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No. 55055-1-I

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

TODD SHIPYARDS CORPORATION,

Petitioner,

v.

EDWIN HERRING, for himself and as  
Personal Representative of the Estate of ROGER HERRING,

Respondent.

PETITION FOR REVIEW

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COURT OF APPEALS  
DIVISION I  
STATE OF WASHINGTON

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A. Identity of Petitioner

Petitioner Todd Shipyards Corporation ("Todd") asks this Court to accept review of the Court of Appeals decision terminating review set forth in Part B of this petition.

B. Court of Appeals Decision

In a published split decision filed on April 17, 2006, the Court of Appeals reversed the trial court's order on summary judgment that dismissed respondent Edwin Herring's present action as barred by Todd's bankruptcy. A copy of the opinion is set forth in the Appendix at pages A-1 through A-19.

C. Issues Presented for Review

1. Where Todd sought the protection of Chapter 11 bankruptcy reorganization and diligently sought to identify its known creditors, was Todd obliged to give actual notice of the bankruptcy proceedings to a union representing employees of one of its subcontractors when Todd had no contractual relationship with that union and the union had no claim in the bankruptcy?

2. Was an employee of a Todd subcontractor who performed occasional work at Todd's Seattle shipyard in the 1960s a known creditor for purposes of Todd's 1987 Chapter 11 petition?

D. Statement of the Case

The Court of Appeals' published split decision frames the factual issues in this case quite clearly.

Roger Herring<sup>1</sup> worked as an asbestos insulator from 1958 to the mid-1970s. CP 113. Herring first filed suit on or about February 10, 1989, alleging that he had "developed an asbestos-related disease" and that he had "first learned in August 1986 that he has an asbestos-related disease caused by asbestos exposure." CP 112-13. Herring sought damages for "severe personal injury," including "past and future disability; pain and suffering both physical and emotional; greatly increased risk of further disease; anxiety and fear of further disease; shortening of life expectancy; and interference with normal life."<sup>2</sup> CP 115. Todd was never named in the 1989 suit. CP 112, 131.

After being diagnosed with mesothelioma, Herring filed suit against new defendants in October 2002. In December 2003, Herring amended his complaint to add Todd as a defendant, alleging that he worked at Todd "in the mid 1960s" where "he was exposed to asbestos

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<sup>1</sup> Roger Herring originally brought the action below in his own name. He later passed away and the matter was pursued by Edwin Herring, his brother and the personal representative of his estate. All references herein to Herring are to Roger Herring.

<sup>2</sup> At the time, Herring could have received damages for his expressed fear of contracting further disease, including cancer, due to his asbestos exposure. *See Jackson v. Johns-Manville Sales Corp.*, 781 F.2d 394 (5<sup>th</sup> Cir.), *cert. denied*, 106 S. Ct. 3339 (1986).

and asbestos-containing products manufactured and/or sold by defendants,” and that Todd was negligent or otherwise liable for his injuries. CP 7-11. Herring could recall only that he worked on ships at Todd “from time-to-time” during the 1960s and 1970s. CP 348-49.

Todd filed its voluntary petition for Chapter 11 reorganization on August 17, 1987, in the United States Bankruptcy Court for the District of New Jersey. CP 46. The bar date for filing proofs of claims was June 6, 1988, or almost two years after Herring stated that he first learned that he had an asbestos-related disease caused by asbestos exposure. CP 46, 112-13, 207.

The bankruptcy court’s March 8, 1988 Order (i) Reconfirming Bar Date for the Filing of Proofs of Claim or Interest and (ii) Providing for Supplemental Notice Thereof specifically listed the creditors to whom notice had to be sent. Neither the Asbestos Workers Union (Herring’s union), nor Herring were listed as creditors. CP 210-11. A copy of that order is in the Appendix.

Herring was never an employee of Todd or any of its affiliates. CP 48. Todd did not learn of Herring and his claims against it until Todd was named in this action in 2003. CP 49. Herring was a member of the Asbestos Workers Union (“AWU”), Local No. 7. CP 341. It is undisputed that members of the AWU were not Todd employees, but

worked at Todd as employees of subcontractors. The AWU was not a Todd creditor in its bankruptcy.

The trial court, the Honorable Linda Lau of the King County Superior Court, granted Todd's summary judgment motion finding Herring's claim to have been discharged in bankruptcy. CP 641-42. The Court of Appeals reversed in a published split decision.

E. Argument Why Review Should be Accepted

RAP 13.4(b) sets forth the factors under which the Supreme Court will accept review. This Court will accept review if (1) the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; (2) the decision of the Court of Appeals is in conflict with a decision of another division of the Court of Appeals; (3) a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

This case is unusual and does not readily fit into the traditional criteria of RAP 13.4(b). The trial court and the Court of Appeals were addressing a question largely resolved by federal law. The Court of Appeals majority adopted a definition of a "known creditor" that is rejected universally in the federal cases. Where a lower court adopts an interpretation of federal law so inconsistent with federal cases in a

published opinion this Court must intervene to correct that interpretation. This factor is reinforced by the fact this was a split decision in the Court of Appeals, an event that is rare in Division I cases.

Moreover, bankruptcy policy provides that debtors in bankruptcy are entitled to a fresh start. They should receive relief from claims that could have been addressed in the bankruptcy. The Court of Appeals decision threatens to strip the certainty of relief from such claims with which debtors now emerge from bankruptcy given that it would impose post hoc requirements upon debtors neither required by the bankruptcy court nor heretofore required under bankruptcy law.

(1) The Requirement of Notice with Respect to Known and Unknown Creditors Is an Issue of Federal Law

Under Washington law, issues relating to notice are ordinarily considered matters of procedure and are reviewed as questions of law. *Cent. Puget Sound Reg'l Transit Auth. v. Miller*, 156 Wn.2d 403, 128 P.3d 588 (2006). The Court of Appeals majority plainly considered the issue of notice a matter for the trier of fact. Op. at 7.

The Court of Appeals majority's treatment of the notice issue conflicts with federal law in two key respects. First, the notice required by the Court of Appeals was inconsistent with that required by the district court sitting in bankruptcy; and second, the Court of Appeals majority

required Todd to provide actual notice of its bankruptcy to the union representing Herring even though the union was not a creditor — known or otherwise — in Todd’s bankruptcy.

(a) The 1988 Bar Date Order Has Preclusive Effect

In its Bar Date Order, the New Jersey bankruptcy court, consistent with well-established bankruptcy law, determined that the publication notice ordered was sufficient to discharge the unscheduled claims of unknown claimants, such as Herring. Known stockholders and note holders, as well as scheduled creditors, were to receive mailed notice. The order provided for publication notice to all other creditors and deemed the combined notice “good and sufficient notice of the Bar Date.” It is important to note the bankruptcy court entered an order of discharge, granting Todd a discharge from its debts. CP 67–68, 96–97.

A state court may not question a bankruptcy court’s order outlining the form of publication notice required for unknown claimants such as Herring and determining that Todd’s publication notice was sufficient to discharge the claims of unknown claimants. The bankruptcy court’s decision on that question is, in effect, res judicata on the question. *See Matter of Brady*, 936 F.2d 212, 215 (5<sup>th</sup> Cir.), *cert. denied*, 502 U.S. 1013, 112 S. Ct. 657, 116 L.Ed.2d 748 (1991) (“An arrangement confirmed by a bankruptcy court has the effect of a judgment rendered by a district court.

Any attempt by the parties to relitigate any of the matters that were raised or could have been raised therein is barred under the doctrine of res judicata.”); *Stevenson v. Baker*, 310 N.E.2d 58 (Ill. Ct. App. 1974) (holding that creditor who received notice of bankruptcy had an opportunity to respond and for failing to do so was barred by res judicata from relitigating the validity of the debt; creditor’s proper recourse was to challenge the propriety of the bankruptcy court’s actions within the federal system and not the state court of Illinois); *Blumenfeld v. Blumenfeld*, 589 N.Y.S.2d 297 (N.Y. Sup. Ct. 1992) (“This court will not disturb what has been decided by the Bankruptcy Court.”).

The issue of whether the notice requirements set forth in the bankruptcy court’s Bar Date Order were sufficient is particularly a matter for the federal courts. The bankruptcy court itself determined that its notice requirements and Todd’s compliance therewith were sufficient to discharge the claims of unknown claimants such as Herring. That order had preclusive effect in this state court proceeding.

A bankruptcy court, which receives its authority from the United States district court, has exclusive jurisdiction over bankruptcy cases under 28 U.S.C. §§ 157 and 1334. A state court cannot overrule a federal court in violation of the Supremacy Clause of the United States Constitution. *See In re Careau Group*, 923 F.2d 710, 712 (9<sup>th</sup> Cir. 1991)

("[T]he Supremacy Clause of the United States Constitution prevents a state from enacting laws that . . . supersede a federal court's jurisdiction. . . . [I]t is not possible for . . . a state agency, to usurp the federal bankruptcy court's subject matter jurisdiction over claims filed in bankruptcy court."). Just as a state agency may not supersede the bankruptcy court's jurisdiction under the Supremacy Clause, neither may a state court.

Herring, an unknown creditor, had legal and effective notice of Todd's bankruptcy pursuant to the bankruptcy court's Bar Date Order. The order is conclusive. Todd provided the requisite notice to unknown creditors such as Herring, which the bankruptcy court directed and held was sufficient, and the Court of Appeals was not empowered to find otherwise. In fact, no state court has ever held that publication notice ordered by the bankruptcy court and provided by the debtor was constitutionally insufficient to discharge the claim of an unknown claimant. *See, e.g., In re The Charter Co.*, 113 B.R. 725, 728 (M.D. Fla. 1990); *Texaco, Inc. v. Sanders*, 182 B.R. 937, 955, 957 (S.D.N.Y. 1995).

(b) Federal Law Only Requires Actual Notice to Known Creditors and Neither the AWU Nor Herring Was a Known Creditor

Federal case law has clearly indicated that actual notice is only required in bankruptcy to the known creditors of a debtor. *Fogel v. Zell*, 221 F.3d 955, 963 (7<sup>th</sup> Cir. 2000). A debtor is only required to do a

diligent search of its own books and records to ascertain creditors. *Chemetron Corp. v. Jones*, 72 F.3d 341 (3d Cir. 1995), *cert. denied*, 517 U.S. 1137 (1996). In this case, it is undisputed that a diligent search of Todd's books and records would not have revealed that either AWU or Herring was a creditor, as the Court of Appeals majority readily concedes. Op. at 6.

*Chemetron, Trump Taj Mahal Assocs. v. Alibraham*, 156 B.R. 928 (Bankr. D. N.J. 1993), *aff'd sub. nom. Trump Taj Mahal Assocs. v. O'Hara*, 1993 U.S. Dist. LEXIS 17827 (D. N.J. 1993), and *In re Chicago, Rock Island & Pacific R.R. Co.*, 90 B.R. 329 (N.D. Ill. 1987), all make it clear that a debtor in bankruptcy has no obligation to search out each possible creditor against the debtor. The debtor need only find those creditors that are reasonably ascertainable from the debtor's own records. It was precisely for this reason the *Chemetron* court rejected a "reasonably foreseeable" creditor test in favor of the "reasonably ascertainable" test. *Chemetron*, 72 F.3d at 347.

The Court of Appeals decision is contrary to established federal law in multiple respects. First and foremost, no federal court has ever held—as the Court of Appeals majority did—that a debtor in bankruptcy is required to provide actual notice of its bankruptcy to a noncreditor on

the chance that such notice might then filter down to potential creditors, though they be unknown to the debtor.

Persons not entitled to actual notice are those whose “interests are either conjectural or future *or*, although they *could be* discovered upon investigation, do not *in the due course of business* come to the knowledge of the [debtor].” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 317, 70 S. Ct. 652, 659, 94 L.Ed. 865 (1950) (emphasis added). Although noting that, to be required to give actual notice to a “potential creditor,” “the debtor must have in his or her possession some specific information suggesting both the claim for which and the entity to which it would be liable,” Op. at 1-2, the Court of Appeals held that Todd was required to seek out such information when it was not in its possession.

However, bankruptcy law establishes that Herring was an “unknown creditor” entitled only to publication notice because his identity would not have come to the knowledge of Todd “in the due course of business” and because his claim against Todd was “conjectural.” *See In re The Charter Co.*, 125 B.R. at 654-55 n.2 (noting, in part, that a claim is conjectural if the debtor would have been required to engage in “conjecture or speculation” about whether a particular entity had a claim at the time the debtor compiled its list of creditors). “While the debtor does have a duty to give notice to known creditors of the bar date, it is not

the debtor's duty to search out each conceivable or possible creditor and urge that person or entity to make a claim against it." *Id.* at 655.

The Court of Appeals majority decision ultimately rested on its determination that "[t]he central issue here is whether Herring's union, Local 7, was a known or unknown creditor." *Op.* at 4. The majority determined Todd was required to give notice to the AWU local. However, it is not disputed -- as pointed out in Judge Grosse's dissent<sup>3</sup> -- that Herring's union was not a *creditor* in Todd's bankruptcy. As such, Todd was not required to give any notice of its bankruptcy to the union, even if the purpose of doing so was "to search out each conceivable or possible creditor and urge that person or entity to make a claim against it," because it had no duty to do so. As Judge Grosse noted:

Because at the time Todd Shipyards Corporation filed for bankruptcy it did not have in its possession some specific information that reasonably suggested it would be liable to Roger Herring for his asbestos related tort claims, Herring was an unknown creditor and publication notice was sufficient.

Dissent at 1.

The Court of Appeals majority's contrary ruling not only effects a change in bankruptcy law, by determining an undisputed noncreditor to be

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<sup>3</sup> "Even if the issue turned on whether the union was a known creditor, there is nothing in the record to support the contention that the union was a known creditor, because there is nothing in the record showing that the AWU Local No. 7 had any existing or potential claims against Todd Shipyards." Dissent at 1 n.1.

a "known creditor" entitled to actual notice, but also effectively imposes upon debtors in bankruptcy an additional duty to take steps to identify potential creditors that are not required under established federal law. Review is merited.

(2) The Court of Appeals Decision Involves an Issue of Substantial Public Interest

The legislative history of the Bankruptcy Code reveals that Congress' overriding goal was to give debtors a fresh start and to ensure that "all legal obligations of the debtor, *no matter how remote or contingent*, will be able to be dealt with in the bankruptcy case. [The definition of claim] permits the broadest possible relief in the bankruptcy court." H.R. Rep. No. 595, 95th Cong., 1st Sess. 309 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 21-1 (1978), *reprinted in*, 1978 U.S.C.C.A.N. 6866; 5787, 5807-08 (emphasis added). "[O]ne of the primary purposes of the bankruptcy act is to give debtors a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." *Perez v. Campbell*, 402 U.S. 637, 648, 91 S. Ct. 1704, 29 L.Ed.2d 233 (1971) (citations and internal quotation marks omitted). "[The] goal of giving debtors a fresh start would be frustrated if creditors who failed to file timely claims tried to bring claims against a reorganized

company after the close of bankruptcy." *In re Chicago, Milwaukee, St. Paul & Pac. R.R. Co.*, 974 F.2d 775, 779 (7th Cir. 1992).

The "fresh start" doctrine is a primary public interest underlying the whole of bankruptcy law under which the bankruptcy court is afforded broad powers to discharge the debtor's liabilities. With respect to creditors who were unknown to the debtor and did not participate in the bankruptcy process, the discharge will bar a creditor's claim if two conditions are met: (1) the creditor had a "claim," as defined in the Bankruptcy Code, which arose prior to confirmation; and (2) the creditor was given sufficient notice of the bankruptcy proceeding. If these conditions are met, the "order confirming a reorganization plan operates to discharge all unsecured debts and liabilities, even those of tort victims who were unaware of the debtor's bankruptcy." *Brown v. Seaman Furniture Co., Inc.*, 171 B.R. 26, 26 (E.D. Pa. 1994).

The Court of Appeals decision, which effectively imposes an additional layer of notice upon a debtor in bankruptcy, would frustrate the "fresh start" principle, particularly where bankruptcy court orders already have been entered, notice has been provided and claims have been discharged.

F. Conclusion

The Court of Appeals majority decision in this published opinion flies in the face of numerous bankruptcy cases on notice to creditors. Todd respectfully requests that the Supreme Court grant its petition for review, reverse the Court of Appeals, and reinstate the trial court's order on summary judgment.

DATED this 1<sup>th</sup> day of May, 2006.

Respectfully submitted,



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# APPENDIX

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APR 19 2006

By \_\_\_\_\_

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

EDWIN HERRING, for himself and as	)	
Personal Representative of the Estate	)	
of ROGER HERRING,	)	No. 55055-1-1
	)	
Appellant,	)	DIVISION ONE
	)	
v.	)	PUBLISHED OPINION
	)	
TEXACO, INC.; GEORGIA-PACIFIC	)	
CORPORATION; INTALCO ALUMINUM	)	
CORPORATION; SABERHAGEN	)	
HOLDINGS, INC.; METROPOLITAN	)	
LIFE INSURANCE COMPANY; CROWN	)	
CORK & SEAL COMPANY, INC.,	)	
SHELL OIL COMPANY; ARCO OIL	)	
AND GAS COMPANY; LOCKHEED	)	
SHIPBUILDING COMPANY;	)	
	)	
Defendants,	)	
	)	
and	)	
	)	
TODD SHIPYARDS CORPORATION,	)	FILED: April 17, 2006
	)	
Respondent.	)	
_____	)	

AGID, J. – In a bankruptcy action, a potential creditor is entitled to actual notice of the debtor’s bankruptcy if the debtor can reasonably identify the potential creditor and his or her claim through the debtor’s reasonably diligent efforts. This means that the debtor must have in his or her possession some

specific information suggesting both the claim for which and the entity to which it would be liable. At the time Todd Shipyards Corporation (Todd) filed for bankruptcy, it knew that members of the Asbestos Workers Union Local No. 7 (Local 7) who had worked at Todd could reasonably be expected to suffer asbestos-related diseases for which they would file tort claims. It therefore should have given Local 7 actual notice of Todd's bankruptcy. Because it did not, we reverse.

### **FACTS**

Roger Herring worked as an asbestos insulator from 1958 to the mid-1970s. He worked at Todd from time to time in the 1960s and early 1970s as an employee of Owens-Corning Fiberglas and Brower Corporation and was a member of Local 7. In 1986, Herring was diagnosed with pleural thickening caused by asbestos exposure. In 1989, he sued various manufacturers of asbestos-containing products, and the lawsuit settled.

In 2002, Herring was diagnosed with terminal cancer caused by asbestos exposure, and he filed this lawsuit. In 2003, he amended the complaint to include Todd as a defendant. Roger Herring died in August 2004, and the court substituted his brother, Edwin Herring, as the estate's personal representative.

Todd filed a voluntary petition for Chapter 11 reorganization on August 17, 1987. The court set the bankruptcy claims bar date (bar date) for filing proofs of claims as June 6, 1988. On March 16, 1988, Todd published notice of the bar date in several newspapers.

On March 19, 2004, Todd moved for summary judgment on Herring's claims. The trial court granted the motion, stating that "[p]laintiff's claims were discharged in bankruptcy." Herring appeals and argues that his claims were not discharged because he was not provided with adequate notice of Todd's bankruptcy.<sup>1</sup>

### ANALYSIS

In Mullane v. Central Hanover Bank & Trust Co., the United States Supreme Court announced:

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. . . .<sup>[2]</sup>

The reasonableness of the notice provided is determined by the totality of the circumstances.<sup>3</sup>

A court's determination of whether notice was reasonably calculated to notify a potential creditor of a bankruptcy proceeding focuses on whether the potential creditor was known or unknown.<sup>4</sup> Known creditors are those whose identity is reasonably ascertainable through a reasonably diligent search by the

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<sup>1</sup> When reviewing a decision granting summary judgment, we engage in the same inquiry as the trial court, and summary judgment is properly granted when the pleadings and affidavits show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Thatcher v. Salvo, 128 Wn. App. 579, 116 P.3d 1019 (2005) (citing Reynolds v. Hicks, 134 Wn.2d 491, 495, 951 P.2d 761 (1998) and CR 56 (c)).

<sup>2</sup> Mullane, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950).

<sup>3</sup> Tulsa Prof'l Collection Servs., Inc. v. Pope, 485 U.S. 478, 484, 108 S. Ct. 1340, 99 L. Ed. 565 (1988) ("whether a particular method of notice is reasonable depends on the particular circumstances").

<sup>4</sup> Fogel v. Zell, 221 F.3d 955, 963 (7th Cir. 2000).

debtor filing for bankruptcy.<sup>5</sup> The debtor must do a diligent search of its own books and records, and efforts beyond a careful examination of these documents may not be required. However, “[s]ituations may arise when creditors are ‘reasonably ascertainable,’ although not identifiable through the debtor’s books and records.”<sup>6</sup> All known creditors are entitled to have notice sent directly to them.

Unknown creditors, those whose names and addresses are not reasonably ascertainable, are not entitled to direct notice but may be notified by publication.<sup>7</sup> Notice by publication is also reasonable for parties whose interests are “either conjectural or future or, although they could be discovered upon investigation, do not in due course of business come to [the] knowledge of” the debtor.<sup>8</sup>

In sum, whether a creditor is known or unknown depends on whether the debtor can reasonably determine the creditor’s identity and claim. The central issue here is whether Herring’s union, Local 7, was a known or unknown creditor. If it was a known creditor, it was entitled to actual notice of the bankruptcy proceedings; if it was an unknown creditor, notice by publication was sufficient to

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<sup>5</sup> See Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 800, 103 S. Ct. 2706, 77 L. Ed. 2d 180 (1983) (“Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of *any* party, whether unlettered or well versed in commercial practice, if its name and address are reasonably ascertainable.”); see also Tulsa, 485 U.S. at 491; Mullane, 339 U.S. at 317-18.

<sup>6</sup> Chemetron Corp. v. Jones, 72 F.3d 341, 347 n.2 (3rd Cir. 1995), cert. denied, 517 U.S. 1137 (1996).

<sup>7</sup> Tulsa, 485 U.S. at 490 (“For creditors who are not ‘reasonably ascertainable,’ publication notice can suffice.”).

<sup>8</sup> Mullane, 339 U.S. at 317.

satisfy due process, and the trial court properly barred Herring's claim against Todd.<sup>9</sup>

Herring argues that his identity and potential claim were reasonably ascertainable through Local 7 and a reasonably diligent effort by Todd to identify known creditors should have included notifying Local 7, whose members worked at Todd for various Todd subcontractors. Herring asserts that if Todd had notified Local 7, the union would have notified him. He also argues it is reasonable to infer that if Todd had asked the union to provide it with the names and addresses of its union members, or if it had asked its members to provide Todd with their names and addresses, the local would have done so and Todd would have had Herring's name and address. Thus, Todd could have reasonably ascertained Herring's identity and potential claim, and Herring was therefore entitled to actual notice.

In support, Herring submitted affidavits from the business agents who headed Local 7 during 1987-89, who stated they were not notified of Todd's bankruptcy. One of those agents testified that "had the union been notified of the Todd bankruptcy, it would have notified its members by publication and/or during union meetings . . . ."

Herring also contends that a declaration by Todd's in-house counsel, filed in a different lawsuit in Texas, demonstrates that Todd thought a reasonably diligent search included notifying Herring's union local, and Todd should be held

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<sup>9</sup> State courts have concurrent jurisdiction with federal bankruptcy courts over all dischargeability issues other than those concerning Section 523(a)(2), (4) or (6) of the Bankruptcy Code, which are inapplicable here. See In re Carter, 38 B.R. 636, 638 n.5 (Bankr. D. Conn. 1984).

to its self-imposed standard. In that declaration counsel Michael Marsh stated, "Todd made diligent efforts to identify and notify potential creditors of its bankruptcy" including "notifying all unions whose members had worked at Todd Shipyards." However, Marsh modified his statement in this lawsuit to state that instead of notifying all unions *whose members had worked at Todd* (which would have included Herring's local), Todd notified "all unions *representing Todd's employees*" and "identified [Todd's] subcontractors as entities to [which] it would send actual notice."<sup>10</sup> Local 7 did not represent Todd's employees, but it did represent employees of Todd's subcontractors who worked at Todd.

Therefore, the issue we must decide is whether under these circumstances, Todd was required to notify Herring's local union of its pending bankruptcy in order to afford Herring due process notification on his asbestos-related claims. In other words, did Todd discharge its legal responsibility to provide actual notice to those potential creditors whose identities and potential claims were reasonably ascertainable through Todd's reasonably diligent efforts.

A search of Todd's own books and records would not have revealed Herring's name and address, although it would have included Todd's subcontractors and Local 7. Todd did personally notify all entities on its accounts receivable and payable registers, all entities that conducted business with Todd, and all unions that represented Todd employees. The Marsh declaration also

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<sup>10</sup> (Emphasis added.) Todd asserts that the change Marsh made in his declaration for this case *clarifies* the statement he made in the declaration in the Texas case. Because the change may also *contradict* Marsh's declaration in the Texas case, we leave it to the trial court on remand to determine which is the more persuasive interpretation.

states that Todd identified its subcontractors as entities to whom it would send actual notice.<sup>11</sup> But, under the unique circumstances of this case, these steps were not enough to constitute reasonable diligence. Because Todd knew of numerous asbestos-related claims that were and had been surfacing at the time of its bankruptcy, it was not reasonable to fail to notify a union that represented asbestos workers, a union known to Todd whose members had been employed on its job sites. That Todd chose to notify all the unions that represented Todd employees undermines its position in this case that it was not required to notify Herring's union. While it is true that the unions Todd notified were also known creditors with potential claims under collective bargaining agreements, they were not the only unions whose members Todd knew could have claims against the company. Keeping in mind Mullane's standard for reasonable notice, what we require here is consistent with the law defining when a potential claim is reasonably ascertainable.

Herring asks us to decide whether his claim was reasonably ascertainable based on what might have happened had Todd notified Herring's union. But we need not do so here; that is a factual issue to be determined in the trial court. We need only decide that the information Todd had in its possession at the time of the bankruptcy proceedings was sufficient to require actual notice to Local 7. What more probably than not would have happened had Todd notified the union

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<sup>11</sup> "[E]veryone who conducted business with Todd" and Todd's "subcontractors" are categories that would presumably include Herring's employer.

is for the trier of fact.<sup>12</sup> As summarized by the Fifth Circuit: “[I]n order for a claim to be reasonably ascertainable, the debtor must have in his possession, at the very least, some specific information that reasonably suggests both the claim for which the debtor may be liable and the entity to whom he would be liable.”<sup>13</sup> Todd had both. It was acutely aware of the burgeoning number of tort claims for asbestos-related injury. It knew Local 7 represented asbestos workers and that its subcontractors had employed those workers at Todd’s job sites. That was sufficient information to require Todd to include Local 7 in the unions to which it sent notice of the bar date.

Todd relies on In re Chicago, Rock Island & Pacific Railroad Co.,<sup>14</sup> where a former railroad employee developed an asbestos-related disease allegedly caused by the railroad’s negligence. The employee worked for the railroad from 1957 to 1979. The railroad filed for bankruptcy in 1975 and emerged in June 1984. The bar date was set as April 12, 1986, and the employee did not file his claim until November 1986.

The railroad employee argued that his claim was not time-barred because he was not given personal notice of the bar date. The court found that because the railroad did not have any information in its possession that the individual

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<sup>12</sup> The fact-finder may determine that notice to Local 7 would not have resulted in notice to Herring, in which case Todd would prevail. But it is not for the trial court on summary judgment—or this court on appeal—to resolve this factual issue.

<sup>13</sup> La. Dep’t of Env’tl Quality v. Crystal Oil Co., 158 F.3d 291, 297 (5th Cir. 1998).

<sup>14</sup> 90 B.R. 329 (N.D. Ill. 1987).

employee had a claim, the employee was an unknown creditor entitled only to notice by publication. The court reasoned:

Nonetheless, plaintiffs argue that the Rock Island knew that its employees had suffered asbestos exposure and therefore that the Rock Island knew of their potential claims. However, the court does not find, in the absence of any indication that a particular claim would ensue, that plaintiffs can be classified as potential creditors. A trustee has no duty to give notice, other than publication, to non-creditors. . . .<sup>[15]</sup>

But Rock Island differs from our case because there was no entity, like Local 7, to which the railroad could have given notice. Notice to individual employees is not the issue here. Rather, Todd knew of an entity whose members had been exposed to and injured by asbestos on its job sites. Both the union and its potential claimants were reasonably ascertainable.

Todd also cites Trump Taj Mahal Associates v. Alibraham,<sup>16</sup> where the court found that a casino customer who was injured in a slip and fall and had submitted an incident report to the casino was an unknown creditor not entitled to actual notice of Trump Taj Mahal's bankruptcy. Citing the Rock Island case, the Trump court reasoned that the casino customer was one of several hundred potential claimants and, "although many people in [the customer's] position threaten to file suit against the Taj; only a nominal number, if any, actually bring suit."<sup>17</sup> In the absence of any specific information that reasonably suggested the individual customer would file a claim, the court found the customer's claim,

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<sup>15</sup> In re Chicago, 90 B.R. at 330-31.

<sup>16</sup> 156 B.R. 928 (Bankr. D.N.J. 1993), aff'd sub nom., Trump Taj Mahal Assocs. v. O'Hara, 1993 U.S. Dist. LEXIS 17827 (D.N.J. December 13, 1993).

<sup>17</sup> Trump, 156 B.R. at 940.

“although conceivable, was speculative and conjectural.”<sup>18</sup> But, as in Rock Island, the Trump court was again analyzing a situation in which there was no known entity to which the debtor could have given notice.

Both Trump and the Rock Island case raise concerns articulated in Chemetron Corp. v. Jones,<sup>19</sup> which are not present here. In Chemetron, the Third Circuit found that a group of former residents and occasional visitors to a toxic site contaminated by Chemetron were unknown claimants not entitled to actual notice of Chemetron’s bankruptcy. The trial court had found that, “Chemetron knew or should have known that it was reasonably foreseeable that it could suffer claims from individuals living near the [toxic site]” and on that basis found the claimants were known creditors.<sup>20</sup> On appeal, the court rejected the trial court’s “reasonably foreseeable” test and instead held that the proper inquiry was whether the claimants and their claims were “reasonably ascertainable.”<sup>21</sup>

Specifically, the court rejected the notion that Chemetron should be required to conduct a title search on all properties surrounding the toxic sites to locate all the people who might have lived in the area in the 20 years leading up to the bankruptcy proceedings. The court held that such a requirement would give rise to a “Scylla of causational difficulties and a Charybdis of practical concerns.”<sup>22</sup> As for the difficulties in determining how great a geographic area

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<sup>18</sup> Trump, 156 B.R. at 940.

<sup>19</sup> 72 F.3d 341 (3rd Cir. 1995), cert. denied, 517 U.S. 1137 (1996).

<sup>20</sup> Chemetron, 72 F.3d at 347.

<sup>21</sup> Chemetron, 72 F.3d at 347.

<sup>22</sup> Chemetron, 72 F.3d at 347.

the search would need to cover, or how broad the temporal dimension need be, the Chemetron court stated, "while we might be urged to bring these determinations under Mullane's 'reasonably calculated under the circumstances' umbrella, . . . we hesitate to thrust the judiciary into a domain where decisions turn on rarely pellucid and often disputed scientific studies, requiring different varieties of technical expertise from case to case."<sup>23</sup>

And as for the practical difficulties involved, the court stated, "No title search could reveal the identity of claimants who merely visited houses in the vicinity of the sites at some point in the distant past, and we decline to impose any Orwellian monitoring requirements on Chemetron and similarly situated corporations."<sup>24</sup> The court summed up its discussion by stating, "Debtors cannot be required to provide actual notice to anyone who potentially could have been affected by their actions; such a requirement would completely vitiate the important goal of prompt and effectual administration and settlement of debtors' estates."<sup>25</sup>

As we stated above, none of these concerns is present in our case. Unlike the railroad in Rock Island, the casino in Trump or the chemical company in Chemetron, we are not requiring Todd to search through records to pull out names of individuals who might bring a claim against the company. No scientific or practical conundrums would arise from notifying an asbestos workers' union. Because we need not be concerned with Scylla, Charybdis or Orwell in our case,

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<sup>23</sup> Chemetron, 72 F.3d at 348 (quoting Mullane, 339 U.S. at 314).

<sup>24</sup> Chemetron, 72 F.3d at 348.

<sup>25</sup> Chemetron, 72 F.3d at 348.

the practical problems underlying the decisions in Rock Island, Trump and Chemetron do not mandate the same result here.

When courts have held that actual notice was required, they have focused on what information the debtors had in their possession in determining whether a potential claim was reasonably ascertainable. For example, in Fogel v. Zell,<sup>26</sup> the City of Denver had purchased a large amount of defective pipe. The Seventh Circuit held Denver was entitled to actual notice of the manufacturer's successor in interest's bankruptcy, even though the pipes did not burst until years after the bar date and Denver had not previously notified the debtor of its claim. The court reasoned, "the potential claimants were all purchasers of a product manufactured by the debtor's predecessor, and Denver in particular was a large purchaser."<sup>27</sup> Moreover, because "[o]ther pipe claimants had filed multimillion dollar claims" the court said the "suggestion that the trustee could not have discovered that Denver had purchased a large quantity of the defective pipe strikes us as risible."<sup>28</sup> In sum, the court determined that Denver's identity and potential claim were reasonably ascertainable because the debtor need only look to its own books and records to determine that the City of Denver had purchased a large amount of pipe that at the time of the bankruptcy the debtor knew was potentially defective. Similarly here, Todd was aware of large numbers of asbestos claims arising from its operations at the time of its bankruptcy and of a union that represented asbestos workers on its job sites. As in Fogel, there was no reason

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<sup>26</sup> 221 F.3d 955 (7th Cir. 2000).

<sup>27</sup> Fogel, 221 F.3d at 963.

<sup>28</sup> Fogel, 221 F.3d at 963.

the trustee would not have been aware of the claims and the union whose members were likely to have them.

In Solow Building Co. v. ATC Associates,<sup>29</sup> the court found that a building management group, Solow, was a known creditor because the debtor renovation company, ATC, had in its possession at the time of filing for bankruptcy letters from Solow threatening legal action for damages caused by their alleged improper asbestos abatement practices.<sup>30</sup> At the time of filing, ATC was also defending a lawsuit against the leaseholder of the Solow property, who hired ATC, concerning the same inadequate abatement practices. Thus, the court concluded, "ATC should have been alerted to the possibility that a claim might reasonably be filed against it."<sup>31</sup>

Applying the law to the facts of this case, Todd was aware that there were asbestos-related claims for which it may be liable. It was also aware that its subcontractors employed members of a union who had been exposed to asbestos on its job sites. Todd had in its possession specific information that reasonably suggested it would be liable to members of Local 7 for asbestos-

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<sup>29</sup> 175 F. Supp. 2d 465, 473 (E.D.N.Y. 2001).

<sup>30</sup> One such letter stated:

"We demand that you desist from continuing these irregular, and what we are advised are, illegal procedures in the asbestos abatement and containment and *will hold you and your personnel supervising the work responsible for any damages or claims* by personnel in the building for your failure to properly control the asbestos in the Morgan premises."

Solow, 175 F. Supp. 2d at 472. We note there is little, if any, difference between these letters and those found to be insufficient to require notice in the Trump case. Both threatened future legal action but had not resulted in lawsuits at the time of the bankruptcy filing.

<sup>31</sup> Solow, 175 F. Supp. 2d at 473 (citing In re Drexel Burnham Lambert Group, 151 B.R. 674 (Bankr. S.D.N.Y. 1993)).

related tort claims. Therefore, notice to the union was “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”<sup>32</sup>

In reaching our decision in this case, we have taken into account a number of circumstances not present in the cases on which the parties rely. These include the likelihood that anyone working under conditions similar to those Herring experienced would have grounds for an asbestos-related tort claim, the ease with which Todd could have notified Herring’s union, and the uniquely rich source of information possessed by the union. Under the Mullane due process standard, we hold that in these specific circumstances an attempt to identify and notify workers like Herring through their union was required. Unlike Chemetron, our decision does not turn on disputed scientific studies addressing how foreseeable a claim may be under the circumstances of a specific case.<sup>33</sup> Nor is Todd required to provide actual notice to every person who could potentially have been affected by its actions.<sup>34</sup> Instead, the potential claimants and their claims here are reasonably ascertainable because Todd had in his possession “some specific information that reasonably suggests both the claim for which the debtor may be liable and the entity to whom he would be liable.”<sup>35</sup> Under these circumstances, requiring Todd to give notice to Local 7 balances the

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<sup>32</sup> Mullane, 339 U.S. at 314 (citing Milliken v. Meyer, 311 U.S. 457, 61 S. Ct. 339, 85 L. Ed. 278 (1940); Grannis v. Ordean, 234 U.S. 385, 34 S. Ct. 779, 58 L. Ed. 1363 (1914); Priest v. Trustees of Las Vegas, 232 U.S. 604, 34 S. Ct. 443, 58 L. Ed. 751 (1914); Roller v. Holly, 176 U.S. 398, 20 S. Ct. 410, 44 L. Ed. 520 (1900)).

<sup>33</sup> Chemetron, 72 F.3d at 348.

<sup>34</sup> Chemetron, 72 F.3d at 347-48.

<sup>35</sup> Crystal Oil, 158 F.3d at 297.

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interests of potential creditors with "the important goal of prompt and effectual administration and settlement of debtors' estates" and establishes a workable standard upon which debtors and courts may rely.<sup>36</sup>

For the above reasons, we reverse the trial court's decision.

  
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WE CONCUR:

  
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<sup>36</sup> Chemetron, 72 F.3d at 348.

GROSSE, J. (dissenting) – In a bankruptcy action, a potential creditor is entitled to actual notice of the debtor’s bankruptcy only if the potential creditor and his or her claim is reasonably ascertainable to the debtor through the debtor’s reasonably diligent efforts. In order for a potential creditor’s claim to be reasonably ascertainable to the debtor, the debtor must have in his or her possession some specific information that suggests both the claim for which the debtor may be liable and the entity to whom he or she would be liable. Because at the time Todd Shipyards Corporation (Todd) filed for bankruptcy it did not have in its possession some specific information that reasonably suggested it would be liable to Roger Herring for his asbestos related tort claims, Herring was an unknown creditor and publication notice was sufficient.

The majority’s analysis is deficient in two major respects. First, the central issue here is whether Herring was a known or unknown creditor, not whether the Asbestos Workers Union Local No. 7 (AWU Local No. 7) was a known or unknown creditor. After all, it is Herring who has filed the claim here, not the union.<sup>1</sup> Second, in holding that the union was entitled to actual notice because Todd knew that members of the AWU Local No. 7 Todd “could reasonably be

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<sup>1</sup> Even if the issue turned on whether the union was a known creditor, there is nothing in the record to support the contention that the union was a known creditor, because there is nothing in the record showing that the AWU Local No. 7 had any existing or potential claims against Todd Shipyards. To the contrary, Todd points out the AWU Local No. 7 did not represent Todd employees, but employees of Todd subcontractors. Thus, they had no collective bargaining agreements or other contracts with Todd that could give rise to claims making them known creditors to Todd for purposes of bankruptcy.

expected to suffer asbestos-related diseases for which they would file tort claims,” the majority applies the “reasonably foreseeable” test rejected in Chemetron<sup>2</sup> and fails to faithfully apply the reasonably ascertainable test articulated in the case law.

Turning first to the facts, it is uncontested that a search of Todd’s own books and records would not have revealed Herring’s name and address. It is also uncontested that Todd, reasonably relying on the bankruptcy court’s order setting out who was entitled to actual notice, personally notified all entities on its accounts receivable and payable registers, all entities that conducted business with Todd, and all unions that represented Todd employees.<sup>3</sup> The Marsh declaration also states that Todd identified its subcontractors as entities to whom it would send actual notice. “[E]veryone who conducted business with Todd” and Todd’s “subcontractors” are categories that would presumably include Herring’s employer.

These steps are enough under these circumstances to constitute reasonable diligence on the part of Todd, and this court should not impose the additional requirement that Todd provide notice to a non-creditor (the union) in the hope that it would identify a potential creditor (Herring) whose identity and

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<sup>2</sup> Chemetron v. Jones, 72 F.3d 341, 347 (3rd Cir. 1995).

<sup>3</sup> Declaration of Michael Marsh (“Todd made diligent efforts to identify and notify potential creditors of its bankruptcy. Such efforts included notifying individuals on its accounts receivable and accounts payable registers, notifying everyone who conducted business with Todd, and notifying all unions representing Todd’s employees. In addition, I recall that Todd Shipyards identified its subcontractors as entities to whom I would send actual notice.”).

potential claim were unknown to Todd.<sup>4</sup> Such a requirement is inconsistent with existing case law defining when a potential claim is reasonably ascertainable. As the case law holds, the appropriate test of whether a potential claim is reasonably ascertainable is determined based on the information the debtor has in its possession at the time of the bankruptcy proceedings, and not on a factual finding as to what might have happened had the debtor notified a non-creditor. As summarized by the Fifth Circuit: “[I]n order for a claim to be reasonably ascertainable, the debtor must have in his possession, at the very least, some specific information that reasonably suggests both the claim for which the debtor may be liable and the entity to whom he would be liable.”<sup>5</sup>

Furthermore, decisions such as these should not turn on often disputed scientific studies addressing how foreseeable a claim may be under the circumstances of a specific case.<sup>6</sup> Nor should a debtor be required to provide actual notice to anyone who potentially could have been affected by their actions.<sup>7</sup> Instead the test is whether the potential claimant and his claim is reasonably ascertainable, meaning the debtor has in his possession “some specific information that reasonably suggests both the claim for which the debtor may be liable and the entity to whom he would be liable.”<sup>8</sup> Such a rule, when properly applied, balances the interests of potential creditors with “the important

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<sup>4</sup> That Todd chose to notify the unions that represented Todd employees does not undermine Todd’s position in this case that it was not required to notify Herring’s union. This is because the unions Todd notified were known creditor’s to Todd, with potential claims under collective bargaining agreements.

<sup>5</sup> In re Crystal Oil, 158 F.3d 291, 297 (5th Cir. 1998).

<sup>6</sup> Chemetron, 72 F.3d at 348.

<sup>7</sup> Chemetron, 72 F.3d at 347-48.

<sup>8</sup> In re Crystal Oil, 158 F.3d at 297.

goal of prompt and effectual administration and settlement of debtors' estates" and establishes a workable standard upon which debtors and courts may rely.<sup>9</sup>

Here, the majority fails to properly apply the reasonably ascertainable test. The majority's analysis turns on its finding that Todd "knew that members of the Asbestos Workers Union Local No. 7 (Local 7) who had worked at Todd could reasonably be expected to suffer asbestos-related diseases for which they would file tort claims."<sup>10</sup> This "could reasonably be expected"<sup>11</sup> test applied by the majority is no different than the "reasonably foreseeable"<sup>12</sup> test rejected in Chemetron and is not the "reasonably ascertainable" test which the majority purports to apply.

While Todd may have been generally aware that there were asbestos related claims for which it may be liable, the undisputed facts of this case reveal that it possessed no specific information of Herring's identity or his exposure to asbestos. Todd thus did not have in its possession specific information that reasonably suggested it would be liable to Herring for his asbestos related tort claims. Therefore, Herring was an unknown creditor and notice by publication was sufficient.

For the above reasons, I respectfully dissent.

Grosse, J

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<sup>9</sup> Chemetron, 72 F.3d at 348.

<sup>10</sup> Majority opinion at 2 (emphasis added).

<sup>11</sup> Majority opinion at 2.

<sup>12</sup> Chemetron, 72 F.3d at 347-48.

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Judge Linda Lau  
Hearing Date: April 16, 2004  
Time of Hearing: 10:30 a.m.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

ROGER HERRING,	)	
	)	
Plaintiff,	)	NO. 02-2-28063-3 SEA
	)	
v.	)	DECLARATION OF MICHAEL G.
	)	MARSH IN SUPPORT OF TODD
TEXACO, INC.; GEORGIA-PACIFIC	)	SHIPYARD'S MOTION FOR SUMMARY
CORP.; INTALCO ALUMINUM	)	JUDGMENT
CORPORATION; SABERHAGEN	)	
HOLDINGS, INC.; METROPOLITAN LIFE	)	
INSURANCE CO.; CROWN CORK &	)	
SEAL COMPANY, INC.; SHELL OIL	)	
COMPANY; ARCO OIL AND GAS	)	
COMPANY; LOCKHEED SHIPBUILDING	)	
COMPANY; and TODD SHIPYARDS	)	
CORPORATION,	)	
	)	
Defendants.	)	

I, MICHAEL G. MARSH, hereby declare as follows:

1. I am the Secretary and General Counsel of Todd Shipyards Corporation. As such, I have personal knowledge of Todd Shipyard's history, operations and policies. I make this declaration from personal knowledge and I am otherwise competent to testify about the matters stated herein.

1           2.       Todd Shipyards Corporation was founded in 1916 with operations in Seattle and  
2 elsewhere. It has operated its present facility on Harbor Island in Seattle for more than 80 years.

3           3.       In 1939, Todd Shipyards Corporation entered into a joint venture to organize a  
4 new Washington Corporation, the Seattle-Tacoma Shipbuilding Corporation for the purpose of  
5 engaging in new ship construction in Tacoma and Seattle during World War II. At that time,  
6 Todd owned 50% of the Seattle-Tacoma Shipbuilding Corp. Seattle-Tacoma Shipbuilding Corp.  
7 and Todd Shipyards Corp. shared common directors.  
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10          4.       By June 1944, Todd owned a 100% interest in the Seattle-Tacoma Shipbuilding  
11 Corporation and the company's name was changed to Todd Pacific Shipyards, Inc. Eventually,  
12 in 1946, Todd Pacific Shipyards, Inc. was dissolved and the Tacoma division was operated under  
13 the name of the Todd Shipyards Corporation until 1947 when it was closed. Todd Shipyards  
14 Corporation assumed all of Todd Pacific Shipyards, Inc.'s assets and liabilities when it was  
15 dissolved in 1946. At all times, Todd Shipyards Corporation retained control over the Seattle-  
16 Tacoma Shipbuilding Corp./Todd Pacific Shipyards, Inc. and directed its activities.  
17

18          5.       Todd Shipyards Corporation and Todd Pacific Shipyards Corporation filed a  
19 voluntary petition for Chapter 11 reorganization on August 17, 1987, in the United States  
20 Bankruptcy Court for the District of New Jersey.  
21

22          6.       The bar date for filing proofs of claims was June 6, 1988. As ordered by the  
23 Bankruptcy Court, notice of the bar date was published in, amongst others, the Seattle Times, the  
24 Seattle Post-Intelligencer, and the national editions of The New York Times and The Wall Street  
25 Journal on March 16, 1988. True and correct copies of the Notice of Bar Date For Filing Proofs  
26 of Claim or Interest published in the Seattle Times, the Seattle Post-Intelligencer, and the  
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1 national editions of The New York Times and The Wall Street Journal are attached hereto as  
2 Exhibit A.

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4 7. The Third Amended Joint Plan of Reorganization was dated October 26, 1990. A  
5 true and correct copy of the Debtors' Third Amended Joint Plan of Reorganization is attached  
6 hereto as Exhibit B.

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8 8. The Bankruptcy Court entered the Order Confirming Debtor's Third Amended  
9 Joint Plan of Reorganization on December 14, 1990. A true and correct copy of the Order  
10 Confirming Debtors' Third Amended Joint Plan of Reorganization is attached as Exhibit C  
11 hereto.

12  
13 9. As ordered by the Bankruptcy Court, notice of the confirmation hearing was  
14 published in the national editions of The Wall Street Journal and New York Times on November  
15 2, 1990. True and correct copies of the Certifications of Publication for The New York Times  
16 and The Wall Street Journal are attached hereto as Exhibit D. The same notice was published in  
17 the Seattle Times and the Seattle Post-Intelligencer on the same days. Notice of entry of the  
18 confirmation order was also published in the same newspapers on December 28, 1990. A true  
19 and correct copy of the Notice of (i) Order Confirming Debtors' Third Amended Joint Plan of  
20 Reorganization, and (ii) Discharge of Debts is attached hereto as Exhibit E.

21  
22 10. As counsel for Todd during its bankruptcy, I was aware that Todd was required to  
23 make a diligent search to discover and notify possible claimants. I was also a member of Todd  
24 Shipyards' management team charged with the responsibility of identifying those entities to  
25 which Todd Shipyards would provide actual notice of its bankruptcy filing. However, Todd was  
26 not able nor required by the Bankruptcy Court to locate and notify all of its previous employees,  
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DECLARATION OF MICHAEL G. MARSH - 3

#496815 v1 / 20157-060

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1 the employees of subcontractors or others who conceivably could have claims against Todd. Had  
2 Todd been required to somehow retrieve the books and records relating to all of its previous  
3 employees, this not only would have been unreasonable, but it would not have turned up Mr.  
4 Herring's name. Mr. Herring was never an employee of Todd Shipyards Corp. or any of its  
5 affiliates.  
6

7 11. In order to identify Mr. Herring, Todd would have had to identify the employees  
8 of the hundreds of subcontractors who have worked for Todd over the years. Not only has Todd  
9 never possessed such information, but Todd would not be privy to it even if all the  
10 subcontractors could be identified and contacted. In addition, the Bankruptcy Court did not order  
11 Todd to undertake such a search.  
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13 12. Todd conducted the most diligent search for creditors which Todd's resources  
14 permitted. Any further efforts to locate possible creditors would have been impractical based  
15 upon Todd's limited manpower resources, the state of Todd's books and records, and the  
16 financial and time constraints imposed upon Todd by Todd's bankruptcy proceedings. For this  
17 reason, Todd relied upon published notice, as ordered by the Bankruptcy Court, to inform those  
18 persons whose existence was not revealed by Todd's extensive search.  
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21 13. Todd made diligent efforts to identify and notify potential creditors of its  
22 bankruptcy. Such efforts included notifying individuals on its accounts receivable and accounts  
23 payable registers, notifying everyone who conducted business with Todd, and notifying all  
24 unions representing Todd's employees. In addition, I recall that Todd Shipyards identified its  
25 subcontractors as entities to whom it would send actual notice.  
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1 14. Todd's bankruptcy also was widely publicized in the Seattle-area newspapers and  
2 reported on the television news.

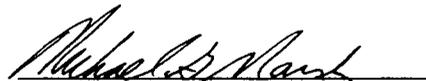
3 15. Despite Todd's best efforts to identify all potential creditors and claimants,  
4 Mr. Herring remained unknown to Todd during its bankruptcy proceedings. Todd did not learn  
5 of Mr. Herring and his claims against Todd until Todd was joined in this action in 2003.  
6

7 16. Todd was not in the ordinary course of business a seller or manufacturer of  
8 asbestos products and did not anticipate large numbers of asbestos claims at the time it filed its  
9 bankruptcy. At the time Todd commenced its bankruptcy filing in 1987, Todd was aware of only  
10 a handful of asbestos-related employee claims regarding its operations which had been filed in  
11 New Orleans.  
12

13 17. As a result, Todd did not form a special committee or trust for "future" asbestos  
14 claimants. However, because Mr. Herring had manifested symptoms of asbestos-related disease  
15 well before the commencement of Todd's Chapter 11 bankruptcy, Mr. Herring was a claimant  
16 whose interests would have been represented by the Official Committee of Unsecured Creditors  
17 and its counsel.  
18

19 I declare under penalty of perjury under the laws of the state of Washington that the  
20 foregoing is true and correct.  
21

22 DATED at Seattle, Washington, this 17 day of March, 2004.  
23

24   
25 Michael G. Marsh  
26

By: Alan B. Hyman  
Alan B. Hyman  
ABH6655

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY

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In re: :  
: :  
TODD SHIPYARDS CORPORATION, : (Chapter 11)  
TODD PACIFIC SHIPYARDS : Case Nos. 87-5005 WT  
CORPORATION, : 87-5006 WT  
: :  
Debtors. :  
: :  
-----X

ORDER CONFIRMING DEBTORS' THIRD AMENDED  
JOINT PLAN OF REORGANIZATION

This matter having been opened to this Court upon the application of Todd Shipyards Corporation and Todd Pacific Shipyards Corporation, debtors and debtors-in-possession (jointly, the "Debtors") dated June 22, 1990 for an Order, pursuant to Section 1129 of Title 11, United States Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"), confirming a plan of reorganization filed by the Debtors; and upon the Debtors' Third Amended Joint Plan of Reorganization dated October 26, 1990 (the "Plan") (all capitalized terms not defined herein shall have

the meaning ascribed to them in the Plan); and upon the Debtors' Third Amended Disclosure Statement (relating to the Plan) dated October 26, 1990 (the "Disclosure Statement") which was approved as containing "adequate information", as such term is defined in Section 1125 of the Bankruptcy Code, by Order of this Court entered on October 30, 1990 (the "Disclosure Statement Approval Order"); and the Debtors each having filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code on August 17, 1987 and having continued in the operation of their businesses and management of their properties as debtors-in-possession pursuant to Section 1107 and 1108 of the Bankruptcy Code; and the Disclosure Statement Approval Order having, inter alia: (i) directed the Debtors to solicit acceptances or rejections of the Plan; (ii) approved the forms of ballot to be transmitted with the Disclosure Statement and Plan for voting purposes; (iii) scheduled the hearing on Confirmation of the Plan for December 14, 1990 at 11:00 o'clock in the forenoon or as soon thereafter as counsel can be heard (the "Confirmation Hearing"); (iv) directed that objections to confirmation of the Plan be filed and served pursuant to Bankruptcy Rule 3020(b) such that they would be filed with the Court and served on certain specified parties no later than ten (10) days prior to the Confirmation Hearing; (v) approved the form of notice to be provided by the Debtors respecting the voting process and the Confirmation Hearing; and (vi) directed that all ballots must be received on or before the close of business on December 5, 1990

to be eligible to be counted in determining whether the Plan is accepted or rejected; and the Debtors having served (i) copies of the Disclosure Statement and the Plan and (ii) a ballot as required pursuant to the Disclosure Statement Approval Order; and the Debtors having published a notice respecting the Confirmation Hearing once in the Wall Street Journal (national edition) and once in the New York Times (national edition) in accordance with the Disclosure Statement Approval Order; and affidavits of service and publication having been filed with the Clerk of this Court with respect thereto; and a Declaration of Claudia D. King certifying the Ballots Accepting and Rejecting the Plan having been filed with this Court; and the acceptances and rejections of the Plan of those holders of Allowed Claims that voted having been duly received and tabulated; and it appearing that the solicitation and tabulation of acceptances having thus been accomplished in a proper and fair manner satisfactory to this Court; and one objection to confirmation of the Plan having been initially received but subsequently withdrawn; and it appearing that the Plan has been duly accepted by the creditors and interest holders whose acceptance is required in accordance with the provisions of Section 1126 of the Bankruptcy Code; and upon the entire record of the Debtors' Chapter 11 cases, the arguments of counsel, and the testimony of witnesses and introduction of evidence at the Confirmation Hearing; and after due deliberation; and sufficient cause appearing therefor; and

IT HAVING BEEN FOUND AND DETERMINED by this Court,  
that:

A. The Plan complies with the applicable provisions of the Bankruptcy Code.

B. The Debtors, as proponents of the Plan, have complied with the applicable provisions of the Bankruptcy Code.

C. The Plan has been proposed in good faith and not by any means forbidden by law.

D. Any payment made or to be made by the Debtors or any person issuing securities or acquiring property under the Plan, for services or for costs and expenses in, or in connection with, these Chapter 11 cases, or in connection with the Plan and incident to the Chapter 11 cases, has been approved by, or will be subject to the approval of, the Court as reasonable.

E. The Debtors have disclosed the identity and affiliations of those individuals proposed to continue to serve, after confirmation of the Plan, as a director, officer, voting trustee or insider of the Debtors pursuant to the statement filed by the Debtors respecting officers and directors and the terms of their employment, and the continuance in such office of each such individual is consistent with the interests of creditors and equity security holders and with public policy.

F. There are no rate changes provided for in the Plan, with respect to which rates, a governmental regulatory commission has jurisdiction over the Debtors after confirmation.

G. (1) The Plan properly classifies Claims and Interests and properly designates such Classes in accordance with Section 1122 of the Bankruptcy Code;

(2) The Plan specifies ~~the classes~~ of Claims and Interests which are impaired or not impaired under the Plan; and

(3) With respect to each impaired Class of Claims and Interests, (i) each holder of a Claim or Interest of such Class has accepted the Plan, or will receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would so receive or retain if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code on such date, and (ii) there are no holders of Allowed Secured Claims who made elections under Section 1111(b)(2) of the Bankruptcy Code.

H. Each Class has accepted the Plan or is not impaired under the Plan.

I. Except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that:

(1) With respect to a Claim of a kind specified in Sections 507(a)(1) or (2) of the Bankruptcy Code, as soon as

practicable after the Effective Date, the holder of such Claim will receive on account of such Claim, cash equal to the allowed amount of such Claim;

(2) With respect to a Class of Claims of a kind specified in Sections 507(a)(3), (4), (5), or (6) of the Bankruptcy Code, each holder of a Claim of such Class will receive cash as soon as practicable after the Effective Date, equal to the allowed amount of such Claim; and

(3) With respect to a Claim of a kind specified in Section 507(a)(7) of the Bankruptcy Code, the holder of such Claim will receive as soon as practicable after the Effective Date, on account of such Claim, Cash equal to the allowed amount of such Claim.

J. At least one Class of Claims that is impaired under the Plan has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim in such Class.

K. Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors or the Reorganized Debtors.

L. The Debtors have paid or shall pay on or prior to the Effective Date all amounts due under 28 U.S.C. § 1930.

M. The Plan provides adequate means for the Plan's implementation, and is otherwise in compliance with Section 1123(a) of the Bankruptcy Code. The Debtors will have sufficient funds on hand as of December 17, 1990 to make the cash disbursements provided for in the Plan including the prepayment of the principal of the Confirmation Obligations otherwise payable 360 days after the Confirmation Date.

O. The Plan provides, pursuant to Section 8.3 thereof, for the continuation of retiree benefits in accordance with Section 1129(a)(13) of the Bankruptcy Code.

P. The substantive consolidation of the Debtors' estates for the purposes of effectuating the Plan is appropriate.

IT IS ON THIS 17<sup>th</sup> DAY OF Dec. THEREFORE ORDERED  
that:

1. The Plan is hereby confirmed, having met the requirements of Section 1129(a) of the Bankruptcy Code.

2. The record date for the purpose of determining those holders of debt and equity securities entitled to distributions under the Plan shall be as of the close of business on December 14, 1990.

3. Solely for the purposes of distributions to be made under the Plan, the Effective Date of the Plan shall be December 17, 1990.

4. On December 17, 1990, all of the property of the estates shall be vested in the Debtors and shall be free and clear of any and all Claims of the Debtors' creditors and equity security holders, and any and all liens and encumbrances which have not been expressly preserved under the Plan shall be deemed extinguished as of such date.

5. Chemical Bank ("Chemical"), as Escrow Agent pursuant to an agreement (the "Escrow Agreement") dated as of October 26, 1990 between Chemical Bank and Todd heretofore approved by this Court shall, on December 17, 1990, disburse the funds in the escrow account it is holding (the "Escrow Account") as follows:

a. With respect to payments to be made under the Plan to Whitmore Capital, L.P. ("Whitmore"), the sole Class 4 claimant, Chemical is hereby authorized to disburse such funds directly to Whitmore as soon as practicable on or after the later of the Effective Date or the date of surrender to Todd of the certificates representing the Notes held by Whitmore (or if such certificates have been stolen, lost, or destroyed, in lieu thereof (i) a lost security affidavit and (ii) a bond if reasonably required by Todd), in accordance with written wire instructions received from Whitmore prior thereto.

b. With respect to the balance of the funds held in the Escrow Account, on the Effective Date, Chemical shall

disburse such funds to DRX, Inc., the Debtors' disbursing agent (the "Disbursing Agent").

6. The Debtors are hereby authorized to provide the balance of the funds required to implement the Plan, including such funds as are required to prepay the Confirmation Obligations otherwise payable 360 days after the Confirmation Date, to the Disbursing Agent on December 17, 1990.

7. On December 17, 1990, interest at the rate of 11½ per annum shall stop accruing on the amounts payable under the Plan to holders of Claims in Class 3, Class 5 and Class 6.

8. The Disbursing Agent shall disburse all funds received from Chemical and from the Debtors and securities received from the Debtors only in accordance with the terms of the Plan and this Order, as soon as practicable on or after December 17, 1990, except that (i) the Disbursing Agent is hereby authorized to prepay the principal amount of the Confirmation Obligations otherwise payable 360 days after the Confirmation Date and (ii) with respect to those funds to be paid to claimants in a manner other than wire transfer, the Disbursing Agent shall hold such funds in an interest bearing account at Chemical Bank (the "Disbursement Account") and shall disburse (a) such funds, including interest earned on the Disbursement Account through January 23, 1991, and (b) securities, to such creditors or holders of interests on or about the later of January 23, 1991 or the effective date of the Merger, or as soon thereafter as the

necessary information is received from such creditors by the Debtors.

9. The Disbursing Agent is authorized to make payments to creditors by wire transfer as provided for under the Plan as soon as practicable on or after December 17, 1990.

10. The Debtors are hereby authorized and directed to take all steps necessary to effectuate consummation of the Plan including but not limited to the mailing of letters of transmittal to holders of Claims or interests seeking the surrender of documents representing such obligations and interests, and the information required by the Debtors in order to be able to comply with applicable law respecting distributions made under the Plan to holders of such claims and interests.

11. Except as otherwise expressly provided in Section 1141 of the Bankruptcy Code or the Plan, the distributions made pursuant to the Plan will be in full and final satisfaction, settlement, release and discharge as against the Debtors, of any debt that arose before the Confirmation Date and any debt of a kind specified in Section 502(g), 502(h) or 502(i) of the Bankruptcy Code and all Claims and interests of any nature, including, without limitation, any interest accrued thereon from and after the Filing Date, whether or not (i) a proof of a Claim or interest based on such debt, obligation or interest is filed or deemed filed under Section 501 of the Bankruptcy Code, (ii) such Claim or Stock Interest is allowed

under Section 502 of the Bankruptcy Code or (iii) the holder of such Allowed Claim or Stock Interest has accepted the Plan. This discharge shall include the extinguishment of any and all liens and encumbrances which have not expressly been preserved under the Plan.

12. In addition, in consideration for past and future services, and other valuable consideration, all of the Debtors' present and former officers, directors, agents, employees, and counsel shall be deemed discharged and released from any and all Claims asserted or assertable by any person, firm or corporation arising in any way out of such person's relationship with or work performed for the Debtors on or prior to the date hereof.

13. The discharge set forth in the above decretal paragraphs shall not include:

a. administrative expenses representing liabilities incurred in the ordinary course of business by the Debtors as Debtors-in-Possession, or liabilities arising under loans or advances to the Debtors as Debtors-in-Possession, or liabilities arising under post-petition agreements or stipulations entered into by the Debtors as Debtors-in-Possession, which liabilities shall be paid by the Debtors in accordance with the terms and conditions of any such agreements or stipulations and the Plan, except as otherwise provided in the Plan:

b. administrative expenses due to Professionals representing allowances of compensation and reimbursement of expenses allowable pursuant to Section 330 of the Bankruptcy Code;

c. The Claims filed by the United States relating to response costs incurred by the Environmental Protection Agency with respect to the Harbor Island site, as well as any costs incurred in the future and any future injunctive obligations with respect to the Harbor Island site, as contemplated by Article 8.5 of the Plan, and such exclusion from discharge shall apply irrespective of whether a stipulation and agreement to settle and compromise environmental Claims of the United States of America shall be filed with the Court prior to the Confirmation Date;

d. All of the obligations relating to indemnification and exculpation existing in favor of Todd's, and its subsidiaries', respective present or former directors, officers, employees, fiduciaries, agents, attorneys or controlling persons as arise under applicable law or as provided in any of (i) Todd's Certificate of Incorporation in effect prior to or as of the date hereof, or (ii) Todd's by-laws in effect prior to or as of the date hereof, or (iii) each agreement identified in the Disclosure Statement or (iv) the articles of incorporation, by-laws or similar documents or agreements of any of Todd's subsidiaries as in effect prior to or as of the date

hereof, in each case with respect to matters occurring on or prior to the Effective Date, which obligations shall be assumed by Reorganized Todd;

e. Retiree Benefits Coverage (other than death benefits coverage) for all eligible Todd retirees who elected to retire on or before May 31, 1988 and for their eligible spouses and eligible dependents which, pursuant to Article VIII of the Plan terminates (a) when the appropriate maximum lifetime benefit has been exhausted by claims, or (b) when the eligible Todd retiree becomes covered, or is eligible to be covered, under a program with another employer providing similar benefits or (c) when the eligible spouse or eligible dependent of an eligible Todd retiree ceases to be such an eligible spouse or eligible dependent under the terms of the applicable plan, fund or program. Under the Plan, Retiree Benefits consisting of death benefits shall also be provided post-confirmation in the amount and under the terms of the applicable plan, fund or program. Retiree Benefits shall be provided at the applicable level established on or before May 31, 1988 to the extent, and for the period, the Debtors are contractually or otherwise legally obligated to provide such benefits. Any plan, fund or program for the provision of retiree benefits may be amended or terminated at any time according to the terms of such plan or program. Nothing herein contained shall be deemed to change, alter or amend any rights eligible Todd retirees or their respective eligible spouses, dependents or beneficiaries may have

to any Retiree Benefits. The Reorganized Debtors shall also continue all their Defined Benefit Pension plans and resume contributions to these plans in each case to the extent required by the plans and the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 et seq. ("ERISA"). In the event that the Reorganized Debtors seek to terminate their defined benefit pension plans, they shall do so pursuant to Title IV of ERISA. No distributions of the benefits due under these defined benefit pension plans may occur except to the extent that such distributions are consistent with Title IV of ERISA:

f. The death benefits of certain Todd retirees approved by Order of the Bankruptcy Court dated April 6, 1988 which shall be paid in full, in cash, upon the death of the Todd retiree by Todd, its successors and/or assigns; and

g. The Claims of the individuals listed on Exhibit D to this Court's previous Order dated February 22, 1989 entitled Order Granting Debtors' Objection to Allowance of Claims in accordance with the terms of such Order.

14. Except as otherwise provided under the Plan or under Order entered by this Court, any judgment at any time obtained, to the extent that such judgment is a determination of the liability of the Debtors with respect to any debt discharged under this Order and pursuant to the Plan and Section 1141(d)(1) of the Bankruptcy Code, shall be null and void and of no force and effect, regardless of whether a proof of claim therefor was

filed or deemed filed and all Claimants holding Claims against the Debtors and holders of equity interests of the Debtors shall be precluded from asserting against the Debtors, or any of their assets or properties, any other or further Claims or interests based upon any act or omission, transaction or other activity of any kind or nature that occurred prior to the Confirmation Date, and this Order shall permanently enjoin said Claimants and holders of equity interests, their successors and assigns, from enforcing or seeking to enforce any such Claims or equity interests.

15. In addition, except as otherwise provided in the Plan or under Order entered by this Court and with respect to the Debtors' obligations under the Plan, the commencement or continuation of any action, the employment of process, or any act to collect, recover or offset any debt discharged under this Order and the Plan and pursuant to Section 1141(d)(1) of the Bankruptcy Code as a liability of the Debtors, or from property of the Debtors, is forever stayed, restrained and enjoined.

16. The Court shall retain jurisdiction of the Debtors' Chapter 11 cases with respect to (i) motions pending before this Court as of the date of this Order, (ii) approval of the terms of sale of any assets located at the Debtors' Galveston shipyard, (iii) approval of the terms of any settlement of the Debtors' outstanding dispute with Cunard respecting the M.V. Sagafjord and (iv) approval of the terms of a settlement between

the Debtors and the EPA respecting the Queens City Farms, Wycoff Eagle Harbor and the Dutchtown Superfund sites including any terms of such settlement which provide for the barring of third party claims against the Debtors or newly organized Todd relating to these Superfund sites; provided, however, that in the event the Debtors and the EPA fail to execute an agreement within three (3) months of the Confirmation Date, then the proofs of claim filed by the EPA with respect to these three sites shall be governed by the procedures set forth in Paragraph 6.6 of the Plan for the resolution of Disputed Claims, except that the Debtors shall not be required to reserve any funds, nor make any payments respecting such claims; and matters provided for in Article X of the Plan.

17. For purposes of and solely to the extent set forth in the Plan, the Debtors' estates are hereby consolidated, and the assets of the Debtors are to be pooled and the liabilities of the Debtors are to be satisfied from the resultant common fund, as follows:

(i) all intercompany Claims by and among the Debtors will be eliminated; (ii) all assets and all proceeds thereof and all liabilities of the Debtors will be merged or treated as though they were merged for purposes of the Plan; (iii) any obligation of any Debtor and all guarantees thereof executed by either of the Debtors will be deemed to be one obligation of the

consolidated Debtors; (iv) any Claims filed or to be filed in connection with any such obligation and such guarantees will be deemed one Claim against the consolidated Debtors; (v) each and every Claim filed in the individual case of any of the Debtors will be deemed filed against the consolidated Debtors in the consolidated Case; and (vi) for purposes of determining the availability of the right of set-off under Section 553 of the Code, the Debtors shall be treated as one entity so that, subject to the other provisions of Section 553 of the Code, debts due to any of the Debtors may be set off against the debts of any of the Debtors. In addition, and in accordance with the terms of the Plan, all Claims based upon guarantees of collections, payment or performance made by one Debtor as to the obligations of the other Debtor shall be discharged, released and of no further force and effect.

18. The Debtors are hereby authorized and directed to deposit \$5,000,000 (the "Funds") into an escrow account, which Funds shall be available solely for the payment of the final allowance of professional fees in the amounts to be subsequently determined by the Court pursuant to appropriate notice and hearing.

19. The Debtors are hereby authorized to pay, in the ordinary course and without further application to this Court, all professional fees and expenses for services rendered after the date hereof.

20. The Debtors shall pay any amounts due under 28 U.S.C. § 1930 within ten (10) business days of notification of the amounts thereof by the Office of the United States Trustee.

21. Upon the entry of this Order, all rights, duties and obligations of the Indenture Trustee respecting the Notes and the holders of such notes shall cease and become null and void.

22. Each and every federal, state and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Plan.

23. Notice of entry of this Order, substantially in the form annexed hereto as Exhibit "A" which is hereby approved, shall be, and hereby is, deemed sufficient (a) if served by first class mail upon (i) all persons having filed a notice of

appearance herein within 20 days from the date hereof, and (ii) together with the distributions to be made under the Plan to all holders of allowed claims and interests and (b) if published once on or before 20 days from the date hereof in the national editions of The New York Times and The Wall Street Journal.



UNITED STATES BANKRUPTCY JUDGE

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

To all to whom these presents shall come. Greeting:

By virtue of the authority vested in me by the Archivist of the United States, I certify on his behalf, under the seal of the National Archives and Records Administration, that the attached reproduction(s) is the true and correct copy of documents in his custody.

SIGNATURE <i>Theresa Mellon</i>	
NAME THERESA MELLON	DATE 11-8-99
TITLE SUPERVISORY ARCHIVES SPECIALIST	
NAME AND ADDRESS OF DEPOSITORY NARA - Office of Regional Records Services 200 Space Center Drive Lee's Summit, MO 64064	

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STAMP: FEB 15 1988  
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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY

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In re: :  
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TODD SHIPYARDS CORPORATION, : Chapter 11 *uy*  
TODD PACIFIC SHIPYARDS CORPORATION, : Case Nos. 87-5005 WT  
: 87-5006 WT  
Debtors. :  
: :  
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ORDER (i) RECONFIRMING BAR DATE FOR  
THE FILING OF PROOFS OF CLAIM OR INTEREST  
AND (ii) PROVIDING FOR SUPPLEMENTAL NOTICE THEREOF

This matter having been opened to the Court by way of the Debtors' Notice of Motion dated February 2, 1988 and upon the application (the "Application") of Todd Shipyards Corporation and Todd Pacific Shipyards Corporation, Debtors and Debtors-in-Possession (collectively, the "Debtors"), seeking the entry of an Order, pursuant to Section 1111(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101, et seq. (the "Code") and Bankruptcy Rule 3003, (i) reconfirming June 6, 1988 as an absolute bar date (the "Bar Date") for the filing of proofs of claim or interest and (ii) providing for the supplemental notice thereof; and it

appearing that sufficient notice of the Application has been given; and upon the record of the hearing held on February 29, 1988; and it appearing that the manner of entry of this Order as provided herein is reasonably calculated to give actual notice of the Bar Date; and this Court, by sua sponte order entered November 17, 1987, having heretofore ordered that any creditor or equity security holder whose claim or interest is not scheduled by the Debtors pursuant to Bankruptcy Rule 1007 or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest on or before June 6, 1988 unless otherwise modified by the Court, provided that stockholders need not file a proof of claim; and sufficient cause appearing therefor;

IT IS, ON THIS 8<sup>TH</sup> DAY OF ~~FEBRUARY~~ <sup>MARCH</sup>, 1988

ORDERED, that all creditors, individuals, partnerships, corporations, associations, governmental units, note holders and stockholders of record as of the date of entry of this Order (as reflected in the books and records of the Debtors, the indenture trustees and the stock transfer agents), and other entities that hold or assert claims (as defined in Section 101(4) of the Code) against the Debtors arising prior to, or which may be deemed to have arisen prior to, the commencement of Debtors' Chapter 11 cases on August 17, 1987, which claims are based on the Debtors' primary, secondary, direct, indirect, secured, unsecured, contingent, guaranty, or other liability, and whose claims are not scheduled on

the Debtors' respective Schedules of Liabilities filed with the Court on January 15, 1988 pursuant to Bankruptcy Rule 1007 (collectively, the "Schedules") or whose claims are scheduled but are disputed as to amount or type by either the Debtors or the claimant or any party-in-interest or are listed on the Schedules, as filed or as may be amended, as contingent or unliquidated as to amount, provided that (a) a note holder shall not be required to file a proof of claim to the extent that its claim is based on principal and interest due on the subject note, and (b) a stockholder shall not be required to file a proof of interest to the extent that its interest is based on ownership of shares of the Debtors' stock, shall file by mail or by hand delivery a written proof of claim or interest conforming to Official Bankruptcy Form No. 19, with supporting documentation annexed thereto, identifying the entity against which the claim or interest is asserted and referencing any assigned creditor number, such that said claim is received as set forth below on or before 5:00 p.m. June 6, 1988 New Jersey Time, which is hereby deemed to be the Bar Date; and it is further

**ORDERED**, that the Debtors are authorized (a) to retrieve from the Clerk of the Court any and all proofs of claim or interest heretofore filed against the Debtors with the Clerk of the Court, and (b) to act as the agent of the Court for the purposes of receiving all proofs of claim or interest, which shall be filed (i) if by mail, at: Todd Shipyards Corporation, Debtor, Todd Pacific

Shipyards Corporation, Debtor, P.O. Box 2018, Jersey City, New Jersey 07303-9998 or (ii) if by courier or hand, at: Todd Shipyards Corporation, Debtor, Todd Pacific Shipyards Corporation, Debtor, 66 York Street, Jersey City, New Jersey 07302, and the Debtors shall from time to time provide the Clerk of the Court with a docket of all proofs of claim or interest filed herein; and it is further

ORDERED, that any holder of any claim or interest required to be filed by the preceding decretal paragraphs that fails to properly file such proof of claim or interest on or before the Bar Date shall be (i) forever barred from asserting that claim or interest against the Debtors and from voting on a plan(s) of reorganization in the Debtors' Chapter 11 cases or sharing in any distribution thereunder, and (ii) bound by the terms of any such plan(s) of reorganization confirmed by the Court; and it is further

ORDERED, that the Debtors, or Claudia King & Associates, Inc. ("King") on the Debtors' behalf, on or before March 18, 1988, shall give notice of the Bar Date by mailing a Notice of Bar Date for Filing Proofs of Claim or Interest in the form annexed hereto as Exhibit A (i) to all known stockholders and note holders at their last known addresses as of the date of entry of the Order, as reflected in the books and records of the Debtors, the indenture trustees and the stock transfer agents, and (ii) to all creditors listed on the Debtors' respective Schedules at the addresses

stated therein; and it is further

ORDERED, that in the event the Debtors amend the Schedules, appropriate notice thereof shall be given to such creditors whose status and/or claim has been revised, and said creditors shall have an additional thirty (30) day period following the giving of such notice to file a proof of claim or interest, if necessary; and it is further

ORDERED, that the Debtors shall arrange to be published on or before March 18, 1988 a copy of the Notice of Bar Date for Filing Proofs of Claim or Interest in the form annexed hereto as Exhibit B once in each of the following newspapers: The New York Times (national edition), The Wall Street Journal (national edition), The Journal of Commerce, The Washington Post, The Newark Star Ledger, The Los Angeles Times, The San Francisco Examiner, The San Pedro News Pilot, The New Orleans Times Picayune, The Seattle Times, The Houston Post, and The Galveston Daily News; and it is further

ORDERED, that the notice of the Bar Date by mail and by publication as provided for herein on or before March 18, 1988 shall be deemed good and sufficient notice of the Bar Date pursuant to Section 1111(a) of the Code and Bankruptcy Rule 3003.

  
UNITED STATES BANKRUPTCY JUDGE