

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

In re:  
Pittsburgh Corning Corporation,  
Debtor(s)

Bankruptcy No. 00-22876-JKF  
Chapter 11  
**Related to Doc. No. 9260**

In re:  
North American Refractories  
Company, *et al.*  
Debtor(s)

Bankruptcy No. 02-20198-JKF  
Chapter 11  
**Related to Doc. No. 7835**

In re:  
Mid-Valley, Inc., *et al.* and  
DII Industries LLC  
Debtor(s)

Bankruptcy No. 03-35592-JKF (**CLOSED**)  
Chapter 11  
**Related to Doc. No. 2839**

---

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

In Re:

Owens Corning, *et al.*,  
Debtor(s)

Bankruptcy No. 00-3837-JKF (**CLOSED**)  
Chapter 11  
**Related to Doc. No. 21068**

W.R. Grace & Co., *et al.*  
Debtor(s)

Bankruptcy No. 01-1139-JKF  
Chapter 11  
**Related to Doc. No. 30404**

USG Corporation, *et al.*,  
Debtor(s)

Bankruptcy No. 01-2094-JKF (**CLOSED**)  
Chapter 11  
**Related to Doc. No. 12682**

United States Mineral Products Company,  
*et al.*  
Debtor(s)

Bankruptcy No. 01-2471-JKF (**CLOSED**)  
Chapter 11  
**Related to Doc. No. 3989**

Kaiser Aluminum Corporation, *et al.*  
Debtor(s)

Bankruptcy No. 02-10429-JKF  
Chapter 11  
**Related to Doc. No.**

The Flintkote Company  
Debtor(s)

Bankruptcy No. 04-11300-JKF  
Chapter 11  
**Related to Doc. No. 7436**

Armstrong World Industries, Inc., *et al.*  
Debtor(s)

Bankruptcy No. 00-4471-JKF (CLOSED)  
Chapter 11  
**Related to Doc. No. 10782**

ACandS, Inc., *et al.*  
Debtor(s)

Bankruptcy No. 02-12687-JKF (CLOSED)  
Chapter 11  
**Related to Doc. No. 3721**

Combustion Engineering, Inc.  
Debtor(s)

Bankruptcy No. 03-10495-JKF (CLOSED)  
Chapter 11  
**Related to Doc. No. 3476**

---

### **ORDER ESTABLISHING THE PROTOCOL FOR PRODUCTION OF 2019 EXHIBITS**

This Protocol establishes the process by which the United States Bankruptcy Court for the Western District of Pennsylvania (“PAWB”) and the United States Bankruptcy Court for the District of Delaware (“DEB”) shall produce exhibits filed pursuant to Fed. R. Bank. P. 2019 in the above-captioned cases (the “2019 Exhibits”) to Garlock Sealing Technologies LLC (“Garlock”) in compliance with recent opinions and orders entered by United States District Court for the Western District of Pennsylvania (“WDPA”) and the United States District Court for the District of Delaware (“DOD”).

This Protocol includes the designation of an attorney from WDPA’s Special Masters Panel to undertake the production of the 2019 Exhibits to Garlock.<sup>1</sup> For the benefit of the Special Master, the PAWB Clerk’s Office, the DEB Clerk’s Office, and Garlock, a brief summary of the procedural background is set forth in Part A; restrictions on Garlock’s access to and use of the 2019 Exhibits are identified in Part B; information about the format, volume and content of the 2019 Exhibits is provided in Part C; and instructions to be followed by the Special Master (and copying vendors) are set forth in Part D.

Instructions for Garlock to be followed at the conclusion of its pending proceedings in the United States Bankruptcy Court for the Western District of North Carolina (the “NCWB Proceedings”),<sup>2</sup> are set forth in Part E.

---

<sup>1</sup> On November 16, 2010, WDPA established by Standing Order filed at Miscellaneous No. 10-324, a list of attorneys with expertise in electronic discovery to serve as Special Masters. Pursuant to that Order, WDPA maintains a list of qualified Special Masters (“the “WDPA Special Masters Panel”) on its website. On March 30, 2011, WDPA established by Standing Order filed at Miscellaneous No. 11-94, that the WDPA Special Masters Panel “shall be available for use in any bankruptcy case, matter or proceeding in which the presiding bankruptcy judge determines that a Special Master would assist the bankruptcy court in handling motions or requests involving electronic discovery.”

<sup>2</sup> In 2010, Garlock filed for chapter 11 bankruptcy protection in NCWB, where its pending cases are jointly administered at *In re Garlock Sealing Technology LLC*, Bankr. Case No. 10-31607 (Bankr. W.D.N.C.).

## A. Procedural Background

1. A trial is scheduled in the NCWB Proceedings for the purpose of estimating Garlock's liability for mesothelioma claims (the "Liability Estimation").

2. Premised on obtaining information for use in its Liability Estimation, Garlock filed motions in the twelve above-captioned cases seeking access to the 2019 Exhibits.<sup>3</sup>

3. On October 7, 2011, orders were entered in DEB (the "DEB Orders")<sup>4</sup> and in PAWB (the "PAWB Orders")<sup>5</sup> denying Garlock's motions seeking access to the 2019 Exhibits.

4. On October 12, 2011, Garlock appealed the DEB Orders to DOD<sup>6</sup> and the PAWB Orders to WDPA.<sup>7</sup>

5. On June 21, 2012, the WDPA appeals were stayed pending the disposition of the DOD appeals.<sup>8</sup>

6. On March 1, 2013, DOD entered an Opinion and Order (the "DOD Opinion & Order")<sup>9</sup> granting Garlock access to the 2019 Exhibits filed in the nine DEB cases, subject to certain restrictions set forth in Part B, below.

---

<sup>3</sup> *In re Owens Corning, et al.* ("Owens Corning"), Bankr. Case No. 00-3837-JKF at dkt. no. 20954 (Bankr. D. Del.); *In re W.R. Grace & Co., et al.* ("W.R. Grace"), Bankr. Case No. 01-1139-JKF at dkt. no. 26053 (Bankr. D. Del.); *In re USG Corporation, et al.* ("USG"), Bankr. Case. No. 01-2094-JKF at dkt. no. 12596 (Bankr. D. Del.); *In re United States Mineral Products Co. d/b/a Isoletek Int'l* ("US Mineral Products"), Bankr. Case. No. 01-2471-JKF at dkt. no. 3878 (Bankr. D. Del.); *In re Kaiser Aluminum Corporation, et al.* ("Kaiser"), Bankr. Case. No. 02-10429-JKF at dkt. no. 10009 (Bankr. D. Del.); *In re The Flintkote Co.* ("Flintkote"), Bankr. Case. No. 04-11300-JKF at dkt. no. 5606 (Bankr. D. Del.); *In re Armstrong World Industries, Inc.* ("Armstrong"), Bankr. Case. No. 00-4471-JKF at dkt. no. 10698 (Bankr. D. Del.); *In re AC and S, Inc.* ("ACandS"), Bankr. Case No. 02-12687-JKF at dkt. no. 3639 (Bankr. D. Del.); *In re Combustion Engineering, Inc.* ("CE"), Bankr. Case No. 03-10495-JKF at dkt. no. 3380 (Bankr. D. Del.); *In re Pittsburgh Corning Corporation* ("Pittsburgh Corning"), Bankr. Case No. 00-22876-JKF at dkt. no. 8162 (Bankr. W.D.P.A.); *In re North American Refractories Company* ("NARCO"), Bankr. Case No. 02-20198-JKF at dkt. no. 6998 (Bankr. W.D.P.A.); *In re Mid-Valley, Inc., et al. and DII Industries LLC*, ("Mid-Valley"), Bankr. Case No. 03-35592-JKF at dkt. no. 2792 (Bankr. W.D.P.A.).

<sup>4</sup> *Owens*, at dkt. no. 21027; *Grace*, at dkt. no. 27737; *USG*, at dkt. no. 12652; *USMP*, at dkt. no. 3934; *Kaiser*, at dkt. no. 10166; *Flintkote*, at dkt. no. 6244; *Armstrong*, at dkt. no. 10757X; *ACandS*, at dkt. no. 3697; and *CE*, at dkt. no. 3437.

<sup>5</sup> *Pittsburgh Corning*, at dkt. no. 8488; *NARC*, at dkt. no. 7246; and *Mid-Valley*, at dkt. no. 2817.

<sup>6</sup> *In re Motions for Access of Garlock Sealing Technology LLC* ("In re Garlock I"), consolidated at Civil A. No. 11-1130 (D. Del.).

<sup>7</sup> *In re Motions for Access of Garlock Sealing Technology LLC* ("In re Garlock II") Civil A. Nos. 11-1406, 11-1439, 11-1452 (W.D.P.A.)

<sup>8</sup> *In re Garlock II*, 11-1406 at dkt no. 27, 11-1439 at dkt. no. 21, 11-1452 at dkt. no. 26.

<sup>9</sup> *In re Garlock I*, at dkt nos. 64, 65.

7. On March 19, 2013, WDPa issued an Order (the “WDPa Order”)<sup>10</sup> adopting the DOD Opinion as WDPa’s Opinion and granting Garlock access to the 2019 Exhibits filed in the three PAWB cases, subject to certain restrictions set forth in Part B, below.

8. On March 21, 2013, PAWB provided Garlock with docket activity reports identifying the 2019 Exhibits filed in each of the three PAWB cases (the “PAWB 2019 Exhibit Reports”).

9. On March 22, 2013, DEB provided Garlock with docket activity reports identifying the 2019 Exhibits filed in each of the nine DEB cases (the “DEB 2019 Exhibit Reports”).

10. On March 28, 2013, NCWB issued an *Order Governing Use and Confidentiality of Certain Exhibits to Rule 2019 Statements from Other Bankruptcy Cases* (the “NCWB Protective Order”).<sup>11</sup> The NCWB Protective Order, including the exhibits thereto, is attached to this Protocol as Exhibit A.

## **B. Restrictions on Garlock’s Access To and Use Of the 2019 Exhibits**

11. Both the DOD Opinion & Order and the WDPa Order impose restrictions on Garlock’s access to and use of the 2019 Exhibits.

12. The DOD Opinion & Order states that “Garlock is not seeking retention agreements between lawyers and potential claimants and ***Garlock shall not be granted access to such agreements.***”<sup>12</sup> Likewise, the WDPa Order states that Garlock is permitted to inspect and copy any 2019 Exhibit, “***with the exception of Retention Agreements, including any exemplars thereof.***”<sup>13</sup> Thus, Garlock may not access retention agreements, exemplars or their equivalents (individually and collectively, the “Excluded Documents”).

13. The DOD Opinion & Order states that “Garlock is to be provided access to the 2019 Exhibits ***solely*** for the purpose of using them in connection with the estimation proceedings in its own bankruptcy case.”<sup>14</sup> Likewise, the WDPa Order “authorizes Garlock to use such 2019 Exhibits ***solely*** in connection with the estimation proceedings in Garlock’s chapter 11 bankruptcy cases pending in the North Carolina Bankruptcy Court, and neither the 2019 Exhibits nor the information contained therein may be used for ***any other purpose.***”<sup>15</sup> Thus, Garlock may not use the 2019 Exhibits or their contents for any purpose other than the Liability Estimation in the NCWB Proceedings.

---

<sup>10</sup> *In re Garlock II*, 11-1406 at dkt no. 33, 11-1439 at dkt. no.25, 11-1452 at dkt. no.30.

<sup>11</sup> *In re Garlock Sealing Technology LLC*, at dkt.no. 2807.

<sup>12</sup> *In re Garlock I*, 11-1406 at dkt no. 64, p.31 (emphasis added).

<sup>13</sup> *In re Garlock II*, 11-1406 at dkt no. 33, 11-1439 at dkt. no.25, 11-1452 at dkt. no.30, paragraph 2 (emphasis added).

<sup>14</sup> *In re Garlock I*, 11-1406 at dkt no. 64, p.31 (emphasis added).

<sup>15</sup> *In re Garlock II*, 11-1406 at dkt no. 33, 11-1439 at dkt. no.25, 11-1452 at dkt. no.30, paragraph 3 (emphasis added).

14. The DOD Opinion & Order states that “Garlock may not publicly disclose information contained in the 2019 Exhibits *except in an aggregate format that does not identify any individual*.”<sup>16</sup> Likewise, the WDPa Order states that “Garlock shall not disclose publicly the information contained in any 2019 Exhibit *except in an aggregate format that does not identify any individual* represented person.”<sup>17</sup> Thus, Garlock may not disclose the identity of any individual listed in any of the 2019 Exhibits.

### C. The Format, Volume and Content of the 2019 Exhibits

15. In October of 2004, when the claimants were ordered to file their 2019 Exhibits, the case management / electronic case filing system (the “CMECF System”) used by PAWB and DEB did not have a feature allowing the electronic filing of documents under seal. Consequently, claimants submitted their 2019 Exhibits by mailing compact discs (“CDs”) to PAWB and DEB. Upon receipt of the 2019 Exhibit mailings, PAWB’s and DEB’s Clerk’s Office inventoried and stored the CDs in locked cabinets.

16. The volume of mailings and corresponding CDs associated with the 2019 Exhibits requested by Garlock is substantial. Combined, the PAWB and DEB 2019 Exhibit Reports are over 680 pages, identifying more than 3,300 individual 2019 Exhibits.

17. Six of the DEB cases are closed,<sup>18</sup> and many of the 2019 Exhibits were sent by DEB to the off-site National Records Center.

18. The PAWB Clerk’s Office reviewed a sample of the CDs filed in the PAWB cases, and confirmed that the CDs contain 2019 Exhibits to which Garlock is granted access, and documents such as retention agreements, exemplars and their equivalents to which Garlock’s access is restricted (i.e., the CDs also contain the Excluded Documents identified in Part B, paragraph 12, above).

19. The PAWB Clerk’s Office review of the CD sample also confirmed that some of the 2019 Exhibits to which Garlock is granted access list the complete social security numbers of individuals, the disclosure of which is prohibited by Fed. R. Bankr. P. 9037(a).

20. The logistics of providing Garlock access to the 2019 Exhibits (the “2019 Exhibit Production”) is complicated by the fact that there are over 3,300 CDs, many of which contain Excluded Documents and personal identifiers.

21. Moreover, PAWB and DEB are operating at reduced staffing levels resulting from, *inter alia*, sequestration. Neither PAWB nor DEB has the staffing resources required to ensure that the 2019 Exhibit Production is screened of the Excluded Documents and unredacted personal identifiers in compliance with the DOD Opinion & Order, the WDPa Order and Fed. R. Bankr. P. 9037(a).

---

<sup>16</sup> *In re Garlock I*, 11-1406 at dkt no. 64, p.31 (emphasis added).

<sup>17</sup> *In re Garlock II*, 11-1406 at dkt no. 33, 11-1439 at dkt. no.25, 11-1452 at dkt. no.30, paragraph 4 (emphasis added).

<sup>18</sup> *Owens, USG, USMP, Armstrong, ACandS, and CE*.

22. Given the volume of items and the logistical complexity of undertaking the 2019 Exhibit Production, a Special Master would benefit PAWB, DEB and Garlock.

#### **D. Special Master Protocol for the 2019 Exhibit Production**

23. Garlock shall review the WDPA Special Master Panel and, after consultation the parties to the DOD and PAWB appeals identified in paragraph 4, above, and by April 8, 2013, Garlock shall recommend a Pittsburgh-based Special Master to undertake the 2019 Exhibit Production.

24. Upon consideration of, but not bound by, Garlock's recommendation, or in the absence of a recommendation by Garlock on or before April 8, 2013, the Court shall designate a Special Master to be responsible for the 2019 Exhibit Production in accordance with this Protocol.

25. Garlock shall identify a vendor to appear at PAWB and a vendor to appear at DEB (individually and collectively, the "Vendors") for the purpose of copying the CDs and scanning and copying the paper documents contained in the 2019 Exhibit mailings, in accordance with this Protocol.

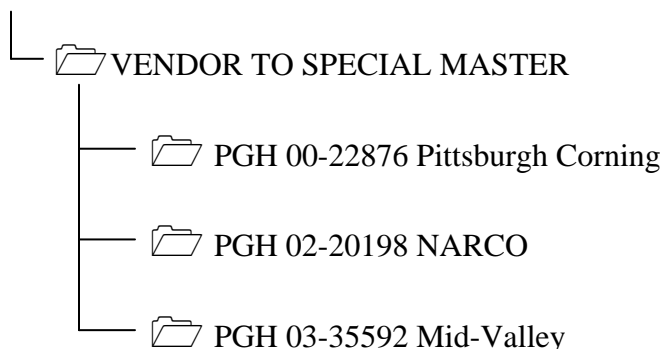
26. All costs, fees and expenses associated with the 2019 Exhibit Production shall be itemized by the Vendors and Special Master and paid for in full by Garlock. The costs incurred by DEB in retrieving and shipping 2019 Exhibits from and to the National Records Center shall be itemized by DEB's Clerk's Office and paid in full by Garlock.

27. PAWB and DEB shall provide the Vendors with a work area within each respective Clerk's Office where the Vendors can undertake the copying and scanning of documents, on a rolling basis and at a volume agreed upon between the Vendors and respective Clerk's Offices. PAWB's and DEB's Clerk shall create a log of the 2019 Exhibits as they are made available to, and then returned by, the Vendors.

28. PAWB and DEB shall make an external storage device ("ESD") available in their respective work areas to serve as the initial destination of the files copied by the Vendors.

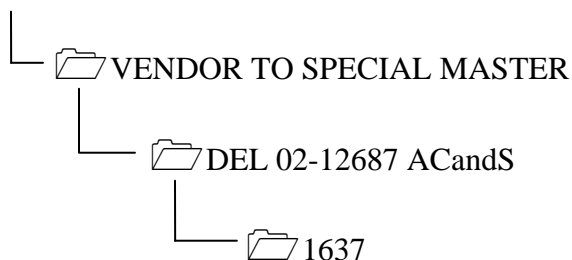
29. Each ESD will be organized under a main folder named "VENDOR TO SPECIAL MASTER." The PAWB ESD will be further organized into three subfolders named for each of the three PAWB cases, respectively. The DEB ESD will be further organized into nine subfolders named for each of the nine DEB cases, respectively. For example, the PAWB ESD would be organized as follows:

PAWB ESD DRIVE:



30. Each case subfolder will be further organized by subfolders named for the 2019 Exhibit document number as listed in the corresponding PAWB 2019 Exhibit Report or DEB 2019 Exhibit Report. For example, one subfolder in the DEB ESD under the “DEL 02-12687 ACandS” subfolder would be “1637.” The resulting organizational structure (file directory tree) on the ESD would be:

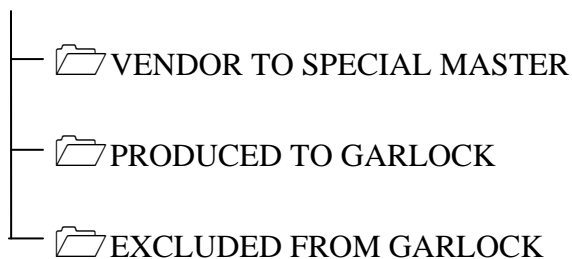
DEB ESD DRIVE:



In this example, the Vendor would copy the content of the 2019 Exhibit mailing corresponding with docket number 1637 in the ACandS case into the target folder \VENDOR TO SPECIAL MASTER\DEL 02-12687 ACandS\1637.

31. PAWB shall provide the Special Master with an ESD (the “SM ESD”) organized under three main folders named “VENDOR TO SPECIAL MASTER,” “PRODUCED TO GARLOCK,” and “EXCLUDED FROM GARLOCK” as follows:

SM ESD DRIVE:



32. Each of the main folders in the SM ESD shall be organized by twelve subfolders named for each of the twelve cases, respectively. Each case subfolder shall be further organized by subfolders named for the docket number as listed in the corresponding PAWB 2019 Exhibit Report or DEB 2019 Exhibit Report.

33. The Special Master shall inspect each file in the VENDOR TO SPECIAL MASTER folder to determine whether it is a document to which Garlock has been granted access or whether it is an Excluded Document. Each file will then be copied to the appropriate corresponding folder (PRODUCED TO GARLOCK or EXCLUDED FROM GARLOCK), depending on whether it is produced or excluded.

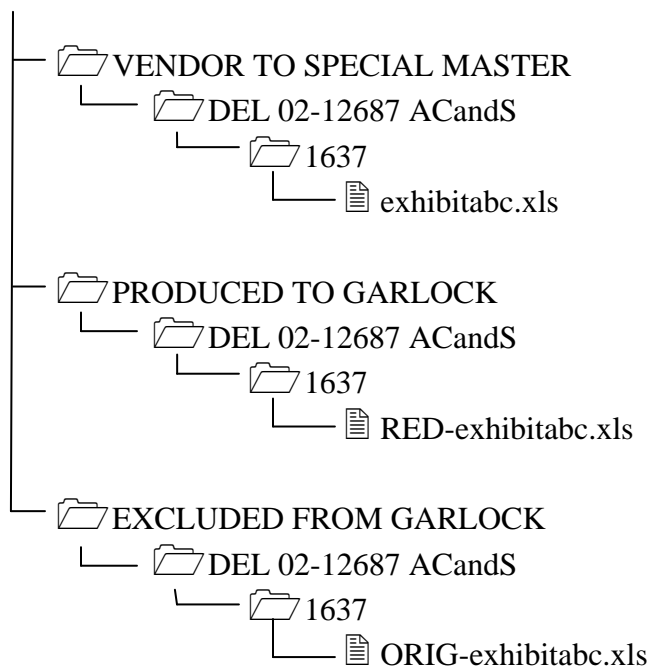
34. Prior to copying a file into a subfolder under the PRODUCED TO GARLOCK main folder, the Special Master shall review the file to ensure that the document does not list more than the last four digits of an individual’s social security number (a “Document Requiring Redaction” or “DRR”). If the Special Master encounters a DRR to which Garlock would otherwise have access, then the Special Master shall undertake the following steps:

(a) The original DRR file shall be copied from the VENDOR TO SPECIAL MASTER subfolder into the appropriate subfolder (the document number subfolder) in the EXCLUDED FROM GARLOCK main folder, where it shall be renamed by adding the prefix “ORIG-”;

(b) The original DRR file shall be copied from the VENDOR TO SPECIAL MASTER subfolder into the appropriate subfolder (the document number subfolder) in the PRODUCED TO GARLOCK main folder, where it shall be redacted<sup>19</sup> and then renamed by adding the prefix “RED”;

(c) For example, suppose (hypothetically) that the Special Master reviews a file named “exhibitabc.xls” corresponding with docket number 1637 in the ACandS case, and discovers that is a DRR due to listing full social security numbers. The Special Master would copy the original file from the VENDOR TO SPECIAL MASTER subfolder to the corresponding EXCLUDED FROM GARLOCK subfolder and rename it as “ORIG-exhibitabc.xls.” Then the Special Master would copy the original file from the VENDOR TO SPECIAL MASTER subfolder to the corresponding PRODUCED TO GARLOCK, where it would be redacted and renamed as “RED-exhibitabc.xls.” The resulting organizational structure (file directory tree) on the ESD would be:

SM ESD DRIVE:



35. The PAWB and DEB Clerk’s Offices will coordinate the transfer of the files from the PAWB ESD and DEB ESD to the SM ESD. This Protocol allows for the Vendors to perform the copying at DEB and PAWB concurrently, and for the Special Master to perform the necessary review on a rolling basis.

<sup>19</sup> The PAWB Information Technology Staff can provide a social security number redaction formula and process for Microsoft Excel files upon the Special Master’s request.



36. PAWB and DEB shall provide the Vendors and Special Master with a spreadsheet to be used for logging any anomalies (defective discs, damaged files, etc.) that are encountered by the Vendors or Special Master while undertaking their respective duties (the “Production Incidents Log”). The Vendors shall confer with the Special Master and Garlock as to whether Garlock would prefer to omit the problematic Exhibits from the production rather than undertaking additional steps that may require an investment of additional time and money. Garlock’s decision shall be recorded in the Production Incidents Log.

37. On a rolling basis, at the conclusion of the Special Master’s review and sorting of an entire case’s exhibits, the Special Master shall prepare and clearly label one DVD for that bankruptcy case, onto which the organized contents of the corresponding SM ESD case folder under the PRODUCED TO GARLOCK main folder shall be copied.

38. On a rolling basis, the Special Master shall deliver the resulting individually labeled DVD of PRODUCED TO GARLOCK content to Garlock, and copy PAWB’s Clerk and DEB’s Clerk on the transmittal letter.

39. PAWB shall retain the PAWB ESD and SM ESD for its records. DEB shall retain the DEB ESD for its records.

#### **E. Instructions to Garlock Regarding the 2019 Exhibit Production**

40. The NCWB Protective Order identifies parties in the NCWB Proceeding to whom Garlock shall provide copies of the 2019 Exhibit Production (the “Receiving Estimation Parties”).<sup>20</sup>

41. The NCWB Protective Order identifies restrictions on the Receiving Estimation Parties’ use of the 2019 Exhibit Production. The restrictions imposed by this Protocol shall be construed as complementary to the restrictions imposed by the NCWB Protective Order. Where there is a perceived conflict between the restrictions and/or limitations imposed by the NCWB Protective Order and this Protocol, the more restrictive and/or limiting provision shall govern.

42. The NCWB Protective Order provides that “nothing in this Order shall interfere with *any additional requirements or shorter timeframe* for the return or destruction [of the 2019 Exhibits] set forth by the Bankruptcy Courts for the Western District of Pennsylvania and Delaware in any protocol or order that those Courts may enter.”<sup>21</sup>

43. Prior to providing any copy of the 2019 Exhibit to a Receiving Estimation Party or any other person or entity authorized by NCWB, Garlock shall obtain and file in each of the above-captioned cases, an affidavit setting forth that the recipient understands and agrees to be bound by the NCWB Protective Order and this Protocol, including the return and destruction requirements set forth in paragraph 44, below.

---

<sup>20</sup> *In re Garlock Sealing Technology LLC*, at dkt.no. 2807, paragraph 5.

<sup>21</sup> *Id.*, at paragraph 19 (emphasis added).

44. Within thirty (30) days after the final confirmation or substantial consummation of Garlock's Chapter 11 plan of reorganization, whichever is earlier, Garlock and each recipient authorized by NCWB to receive copies of the 2019 Exhibit Production, individually shall file with NCWB and each of the above-captioned cases, a sworn affidavit by its counsel expressly attesting that the recipient and its employees, agents, experts and any other person or related entity:

- (a) Used the 2019 Exhibits solely for the purpose of the NCWB Proceeding;
- (b) Did not share or distribute any of the 2019 Exhibits (in whole or in part) with any person or entity other than what was expressly authorized by an Order of NCWB, DEB or PAWB;
- (c) Did not and will not publicly disclose the identity of any individual listed in any of the 2019 Exhibits other than what was expressly authorized by an Order of NCWB, DEB or PAWB; and
- (d) Retrieved, collected and permanently destroyed all copies of the 2019 Exhibit Production, including any and all subparts or subsets, regardless of whether any or all of the 2019 Exhibit data was merged with any other data.

#### **F. Jurisdiction**

45. The United States Bankruptcy Court for the Western District of Pennsylvania and the United States Bankruptcy Court for the District of Delaware retain jurisdiction to adjudicate any disputes that arise pursuant to this Protocol, including but not limited to document production, document exclusion, fees, costs, and expenses.

**IT IS HEREBY ORDERED** that the foregoing Protocol shall be effective as of April 5, 2013. Any requests to deviate from this Protocol shall be made by way of motion to the Court.

  
Judith K. Fitzgerald rmab  
United States Bankruptcy Judge

Date: April ; , 2013