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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - SUSSEX COUNTY  
DOCKET NO.

**SSX-L-213-06**

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION and  
THE ADMINISTRATOR OF THE NEW  
JERSEY SPILL COMPENSATION  
FUND,

Plaintiffs,

v.

AMES RUBBER CORPORATION,

Defendant.

Civil Action

COMPLAINT

FILED & SERVED  
APR 13 2006  
SUSSEX COUNTY CLERK'S OFFICE

Plaintiffs New Jersey Department of Environmental Protection ("DEP") and the  
Administrator of the New Jersey Spill Compensation Fund ("Administrator") (collectively, "the

Plaintiffs”), having their principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, by way of Complaint against the above-named defendant, say:

### STATEMENT OF THE CASE

1. Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act (the “Spill Act”), N.J.S.A. 58:10-23.11 to -23.24, and the common law, for reimbursement of the cleanup and removal costs and damages they have incurred, and will incur, as a result of discharge of hazardous substances at the Ames Rubber site located in the Borough of Hamburg, Sussex County. The costs and damages the Plaintiffs seek include the damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Ames Rubber site. Further, the Plaintiffs seek an order compelling the Defendant to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performance of, any further assessment and restoration of any natural resource that has been, or may be, injured as a result of the discharge of hazardous substances at the Ames Rubber site.

### THE PARTIES

2. Plaintiff DEP is a principal department within the Executive Branch of the State government, vested with the authority to conserve and protect natural resources, protect the environment, prevent pollution, and protect the public health and safety. N.J.S.A. 13:1D-9.

3. In addition, the State is the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction, for which plaintiff DEP is vested with the authority to protect this public trust and to seek compensation for any injury to the natural resources of the State. N.J.S.A. 58:10-23.11a.

4. Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("the Spill Fund"). N.J.S.A. 58:10-23.11j. As chief executive officer of the Spill Fund, plaintiff Administrator is authorized to approve and pay any cleanup and removal costs plaintiff DEP incurs, N.J.S.A. 58:10-23.11f.c. and d., and to certify the amount of any claim to be paid from the Spill Fund, N.J.S.A. 58:10-23.11j.d.

5. Defendant Ames Rubber Corporation ("the Defendant") is a corporation organized and existing under the laws of the State of New Jersey, with a principal place of business located at 23-47 Ames Boulevard, Hamburg, New Jersey.

### AFFECTED NATURAL RESOURCES

#### Ground Water

6. Ground water is an extremely important natural resource for the people of New Jersey, supplying more than 900 million gallons of water per day, which provides more than half of New Jersey's population with drinking water.

7. Not only does ground water serve as a source of potable water, it also serves as an integral part of the State's ecosystem.

8. Ground water provides base flow to streams and other surface water bodies and influences surface water quality wetland ecology and the health of aquatic ecosystems.

9. Ground water also provides cycling and nutrient movement, prevents salt water intrusion, provides ground stabilization, prevents sinkholes, and provides maintenance of critical water levels in freshwater wetlands.

10. Ground water is a unique resource that support the State's tourism industry, and is alos used for commercial, industrial and agricultural purposes, all of which help sustain the State's economy.

11. There are more than 6,000 sites in New Jersey confirmed as having ground water contaminated with hazardous substances.

#### Surface Water

12. Approximately 850 million gallons of surface water per day supplies nearly half of New Jersey's population with drinking water.

13. Surface water, like ground water, is a unique resource that is used for other commercial and industrial purposes, such as cooling water and electrical generation, commercial fishing, and transportation of goods and services.

14. The tourist and recreation industries, including boating, fishing and swimming, which are vital to the economy of this State, depend on clean waters and beaches.

#### GENERAL ALLEGATIONS

15. The Ames Rubber site consists of approximately 20 acres of real property located at 23-47 Ames Boulevard, Borough of Hamburg, Sussex County, this property being also known and designated as Block 7, Lots 2, 22.8, and 31, on the Tax Map of the Borough of Hamburg, New Jersey ("the Ames Rubber Property"), and all other areas where any hazardous substance discharged there has become located (collectively, "the Ames Rubber Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 003018.

16. The Ames Rubber Property is bordered on the west by the Wallkill River, and to the north, south and east by industrial, commercial and municipal properties. A tributary creek of the Wallkill River runs through the Ames Rubber Property before converging with the Wallkill River.

17. Three distinct hydrogeologic zones exist within the Ames Rubber Site. The water table zone ranges from less than 1 foot to over 10 feet below the ground surface with a saturated thickness of approximately 25 feet. The second hydrogeologic unit extends from the water table zone to the overlying bedrock, is completely saturated and has a potentiometric surface that can be up to 25 feet above the top of the formation, indicating a strong upward head and vertical flow direction. The third hydrogeologic unit is the dolomitic limestone bedrock.

18. Ground water from the Ames Rubber Site discharges to the Walkkill River.

19. The Defendant purchased the 20-acre Ames Rubber Property in 1949, and as of the date of the filing of this Complaint, remains the owner of record of the Ames Rubber Property.

20. During the time that the Defendant has owned the Ames Rubber Property, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., have been "discharged" there within the meaning of N.J.S.A. 58:10-23.11f.b.(2), which substances include polychlorinated biphenyls ("PCBs") and volatile organic compounds ("VOCS"), including toluene, 1,1,1-trichloroethane, trichloroethene, trans-1,2-dochloroethene and 1,1-dichloroethene.

21. From 1949 to the present, the Defendant has operated a rubber manufacturing facility at the Ames Rubber Property, which operations have included the manufacturing of extruded and mechanical rubber parts products.

22. The Defendant has engaged in manufacturing activities at the Ames Rubber Property, which activities involved the generation, storage, handling, and disposal of "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., certain of which were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included VOCs and PCBs.

23. In 1981, the United States Environmental Protection Agency ("EPA") issued the Defendant a National Pollutant Discharge Elimination System ("NPDES") permit for discharging "pollutants," as defined in N.J.S.A. 58:10A-3, to the Walkill River, which permit was subsequently converted to a New Jersey Pollutant Discharge Elimination System ("NJPDES") permit.

24. The Defendant subsequently installed three monitoring wells in the vicinity of an on-site lagoon to monitor compliance with its NJPDES permit.

25. The Defendant periodically sampled the monitoring wells and an on-site production well, the results of which revealed the presence of hazardous substances exceeding the NJPDES permit parameters in the ground water, which substances included VOCs and PCBs.

26. On February 15, 1984, plaintiff DEP inspected the Ames Rubber Property, the results of which revealed that the Defendant was discharging pollutants into the ground water without a permit, discharging pollutants into the Walkill River at concentrations exceeding the NJPDES permit parameters, and operating a sedimentation (settling) pond for which it had no permit.

27. In August 1984, the Defendant initiated a groundwater and surface water investigation at the Ames Rubber Site, the results of which revealed the presence of various hazardous substances exceeding plaintiff DEP's cleanup criteria in the ground water and surface water, which substances included VOCs.

28. On April 10, 1987, plaintiff DEP issued the Defendant a final NJPDES Discharge to Surface Water/Discharge to Groundwater permit, one condition of which required the Defendant to submit a plan for the closure of the infiltration-percolation lagoon at the Ames Rubber Property.

29. In June 1988, the Defendant and plaintiff DEP entered into an Administrative Consent Order ("ACO"), which required the Defendant to conduct a Remedial Investigation and a Feasibility Study of the Ames Rubber Site to determine the nature and extent of the contamination, evaluate various ways to remediate the contamination, and explain how it would implement the approved remediation plan.

30. In 1990, the Defendant submitted its Remedial Investigation Report to plaintiff DEP.

31. Sampling results from the remedial investigation confirmed the presence of various hazardous substances exceeding plaintiff DEP's cleanup criteria in the ground water and soils at the Ames Rubber Site, which substances included VOCs and PCBs. Furthermore, the remedial investigation confirmed that contaminated ground water was discharging from the Ames Rubber Property to the Wallkill River.

32. Among the suspected sources of the groundwater, soils and surface water contamination at the Ames Rubber Site were the Defendant's disposal of hazardous substances in rubber burial pits, the on-site percolation lagoon, the Defendant's direct pollutant discharges to the Wallkill River, an underground storage tank from which toluene was discharged, and an on-site hazardous waste storage area.

33. In December 1991, the Defendant removed the 1,500-gallon toluene underground storage tank from the Ames Rubber Property.

34. To address the groundwater contamination at the Ames Rubber Site, the Defendant installed a groundwater pump and treat remediation system in February 1993, which system pumps contaminated water from the ground, treats the water, and then discharges the treated water into the Wallkill River.

35. In March 1993, the Defendant submitted its Remedial Action Report to plaintiff DEP, in which the Defendant described the closure of the on-site settling pond which the Defendant closed pursuant to its NJPDES permit.

36. The Defendant also has excavated and removed contaminated soils from the Ames Rubber Site.

37. In December 1996, the Defendant submitted its Remedial Action Report / Remedial Action Workplan for the North Area at the Ames Rubber Site to plaintiff DEP, which called for the implementation of institutional controls in addition to the already in-place concrete caps to prevent human and environmental exposure to the contaminated soils.

38. The contamination of the ground water at the Ames Rubber Site will require the designation of a Classification Exception Area ("CEA"), which excludes the designated ground water from use as a potable water source.

39. As of the filing of this Complaint, the total area of the CEA, the estimated duration of which is indeterminate, is approximately 20 acres, with a vertical extent of 116 feet.

40. Although the Defendant has initiated the remediation of the Ames Rubber Site, the ground water, soils and surface water remain contaminated.

#### FIRST COUNT

##### Spill Act

41. Plaintiffs repeat each allegation of paragraph nos. 1 through 40 above as though fully set forth in its entirety herein.

42. Each defendant is a "person" within the meaning of N.J.S.A. 58:10-23.11b.

43. Plaintiff DEP has incurred, and will continue to incur, costs as a result of the discharge of hazardous substances at the Ames Rubber Property.



44. Plaintiff Administrator, has certified, or may certify, for payment, valid claims made against the Spill Fund concerning the Ames Rubber Site, and, further, has approved, or may approve, other appropriations for the Ames Rubber Site.

45. Plaintiffs have incurred, and will continue to incur, costs and damages, including lost value and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Ames Rubber Property.

46. The costs and damages the Plaintiffs have incurred, and will incur, for the Ames Rubber Site are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

47. The Defendant is a discharger of hazardous substances at the Ames Rubber Property, and is liable, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Ames Rubber Property. N.J.S.A. 58:10-23.11g.c.

48. The Defendant, as the owner of the Ames Rubber Property at the time hazardous substances were discharged there, also is a person in any way responsible for the discharged hazardous substances, and is liable, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Ames Rubber Property. N.J.S.A. 58:10-23.11g.c(1).

49. Pursuant to N.J.S.A. 58:10-23.11u.a(1)(a) and N.J.S.A. 58:10-23.11u.b., plaintiff

DEP may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10-23.11u.b.(1); for its unreimbursed investigation, cleanup and removal costs, including the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2); for natural resource restoration and replacement costs, N.J.S.A. 58:10-23.11u.b.(4); and for any other unreimbursed costs or damages plaintiff DEP incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

50. Pursuant to N.J.S.A. 58:10-23.11q., plaintiff Administrator is authorized to bring an action in the Superior Court for any unreimbursed costs or damages paid from the Spill Fund.

#### PRAYER FOR RELIEF

**WHEREFORE**, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendant to reimburse the Plaintiffs, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Ames Rubber Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant, without regard to fault, for all cleanup and removal costs and damages, including lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Ames Rubber Property;
- c. Enter judgment against the Defendant, compelling the Defendant to perform, under plaintiff DEP's oversight, any further cleanup of hazardous substances discharged at the Ames Rubber Property;
- d. Enter judgment against the Defendant, without regard to fault, compelling the Defendant to compensate the citizens of New Jersey for the injury to their natural

resources as a result of the discharge of hazardous substances at the Ames Rubber Property, by performing, under Plaintiff DEP's oversight, or funding Plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured as a result of the discharge of hazardous substances at the Ames Rubber Property;

- e. Award the Plaintiffs their costs and fees in this action; and
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

## SECOND COUNT

### Public Nuisance

51. Plaintiffs repeat each allegation of paragraph nos. 1 through 50 above as though fully set forth in its entirety herein.

52. Ground water and surface water are natural resources of the State held in trust by the State for the benefit of the public.

53. The use, enjoyment and existence of uncontaminated natural resources are rights common to the general public.

54. The ground water and surface water contamination at the Ames Rubber Site constitutes a physical invasion of public property and an unreasonable and substantial interference, both actual and potential, with the exercise of the public's common right to these natural resources.

55. As long as ground water and/or surface water remains contaminated due to the Defendant's conduct, the public nuisance continues.

56. Until the ground water and surface water are restored to their pre-injury quality, the Defendant is liable for the creation, and continued maintenance, of a public nuisance in

contravention of the public's common right to clean ground water and surface water.

PRAYER FOR RELIEF

**WHEREFORE**, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendant to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Ames Rubber Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Ames Rubber Property;
- c. Enter judgment against the Defendant, compelling the Defendant to abate the nuisance by performing any further cleanup of hazardous substances discharged at the Ames Property under plaintiff DEP's oversight;
- d. Enter judgment against the Defendant, compelling the Defendant to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharge of hazardous substances at the Ames Rubber Property, by performing, under plaintiff DEP's oversight, or funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured as a result of the discharge of hazardous substances at the Ames Rubber Property;
- e. Award the Plaintiffs their costs and fees in this action; and
- f. Award the Plaintiffs such other relief as this Court deems appropriate.

THIRD COUNT

Trespass

57. Plaintiffs repeat each allegation of Paragraphs 1 through 56 above as though fully set forth in its entirety herein.

58. Ground water and surface water are natural resources of the State held in trust by the State for the benefit of the public.

59. The Defendant is liable for trespass, and continued trespass, since the time hazardous substances were first discharged at the Ames Rubber Property by the Defendant.

60. As long as ground water and/or surface water remain contaminated, the Defendant's trespass continues.

PRAYER FOR RELIEF

**WHEREFORE**, Plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendant to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured as a result of the discharge of hazardous substances at the Ames Rubber Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost value and reasonable assessment costs, that the Plaintiffs will incur for any natural resource of this State injured as a result of the discharge of hazardous substances at the Ames Rubber Property;
- c. Enter judgment against the Defendant, compelling the Defendant to cease the

trespass by performing any further cleanup of hazardous substances discharged at the Ames Property under plaintiff DEP's oversight;

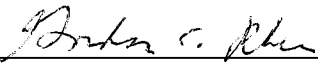
d. Enter judgment against the Defendant, compelling the Defendant to compensate the citizens of New Jersey for the injury to their natural resources as a result of the discharge of hazardous substances at the Ames Rubber Property, by performing, under Plaintiff DEP's oversight, or funding Plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured as a result of the discharge of hazardous substances at the Ames Rubber Property;


e. Award the Plaintiffs their costs and fees in this action; and

f. Award the Plaintiffs such other relief as this Court deems appropriate.

RICHARDSON, PATRICK, WESTBROOK &  
BRICKMAN, L.L.C.  
Attorneys for Plaintiffs

LAW OFFICES OF JOHN K. DEMA, P.C.  
Attorneys for Plaintiffs

By:   
Gordon C. Rhea, Esq.  
Special Counsel to the Attorney General

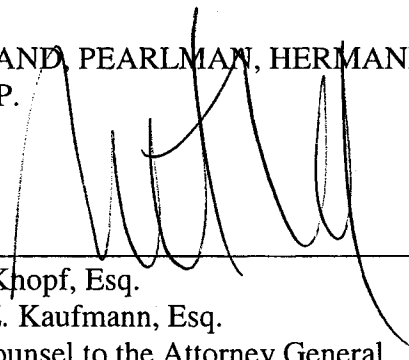
By:   
John K. Dema, Esq.  
Special Counsel to the Attorney General


Dated: April 6, 2006

Dated: April 6, 2006

COHN, LIFLAND, PEARLMAN, HERMANN,  
KNOPF, L.L.P.

ZULIMA V. FARBER  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
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Special Counsel to the Attorney General

By:   
Brendan Ruane  
Deputy Attorney General

Dated:

Dated: 4/10/06

DESIGNATION OF TRIAL COUNSEL

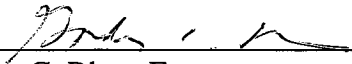
Pursuant to R. 4:25-4, the Court is advised that Gordon C. Rhea, John K. Dema, Barry A. Knopf and Leonard Z. Kaufmann, Matthew Thiesing, and Scott E. Kauff, Special Counsel to the Attorney General, are hereby designated as trial counsel for the Plaintiffs in this action.

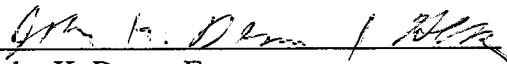
CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding known to the Plaintiffs at this time, nor is any non-party known to the Plaintiffs at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such non-party or new issue, including claims to recover other cleanup and removal costs, later becomes known to the Plaintiffs, an amended certification shall be filed and served on all other parties and with this Court in accordance with R. 4:5-1(b)(2).

RICHARDSON, PATRICK, WESTBROOK &  
BRICKMAN, L.L.C.  
Attorneys for Plaintiffs

LAW OFFICES OF JOHN K. DEMA, P.C.  
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By:   
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Special Counsel to the Attorney General

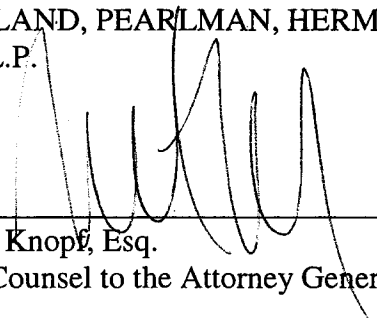
By:   
John K. Dema, Esq.  
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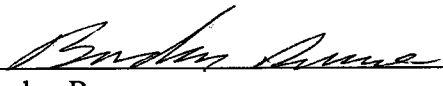
Dated: April 6, 2006

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COHN, LIFLAND, PEARLMAN, HERMANN .  
KNOFF, L.L.P.

ZULIMA V. FARBER  
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Attorney for Plaintiffs

By:   
Barry A. Knopf, Esq.  
Special Counsel to the Attorney General

By:   
Brendan Ruane  
Deputy Attorney General

Dated:

Dated: 4/10/06



# CIVIL CASE INFORMATION STATEMENT

(CIS)

Use for initial pleadings (not motions) under R. 4:5-1.

Pleadings will be rejected for filing under R. 1:5-6(c) if information above the black bar is not completed or if attorney's signature is not affixed.

FOR USE BY CLERK'S OFFICE ONLY

PAYMENT TYPE: CK CG CA

CHG/CK NO.:

AMOUNT:

OVERPAYMENT:

BATCH NUMBER:

ATTORNEY/PRO SE NAME: Brendan Ruane, DAG

TELEPHONE NO.:  
(609) 984-5016

COUNTY OF VENUE: Sussex

FIRM NAME (If Applicable): NEW JERSEY ATTORNEY GENERAL

DOCKET NUMBER (When Available): N/A  
**55X-L-21-06**

OFFICE ADDRESS:  
Richard J. Hughes Justice Complex  
25 Market Street  
P.O. Box 093  
Trenton, NJ 08625-0093

DOCUMENT TYPE: Complaint

JURY DEMAND:  YES  NO

NAME OF PARTY (e.g., John Doe, Plaintiff):  
New Jersey Department of Environmental  
Protection & the Administrator of the New  
Jersey Spill Compensation Fund, plaintiffs

CAPTION: New Jersey Department of Environmental Protection,  
et al. v. Ames Rubber Corporation.

CASE TYPE NUMBER  
(See reverse side for listing): 156

IS THIS A PROFESSIONAL MALPRACTICE CASE?  YES  NO

If You Have Checked "Yes," See N.J.S.A. 2A:53A-27 and  
Applicable Case Law Regarding Your Obligation to File an  
Affidavit of Merit.

RELATED CASES PENDING?  YES  NO

IF YES, LIST DOCKET NUMBERS:

DO YOU ANTICIPATE ADDING ANY PARTIES (arising  
out of the same transaction or occurrence)?

YES  NO

NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN

NONE  UNKNOWN

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

A. DO THE PARTIES HAVE IF YES, IS THAT  EMPLOYER-EMPLOYEE  FRIEND-NEIGHBOR  OTHER (explain)  
A CURRENT, PAST OR RELATIONSHIP:  
RECURRENT RELATIONSHIP? Regulatory

YES  NO  FAMILIAL  BUSINESS

B. DOES THE STATUTE GOVERNING THIS CASE PROVIDE  YES  NO  
FOR PAYMENT OF FEES BY THE LOSING PARTY?

USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL  
MANAGEMENT OR ACCELERATED DISPOSITION.

RECEIVED  
APR 13 2006  
SUSSEX COUNTY CLERK'S OFFICE

DO YOU OR YOUR CLIENT NEED ANY DISABILITY  
ACCOMMODATIONS?

YES  NO

IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION:

WILL AN INTERPRETER BE NEEDED?  YES  NO

IF YES, FOR WHAT LANGUAGE:

ATTORNEY SIGNATURE: