

*Gorton v. Air & Liquid Sys. Corp.*

United States District Court for the Middle District of Pennsylvania

January 7, 2022, Decided; January 7, 2022, Filed

Civ. Action No. 1:17-1110

**Reporter**

2022 U.S. Dist. LEXIS 3896 \*

RHONDA J. GORTON, Personal Representative for the Estate of THOMAS D. GORTON, II, and in her own right, Plaintiff, v. Air & Liquid Systems Corporation As Successor-by-Merger to Buffalo Pumps, et al., Defendants.

Fitzpatrick, Wilbraham, Lawler & Buba, Philadelphia, PA.

For Aurora Pump Company, Defendant, Cross Defendant: James P. Hadden, LEAD ATTORNEY, Maron, Marvel, Bradley Anderson & Tardy LLC, Three Logan Square, Philadelphia, PA; Jennifer A McGarrity, Maron Marvel Bradley Anderson & Tardy LLC, Philadelphia, PA.

For Borgwarner Morse TEC, Defendant, Cross Defendant: A. Kai Seelaus, PRO HAC VICE, Barnard Mezzanotte Pinnie and Seelaus LLP, Media, PA.

For CBS Corporation, A Delaware Corporation, Successor-by-Merger [\*2] to CBS Corporation, a Pennsylvania Corporation, formerly known as Viacom, Inc., formerly known as Westinghouse Electric Corporation, General Electric Company, Defendants: John Patrick McShea, III, LEAD ATTORNEY, McShea Law Firm, PC, Centre Square, West Tower, Philadelphia, PA.

For Cooper Industries, Individually and as Successor-in-Interest to Crouse Hinds Co., Defendant: Joan P. Depfer, Marshall Dennehey Warner Coleman & Goggin, Philadelphia, PA.

For Crane Company, Defendant: G. Daniel Bruch, Lauren E Burke, LEAD ATTORNEYS, Swartz Campbell LLC, Philadelphia, PA; Peter L. Lejeune, Swartz Campbell, LLC, Philadelphia, PA.

**Core Terms**

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default judgment, amended complaint, second amended complaint, original complaint, properly serve, default, vacated, void, motion to vacate, entry of default, fail to respond, circumstances

**Counsel:** [\*1] For Thomas D. Gorton, II, Plaintiff: Jason B. Duncan, LEAD ATTORNEY, Law Offices of Peter Angelos, P.C., Harrisburg, PA; Lamont G McClure, LEAD ATTORNEY, Law Office of Peter G. Angelos, PC, Bethlehem, PA; Dennis F. Wolford, Reed, Tosh, Wolford & Douglass, PC, Beaver, PA.

For Rhonda J. Gorton, Plaintiff: Jason B. Duncan, LEAD ATTORNEY, Law Offices of Peter Angelos, P.C., Harrisburg, PA; Lamont G McClure, LEAD ATTORNEY, Law Office of Peter G. Angelos, PC, Bethlehem, PA.

For Thomas D. Gorton, II, Rhonda J. Gorton, Plaintiffs: Jason B. Duncan, Law Offices of Peter Angelos, P.C., Harrisburg, PA.

For Air & Liquid Systems Corporation, As Successor-by-Merger to Buffalo Pumps, Defendant: John A.

For Fairmont Supply Company, formerly known as Montfair Industrial Supplies Company, formerly known as Fairmont Machinery Company, Defendant: Edward R. Paul, LEAD ATTORNEY, Paul, Flandreau & Berger, LLP, Media, PA.

For Gardner Denver, Inc., Marshall Dennehey Warner Coleman & Goggin, Defendant: Joan P. Depfer.

For Goulds Pumps, Inc., Defendant: Nathan J Andrisani, Morgan, Lewis & Bockius LLP, Philadelphia, PA.

For Greene, Tweed & Company, Inc., Defendant: Dennis F. Wolford, Kathryn L. Johnston, LEAD ATTORNEYS, Reed, Tosh, Wolford & Douglass, PC, Beaver, PA.

For GTE Products [\*3] of Connecticut Corporation, As Successor-in-Interest to Clark Control, Inc., Defendant: Edward T Finch, LEAD ATTORNEY, Lavin, O'Neil, Cedrone & Disipio, Philadelphia, PA.

For HB Fuller Company, formerly known as Amchem Products, Inc., formerly known as Benjamin Foster, Defendant: George S. Bobnak, Burns White LLC, Philadelphia, PA.

For Honeywell International, Inc., Successor to Allied-Signal, Inc., Successor to Bendix Corporation, Defendant: Peter J Neeson, LEAD ATTORNEY, Scott F. Griffith, Rawle & Henderson, LLP, Philadelphia, PA.

For IMO Industries, Inc., Individually and as Parent Company of an/or Successor to DeLaval Pump & Steam Turbine Co., Defendant: Joseph I. Fontak, LEAD ATTORNEY, Leader & Berkon LLP, Philadelphia, PA.

For Ingersoll-Rand Company, Zurn Industries, LLC, Subsidiary of U.S. Industries, Inc., Terex Corporation, Individually and as Parent Company of American Crane and as Parent Company of Lorain Crane, Defendants: Daniel J. Ryan, Jr., LEAD ATTORNEY, Joan P. Depfer, Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA.

For The Kerite Company, A division of the Marmon Group, LLC, Defendant: Tiffany J Giangiulio, LEAD ATTORNEY, Joan P. Depfer, Marshall, Dennehey, [\*4] Warner, Coleman & Goggin, Philadelphia, PA.

For McCormick *Asbestos* Company, also known as MCIC, Defendant: Thomas P Hanna, LEAD ATTORNEY, PRO HAC VICE, Kelley Jasons McGowan Spinelli Hanna & Reber, LLP, Philadelphia, PA; Christina M. Rideout, Kelley Jasons McGowan Spinelli & Hanna, L.L.P., Philadelphia, PA.

For Mobil Corporation, Parent of Mobil Oil Corporation, Defendant: C. James Zeszutek, David J. Singley, LEAD ATTORNEYS, Dinsmore & Shohl LLP, Pittsburgh, PA.

For Reunion Industries, Inc., formerly known as Alliance Machines, LitchField Cavo LLP, Defendant: Sean R. Riley, LitchField Cavo LLP.

For Schneider Electric, formerly known as Square D Company, Defendant: W. Matthew Reber, LEAD ATTORNEY, Kelley Jasons McGuire Spinelli & Hanna, LLP, Philadelphia, PA; Christina M. Rideout, Kelley Jasons McGowan Spinelli & Hanna, L.L.P., Philadelphia, PA.

For RSCC Wire & Cable, Inc., agent of The Rockbestos Company, agent of The Rockbestos Wire & Cable Company, agent of Rockbestos-Suprenant Corp., Defendant: Joan P. Depfer, Tiffany J Giangiulio, LEAD ATTORNEYS, Marshall Dennehey Warner Coleman & Goggin, Philadelphia, PA.

For Rhonda J. Gorton, Amicus: Jason B. Duncan, Law Offices of Peter Angelos, P.C., [\*5] Harrisburg, PA.

For CBS Corporation, A Delaware Corporation, Successor-by-Merger to CBS Corporation, a Pennsylvania Corporation, Cross Claimant, Cross Defendant: John Patrick McShea, III, LEAD ATTORNEY, McShea Law Firm, PC, Centre Square, West Tower, Philadelphia, PA.

For Crane Company, Cross Defendant: G. Daniel Bruch, Lauren E Burke, LEAD ATTORNEYS, Swartz Campbell LLC, Philadelphia, PA.

For Fairmont Supply Company, Cross Defendant: Edward R. Paul, LEAD ATTORNEY, Paul, Flandreau & Berger, LLP, Media, PA.

For Metropolitan Life Insurance Company, Inc., Cross Defendant: Stewart R. Singer, LEAD ATTORNEY, Salmon, Ricchezza, Singer & Turchi, LLP, Philadelphia, PA.

For Aurora Pump Company, Cross Defendant: James P. Hadden, LEAD ATTORNEY, Maron, Marvel, Bradley Anderson & Tardy LLC, Three Logan Square, Philadelphia, PA.

For HB Fuller Company, Cross Defendant, Cross Claimant: George S. Bobnak, Burns White LLC, Philadelphia, PA.

For Metropolitan Life Insurance Company, Inc., Cross Defendant: Stewart R. Singer, LEAD ATTORNEY, Ronald L. Daugherty, Salmon, Ricchezza, Singer & Turchi, LLP, Philadelphia, PA.

For Borgwarner Morse TEC, Cross Defendant: A. Kai Seelaus, PRO HAC VICE, Barnard Mezzanotte Pinnie [\*6] and Seelaus LLP, Media, PA.

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For Fairmont Supply Company, GTE Products of Connecticut Corporation, As Successor-in-Interest to Clark Control, Inc., Cross Defendants: Edward R. Paul, LEAD ATTORNEY, Paul, Flandreau & Berger, LLP,

Media, PA.

For Goulds Pumps, Inc., Cross Defendant: Nathan J Andrisani, Morgan, Lewis & Bockius LLP, Philadelphia, PA.

For Greene, Tweed & Company, Inc., Cross Defendant: Dennis F. Wolford, Reed, Tosh, Wolford & Douglass, PC, Beaver, PA; Kathryn L. Johnston, LEAD ATTORNEY, Reed, Tosh, Wolford & Douglass, PC, Beaver, PA.

For Honeywell International, Inc., Successor to Allied-Signal, Inc., Successor to Bendix Corporation, Cross Defendant: Peter J Neeson, LEAD ATTORNEY, Rawle & Henderson, LLP, Philadelphia, PA.

For IMO Industries, Inc., Individually and as Parent Company of an/or Successor to DeLaval Pump & Steam Turbine Co., Cross Defendant: [\*7] Joseph I. Fontak, LEAD ATTORNEY, Leader & Berkon LLP, Philadelphia, PA.

For Ingersoll-Rand Company, Terex Corporation, Individually and as Parent Company of American Crane and Lorain Crane, Zurn Industries, LLC, Subsidiary of U.S. Industries, Inc., Cross Defendants: Daniel J. Ryan, Jr., LEAD ATTORNEY, Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA.

For McCormick *Asbestos* Company, Cross Defendant: Thomas P Hanna, LEAD ATTORNEY, PRO HAC VICE, Kelley Jasons McGowan Spinelli Hanna & Reber, LLP, Philadelphia, PA.

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For Reunion Industries, Inc., Cross Defendant: Sean R. Riley, LitchField Cavo LLP.

For Schneider Electric, Cross Defendant: W. Matthew Reber, LEAD ATTORNEY, Christina M. Rideout, [\*8] Kelley Jasons McGuire Spinelli & Hanna, LLP, Philadelphia, PA.

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For RSCC Wire & Cable, Inc., The Kerite Company, A division of the Marmon Group, LLC, Cross Defendants: Tiffany J Giangiulio, LEAD ATTORNEY, Marshall, Dennehey, Warner, [\*10] Coleman & Goggin, Philadelphia, PA; Joan P. Depfer, Marshall Dennehey Warner Coleman & Goggin, Philadelphia, PA.

For Reunion Industries, Inc., Cross Defendant: Sean R. Riley, LitchField Cavo LLP.

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For Borgwarner Morse TEC, Cross Defendant: A. Kai Seelaus, PRO HAC VICE, Barnard Mezzanotte Pinnie

and Seelaus LLP, Media, PA.

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For Crane Company, Cross Defendant: G. Daniel Bruch, Lauren E Burke, LEAD ATTORNEYS, Swartz Campbell LLC, Philadelphia, PA.

For Fairmont Supply Company, Cross Defendant: Edward R. Paul, LEAD ATTORNEY, Paul, Flandreau & Berger, LLP, Media, PA.

For Schneider Electric, Cross Defendant: W. Matthew Reber, LEAD ATTORNEY, Kelley Jasons McGuire Spinelli & Hanna, LLP, Philadelphia, PA; Christina M. Rideout, Kelley Jasons McGowan Spinelli & Hanna, L.L.P., Philadelphia, PA.

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For Mobil Corporation, Parent of Mobil Oil Corporation, Cross Defendant, Cross Claimant: C. James Zeszutek, David J. Singley, LEAD ATTORNEYS, Dinsmore & Shohl LLP, Pittsburgh, PA.

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L.L.P., Philadelphia, PA.

For Terex Corporation, Individually and as Parent Company of American Crane and Lorain Crane, Zurn Industries, LLC, Subsidiary of U.S. Industries, Inc., Ingersoll-Rand Company, Cross Defendants: Daniel J. Ryan, Jr., LEAD ATTORNEY, Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA.

For The Kerite Company, A division of the Marmon Group, LLC, Cross Defendant: Tiffany J Giangiulio, [\*12] LEAD ATTORNEY, Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA.

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For Fairmont Supply Company, Cross Defendant: Edward R. Paul, LEAD ATTORNEY, Paul, Flandreau & Berger, LLP, Media, PA.

For GTE Products of Connecticut Corporation, As Successor-in-Interest to Clark Control, Inc., Cross Defendant: Edward T Finch, LEAD ATTORNEY, Lavin, O'Neil, Cedrone & Disipio, Philadelphia, PA.

For Goulds Pumps, Inc., Cross Defendant: Nathan J Andrisani, Morgan, Lewis & Bockius LLP, Philadelphia, PA.

For Greene, Tweed & Company, Inc., Cross Defendant: Dennis F. Wolford, Kathryn L. Johnston, LEAD ATTORNEYS, Reed, [\*13] Tosh, Wolford & Douglass, PC, Beaver, PA.

For HB Fuller Company, Cross Defendant: George S. Bobnak, Burns White LLC, Philadelphia, PA.

For Honeywell International, Inc., Successor to Allied-Signal, Inc., Successor to Bendix Corporation, Cross Defendant: Peter J Neeson, LEAD ATTORNEY, Rawle & Henderson, LLP, Philadelphia, PA.

For IMO Industries, Inc., Individually and as Parent Company of an/or Successor to DeLaval Pump & Steam Turbine Co., Cross Defendant: Joseph I. Fontak, LEAD ATTORNEY, Leader & Berkon LLP, Philadelphia, PA.

For McCormick Asbestos Company, Cross Defendant: Thomas P Hanna, LEAD ATTORNEY, PRO HAC VICE, Kelley Jasons McGowan Spinelli Hanna & Reber, LLP, Philadelphia, PA.

For Metropolitan Life Insurance Company, Inc., Cross Defendant: Stewart R. Singer, LEAD ATTORNEY, Salmon, Ricchezza, Singer & Turchi, LLP, Philadelphia, PA; Ronald L. Daugherty, Salmon Ricchezza Singer & Turchi LLP, Philadelphia, PA.

For Nevada Bell Telephone Company, c/o The Corporation Trust Company of Nevada, Cross Defendant: John A. Turlik, Segal, McCambridge, Singer & Mahoney, Ltd., Philadelphia, PA.

For Honeywell International, Inc., Successor to Allied-Signal, Inc., Successor to Bendix Corporation, [\*14] Cross Defendant: Peter J Neeson, LEAD ATTORNEY, Rawle & Henderson, LLP, Philadelphia, PA; Scott F. Griffith, Rawle & Henderson LLP, Philadelphia, PA.

For RSCC Wire & Cable, Inc., Cross Defendant: Joan P. Depfer, LEAD ATTORNEY, Marshall Dennehey Warner Coleman & Goggin, Philadelphia, PA; Tiffany J Giangiulio, LEAD ATTORNEY, Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA.

For Zurn Industries, LLC, Subsidiary of U.S. Industries, Inc., Counterclaim Defendant: Daniel J. Ryan, Jr., LEAD ATTORNEY, Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA.

For General Electric Company, Cross Claimant: John Patrick McShea, III, McShea Law Firm, PC, Philadelphia, PA.

For McCormick Asbestos Company, Cross Defendant: Thomas P Hanna, LEAD ATTORNEY, Kelley Jasons McGowan Spinelli Hanna & Reber, LLP, Philadelphia, PA.

For General Electric Company, Cross Defendant: John Patrick McShea, III, McShea Law Firm, PC, Philadelphia, PA.

For Zurn Industries, LLC, Subsidiary of U.S. Industries, Inc., Ingersoll-Rand Company, Terex Corporation, Individually and as Parent Company of American Crane and Lorain Crane, Zurn Industries, LLC, Subsidiary of U.S. Industries, Inc., Cross Defendants: Daniel [\*15] J. Ryan, Jr., LEAD ATTORNEY, Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA.

For McCormick Asbestos Company, Cross Claimant: Thomas P Hanna, LEAD ATTORNEY, PRO HAC VICE, Kelley Jasons McGowan Spinelli Hanna & Reber, LLP, Philadelphia, PA; Christina M. Rideout, Kelley Jasons McGowan Spinelli & Hanna, L.L.P., Philadelphia, PA.

For Air & Liquid Systems Corporation, As Successor-by-Merger to Buffalo Pumps, Cross Defendant: John A. Fitzpatrick, Wilbraham, Lawler & Buba, Philadelphia, PA.

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For Borgwarner Morse TEC, Cross Defendant: A. Kai Seelaus, PRO HAC VICE, Barnard Mezzanotte Pinnie and Seelaus LLP, Media, PA.

For CBS Corporation, A Delaware Corporation, Successor-by-Merger to CBS Corporation, a Pennsylvania Corporation, General Electric Company, Cross Defendants: John Patrick McShea, III, LEAD ATTORNEY, McShea Law Firm, PC, Philadelphia, PA.

For Crane Company, Cross Defendant, Cross Claimant: G. Daniel Bruch, Lauren E Burke, LEAD ATTORNEYS, Swartz Campbell LLC, [\*16] Philadelphia, PA.

For Fairmont Supply Company, Cross Defendant: Edward R. Paul, LEAD ATTORNEY, Paul, Flandreau & Berger, LLP, Media, PA.

For GTE Products of Connecticut Corporation, As Successor-in-Interest to Clark Control, Inc., Cross Defendant: Edward T Finch, LEAD ATTORNEY, Lavin, O'Neil, Cedrone & Disipio, Philadelphia, PA.

For Goulds Pumps, Inc., Cross Defendant: Nathan J Andrisani, Morgan, Lewis & Bockius LLP, Philadelphia, PA.

For Greene, Tweed & Company, Inc., Cross Defendant, Cross Claimant: Dennis F. Wolford, Kathryn L. Johnston, LEAD ATTORNEYS, Reed, Tosh, Wolford & Douglass, PC, Beaver, PA.

For HB Fuller Company, Cross Defendant: George S. Bobnak, Burns White LLC, Philadelphia, PA.

For Honeywell International, Inc., Successor to Allied-Signal, Inc., Successor to Bendix Corporation, Cross Defendant: Peter J Neeson, LEAD ATTORNEY, Rawle & Henderson, LLP, Philadelphia, PA Scott F. Griffith, Rawle & Henderson LLP, Philadelphia, PA.

For IMO Industries, Inc., Individually and as Parent Company of an/or Successor to DeLaval Pump & Steam Turbine Co., Cross Defendant: Joseph I. Fontak, LEAD ATTORNEY, Leader & Berkon LLP, Philadelphia, PA.

For McCormick Asbestos Company, Cross Defendant: [\*17] Thomas P Hanna, LEAD ATTORNEY, PRO HAC VICE, Kelley Jasons McGowan Spinelli Hanna & Reber, LLP, Philadelphia, PA.

For Metropolitan Life Insurance Company, Inc., Cross Defendant: Stewart R. Singer, LEAD ATTORNEY, Salmon, Ricchezza, Singer & Turchi, LLP, Philadelphia, PA Ronald L. Daugherty, Salmon Ricchezza Singer & Turchi LLP, Philadelphia, PA.

For Mobil Corporation, Parent of Mobil Oil Corporation, Cross Defendant: C. James Zeszutek, David J. Singley, LEAD ATTORNEYS, Dinsmore & Shohl LLP, Pittsburgh, PA.

For RSCC Wire & Cable, Inc., Cross Defendant: Tiffany J Giangliulo, LEAD ATTORNEY, Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA; Joan P. Depfer, Marshall Dennehey Warner Coleman & Goggin, Philadelphia, PA.

For Reunion Industries, Inc., Cross Defendant: Sean R. Riley, LitchField Cavo LLP.

For Schneider Electric, Cross Defendant: W. Matthew Reber, LEAD ATTORNEY, Kelley Jasons McGuire Spinelli & Hanna, LLP, Philadelphia, PA; Christina M. Rideout, Kelley Jasons McGowan Spinelli & Hanna, L.L.P., Philadelphia, PA.

For The Kerite Company, A division of the Marmon Group, LLC, Cross Defendant: Tiffany J Giangliulo, LEAD ATTORNEY, Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, [\*18] PA.

For Aurora Pump Company, Cross Defendant, Cross Claimant: James P. Hadden, LEAD ATTORNEY, Maron, Marvel, Bradley Anderson & Tardy LLC, Philadelphia, PA.

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For Crane Company, Cross Defendant: G. Daniel Bruch, Lauren E Burke, LEAD ATTORNEYS, Swartz Campbell LLC, Philadelphia, PA; Peter L. Lejeune, Swartz Campbell, LLC, Philadelphia, PA.

For Eaton Corporation, As Successor-in-Interest to Cutler-Hammer, Inc., Cross Defendant: Joan P. Depfer, LEAD ATTORNEY, Marshall Dennehey Warner Coleman & Goggin, Philadelphia, PA.

For Fairmont Supply Company, Cross Defendant: Edward R. Paul, LEAD ATTORNEY, [\*19] Paul, Flandreau & Berger, LLP, Media, PA.

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Signal, Inc., Successor to Bendix Corporation, Cross Defendant: Peter J Neeson, LEAD ATTORNEY, Scott F. Griffith, Rawle & Henderson, LLP, Philadelphia, PA.

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For McCormick *Asbestos* Company, Cross Defendant: Thomas P Hanna, LEAD ATTORNEY, Kelley Jasons McGowan Spinelli Hanna & Reber, LLP, Philadelphia, PA; Christina M. Rideout, Kelley Jasons McGowan Spinelli & Hanna, L.L.P., Philadelphia, PA.

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For Schneider Electric, Cross Defendant: W. Matthew Reber, LEAD ATTORNEY, Kelley Jasons McGuire



Spinelli & Hanna, LLP, Philadelphia, PA; Christina M. Rideout, Kelley Jasons McGowan Spinelli & Hanna, L.L.P., Philadelphia, PA.

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For General Electric Company, Cross Defendant: John

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For McCormick Asbestos Company, Cross Defendant: Thomas P Hanna, LEAD ATTORNEY, Kelley Jasons McGowan Spinelli Hanna & Reber, LLP, Philadelphia, PA; Christina M. Rideout, Kelley Jasons McGowan Spinelli & Hanna, L.L.P., Philadelphia, PA.

For Mobil Corporation, Parent of Mobil Oil Corporation, Cross Defendant: C. James Zeszutek, David J. Singley, LEAD ATTORNEYS, Dinsmore & Shohl LLP, Pittsburgh, PA.

For Reunion Industries, Inc., Cross Defendant: Sean R.

Riley, LitchField Cavo LLP.

For Schneider Electric, Cross Defendant: W. Matthew Reber, LEAD ATTORNEY, Kelley Jasons McGuire Spinelli & Hanna, LLP, Philadelphia, PA; Christina M. Rideout, Kelley Jasons McGowan Spinelli & Hanna, L.L.P., Philadelphia, PA.

For Terex Corporation, Individually and as Parent Company of American Crane and as Parent Company of Lorain Crane, Cross Defendant: Daniel J. Ryan, Jr., LEAD ATTORNEY, Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA.

For The Kerite Company, A division of the Marmon Group, LLC, Cross Defendant: Tiffany J Giangiulio, LEAD ATTORNEY, Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA.

For Aurora [\*24] Pump Company, Cross Defendant: James P. Hadden, LEAD ATTORNEY, Maron, Marvel, Bradley Anderson & Tardy LLC, Philadelphia, PA; Jennifer A McGarrity, Maron Marvel Bradley Anderson & Tardy LLC, Philadelphia, PA.

For Borgwarner Morse TEC, Cross Defendant: A. Kai Seelaus, PRO HAC VICE, Barnard Mezzanotte Pinnie and Seelaus LLP, Media, PA.

For Crane Company, Cross Defendant: G. Daniel Bruch, Lauren E Burke, LEAD ATTORNEYS, Swartz Campbell LLC, Philadelphia, PA; Peter L. Lejeune, Swartz Campbell, LLC, Philadelphia, PA.

For IMO Industries, Inc., Individually and as Parent Company of an/or Successor to DeLaval Pump & Steam Turbine Co., Cross Defendant: Joseph I. Fontak, LEAD ATTORNEY, Leader & Berkon LLP, Philadelphia, PA.

For Metropolitan Life Insurance Company, Inc., Cross Defendant: Stewart R. Singer, LEAD ATTORNEY, Salmon, Ricchezza, Singer & Turchi, LLP, Philadelphia, PA; Ronald L. Daugherty, Salmon Ricchezza Singer & Turchi LLP, Philadelphia, PA.

For RSCC Wire & Cable, Inc., Cross Defendant: Joan P. Depfer, Tiffany J Giangiulio, LEAD ATTORNEYS, Marshall Dennehey Warner Coleman & Goggin, Philadelphia, PA.

For Terex Corporation, Individually and as Parent Company of American Crane and as Parent [\*25] Company of Lorain Crane, Cross Claimant: Daniel J. Ryan, Jr., LEAD ATTORNEY, Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA; Joan P. Depfer, Marshall Dennehey Warner Coleman & Goggin, Philadelphia, PA.

For Aurora Pump Company, Cross Defendant: James P. Hadden, LEAD ATTORNEY, Maron, Marvel, Bradley Anderson & Tardy LLC, Philadelphia, PA.

For CBS Corporation, A Delaware Corporation, Successor-by-Merger to CBS Corporation, a Pennsylvania Corporation, Cross Defendant: John Patrick McShea, III, LEAD ATTORNEY, McShea Law Firm, PC, Philadelphia, PA.

For Zurn Industries, LLC, Subsidiary of U.S. Industries, Inc., Terex Corporation, Individually and as Parent Company of American Crane and as Parent Company of Lorain Crane, Ingersoll-Rand Company, Cross Defendants: Daniel J. Ryan, Jr., LEAD ATTORNEY, Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA, Joan P. Depfer, Marshall Dennehey Warner Coleman & Goggin, Philadelphia, PA.

For Aurora Pump Company, Cross Defendant: James P. Hadden, LEAD ATTORNEY, Maron, Marvel, Bradley Anderson & Tardy LLC, Philadelphia, PA.

For Borgwarner Morse TEC, Cross Defendant: A. Kai Seelaus, PRO HAC VICE, Barnard Mezzanotte Pinnie and Seelaus [\*26] LLP, Media, PA.

For Crane Company, Cross Defendant: G. Daniel Bruch, Lauren E Burke, LEAD ATTORNEYS, Swartz Campbell LLC, Philadelphia, PA; Peter L. Lejeune,

Swartz Campbell, LLC, Philadelphia, PA.

For GTE Products of Connecticut Corporation, As Successor-in-Interest to Clark Control, Inc., Cross Defendant: Edward T Finch, LEAD ATTORNEY, Lavin, O'Neil, Cedrone & Disipio, Philadelphia, PA.

For General Electric Company, Cross Defendant: John Patrick McShea, III, McShea Law Firm, PC, Philadelphia, PA.

For Goulds Pumps, Inc., Cross Defendant: Nathan J Andrisani, Morgan, Lewis & Bockius LLP, Philadelphia, PA.

For HB Fuller Company, Cross Defendant: George S. Bobnak, Burns White LLC, Philadelphia, PA.

For Honeywell International, Inc., Successor to Allied-Signal, Inc., Successor to Bendix Corporation, Cross Defendant: Peter J Neeson, LEAD ATTORNEY, Rawle & Henderson, LLP, Philadelphia, PA; Scott F. Griffith, Rawle & Henderson LLP, Philadelphia, PA.

For McCormick Asbestos Company, Cross Defendant: Thomas P Hanna, LEAD ATTORNEY, Kelley Jasons McGowan Spinelli Hanna & Reber, LLP, Philadelphia, PA; Christina M. Rideout, Kelley Jasons McGowan Spinelli & Hanna, L.L.P., Philadelphia, PA.

For Mobil Corporation, [\*27] Parent of Mobil Oil Corporation, Cross Defendant: C. James Zeszutek, David J. Singley, LEAD ATTORNEYS, Dinsmore & Shohl LLP, Pittsburgh, PA.

For RSCC Wire & Cable, Inc., Cross Defendant, Cross Claimant: Joan P. Depfer, LEAD ATTORNEY, Marshall Dennehey Warner Coleman & Goggin, Philadelphia, PA; Tiffany J Giangiulio, LEAD ATTORNEY, Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA.

For Reunion Industries, Inc., Cross Defendant: Sean R. Riley, LitchField Cavo LLP.

For Schneider Electric, Cross Defendant: W. Matthew Reber, LEAD ATTORNEY, Kelley Jasons McGuire Spinelli & Hanna, LLP, Philadelphia, PA; Christina M. Rideout, Kelley Jasons McGowan Spinelli & Hanna, L.L.P., Philadelphia, PA.

For The Kerite Company, A division of the Marmon Group, LLC, Cross Defendant: Tiffany J Giangiulio, LEAD ATTORNEY, Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA.

For Cooper Industries, Individually and as Successor-in-Interest to Crouse Hinds Co., Cross Claimant, Cross Defendant: Joan P. Depfer, Marshall Dennehey Warner Coleman & Goggin, Philadelphia, PA.

For Borgwarner Morse TEC, Cross Defendant: A. Kai Seelaus, Barnard Mezzanotte Pinnie and Seelaus LLP, Media, PA.

For CBS Corporation, [\*28] A Delaware Corporation, Successor-by-Merger to CBS Corporation, a Pennsylvania Corporation, Cross Defendant: John Patrick McShea, III, LEAD ATTORNEY, McShea Law Firm, PC, Philadelphia, PA.

For The Kerite Company, A division of the Marmon Group, LLC, Cross Claimant, Cross Defendant: Tiffany J Giangiulio, LEAD ATTORNEY, Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA; Joan P. Depfer, Marshall Dennehey Warner Coleman & Goggin, Philadelphia, PA.

For Fairmont Supply Company, Cross Defendant: Edward R. Paul, LEAD ATTORNEY, Paul, Flandreau & Berger, LLP, Media, PA.

For Greene, Tweed & Company, Inc., Cross Defendant: Dennis F. Wolford, Kathryn L. Johnston, LEAD ATTORNEYS, Reed, Tosh, Wolford & Douglass, PC, Beaver, PA.

For Metropolitan Life Insurance Company, Inc., Cross Defendant: Stewart R. Singer, LEAD ATTORNEY,

Salmon, Ricchezza, Singer & Turchi, LLP, Philadelphia, PA; Ronald L. Daugherty, Salmon Ricchezza Singer & Turchi LLP, Philadelphia, PA.

For IMO Industries, Inc., Individually and as Parent Company of an/or Successor to DeLaval Pump & Steam Turbine Co., Cross Defendant: Joseph I. Fontak, LEAD ATTORNEY, Leader & Berkon LLP, Philadelphia, PA.

For Aurora Pump Company, Cross [\*29] Defendant: James P. Hadden, LEAD ATTORNEY, Maron, Marvel, Bradley Anderson & Tardy LLC, Philadelphia, PA.

For Cooper Industries, Individually and as Successor-in-Interest to Crouse Hinds Co., Cross Defendant: Joan P. Depfer, Marshall Dennehey Warner Coleman & Goggin, Philadelphia, PA.

For Crane Company, Cross Defendant: G. Daniel Bruch, Lauren E Burke, LEAD ATTORNEYS, Swartz Campbell LLC, Philadelphia, PA; Peter L. Lejeune, Swartz Campbell, LLC, Philadelphia, PA.

For GTE Products of Connecticut Corporation, As Successor-in-Interest to Clark Control, Inc., Cross Defendant Edward T Finch, LEAD ATTORNEY, Lavin, O'Neil, Cedrone & Disipio, Philadelphia, PA.

For General Electric Company, Cross Defendant: John Patrick McShea, III, McShea Law Firm, PC, Philadelphia, PA.

For Goulds Pumps, Inc., Cross Defendant: Nathan J Andrisani, Morgan, Lewis & Bockius LLP, Philadelphia, PA.

For Honeywell International, Inc., Successor to Allied-Signal, Inc., Successor to Bendix Corporation, Cross Defendant: Peter J Neeson, LEAD ATTORNEY, Rawle & Henderson, LLP, Philadelphia, PA; Scott F. Griffith, Rawle & Henderson LLP, Philadelphia, PA.

For IMO Industries, Inc., Individually and as Parent Company of an/or Successor [\*30] to DeLaval Pump & Steam Turbine Co., Cross Defendant: Joseph I. Fontak,

LEAD ATTORNEY, Leader & Berkon LLP, Philadelphia, PA.

For Ingersoll-Rand Company, Terex Corporation, Individually and as Parent Company of American Crane and as Parent Company of Lorain Crane, Zurn Industries, LLC, Subsidiary of U.S. Industries, Inc., Cross Defendants: Daniel J. Ryan, Jr., LEAD ATTORNEY, Joan P. Depfer, Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA.

For McCormick *Asbestos* Company, Cross Defendant: Thomas P Hanna, LEAD ATTORNEY, Kelley Jasons McGowan Spinelli Hanna & Reber, LLP, Philadelphia, PA; Christina M. Rideout, Kelley Jasons McGowan Spinelli & Hanna, L.L.P., Philadelphia, PA.

For Mobil Corporation, Parent of Mobil Oil Corporation, Cross Defendant: C. James Zeszutek, David J. Singley, LEAD ATTORNEYS, Dinsmore & Shohl LLP, Pittsburgh, PA.

For Reunion Industries, Inc., Cross Defendant: Sean R. Riley, LitchField Cavo LLP.

For Schneider Electric, Cross Defendant: W. Matthew Reber, LEAD ATTORNEY, Kelley Jasons McGuire Spinelli & Hanna, LLP, Philadelphia, PA; Christina M. Rideout, Kelley Jasons McGowan Spinelli & Hanna, L.L.P., Philadelphia, PA.

For The Kerite Company, A division of the [\*31] Marmon Group, LLC, Cross Defendant: Tiffany J Giangiulio, LEAD ATTORNEY, Joan P. Depfer Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA.

For Aurora Pump Company, Cross Defendant: James P. Hadden, LEAD ATTORNEY, Maron, Marvel, Bradley Anderson & Tardy LLC, Philadelphia, PA; Jennifer A McGarrity, Maron Marvel Bradley Anderson & Tardy LLC, Philadelphia, PA.

For HB Fuller Company, Cross Defendant: George S.

Bobnak, Burns White LLC, Philadelphia, PA.

For Metropolitan Life Insurance Company, Inc., Cross Defendant: Stewart R. Singer, LEAD ATTORNEY, Salmon, Ricchezza, Singer & Turchi, LLP, Philadelphia, PA; Ronald L. Daugherty, Salmon Ricchezza Singer & Turchi LLP, Philadelphia, PA.

For RSCC Wire & Cable, Inc., Cross Defendant: Joan P. Depfer, Tiffany J Giangiulio, LEAD ATTORNEYS, Marshall Dennehey Warner Coleman & Goggin, Philadelphia, PA.

For Air & Liquid Systems Corporation, As Successor-by-Merger to Buffalo Pumps, Cross Defendant: John A. Fitzpatrick, Wilbraham, Lawler & Buba, Philadelphia, PA.

For CBS Corporation, A Delaware Corporation, Successor-by-Merger to CBS Corporation, a Pennsylvania Corporation, Cross Defendant: John Patrick McShea, III, LEAD ATTORNEY, McShea Law Firm, [\*32] PC, Philadelphia, PA; Conrad O. Kattner, McShea Tecce, P.C., Philadelphia, PA.

For Borgwarner Morse TEC, Cross Defendant: A. Kai Seelaus, Barnard Mezzanotte Pinnie and Seelaus LLP, Media, PA.

For Greene, Tweed & Company, Inc., Cross Defendant: Dennis F. Wolford, Kathryn L. Johnston, LEAD ATTORNEYS, Reed, Tosh, Wolford & Douglass, PC, Beaver, PA.

For The Kerite Company, A division of the Marmon Group, LLC, RSCC Wire & Cable, Inc., Cross Defendants: Tiffany J Giangiulio, LEAD ATTORNEY, Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA; Joan P. Depfer, Marshall Dennehey Warner Coleman & Goggin, Philadelphia, PA.

For Zurn Industries, LLC, Ingersoll-Rand Company, Terex Corporation, Individually and as Parent Company of American Crane and as Parent Company of Lorain

Crane, Zurn Industries, LLC, Subsidiary of U.S. Industries, Inc., Cross Defendants: Daniel J. Ryan, Jr., LEAD ATTORNEY, Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA; Joan P. Depfer, Marshall Dennehey Warner Coleman & Goggin, Philadelphia, PA.

For Borgwarner Morse TEC, Cross Defendant: A. Kai Seelaus, Barnard Mezzanotte Pinnie and Seelaus LLP, Media, PA.

For Cooper Industries, Individually and as Successor-in-Interest [\*33] to Crouse Hinds Co., Cross Defendant: Joan P. Depfer, Marshall Dennehey Warner Coleman & Goggin, Philadelphia, PA.

For Crane Company, Cross Defendant: G. Daniel Bruch, LEAD ATTORNEY, Swartz Campbell LLC, Philadelphia, PA; Lauren E Burke, LEAD ATTORNEY, Swartz Campbell LLC, Philadelphia, PA; Peter L. Lejeune, Swartz Campbell, LLC, Philadelphia, PA.

For GTE Products of Connecticut Corporation, As Successor-in-Interest to Clark Control, Inc., Cross Defendant: Edward T Finch, LEAD ATTORNEY, Lavin, O'Neil, Cedrone & Disipio, Philadelphia, PA.

For Georgia-Pacific, LLC, Cross Defendant: Kevin J O'Brien, LEAD ATTORNEY, Marks, O'Neill, O'Brien, Doherty & Kelly, PC, Philadelphia, PA.

For HB Fuller Company, Cross Defendant: George S. Bobnak, Burns White LLC, Philadelphia, PA.

For Goulds Pumps, Inc., Cross Defendant: Nathan J Andrisani, Morgan, Lewis & Bockius LLP, Philadelphia, PA.

For Honeywell International, Inc., Successor to Allied-Signal, Inc. Successor to, Bendix Corporation, Cross Defendant: Peter J Neeson, LEAD ATTORNEY, Rawle & Henderson, LLP, Philadelphia, PA; Scott F. Griffith, Rawle & Henderson LLP, Philadelphia, PA.

For IMO Industries, Inc., Individually and as Parent

Company of an/or Successor [\*34] to DeLaval Pump & Steam Turbine Co., Cross Defendant: Joseph I. Fontak, LEAD ATTORNEY, Leader & Berkon LLP, Philadelphia, PA.

For McCormick *Asbestos* Company, Cross Defendant: Thomas P Hanna, LEAD ATTORNEY, Kelley Jasons McGowan Spinelli Hanna & Reber, LLP, Philadelphia, PA; Christina M. Rideout, Kelley Jasons McGowan Spinelli & Hanna, L.L.P., Two Liberty Place, Philadelphia, PA.

For Metropolitan Life Insurance Company, Inc., Cross Defendant: Stewart R. Singer, LEAD ATTORNEY, Salmon, Ricchezza, Singer & Turchi, LLP, Philadelphia, PA; Ronald L. Daugherty, Salmon Ricchezza Singer & Turchi LLP, Philadelphia, PA.

For Schneider Electric, Cross Defendant: W. Matthew Reber, LEAD ATTORNEY, Kelley Jasons McGuire Spinelli & Hanna, LLP, Philadelphia, PA; Christina M. Rideout, Kelley Jasons McGowan Spinelli & Hanna, L.L.P., Two Liberty Place, Philadelphia, PA.

For CBS Corporation, A Delaware Corporation, Successor-by-Merger to CBS Corporation, a Pennsylvania Corporation, Cross Claimant: John Patrick McShea, III, LEAD ATTORNEY, McShea Law Firm, PC, Philadelphia, PA; Conrad O. Kattner, McShea Tecce, P.C., Philadelphia, PA.

For Air & Liquid Systems Corporation, As Successor-by-Merger to Buffalo Pumps, [\*35] Cross Defendant: John A. Fitzpatrick, Wilbraham, Lawler & Buba, Philadelphia, PA.

For Aurora Pump Company, Cross Defendant: James P. Hadden, LEAD ATTORNEY, Maron, Marvel, Bradley Anderson & Tardy LLC, Three Logan Square, Philadelphia, PA; Jennifer A McGarrity, Maron Marvel Bradley Anderson & Tardy LLC, Philadelphia, PA.

For CBS Corporation, A Delaware Corporation,

Successor-by-Merger to CBS Corporation, a Pennsylvania Corporation, Cross Defendant: John Patrick McShea, III, LEAD ATTORNEY, McShea Law Firm, PC, Philadelphia, PA; Conrad O. Kattner, McShea Tecce, P.C., Philadelphia, PA.

For Foseco, Inc., Industrial Holdings Corporation, Cross Defendants: Carolyn A. Williams, LEAD ATTORNEY, Maron Marvel Bradley Anderson & Tardy LLC, Three Logan Square, Philadelphia, PA; Walter S. Jenkins, LEAD ATTORNEY, Maron Marvel Bradley Anderson & Tardy LLC, Philadelphia, PA.

For General Electric Company, Cross Defendant: John Patrick McShea, III, LEAD ATTORNEY, McShea Law Firm, PC, Philadelphia, PA.

For Union Carbide Corporation, Bayer Cropscience, LP, As Successor-in-interest to Amchem Products, Inc., Cross Defendants: Catherine N Jasons, Kelley Jasons McGowan Spinelli Hanna & Reber LLP, Philadelphia, PA; [\*36] Christina M. Rideout, Kelley Jasons McGowan Spinelli & Hanna, L.L.P., Philadelphia, PA.

For Universal Refractories, A Division of Thiem Corporation, Cross Defendant: John J. Dugan, Salmon, Ricchezza, Singer & Turchi, LLP, Philadelphia, NJ.

For Columbus McKinnon Corporation, Cross Defendant: Jennifer A McGarrity, Maron Marvel Bradley Anderson & Tardy LLC, Philadelphia, PA; William F. Kiniry, Jr., DLA Piper LLP (US), Philadelphia, PA.

For Mobil Corporation, Parent of Mobil Oil Corporation, Cross Defendant: C. James Zeszutek, LEAD ATTORNEY, Dinsmore & Shohl LLP, Pittsburgh, PA; David J. Singley, LEAD ATTORNEY, Dinsmore & Shohl LLP, Pittsburgh, PA.

Aurora Pump Company, Cross Defendant: James P. Hadden, LEAD ATTORNEY, Maron, Marvel, Bradley Anderson & Tardy LLC, Three Logan Square, Philadelphia, PA.

For Reunion Industries, Inc., Cross Defendant: Sean R. Riley, LitchField Cavo LLP.

For Foster-Wheeler Corporation, Cross Defendant: Leah A Lewis, Reilly Janiczek McDevitt Henrich & Cholden, PC, Philadelphia, PA; Leroy J Janiczek, Lewis Brisbois Bisgaard & Smith LLP, Wayne, PA.

For J.H. France Refractories Company, Cross Defendant: Damian S Jackson, LEAD ATTORNEY, Reilly, McDevitt & Henrich, PC, Philadelphia, [\*37] PA; Vincent F. Reilly, LEAD ATTORNEY, Reilly, Janiczek, McDevitt, Henrich & Cholden, P.C., Merchantville, NJ; Leah A Lewis, Susan M Valinis, Reilly Janiczek McDevitt Henrich & Cholden, PC, Philadelphia, PA; Leroy J Janiczek, Lewis Brisbois Bisgaard & Smith LLP, Wayne, PA.

For McCormick *Asbestos* Company, Cross Defendant: Thomas P Hanna, LEAD ATTORNEY, Kelley Jasons McGowan Spinelli Hanna & Reber, LLP, Philadelphia, PA; Christina M. Rideout, Kelley Jasons McGowan Spinelli & Hanna, L.L.P., Philadelphia, PA.

For RSCC Wire & Cable, Inc., Cross Defendant: Tiffany J Giangliulo, LEAD ATTORNEYS, Joan P. Depfer, Marshall Dennehey Warner Coleman & Goggin, Philadelphia, PA.

For Terex Corporation, Individually and as Parent Company of, American Crane and as Parent Company of, Lorain Crane, Zurn Industries, LLC, Subsidiary of U.S. Industries, Inc., Ingersoll-Rand Company, Cross Defendants: Daniel J. Ryan, Jr., LEAD ATTORNEY, Joan P. Depfer, Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA.

For The Kerite Company, A division of the Marmon Group, LLC, Cross Defendant: Tiffany J Giangliulo, LEAD ATTORNEY, Joan P. Depfer, Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA.

For Union [\*38] Carbide Corporation, Cross Defendant: Catherine N Jasons, Kelley Jasons McGowan Spinelli Hanna & Reber LLP, Philadelphia, PA; Christina M. Rideout, Kelley Jasons McGowan Spinelli & Hanna, L.L.P., Philadelphia, PA.

For IMO Industries, Inc., Individually and as Parent Company of an/or Successor to DeLaval Pump & Steam Turbine Co., Cross Defendant, Cross Claimant: Joseph I. Fontak, LEAD ATTORNEY, Leader & Berkon LLP, Philadelphia, PA.

For Air & Liquid Systems Corporation, As Successor-by-Merger to Buffalo Pumps, Cross Defendant: John A. Fitzpatrick, Wilbraham, Lawler & Buba, Philadelphia, PA.

For Aurora Pump Company, Cross Defendant: James P. Hadden, LEAD ATTORNEY, Maron, Marvel, Bradley Anderson & Tardy LLC, Philadelphia, PA; Jennifer A McGarrity, Maron Marvel Bradley Anderson & Tardy LLC, Philadelphia, PA.

For Eaton Corporation, As Successor-in-Interest to Cutler-Hammer, Inc., Cross Defendant: Joan P. Depfer, LEAD ATTORNEY, Marshall Dennehey Warner Coleman & Goggin, Philadelphia, PA.

For Foseco, Inc., Industrial Holdings Corporation, Cross Defendants: Carolyn A. Williams, LEAD ATTORNEY, Maron Marvel Bradley Anderson & Tardy LLC, Philadelphia, PA; Walter S. Jenkins, LEAD ATTORNEY, Maron Marvel [\*39] Bradley Anderson & Tardy LLC, Philadelphia, PA.

For Foster-Wheeler Corporation, Cross Defendant: Leah A Lewis, Reilly Janiczek McDevitt Henrich & Cholden, PC, Philadelphia, PA; Leroy J Janiczek, Lewis Brisbois Bisgaard & Smith LLP, Wayne, PA.

For GTE Products of Connecticut Corporation, As Successor-in-Interest to Clark Control, Inc., Cross Defendant: Edward T Finch, LEAD ATTORNEY, Lavin,

O'Neil, Cedrone & Disipio, Philadelphia, PA.

For General Electric Company, Cross Defendant: John Patrick McShea, III, LEAD ATTORNEY, McShea Law Firm, PC, West Tower, Philadelphia, PA.

For Georgia-Pacific, LLC, Cross Defendant: Kevin J O'Brien, LEAD ATTORNEY, Marks, O'Neill, O'Brien, Doherty & Kelly, PC, Philadelphia, PA.

For Greene, Tweed & Company, Inc., Cross Defendant: Kathryn L. Johnston, LEAD ATTORNEYS, Dennis F. Wolford, Reed, Tosh, Wolford & Douglass, PC, Beaver, PA.

For HB Fuller Company, Cross Defendant: George S. Bobnak, Burns White LLC, Philadelphia, PA.

For Honeywell International, Inc., Successor to Allied-Signal, Inc., Successor to Bendix Corporation, Cross Defendant: Peter J Neeson, LEAD ATTORNEY, Scott F. Griffith, Rawle & Henderson, LLP, Philadelphia, PA.

For Metropolitan Life Insurance Company, [\*40] Inc., Cross Defendant: Stewart R. Singer, LEAD ATTORNEY, Ronald L. Daugherty, Salmon, Ricchezza, Singer & Turchi, LLP, Philadelphia, PA.

For Universal Refractories, A Division of Thiem Corporation, Cross Defendant: John J. Dugan, Salmon, Ricchezza, Singer & Turchi, LLP, Philadelphia, NJ.

For Borgwarner Morse TEC, Cross Defendant: A. Kai Seelaus, Barnard Mezzanotte Pinnie and Seelaus LLP, Media, PA.

For Columbus McKinnon Corporation, Cross Defendant: Jennifer A McGarrity, LEAD ATTORNEY, Maron Marvel Bradley Anderson & Tardy LLC, Philadelphia, PA; William F. Kiniry, Jr., DLA Piper LLP (US), Philadelphia, PA.

For Cooper Industries, Individually and as Successor-in-Interest to Crouse Hinds Co., Cross Defendant: Joan P. Depfer, Marshall Dennehey Warner Coleman & Goggin,

Philadelphia, PA.

For Crane Company, Cross Defendant: G. Daniel Bruch, Lauren E Burke, LEAD ATTORNEYS, Swartz Campbell LLC, Philadelphia, PA; Peter L. Lejeune, Swartz Campbell, LLC, Philadelphia, PA.

For Aurora Pump Company, Cross Defendant: James P. Hadden, LEAD ATTORNEY, Maron, Marvel, Bradley Anderson & Tardy LLC, Philadelphia, PA.

For Reunion Industries, Inc., Cross Defendant: Sean R. Riley, LitchField Cavo LLP.

For Mobil Corporation, [\*41] Parent of Mobil Oil Corporation, Cross Defendant: C. James Zeszutek, David J. Singley, LEAD ATTORNEYS, Dinsmore & Shohl LLP, Pittsburgh, PA.

For CBS Corporation, A Delaware Corporation, Successor-by-Merger to CBS Corporation, a Pennsylvania Corporation, Cross Defendant: John Patrick McShea, III, LEAD ATTORNEY, McShea Law Firm, PC, West Tower, Philadelphia, PA; Conrad O. Kattner, McShea Tecce, P.C., Philadelphia, PA.

For Corhart Refractories Co., Cross Defendant: Thomas J. Johanson, Philadelphia, PA.

For Goulds Pumps, Inc., Cross Defendant: Nathan J Andrisani, Morgan, Lewis & Bockius LLP, Philadelphia, PA.

For J.H. France Refractories Company, J.H. France Refractories Company, J.H. France Refractories Company, Cross Defendants: Damian S Jackson, LEAD ATTORNEY, Reilly, McDevitt & Henrich, PC, Philadelphia, PA; Vincent F. Reilly, LEAD ATTORNEY, Reilly, Janiczek, McDevitt, Henrich & Cholden, P.C., The Kevon Office Center, Merchantville, NJ; Leroy J Janiczek, Lewis Brisbois Bisgaard & Smith LLP, Wayne, PA; Leah A Lewis, Susan M Valinis, Reilly Janiczek McDevitt Henrich & Cholden, PC, Philadelphia, PA.

For McCormick *Asbestos* Company, McCormick



Asbestos Company, Cross Defendants: Thomas P Hanna, [\*42] LEAD ATTORNEY, PRO HAC VICE, Kelley Jasons McGowan Spinelli Hanna & Reber, LLP, Philadelphia, PA; Christina M. Rideout, Kelley Jasons McGowan Spinelli & Hanna, L.L.P., Philadelphia, PA.

For Metropolitan Life Insurance Company, Inc., Metropolitan Life Insurance Company, Inc., Cross Defendants: Stewart R. Singer, LEAD ATTORNEY, Ronald L. Daugherty, Salmon, Ricchezza, Singer & Turchi, LLP, Philadelphia, PA.

For Mobil Corporation, Parent of Mobil Oil Corporation, Mobil Corporation, Parent of Mobil Oil Corporation, Cross Defendants: C. James Zeszutek, David J. Singley, LEAD ATTORNEYS, Dinsmore & Shohl LLP, Pittsburgh, PA.

For RSCC Wire & Cable, Inc., Cooper Industries, Individually and as Successor-in-Interest to Crouse Hinds Co., RSCC Wire & Cable, Inc., The Kerite Company, A division of the Marmon Group, LLC, Cross Defendants: Joan P. Depfer, Tiffany J Giangiulio, LEAD ATTORNEYS, Marshall Dennehey Warner Coleman & Goggin, Philadelphia, PA.

For Terex Corporation, Individually and as Parent Company of American Crane and as Parent Company of Lorain Crane, Zurn Industries, LLC, Subsidiary of U.S. Industries, Inc., Terex Corporation, Individually and as Parent Company of American Crane and as [\*43] Parent Company of Lorain Crane, Terex Corporation, Individually and as Parent Company of American Crane and Lorain Crane, Zurn Industries, LLC, Subsidiary of U.S. Industries, Inc., Ingersoll-Rand Company, Terex Corporation, Individually and as Parent Company of American Crane and as Parent Company of Lorain Crane, Ingersoll-Rand Company, Cross Defendants: Daniel J. Ryan, Jr., LEAD ATTORNEY, Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA; Joan P. Depfer, Marshall Dennehey Warner

Coleman & Goggin, Philadelphia, PA.

For The Kerite Company, A division of the Marmon Group, LLC, The Kerite Company, A division of the Marmon Group, LLC, Cross Defendants: Tiffany J Giangiulio, LEAD ATTORNEY, Philadelphia, PA; Joan P. Depfer, Marshall Dennehey Warner Coleman & Goggin, Philadelphia, PA.

For Union Carbide Corporation, Bayer Cropscience, LP, As Successor-in-interest to Amchem Products, Inc., Union Carbide Corporation, Union Carbide Corporation, Cross Defendants: Catherine N Jasons, Christina M. Rideout, Kelley Jasons McGowan Spinelli & Hanna, L.L.P., Philadelphia, PA.

For A.O. Smith Corporation, Cross Defendant: Eric J Kadish, Maron Marvel Bradley Anderson & Tardy LLC, Philadelphia, [\*44] PA.

For Air & Liquid Systems Corporation, As Successor-by-Merger to Buffalo Pumps, Cross Defendant: John A. Fitzpatrick, Wilbraham, Lawler & Buba, Philadelphia, PA.

For Aurora Pump Company, Aurora Pump Company, Cross Defendants: James P. Hadden, LEAD ATTORNEY, Maron, Marvel, Bradley Anderson & Tardy LLC, Three Logan Square, Philadelphia, PA.

For Borgwarner Morse TEC, Cross Defendant: A. Kai Seelaus, Barnard Mezzanotte Pinnie and Seelaus LLP, Media, PA.

For CBS Corporation, A Delaware Corporation, Successor-by-Merger to CBS Corporation, a Pennsylvania Corporation, General Electric Company, Cross Defendants: John Patrick McShea, III, LEAD ATTORNEY, McShea Law Firm, PC, Philadelphia, PA.

For Cleaver Brooks, Inc., Cross Defendant: Leah A Lewis, Susan M Valinis, Reilly Janiczek McDevitt Henrich & Cholden, PC, Philadelphia, PA.

For Columbus McKinnon Corporation, Cross Defendant:

Jennifer A McGarrity, Maron Marvel Bradley Anderson & Tardy LLC, Philadelphia, PA; William F. Kiniry, Jr., DLA Piper LLP (US), Philadelphia, PA.

For Corhart Refractories Co., Corhart Refractories Co., Cross Defendants: Thomas J. Johanson, Philadelphia, PA.

For Crane Company, Crane Company, Cross Defendants: G. Daniel Bruch, [\*45] Lauren E Burke, LEAD ATTORNEYS, Swartz Campbell LLC, Philadelphia, PA; Peter L. Lejeune, Swartz Campbell, LLC, Philadelphia, PA.

For Fairmont Supply Company, Cross Defendant: Edward R. Paul, LEAD ATTORNEY, Paul, Flandreau & Berger, LLP, Media, PA.

For Foseco, Inc., Industrial Holdings Corporation, Foseco, Inc., Industrial Holdings Corporation, Foseco, Inc., Cross Defendants: Carolyn A. Williams, Walter S. Jenkins, LEAD ATTORNEYS, Maron Marvel Bradley Anderson & Tardy LLC, Philadelphia, PA.

For Foster-Wheeler Corporation, Cross Defendant: Leah A Lewis, Reilly Janiczek McDevitt Henrich & Cholden, PC, Philadelphia, PA; Leroy J Janiczek, Lewis Brisbois Bisgaard & Smith LLP, Wayne, PA.

For GTE Products of Connecticut Corporation, As Successor-in-Interest to Clark Control, Inc., GTE Products of Connecticut Corporation, As Successor-in-Interest to Clark Control, Inc., GTE Products of Connecticut Corporation, As Successor-in-Interest to Clark Control, Inc., Cross Defendants: Edward T Finch, LEAD ATTORNEY, Lavin, O'Neil, Cedrone & Disipio, Philadelphia, PA.

For Georgia-Pacific, LLC, Cross Defendant: Kevin J O'Brien, LEAD ATTORNEY, Marks, O'Neill, O'Brien, Doherty & Kelly, PC, Philadelphia, PA.

For [\*46] Rhonda J. Gorton, Cross Defendant: Jason B. Duncan, Law Offices of Peter Angelos, P.C., Harrisburg,

PA.

For Thomas D. Gorton, II, Cross Defendant: Jason B. Duncan, Law Offices of Peter Angelos, P.C., Harrisburg, PA; Lamont G McClure, LEAD ATTORNEY, Law Office of Peter G. Angelos, PC, Bethlehem, PA; Dennis F. Wolford, Reed, Tosh, Wolford & Douglass, PC, Beaver, PA.

For Goulds Pumps, Inc., Goulds Pumps, Inc., Cross Defendants: Nathan J Andrisani, Morgan, Lewis & Bockius LLP, Philadelphia, PA.

For Greene, Tweed & Company, Inc., Cross Defendant: Dennis F. Wolford, Kathryn L. Johnston, LEAD ATTORNEYS, Reed, Tosh, Wolford & Douglass, PC, Beaver, PA.

For HB Fuller Company, Cross Defendant: George S. Bobnak, Burns White LLC, Philadelphia, PA.

For Honeywell International, Inc., Successor to Allied-Signal, Inc., Successor to Bendix Corporation, Honeywell International, Inc., Successor to Allied-Signal, Inc., Successor to Bendix Corporation, Honeywell International, Inc., Successor to Allied-Signal, Inc., Successor to Bendix Corporation, Cross Defendants: Peter J Neeson, LEAD ATTORNEY, Scott F. Griffith, Rawle & Henderson, LLP, Philadelphia, PA.

For IMO Industries, Inc., Individually and as Parent [\*47] Company of an/or Successor to DeLaval Pump & Steam Turbine Co., IMO Industries, Inc., Individually and as Parent Company of an/or Successor to DeLaval Pump & Steam Turbine, Co., Cross Defendants: Joseph I. Fontak, LEAD ATTORNEY, Leader & Berkon LLP, Philadelphia, PA.

For Ingersoll-Rand Company, Zurn Industries, LLC, Subsidiary of U.S. Industries, Inc., Cross Defendants: Daniel J. Ryan, Jr., LEAD ATTORNEY, Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia, PA.

For J.H. France Refractories Company, Cross Defendant: Damian S Jackson, LEAD ATTORNEY, Reilly, McDevitt & Henrich, PC, Philadelphia, PA; Vincent F. Reilly, LEAD ATTORNEY, Reilly, Janiczek, McDevitt, Henrich & Cholden, P.C., Merchantville, NJ.

For Keeler/Dorr-Oliver Boiler Company, Cross Defendant: Lina M. Carreras, LEAD ATTORNEY, Maron Marvel Bradley Anderson & Tardy LLC, Philadelphia, PA; Walter S. Jenkins, LEAD ATTORNEY, Maron Marvel Bradley Anderson & Tardy LLC, Philadelphia, PA.

For McCormick Asbestos Company, Cross Defendant: Thomas P Hanna, LEAD ATTORNEY, Kelley Jasons McGowan Spinelli Hanna & Reber, LLP, Philadelphia, PA.

For Reunion Industries, Inc., Cross Defendant: Sean R. Riley, LitchField Cavo LLP.

For Schneider [\*48] Electric, Cross Defendant: W. Matthew Reber, LEAD ATTORNEY, Kelley Jasons McGuire Spinelli & Hanna, LLP, Philadelphia, PA; Christina M. Rideout, Kelley Jasons McGowan Spinelli & Hanna, L.L.P., Philadelphia, PA.

For The Okonite Company, Cross Defendant: G. Daniel Bruch, LEAD ATTORNEY, Swartz Campbell LLC, Philadelphia, PA.

For Universal Refractories, A Division of Thiem Corporation, Universal Refractories, A Division of Thiem Corporation, Cross Defendants: John J. Dugan, Salmon, Ricchezza, Singer & Turchi, LLP, Philadelphia, NJ.

For McCormick Asbestos Company, Cross Claimant, Cross Defendant: Thomas P Hanna, LEAD ATTORNEY, Kelley Jasons McGowan Spinelli Hanna & Reber, LLP, Philadelphia, PA; Christina M. Rideout, Kelley Jasons McGowan Spinelli & Hanna, L.L.P., Philadelphia, PA.

For Cooper Industries, Individually and as Successor-in-Interest to Crouse Hinds Co., Cross Defendant: Joan P. Depfer, Marshall Dennehey Warner Coleman & Goggin, Philadelphia, PA.

**Judges:** Joy Flowers Conti, Senior United States District Judge.

**Opinion by:** Joy Flowers Conti

## Opinion

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### MEMORANDUM OPINION

#### I. Introduction

Decedent Thomas Gorton ("decendent"), the husband of plaintiff Rhonda J. Gorton ("Ms. Gorton"), developed mesothelioma, allegedly due [\*49] to his occupational exposure to defendants' asbestos-containing products. Ms. Gorton brought this lawsuit, which was removed to this court, on behalf of her deceased husband's estate and in her own right. Ms. Gorton reached settlement agreements with many of the defendants in the litigation. On October 6, 2021, default judgment was entered against defendant Warren Pumps, LLC ("Warren Pumps") because it "failed to appear, plead, or otherwise defend" in this case. (ECF No. 527.) Pending before the court is a motion to vacate the default judgment (ECF No. 529) filed by Warren Pumps.

Warren Pumps argues, among other things, that the default judgment should be vacated because Ms. Gorton did not properly serve the amended complaint upon Warren Pumps in accordance with Federal Rule of Civil Procedure 4, and, under those circumstances, the entry of default is void. Ms. Gorton argues in opposition that Warren Pumps was in default at the time Ms.

Gorton filed the amended complaint because Warren Pumps did not file a responsive pleading to the original complaint, and, therefore, service of the amended complaints was not required, pursuant to [Federal Rule of Civil Procedure 5\(a\)\(2\)](#).

Here, the record before this court shows that: (1) Ms. Gorton for the first time in [\*50] the amended complaint set forth a wrongful death claim against defendants, including Warren Pumps; and (2) Ms. Gorton did not properly serve Warren Pumps with either the amended complaint or second amended complaint. Under those circumstances, [Federal Rule of Civil Procedure 5\(a\)\(2\)](#) required Ms. Gorton to effectuate proper service of the amended complaint upon Warren Pumps (even if Warren Pumps was in default for failing to respond to the original complaint).<sup>1</sup> Based upon the foregoing, and as set forth fully in this opinion, the default judgment entered against Warren Pumps is void and will be vacated. Warren Pumps' motion to vacate the default judgment will be granted.

## II. Procedural History Relevant to the Motion to Vacate Default Judgment

On June 23, 2017, this diversity action was removed from the Dauphin County Court of Common Pleas to the United States District Court for the Middle District of Pennsylvania. (ECF No. 1.) Mr. Gorton and Ms. Gorton were the plaintiffs and named at least sixty-five

defendants in the complaint, including Warren Pumps. (Id. at 1-4.) The following six counts were asserted in the complaint: (1) count I: products liability; (2) count II: breach of implied warranty; (3) count III: negligence; [\*51] (4) count IV: intentional conduct—fraudulent concealment; (5) count V: premises liability (*against only certain defendants*); and (6) count VI: loss of consortium. (Id.) In the complaint, it was alleged that the defendants caused Mr. Gorton to contract mesothelioma when he was exposed to *asbestos* while employed by the defendants. Warren Pumps did not respond to the complaint or otherwise have counsel enter an appearance on its behalf. Ms. Gorton and Warren Pumps dispute whether Ms. Gorton properly served Warren Pumps with the original complaint, and, thus, whether Warren Pumps was in default for failing to respond to the original complaint.

Certain defendants engaged in motions practice with respect to the original complaint, and the court permitted the plaintiffs to file an amended complaint. On or about March 6, 2018, Mr. Gorton passed away. On July 9, 2018, Ms. Gorton filed an amended complaint alleging for the first time that the negligent actions of the defendants, including Warren Pumps, caused Mr. Gorton's death, i.e., Ms. Gorton in the amended complaint for the first time set forth a claim of wrongful death against the defendants.<sup>2</sup> There is no evidence

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<sup>2</sup> One court has explained:

"In order to recover in an action for wrongful death, the plaintiff must prove that the death was caused by violence or negligence of the defendant. See [42 Pa.C.S. § 8301\(a\)](#). Therefore, liability for wrongful death requires a determination that a defendant's negligence caused the death. . . .

[Ruehl v. S.N.M. Enterprises, Inc., No. 1:15-CV-168, 2017 U.S. Dist. LEXIS 5399, 2017 WL 1682569, at \\*5 \(M.D. Pa. Jan. 12,](#)

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<sup>1</sup> Ms. Gorton was required to serve Warren Pumps with the amended complaint because it set forth a new claim that was not set forth in the original complaint, i.e., a claim for wrongful death. [Fed. R. Civ. P. 5\(a\)\(2\)](#). Under those circumstances, the court need not analyze whether Ms. Gorton's service of the original complaint was proper or whether Warren Pumps was in default at the time Ms. Gorton filed the amended complaint. See discussion on page 6 *infra*.

before this court that Ms. [\*52] Gorton caused the amended complaint to be served upon Warren Pumps.

After motions practice by certain defendants with respect to the first amended complaint and the court's resolution of a motion for leave to file a second amended complaint, Ms. Gorton filed a second amended complaint. (ECF No. 422.) The second amended complaint included amendments with respect to defendants in this case other than Warren Pumps and not relevant to the motion currently pending before this court. There is no evidence of record that Ms. Gorton caused the second amended complaint to be

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[2017](#)), report and recommendation adopted, [No. 1:15-CV-168, 2017 U.S. Dist. LEXIS 64705, 2017 WL 1541814 \(M.D. Pa. Apr. 28, 2017\)](#). It is recognized in the *asbestos* context that when the plaintiff dies from his or her mesothelioma injuries after the commencement of an action, a wrongful death claim based upon the death is a "new claim" separate and distinct from claims asserted as survival actions. See e.g., *I. Horst et al. v. Union Carbide Corp., et al.*, No. 15CV1903, 2017 WL 11657237, at \*5 (Pa. Com. Pl. June 30, 2017) (recognizing in the *asbestos* context that a claim for wrongful death that accrues when a plaintiff dies from his or her mesothelioma injuries after the commencement of the action is a "new claim"); see also *Kaczorowski v. Kalkosinski*, 321 Pa. 438, 184 A. 663, 664 (Pa. 1936) (recognizing that a claim for wrongful death is independent of claims asserted on the decedent's behalf); *Pisano v. Extencicare Homes, Inc.*, 2013 PA Super 232, 77 A.3d 651, 663 (Pa. Super. Ct. 2013) (same).

Here, in count three of the *original* complaint, Ms. Gorton and Mr. Gorton alleged that defendants—including Warren Pumps—were negligent and caused Mr. Gorton to contract mesothelioma. The amended complaint, which was filed after Mr. Gorton passed away, contains survival claims, which are the same claims asserted by Mr. Gorton in the original complaint, Ms. Gorton's claims set forth in the original complaint, *and* a new wrongful death claim asserted by Ms. Gorton based upon her husband's death. Based upon the foregoing, the court concludes that the amended complaint contained a *new claim*.

served upon Warren Pumps.

On October 6, 2021, Ms. Gorton filed a motion for entry of default judgment. (ECF No. 526.) On the same day, the Clerk of Court entered default judgment in favor of Ms. Gorton and against Warren Pumps because Warren Pumps "failed to appear, plead, or otherwise defend" [\*53] in this case. (ECF No. 527.) On October 8, 2021, counsel for Warren Pumps first entered an appearance on behalf of Warren Pumps. (ECF No. 528.) On the same day, Warren Pumps filed the pending motion to vacate entry of default. (ECF No. 529.) On November 1, 2021, Ms. Gorton filed a response in opposition to the motion. (ECF No. 540.) On November 10, 2021, Warren Pumps, with leave of court, filed a reply brief in support of the motion. (ECF No. 547.) The motion to vacate entry of default having been fully briefed is now ripe for disposition by the court.

### III. Discussion

#### A. Applicable Law

The issue before the court is whether the default judgement entered against Warren Pumps for failing to respond in this case should be vacated. One court has explained:

[Rule 55\(c\) of the Federal Rules of Civil Procedure](#) provides that "[f]or good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with [Rule 60\(b\)](#)." Pursuant to [Fed.R.Civ.P. 60\(b\)\(4\)](#), "[o]n motion and upon such terms as are just, the court may relieve a party . . . from a final judgment" if "the judgment is void." A default judgment rendered by a court which lacked personal jurisdiction over the defendant is void. [Pennoyer v. Neff](#), 95 U.S. 714, 725-727, 24 L. Ed.

[565 \(1877\)](#). A defendant may [\*54] challenge the personal jurisdiction of the rendering court by attacking the validity of the service of process. [Stranahan Gear Co. v. NL Indus. Inc., 800 F.2d 53, 56-57 \(3d Cir.1986\)](#). "Service of process refers to a formal delivery of documents that is legally sufficient to charge the defendants with notice of a pending action." [Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694, 699, 701, 108 S. Ct. 2104, 100 L. Ed. 2d 722 \(1988\)](#).

[O'Donnell v. Shalayev, No. CIV.A.01-4721\(JBS\), 2004 U.S. Dist. LEXIS 25658, 2004 WL 2958698, at \\*3-4 \(D.N.J. Dec. 22, 2004\)](#). With respect to service of process, another court has explained:

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." [Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 \(1950\)](#); *see also* [Marks Law Offices, LLC v. Mireskandari, 704 Fed. Appx. 171, 177 \(3d Cir. 2017\)](#) (permitting service by an alternative method where the court was satisfied that the alternative method provided "notice reasonably calculated to apprise interested parties of the pendency of the action and thus satisfied the requirements of the *Due Process Clause*") (internal quotations and citations omitted).

[Federal Rule of Civil Procedure 4\(e\)\(1\)](#) permits an individual to be served by "following state law for serving summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made." [Fed. R. Civ. P. 4\(e\)\(1\)](#). As this Court sits in Middle District of Pennsylvania, the Pennsylvania [\*55] Rules of

Civil Procedure apply. *Pennsylvania Rule of Civil Procedure 404* authorizes, in relevant part, service of original process on an individual outside Pennsylvania "(1) by a competent adult in the manner provided by *Rule 402(a)*; (2) by mail in the manner provided by *Rule 403*; [or] (3) in the manner provided by the law of the jurisdiction in which the service is made for service in an action in any of its courts of general jurisdiction[.]" *Pa. R. Civ. P. 404(1)-(3)*.

[Betances v. AT&T, No. 3:20-CV-2239, 2021 U.S. Dist. LEXIS 177062, 2021 WL 4256293, at \\*2 \(M.D. Pa. Sept. 17, 2021\)](#).

## B. Analysis

Warren Pumps argues that the default judgment entered against it must be vacated as void because Ms. Gorton did not properly serve the amended complaint upon Warren Pumps. Like in [Betances](#), this court must apply the Pennsylvania-state service rules in this case because this court sits in Pennsylvania. There is no evidence of record that Ms. Gorton served Warren Pumps with the amended complaint in compliance with the federal rules or *Pennsylvania Rule of Civil Procedure 404*. Ms. Gorton argues, however, that she was not required to serve the amended complaint upon Warren Pumps because Warren Pumps was in default for failing to respond to the original complaint. Even if the court assumes that (1) Ms. Gorton properly served the original complaint upon Warren Pumps, and (2) Warren Pumps was in default [\*56] for failing to respond to the original complaint, Ms. Gorton was required under [Federal Rule of Civil Procedure 5\(a\)\(2\)](#) to serve the amended complaint upon Warren Pumps because Ms. Gorton set forth a new claim for wrongful death against Warren Pumps in that pleading. [Rule 5\(a\)\(2\)](#) provides: "**No service is required on a party who**

**is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.**" *Fed. R. Civ. P. 5(a)(2)* (emphasis added). Ms. Gorton set forth a new claim for wrongful death in the amended complaint and did not properly serve the pleading upon Warren Pumps. See *Taylor Farms Cal., Inc. v. Reg'l Source Produce, Inc., No. C 07-05068 JW, 2011 U.S. Dist. LEXIS 148642, 2011 WL 6329914, at \*1 (N.D. Cal. Nov. 29, 2011)*.<sup>3</sup> Under those circumstances, service was not proper, and the default judgment entered against Warren Pumps is void. Based upon the foregoing, the motion to vacate default judgment will be granted, the default judgment will be vacated, and Warren Pumps will be given an opportunity to respond to the second amended complaint.

#### IV. Conclusion

A default judgment entered against a defendant is void if the court lacked personal jurisdiction over the defendant because the defendant was not properly served with notice of the action. Here, Ms. Gorton asserted a new

<sup>3</sup> The court in Taylor succinctly explained:

*Federal Rule of Civil Procedure 5* requires that a pleading filed after the original complaint "must be served on every party." *Fed.R.Civ.P. 5(a)(1)(B)*. If a party is in default for failing to appear, no service is required on that party. See *Fed.R.Civ.P. 5(2)*. However, "a pleading that asserts a new claim for relief against [a party in default] must be served on [\*57] that party under *Rule 4*." *Id.* Thus, although *Rule 5* does allow for service by first-class mail, service of a complaint which states a new claim against a party in default must be made under *Rule 4*, and not *Rule 5*. See *Emp. Painters' Trust v. Ethan Enters., Inc., 480 F.3d 993, 999 (9th Cir.2007)*.

*Taylor, 2011 U.S. Dist. LEXIS 148642, 2011 WL 6329914, at \*1.*

wrongful death claim in the amended complaint. She did not properly serve the amended complaint upon Warren Pumps. This court, therefore, did not have personal jurisdiction over Warren Pumps when default judgment was entered against it. Under those circumstances, the default judgment was void and Warren Pumps is entitled to relief from that judgment under *Federal Rule of Civil Procedure 60(b)(4)*. The motion to vacate default judgment will be granted and the default judgment will be vacated. On or before January 24, 2022, Ms. Gorton shall cause the service of the second amended complaint upon Warren Pumps in accordance with *Federal Rule of Civil Procedure 4*. Within 21 days of the date of service, Warren Pumps shall respond to the second amended complaint in accordance with the Federal Civil Rules of Procedure. An appropriate order will [\*58] be entered.

Dated: January 7, 2022

**BY THE COURT,**

/s/ JOY FLOWERS CONTI

Joy Flowers Conti

Senior United States District Court Judge

#### **ORDER**

**AND NOW**, this 7th day of January 2022, for the reasons sets for the accompanying memorandum opinion, the motion to vacate the default judgment (ECF No. 529) filed by defendant Warren Pumps, LLC ("Warren Pumps") is **HEREBY GRANTED**;

**IT IS FURTHER ORDERED** that the default judgment entered against Warren Pumps on October 6, 2021 (ECF No. 527) is **HEREBY VACATED**; and

**IT IS FURTHER ORDERED** that on or before January 24, 2022, plaintiff Rhonda J. Gorton shall cause the

service of the second amended complaint upon Warren Pumps, and, within 21 days of the date of service, Warren Pumps shall respond to the second amended complaint in accordance with the Federal Civil Rules of Procedure.

**IT IS SO ORDERED.**

**/s/ JOY FLOWERS CONTI**

Joy Flowers Conti

Senior United States District Court Judge

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