

BEFORE THE ILLINOIS  
POLLUTION CONTROL BOARD

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MAR 09 2006

STATE OF ILLINOIS  
Pollution Control Board

GRAND PIER CENTER LLC )  
AMERICAN INTERNATIONAL )  
SPECIALTY LINES INSURANCE CO. )  
*as subrogee of* GRAND PIER CENTER LLC, )

Complainants, )

v. )

RIVER EAST LLC )  
CHICAGO DOCK AND CANAL TRUST )  
CHICAGO DOCK AND CANAL COMPANY )  
KERR-McGEE CHEMICAL LLC, )

Respondents. )

PCB 05-157  
(Enforcement)

**TO: Frederick S. Mueller  
Daniel C. Murray  
Garrett L. Boehm, Jr.  
JOHNSON & BELL, LTD.  
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Suite 2700  
Chicago, IL 60603-5404**

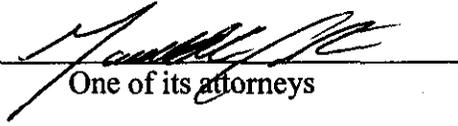
**Donald J. Moran  
Pedersen & Houpt  
161 North Clark Street  
Suite 3100  
Chicago, IL 60601-3242**

**Bradley Halloran  
Hearing Officer  
Illinois Pollution  
Control Board  
James R. Thompson  
Center – Suite 11-500  
Chicago, IL 60601**

**NOTICE OF FILING**

PLEASE TAKE NOTICE that on March 9, 2006, we caused to be filed with the Illinois Pollution Control Board in the James R. Thompson Center, Chicago, Illinois, **TRONOX LLC'S MOTION FOR SUMMARY JUDGMENT DIRECTED TOWARDS THE ILLINOIS POLLUTION CONTROL BOARD**, a copy of which is served upon you along with this notice.

Tronox LLC

By:   
One of its attorneys

Michael P. Connelly  
Garrett C. Carter  
Connelly Roberts & McGivney LLC  
One North Franklin Street  
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Chicago, Illinois 60606  
Tele: (312) 251.9600

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Pollution Control Board

GRAND PIER CENTER LLC, )  
AMERICAN INTERNATIONAL )  
SPECIALTY LINES INSURANCE CO. )  
as subrogee of Grand Pier Center LLC, )

Complainants/ )  
Counter-Complaint Respondents, )

v. )

PCB 2005-157  
(Enforcement)

RIVER EAST LLC, )  
CHICAGO DOCK AND CANAL TRUST, )  
CHICAGO DOCK AND CANAL COMPANY, )

Respondents, )

TRONOX LLC, )

Respondent/ )  
Counter-Complaint Complainant. )

**TRONOX LLC'S MOTION FOR SUMMARY JUDGMENT DIRECTED TOWARDS  
THE ILLINOIS POLLUTION CONTROL BOARD**

Tronox, LLC, by its attorneys, Connelly Roberts & McGivney LLC and Covington & Burling, pursuant to 35 Ill. Adm. Code 101.516 and 735 ILCS 5/2-1005, hereby moves for Summary Judgment with respect to all claims asserted by Plaintiffs/Counterclaim Defendants Grand Pier Center LLC ("Grand Pier") and American International Specialty Lines Insurance Co. ("American International"), as subrogee of Grand Pier (collectively, the "plaintiffs").

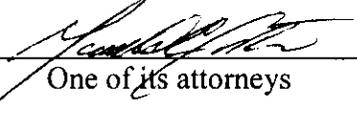
The grounds for Tronox's motion are fully set forth in the accompanying memorandum of law in support of Tronox LLC's Motion for Summary Judgment.

Dated: March 9, 2006

Respectfully submitted,

Tronox, LLC

By:

  
One of its attorneys

Michael P. Connelly  
Garrett Carter  
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(202) 662-6000

Attorneys for Tronox LLC

**CERTIFICATE OF SERVICE**

I, Lynne Pudlo, a non-attorney, being first sworn on oath, depose and state that I served the attached **TRONOX LLC'S MOTION FOR SUMMARY JUDGMENT DIRECTED TOWARDS THE ILLINOIS POLLUTION CONTROL BOARD** on the attorneys of record by mailing true and correct copies in a properly addressed, sealed envelope with appropriate postage affixed and depositing same in the U.S. mail located at One North Franklin Street, Chicago, Illinois, before 5:00 p.m. on March 9, 2006.

*Lynne Pudlo*

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Subscribed and sworn to  
before me March 9, 2006.

*Kristina L. Judge*

---

Notary Public



**BEFORE THE ILLINOIS  
POLLUTION CONTROL BOARD**

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STATE OF ILLINOIS  
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**RIVER EAST LLC, )  
CHICAGO DOCK AND CANAL TRUST, )  
CHICAGO DOCK AND CANAL COMPANY, )**

**Respondents, )**

**TRONOX LLC, )**

**Respondent/ )  
Counter-Complaint Complainant. )**

**MEMORANDUM OF LAW IN SUPPORT OF  
TRONOX LLC'S MOTION FOR SUMMARY JUDGMENT**

Tronox LLC ("Tronox"), by its attorneys, Connelly Roberts & McGivney LLC and Covington & Burling, pursuant to 35 Ill. Adm. Code 101.516 and 735 ILCS 5/2-1005, hereby moves the Illinois Pollution Control Board (the "Board") to enter Summary Judgment in its favor with respect to the claims asserted by Complainants/ Counter-Complaint Respondents Grand Pier Center LLC ("Grand Pier") and American International Specialty Lines Insurance Co. ("American International"), as subrogee of Grand Pier (collectively, the "Complainants") and, in support, submits this Memorandum of Law.

## INTRODUCTION

On February 25, 2005, Grand Pier and American International, as subrogee of Grand Pier, asserted claims under various provisions of the Illinois Environmental Protection Act against Tronox<sup>1</sup> regarding thorium deposits beneath a private parking lot and adjacent public ways in the Streeterville area of Chicago.<sup>2</sup> The Complainants are not entitled to assert these claims, however, because Grand Pier assigned these claims to other entities on February 4, 2003 (hereinafter, the “February 2003 Assignment”). See Exhibit B, February 2003 Assignment at 1, 2, and 4. Tronox first became aware of the February 2003 Assignment after reviewing certain storage files of the Cook County Circuit Court during the week of February 7, 2006. Tronox contacted Complainants on March 1, 2006, to bring the February 2003 Assignment to their attention and to ask them to produce any document or information that would mitigate against the filing of this motion. Complainants have not come forward with any such document or information as of the filing of this motion. Accordingly, summary judgment is warranted pursuant to 35 Ill. Adm. Code 101.516 and 735 ILCS 5/2-1005.

## BACKGROUND

On February 4, 2003, Grand Pier executed an assignment of all claims it “now has or may have in the future” against numerous parties, including “Kerr-McGee Corporation and its predecessor Lindsay Light and Chemical Company,” to EPC Group, L.L.C, Harmony Group, L.L.C., New Management L.L.C., and Reliable Contracting &

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<sup>1</sup> Tronox LLC was formerly known as Kerr-McGee Chemical LLC. A notice of name change was filed with the Board on October 11, 2005.

<sup>2</sup> A copy of Complainants’ complaint is attached as Exhibit A.

Equipment Co. (collectively referred to as the “February 2003 Assignment Assignees”).  
See Exhibit B, February 2003 Assignment at 1, 2, and 4. None of the February 2003  
Assignment Assignees is a party to the current litigation.

The February 2003 Assignment states, in relevant part, as follows:

ASSIGNMENT OF CLAIMS

1. Assignment. Assignor [Grand Pier] hereby assigns to each of the Assignees [EPC Group, L.L.C, Harmony Group, L.L.C., New Management L.L.C., and Reliable Contracting & Equipment Co.] . . . all of Assignor’s right, title and interest in, to and under any and all rights, claims, choses in action, suits, settlements, awards, and judgments, whether choate or inchoate, for any and all harm, costs, expenses, losses, damages, penalties, lost profits, expenses and disbursements (including without limitation, legal fees and expenses) which Assignor now has or may have in the future against each of the parties listed in Exhibit A hereto,<sup>3</sup> whether at law or in equity, which includes the entire amount of the claim that Assignor is entitled to assert.
2. Binding Effect. The obligations and liabilities of the parties hereunder shall be binding upon and enforceable against the Parties and each party hereto, and their respective successors and assigns and shall inure to the benefit of such parties and their successors and assigns.

Exhibit B, February 2003 Assignment at 1, 2.

On February 10, 2003, Grand Pier and the February 2003 Assignment Assignees filed the February 2003 Assignment as “Exhibit A” to a motion seeking to substitute the assignees in Grand Pier’s stead in the litigation then-proceeding in the Circuit Court of Cook County, Illinois County Department, Chancery Division. See Exhibit B, Motion to Substitute and For Extension of Time at 3-4 ¶ 9. According to Grand Pier’s motion to substitute parties in that litigation, Grand Pier assigned its rights

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<sup>3</sup> Kerr-McGee Corporation and its predecessor Lindsay Light and Chemical Company are among the listed parties. See Exhibit B, February 2003 Assignment at 4.

and claims to the February 2003 Assignment Assignees because it believed Lehman Brothers was about to take control of Grand Pier. See generally Exhibit B.

More than two years after Grand Pier relinquished its claims against Tronox to the February 2003 Assignment Assignees, the Complainants filed the present complaint against Tronox. See Exhibit A.

### STANDARD OF REVIEW

Summary judgment should be granted when “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact” and the moving “party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005(c); 35 ILCS 101.516(b). All evidence before a court considering a summary judgment motion must be considered in the light most favorable to the nonmoving party. In re Estate of Hoover, 155 Ill. 2d 402, 410-11, 185 Ill. Dec. 866, 615 N.E. 2d 736 (1993). Summary judgment should be granted when the moving party’s right to judgment is clear and free from doubt. Outboard Marine Corp. v. Liberty Mutual Ins. Co., 154 Ill. 2d 90, 102, 180 Ill. Dec. 691, 607 N.E. 2d 1204 (1992).

### ARGUMENT

Following an assignment of a claim, the assignee becomes the real party in interest and the assignor may not sue on the claim because it no longer retains an interest on which to base an action. See Art Signs, Inc. v. Schaumburg State Bank, 162 Ill.App. 3d 955, 958, 114 Ill. Dec. 186, 516 N.E.2d 341 (1<sup>st</sup> Dist. 1987) (affirming dismissal of complaint because assignor/plaintiff was not the proper party to the litigation).

Two years before bringing the present action against Tronox, Grand Pier assigned to four other entities its “right, title and interest in, to and under any and all rights, claims, [and] choses in action . . . for any and all harm, costs, expenses, losses,

damages, penalties, lost profits, expenses and disbursements” which Grand Pier “now has or may have in the future” against “Kerr-McGee Corporation and its predecessor Lindsay Light and Chemical Company.” Exhibit B, February 2003 Assignment at 1, 2, and 4. By virtue of this broad assignment of its claims, Grand Pier relinquished its rights in the claims that the Grand Pier now assert against Tronox under the Illinois Environmental Protection Act. See Art Signs, Inc., 162 Ill.App.3d at 658. Furthermore, because Grand Pier relinquished its claims against Tronox to the February 2003 Assignment Assignees, Grand Pier does not retain any rights against Tronox with respect to which American International may proceed as subrogee. See Whitledge v. Klein, 348 Ill.App.3d 1059, 1064, 284 Ill.Dec. 650, 810 N.E.2d 303 (4<sup>th</sup> Dist. 2004) (holding that a subrogee-insurer stands in the shoes of its subrogor-insured). American International is a complainant in this action only by virtue of its status as alleged subrogee of Grand Pier and its rights against Tronox are derived from and limited to those of Grand Pier. See id.; Intergovernmental Risk Mgmt. v. O’Donnell, Wicklund, Pigozzi & Peterson Architects, Inc., 295 Ill.App.3d 784, 229 Ill.Dec. 750, 692 N.E.2d 739 (1<sup>st</sup> Dist. 1998); see also American Nat’l Bank and Trust Co. of Chicago v. Weyerhaeuser Co., 692 F.2d 455, 461 (7<sup>th</sup> Cir. 1982) (“The subrogee’s rights are derived from and dependent upon the rights of the subrogor.”). Thus, neither Complainant has standing with respect to the claims asserted against Tronox in the complaint.

Tronox alerted Complainants of their lack of standing on March 1, 2006, and asked them to produce any document or information that would mitigate against the filing of this motion. Complainants failed to produce any such document or information. Instead, they provided a March 24, 2003 document (hereinafter, the “March 2003

Document”). In that document, Grand Pier purports to assign to LB Streeterville LLC, an entity which is not a party to this litigation, some of the same claims Grand Pier earlier had assigned to the February 2003 Assignment Assignees. See Exhibit C at 2.

Apparently, Complainants contend that the March 2003 Document restores Grand Pier’s rights to the claims previously assigned to the February 2003 Assignment Assignees on the basis of a representation by Grand Pier in that same document, to wit, “Assignor [Grand Pier] represents and warrants that the Prior Assignment has been rescinded and is of no force or effect.” Exhibit C at 2. The March 2003 Document, however, does not purport to be an assignment to Grand Pier of any claims previously assigned to the February 2003 Assignment Assignees, nor are the February 2003 Assignment Assignees – EPC Group, L.L.C, Harmony Group, L.L.C., New Management L.L.C., and Reliable Contracting & Equipment Co. – parties to the March 2003 Document. Moreover, because the February 2003 Assignment is a contract made for consideration,<sup>4</sup> it is irrevocable. See, e.g., In re Robert T. Noel Coal, Inc. et al. v. Erickson of Johnstown, Inc. et al., 82 B.R. 778, 780 (Bankr. W.D. Pa. 1988) (“An assignment made for consideration is irrevocable.”); see also RESTATEMENT (SECOND) OF CONTRACTS § 332 (1981) (stating that, even in the absence of consideration, an assignment of a claim is irrevocable if “(a) the assignment is in a writing either signed or under seal that is delivered by the assignor; or (b) the assignment is accompanied by delivery of a writing of a type customarily accepted as a symbol or as evidence of the

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<sup>4</sup> See Exhibit B, February 2003 Assignment at 2 (“[I]n consideration of the foregoing and the mutual agreements herein contained, and other good and valuable consideration . . . the receipt and sufficiency of which are hereby acknowledged . . .”).

right assigned"). Thus, the March 2003 Document does not restore to Grand Pier any of the rights Grand Pier assigned to the February 2003 Assignment Assignees.<sup>5</sup>

### CONCLUSION

The Complainants have no interest in the claims they are asserting against Tronox. Grand Pier completely and unconditionally assigned all of these claims to the February 2003 Assignment Assignees. The decision of Grand Pier and American International, as subrogee of Grand Pier, to bring this action against Tronox is not an understandable mistake. The Complainants certainly were aware of the assignments Grand Pier made. Complainants could not have failed to understand they were bringing these claims against Tronox improperly and causing Tronox to expend substantial sums in defense of the claims. Tronox became aware of the February 2003 Assignment only after it undertook its own review of certain storage files of the Cook County Circuit Court. Tronox has given Complainants every opportunity to produce documents or information that would mitigate against the filing of this motion. Complainants have

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<sup>5</sup> It is noteworthy that the March 2003 Document purports on its face to divest Grand Pier of any interest in some of the claims that Complainants are asserting in their complaint. For example, Complainants seek damages from Tronox related to the existence of thorium beneath public ways adjacent to the Grand Pier parking lot. See Second Amended Complaint ¶ 21. Grand Pier purports to assign that very claim to LB Streeterville LLC in the March 2003 Document. See Exhibit C at 2 (providing that claims retained by Grand Pier "shall not . . . include any claims against Kerr-McGee . . . related to the existence of thorium . . . beneath any public streets or sidewalks"). In addition, Grand Pier purports to assign to this same Lehman Brothers entity its claims as they relate to thorium to the extent that Grand Pier's retention of such claims would prejudice Lehman Brothers or LB Streeterville LLC. See Exhibit C at 1.

Setting aside the confusion created by Grand Pier's purported assignment of claims that it previously had relinquished in the February 2003 Assignment to four entities not party to this current litigation, the bottom line is that Complainants do not have rights in any of the claims they are asserting against Tronox.

failed to come forward with any such document or information as of the date of this filing.

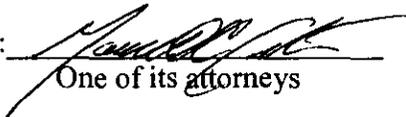
For the foregoing reasons and pursuant to 35 Ill. Adm. Code 101.516 and 735 ILCS 5/2-1005, the Illinois Pollution Control Board should grant Tronox's motion for summary judgment.

Dated: March 9, 2006

Respectfully submitted,

Tronox, LLC

By:



One of its attorneys

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Garrett Carter  
Connelly Roberts & McGivney LLC  
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Attorneys for Tronox LLC

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FEB 25 2005

STATE OF ILLINOIS  
Pollution Control Board

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SPECIALTY LINES INSURANCE CO. )  
as subrogee of Grand Pier Center LLC )

Complainants )

v. )

PCB 05157  
(Enforcement)

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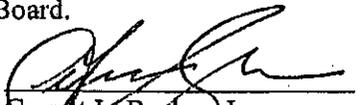
Respondents )

NOTICE OF FILING

To: Donald J. Moran  
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161 North Clark Street, Suite 3100  
Chicago, IL 60601-3242

John T. Smith II  
COVINGTON & BURLING  
1201 Pennsylvania Avenue. N.W.  
Washington, D.C. 20004-2401

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board (Board) the COMPLAINT of Grand Pier Center LLC and American International Specialty Lines Insurance Co., as subrogee of Grand Pier Center LLC, a copy of which is herewith served upon you along with this notice. You may be required to attend a hearing on a date set by the Board.

  
Garrett L. Boehm, Jr.

Dated: February 25, 2005

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Daniel C. Murray  
Garrett L. Boehm, Jr.  
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Tel. (312) 372-0770

Attorneys for Grand Pier Center LLC and  
American International Specialty Lines Insurance Co.,  
As subrogee of Grand Pier Center LLC

Doc. No. 1188179



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FEB 25 2005

STATE OF ILLINOIS  
Pollution Control Board

*BEFORE THE ILLINOIS  
POLLUTION CONTROL BOARD*

*GRAND PIER CENTER LLC* )  
*AMERICAN INTERNATIONAL* )  
*SPECIALTY LINES INSURANCE CO.* )  
*as subrogee of Grand Pier Center LLC* )  
  
*Complainants* )  
  
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*CHICAGO DOCK AND CANAL TRUST* )  
*CHICAGO DOCK AND CANAL COMPANY* )  
*KERR-MCGEE CHEMICAL LLC* )  
  
*Respondents* )

PCB 05-157  
(Enforcement)

**COMPLAINT**

Complainants Grand Pier Center LLC and American International Specialty Lines Insurance Co., as subrogee of Grand Pier Center LLC, by their attorneys JOHNSON & BELL, LTD., for their Complaint against the Respondents River East LLC; Chicago Dock and Canal Trust; Chicago Dock and Canal Company, and Kerr-McGee Chemical LLC, aver as follows:

1. This is a citizen suit brought to enforce Sections 12(a), 12(d) and 21(e) of the Illinois Environmental Protection Act (the Act) (415 ILCS 5/1 et seq.), as amended, directing Respondents to abate and remediate certain environmental contamination, and for cost recovery with respect to any costs incurred by Grand Pier Center LLC (Grand Pier) and American International Specialty Lines Insurance Co. (AISLIC), or to be incurred by Grand Pier and AISLIC, in performing response activities at the site identified by the United States Environmental Protection Agency (USEPA) as the RV3 North Columbus Drive Site (the RV3 Site) in Chicago, Illinois.

2. For each of Complainants' claims, the Illinois Pollution Control Board has jurisdiction and authority to declare and enter judgment of the rights and responsibilities of the parties to this citizen suit pursuant to 35 IAC 103.200 and Sections 5(d), 31(d) and 33(a) of the Act.

3. Complainant Grand Pier Center LLC (Grand Pier) is an Illinois limited liability company, with its principal office in Chicago, Illinois. Grand Pier was issued a policy of insurance by American International Specialty Lines Insurance Co.

4. Complainant American International Specialty Lines Insurance Co. (AISLIC) is a corporation, with its principal office in New York, New York. AISLIC is subrogated to certain claims that Grand Pier has against Respondents for damages Respondents caused to Grand Pier.

5. Respondent River East LLC, formerly known as CityFront Center LLC, is a Delaware limited liability company authorized to do business in Illinois, with its principal office in Chicago, Illinois. River East LLC is sued as successor of and successor in interest to Respondents Chicago Dock and Canal Trust, and Chicago Dock and Canal Company.

6. Respondent Chicago Dock and Canal Trust, an Illinois business trust, is sued as the successor of and successor in interest to Chicago Dock and Canal Company. Chicago Dock and Canal Trust has also been known as CityFront Acquisition Trust, an Illinois business trust.

7. Respondent Chicago Dock and Canal Company was a corporation organized and existing under and by virtue of a special act of the legislature of the State of Illinois and authorized to do business in Illinois.

8. Respondent Kerr-McGee Chemical LLC, a Delaware limited liability company authorized to do business in Illinois, is an affiliate of Kerr-McGee Chemical Corporation, successor of and successor in interest to Lindsay Light and Chemical Company and Lindsay Light Company.

#### **The RV3 North Columbus Drive Site**

9. Through a series of administrative orders and amendments, the USEPA has identified land generally located at 316 East Illinois Street, Chicago, Cook County, Illinois as the Lindsay Light II Site. Lindsay Light II is situated in an urban area known as Streeterville, and is surrounded by commercial and residential buildings. The Chicago River is located approximately ¼ mile south, and Lake Michigan is about ½ mile east of the Lindsay Light II Site.

10. RV3 North Columbus Drive Site (the RV3 Site), the parcel of land pertinent to this citizen suit, is identified by the USEPA in an amendment to its administrative orders issued for the Lindsay Light II Site. The RV3 Site is generally located at 200 East Illinois Street in Chicago, Cook County, Illinois, and is bounded by North Columbus Drive, East Grand Avenue, North St. Clair Street, and East Illinois Street.

11. The RV3 North Columbus Drive Site is a "site" as that term is defined in Section 3.460 of the Act (415 ILCS 5/3.460).

#### **Contamination of the RV3 Site**

12. From at least 1915 to 1933, the Lindsay Light Company was headquartered at 161 East Grand Avenue, and manufactured incandescent gaslight mantles at 161 East Grand Avenue and / or at 316 East Illinois Street, at and adjacent to the Lindsay Light II and the RV3 Sites.

13. The principal ingredient in gaslight mantle manufacture is thorium. Thorium occurs principally as the parent radionuclide thorium-232 in association with its daughter products in a decay sequence known as the Thorium Decay Series. It is believed that the principal source of contamination at the RV3 Site is the Thorium Decay Series.

14. Between at least 1915 and 1933, Lindsay Light Company operated its incandescent gaslight mantle manufacturing business at the Lindsay Light II Site, and arranged for the disposal of hazardous substances at the Lindsay Light II Site, including the RV3 North Columbus Drive parcel, the parcel pertinent to this citizen suit.

15. Chicago Dock and Canal Company owned the RV3 North Columbus Drive parcel of the Lindsay Light II Site at the time hazardous substances were disposed at the RV3 Site by Lindsay Light Company.

#### **Remediation of the RV3 Site**

16. Through a series of administrative orders, the USEPA ordered Chicago Dock and Canal Trust and Kerr-McGee Chemical LLC to remove the hazardous substances contamination at the Lindsay Light II Site, and in an amendment, ordered River East LLC, Kerr-McGee Chemical LLC and Grand Pier Center LLC to remove the hazardous substances contamination at the RV3 North Columbus Drive Site.

17. The remediation work performed at the RV3 Site was conducted under the Unilateral Administrative Order Docket Number V-W-96-C-353 issued June 6, 1996 (UAO) and the First Amendment to that Order dated March 29, 2000. The work was conducted in accordance with the Work Plan for Site Radiation Survey and Excavation Soil Management dated March 20, 2000 and approved by the USEPA on March 23, 2000.

18. Thereafter, the USEPA required additional work, which was conducted in accordance with the Sidewalk Remediation Work Plan dated March 9, 2001 and approved by USEPA on April 11, 2001.

19. The First Amendment to the UAO required Grand Pier, River East LLC, and Kerr-McGee Chemical LLC to perform certain removal actions including, but not limited to, the implementation of a Site Health and Safety Plan, the implementation of an air monitoring program, the removal of contamination, and the disposal of hazardous substances.

20. Grand Pier Center LLC, as the then current owner of the RV3 Site, and AISLIC, as subrogee of Grand Pier, performed and completed work at the RV3 Site in accordance with the UAO, the UAO's First Amendment, and the Work Plans.

21. The removal activities under the Work Plan began on April 4, 2000, and Grand Pier Center LLC has been in compliance with the UAO since the UAO was issued to Grand Pier Center LLC for the RV3 Site.

22. A final Closure Report for the area bounded by North Columbus Drive, East Grand Avenue, North St. Clair Street, and East Illinois Street was prepared by the Project Coordinator, STS Consultants, Ltd., and submitted to the USEPA on July 2, 2001. Thereafter, the Final Closure Report Addendum dated August 31, 2004 was submitted to USEPA.

23. USEPA issued Letters of Completion on August 26, 2002 and on October 8, 2004 for the work performed according to the approved Work Plans.

24. Grand Pier and AISLIC incurred necessary response costs of approximately \$2,300,000 at the RV3 Site, and continue to incur additional costs of response.

25. Respondents are liable "persons" as that term is defined by Section 3.315 of the Act (415 ILCS 5/3.315) for all costs of response at the RV3 Site.

### Count I – Waste Disposal

26. Complainants incorporate by reference as if fully restated herein, paragraphs 1 through 25, above.

27. Respondent Kerr-McGee is a “generator” as that term is defined by Section 3.205 of the Act (415 ILCS 5/3.205).

28. Chicago Dock and Canal Company owned the parcel of land comprising the RV3 North Columbus Drive Site at the time that Lindsay Light Company disposed of “hazardous substances,” as that term is defined in Section 3.215 of the Act (415 ILCS 5/3.215), at the RV3 Site, including but not limited to thorium.

29. Releases of hazardous substances at the RV3 Site have resulted in radioactive thorium contamination requiring Grand Pier and AISLIC to incur necessary response costs to remove the contamination and remediate the RV3 Site, totaling approximately \$2,300,000 to date.

30. Grand Pier was an innocent purchaser of the RV3 Site. Grand Pier is a wholly innocent owner which had no involvement with the improper treatment, storage, disposal or discharge of thorium contamination at the RV3 Site.

31. The Act prohibits the disposal, treatment, storage or abandonment of any waste in Illinois, except at a site or facility which meets the requirements of the Act and of regulations and standards thereunder. 415 ILCS 5/21(e).

32. Respondents violated the Act when they improperly disposed, treated, stored and abandoned solid and hazardous wastes at the Site, a facility which does not meet the requirements of the Act and regulations and standards thereunder for such disposal, treatment, storage and abandonment of waste.

33. As a result of Respondents' violation of the Act, the Site was contaminated, resulting in Complainants' incurrence of costs in the investigation, removal, and reporting activities at the Site.

34. Respondents are liable under the Act for Complainants' costs incurred in the investigation, removal, and reporting to USEPA of contaminants Respondents failed to remove from the Site.

#### **Count II – Contaminant Threat to Groundwater**

35. Complainants incorporate by reference as if fully restated herein, paragraphs 1 through 34, above.

36. The Act prohibits any person from causing, threatening, or allowing the discharge of any contaminant so as to cause or tend to cause water pollution, either alone or in combination with matter from other sources. 415 ILCS 5/12(a).

37. Respondents violated the Act when they improperly handled, treated, stored and disposed of solid and hazardous wastes, thereby causing, threatening, and allowing the discharge of contaminants, so as to cause and tend to cause water pollution at the Site, either alone or in combination with matter from other sources.

38. As a result of Respondents' violation of the Act, the Site was contaminated, resulting in Complainants' incurrence of costs in the investigation, removal, and reporting activities at the Site.

39. Respondents are liable under the Act for Complainants' costs incurred in the investigation, removal, and reporting to USEPA of contaminants Respondents failed to remove from the Site.

### **Count III – Contaminants Upon Land**

40. Complainants incorporate by reference as if fully restated herein, paragraphs 1 through 39, above.

41. The Act prohibits any person from depositing any contaminants upon the land in such place and manner so as to create a water pollution hazard. 415 ILCS 5/12(d).

42. Respondents violated the Act when they improperly handled, treated, stored and disposed of solid and hazardous wastes, thereby depositing contaminants upon the land at the Site in such place and manner so as to create a water pollution hazard.

43. As a result of Respondents' violation of the Act, the Site was contaminated, resulting in Complainants' incurrence of costs in the investigation, removal, and reporting activities at the Site.

44. Respondents are liable under the Act for Complainants' costs incurred in the investigation, removal, and reporting to USEPA of contaminants Respondent failed to remove from the Site.

### **PRAYER FOR RELIEF**

WHEREFORE, Complainants demand judgment in their favor and against the Respondents, and each of them:

A. declaring each Respondent jointly and severally liable and awarding to Complainants all past costs of response incurred by Complainants, with interest as provided by law;

B. declaring each Respondent jointly and severally liable and awarding to Complainants all future costs of response, if any, to be incurred by Complainants, with interest as provided by law;

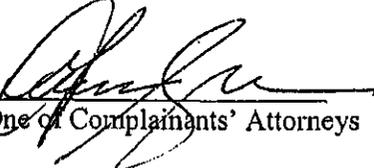
C. mandating and ordering Respondents to abate and remediate contamination should additional remediation be required by administrative order or judicial decree;

D. awarding to Complainants their costs of litigation, including reasonable attorney and expert witness fees; and

E. ordering such other relief as is appropriate and just.

Respectfully submitted this 25<sup>th</sup> day of February 2005

GRAND PIER CENTER LLC  
AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE Co.

By   
One of Complainants' Attorneys

Frederick S. Mueller  
Daniel C. Murray  
Garrett L. Boehm, Jr.  
JOHNSON & BELL, LTD.  
Suite 4100  
55 East Monroe Street  
Chicago, Illinois 60603-5803

Tel. (312) 372-0770

1181048

**CERTIFICATE OF SERVICE**

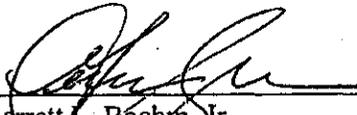
I, the undersigned, on oath, state that I have served on the date of February 25, 2005, the attached formal complaint and notice by Certified mail, upon the following persons:

Donald J. Moran  
PEDERSEN & HOUP  
161 North Clark Street, Suite 3100  
Chicago, Illinois 60601-3242

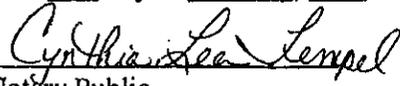
*Attorney for River East LLC and  
Chicago Dock and Canal Trust*

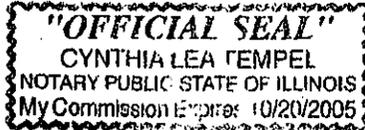
John T. Smith II  
COVINGTON & BURLING  
1201 Pennsylvania Avenue N.W.  
Washington, D.C. 20004-2401

*Attorney for Kerr-McGee Chemical LLC*

  
\_\_\_\_\_  
Garrett L. Boehm, Jr.  
JOHNSON & BELL, LTD.  
55 East Monroe Street, Suite 4100  
Chicago, IL 60603  
(312) 372-0770

Subscribed to and sworn before me  
This 25<sup>th</sup> day of February, 2005.

  
\_\_\_\_\_  
Notary Public



My commission expires: Oct. 20, 2005

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

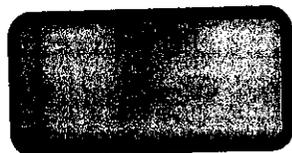


AMEC CONSTRUCTION MANAGEMENT, INC.,	)	
	)	
Plaintiff-Counterdefendant,	)	
	)	
vs.	)	No. 01 CH 11407
	)	
GRAND PIER CENTER, L.L.C., et al.,	)	Consolidated with
	)	No. 01 CH 10930
Defendants-Counterplaintiffs.	)	
	)	Judge Robert J. Quinn

2009 FEB 10 AM 12:34

**MOTION TO SUBSTITUTE AND FOR EXTENSIONS OF TIME**

Defendant-Counterplaintiff Grand Pier Center, L.L.C. ("Grand Pier"), Defendant EPC Group, L.L.C. ("EPC") and Intervenors Harmony Group, L.L.C. ("Harmony"), New Management, L.L.C. ("New Management") and Reliable Contracting & Equipment Co. ("Reliable") (collectively, "Movants"), by their attorneys, Novack and Macey, respectfully move this Court for the entry of an order: (a) substituting EPC, Harmony, New Management and Reliable (collectively, the "LLC Members") for Grand Pier Center, L.L.C. ("Grand Pier") as the proper parties to pursue the various counterclaims asserted, or which could be asserted, by Grand Pier in the instant action; and (b) granting Grand Pier extensions of time to file the pleadings described in paragraph 15 below until a ruling is made by this Court as to the proper parties to pursue the counterclaims and/or a decision is issued by the Appellate Court regarding the appeal that has been filed. In support hereof, Movants state as follows:



## **Background**

1. On January 15, 2003, Movants received notice from Lehman Brothers Holdings Inc. ("Lehman") of its intent to conduct on February 5, 2003 at 10:00 a.m. the non-judicial sale (the "Sale") of 100% of the LLC Members' membership interests in Grand Pier.

2. After receiving that notice, Movants moved as promptly as possible. In particular, on January 16, 2003, Grand Pier filed an Emergency Motion to Enjoin the Proposed Non-Judicial Sale (the "Injunction Motion"). At the same time, the LLC Members petitioned to intervene and join in the Injunction Motion (the "Intervention Petition"). The Injunction Motion and Intervention Petition were presented to the Court that same day.

3. The Court set a very short briefing schedule and a hearing date of January 28, 2003 at 3:00 p.m. At the January 28 hearing, the Court granted the Intervention Petition and announced that it would issue its ruling on the Injunction Motion on February 3, 2003 at 12:00 p.m.

4. On February 3, 2003, the Court issued an opinion denying the Injunction Motion (the "Opinion"). At that time, Movants requested that the Court stay the effect of the Opinion and the Sale until the Appellate Court had an opportunity to consider the appeal in this matter (the "Motion to Stay"). The Court granted in part and denied in part the Motion to Stay: it allowed the Sale to proceed on February 5 at 10:00 a.m., but stayed any transfer of property or closing of the Sale for 21 days, or until February 24, 2003.

## The Assignment

5. In the Opinion, the Court stated that, if the LLC Members lose their shares in Grand Pier as a result of LaSalle's failure to fund the project, "they would certainly have a legal claim against LaSalle for their loss." (Opinion at 8.) Indeed, it was based on this assumption that this Court found that Movants failed to establish that they had no adequate remedy at law and that they would suffer irreparable harm.

6. No sooner was the Court's ink dry on the Opinion, than LaSalle's counsel advised Movants' counsel that LaSalle's position was that the Court's statement was wrong, that any claims belonged only to Grand Pier, that those claims will be taken over by Lehman after the Sale and that they would be dropped. Lehman has similarly taken the position that the claims belong to Grand Pier, which Lehman would take over if the Sale goes through.

7. Based on, among other things, LaSalle's and Lehman's stated positions, and the uncertainty as to whether the Court's expectation and belief regarding the LLC Members' claims would actually prove true, there was a very real possibility that the substantial and valid claims against LaSalle would never again see the light of day. The same is true for the claims against AMEC and others and the anticipated claims against Lehman.

8. If so, Movants would suffer a substantial injustice (unintended by this Court) that would leave them with no remedy for the wrongs they claim were perpetrated against them and -- at least as to LaSalle -- as to which this Court has already held there are genuine issues of fact.

9. Movants were presented with no real choice. Not knowing what the Appellate Court would do -- or what would happen to this Court's assumption as to the LLC Members'

right to assert claims -- on February 4, 2003, Movants executed an assignment from Grand Pier to the LLC Members of all of Grand Pier's claims against LaSalle, Lehman, AMEC and others (the "Assignment"). A copy of the Assignment is attached hereto as Exhibit A.

10. This Assignment was designed: (a) to avoid the complete injustice that would occur if the very lenders who caused the damage got control of the claims against themselves; and (b) to make sure that the Court's stated assumption and expectation would come true.

### **The Sale And Appeal**

11. The Sale took place as scheduled. As expected -- and despite Lehman's protestations that it would not necessarily be the purchaser -- Lehman was the only bidder at the sale, credit bid its \$22.5 million debt and purchased the LLC Members' interests in Grand Pier. If the Appellate Court does not grant Movants relief: (a) the LLC Members will lose forever their ownership of Grand Pier; (b) Grand Pier will lose its independent ownership and control of the Property; (c) Grand Pier will become owned and controlled by its adversary, Lehman; and (d) Lehman will direct Grand Pier in the litigation, including dropping its very valid counterclaims.

12. Accordingly, on February 5, 2003, Movants appealed as of right pursuant to Illinois Supreme Court Rule 307(d). The earliest that Movants could possibly receive a decision on their Appeal is February 13, 2003.

### **Motion For Substitution**

13. By reason of the Assignment, pursuant to 735 ILCS 5/2-1008(a), the LLC Members now move to substitute themselves for Grand Pier as the proper parties to assert the various counterclaims instituted, or to be instituted, by Grand Pier in the instant action.

### **Motion For Extensions Of Time**

14. Because the closing of the Sale is stayed until at least February 24, 2003 and the Appeal of the Denial Order is pending, it remains uncertain who will be the owner of Grand Pier.

15. Grand Pier has several pleadings to which it must respond over the next few weeks: (a) Grand Pier's Reply to LaSalle's Affirmative Defenses to its Counterclaim is due on February 10, 2003; (b) Grand Pier's Answer or responsive pleading to Otis Elevator's Co.'s Complaint is due on February 18, 2003; (c) Grand Pier's Reply in Support of Its Motion for Summary Judgment against LaSalle is due on February 20, 2003; and (d) Grand Pier's answer or responsive pleading to LaSalle's Second Amended Complaint is due on March 20, 2003.

16. Moreover, Grand Pier's current counsel of record have been expending a substantial amount of time since receiving the January 15, 2003 notice of the Proposed Non-Judicial Sale on the Intervention Petition, the Injunction Motion and the Appeal. As a result, among other things, Grand Pier has lost almost three of the four weeks that were originally scheduled for its Reply in Support of Its Motion for Summary Judgment against LaSalle.

17. Accordingly, Movants respectfully request that the Court: (a) hold all of the above pleadings in abeyance until the issues of Grand Pier's ownership and the proper parties to pursue

its defenses and counterclaims are determined; and (b) grant extensions of time for each equivalent to the time period covered by the abeyance.

WHEREFORE, Movants respectfully request that the Motion to Substitute and the Motion for Extensions of Time be granted in their entirety and that the Court grant Movants such other and further relief as is appropriate.

Respectfully submitted,

GRAND PIER CENTER, L.L.C.  
EPC GROUP, L.L.C.,  
HARMONY GROUP, L.L.C., NEW  
MANAGEMENT, L.L.C., and RELIABLE  
CONTRACTING & EQUIPMENT CO.

By: P. Andrew Fleming  
One Of Their Attorneys

Stephen Novack  
P. Andrew Fleming  
Venus S. McGhee  
Daniel R. Halperin  
NOVACK and MACEY  
303 West Madison Street  
Suite 1500  
Chicago, Illinois 60606  
(312) 419-6900  
Firm ID 91731

## ASSIGNMENT OF CLAIMS

This Assignment of Claims ("Assignment") is made and entered into as of this 4<sup>th</sup> day of February, 2003 by and among Grand Pier Center, L.L.C., an Illinois limited liability company ("Assignor"), on the one hand, and EPC Group, L.L.C., an Illinois limited liability company and the managing member of Assignor, Harmony Group, L.L.C., an Illinois limited liability company and member of Assignor, New Management, L.L.C., an Illinois limited liability company and member of Assignor, Reliable Contracting & Equipment Co., an Illinois corporation and member of Assignor (collectively, the "Assignees"), on the other. (Assignor and Assignees are sometimes collectively referred to herein as the "Parties.")

WHEREAS, Assignor is the owner of that certain real estate located at the southwest corners of Grand Avenue and Columbus Drive, Chicago, Illinois (the "Property") and has been constructing, developing and leasing a mixed-use retail and parking garage development on the Property (the "Project");

WHEREAS, Assignor is a party to actions arising out of the Project and pending in the Circuit Court of Cook County, Illinois, styled LaSalle Bank National Association v. Grand Pier Center, L.L.C., et al., Case No. 01 CH 10930 and AMEC Construction Management, Inc. et al. v. Grand Pier Center, L.L.C. et al., Case No. 01 CH 11407, which actions have been consolidated (the "Lawsuit");

WHEREAS, Assignor is the owner of certain claims related to the Property, the Project and/or the Lawsuit (the "Claims") that have been asserted or may be asserted in the Lawsuit against one or more of the parties listed on Exhibit A hereto. The Claims include claims that have been asserted or may be asserted against: (a) LaSalle Bank National Association ("LaSalle") and Lehman Brothers Holdings, Inc. ("Lehman") (collectively, the "Lender Claims"); (b) AMEC Construction Management, Inc. ("AMEC") and various of its subcontractors (collectively, the "Lien claims"); and (c) the remaining parties listed on Exhibit A hereto (the "Other Claims");

WHEREAS, Assignees have to date been directing and, in great part, financing the prosecution of the Claims;

WHEREAS, LaSalle and Lehman have consistently taken the position in the Lawsuit that the Lender Claims have no merit;

WHEREAS, on January 14, 2003, Lehman sent a Notification of Disposition of Collateral to Assignor and Assignees of its intention to conduct a non-judicial sale of the membership interests in Assignor (the "Sale") on February 5, 2003 at 10:00 a.m.;

WHEREAS, Assignor maintains a good faith belief that, if the membership interests in Assignor are sold at the Sale, the Lender Claims will not be appropriately pursued on behalf of Assignor and, accordingly, good and legitimate claims may be forever lost and wrongdoers may be allowed to avoid responsibility and liability for their actions;

WHEREAS, the Court's Opinion dated February 3, 2003 states that, in the event that the Sale occurs, Assignees would "certainly have a legal claim against LaSalle for their loss";

WHEREAS, LaSalle disputes the Court's finding in that regard and takes the position that: (a) Assignees would have no standing to make any of the Claims; and (b) all pending claims against LaSalle will terminate upon the Sale;

WHEREAS, the Parties desire to ensure that the Claims will be prosecuted if the Sale occurs and that the Court's above-described finding will not be frustrated;

WHEREAS, Assignor maintains a good faith belief that, if the membership interests in Assignor are sold at the Sale, the Claims will not be vigorously pursued and, accordingly, the Claims would be more valuable to Assignees than to Assignor;

WHEREAS, Assignor desires to assign the Claims to Assignees in order to, among other things, assure that the Claims are in the hands of parties who will vigorously pursue them;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements herein contained, and other good and valuable consideration, including, but not limited to, Assignees' role in the prosecution of the Claims to date, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

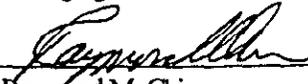
1. Assignment. Assignor hereby assigns to each of the Assignees, and each of the Assignees hereby accepts such assignment, on a pro rata basis in accordance with their respective percentage of ownership in the Assignor, all of Assignor's right, title and interest in, to and under any and all rights, claims, choses in action, suits, settlements, awards, and judgments, whether choate or inchoate, for any and all harm, costs, expenses, losses, damages, penalties, lost profits, expenses and disbursements (including without limitation, legal fees and expenses) which Assignor now has or may have in the future against each of the parties listed in Exhibit A hereto, whether at law or in equity, which includes the entire amount of the claim that Assignor is entitled to assert.

2. Binding Effect. The obligations and liabilities of the parties hereunder shall be binding upon and enforceable against the Parties and each party hereto, and their respective successors and assigns and shall inure to the benefit of such parties and their successors and assigns.

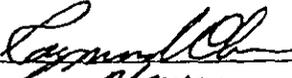
IN WITNESS WHEREOF, the Parties have executed this Assignment as of the date set forth above.

GRAND PIER CENTER, L.L.C. "Assignor"

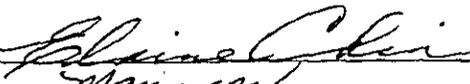
By: EPC GROUP, L.L.C.  
Managing Member

By:   
Raymond M. Chin  
Manager

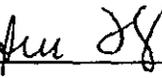
EPC GROUP, L.L.C. "Assignee"

By:   
Its: Manager

HARMONY GROUP, L.L.C. "Assignee"

By:   
Its: Manager

NEW MANAGEMENT, L.L.C. "Assignee"

By:   
Its: \_\_\_\_\_

RELIABLE CONTRACTING & EQUIPMENT CO.  
"Assignee"

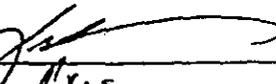
By:   
Its: 12.5.

EXHIBIT A

AIG Insurance Co.  
American International Specialty Lines Insurance Co.  
AMEC Construction Management, Inc.  
ATC Associates, Inc.  
ATC Group Services Inc.  
BCM Engineers Inc.  
CECO Concrete Construction  
Compass Management & Leasing Inc.  
Concrete Structures of the Midwest, Inc.  
Environmental Systems Design, Inc  
Equitable Life Assurance Society of the United States, and predecessors in title  
ERE Yarmouth  
Fujikawa Johnson & Associates, Inc. ;  
Great Lakes Plumbing & Heating Co.  
Harmon Limited  
Kerr-McGee Corporation and its predecessor Linsday Light and Chemical Company  
LaSalle Bank National Association  
Lehman Brothers Holdings, Inc.  
Loebl, Schlossman & Hackl  
Maron Electric Co.  
Near North Insurance Brokerage, Inc.  
North River Insurance Co.  
Otis Elevator Co.  
Revcon Construction  
Roy Strom Excavating & Grading Co.  
Smith Environmental Technologies Corporation  
Smith Technology Corporation  
Thomton-Tomasetti Group, Inc.  
U.S. Fire Ins. Co.  
United States of America, and its Officers, Departments, and Agencies

## CERTIFICATE OF SERVICE

P. Andrew Fleming, an attorney, hereby certifies that he served the foregoing Motion to Substitute and For Extensions of Time, by causing a true and correct copy thereof to be sent by messenger delivery (*unless indicated otherwise*) to:

Peter F. Herzog  
Peter J. Bedard  
Helen M. Burke  
Michael Best & Friedrich LLC  
401 North Michigan Avenue, Suite 1900  
Chicago, Illinois 60611  
(Attorneys for AMEC Construction Management, Inc.)

Eric S. Rein  
Richard P. Darke  
Schwartz, Cooper, Greenberger & Krauss  
180 North LaSalle Street, Suite 2700  
Chicago, Illinois 60601  
(Attorneys for LaSalle Bank N.A.)

Theodore E. Harman  
James R. Pittacora  
Ungaretti & Harris  
70 West Madison Street, Suite 3500  
Chicago, Illinois 60602  
(Attorneys for Lehman Brothers Holdings Inc.)

Suzanne Karbarz Rovner  
David A. Howard  
Schiff Hardin & Waite  
6600 Sears Tower  
Chicago, Illinois 60606  
(Attorneys for Revcon Construction)

Michael Gilman  
O'Rourke, Hogan, Fowler & Dwyer  
10 South LaSalle Street, Suite 2900  
Chicago, Illinois 60603  
(Attorneys for Concrete Structures of the Midwest, Inc.)

Richard S. Reizen  
Bethany E. Ammons  
Kubasiak, Fylstra, Reizen & Rotunno  
20 South Clark Street, 29th Floor  
Chicago, Illinois 60603  
(Attorneys for Maron Electric)

Dennis Powers  
Piper Rudnick  
203 North LaSalle Street, Suite 1800  
Chicago, Illinois 60601  
(Attorneys for Harmon, Ltd.)

Barry C. Kessler  
Thomas A. Christensen  
Kessler & Krantz  
318 West Randolph Street, Fifth Floor  
Chicago, Illinois 60606  
(Attorneys for Great Lakes Plumbing and Heating Company)

Christina A. Daskas  
Howard C. Emmerman  
Beermann, Swerdlow, Woloshin,  
Barezky, Becker, Genin & London  
161 North Clark Street, Suite 2600  
Chicago, Illinois 60601  
(Attorneys for CECO Concrete Construction)

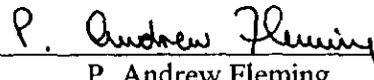
Steven P. Rouse  
Menges & Molzahn  
20 North Clark Street, Suite 2300  
Chicago, Illinois 60602  
(Attorneys for Otis Elevator Company)

James S. Koehler (*by facsimile*)  
Callahan, Fitzpatrick & LaKoma  
1200 Jorie Boulevard, Suite 329  
Oak Brook, Illinois 60523  
(Attorneys for Roy Strom)

Jeffrey M. Osterkamp  
Joel J. Rhiner  
Stein, Ray & Harris  
222 West Adams Street, Suite 1800  
Chicago, Illinois 60606  
(Attorneys for Loeb, Schlossman & Hackl,  
Inc.; Fujikawa Johnson & Associates, Inc.;  
Environmental Systems Designs, Inc.; and  
Thornton-Tomasetti Group, Inc.)

Eric L. Singer (*by facsimile*)  
Wildman, Harrold, Allen & Dixon  
2300 Cabot Drive, Suite 455  
Lisle, Illinois 60532  
(Co-counsel for Loeb, Schlossman & Hackl,  
Inc.)

on this 10th day of February, 2003.

  
P. Andrew Fleming

## ASSIGNMENT OF CLAIMS

THIS ASSIGNMENT OF CLAIMS ("Assignment") is made by and between GRAND PIER CENTER, L.L.C., an Illinois limited liability company ("Assignor"), to and in favor of LB STREETERVILLE LLC, a Delaware limited liability company ("Assignee").

### WITNESSETH:

WHEREAS, Assignor is the owner and holder of fee simple title to certain real estate legally described on Exhibit A attached hereto and made a part hereof (the "Real Estate") and the improvements thereon (the Real Estate and improvements are collectively the "Property"); and

WHEREAS, Assignor and EPC GROUP, L.L.C., an Illinois limited liability company, HARMONY GROUP, L.L.C., an Illinois limited liability company, NEW MANAGEMENT L.L.C., an Illinois limited liability company, and RELIABLE CONTRACTING AND EQUIPMENT CO., an Illinois corporation, and RAYMOND M. CHIN, SUE LING GIN, LINVAL CHUNG, and ELAINE CHIN, and LEHMAN BROTHERS HOLDINGS INC., doing business as Lehman Capital, a division of Lehman Brothers Holdings Inc., a Delaware corporation ("Lender"), have entered into a certain Settlement Agreement, dated as of March 21, 2003 (the "Settlement Agreement") pursuant to which, among other things, Assignor has agreed to convey the Property and the Claims (as such terms are hereinafter defined) to Assignee as nominee for Lender.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Assignment. Assignor does hereby assign, transfer, set over and convey, unto Assignee those all claims and causes of action (collectively, the "Claims") that Assignor may have arising out of Assignor's acquisition, ownership, operation, financing and development of the Property, including, without limitation, any and all claims and causes of action described in the instrument of assignment dated as of February 4, 2003, a copy of which is attached hereto as Exhibit B ("Prior Assignment") (but not defenses or any counterclaims or separate claims against AMEC, which are within the Retained Claims referred to below) and the Sidewalk Thorium Claim (defined below), such assignment effective as of the "Effective Date" defined below, RESERVING IN ASSIGNOR, HOWEVER, the following specifically described claims, and only the following specifically described claims: (a) claims of Assignor against ~~Kerr McGee~~ (or any of its predecessors), ~~Equitable Life Assurance Society of the United States~~ (or any of its predecessors in title to the Real Estate), the ~~United States of America, Near North Insurance Company~~ and ~~American International Specialty Lines Insurance Company~~ ("AIG") related to damages incurred by Borrower, during its period of ownership of the Real Estate caused or resulting from the existence of thorium therein; provided the claims so retained shall not (i) prejudice the claims of Lender or Lender's Nominee, as the case may be, which may arise in any successor in title by statute or common law with respect to damages that may be incurred by Lender or Lender's Nominee as a result of the existence of thorium containing soils in or under the Mortgaged Property as of the Conveyance Date or (ii) include any claims against Kerr McGee

(or any of its predecessors), Equitable Life Assurance Society of the United States (or any of its predecessors in title to the Real Estate), the United States of America, Near North Insurance Company and AIG or any predecessors in title to the Real Estate related to the existence of thorium in or under any portion of the Land beneath any public streets or sidewalks located thereon or in or under any streets, sidewalks or rights of way immediately adjacent to the Land (the "Sidewalk Thorium Claim") (all such claims described in clauses (i) and (ii) above being claims assigned to Assignee by this Assignment of Claims), (b) any and all claims against ATC Associates, Inc. and/or its affiliates, predecessors or successors related to the environmental report or reports prepared by them for Borrower with respect to the Real Estate; and (c) any and all claims against AMEC (including any defenses or affirmative defenses against the AMEC claim for foreclosure of its mechanics lien against the Real Estate) related to matters arising prior to the Conveyance Date (the claims identified in clauses (a), (b) and (c) above are, collectively, the "Retained Claims"). Assignor represents and warrants that the Prior Assignment has been rescinded and is of no force or effect, and that Assignor is the sole holder of the Claims and has not previously assigned or encumber same (except for the rescinded Prior Assignment). Assignor covenants the defenses retained by Borrower with respect to the AMEC claims shall be asserted for the benefit and on behalf of Assignee's in accordance with the terms of the Settlement Agreement, and if the Court should determine Borrower does not have standing to assert same Borrower shall re-assign such defenses to Assignee. Notwithstanding the foregoing, the retention of the defenses of Borrower against AMEC as a part of the Retained Claims shall not prejudice the assertion by Lender or Lender's Nominee of any defenses to AMEC's claim for foreclosure of its mechanics lien against the Mortgaged Property that may be asserted by the title holder of any property subject to a foreclosure action.

2. Acceptance of Assignment. Effective as of the Effective Date of this Assignment, Assignee accepts the assignment of Claims made herein.

3. Successors. The terms, covenants, conditions and warranties herein contained and the powers hereby granted shall inure to the benefit of, and bind, all parties hereto and their respective successors and assigns.

4. Severability. If any provision of this Assignment or the application thereof to any entity, person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Assignment and the application of its provisions to other entities, persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

5. Entire Agreement. This document and the Settlement Agreement contain the entire agreement concerning the assignment of Claims between the parties hereto. No variations, modifications or changes herein or hereof shall be binding upon any party hereto, unless set forth in a document duly executed by, or on behalf of, such party.

6. Construction. Whenever used herein and the context requires it, the singular number shall include the plural, the plural the singular; and any gender shall include all genders.

7. Governing Law. The parties agree that the law of the State of Illinois shall govern the performance and enforcement of this Assignment.

8. Counterparts. This Assignment may be executed in counterparts.

9. Effective Date. This Assignment shall take effect between the parties on the date hereafter set forth (the "Effective Date").

IN WITNESS WHEREOF, the parties have executed this Assignment of Claims the 24th day of March, 2003.

**ASSIGNOR:**

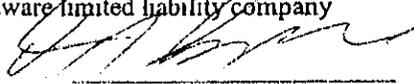
**GRAND PIER CENTER, L.L.C.**, an Illinois limited liability company

By: **EPC Group, L.L.C.**, an Illinois limited liability company, its manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

**LB STREETERVILLE LLC**,  
a Delaware limited liability company

By:   
Name: \_\_\_\_\_  
Title: Authorized Signatory

Schedule of Exhibits:

<u>Exhibit A</u>	Legal Description
<u>Exhibit B</u>	Prior Assignment

IN WITNESS WHEREOF, the parties have executed this Assignment of Claims the 24th  
day of March, 2003.

**ASSIGNOR:**

**GRAND PIER CENTER, L.L.C.**, an Illinois  
limited liability company

By: **EPC Group, L.L.C.**, an Illinois limited  
liability company, its manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*Raymond Chiu*

*Raymond Chiu*

*Manager*

**ASSIGNEE:**

**LB STREETERVILLE LLC**,  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Schedule of Exhibits:

<u>Exhibit A</u>	Legal Description
<u>Exhibit B</u>	Prior Assignment

ASSIGNOR'S ACKNOWLEDGMENTS

Acknowledgement of Grand Pier Center, L.L.C.

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Raymond H. Chiu, personally known to me to be the same person whose name is subscribed to the foregoing instrument as the Manager of EPC Group, L.L.C., an Illinois limited liability company, the manager of Grand Pier Center, L.L.C., an Illinois limited liability company, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this 24<sup>th</sup> day of March, 2003.

Sharon M. Strobo  
NOTARY PUBLIC



ASSIGNEE'S ACKNOWLEDGEMENT

~~New York~~  
STATE OF ILLINOIS )  
COUNTY OF ~~New York~~ )

Maribel Ruiz

I, \_\_\_\_\_, a Notary Public in and for said County and in the State aforesaid, DO  
HEREBY CERTIFY that David Broderick, the Authorized signatory of, personally known to me  
to be the same person whose name is subscribed to the foregoing instrument as such officer,  
appeared before me this day in person and acknowledged that he signed and delivered the said  
instrument as his own free and voluntary act and as the free and voluntary act of said corporation,  
for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 21<sup>st</sup> day of March, 2003.

Maribel Ruiz  
Notary Public

My Commission expires:

MARIBEL RUIZ  
Notary Public, State of New York  
No. 01RU6081733  
Qualified in County of New York  
Commission Expires October 8, 2008

**EXHIBIT A**  
**Legal Description**

Block 1 in Cityfront Center, being a resubdivision in the North fraction of Section 10, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Also known as:

**PARCEL 1:**

That part of Block 1 in Cityfront Center, being a resubdivision in the North fraction of Section 10, Township 39 North, Range 14 East of the Third Principal Meridian, described as follows:

Beginning at the Northeast corner of said Block 1; thence South along the East line of said Block 1, a distance of 125.106 feet to a point of curve; thence Southerly along the Easterly line of said Block 1, being the arc of a circle tangent to the last described line convex to the East and having a radius of 2809.79 feet, an arc distance of 92.822 feet to the Southeast corner of said Block 1; thence West along the South line of said Block 1, a distance of 426.334 feet; thence North along a line perpendicular to said South line of said Block 1, a distance of 99.948 feet to a corner in said Block 1; thence North along a West line of said Block 1, a distance of 117.947 feet to the Northwest corner of said Block 1; thence East along the North line of said Block 1, a distance of 428.054 feet to the point of beginning, in Cook County, Illinois.

**PARCEL 2:**

That part of Block 1 in Cityfront Center, being a resubdivision in the North fraction of Section 10, Township 39 North, Range 14 East of the Third Principal Meridian, described as follows:

Beginning at the Southwest corner of said Block 1; thence North along the West line of said Block 1, a distance of 99.944 feet to a Northwest corner of said Block 1; thence East along a North line of said Block, being the South line of a public alley, a distance of 150.00 feet to a corner of said Block 1; thence South along a line perpendicular to the South line of said Block 1 at a point 150.164 feet East, as measured along said South line, from the Southwest corner of said Block 1, a distance of 99.948 feet to the South line of said Block 1; thence West along the South line of said Block 1, a distance of 150.164 feet to the point of beginning, in Cook County, Illinois.

# EXHIBIT B

## ASSIGNMENT OF CLAIMS

This Assignment of Claims ("Assignment") is made and entered into as of this 4<sup>th</sup> day of February, 2003 by and among Grand Pier Center, L.L.C., an Illinois limited liability company ("Assignor"), on the one hand, and EPC Group, L.L.C., an Illinois limited liability company and the managing member of Assignor, Harmony Group, L.L.C., an Illinois limited liability company and member of Assignor, New Management, L.L.C., an Illinois limited liability company and member of Assignor, Reliable Contracting & Equipment Co., an Illinois corporation and member of Assignor (collectively, the "Assignees"), on the other. (Assignor and Assignees are sometimes collectively referred to herein as the "Parties.")

WHEREAS, Assignor is the owner of that certain real estate located at the southwest corners of Grand Avenue and Columbus Drive, Chicago, Illinois (the "Property") and has been constructing, developing and leasing a mixed-use retail and parking garage development on the Property (the "Project");

WHEREAS, Assignor is a party to actions arising out of the Project and pending in the Circuit Court of Cook County, Illinois, styled LaSalle Bank National Association v. Grand Pier Center, L.L.C. et al., Case No. 01 CH 10930 and AMEC Construction Management, Inc. et al. v. Grand Pier Center, L.L.C. et al., Case No. 01 CH 11407, which actions have been consolidated (the "Lawsuit");

WHEREAS, Assignor is the owner of certain claims related to the Property, the Project and/or the Lawsuit (the "Claims") that have been asserted or may be asserted in the Lawsuit against one or more of the parties listed on Exhibit A hereto. The Claims include claims that have been asserted or may be asserted against: (a) LaSalle Bank National Association ("LaSalle") and Lehman Brothers Holdings, Inc. ("Lehman") (collectively, the "Lender Claims"); (b) AMEC Construction Management, Inc. ("AMEC") and various of its subcontractors (collectively, the "Lien claims"); and (c) the remaining parties listed on Exhibit A hereto (the "Other Claims");

WHEREAS, Assignees have to date been directing and, in great part, financing the prosecution of the Claims;

WHEREAS, LaSalle and Lehman have consistently taken the position in the Lawsuit that the Lender Claims have no merit;

WHEREAS, on January 14, 2003, Lehman sent a Notification of Disposition of Collateral to Assignor and Assignees of its intention to conduct a non-judicial sale of the membership interests in Assignor (the "Sale") on February 5, 2003 at 10:00 a.m.;

WHEREAS, Assignor maintains a good faith belief that, if the membership interests in Assignor are sold at the Sale, the Lender Claims will not be appropriately pursued on behalf of Assignor and, accordingly, good and legitimate claims may be forever lost and wrongdoers may be allowed to avoid responsibility and liability for their actions;

WHEREAS, the Court's Opinion dated February 3, 2003 states that, in the event that the Sale occurs, Assignees would "certainly have a legal claim against LaSalle for their loss";

WHEREAS, LaSalle disputes the Court's finding in that regard and takes the position that: (a) Assignees would have no standing to make any of the Claims; and (b) all pending claims against LaSalle will terminate upon the Sale;

WHEREAS, the Parties desire to ensure that the Claims will be prosecuted if the Sale occurs and that the Court's above-described finding will not be frustrated;

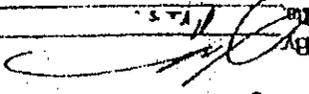
WHEREAS, Assignor maintains a good faith belief that, if the membership interests in Assignor are sold at the Sale, the Claims will not be vigorously pursued and, accordingly, the Claims would be more valuable to Assignees than to Assignor;

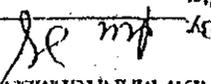
WHEREAS, Assignor desires to assign the Claims to Assignees in order to, among other things, assure that the Claims are in the hands of parties who will vigorously pursue them;

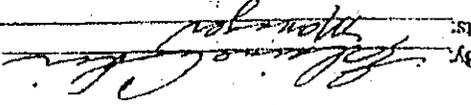
NOW, THEREFORE, in consideration of the foregoing and the mutual agreements herein contained, and other good and valuable consideration, including, but not limited to, Assignees' role in the prosecution of the Claims to date, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

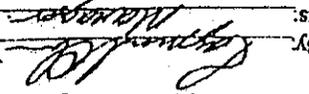
1. Assignment. Assignor hereby assigns to each of the Assignees, and each of the Assignees hereby accepts such assignment, on a pro rata basis in accordance with their respective percentage of ownership in the Assignor, all of Assignor's right, title and interest in, to and under any and all rights, claims, choses in action, suits, settlements, awards, and judgments, whether choate or inchoate, for any and all harm, costs, expenses, losses, damages, penalties, lost profits, expenses and disbursements (including without limitation, legal fees and expenses) which Assignor now has or may have in the future against each of the parties listed in Exhibit A hereto, whether at law or in equity, which includes the entire amount of the claim that Assignor is entitled to assert.

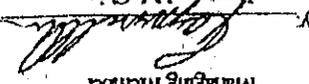
2. Binding Effect. The obligations and liabilities of the parties hereunder shall be binding upon and enforceable against the Parties and each party hereto, and their respective successors and assigns and shall inure to the benefit of such parties and their successors and assigns.

By:   
 Its: \_\_\_\_\_  
 RELIABLE CONTRACTING & EQUIPMENT CO.  
 "Assignee"

By:   
 Its: \_\_\_\_\_  
 NEW MANAGEMENT, L.L.C. "Assignee"

By:   
 Its: \_\_\_\_\_  
 HARMONY GROUP, L.L.C. "Assignee"

By:   
 Its: \_\_\_\_\_  
 EPC GROUP, L.L.C. "Assignee"

By:   
 Its: \_\_\_\_\_  
 Managing Member  
 GRAND PIER CENTER, L.L.C. "Assignee"  
 EPC GROUP, L.L.C.  
 Raymond M. Chin  
 Manager

IN WITNESS WHEREOF, the Parties have executed this Assignment as of the date set forth above.

EXHIBIT A

AIG Insurance Co.  
American International Specialty Lines Insurance Co.  
AMEC Construction Management, Inc.  
ATC Associates, Inc.  
ATC Group Services Inc.  
BCM Engineers Inc.  
CECO Concrete Construction  
Compass Management & Leasing Inc.  
Concrete Structures of the Midwest, Inc.  
Environmental Systems Design, Inc  
Equitable Life Assurance Society of the United States, and predecessors in title  
ERE Yarmouth  
Fujikawa Johnson & Associates, Inc.;  
Great Lakes Plumbing & Heating Co.  
Harmon Limited  
Kerr-McGee Corporation and its predecessor Linsday Light and Chemical Company  
LaSalle Bank National Association  
Lehman Brothers Holdings, Inc.  
Loebl, Schlossman & Hackl  
Maron Electric Co.  
Near North Insurance Brokerage, Inc.  
North River Insurance Co.  
Otis Elevator Co.  
Revcon Construction  
Roy Stron Excavating & Grading Co.  
Smith Environmental Technologies Corporation  
Smith Technology Corporation  
Thornton-Tomasetti Group, Inc.  
U.S. Fire Ins. Co.  
United States of America, and its Officers, Departments, and Agencies