered: 02/28/2022)
03/01/2022	34	MINUTE entry before the Honorable Mary M. Rowland: Plaintiff's unopposed motion for extension of time and leave to file a reply in support of its motion for partial judgment on the pleadings 33 is granted. Sterigenics U.S.'s combined Reply in Support of its Motion for Partial Judgment on the Pleadings and Response in Opposition to National Union's Cross-Motion is due on March 18, 2022; and National Union's Reply Brief in Support of its Cross-Motion for Judgment on the Pleadings is due on April 8, 2022 Mailed notice. (dm,) (Entered: 03/01/2022)
03/18/2022	35	REPLY by Plaintiff Sterigenics U.S., LLC to memorandum in support of motion, 25 *and Brief in Opposition to National Union's Motion for Judgment on the Pleadings* (Chiricosta, Matthew) (Entered: 03/18/2022)
03/29/2022	36	MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA for extension of time to file response/reply *Unopposed* (Attachments: # 1 Text of Proposed Order 2022-03-29 [PROPOSED] Order Granting Motion for Extension of Time and Excess Page Limits)(Chen, Samuel) (Entered: 03/29/2022)
03/30/2022	37	MINUTE entry before the Honorable Mary M. Rowland: Defendant's unopposed motion for extension of time and permission to file brief in excess of page limits 36 is granted. Defendant's reply is due 4/15/22. Brief is not to exceed 10 pages. Mailed notice. (dm,) (Entered: 03/30/2022)
04/12/2022	38	REPLY by Defendant National Union Fire Insurance Company of Pittsburgh, PA to reply 35 *in support of Motion for Judgment on the Pleadings* (Lang, Joseph) (Entered: 04/12/2022)
08/03/2022	39	MINUTE entry before the Honorable Mary M. Rowland: For the reasons explained in the accompanying memorandum opinion and order, this Court concludes that National Union owes Sterigenics a duty to defend the underlying fourth amended complaint. As a result, this Court grants Sterigenics' partial motion for judgment on the pleadings 24 and denies National Union's motion for judgment on the pleadings 31 . This Court sets a telephonic status hearing for 8/25/22 at 10:00 a.m. Parties shall call 866-434-5269; access code 3751971. Mailed notice. (dm,) (Entered: 08/03/2022)
08/03/2022	40	MEMORANDUM Opinion and Order Signed by the Honorable Mary M. Rowland on 8/3/2022. Mailed notice. (dm,) (Entered: 08/03/2022)
08/25/2022	41	MINUTE entry before the Honorable Mary M. Rowland: Telephonic status hearing held. Counsel appeared telephonically. Plaintiff shall provide redacted costs of defense to Defendant by 10/28/22. The court requests briefing on several issues raised on the record. Opening briefs due 9/23/22; responses due 10/14/22. The court will rule by mail. Strict compliance with the Local Rules on page limitations is required. Mailed notice. (dm,) (Entered: 08/25/2022)
09/23/2022	42	MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA for leave to file *File Counterclaims* (Lang, Joseph) (Entered: 09/23/2022)
09/23/2022	43	MEMORANDUM by National Union Fire Insurance Company of Pittsburgh, PA in support of motion for leave to file 42 *Counterclaims* (Attachments: # 1 Exhibit Exhibit A) (Lang, Joseph) (Entered: 09/23/2022)

09/23/2022	44	MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA for leave to file *Third-Party Complaint* (Lang, Joseph) (Entered: 09/23/2022)
09/23/2022	45	MEMORANDUM by National Union Fire Insurance Company of Pittsburgh, PA in support of motion for leave to file 44 *Third-Party Complaint* (Attachments: # 1 Exhibit Exhibit A)(Lang, Joseph) (Entered: 09/23/2022)
09/23/2022	46	STATUS Report *Regarding Case Management* by National Union Fire Insurance Company of Pittsburgh, PA (Lang, Joseph) (Entered: 09/23/2022)
09/23/2022	47	MEMORANDUM by Sterigenics U.S., LLC *Joint Opening Brief of Sterigenics U.S., LLC, Griffith Foods International Inc., and Griffith Foods Group Inc. in Response to the Court's August 25, 2022 Minute Entry* (Chiricosta, Matthew) (Entered: 09/23/2022)
09/28/2022	48	MINUTE entry before the Honorable Mary M. Rowland: Video status hearing set for 10/25/22 at 1:00 PM to discuss impact of the verdict in the underlying case and the claim for indemnification; and Defendant's motion to file counterclaims and to set briefing on Defendant's motion for leave to file third-party complaint. Counsel of record will receive an email with a link to join the video conference prior to the hearing. Members of the public and media will be able to call in to listen to this hearing. The call-in number is 650-479-3207 and the call-in ID is 1801732451. Persons granted remote access to proceedings are reminded of the general prohibition against photographing, recording, and rebroadcasting of court proceedings. Violation of these prohibitions may result in sanctions, including removal of court issued media credentials, restricted entry to future hearings, denial of entry to future hearings, or any other sanctions deemed necessary by the Court. Mailed notice. (dm,) (Entered: 09/28/2022)
10/03/2022	49	MINUTE entry before the Honorable Mary M. Rowland: On the court;s own motion, video status hearing set for 10/25/22 is re-set to 10/28/22 at 10:00 AM. All other aspects of Judge Rowland's 9/28/22 order remain unchanged. Mailed notice. (dm,) (Entered: 10/03/2022)
10/14/2022	50	MINUTE entry before the Honorable Mary M. Rowland: Video status on 10/28/22 is stricken. Plaintiffs' response to Defendants' motions for leave to file counterclaims 42 and motion for leave to file third party complaint 44 is due 11/4/22. Defendants' reply due 11/18/22. Strict compliance with the Local Rules on page limitations is required. Mailed notice. (dm,) (Entered: 10/14/2022)
10/14/2022	51	RESPONSE by Plaintiff Sterigenics U.S., LLC to status report 46 (Chiricosta, Matthew) (Entered: 10/14/2022)
10/14/2022	52	RESPONSE by Defendant National Union Fire Insurance Company of Pittsburgh, PA to memorandum 47 *Joint Opening Brief of Sterigenics and Griffith* (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B)(Lang, Joseph) (Entered: 10/14/2022)
10/28/2022	53	AGREED CONFIDENTIALITY ORDER Signed by the Honorable Mary M. Rowland on 10/28/2022. Mailed notice. (dm,) (Entered: 10/28/2022)
11/04/2022	54	RESPONSE by Sterigenics U.S., LLCin Opposition to MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA for leave to file *File Counterclaims* 42 (Chiricosta, Matthew) (Entered: 11/04/2022)
11/04/2022	55	RESPONSE by Sterigenics U.S., LLCin Opposition to MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA for leave to file *Third-Party Complaint* 44 (Chiricosta, Matthew) (Entered: 11/04/2022)
11/11/2022	56	MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA for extension of time to file response/reply as to response in opposition to motion 54 ,

		response in opposition to motion 55 *Unopposed* (Attachments: # 1 Text of Proposed Order)(Lang, Joseph) (Entered: 11/11/2022)
11/15/2022	57	MINUTE entry before the Honorable Mary M. Rowland: Defendant's unopposed motion for extension of time 56 is granted. National Union's Reply in support of its Motion for Leave to File Counterclaims and Reply in support of its Motion for Leave to File Third-Party Complaint is due December 2, 2022. Mailed notice. (dm,) (Entered: 11/15/2022)
12/02/2022	58	REPLY by National Union Fire Insurance Company of Pittsburgh, PA to memorandum in support of motion 43 , MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA for leave to file *File Counterclaims* 42 (Attachments: # 1 Exhibit Exhibit 1)(Lang, Joseph) (Entered: 12/02/2022)
12/02/2022	59	REPLY by National Union Fire Insurance Company of Pittsburgh, PA to MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA for leave to file *Third-Party Complaint* 44 , memorandum in support of motion 45 (Lang, Joseph) (Entered: 12/02/2022)
12/12/2022	60	MOTION by Plaintiff Sterigenics U.S., LLC for protective order (Attachments: # 1 Exhibit A - Email Chains, # 2 Exhibit B - National Union's First Set of Document Requests to Sterigenics, # 3 Exhibit C - National Union's Second Set of Document Requests to Sterigenics, # 4 Exhibit D - National Union's First Set of Document Requests to the Griffith Parties, # 5 Exhibit E - National Union's Second Set of Document Requests to the Griffith Parties)(Chiricosta, Matthew) (Entered: 12/12/2022)
12/12/2022	61	Entered in Error. Modified on 12/13/2022 (kl,). (Entered: 12/12/2022)
12/13/2022	62	MINUTE entry before the Honorable Mary M. Rowland: Defendant may file a response to Plaintiff's motion limited to 10 pages. No reply at this time. Mailed notice. (dm,) (Entered: 12/13/2022)
12/14/2022	63	MINUTE entry before the Honorable Mary M. Rowland: The Court's prior order 62 is clarified to state that Defendant's response brief is due 1/9/23. Mailed notice. (dm,) (Entered: 12/14/2022)
12/29/2022	64	ANNUAL REMINDER: Pursuant to Local Rule 3.2 (Notification of Affiliates), any nongovernmental party, other than an individual or sole proprietorship, must file a statement identifying all its affiliates known to the party after diligent review or, if the party has identified no affiliates, then a statement reflecting that fact must be filed. An affiliate is defined as follows: any entity or individual owning, directly or indirectly (through ownership of one or more other entities), 5% or more of a party. The statement is to be electronically filed as a PDF in conjunction with entering the affiliates in CM/ECF as prompted. As a reminder to counsel, parties must supplement their statements of affiliates within thirty (30) days of any change in the information previously reported. This minute order is being issued to all counsel of record to remind counsel of their obligation to provide updated information as to additional affiliates if such updating is necessary. If counsel has any questions regarding this process, this LINK will provide additional information. Signed by the Executive Committee on 12/29/2022: Mailed notice. (tg,) (Entered: 12/29/2022)
01/09/2023	65	RESPONSE by National Union Fire Insurance Company of Pittsburgh, PAin Opposition to MOTION by Plaintiff Sterigenics U.S., LLC for protective order 60 (Attachments: # 1 Exhibit Exhibit 1)(Lang, Joseph) (Entered: 01/09/2023)
02/02/2023	66	MINUTE entry before the Honorable Mary M. Rowland: Telephonic status hearing held. Counsel appeared telephonically. For the reasons stated on the record, Plaintiffs' joint motion for protective order 60 is granted. Sterigenics' motion for past defense costs is due within 14 days. Parties' agreed proposed briefing schedule on Plaintiff's motion shall be

		sent to the court's proposed order mailbox for entry. A status will be set after a ruling is issued on the pending fully briefed motions. Mailed notice. (dm,) (Entered: 02/03/2023)
02/16/2023	67	SEALED EXHIBIT by Plaintiff Sterigenics U.S., LLC *Exhibit 2 to Sterigenics U.S., LLC's Motion for Past Defense Costs* (Chiricosta, Matthew) (Entered: 02/16/2023)
02/16/2023	68	MOTION by Plaintiff Sterigenics U.S., LLC to seal document exhibit 67 *2 to Sterigenics U.S., LLC's Motion for Past Defense Costs* (Chiricosta, Matthew) (Entered: 02/16/2023)
02/16/2023	69	MOTION by Plaintiff Sterigenics U.S., LLCfor Past Defense Costs (Attachments: # 1 Exhibit 1 - Declaration of Martha Stevens Sullivan, # 2 Exhibit 3 - Susan Kamuda Verdict Form, # 3 Exhibit 4 - Theresa Fornek Judgment Order, # 4 Exhibit 5 - 1.9.23 Press Release)(Chiricosta, Matthew) (Entered: 02/16/2023)
02/17/2023	70	MINUTE entry before the Honorable Mary M. Rowland: Plaintiff's motion for leave to file exhibit under seal 68 is granted. Mailed notice. (dm,) (Entered: 02/17/2023)
03/02/2023	71	MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA to dismiss (Chen, Samuel) (Entered: 03/02/2023)
03/02/2023	72	MEMORANDUM by National Union Fire Insurance Company of Pittsburgh, PA in support of motion to dismiss 71 (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Chen, Samuel) (Entered: 03/02/2023)
03/23/2023	73	RESPONSE by Sterigenics U.S., LLCin Opposition to MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA to dismiss 71 (Attachments: # 1 Exhibit A - Transcript of 2.2.23 Status Hearing)(Chiricosta, Matthew) (Entered: 03/23/2023)
03/24/2023	74	MOTION by Plaintiff Sterigenics U.S., LLCto Withdraw Proposed Briefing Schedule on Sterigenics U.S., LLC's Motion for Past Defense Costs *(Jointly Filed by the Parties)* (Chiricosta, Matthew) (Entered: 03/24/2023)
03/27/2023	75	MINUTE entry before the Honorable Mary M. Rowland: On 2/16/23 Sterigenics U.S., LLC submitted its motion for costs of defense. 69 The Court neglected to enter the agreed proposed briefing schedule. The parties now jointly request to withdraw that schedule as Plaintiff is going to submit redacted invoices in support of the motion for costs. The motion to withdraw proposed briefing schedule 74 is granted. Parties are to submit a status report on the docket proposing a revised briefing schedule, agreed if possible, by April 21, 2023. Mailed notice. (dm,) (Entered: 03/27/2023)
04/06/2023	76	REPLY by National Union Fire Insurance Company of Pittsburgh, PA to MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA to dismiss 71 (Chen, Samuel) (Entered: 04/06/2023)
04/21/2023	77	MOTION by Plaintiff Sterigenics U.S., LLC to set a briefing schedule *on Sterigenics U.S., LLC's Motion for Past Defense Costs* (Attachments: # 1 Exhibit A - Proposed Order) (Chiricosta, Matthew) (Entered: 04/21/2023)
04/24/2023	78	MINUTE entry before the Honorable Mary M. Rowland: Joint motion to set briefing schedule on Sterigenics U.S,. LLC's motion for past defense costs 77 is granted. National Union's Opposition to Sterigenics' Defense Costs Motion is due May 26, 2023; and Sterigenics' Reply in Support of its Defense Costs Motion is due June 16, 2023. The court will rule by mail. Mailed notice. (dm,) (Entered: 04/24/2023)
05/17/2023	79	MINUTE entry before the Honorable Mary M. Rowland: Video status hearing set for 5/19/23 at 10:00am. Parties should be prepared to discuss the current status of the underlying litigation and the impact if any on the pending motions. Counsel of record will receive an email with a link to join the video conference prior to the hearing. Members of the public and media will be able to call in to listen to this hearing. The call-in number is

		650-479-3207 and the call-in ID is 1801732451. Persons granted remote access to proceedings are reminded of the general prohibition against photographing, recording, and rebroadcasting of court proceedings. Violation of these prohibitions may result in sanctions, including removal of court issued media credentials, restricted entry to future hearings, denial of entry to future hearings, or any other sanctions deemed necessary by the Court. Mailed notice. (dm,) (Entered: 05/17/2023)
05/19/2023	80	MINUTE entry before the Honorable Mary M. Rowland: Video status hearing held. Parties discussed the pending motions before this court. The court will rule by mail. Mailed notice. (dm,) (Entered: 05/19/2023)
05/19/2023	81	MINUTE entry before the Honorable Mary M. Rowland: In light of counsel's informing the Court at today's hearing that Sterigenics recently moved to intervene in the state court coverage action in Cook County, Sterigenics should file a short status report by 5/23/23 informing this Court whether, like Griffith in 21-cv-06403, Sterigenics is also moving to voluntarily dismiss its remaining non-duty to defend claims in this case. Mailed notice. (dm,) (Entered: 05/19/2023)
05/22/2023	82	MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA for extension of time to file response/reply as to order on motion to set a briefing schedule,, terminate motion and R&R deadlines/hearings,, set motion and R&R deadlines/hearings, 78 (Attachments: # 1 Text of Proposed Order PROPOSED Order Granting Motion for Extension of Time)(Chen, Samuel) (Entered: 05/22/2023)
05/23/2023	83	STATUS Report *in Response to the Court's May 19, 2023 Minute Entry* by Sterigenics U.S., LLC (Chiricosta, Matthew) (Entered: 05/23/2023)
05/23/2023	84	MINUTE entry before the Honorable Mary M. Rowland: Defendant's unopposed motion for extension of time 82 is granted. National Union's Response in Opposition to Sterigenics U.S., LLC's Motion for Past Defense Costs is due June 2, 2023. Sterigenics U.S., LLC's Reply in Support of its Motion for Past Defense Costs is due June 16, 2023. Mailed notice. (dm,) (Entered: 05/23/2023)
05/24/2023	85	TRANSCRIPT OF PROCEEDINGS held on 5/19/23 before the Honorable Mary M. Rowland. Video status. Order Number: 45932. Court Reporter Contact Information: Laura Renke, OfficialTranscript@gmail.com, 312.435.6053. IMPORTANT: The transcript may be viewed at the court's public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through the Court Reporter/Transcriber or PACER. For further information on the redaction process, see the Court's web site at www.ilnd.uscourts.gov under Quick Links select Policy Regarding the Availability of Transcripts of Court Proceedings. Redaction Request due 6/14/2023. Redacted Transcript Deadline set for 6/26/2023. Release of Transcript Restriction set for 8/22/2023. (Renke, Laura) (Entered: 05/24/2023)
05/26/2023	86	MOTION by Plaintiff Sterigenics U.S., LLC to dismiss *Remaining Non-Duty to Defend Claims* (Attachments: # 1 Exhibit A - Griffith's Motion for Voluntary Dismissal of Remaining Non-Duty to Defend Claims, # 2 Exhibit B - National Union's Opposition to Griffith's

		Motion for Voluntary Dismissal of Remaining Non-Duty to Defend Claims)(Chiricosta, Matthew) (Entered: 05/26/2023)
05/30/2023	87	MINUTE entry before the Honorable Mary M. Rowland: Defendant's response to Plaintiff's motion to dismiss 86 is due 6/27/23. Plaintiff's reply is due 7/18/23. The court will rule by mail. Mailed notice. (dm,) (Entered: 05/30/2023)
06/02/2023	88	MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA for leave to file *Opposition Brief and Exhibits Under Seal* (Chen, Samuel) (Entered: 06/02/2023)
06/02/2023	89	SEALED DOCUMENT by Defendant National Union Fire Insurance Company of Pittsburgh, PA *Opposition to Plaintiff's Motion for Past Defense Costs* (Attachments: # 1 Exhibit 5 Part 1, # 2 Exhibit 5 Part 2, # 3 Exhibit 6, # 4 Exhibit 11, # 5 Exhibit 12, # 6 Exhibit 13, # 7 Exhibit 14, # 8 Exhibit 17)(Chen, Samuel) (Entered: 06/02/2023)
06/02/2023	90	RESPONSE by National Union Fire Insurance Company of Pittsburgh, PAin Opposition to MOTION by Plaintiff Sterigenics U.S., LLCfor Past Defense Costs 69 *Opposition to Plaintiff's Motion for Past Defense Costs* (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 7, # 6 Exhibit 8, # 7 Exhibit 9, # 8 Exhibit 10, # 9 Exhibit 10-1 to 10-508B, # 10 Exhibit 15, # 11 Exhibit 16, # 12 Exhibit 18)(Chen, Samuel) (Entered: 06/02/2023)
06/06/2023	91	MINUTE entry before the Honorable Mary M. Rowland: Defendant's motion for leave to file opposition brief and exhibits under seal 88 is granted. Mailed notice. (dm,) (Entered: 06/06/2023)
06/16/2023	92	SEALED EXHIBIT by Plaintiff Sterigenics U.S., LLC *Exhibit B to Sterigenics' Reply Brief in Support of its Motion for Past Defense Costs -- Exhibit 1 to Supplemental Declaration of Martha Stevens Sullivan* (Chiricosta, Matthew) (Entered: 06/16/2023)
06/16/2023	93	MOTION by Plaintiff Sterigenics U.S., LLC to seal document exhibit 92 (Chiricosta, Matthew) (Entered: 06/16/2023)
06/16/2023	94	REPLY by Plaintiff Sterigenics U.S., LLC *in Support of Motion for Past Defense Costs* (Attachments: # 1 Exhibit A - Supplemental Declaration of Martha Stevens Sullivan) (Chiricosta, Matthew) (Entered: 06/16/2023)
06/21/2023	95	MINUTE entry before the Honorable Mary M. Rowland: Plaintiff's motion for leave to file exhibit under seal 93 is granted. Mailed notice. (dm,) (Entered: 06/21/2023)
06/27/2023	96	RESPONSE by National Union Fire Insurance Company of Pittsburgh, PAin Opposition to MOTION by Plaintiff Sterigenics U.S., LLC to dismiss *Remaining Non-Duty to Defend Claims* 86 (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Chen, Samuel) (Entered: 06/27/2023)
07/18/2023	97	REPLY by Plaintiff Sterigenics U.S., LLC to motion to dismiss, 86 *in Support of Motion for Voluntary Dismissal of Remaining Non-Duty to Defend Claims* (Chiricosta, Matthew) (Entered: 07/18/2023)
07/25/2023	98	MEMORANDUM Opinion and Order: In Griffith, 21-cv-06403, National Union's motion for leave to file counterclaims 32 , motion for leave to file a third-party complaint 34 , and Rule 12(b)(7) motion to dismiss 68 are denied; the Griffith Plaintiffs' motion to dismiss the remaining non-duty to defend claims 65 is granted; and the Griffith Plaintiffs' motion for past defense costs 59 is granted as modified in their reply brief. Further, in

		Sterigenics, 21-cv-04581, National Union's motion for leave to file counterclaims 42 , motion for leave to file a third-party complaint 44 , and National Union's motion to dismiss 71 are denied; Sterigenics' motion to dismiss the remaining non-duty to defend claims 86 is granted, and Sterigenics' motion for past defense costs 69 is granted as modified in its reply brief. The Court has declared that National Union owes Griffith and Sterigenics a duty to defend the underlying fourth amended complaint and owes Griffith $16,017,702.62 in past defense costs and owes Sterigenics $75,502,938.25 in past defense costs. The Clerk is directed to enter judgment accordingly. Civil case terminated. Signed by the Honorable Mary M. Rowland on 7/25/2023. (See attached Order for further detail.)Mailed notice. (dm,) (Entered: 07/25/2023)
07/25/2023	99	MINUTE entry before the Honorable Mary M. Rowland: The sole issue remaining is Plaintiffs' indication that they intend to seek additional defense costs. The parties are to confer and file a status report by August 21, 2023 indicating whether this final matter can be resolved or proposing a briefing schedule. Mailed notice. (dm,) (Entered: 07/25/2023)
07/25/2023	100	ENTERED JUDGMENT on 7/25/2023. Mailed notice. (dm,) (Entered: 07/25/2023)
08/17/2023	101	SEALED EXHIBIT by Plaintiff Sterigenics U.S., LLC *Exhibit B to Sterigenics' Motion for Prejudgment and Postjudgment Interest on the July 25, 2023 Judgment - Exhibit 1 to Declaration of Martha Stevens Sullivan* (Chiricosta, Matthew) (Entered: 08/17/2023)
08/17/2023	102	MOTION by Plaintiff Sterigenics U.S., LLC to seal document exhibit 101 (Chiricosta, Matthew) (Entered: 08/17/2023)
08/17/2023	103	MOTION by Plaintiff Sterigenics U.S., LLCPrejudgment and Postjudgment Interest on the July 25, 2023 Judgment (Attachments: # 1 Exhibit A to Sterigenics' Motion for Prejudgment and Postjudgment Interest on the July 25, 2023 Judgment - Declaration of Martha Stevens Sullivan, # 2 Exhibit C to Sterigenics' Motion for Prejudgment and Postjudgment Interest on the July 25, 2023 Judgment - Federal Reserve Interest Table for Week of July 17, 2023) (Chiricosta, Matthew) (Entered: 08/17/2023)
08/18/2023	104	MINUTE entry before the Honorable Mary M. Rowland: Plaintiff's motion for leave to file exhibit under seal 102 is granted. Mailed notice. (dm,) (Entered: 08/18/2023)
08/18/2023	105	MINUTE entry before the Honorable Mary M. Rowland: Defendant has until 9/14/23 to file any objections to Plaintiff's motion for prejudgment and post judgment interest; reply due 9/28/23. Mailed notice. (dm,) (Entered: 08/18/2023)
08/21/2023	106	STATUS Report *Pursuant to the Court's July 25, 2023 Minute Entry* by Sterigenics U.S., LLC (Chiricosta, Matthew) (Entered: 08/21/2023)
08/23/2023	107	MINUTE entry before the Honorable Mary M. Rowland: The court has reviewed the joint status report. Plaintiff's motion for additional costs is due 9/8/23. The court will set briefing schedules as other motions are filed. Mailed notice. (dm,) (Entered: 08/23/2023)
08/23/2023	108	ATTORNEY Appearance for Defendant National Union Fire Insurance Company of Pittsburgh, PA by Thomas H. Dupree, Jr (Dupree, Thomas) (Entered: 08/23/2023)
08/23/2023	109	NOTICE of appeal by National Union Fire Insurance Company of Pittsburgh, PA regarding orders 98 , 100 , 40 Filing fee $ 505, receipt number AILNDC-20962057. Receipt number: n (Dupree, Thomas) (Entered: 08/23/2023)

08/24/2023	110	NOTICE of Appeal Due letter sent to counsel of record regarding notice of appeal 109 . (daj,) (Entered: 08/24/2023)
08/24/2023	111	TRANSMITTED to the 7th Circuit the short record on notice of appeal 109 . Notified counsel (daj,) (Entered: 08/24/2023)
08/24/2023	112	ACKNOWLEDGMENT of receipt of short record on appeal regarding notice of appeal 109 ; USCA Case No. 23-2670. (daj,) (Entered: 08/24/2023)
08/24/2023	113	MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PAfor Approval of a Supersedeas Bond (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Text of Proposed Order)(Dupree, Thomas) (Entered: 08/24/2023)
08/28/2023	114	SEALED EXHIBIT by Plaintiff Sterigenics U.S., LLC *Exhibit B to Sterigenics' Motion for Additional Defense Costs -- Exhibit 1 to Declaration of Martha Stevens Sullivan* (Chiricosta, Matthew) (Entered: 08/28/2023)
08/28/2023	115	MOTION by Plaintiff Sterigenics U.S., LLC to seal document exhibit 114 (Chiricosta, Matthew) (Entered: 08/28/2023)
08/28/2023	116	MOTION by Plaintiff Sterigenics U.S., LLC for Additional Defense Costs (Attachments: # 1 Exhibit A to Sterigenics' Motion for Past Defense Costs - Declaration of Martha Stevens Sullivan)(Chiricosta, Matthew) (Entered: 08/28/2023)
08/28/2023	117	MINUTE entry before the Honorable Mary M. Rowland: Defendant National Union's Motion for Approval of a Supersedeas Bond 113 is granted. Enter Order. Mailed notice. (dm,) (Entered: 08/28/2023)
08/28/2023	118	ORDER Signed by the Honorable Mary M. Rowland on 8/28/2023. Mailed notice. (dm,) (Entered: 08/28/2023)
08/29/2023	119	MINUTE entry before the Honorable Mary M. Rowland: Plaintiff's motion for leave to file exhibit under seal 115 is granted. Mailed notice. (dm,) (Entered: 08/29/2023)
08/29/2023	120	MINUTE entry before the Honorable Mary M. Rowland: Response to Plaintiff's motion for additional defense costs due 9/19/23. Reply due 10/3/23. Mailed notice. (dm,) (Entered: 08/29/2023)
08/31/2023	121	SUPERSEDEAS BOND #994-942 in the amount of $ 79,527,744.86 posted by National Union Fire Insurance Company of Pittsburgh, PA (Document not Scanned). (gcy,) Modified on 9/8/2023 (gcy,). (Entered: 09/08/2023)
09/14/2023	122	RESPONSE by National Union Fire Insurance Company of Pittsburgh, PAin Opposition to MOTION by Plaintiff Sterigenics U.S., LLCPrejudgment and Postjudgment Interest on the July 25, 2023 Judgment 103 (Chen, Samuel) (Entered: 09/14/2023)
09/19/2023	123	RESPONSE by National Union Fire Insurance Company of Pittsburgh, PAin Opposition to MOTION by Plaintiff Sterigenics U.S., LLC for Additional Defense Costs 116 (Chen, Samuel) (Entered: 09/19/2023)
09/28/2023	124	REPLY by Plaintiff Sterigenics U.S., LLC to motion for miscellaneous relief, 103 (Attachments: # 1 Exhibit A - 9/8/23 Order from the Seventh Circuit, # 2 Exhibit B -

		Sterigenics' Jurisdictional Memorandum in the Seventh Circuit)(Chiricosta, Matthew) (Entered: 09/28/2023)
10/03/2023	125	REPLY by Plaintiff Sterigenics U.S., LLC to motion for miscellaneous relief 116 (Attachments: # 1 Exhibit A- Supplemental Declaration of Martha Stevens Sullivan) (Chiricosta, Matthew) (Entered: 10/03/2023)
01/03/2024	126	MINUTE entry before the Honorable Mary M. Rowland: In person hearing set for 9:00 AM on 1/11/24 for ruling on motion for Plaintiff's motion for additional defense costs 116 . Parties should be prepared for entry of FINAL judgment that includes a calculation of prejudgment interest to 1/11/24 and post-judgment interest thereafter and the declaratory judgment language from the order dated 8/3/22. [39, 40]. Mailed notice. (dm,) (Entered: 01/03/2024)
01/10/2024	127	SEALED EXHIBIT by Plaintiff Sterigenics U.S., LLC *Exhibit B to Sterigenics' Motion for Supplement Motions for Past Defense Costs, for Additional Defense Costs, and for Prejudgment and Postjudgment Interest with Updated Prejudgment Interest Calculations Through January 11, 2024 - Exhibit 1 to Declaration of Martha Stevens Sullivan dated January 9, 2024* (Chiricosta, Matthew) (Entered: 01/10/2024)
01/10/2024	128	SEALED EXHIBIT by Plaintiff Sterigenics U.S., LLC *Exhibit C to Sterigenics' Motion for Supplement Motions for Past Defense Costs, for Additional Defense Costs, and for Prejudgment and Postjudgment Interest with Updated Prejudgment Interest Calculations Through January 11, 2024 - Exhibit 2 to Declaration of Martha Stevens Sullivan dated January 9, 2024* (Chiricosta, Matthew) (Entered: 01/10/2024)
01/10/2024	129	MOTION by Plaintiff Sterigenics U.S., LLC to seal document exhibit, 127 , exhibit, 128 (Chiricosta, Matthew) (Entered: 01/10/2024)
01/10/2024	130	MOTION by Plaintiff Sterigenics U.S., LLC to supplement *Motions for Past Defense Costs, for Additional Defense Costs, and for Prejudgment and Postjudgment Interest with Updated Prejudgment Interest Calculations Through January 11, 2024* (Attachments: # 1 Exhibit A - Declaration of Martha Stevens Sullivan dated January 9, 2024)(Chiricosta, Matthew) (Entered: 01/10/2024)
01/10/2024	131	MOTION for Leave to Appear Pro Hac Vice Filing fee $ 150, receipt number AILNDC-21506213. (Harper, Denis) (Entered: 01/10/2024)
01/11/2024	132	ATTORNEY Appearance for Defendant National Union Fire Insurance Company of Pittsburgh, PA by Denis Nicholas Harper (Harper, Denis) (Entered: 01/11/2024)
01/11/2024	133	MINUTE entry before the Honorable Mary M. Rowland: In court hearing held. Enter Amended Judgment. In light of the Amended Judgment, Plaintiff's motions for prejudgment and post judgment interest 103 and motion for additional defense costs 116 are granted. The court grants Plaintiff's motion to seal 129 and Plaintiff's motion for leave to supplement motions 130 . Motion to appear pro hac vice by Nick Harper 131 is granted. Counsel is reminded to become familiar with this court's local rules. Civil case remains closed. Mailed notice. (dm,) (Entered: 01/12/2024)
01/11/2024	134	AMENDED JUDGMENT ENTRY Signed by the Honorable Mary M. Rowland on 1/11/2024. Mailed notice. (dm,) (Entered: 01/12/2024)
01/16/2024	135	CERTIFIED copy of order dated 12/22/2023 from the 7th Circuit regarding notice of appeal 109 ; Appellate case no. : 23-2679; On consideration of the papers filed in this

		appeal and review of the short record, IT IS ORDERED that this appeal is DISMISSED for lack of jurisdiction. (daj,) (Entered: 01/17/2024)
01/16/2024	136	MANDATE of USCA dated 01/16/2024 regarding notice of appeal 109 ; USCA No.23-2679 ; No record to be returned. (daj,) (Entered: 01/17/2024)
02/06/2024	137	TRANSCRIPT OF PROCEEDINGS held on 1/11/24 before the Honorable Mary M. Rowland. Motion hearing. Order Number: 47906. Court Reporter Contact Information: Laura Renke, OfficialTranscript@gmail.com, 312.435.6053. IMPORTANT: The transcript may be viewed at the court's public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through the Court Reporter/Transcriber or PACER. For further information on the redaction process, see the Court's web site at www.ilnd.uscourts.gov under Quick Links select Policy Regarding the Availability of Transcripts of Court Proceedings. Redaction Request due 2/27/2024. Redacted Transcript Deadline set for 3/8/2024. Release of Transcript Restriction set for 5/6/2024. (Renke, Laura) (Entered: 02/06/2024)
02/09/2024	138	NOTICE of appeal by National Union Fire Insurance Company of Pittsburgh, PA regarding orders 98 , 100 , 40 , 134 Filing fee $ 605, receipt number AILNDC-21626923. Receipt number: n (Dupree, Thomas) (Entered: 02/09/2024)
02/12/2024	139	MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA for bond *Approval of a Supersedeas Bond* , MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA for release of bond obligation *Unconditional Release, Discharge, and Exoneration of Previous Supersedeas Bond* (Attachments: # 1 Exhibit A, # 2 Text of Proposed Order)(Dupree, Thomas) (Entered: 02/12/2024)
02/13/2024	140	NOTICE of Appeal Due letter sent to counsel of record regarding notice of appeal 138 . (daj,) (Entered: 02/13/2024)
02/13/2024	141	TRANSMITTED to the 7th Circuit the short record on notice of appeal 138 . Notified counsel (daj,) (Entered: 02/13/2024)
02/13/2024	142	ACKNOWLEDGMENT of receipt of short record on appeal regarding notice of appeal 138 ; USCA Case No. 24-1223. (daj,) (Entered: 02/14/2024)
02/21/2024	143	MINUTE entry before the Honorable Mary M. Rowland: Defendant National Union's Motion for Approval of a Supersedeas Bond and for Unconditional Release, Discharge, and Exoneration of Previous Supersedeas Bond 139 is granted. Enter Order. Mailed notice. (dm,) (Entered: 02/21/2024)
02/21/2024	144	ORDER Signed by the Honorable Mary M. Rowland on 2/21/2024. Mailed notice. (dm,) (Entered: 02/21/2024)
02/22/2024	145	Notice of Removal of Material from the Custody of the Clerk's Office by Defendant's Counsel (Dckt. #121 Supersedeas Bond). (gcy,) (Entered: 02/22/2024)
04/11/2025	146	CERTIFIED COPY OF OPINION from the USCA for the Seventh; Argued 9/25/2024; Decided 4/11/2025 in USCA case no. 24-1223. (jp,) (Entered: 04/13/2025)

APPEAL,PROTO,TERMED,VALDEZ

United States District Court
Northern District of Illinois - CM/ECF NextGen 1.8 (rev. 1.8.3) (Chicago)
CIVIL DOCKET FOR CASE #: 1:21-cv-06403

Griffith Foods International Inc. et al v. National Union Fire Insurance Company of Pittsburgh, PA.
Assigned to: Honorable Mary M. Rowland
Demand: $75,000
related Case: 1:21-cv-04581
Case in other court: 23-02688
24-01217
Cause: 28:1332 Diversity-Breach of Contract

Date Filed: 11/30/2021
Date Terminated: 07/25/2023
Jury Demand: Both
Nature of Suit: 110 Contract: Insurance
Jurisdiction: Diversity

Plaintiff

Griffith Foods International Inc.
formerly known as
Griffith Laboratories U.S.A., Inc.

represented by **James M. Davis**
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Plaintiff

Griffith Foods Group Inc.
formerly known as
Griffith Laboratories Inc.

represented by **James M. Davis**
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ATTORNEY TO BE NOTICED

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V.

Defendant

National Union Fire Insurance Company of Pittsburgh, PA.

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Date Filed	#	Docket Text
11/30/2021	1	COMPLAINT filed by Griffith Foods International Inc. f/k/a Griffith Laboratories U.S.A., Inc., Griffith Foods Group Inc. f/k/a Griffith Laboratories Inc., ; Jury Demand. Filing fee $ 402, receipt number 0752-18920506. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K)(Davis, James) (Entered: 11/30/2021)
11/30/2021	2	CIVIL Cover Sheet (Davis, James) (Entered: 11/30/2021)
11/30/2021	3	ATTORNEY Appearance for Plaintiffs Griffith Foods Group Inc. f/k/a Griffith Laboratories Inc.,, Griffith Foods International Inc. f/k/a Griffith Laboratories U.S.A., Inc. by James M. Davis (Davis, James) (Entered: 11/30/2021)
11/30/2021	4	ATTORNEY Appearance for Plaintiffs Griffith Foods Group Inc. f/k/a Griffith Laboratories Inc.,, Griffith Foods International Inc. f/k/a Griffith Laboratories U.S.A., Inc. by Bradley Dlatt (Dlatt, Bradley) (Entered: 11/30/2021)
12/01/2021		CASE ASSIGNED to the Honorable Robert W. Gettleman. Designated as Magistrate Judge the Honorable Young B. Kim. Case assignment: Random assignment. (cxr,) (Entered: 12/01/2021)
12/01/2021		CLERK'S NOTICE: Pursuant to Local Rule 73.1(b), a United States Magistrate Judge of this court is available to conduct all proceedings in this civil action. If all parties consent to have the currently assigned United States Magistrate Judge conduct all proceedings in this case, including trial, the entry of final judgment, and all post-trial proceedings, all parties must sign their names on the attached Consent To form. This consent form is eligible for filing only if executed by all parties. The parties can also express their consent to jurisdiction by a magistrate judge in any joint filing, including the Joint Initial Status Report or proposed Case Management Order. (cxr,) (Entered: 12/01/2021)
12/01/2021	5	NOTIFICATION of Affiliates pursuant to Local Rule 3.2 by All Plaintiffs (Davis, James) (Entered: 12/01/2021)
12/08/2021	6	WAIVER OF SERVICE returned executed by Griffith Foods International Inc., Griffith Foods Group Inc.. National Union Fire Insurance Company of Pittsburgh, PA. waiver sent on 11/30/2021, answer due 1/31/2022. (Dlatt, Bradley) (Entered: 12/08/2021)
01/27/2022	7	ATTORNEY Appearance for Defendant National Union Fire Insurance Company of Pittsburgh, PA. by Joseph Peter Lang (Lang, Joseph) (Entered: 01/27/2022)
01/27/2022	8	ATTORNEY Appearance for Defendant National Union Fire Insurance Company of Pittsburgh, PA. by Matthew J Fink (Fink, Matthew) (Entered: 01/27/2022)
01/28/2022	9	ATTORNEY Appearance for Defendant National Union Fire Insurance Company of Pittsburgh, PA. by Samuel Yiran Chen (Chen, Samuel) (Entered: 01/28/2022)
01/31/2022	10	NOTIFICATION of Affiliates pursuant to Local Rule 3.2 by National Union Fire Insurance Company of Pittsburgh, PA. (Chen, Samuel) (Entered: 01/31/2022)
01/31/2022	11	ANSWER to Complaint with Jury Demand *and Affirmative Defenses* by National Union Fire Insurance Company of Pittsburgh, PA.(Lang, Joseph) (Entered: 01/31/2022)
02/01/2022	12	MINUTE entry before the Honorable Robert W. Gettleman: The parties are directed to file a Joint Status Report on this court's form on or before 2/15/2022. Mailed notice (Attachments: # 1 Joint Status Report) (cn). (Entered: 02/01/2022)

02/04/2022	13	EXECUTIVE COMMITTEE ORDER: Case reassigned to the Honorable Mary M. Rowland for all further proceedings pursuant to Local Rule 40.4. Honorable Robert W. Gettleman no longer assigned to the case. Signed by Executive Committee on 2/4/22. (aee,) (Entered: 02/07/2022)
02/08/2022	14	MINUTE entry before the Honorable Mary M. Rowland: On or before 2/22/22, the parties shall file a joint initial status report. A template for the Initial Status Report, setting forth the information required, may be found at http://www.ilnd.uscourts.gov/Judges.aspx by clicking on Judge Rowland's name and then again on the link entitled 'Initial Status Conference.' The litigants are further ordered to review all of Judge Rowland's standing orders and the information available on her webpage. The court will enter a scheduling order in response. Mailed notice. (dm,) (Entered: 02/08/2022)
02/11/2022	15	MOTION by Plaintiffs Griffith Foods Group Inc., Griffith Foods International Inc. for judgment on the pleadings *on AIG's Duty to Defend and Estoppel* (Davis, James) (Entered: 02/11/2022)
02/11/2022	16	MOTION by Plaintiffs Griffith Foods Group Inc., Griffith Foods International Inc. for leave to file *INSTANTER AN OVERLENGTH BRIEF IN SUPPORT OF THEIR MOTION FOR JUDGMENT ON THE PLEADINGS ON AIG'S DUTY TO DEFEND AND ESTOPPEL* (Attachments: # 1 Exhibit EXHIBIT A - PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR JUDGMENT ON THE PLEADINGS ON AIG'S DUTY TO DEFEND AND ESTOPPEL, # 2 Exhibit EXHIBIT 1 TO PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR JUDGMENT ON THE PLEADINGS ON AIG'S DUTY TO DEFEND AND ESTOPPEL) (Davis, James) (Entered: 02/11/2022)
02/14/2022	17	MINUTE entry before the Honorable Mary M. Rowland: The court requests the parties to propose a briefing schedule on Plaintiff's motion 15 . The parties are free to track the briefing schedule set in 21-4581 (dkt. 28) or deviate from it. The parties should submit the proposed schedule to Proposed_Order_Rowland@ilnd.uscourts.gov by 2/18/22. Mailed notice. (dm,) (Entered: 02/14/2022)
02/14/2022	18	MINUTE entry before the Honorable Mary M. Rowland: Plaintiffs' unopposed motion for leave to file instanter an overlength brief 16 is granted. Plaintiffs are granted leave to file brief of up to 25 pages. Plaintiffs shall file brief as a separate entry on the docket. AIG is granted leave to file an overlength brief of up to 25 pages in response to plaintiffs' motion for judgment on the pleadings and in support of AIG's expected cross-motion addressing the same. Plaintiffs are granted leave to file an overlength brief of up to 15 pages replying in support of its motion and responding to AIG's expected cross-motion. Mailed notice. (dm,) (Entered: 02/14/2022)
02/14/2022	19	MEMORANDUM *OF LAW IN SUPPORT OF THEIR MOTION FOR JUDGMENT ON THE PLEADINGS ON AIG'S DUTY TO DEFEND AND ESTOPPEL* (Attachments: # 1 Exhibit Exhibit 1 to Memorandum of Law in Support of MJP)(Davis, James) (Entered: 02/14/2022)
02/15/2022	20	MINUTE entry before the Honorable Mary M. Rowland:The court adopts the parties' proposed briefing schedule: Defendant's Response to Plaintiffs' motion for summary judgment and defendant's Cross-Motion and Memo in Support (liited to 25 pages) is due March 11, 2022; Plaintiffs' Reply in support of summary judgment and in response to defendant's motion for summary judgment (15 pages) is due March 25, 2022; Defendant's Reply (10 pages) is due April 8, 2022. Mailed notice. (dm,) (Entered: 02/15/2022)
02/22/2022	21	STATUS Report *Joint Initial Status Report* by Griffith Foods Group Inc., Griffith Foods International Inc. (Davis, James) (Entered: 02/22/2022)

02/23/2022	22	MINUTE entry before the Honorable Mary M. Rowland: The court has reviewed the joint initial status report. Rule 26(a)(1) disclosures due March 11, 2022. At the request of the parties, discovery is stayed pending the Court'sresolution of Plaintiffs' Rule 12(c) Motion, National Union's cross-motion, and the related Sterigenics motions. Mailed notice. (dm,) (Entered: 02/23/2022)
03/11/2022	23	MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA. for judgment on the pleadings. (ph,) (Entered: 03/16/2022)
03/11/2022	24	NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA'S COMBINED RESPONSE IN OPPOSITION TO PLAINTIFF'S "MOTION FOR JUDGMENT ON THE PLEADINGS ON AIG'S DUTY TO DEFEND AND ESTOPPEL" AND MEMORANDUM OF LAW IN SUPPORT OF ITS CROSS-MOTION FOR JUDGMENT ON THE PLEADINGS. (Exhibits) (ph,) (Entered: 03/16/2022)
03/25/2022	25	REPLY by Plaintiff Griffith Foods International Inc. *PLAINTIFFS' COMBINED REPLY MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR JUDGMENT ON THE PLEADINGS ON AIG'S DUTY TO DEFEND AND ESTOPPEL AND RESPONSE IN OPPOSITION TO DEFENDANT'S CROSS-MOTION FOR JUDGMENT ON THE PLEADINGS* (Davis, James) (Entered: 03/25/2022)
03/29/2022	26	MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA. for extension of time to file response/reply *Unopposed* (Attachments: # 1 Text of Proposed Order 2022-03-29 PROPOSED Order Granting Motion for Extension of Time)(Chen, Samuel) (Entered: 03/29/2022)
03/30/2022	27	MINUTE entry before the Honorable Mary M. Rowland: Defendant's unopposed motion for extension of time 26 is granted. Defendant's reply in Support of its Motion for Judgment on the Pleadings is due 4/15/22. Mailed notice. (dm,) (Entered: 03/30/2022)
04/12/2022	28	REPLY by Defendant National Union Fire Insurance Company of Pittsburgh, PA. to reply, 25 *in support of Motion for Judgment on the Pleadings* (Lang, Joseph) (Entered: 04/12/2022)
08/03/2022	29	MINUTE entry before the Honorable Mary M. Rowland: For the reasons explained in the accompanying memorandum opinion and order, this Court concludes that National Union owes Griffith Labs a duty to defend the underlying fourth amended complaint and that National Union is not estopped from asserting coverage defenses. As a result, this Court grants in part the Griffith Plaintiffs' partial motion for judgment on the pleadings 15 , and grants in part National Union's cross-motion for judgment on the pleadings 23 . This Court sets a telephonic status hearing for 8/25/22 at 10:00 a.m. Parties shall call 866-434-5269; access code 3751971. Mailed notice. (dm,) (Entered: 08/03/2022)
08/03/2022	30	MEMORANDUM Opinion and Order Signed by the Honorable Mary M. Rowland on 8/3/2022. Mailed notice. (dm,) (Entered: 08/03/2022)
08/25/2022	31	MINUTE entry before the Honorable Mary M. Rowland: Telephonic status hearing held. Counsel appeared telephonically. Plaintiffs shall provide redacted costs of defense to Defendant by 10/28/22. The court requests briefing on several issues raised on the record. Opening briefs due 9/23/22; responses due 10/14/22. Strict compliance with the Local Rules on page limitations is required. Mailed notice. (dm,) (Entered: 08/25/2022)
09/23/2022	32	MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA. for leave to file *Counterclaims* (Lang, Joseph) (Entered: 09/23/2022)
09/23/2022	33	MEMORANDUM by National Union Fire Insurance Company of Pittsburgh, PA. in support of motion for leave to file 32 *Counterclaims* (Attachments: # 1 Exhibit Exhibit A) (Lang, Joseph) (Entered: 09/23/2022)

09/23/2022	34	MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA. for leave to file *Third-Party Complaint* (Lang, Joseph) (Entered: 09/23/2022)
09/23/2022	35	MEMORANDUM by National Union Fire Insurance Company of Pittsburgh, PA. in support of motion for leave to file 34 *Third-Party Complaint* (Attachments: # 1 Exhibit Exhibit A)(Lang, Joseph) (Entered: 09/23/2022)
09/23/2022	36	STATUS Report *Regarding Case Management* by National Union Fire Insurance Company of Pittsburgh, PA. (Lang, Joseph) (Entered: 09/23/2022)
09/23/2022	37	RESPONSE by Plaintiffs Griffith Foods Group Inc., Griffith Foods International Inc. *JOINT OPENING BRIEF OF STERIGENICS U.S., LLC, GRIFFITH FOODS INTERNATIONAL INC., AND GRIFFITH FOODS GROUP INC. IN RESPONSE TO THE COURT'S AUGUST 25, 2022 MINUTE ENTRY* (Davis, James) (Entered: 09/23/2022)
09/28/2022	38	MINUTE entry before the Honorable Mary M. Rowland: Video status hearing set for 10/25/22 at 1:00 PM to discuss impact of the verdict in the underlying case and the claim for indemnification; and Defendant's motion to file counterclaims and to set briefing on Defendant's motion for leave to file third-party complaint. Counsel of record will receive an email with a link to join the video conference prior to the hearing. Members of the public and media will be able to call in to listen to this hearing. The call-in number is 650-479-3207 and the call-in ID is 1801732451. Persons granted remote access to proceedings are reminded of the general prohibition against photographing, recording, and rebroadcasting of court proceedings. Violation of these prohibitions may result in sanctions, including removal of court issued media credentials, restricted entry to future hearings, denial of entry to future hearings, or any other sanctions deemed necessary by the Court. Mailed notice. (dm,) (Entered: 09/28/2022)
10/03/2022	39	MINUTE entry before the Honorable Mary M. Rowland: On the court's own motion, video status hearing set for 10/25/22 is re-set to 10/28/22 at 10:00 AM. All other aspects of Judge Rowland's 9/28/22 order remain unchanged. Mailed notice. (dm,) (Entered: 10/03/2022)
10/13/2022	40	MOTION by Plaintiffs Griffith Foods Group Inc., Griffith Foods International Inc. to reset 10/28/2022 *Motion To Re-Set the October 28,2022 Video Status Hearing Regarding Indemnity* (Davis, James) (Entered: 10/13/2022)
10/13/2022	41	RESPONSE by Defendant National Union Fire Insurance Company of Pittsburgh, PA. to motion to reset 40 *Status Hearing* (Lang, Joseph) (Entered: 10/13/2022)
10/14/2022	42	MINUTE entry before the Honorable Mary M. Rowland: Plaintiffs' motion to re-set the October 28. 2022 video status hearing 40 is granted. Video status on 10/28/22 is stricken. Plaintiffs' response to Defendants' motions for leave to file counterclaims 32 and motion for leave to file third party complaint 34 is due 11/4/22. Defendants' reply due 11/18/22. Strict compliance with the Local Rules on page limitations is required. Mailed notice. (dm,) (Entered: 10/14/2022)
10/14/2022	43	STATUS Report *Joint Response Brief Of Sterigenics U.S., LLC, Griffith Foods International Inc., And Griffith Foods Group Inc. In Response To National Union's Case Management Status Report* by Griffith Foods Group Inc., Griffith Foods International Inc. (Davis, James) (Entered: 10/14/2022)
10/14/2022	44	RESPONSE by Defendant National Union Fire Insurance Company of Pittsburgh, PA. to Response, 37 *Joint Opening Brief of Sterigenics and Griffith* (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B)(Lang, Joseph) (Entered: 10/14/2022)

10/28/2022	45	AGREED CONFIDENTIALITY ORDER Signed by the Honorable Mary M. Rowland on 10/28/2022. Mailed notice. (dm,) (Entered: 10/28/2022)
11/04/2022	46	RESPONSE by Griffith Foods Group Inc., Griffith Foods International Inc.in Opposition to MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA. for leave to file *Third-Party Complaint* 34 *JOINT BRIEF OF STERIGENICS U.S., LLC, GRIFFITH FOODS INTERNATIONAL INC., AND GRIFFITH FOODS GROUP INC. IN OPPOSITION TO NATIONAL UNION'S MOTION FOR LEAVE TO FILE THIRD-PARTY COMPLAINT* (Davis, James) (Entered: 11/04/2022)
11/04/2022	47	RESPONSE by Griffith Foods Group Inc., Griffith Foods International Inc.in Opposition to MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA. for leave to file *Counterclaims* 32 *JOINT BRIEF OF STERIGENICS U.S., LLC, GRIFFITH FOODS INTERNATIONAL INC., AND GRIFFITH FOODS GROUP INC. IN OPPOSITION TO NATIONAL UNION'S MOTION FOR LEAVE TO FILE COUNTERCLAIMS* (Davis, James) (Entered: 11/04/2022)
11/11/2022	48	MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA. for extension of time to file response/reply as to response in opposition to motion, 46 , response in opposition to motion, 47 *Unopposed* (Attachments: # 1 Text of Proposed Order)(Lang, Joseph) (Entered: 11/11/2022)
11/15/2022	49	MINUTE entry before the Honorable Mary M. Rowland: Defendant's unopposed motion for extension of time 48 is granted. National Union's Reply in support of its Motion for Leave to File Counterclaims and Reply in support of its Motion for Leave to File Third-Party Complaint is due December 2, 2022. Mailed notice. (dm,) (Entered: 11/15/2022)
11/22/2022	50	Plaintiffs' Notice of Supplemental New Factual Information by Griffith Foods Group Inc., Griffith Foods International Inc. (Attachments: # 1 Exhibit 1)(Davis, James) (Entered: 11/22/2022)
12/02/2022	51	REPLY by National Union Fire Insurance Company of Pittsburgh, PA. to MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA. for leave to file *Counterclaims* 32 , memorandum in support of motion 33 (Attachments: # 1 Exhibit Exhibit 1)(Lang, Joseph) (Entered: 12/02/2022)
12/02/2022	52	REPLY by National Union Fire Insurance Company of Pittsburgh, PA. to MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA. for leave to file *Third-Party Complaint* 34 , memorandum in support of motion 35 (Lang, Joseph) (Entered: 12/02/2022)
12/12/2022	53	MOTION by Plaintiffs Griffith Foods Group Inc., Griffith Foods International Inc. for protective order *STERIGENICS U.S., LLC'S, GRIFFITH FOODS INTERNATIONAL INC.'S, AND GRIFFITH FOODS GROUP INC.'S JOINT MOTION FOR PROTECTIVE ORDER* (Attachments: # 1 Exhibit A - Email Chains, # 2 Exhibit B - Requests for Production, # 3 Exhibit C - National Union, # 4 Exhibit D - Request for Production, # 5 Exhibit E - National Union's 2nd Set)(Davis, James) (Entered: 12/12/2022)
12/13/2022	54	MINUTE entry before the Honorable Mary M. Rowland: Plaintiffs' motion is taken under advisement. Mailed notice. (dm,) (Entered: 12/13/2022)
12/29/2022	55	ANNUAL REMINDER: Pursuant to Local Rule 3.2 (Notification of Affiliates), any nongovernmental party, other than an individual or sole proprietorship, must file a statement identifying all its affiliates known to the party after diligent review or, if the party has identified no affiliates, then a statement reflecting that fact must be filed. An affiliate is defined as follows: any entity or individual owning, directly or indirectly (through ownership of one or more other entities), 5% or more of a party. The statement is to be electronically filed as a PDF in conjunction with entering the affiliates in CM/ECF

		as prompted. As a reminder to counsel, parties must supplement their statements of affiliates within thirty (30) days of any change in the information previously reported. This minute order is being issued to all counsel of record to remind counsel of their obligation to provide updated information as to additional affiliates if such updating is necessary. If counsel has any questions regarding this process, this LINK will provide additional information. Signed by the Executive Committee on 12/29/2022: Mailed notice. (tg,) (Entered: 12/30/2022)
01/09/2023	56	RESPONSE by National Union Fire Insurance Company of Pittsburgh, PA.in Opposition to MOTION by Plaintiffs Griffith Foods Group Inc., Griffith Foods International Inc. for protective order *STERIGENICS U.S., LLC'S, GRIFFITH FOODS INTERNATIONAL INC.'S, AND GRIFFITH FOODS GROUP INC.'S JOINT MOTION FOR PROTECTIVE ORDER* 53 (Attachments: # 1 Exhibit Exhibit 1)(Lang, Joseph) (Entered: 01/09/2023)
01/17/2023	57	MOTION by Plaintiffs Griffith Foods Group Inc., Griffith Foods International Inc. for leave to file *Exhibits Under Seal* (Davis, James) (Entered: 01/17/2023)
01/17/2023	58	SEALED EXHIBIT by Plaintiffs Griffith Foods Group Inc., Griffith Foods International Inc. regarding MOTION by Plaintiffs Griffith Foods Group Inc., Griffith Foods International Inc. for leave to file *Exhibits Under Seal* 57 (Attachments: # 1 Exhibit B, part 2, # 2 Exhibit B, part 3, # 3 Exhibit B, part 4, # 4 Exhibit B, part 5, # 5 Exhibit B, part 6, # 6 Exhibit B, part 7, # 7 Exhibit B, part 8, # 8 Exhibit C, # 9 Exhibit D)(Davis, James) (Entered: 01/17/2023)
01/17/2023	59	MOTION by Plaintiffs Griffith Foods Group Inc., Griffith Foods International Inc. for Past Defense Costs (Attachments: # 1 Exhibit A, # 2 Exhibit E, # 3 Exhibit F)(Davis, James) (Entered: 01/17/2023)
01/18/2023	60	MINUTE entry before the Honorable Mary M. Rowland: Plaintiff's motion for leave to file exhibits under seal 57 is granted. Mailed notice. (dm,) (Entered: 01/18/2023)
01/18/2023	61	MINUTE entry before the Honorable Mary M. Rowland: Video motion hearing on Plaintiffs' motion for past defense costs 59 is set for 2/2/23 at 2:00 PM. Counsel of record will receive an email with a link to join the video conference prior to the hearing. Members of the public and media will be able to call in to listen to this hearing. The call-in number is 650-479-3207 and the call-in ID is 1801732451. Persons granted remote access to proceedings are reminded of the general prohibition against photographing, recording, and rebroadcasting of court proceedings. Violation of these prohibitions may result in sanctions, including removal of court issued media credentials, restricted entry to future hearings, denial of entry to future hearings, or any other sanctions deemed necessary by the Court. Mailed notice. (dm,) (Entered: 01/18/2023)
01/26/2023	62	MINUTE entry before the Honorable Mary M. Rowland: The video motion hearing set for 2/2/23 at 2:00 PM is converted to a teleconference hearing and re-set to 11:00 AM. (Please Note Time Change) Parties shall call 866-434-5269; access code 3751971. Mailed notice. (dm,) (Entered: 01/26/2023)
02/02/2023	63	MINUTE entry before the Honorable Mary M. Rowland: Telephonic status hearing held. Counsel appeared telephonically. For the reasons stated on the record, Plaintiffs' joint motion for protective order 53 is granted. The court adopts the parties' proposed briefing schedule on Griffith's motion for past defense costs 59 . Response due 3/2/23. Reply due 3/16/23. Any motion to dismiss, assuming there is a good faith basis to file a motion to dismiss, is due 3/2/23. Response due 3/23/23 and reply due 4/6/23. A status will be set after a ruling is issued on the pending fully briefed motions. Mailed notice. (dm,) (Entered: 02/03/2023)
02/16/2023	64	TRANSCRIPT OF PROCEEDINGS held on 2/2/23 before the Honorable Mary M. Rowland. Telephonic status hearing. Order Number: 45136. Court Reporter Contact

		Information: Laura Renke, OfficialTranscript@gmail.com, 312.435.6053. IMPORTANT: The transcript may be viewed at the court's public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through the Court Reporter/Transcriber or PACER. For further information on the redaction process, see the Court's web site at www.ilnd.uscourts.gov under Quick Links select Policy Regarding the Availability of Transcripts of Court Proceedings. Redaction Request due 3/9/2023. Redacted Transcript Deadline set for 3/20/2023. Release of Transcript Restriction set for 5/17/2023. (Renke, Laura) (Entered: 02/16/2023)
02/23/2023	65	MOTION by Plaintiffs Griffith Foods International Inc., Griffith Foods Group Inc. to dismiss *remaining non-duty to defend claims* (Davis, James) (Entered: 02/23/2023)
02/24/2023	66	MINUTE entry before the Honorable Mary M. Rowland: Any objection to Plaintiff's motion to dismiss the remaining non-duty to defend claims 65 is due by 3/3/23 and is limited to 5 pages. Mailed notice. (dm,) (Entered: 02/24/2023)
03/02/2023	67	DOCUMENT REMOVED PURSUANT TO ORDER DATED 3/6/23 (gcy,). Modified on 5/15/202 (gcy,). (Entered: 03/02/2023)
03/02/2023	68	MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA. to dismiss (Chen, Samuel) (Entered: 03/02/2023)
03/02/2023	69	MEMORANDUM by National Union Fire Insurance Company of Pittsburgh, PA. in support of motion to dismiss 68 (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Chen, Samuel) (Entered: 03/02/2023)
03/03/2023	70	RESPONSE by National Union Fire Insurance Company of Pittsburgh, PA.in Opposition to MOTION by Plaintiffs Griffith Foods International Inc., Griffith Foods Group Inc. to dismiss *remaining non-duty to defend claims* 65 (Attachments: # 1 Exhibit A)(Chen, Samuel) (Entered: 03/03/2023)
03/03/2023	71	MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA. to withdraw response in opposition to motion, 67 (Attachments: # 1 Text of Proposed Order) (Chen, Samuel) (Entered: 03/03/2023)
03/03/2023	72	MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA. for leave to file *Opposition Brief Under Seal* (Chen, Samuel) (Entered: 03/03/2023)
03/03/2023	73	SEALED DOCUMENT by Defendant National Union Fire Insurance Company of Pittsburgh, PA. *Opposition to Plaintiff's Motion for Past Defense Costs* (Chen, Samuel) (Entered: 03/03/2023)
03/03/2023	74	RESPONSE by National Union Fire Insurance Company of Pittsburgh, PA.in Opposition to MOTION by Plaintiffs Griffith Foods Group Inc., Griffith Foods International Inc. for Past Defense Costs 59 (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5 (Part A), # 6 Exhibit 5 (Part B), # 7 Exhibit 6)(Chen, Samuel) (Entered: 03/03/2023)
03/06/2023	75	MINUTE entry before the Honorable Mary M. Rowland: Defendant's motion to withdraw Docket Entry 67 71 is granted. The Clerk of Court is directed to remove Docket Entry 67. Mailed notice. (dm,) (Entered: 03/06/2023)
03/06/2023	76	MINUTE entry before the Honorable Mary M. Rowland: Defendant's motion for leave to file opposition brief under seal 72 is granted. Mailed notice. (dm,) (Entered: 03/06/2023)

03/16/2023	77	MOTION by Plaintiffs Griffith Foods Group Inc., Griffith Foods International Inc. for leave to file *its reply and exhibits under seal* (Davis, James) (Entered: 03/16/2023)
03/16/2023	78	SEALED REPLY by Griffith Foods Group Inc., Griffith Foods International Inc. to MOTION by Plaintiffs Griffith Foods Group Inc., Griffith Foods International Inc. for Past Defense Costs 59 (Davis, James) (Entered: 03/16/2023)
03/16/2023	79	REPLY by Plaintiffs Griffith Foods Group Inc., Griffith Foods International Inc. to motion for miscellaneous relief 59 *public version* (Davis, James) (Entered: 03/16/2023)
03/16/2023	80	DECLARATION of David Kim regarding reply 78 , reply 79 (Davis, James) (Entered: 03/16/2023)
03/16/2023	81	SEALED EXHIBIT by Plaintiffs Griffith Foods Group Inc., Griffith Foods International Inc. *Exhibits A and B* regarding declaration 80 (Attachments: # 1 Exhibit)(Davis, James) (Entered: 03/16/2023)
03/17/2023	82	MINUTE entry before the Honorable Mary M. Rowland: Plaintiff's motion for leave to file its reply and exhibits under seal 77 is granted. Mailed notice. (dm,) (Entered: 03/17/2023)
03/23/2023	83	MEMORANDUM by Griffith Foods Group Inc., Griffith Foods International Inc. in Opposition to motion to dismiss 68 (Davis, James) (Entered: 03/23/2023)
04/06/2023	84	REPLY by National Union Fire Insurance Company of Pittsburgh, PA. to MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA. to dismiss 68 (Chen, Samuel) (Entered: 04/06/2023)
04/20/2023	85	MOTION by Plaintiffs Griffith Foods Group Inc., Griffith Foods International Inc. For A Status Conference on Pending, Fully Briefed Motions (Davis, James) (Entered: 04/20/2023)
05/17/2023	86	MINUTE entry before the Honorable Mary M. Rowland: Griffith's motion for status conference 85 is granted. Video status hearing set for 5/19/23 at 10:00am. Parties should be prepared to discuss the current status of the underlying litigation and the impact if any on the pending motions. Counsel of record will receive an email with a link to join the video conference prior to the hearing. Members of the public and media will be able to call in to listen to this hearing. The call-in number is 650-479-3207 and the call-in ID is 1801732451. Persons granted remote access to proceedings are reminded of the general prohibition against photographing, recording, and rebroadcasting of court proceedings. Violation of these prohibitions may result in sanctions, including removal of court issued media credentials, restricted entry to future hearings, denial of entry to future hearings, or any other sanctions deemed necessary by the Court. Mailed notice. (dm,) (Entered: 05/17/2023)
05/19/2023	87	MINUTE entry before the Honorable Mary M. Rowland: Video status hearing held. Parties discussed the pending motions before this court. The court will rule by mail. Mailed notice. (dm,) (Entered: 05/19/2023)
05/24/2023	88	TRANSCRIPT OF PROCEEDINGS held on 5/19/23 before the Honorable Mary M. Rowland. Video status. Order Number: 45932. Court Reporter Contact Information: Laura Renke, OfficialTranscript@gmail.com, 312.435.6053. IMPORTANT: The transcript may be viewed at the court's public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through the Court Reporter/Transcriber or PACER. For further information on the redaction process, see the Court's web site at

		www.ilnd.uscourts.gov under Quick Links select Policy Regarding the Availability of Transcripts of Court Proceedings. Redaction Request due 6/14/2023. Redacted Transcript Deadline set for 6/26/2023. Release of Transcript Restriction set for 8/22/2023. (Renke, Laura) (Entered: 05/24/2023)
07/25/2023	89	MEMORANDUM Opinion and Order: In Griffith, 21-cv-06403, National Union's motion for leave to file counterclaims 32 , motion for leave to file a third-party complaint 34 , and Rule 12(b)(7) motion to dismiss 68 are denied; the Griffith Plaintiffs' motion to dismiss the remaining non-duty to defend claims 65 is granted; and the Griffith Plaintiffs' motion for past defense costs 59 is granted as modified in their reply brief. Further, in Sterigenics, 21-cv-04581, National Union's motion for leave to file counterclaims 42 , motion for leave to file a third-party complaint 44 , and National Union's motion to dismiss 71 are denied; Sterigenics' motion to dismiss the remaining non-duty to defend claims 86 is granted, and Sterigenics' motion for past defense costs 69 is granted as modified in its reply brief. The Court has declared that National Union owes Griffith and Sterigenics a duty to defend the underlying fourth amended complaint and owes Griffith $16,017,702.62 in past defense costs and owes Sterigenics $75,502,938.25 in past defense costs. The Clerk is directed to enter judgment accordingly. Civil case terminated. Signed by the Honorable Mary M. Rowland on 7/25/2023. (See attached Order for further detail.)Mailed notice. (dm,) (Entered: 07/25/2023)
07/25/2023	90	MINUTE entry before the Honorable Mary M. Rowland: The sole issue remaining is Plaintiffs' indication that they intend to seek additional defense costs. The parties are to confer and file a status report by August 21, 2023 indicating whether this final matter can be resolved or proposing a briefing schedule. Mailed notice. (dm,) (Entered: 07/25/2023)
07/25/2023	91	ENTERED JUDGMENT on 7/25/2023. Mailed notice. (dm,) (Entered: 07/25/2023)
08/18/2023	92	Motion by Griffith Foods Group Inc., Griffith Foods International Inc. *Second and Final Motion for Defense Costs and Interest* (Attachments: # 1 Exhibit A, # 2 Exhibit B (part 1), # 3 Exhibit B (part 2), # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F) (Davis, James) Modified on 8/21/2023 (jh,). (Entered: 08/18/2023)
08/18/2023	93	MOTION by Plaintiffs Griffith Foods Group Inc., Griffith Foods International Inc. to seal *Exhibits* (Davis, James) (Entered: 08/18/2023)
08/21/2023	94	MINUTE entry before the Honorable Mary M. Rowland: Griffith's motion for leave to file exhibits under seal 93 is granted. Mailed notice. (dm,) (Entered: 08/21/2023)
08/21/2023	95	MINUTE entry before the Honorable Mary M. Rowland: Defendant has until 9/18/23 to file any objections to Plaintiff's motion for prejudgment and post judgment interest; reply due 10/2/23. Mailed notice. (dm,) (Entered: 08/21/2023)
08/21/2023	96	Griffith Plaintiffs' and National Union's Joint Status Report by Griffith Foods Group Inc., Griffith Foods International Inc. (Davis, James) (Entered: 08/21/2023)
08/23/2023	97	ATTORNEY Appearance for Defendant National Union Fire Insurance Company of Pittsburgh, PA. by Thomas H. Dupree, Jr (Dupree, Thomas) (Entered: 08/23/2023)
08/23/2023	98	NOTICE of appeal by National Union Fire Insurance Company of Pittsburgh, PA. regarding orders 91 , 30 , 89 Filing fee $ 505, receipt number AILNDC-20961972. Receipt number: n (Dupree, Thomas) (Entered: 08/23/2023)
08/24/2023	99	MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA.for Approval of a Supersedeas Bond

		(Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Text of Proposed Order)(Dupree, Thomas) (Entered: 08/24/2023)
08/25/2023	100	NOTICE of Appeal Due letter sent to counsel of record regarding notice of appeal 98 . (daj,) (Entered: 08/25/2023)
08/25/2023	101	TRANSMITTED to the 7th Circuit the short record on notice of appeal 98 . Notified counsel (daj,) (Entered: 08/25/2023)
08/25/2023	102	ACKNOWLEDGMENT of receipt of short record on appeal regarding notice of appeal 98 ; USCA Case No. 23-2688. (gcy,) (Entered: 08/28/2023)
08/28/2023	103	MINUTE entry before the Honorable Mary M. Rowland: Defendant National Union's Motion for Approval of a Supersedeas Bond 99 is granted. Enter Order. Mailed notice. (dm,) (Entered: 08/28/2023)
08/28/2023	104	ORDER Signed by the Honorable Mary M. Rowland on 8/28/2023. Mailed notice. (dm,) (Entered: 08/28/2023)
08/31/2023	105	SUPERSEDEAS BOND #994-941 in the amount of $ 16,871,946.17 posted by National Union Insurance Company of Pittsburgh, PA. (Document not Scanned). (gcy,) Modified on 9/8/2023 (gcy,). (Entered: 09/08/2023)
09/18/2023	106	MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA. to seal document *National Union's Opposition to Griffith's Final Motion for Defense Costs* (Chen, Samuel) (Entered: 09/18/2023)
09/18/2023	107	SEALED DOCUMENT by Defendant National Union Fire Insurance Company of Pittsburgh, PA. *Opposition to Griffith's Second and Final Motion for Defense Costs and Interests* (Attachments: # 1 Exhibit 1)(Chen, Samuel) (Entered: 09/18/2023)
09/18/2023	108	RESPONSE by National Union Fire Insurance Company of Pittsburgh, PA.in Opposition to MOTION 92 *Redacted* (Chen, Samuel) (Entered: 09/18/2023)
09/19/2023	109	MINUTE entry before the Honorable Mary M. Rowland: Defendant's motion for leave to file opposition brief under seal 106 is granted. Mailed notice. (dm,) (Entered: 09/19/2023)
09/29/2023	110	MOTION by Plaintiffs Griffith Foods Group Inc., Griffith Foods International Inc. for leave to file *Its Reply In Support of Its Second and Final Motion for Defense Costs and Interest Under Seal* (Davis, James) (Entered: 09/29/2023)
09/29/2023	111	SEALED REPLY by Griffith Foods Group Inc., Griffith Foods International Inc. to MOTION 92 , response in opposition to motion 108 , MOTION by Plaintiffs Griffith Foods Group Inc., Griffith Foods International Inc. for leave to file *Its Reply In Support of Its Second and Final Motion for Defense Costs and Interest Under Seal* 110 (Davis, James) (Entered: 09/29/2023)
09/29/2023	112	REPLY by Plaintiffs Griffith Foods Group Inc., Griffith Foods International Inc. to motion for miscellaneous relief, 92 , reply, 111 , response in opposition to motion 108 *Redacted Public Version* (Davis, James) (Entered: 09/29/2023)
10/02/2023	113	MINUTE entry before the Honorable Mary M. Rowland: Plaintiff's motion for leave to file its reply under seal 110 is granted. Mailed notice. (dm,) (Entered: 10/02/2023)

01/03/2024	114	MINUTE entry before the Honorable Mary M. Rowland: In person hearing set for 9:00 AM on 1/11/24 for ruling on motion for Plaintiff's second and final motion for defense costs 92 . Parties should be prepared for entry of FINAL judgment that includes a calculation of prejudgment interest to 1/11/24 and post-judgment interest thereafter and the declaratory judgment language from the order dated 8/3/22. [29, 30]. Mailed notice. (dm,) (Entered: 01/03/2024)
01/10/2024	115	MOTION for Leave to Appear Pro Hac Vice Filing fee $ 150, receipt number AILNDC-21506279. (Harper, Denis) (Entered: 01/10/2024)
01/10/2024	116	DECLARATION of David Kim regarding motion for miscellaneous relief, 92 *Supplemental Declaration* (Davis, James) (Entered: 01/10/2024)
01/11/2024	117	ATTORNEY Appearance for Defendant National Union Fire Insurance Company of Pittsburgh, PA. by Denis Nicholas Harper (Harper, Denis) (Entered: 01/11/2024)
01/11/2024	118	MINUTE entry before the Honorable Mary M. Rowland: In court hearing held. Enter Amended Judgment Entry. In light of the Amended Judgment, Plaintiff's second and final motion for defense costs and interest 92 is granted.Motion to appear pro hac vice by Nick Harper 115 is granted. Counsel is reminded to become familiar with this court's local rules. Civil case remains closed. Mailed notice. (dm,) (Entered: 01/12/2024)
01/11/2024	119	AMENDED JUDGMENT ENTRY Signed by the Honorable Mary M. Rowland on 1/11/2024. Mailed notice. (dm,) (Entered: 01/12/2024)
01/16/2024	120	MANDATE of USCA dated 1/16/24 regarding notice of appeal 98 ;USCA No.23-2688 ; No record to be returned. (gcy,) (Entered: 01/17/2024)
01/16/2024	121	CERTIFIED copy of order dated 12/22/23 from the 7th Circuit regarding notice of appeal 98 ; Appellate case no. : 23-2688; IT IS ORDERED that this appeal is DISMISSED for lack of jurisdiction. (gcy,) (Entered: 01/17/2024)
02/06/2024	122	TRANSCRIPT OF PROCEEDINGS held on 1/11/24 before the Honorable Mary M. Rowland. Motion hearing. Order Number: 47905. Court Reporter Contact Information: Laura Renke, OfficialTranscript@gmail.com, 312.435.6053. IMPORTANT: The transcript may be viewed at the court's public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through the Court Reporter/Transcriber or PACER. For further information on the redaction process, see the Court's web site at www.ilnd.uscourts.gov under Quick Links select Policy Regarding the Availability of Transcripts of Court Proceedings. Redaction Request due 2/27/2024. Redacted Transcript Deadline set for 3/8/2024. Release of Transcript Restriction set for 5/6/2024. (Renke, Laura) (Entered: 02/06/2024)
02/09/2024	123	NOTICE of appeal by National Union Fire Insurance Company of Pittsburgh, PA. regarding orders 91 , 30 , 119 , 89 Filing fee $ 605, receipt number AILNDC-21626993. Receipt number: n (Dupree, Thomas) (Entered: 02/09/2024)
02/12/2024	124	MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA. for bond *Approval of a Supersedeas Bond* , MOTION by Defendant National Union Fire Insurance Company of Pittsburgh, PA. for release of bond obligation *Unconditional Release, Discharge, and Exoneration of Previous Supersedeas Bond*

		(Attachments: # 1 Exhibit A, # 2 Text of Proposed Order)(Dupree, Thomas) (Entered: 02/12/2024)
02/12/2024	125	NOTICE of Appeal Due letter sent to counsel of record regarding notice of appeal 123 (gcy,) (Entered: 02/12/2024)
02/12/2024	126	TRANSMITTED to the 7th Circuit the short record on notice of appeal 123 . Notified counsel (gcy,) (Entered: 02/12/2024)
02/12/2024	127	ACKNOWLEDGMENT of receipt of short record on appeal regarding notice of appeal 123 ; USCA Case No. 24-1217. (gcy,) (Entered: 02/13/2024)
02/21/2024	128	MINUTE entry before the Honorable Mary M. Rowland: Defendant National Union's Motion for Approval of a Supersedeas Bond and for Unconditional Release, Discharge, and Exoneration of Previous Supersedeas Bond 124 is granted. Enter Order. Mailed notice. (dm,) (Entered: 02/21/2024)
02/21/2024	129	ORDER Signed by the Honorable Mary M. Rowland on 2/21/2024. Mailed notice. (dm,) (Entered: 02/21/2024)
02/22/2024	130	Notice of Removal of Material from the Custody of the Clerk's Office by Defendant's Counsel (Dckt. #105 - Supersedeas bond). (gcy,) (Entered: 02/22/2024)
04/11/2025	131	CERTIFIED COPY OF OPINION from the USCA for the Seventh; Argued 9/25/2024; Decided 4/11/2025 in USCA case no. 24-1217. (jp,) (Entered: 04/13/2025)