SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

GARRETT MOTION INC. and GARRETT ASASCO INC., *Plaintiffs*, v. HONEYWELL INTERNATIONAL INC., HONEYWELL ASASCO LLC, HONEYWELL ASASCO 2 LLC, HONEYWELL HOLDINGS INTERNATIONAL INC., SU PING LU, and DARIUS ADAMCZYK, *Defendants*.	Index No. 657106/2019 **COMPLAINT** IAS Part 53 Hon. Andrew S. Borrok Plaintiffs designate New York County as the place of trial.

Plaintiffs Garrett Motion Inc. and Garrett ASASCO Inc. file this action for breach of contract, breach of fiduciary duties, aiding and abetting breach of fiduciary duties, corporate waste, breach of the implied covenant of good faith and fair dealing, unjust enrichment, and declaratory judgment against Honeywell International Inc. ("**Honeywell International**"), Honeywell ASASCO LLC, Honeywell ASASCO 2 LLC, Honeywell Holdings International Inc., Su Ping Lu, and Darius Adamczyk in connection with the 2018 spin-off of Garrett Motion Inc. and its subsidiaries (collectively, "**Garrett**") from Honeywell International and its subsidiaries (collectively, including its predecessors, "**Honeywell**") and the accompanying transactions entered into between the parties.[1]

[1] Plaintiffs refer to Honeywell International, Honeywell ASASCO LLC, Honeywell ASASCO 2 LLC, and Honeywell Holdings International Inc. collectively as the Corporate Defendants.

NATURE OF THE ACTION

1. This action arises out of Honeywell's spin-off of Garrett in October 2018. The spin was the brainchild of Honeywell's CEO, Darius Adamczyk, and his "first major move" in that position.[2] Adamczyk sought to use the spin to convince the market that Honeywell's legacy Bendix-related asbestos liability, which well exceeded a billion dollars and had saddled the company for decades, would no longer impact Honeywell's balance sheet and future earnings. To do this, Honeywell purported to give itself control over Garrett's strategic decision-making for thirty years through illegal covenants, and required Garrett to indemnify it for virtually all of Honeywell's legacy Bendix-related asbestos liability—despite the liability being unrelated to Garrett's business. To add insult to injury, Honeywell also forced Garrett to borrow $1.6 billion to fund a cash distribution to Honeywell.

2. Honeywell's massive asbestos liability arises from claims that it knowingly sold products containing asbestos, including Honeywell's "Bendix" automotive brakes, for over six decades—well after the fatal dangers of asbestos became known to Honeywell. As a result, Honeywell faces tens of thousands of tort claims seeking potential compensatory and punitive damages.

3. Honeywell and Adamczyk used the spin-off to foist Honeywell's asbestos liability upon Garrett through an oppressive and unenforceable thirty-year Indemnification Agreement.[3] The agreement purports to require Garrett to reimburse Honeywell for 90% of Honeywell's legacy asbestos liability, including Honeywell's legal fees and costs of managing and defending the

[2] Thomas Black, *Honeywell CEO Faces Test with Wall Street Awaiting 'Signature Deal,'* Bloomberg (Oct. 1, 2018), https://www.bloomberg.com/news/articles/2018-10-01/honeywell-ceo-faces-test-as-wall-street-awaits-signature-deal.

[3] Capitalized terms not defined in this section are defined in the Statement of Facts.

thousands of asbestos-related claims brought against it each year. The Indemnification Agreement also purports to illegally require Garrett to indemnify Honeywell for punitive damages, e.g., damages meant to punish Honeywell for its reckless disregard for human life, which juries have awarded against Honeywell in multi-million dollar verdicts both before and after the spin. And, while Honeywell forces Garrett to foot the bill, Honeywell purports to retain full control over managing the claims, including making settlement decisions without any notice to Garrett.

4. But the agreement goes far beyond indemnity—it gives Honeywell a veto over Garrett's key corporate decision-making. Honeywell incorporated onerous covenants into the Indemnification Agreement that are typically found in loan agreements. But unlike a loan agreement, which can be refinanced to allow freedom from its covenants, Honeywell made the Indemnification Agreement virtually inescapable. Under the terms of the Indemnification Agreement, Honeywell controls Garrett's key corporate decisions for thirty years, and Garrett—an independent, publicly-traded company—is serving as Honeywell's asbestos piggybank. The resulting agreement is unlawful and so one-sided as to be manifestly unconscionable. Thus it is unenforceable.

5. Because no company would voluntarily agree to such an egregious arrangement (and no Delaware company lawfully could), Honeywell did not actually negotiate the Indemnification Agreement with Garrett. Instead, Adamczyk installed one of Honeywell's own in-house lawyers (Su Ping Lu) as Garrett's president and sole director for the purpose of forcing these unconscionable terms on Garrett. Lu exercised no judgment, discretion, or care in binding Garrett to a transaction unilaterally imposed by Honeywell. Instead, Lu acted under Honeywell's and Adamczyk's direction and signed whatever they told her to. In so doing, Lu breached her fiduciary duties to Garrett, and Honeywell and Adamczyk aided and abetted her breaches.

Honeywell also retained the same lawyers to represent both Honeywell and Garrett in connection with the spin-off; but the lawyers blindly acceded to Honeywell's wishes, regardless of the best interest of their other client, Garrett.

6. Worse yet, Honeywell breached its minimal obligations under the agreement it wrote for itself. Honeywell denied Garrett's requests for information concerning the liability and the management of the claims, despite Garrett's rights under the Indemnification Agreement to access such information and its attempts for over a year to obtain it. Honeywell's breach caused Garrett to report a material weakness in its internal control over financial reporting in its public SEC filings.

7. Honeywell's failure to provide Garrett information also precludes Honeywell from being indemnified. For each and every asbestos settlement, Honeywell must establish its entitlement to indemnity, including that it was actually liable on the underlying claim, and that the settlement was reasonable and executed in good faith. Honeywell also must allocate between indemnifiable amounts and non-indemnifiable amounts (including amounts for punitive damages or intentional misconduct). But in its arrogance, Honeywell has refused to abide by those obligations, and instead has continued to force Garrett to pay Honeywell's asbestos liability (including amounts paid to settle punitive damages exposure and exposure related to Honeywell's wrongful conduct) under the threat of improperly triggering a cascade of defaults on Garrett's debts and driving Garrett into severe financial distress.

8. Garrett seeks relief from the illegal, oppressive, and unconscionable Indemnification Agreement, which resulted from substantial breaches of fiduciary duty. Garrett further seeks relief, including damages, based on Honeywell's material breach of the agreement and Honeywell's and Adamczyk's misconduct. And to the extent Honeywell has any right to

indemnity, Garrett seeks declaratory judgment that Honeywell cannot be indemnified for amounts paid to settle its exposure to punitive damages or claims asserting wrongful conduct, and that Honeywell must establish its right to indemnity for each and every expense and settlement.

JURISDICTION, VENUE, AND GOVERNING LAW

9. This Court has jurisdiction over the causes of action stated herein pursuant to Judiciary Law § 140-b.

10. Venue is proper in the New York Supreme Court, New York County pursuant to Section 4.4 of the Indemnification Agreement.

11. To the extent applicable, Garrett waives the venue provision in Article X of its corporate charter and consents to this forum to adjudicate this matter.

12. Garrett has incurred or faces damages in excess of the $500,000 monetary threshold required for jurisdiction in the Commercial Division of New York County.

13. This Court has personal jurisdiction over Honeywell International Inc., Honeywell ASASCO LLC, Honeywell ASASCO 2 LLC, Honeywell Holdings International Inc., Su Ping Lu, and Darius Adamczyk pursuant to Section 4.4 of the Indemnification Agreement.

14. Under Section 4.4 of the Indemnification Agreement, disputes arising out of or relating to the Indemnification Agreement are governed by the laws of the State of New York.

THE PARTIES

15. Plaintiff Garrett Motion Inc. is a corporation organized under the laws of the State of Delaware.

16. Plaintiff Garrett ASASCO Inc. is a corporation organized under the laws of the State of Delaware.

17. Defendant Honeywell International Inc. is a corporation organized under the laws of the State of Delaware.

18. Defendant Honeywell ASASCO LLC is a limited liability company organized under the laws of the State of Delaware. Honeywell ASASCO LLC was formerly Honeywell ASASCO Inc. All references herein to Honeywell ASASCO LLC include references to both Honeywell ASASCO LLC and Honeywell ASASCO Inc. All references herein to Honeywell ASASCO Inc. include references to both Honeywell ASASCO Inc. and Honeywell ASASCO LLC.

19. Defendant Honeywell ASASCO 2 LLC is a limited liability company organized under the laws of the State of Delaware. Honeywell ASASCO 2 LLC was formerly Honeywell ASASCO 2 Inc. All references herein to Honeywell ASASCO 2 LLC include references to both Honeywell ASASCO 2 LLC and Honeywell ASASCO 2 Inc. All references herein to Honeywell ASASCO 2 Inc. include references to both Honeywell ASASCO 2 Inc. and Honeywell ASASCO 2 LLC.

20. Defendant Honeywell Holdings International Inc. is a corporation organized under the laws of the State of Delaware.

21. Defendant Su Ping Lu is an individual who, upon information and belief, is a resident of the State of North Carolina. Lu served as the sole member of the Board of Directors of Garrett Motion Inc. through September 16, 2018, and thereafter served as one of the two members of the Board of Directors of Garrett Motion Inc. through September 30, 2018—the day before the spin. Lu also served as President of Garrett Motion Inc. through September 30, 2018. Upon information and belief, Lu served as the sole member of the Board of Directors of Garrett ASASCO Inc. through at least September 26, 2018, and served as a member of the Board of Directors of Garrett ASASCO Inc. through September 30, 2018. Upon information and belief, Lu

has served as Assistant General Counsel and Assistant Corporate Secretary for Honeywell and was an employee of Honeywell during all relevant times to this action.

22. Defendant Darius Adamczyk is an individual who, upon information and belief, is a resident of the State of North Carolina. Adamczyk was elected Chairman of Honeywell in 2018 and named President and Chief Executive Officer of Honeywell in 2017. Prior to that, Adamczyk served as President and Chief Operating Officer.

STATEMENT OF FACTS

I. Honeywell Has Incurred Substantial Asbestos Liability

A. Honeywell's Asbestos Liability Originated With The Bendix Corporation

23. In 1939, the Bendix Corporation ("**Bendix**"), an aerospace and automotive company, began manufacturing friction products, including automotive brakes, containing asbestos. Bendix purchased asbestos from Johns Manville, a leading miner of asbestos, and manufactured its brake linings at plants in Troy, New York and Cleveland, Tennessee, among others.

24. A corporate representative of Honeywell, Joel Cohen, testified that a 1968 letter from Johns Manville put Bendix on notice that asbestos could cause disease.[4] However, courts have found indicia that Bendix knew of the dangers of asbestos long before 1968. *See infra* ¶ 245.

25. Until 1983—fifteen years after the year Honeywell expressly admitted Bendix was on notice—Bendix manufactured all of its brakes using twenty-five to fifty percent asbestos,[5] with

[4] *Phillips v. Honeywell Int'l Inc.*, 217 Cal. Rptr. 3d 147, 158 (Ct. App. 2017) (recounting testimony from Honeywell's corporate representative, stating: "I can tell you that in 1968 [Bendix] did receive this letter [from Johns-Manville], and I believe that's what put [Bendix] on notice." (alterations in original)).

[5] *Conda v. Honeywell Int'l Inc.*, 2018 WL 2293530 (Minn. Ct. App. May 21, 2018) (recounting testimony from Honeywell's corporate representative, indicating "that from 1939 to 1983, Bendix's drum brakes contained 25−50% asbestos").

other ingredients bound in a resin. The pervasiveness of asbestos at Bendix factories and in the brake manufacturing process is well-remembered by Bendix employees at the time, one of whom described their "most vivid memory of their working conditions" to be "the ever-present dust."[6] Indeed, the Bendix plant in Troy, New York was generating fifteen tons of asbestos-laden brake dust *each day*.[7] This asbestos dust eventually made its way into the brake products being sold to consumers.

26. In 1983, Bendix began offering asbestos-free brake options. However, Bendix continued to manufacture and sell asbestos-containing brakes until 2001, i.e., *thirty-three years* after Honeywell admits that Bendix learned of the dangers of asbestos.

B. Honeywell Acquired Bendix And Continued To Manufacture And Sell Products Containing Asbestos

27. The Allied Corporation acquired Bendix in 1982.

28. In 1985, Allied Corporation combined with Signal Companies. The combined company was initially named Allied-Signal, but later changed its name to AlliedSignal in 1993.

29. In 1999, AlliedSignal acquired Honeywell, with the Honeywell name being retained for brand recognition. Honeywell Inc. was renamed Honeywell International Inc. at this time. Honeywell became the successor-in-interest to Bendix through its acquisition by AlliedSignal in 1999.

30. Despite retaining the Honeywell name, AlliedSignal, which had nearly twice Honeywell's revenue in the year prior to the acquisition, was in actuality the continuing

[6] Robert Storey & Wayne Lewchuk, *From Dust to DUST to Dust: Asbestos and the Struggle for Worker Health and Safety at Bendix Automotive*, 45 Labour 103, 108 (2000).

[7] Barry I. Castleman, *Asbestos: Medical and Legal Aspects* 535 (5th ed. 2005).

corporation. The combined company remained based in Morristown, New Jersey—AlliedSignal's headquarters at the time of the acquisition—until 2019.

31. The new combined company continued to utilize the Bendix brand name in Honeywell's Friction Materials business, which continued to manufacture automotive brake pads that included asbestos.

C. Honeywell Faces Thousands Of Asbestos-Related Lawsuits

32. Honeywell has been and continues to be a frequently-named defendant in asbestos-related products liability and personal injury actions arising from the Bendix business.

33. From 1981 through 2001, Honeywell resolved approximately 53,000 Bendix-related asbestos claims. Approximately 47,000 claims remained pending in 2001.

34. This number grew substantially in the following years. In its 2004 10-K, Honeywell estimated it resolved approximately 71,000 Bendix-related asbestos claims from 1981 through December 31, 2004. 76,348 claims remained unresolved at the end of 2004. In its 2008 10-K, Honeywell estimated it resolved approximately 117,000 Bendix-related asbestos claims from 1981 through December 31, 2008. 51,951 claims remained unresolved at the end of 2008.

35. In its 2012 10-K, Honeywell estimated it resolved approximately 3,350 Bendix-related asbestos claims during 2012, with 23,141 claims remaining unresolved at the end of 2012.[8]

36. Honeywell continues to face significant liability from its historical use of asbestos, and such exposure is anticipated to carry decades into the future. Among other reasons, this is because mesothelioma, a cancer that is linked almost exclusively to exposure to asbestos, is characterized by a latency period of approximately forty years. This latency period, and the

[8] The dramatic reduction in remaining unresolved claims was due to the claims portfolio being reduced in 2009 due to settlements, dismissals, and the elimination of significantly aged (i.e., pending more than six years), inactive, and duplicate claims.

accompanying liability projected decades into the future, requires Honeywell to account for both pending and unasserted Bendix-related personal injury claims in its financial statements.

37. Honeywell historically accounted for its Bendix-related asbestos liability for unasserted claims over a five-year time horizon. In 2018, under pressure from the Securities and Exchange Commission ("**SEC**"), Honeywell revised its accounting, including a restatement of its prior financial statements, to change the time period associated with the determination of appropriate accruals for the Bendix-related asbestos liability for unasserted claims and to reflect the full term of epidemiological projections through 2059.[9]

38. This prior accounting methodology, which was used by Honeywell before Garrett was spun off into an independent company, forced Garrett to disclose a material weakness in its internal control over financial reporting in a Form 10 filed on August 23, 2018, prior to the spin-off:

> Our financial statements are derived from the consolidated financial statements and accounting records of Honeywell. In the course of preparing for our Spin-Off from Honeywell, Honeywell reassessed its accounting for unasserted Bendix-related asbestos claims to reflect the epidemiological projections through 2059 in its measurement of such liability. This matter also affected our financial statements. As a result of this error, the Company's Combined Financial Statements were restated . . . , and a material weakness in internal control over financial reporting was identified related to a deficiency of internal control for the estimation of probable and reasonably estimable liability for unasserted Bendix-related asbestos claims.[10]

39. Under the revised accounting, as of December 31, 2016, Honeywell's Bendix-related asbestos liability was $1.789 billion (excluding liability for future defense costs). As of December 31, 2017, Honeywell's Bendix-related asbestos liability was $1.703 billion, and as of

[9] Honeywell Int'l Inc., Current Report (Form 8-K) (Aug. 23, 2018).

[10] Garrett Motion Inc., General Form for Registration of Securities (Form 10) (Aug. 23, 2018).

December 31, 2018, Honeywell's Bendix-related asbestos liability was $1.623 billion, in each case, excluding liability for future defense costs.

40. This accounting correction not only caused a massive restatement for Honeywell and a material weakness for Garrett, but also resulted in an investigation by the SEC's Division of Enforcement regarding Honeywell's accounting for Bendix-related asbestos liability, and multiple class action lawsuits, which have now been consolidated into a single action: *Kanefsky v. Honeywell International Inc.*, No. 18-cv-15536 (D.N.J. 2018). The class action centers on Honeywell's failure to disclose the extent of its Bendix-related asbestos liability, which the class action complaint alleges made Honeywell's public statements false and misleading in violation of federal securities laws.

II. Honeywell Failed In Prior Attempts To Offload Its Asbestos Liability

41. In 2003, Honeywell attempted to sell its automotive Bendix Friction Materials business to Federal-Mogul Corporation ("**Federal-Mogul**") and isolate itself from current and future asbestos liability related to its Bendix business.

42. Federal-Mogul had filed a petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code on October 1, 2001.

43. On January 30, 2003, Honeywell and Federal-Mogul entered into a letter of intent pursuant to which Honeywell would "sell" the Bendix brake business to Federal-Mogul in exchange for a permanent channeling injunction through Federal-Mogul's bankruptcy, shielding it from Bendix-related asbestos liability. Although Honeywell would actually pay a small amount to divest the Bendix business, Honeywell would benefit by shielding itself from related asbestos exposures. Honeywell's CEO in 2003, David Cote, acknowledged that as of January 2003, Honeywell was in negotiations for several transactions, similar to the one with Federal-Mogul, to allow Honeywell to rid itself of its asbestos liability.

44. Specifically, Honeywell and Federal-Mogul contemplated that, as part of Federal-Mogul's reorganization plan, Federal-Mogul would establish a trust (the "**Bendix Trust**") under Section 524(g) of the U.S. Bankruptcy Code for resolution of all existing and future Bendix-related asbestos claims. As a result, the Bankruptcy Court would issue an injunction barring all present and future individual actions and requiring all Bendix-related asbestos claims to be made against the Bendix Trust, i.e., channeling all Bendix asbestos claims to the Bendix Trust. The Bendix Trust would receive the rights to proceeds from Honeywell's Bendix-related insurance policies, and Honeywell would have no obligation to contribute any additional amounts toward the settlement or resolution of Bendix-related asbestos claims.

45. Honeywell's attempt to take advantage of another corporation's bankruptcy protection to shield itself from Bendix-related asbestos liability failed. General Motors, Ford, and Daimler Chrysler—other frequently-named defendants in asbestos cases—sued to block the transaction. Those companies asserted that the proposed transaction between Honeywell and Federal-Mogul would be a fraudulent transfer. On January 19, 2004, Honeywell announced that it had terminated discussions with Federal-Mogul regarding the possible sale of its Bendix Friction Materials business.

46. It was not until ten years later, in 2014, that Honeywell sold its Friction Materials business to Federal Mogul Corporation. On July 14, 2014, Honeywell announced that it had completed the sale of that business to Federal-Mogul for approximately $155 million. However, Honeywell did not divest its Bendix-related asbestos liability in this transaction. Instead, Honeywell expressly retained all Bendix-related asbestos liability.

III. Honeywell Devised And Executed The Spin-Off

A. Honeywell Devised A Plan To Offload The Financial Burdens Of Its Asbestos Liabilities Through A Spin-Off

47. In October 2017, Honeywell announced its intention to spin off what remained of its Transportation Systems business, primarily a turbocharger business, which eventually became Garrett. At the same time, Honeywell also announced its intention to spin off its Homes and Global Distribution business, which eventually became the independent company Resideo Technologies, Inc.

48. In an October 10, 2017 press release, Adamczyk announced that the spun-off turbocharger business would have "financial responsibility for Honeywell legacy automotive segment liabilities in an amount equal to our Bendix legacy asbestos liability." The spun-off Homes and Global Distribution business would similarly have "financial responsibility for certain Honeywell legacy liabilities."

49. As the spin moved closer in 2018, Honeywell strategically timed its announcements of the offloading of Honeywell's asbestos liability to coincide with a sharp increase in the impact that liability would have otherwise had on Honeywell's balance sheet.

50. As previously mentioned, *see supra* ¶¶ 37–39, Honeywell substantially restated its accounting of the Bendix-related asbestos liability in 2018 to account for the full term of epidemiological projections through 2059. Previously, Honeywell had been accounting for its liability for unasserted Bendix-related asbestos claims using only a five-year time horizon. This revision was prompted by the SEC Division of Corporation Finance's review of Honeywell's Annual Report on Form 10-K for 2017, which encompassed a review of Honeywell's prior accounting for liability for unasserted Bendix-related asbestos claims. Specifically, the SEC questioned why Honeywell was using such a short time horizon given that it seemed "unlikely . .

. that the low end of [Honeywell's] range of probable losses for time periods beyond five years is zero."

51. As a result of the SEC's review, Honeywell restated its accounting for asbestos liability to estimate liability for "the full term of epidemiological projections through 2059."

52. Unsurprisingly, the results of Honeywell's adjustment on its financial statements (and, by extension, Garrett's financial statements) were dramatic. As Honeywell disclosed, "[t]he Company's revised estimated asbestos-related liabilities are now $2,610 million as of December 31, 2017, which is $1,087 million higher than the Company's prior estimate." The $2,610 million included both Bendix-related claims (relevant to this litigation) and claims related to Honeywell's North American Refractories Company. Yet, the entire $1,087 million increase was for Bendix-related asbestos claims, which were restated from $616 million to $1,703 million as of December 31, 2017.

53. Honeywell attempted to deflect the bad news of this disclosure by touting the benefits of the anticipated Garrett spin-off. In a press release issued the same day as its August 23 8-K announcing the restated asbestos liabilities, Honeywell stated that the Garrett spin-off would "strengthen Honeywell's already-strong financial position through a combination of one-time dividends and ongoing reimbursements from the spin companies for the majority of Honeywell's environmental and Bendix asbestos payments."

54. The timing of the closing of the spin was not coincidental—it was clearly timed with the end of Honeywell's third quarter of 2018, the first quarter in which Honeywell disclosed the substantial increase in the same asbestos liability that Honeywell forced onto Garrett. Honeywell was attempting to soften the blow of its disclosure of more than $1 billion in additional

asbestos liability by simultaneously announcing that it had "offloaded" 90% of that liability to Garrett.

55. The "Risk Factors" section of a May 1, 2018 Preliminary Information Statement, included with Garrett's Draft Registration Statement, discussed the negative impacts of the Indemnification Agreement. At this time, Garrett was *not* an independent company and was still a wholly-owned subsidiary of Honeywell.

56. The May 1, 2018 Preliminary Information Statement disclosed that "substantial quarterly cash payments" would be made to Honeywell. It further stated:

> This agreement may have material adverse effects on our liquidity and cash flows and on our results of operations, even when we do not experience a decline in net sales. The agreement may also require us to accrue significant long-term liabilities on our consolidated balance sheet, the amounts of which will be dependent on factors outside our control, including Honeywell's responsibility to manage and determine the outcomes of claims underlying the liabilities. This may have a significant negative impact on the calculation of key financial ratios and other metrics that are important . . . in evaluating our creditworthiness and the value of our securities. Accordingly, our access to capital to fund our operations may be materially adversely affected and the value of your investment in our company may decline. Moreover, the quarterly cash payments that we will be required to make to Honeywell pursuant to this agreement will not be deductible for U.S. federal income tax purposes.
>
> . . . .
>
> The Indemnification and Reimbursement Agreement also includes other obligations that may impose significant operating and financial restrictions on us and our subsidiaries and limit our ability to engage in actions that may be in our long-term best interests.[11]

[11] Garrett Motion Inc., Draft Registration Statement (Form 10) (May 1, 2018).

B. Honeywell Implemented Its Plan And Executed The One-Sided Spin-off Transactions, Resulting In The Unconscionable Indemnification Agreement

57. In September 2018, Honeywell implemented the spin-off of its turbochargers business by entering into several agreements with Garrett entities that Honeywell had created specifically for the spin-off, and which Honeywell controlled (the "**Spin-off Transactions**").[12]

58. These Spin-off Transactions culminated in the October 1, 2018 spin-off of Garrett, in which Garrett Motion Inc. became an independent publicly-traded company through a pro rata distribution by Honeywell of 100% of the outstanding shares of Garrett Motion Inc. to Honeywell's shareholders.

1. *Honeywell And Adamczyk Caused Su Ping Lu To Act On Behalf Of Both Honeywell And Garrett In The Spin-Off Transactions*

59. Su Ping Lu, a Honeywell in-house attorney, was ostensibly the corporate representative for Garrett throughout the negotiation and execution of the Spin-off Transactions. She was also ostensibly the President and sole director of several of the Garrett entities in September 2018 when the Spin-off Transactions were being implemented. At the same time, Su Ping Lu served as a director or in an executive capacity on behalf of several Honeywell-affiliated entities throughout the negotiation and execution of the Spin-off Transactions, including in her capacity as Assistant General Counsel and Assistant Corporate Secretary for Honeywell International. Su Ping Lu served as a director, officer, or executive for the following non-exhaustive list of Garrett entities:

Garrett Transportation I Inc.	Director
Garrett Motion LLC	Director, Manager
Garrett Transportation Systems UK II Ltd.	Director
Garrett Turbo Ltd.	Director
Garrett Borrowing LLC	Manager

[12] Although Garrett has other components to its business, its primary business is turbochargers.

Garrett Motion Holdings Inc.	President
Garrett Motion Inc.	Director, President
Garrett LX I S.à r.l	Class A Manager and Authorized Signatory
Garrett ASASCO Inc.	President
Garrett Transportation Systems Ltd.	Director
Garrett LX II S.à r.l.	Class A Manager and Authorized Signatory
Garrett LX III S.à r.l.	Class A Manager and Authorized Signatory
Garrett Transportation Systems Inc.	Director

60. Su Ping Lu signed many of the key documents implementing the Spin-off Transactions on behalf of both Honeywell and Garrett entities. *See, e.g.*, *infra* ¶¶ 70, 76, 90.

2. *Honeywell and Adamczyk Caused Both Honeywell And Garrett To Be Represented By The Same Legal Counsel*

61. Paul, Weiss, Rifkind, Wharton & Garrison LLP ("**Paul Weiss**") was the legal representative for Honeywell in connection with the spin-off [redacted]. At some point, Paul Weiss also became the legal representative for Garrett in the negotiation and execution of the Spin-off Transactions. Paul Weiss was heavily involved in the spin-off and drafting the documents for Honeywell and Garrett to sign to execute the spin. Paul Weiss is listed as notice counsel for both Honeywell and Garrett entities in several Spin-off Transactions. *See*, *e.g.*, September 27, 2018 Separation and Distribution Agreement § 11.09; September 12, 2018 Tax Matters Agreement § 6.15; September 27, 2018 Trademark License Agreement § 9.09; September 27, 2018 Intellectual Property Agreement § 11.08.

62. Both Honeywell and Garrett were Paul Weiss's clients in connection with the Separation and Distribution Agreement ("**Separation Agreement**"). The Separation Agreement provides that "legal and other professional services that have been and will be provided prior to the Distribution (whether by outside counsel, in-house counsel or other legal professionals) have been and will be rendered for the collective benefit of each of the members of the Honeywell Group and the SpinCo Group [Garrett], and each of the members of the Honeywell Group and the

SpinCo Group [Garrett] shall be deemed to be the client with respect to such services for the purposes of asserting all privileges which may be asserted under applicable Law in connection therewith." Separation Agreement § 7.08(a).

3. *Honeywell And Adamczyk Caused Su Ping Lu To Breach Her Fiduciary Duties By Authorizing And Executing The Spin-Off Transactions*

63. Effecting the spin-off of Garrett was a complex process, encompassing many transactions and entities. Su Ping Lu appeared "on behalf of" Garrett on nearly all of these transactions, *see, e.g.*, *infra* ¶¶ 70, 90, and was representing dozens of entities involved in the spin, *see, e.g.*, *supra* ¶ 59.

64. At the very center of this orchestrated process was Adamczyk. The team at Honeywell responsible for executing the spin reported to Adamczyk, who was invested in seeing what was designed to be his legacy through to the finish line. Indeed, Adamczyk assigned some of his most senior and most trusted people at Honeywell to work on the Spin-off Transactions full-time, and he ensured these people gave him "weekly visibility" into the progress being made.

65. Among the agreements executed to implement Adamczyk's plan were the following:

The September 27, 2018 Separation and Distribution Agreement

66. The September 27, 2018 Separation Agreement was executed between Honeywell International and Garrett Motion Inc.

67. The Separation Agreement details the transfer of assets and assumption of liabilities that would occur in connection with the spin-off. It also describes the actions that would be taken to effect the spin-off, such as the formation of subsidiaries and certain internal restructuring actions. Honeywell included in the Separation Agreement a purported release for itself from certain claims arising on or before October 1, 2018 (the "**Distribution Date**"). The release

excludes liabilities provided in or resulting from certain contracts, including the Indemnification Agreement.

68. The Separation Agreement also provides for the distribution of the shares of Garrett's common stock following the Distribution Date.

69. Richard Kent, Vice President, Deputy General Counsel, Finance and Assistant Secretary, signed the Separation Agreement on behalf of Honeywell International.

70. Su Ping Lu, in her newly appointed position as President of Garrett Motion Inc., signed the Separation Agreement on behalf of Garrett Motion Inc.

71. Paul Weiss was listed as notice counsel for both Honeywell International and Garrett Motion Inc.

72. By way of September 4, 2018 Board of Directors Resolutions, Garrett Motion Inc. allegedly found entering into the Separation Agreement to be "advisable and in the best interests of the Company and its sole stockholder." At the time, Su Ping Lu was the sole member of the Board of Directors of Garrett Motion Inc., at the same time she held her many officer positions for Honeywell. This September 4th approval was based on the August 23, 2018 draft of the Separation Agreement—meaning the supposed Board of Garrett Motion Inc. (Su Ping Lu) purportedly authorized the Separation Agreement over three weeks before it was finalized, and based on a draft that was over a month old by the time it was finally signed on September 27, 2018.

The September 12, 2018 Indemnification and Reimbursement Agreement

73. The September 12, 2018 Indemnification and Reimbursement Agreement ("**Indemnification Agreement**" or "**IA**") was executed between Honeywell ASASCO Inc. as "Payor," Honeywell ASASCO 2 Inc. as "Payee," and Honeywell International as "Claim Manager." No Garrett entities were signatories to the Indemnification Agreement. But Garrett ASASCO Inc. subsequently became the Payor/indemnitor by virtue of an assignment agreement

between it and Honeywell ASASCO Inc., executed for both parties by Su Ping Lu. *See infra* ¶¶ 88–92. Honeywell Holdings International Inc. subsequently became "Payee" under the Indemnification Agreement pursuant to an Amended and Restated Contribution Agreement effective as of October 13, 2018. The Indemnification Agreement is attached hereto as Exhibit A.

74. As described below, *see infra* § IV, the Indemnification Agreement purports to: (1) impose onerous covenants and cross defaults on Garrett; (2) require Garrett to make indemnification payments for 90% of Honeywell's legacy Bendix-related asbestos liability, including punitive damages, liability for Honeywell's wrongful conduct, and Honeywell's legal fees and costs associated with managing and defending the thousands of Bendix-related asbestos claims brought against it each year; and (3) give Honeywell full control over management of the asbestos liability despite bearing only at most 10% of the economic risk.

75. Garrett had no choice in entering into the Indemnification Agreement. In short, the Indemnification Agreement was forced upon Garrett as part of a carefully orchestrated scheme to try to create the appearance of propriety but which, in reality, was unlawful and resulted in an agreement that is unenforceable in whole or in part. Under the Indemnification Agreement, Honeywell ASASCO Inc. did not receive any rights, interests, profits, or benefits and Honeywell ASASCO 2 Inc. did not undertake or suffer any forbearance, detriment, losses, or responsibilities. As a party to the Indemnification Agreement, Honeywell ASASCO Inc. received no consideration under the Indemnification Agreement, and the Indemnification Agreement did not specify in writing any consideration to Honeywell ASASCO Inc.

76. Su Ping Lu, as its President, signed the Indemnification Agreement on behalf of Honeywell ASASCO Inc. (the initial Payor/indemnitor). Su Ping Lu, as its President, also signed

the Indemnification Agreement on behalf of Honeywell ASASCO 2 Inc. (the initial Payee/indemnitee). Moreover, upon information and belief, both Honeywell and Garrett were represented by Paul Weiss in connection with executing the Indemnification Agreement and the subsequent assignment agreement.

77. Upon information and belief, Su Ping Lu signed the Indemnification Agreement based on direction from her superior, who in turn received his direction from Adamczyk.

78. Su Ping Lu authorized entry into the Indemnification Agreement without any meaningful chance to assess its terms, and indeed without even having the full agreement in front of her.

79. Specifically, by way of September 4, 2018 Board of Directors Resolutions, the Board of Garrett Motion Inc. found entering into the Indemnification Agreement to be "advisable and in the best interests of the Company and its sole stockholder." At the time, Su Ping Lu was the sole member of the Board of Directors of Garrett Motion Inc. This approval was based on an August 23, 2018 draft of the Indemnification Agreement—meaning the Board (Su Ping Lu) authorized the Indemnification Agreement over a week before it was finalized, and based on a draft that was *almost three weeks old* by the time it was finally signed on September 12.

80. To justify entering into such a one-sided agreement, Su Ping Lu purported to rely on a September 4, 2018 Solvency Opinion issued by Duff & Phelps in authorizing the Indemnification Agreement (the "**Solvency Opinion**").

81. Honeywell engaged Duff & Phelps to purportedly serve as an independent financial advisor to the Board of Directors of Garrett Motion Inc.

82. [redacted]

[redacted]. Duff & Phelps also provided the solvency opinion in connection with the spin-off of AdvanSix Inc. from Honeywell.

83. [redacted]

84. [redacted]

a. [redacted]

b. [redacted]

c. [redacted]

85. [redacted]

86. *The very same day* that the Solvency Opinion was issued, Lu, as Garrett's sole director, signed the September 4, 2018 Board of Directors Resolutions of Garrett Motion Inc. The Resolutions stated that the "members of management of Honeywell have provided their view that the assumptions set forth in the Solvency Opinion are reasonable." Nowhere within these resolutions is there a conclusion that Lu reviewed the Solvency Opinion on behalf of *Garrett* and determined the assumptions to be reasonable.

87. Upon information and belief, Lu had no interaction with Duff & Phelps or ability to ask questions regarding the Solvency Opinion, which was requested by Honeywell.

The September 14, 2018 Contribution and Assignment Agreement

88. Two days after the date of the Indemnification Agreement, Honeywell and Adamczyk caused Su Ping Lu to execute the September 14, 2018 Contribution and Assignment Agreement ("**Assignment Agreement**") between Honeywell ASASCO Inc. and Garrett ASASCO Inc.

89. Under the Assignment Agreement, Garrett ASASCO Inc. purports to assume the obligations of Honeywell ASASCO Inc. as Payor under the Indemnification Agreement. Specifically, the Assignment Agreement provides:

> Honeywell ASASCO hereby irrevocably (i) contributes, assigns, grants, transfers, conveys, sets over completely and forever and delivers, without any reservation of any kind, to Garrett ASASCO, and Garrett ASASCO accepts and assumes, all of Honeywell ASASCO's right, title and interest in and to the Contributed Interests and (ii) contributes, assigns, grants, transfers, conveys, sets over completely and forever and delivers, without any reservation of any kind, to Garrett ASASCO, and Garrett ASASCO accepts and assumes, all of Honeywell ASASCO's right and interest in and to, and all the liabilities arising under, all of Honeywell ASASCO's right and interest in and to, and all the liabilities arising under, in connection with or related to, the Indemnification Agreement and all of Honeywell ASASCO's liabilities and obligations in respect of the Section 965 Liability.

90. Lu purportedly signed the Assignment Agreement on behalf of Honeywell ASASCO Inc. and on behalf of Garrett ASASCO Inc. Su Ping Lu, as Class A Manager, also signed the Assignment Agreement on behalf of Garrett LX I S.à r.l.

91. Upon information and belief, Su Ping Lu signed the Assignment Agreement based on direction from her superior, who in turn received his direction from Adamczyk.

92. By way of September 14, 2018 Board of Directors Resolutions, Lu, as the sole board member of Garrett ASASCO Inc., "authorized, approved, and adopted" the Assignment Agreement.

The September 27, 2018 Credit Agreement

93. In connection with the spin-off, Garrett, at Honeywell's direction and under its control, entered into a Credit Agreement with secured lenders, which provided for $1.254 billion in senior secured financing, and issued approximately $400 million of notes. The proceeds from these transactions were used to make approximately $1.6 billion in cash distributions to Honeywell.

IV. The Indemnification Agreement Is Unlawful, Manifestly One-Sided, And Cannot Be Enforced

A. The Indemnification Agreement Improperly Purports To Grant Honeywell Veto Power Over Key Corporate Decisions Of Garrett Through Onerous Covenants

94. The Indemnification Agreement purports to impose unreasonably onerous affirmative and negative covenants on Garrett that are typically seen in loan agreements. *See* IA, Ex. L arts. II, III. Those covenants include, among other things, covenants prohibiting or restricting Garrett's ability to: (1) engage in significant corporate transactions, such as mergers and acquisitions; (2) incur debt or grant liens; (3) make investments; (4) sell assets; (5) pay dividends to its shareholders; (6) amend material agreements in a way that would be materially adverse to Honeywell; and (7) engage in certain prohibited business activities. *See* IA, Ex. L art. III.

95. Those types of onerous covenants are not customary in indemnification agreements, and certainly not arm's-length indemnification agreements. Companies can refinance debt under loan agreements, and thus maintain appropriate managerial control over key business decisions. For example, a prohibition on M&A transactions in a loan agreement can be effectively disregarded by a borrower so long as it pays off its lenders with the proceeds of the sale. But Honeywell designed the Indemnification Agreement to have no such escape hatch for Garrett.

Honeywell—while ostensibly at arm's length from Garrett and denying any duties to Garrett shareholders—asserts the power to overrule the decisions of Garrett's Board of Directors with respect to any strategic transaction, and Garrett has no choice but to comply.

96. Moreover, unlike the indemnity obligation here, a debt obligation in a loan agreement is not a contingent unknown obligation that is subject to the purported sole discretion of the lender. The covenants in the Indemnification Agreement were uniquely designed to handcuff Garrett to Honeywell so that Garrett would be forced to continue to perpetually pay for Honeywell's asbestos liability.

97. Further, Honeywell retains its control over Garrett almost indefinitely. The Indemnification Agreement purports to impose the affirmative and negative covenants on Garrett "[u]ntil all payment obligations under the Agreement have terminated following the Termination Date." IA, Ex. L. art. III at 8. The Indemnification Agreement has a term of thirty years, *id.* § 3.1, and the few triggers for early termination all lie outside of Garrett's control. Thus, Honeywell's covenants purport to impose a perpetual and inescapable veto right over Garrett's Board of Directors for up to thirty years, even if Honeywell acts in a manner that harms Garrett's shareholders.

98. By purporting to give Honeywell this perpetual veto power over certain key decisions of Garrett's Board of Directors, the Indemnification Agreement violates Delaware law, including section 141(a) of the Delaware General Corporation Law, which provides that the board of directors must manage the business and affairs of the corporation and cannot be contractually prohibited from exercising their fiduciary duties on behalf of shareholders.

B. The Indemnification Agreement Purports To Require Garrett To Pay Based On Bare-Bones Estimates And Statements

99. The Indemnification Agreement, which is governed by New York law, provides for the Payor to indemnify Payee for 90% (net of insurance proceeds) of "Losses": (1) from claims related to Bendix or its affiliates asserted by any person in the United States (the "**US Bendix Obligation**"); (2) from certain environmental claims related to "sites historically owned or operated by [Honeywell's] transportation systems business" (the "**Environmental Obligation**"); and (3) from claims related to Bendix or its affiliates asserted by any person outside of the United States (the "**Ex-US Bendix Obligation**"). *See* IA at 2; *id.* § 1.1, at 14.

100. Honeywell defined "Losses" under the Indemnification Agreement broadly to cover any type of loss or liability, expressly including "punitive" Losses. *Id.* § 1.1, at 10. "Losses" also includes "expenses of whatever kind in respect of Managing, investigating, responding to, remediating, defending, settling, compromising or resolving Claims, including attorneys' fees and costs (including, but not limited to, the costs of experts, consultants, and vendors necessary to defend, compromise and Manage the Claims . . .)." *Id.*

101. Honeywell designed the Indemnification Agreement to generally work as follows: (1) for the US Bendix Obligation, Honeywell provides estimates of the liabilities for which it is seeking indemnity from Garrett for the following year; (2) Garrett pays that estimate, broken up on a quarterly basis and subject to certain adjustments and a cap; (3) Honeywell provides certain quarterly and annual reports on the claims; (4) Garrett annually pays the Environmental Obligation and Ex-US Bendix Obligation (subject to the aforementioned cap); and (5) there is a true-up for each year. The parties' respective obligations are more specifically described as follows.

102. Garrett's payment obligations under the Indemnification Agreement are divided into two sections, representing two different scenarios contingent on whether a "Global Asbestos

Resolution Event" has occurred. A "Global Asbestos Resolution Event" is defined as "any settlement of all or substantially all of the current and future US Bendix Claims in which Losses of Payee Parties in respect of such US Bendix Claims is forever extinguished." *Id.* § 1.1, at 7. As of the filing of this Complaint, Garrett is not aware of the occurrence of a Global Asbestos Resolution Event.

103. Section 2.3 of the Indemnification Agreement outlines Garrett's payment obligations if a Global Asbestos Resolution Event has not yet occurred. Under either Section 2.3 or 2.4 (governing payment obligations if there is a Global Asbestos Resolution Event), Garrett's payment obligations are subject to an annual "Cap" of $175,000,000. *Id.* § 1.1, at 3.

104. Garrett has been fully compliant with all of its obligations under the Indemnification Agreement. *See infra* ¶¶ 110, 114, 119–22, 127. Garrett has reserved its rights in connection with each payment it has made.

1. *The Initial Period*

105. Garrett's indemnity obligations under the Indemnification Agreement are divided between (1) its obligations for the "Initial Period," which was the period from October 1, 2018 (the date of the spin-off) through December 31, 2018, IA § 2.2(a), and (2) its annual obligations thereafter.

106. Pursuant to Section 2.2(a) of the Indemnification Agreement, Honeywell was required to deliver, prior to the Distribution Date, a written estimate of the Estimated Initial US Bendix Obligation for the Initial Period.

107. The "Estimated Initial US Bendix Obligation" is defined as, "in respect of the Initial Period, (i) 90% of the amount of estimated Losses incurred by the Payee Parties in respect of US Bendix Claims, *less* (ii) 90% of the amount of estimated US Bendix Insurance Receipts." *Id.* § 1.1, at 6.

108. The written estimate of the Estimated Initial US Bendix Obligation was delivered to Garrett on October 2, 2018. It consisted, in its entirety, of the following information:

109. Based on this information alone, Garrett was purportedly required to make this multi-million dollar payment. Specifically, pursuant to Section 2.3(a), thirty days after the Distribution Date, October 1, 2018, Garrett was required to pay the Estimated Initial US Bendix Obligation, or the amount of an initial cap if the obligation exceeded the cap.

110. Garrett paid the Estimated Initial US Bendix Obligation on October 31, 2018, subject to a reservation of rights.

111. After the Initial Period, Honeywell was required, under Section 2.2(a) of the Indemnification Agreement, to deliver the Initial Prior Year Aggregate Loss Statement, among other documents, to Garrett reflecting the actual losses sustained in respect of the Initial Period. There was then a "true-up" process, whereby if there was a deficiency between the payment Garrett made based on the estimate and the actual amount in the statement, Garrett was required to pay that deficiency (the "**Initial Deficiency Amount**").

112. Honeywell delivered the Initial Prior Year Aggregate Loss Statement to Garrett on February 28, 2019. It consisted of the following information:

113. Neither the estimate nor the statement provided any claim- or settlement-level information to Garrett on the amounts it was being required to indemnify.

114. Garrett paid the Initial Deficiency Amount on March 20, 2019, subject to a reservation of rights.

2. ***Annual Obligations***

115. Following the Initial Period, the Indemnification Agreement provides for Garrett to make indemnity payments to Honeywell based on bare-bones estimates and statements similar to

the ones provided for the Initial Period. Pursuant to Section 2.2(b) of the Indemnification Agreement, "[b]eginning no later than December 14, 2018, and thereafter on or prior to December 15 of each year, the Claim Manager [Honeywell International] shall deliver to Payor an Estimated Annual US Bendix Loss Statement in respect of the following calendar year."

116. The "Estimated Annual US Bendix Loss Statement" is defined as "an annual written estimate . . . of (i) the amount of Losses that the Claim Manager expects to be incurred by the Payee Parties in respect of US Bendix Claims in the following calendar year and (ii) the amount of US Bendix Insurance Receipts that the Claim Manager expects it or its Affiliates to receive in the following calendar year." IA § 1.1, at 5.

117. On December 17, 2018, Honeywell delivered to Garrett the Estimated Annual US Bendix Loss Statement for 2019. It consisted, in its entirety, of the following information:

118. Section 2.3(c) of the Indemnification Agreement provides for Garrett to make quarterly payments of the US Bendix Obligation based on Honeywell's annual estimates: "On January 30, 2019, and each subsequent date that is thirty (30) days following the start of each Fiscal Quarter until the Termination Date . . . , Payor shall pay Payee an amount equal to one-fourth (1/4) of the Estimated Annual US Bendix Obligation for such year" or $43,750,000, representing the Quarterly Cap in the event the Estimated Annual US Bendix Obligation for the year exceeds the Cap (the "**Quarterly Payment**"). The "Estimated Annual US Bendix

Obligation" is defined as "(1) 90% of the amount of estimated Losses incurred by the Payee parties in respect of US Bendix Claims *less* (ii) 90% of the amount of estimated US Bendix Insurance Receipts, in each case, as such estimate is set forth in the Estimated Annual US Bendix Loss Statement." *Id.* § 1.1, at 6.

119. On January 30, 2019, Garrett made the first Quarterly Payment, subject to a reservation of rights.

120. On April 30, 2019, Garrett made the second Quarterly Payment, subject to a reservation of rights.

121. On July 31, 2019, Garrett made the third Quarterly Payment, subject to a reservation of rights.

122. On October 31, 2019, Garrett made the fourth Quarterly Payment, subject to a reservation of rights.

3. *The Environmental Obligation And Ex-US Bendix Obligation*

123. In addition to having to indemnify Honeywell for U.S. Bendix-related asbestos liability, pursuant to the Indemnification Agreement, Garrett is also required to make payments related to certain environmental liabilities and ex-U.S. Bendix-related asbestos liability.

124. Pursuant to Section 2.2(d) of the Indemnification Agreement, "[o]n November 14, 2019 and each subsequent date that is forty-five (45) days following the end of the third Fiscal Quarter of each calendar year, the Claim Manager shall deliver to Payor the 4Q Reports, updated in respect of the prior three Fiscal Quarters." The 4Q Reports consist of "the Environmental Report and the Ex-US Bendix Report providing information in respect of the first three Fiscal Quarters of such calendar year." *Id.* § 1.1, at 2.

125. On November 22, 2019, eight days after they were due under the Indemnification Agreement, Honeywell delivered the 4Q Reports to Garrett.

126. Section 2.3(d) governs Garrett's payment of the Environmental Obligation and Ex-US Bendix Obligation in respect of the first three quarters of the year: "On December 2, 2019, and each subsequent date that is sixty (60) days following the start of the fourth Fiscal Quarter of each calendar year until the Termination Date . . . , Payor shall pay Payee *the sum of* (i) the Environmental Obligation in respect of the first three quarters of such calendar year, *plus* (ii) the Ex-US Bendix Obligation in respect of the first three quarters of such calendar year," subject to the Cap (the "**4Q Payment**").

127. Following receipt of the 4Q Reports on November 22, 2019, Garrett made the 4Q Payment in the amount of [redacted].

4. *The True-Up*

128. Since Garrett's payments are based on *estimated* liability, there is a true-up built into the Indemnification Agreement. If the actual losses exceed the estimate, Garrett must pay an additional amount based on the actual losses.

129. Pursuant to Section 2.2(e) of the Indemnification Agreement, "[o]n March 2, 2020, and on or before March 1 of each year thereafter until the Termination Date, the Claim Manager shall deliver to Payor (i) the Prior Year Aggregate Loss Statement and (ii) the True-Up Reports." The "True-Up Reports" consist of "the Environmental Report and the Ex-US Bendix Report providing information in respect of such calendar year." *Id.* § 1.1, at 15. According to Exhibit I of the Indemnification Agreement, which includes a form of the Prior Year Aggregate Loss Statement, the Prior Year Aggregate Loss Statement will contain only the following information:

Date Prepared: [____]

Prior Year Aggregate Loss Statement in respect of 20[___]	
Losses incurred in respect of US Bendix Claims	€[_____]
90% of Losses incurred in respect of US Bendix Claims	€[_____]
US Bendix Insurance Receipts incurred	€[_____]
Less: 90% of US Bendix Insurance Receipts incurred	€[_____]
US Bendix Obligation	€[_____]
Losses incurred in respect of Ex-US Bendix Claims	€[_____]
90% of Losses incurred in respect of Ex-US Bendix Claims	€[_____]
Ex-US Bendix Insurance Receipts incurred	€[_____]
Less: 90% of Ex-US Bendix Insurance Receipts incurred	€[_____]
Plus: Ex-US Bendix Obligation	€[_____]
Losses incurred in respect of Environmental Claims	€[_____]
90% of Losses incurred in respect of Environmental Claims	€[_____]
Environmental Insurance Receipts incurred	€[_____]
Less: 90% of Environmental Insurance Receipts incurred	€[_____]
Affirmative Environmental Litigation Proceeds incurred	€[_____]
Less: 90% of Affirmative Environmental Litigation Proceeds incurred	€[_____]
Property Sales Proceeds incurred	€[_____]
Less: 90% of Property Sales Proceeds incurred	€[_____]
Co-Contribution Proceeds incurred	€[_____]
Less: 90% of Co-Contribution Proceeds incurred	€[_____]
Plus: Environmental Obligation	€[_____]
Plus: any Disallowance Payment	€[_____]
Aggregate Annual Obligation	€[_____]
Estimated Annual US Bendix Obligation + 4Q Payment	€[_____] + €[_____]
Less: [Estimated Annual US Bendix Obligation + 4Q Payment][Cap][2]	€[_____]
[Deficiency Amount][Overage Amount]	€[_____][(_____)]
[Less: Overage Credit][3]	€[_____]
[Annual Cash Deficiency Payment][Overage Credit]	€[_____][(_____)]

130. Finally, Section 2.3(e) governs the annual true-up of estimated payments based on the actual annual losses.

5. *Honeywell's Additional Information Sharing Obligations*

131. Outside of the estimates and statements prepared exclusively as the basis for payments from Garrett, the Indemnification Agreement also requires Honeywell to provide Garrett with a small number of high-level reports throughout the year on the asbestos liability.

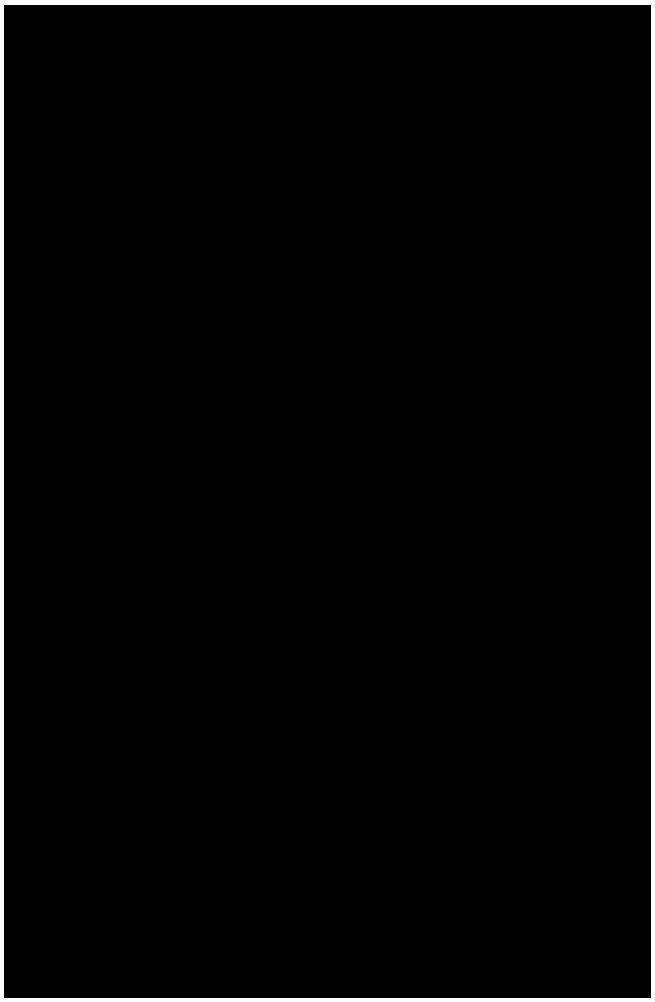
132. Pursuant to Section 2.2(c) of the Indemnification Agreement, "[o]n March 29, 2019 and each subsequent date that is forty-five (45) days following the end of each Fiscal Quarter, the

Claim Manager shall deliver to Payor the US Bendix Reports, updated in respect of the prior Fiscal Quarter."

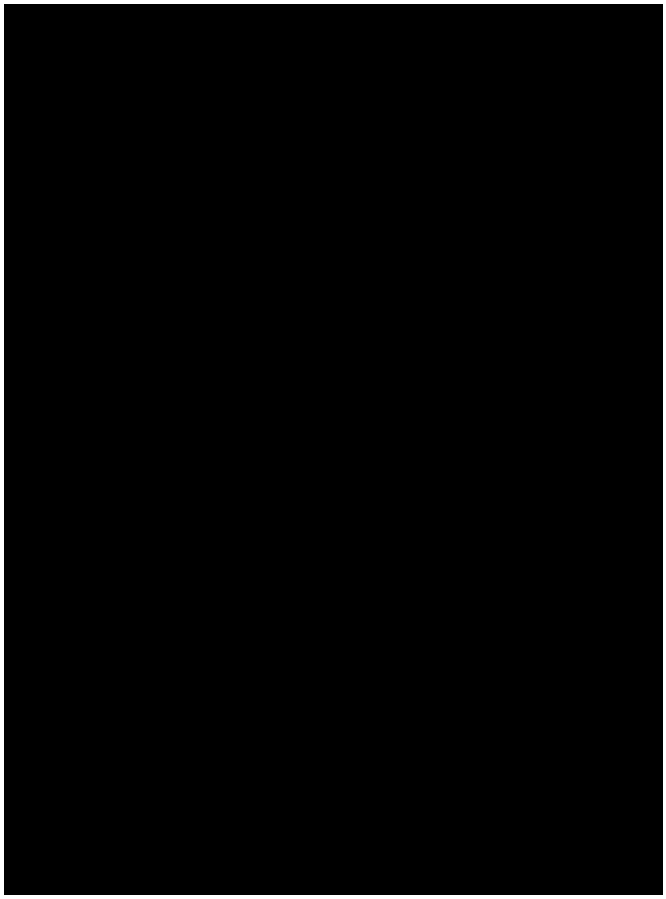
133. The "US Bendix Reports" are defined as "the Claims Activity Report, the Resolution Value Experience Report, the Interim Liability and Defense Costs Report, and the Annual and Year-to-Date Liability and Defense Costs Report." *Id.* § 1.1, at 16.

134. On February 2, 2019, Garrett received the US Bendix Reports for 4Q 2018.

135. The Claims Activity Report for 4Q 2018 consisted of the following:



136. The Resolution Value Experience Report for 4Q 2018 consisted of the following:



137. The Interim Liability and Defense Costs Report for 4Q 2018 consisted of the following:

138. The Annual and Year-to-Date Liability and Defense Costs Report for 4Q 2018 consisted of the following:

139. By way of further agreement between the parties, rather than receiving these reports quarterly, Garrett has received them on a monthly basis since March 2019. These monthly reports take the same format and provide the same high-level information as those for 4Q 2018.

140. Garrett has virtually none of the information underlying these high-level reports. Garrett cannot identify actual settlement amounts for actual claims. Garrett cannot verify that amounts are actually indemnifiable, or even verify that there has not simply been a computational error. Indeed, Garrett does not even know what claims are being resolved and for how much. This information "black-hole" was intentionally created by Honeywell as part of the scheme it orchestrated.

C. The Indemnification Agreement Purports To Put Nearly All Of The Economic Risk Of The Asbestos Liability On Garrett, While Giving Honeywell Full Control Over The Liability

141. Although the Payor is responsible for 90% of the liability and expenses purportedly covered by the Indemnification Agreement, Honeywell gave itself the right to be "solely responsible for" managing the claims in its "sole discretion." IA § 2.9. Garrett has no ability under the Indemnification Agreement to manage, control, or in any way influence the management or resolution of the claims for which it foots nearly the entire bill. Indeed, Section 2.9 specifically states that Honeywell "shall have no obligation to . . . consult, seek the consent of, cooperate with or otherwise inform . . . Payor or any of its Affiliates or their respective Representatives regarding the investigation, defense, compromise, settlement or resolution of any Claim."

142. Honeywell's "Management" of the claims includes, "with respect to any Claim, the defense, settlement and payment of such Claim, including the management of insurance claims relating thereto (and the defense, payment and receipt of amounts in respect thereof)." *Id.* § 1.1, at 10. In other words, Honeywell designed the Indemnification Agreement to require Garrett to write checks for amounts Honeywell can purportedly agree to in settlements with Garrett having no right to participate in the settlements or even receive notice of them. The Indemnification Agreement even purports to require Garrett to refer any claim brought directly against *Garrett* to Honeywell so that Honeywell can manage the claim, while Garrett continues to foot the bill. In other words, Garrett does not even have control over claims directly against it.

143. Honeywell's "Management" of the claims resulted in aggregate defense costs of [redacted]. Upon information and belief, the defense costs Garrett is being forced to pay include not only the costs of defending cases, but also coordinating Honeywell's national asbestos docket and costs of scientific studies unrelated to particular claims against Honeywell. Honeywell gives substantial discretion to its lead asbestos counsel, McDermott Will & Emery ("**McDermott**"), which serves as Honeywell's National Coordinating Counsel, running the asbestos docket and supervising other law firms representing Honeywell.

144. Under the Indemnification Agreement, Garrett pays 90% of the Bendix asbestos costs, including defense costs. While this superficially leaves Honeywell responsible for 10% of the costs, Honeywell engineered another Indemnification Agreement provision to more than cover its 10% share. Under the tax provision of the Indemnification Agreement, upon information and belief, Honeywell deducts from its own income taxes the 90% portion of Losses that Garrett pays. See *id.* § 2.17 ("Honeywell shall be the only person entitled to claim deductions for U.S. federal,

state or local income tax purposes in respect of any Losses relating to Claims."). This deduction allows Honeywell to reduce its income taxes based on the amount that Garrett pays, even though Honeywell is not economically responsible for this amount. Because the tax benefit to Honeywell is greater than its superficial 10% share of the costs, Honeywell lacks any economic incentive to reduce the Bendix asbestos costs, including defense costs.

145. Indeed, Honeywell's lack of incentive is driven by the fact that the indemnity obligation is substantially more material to Garrett than it is to Honeywell.

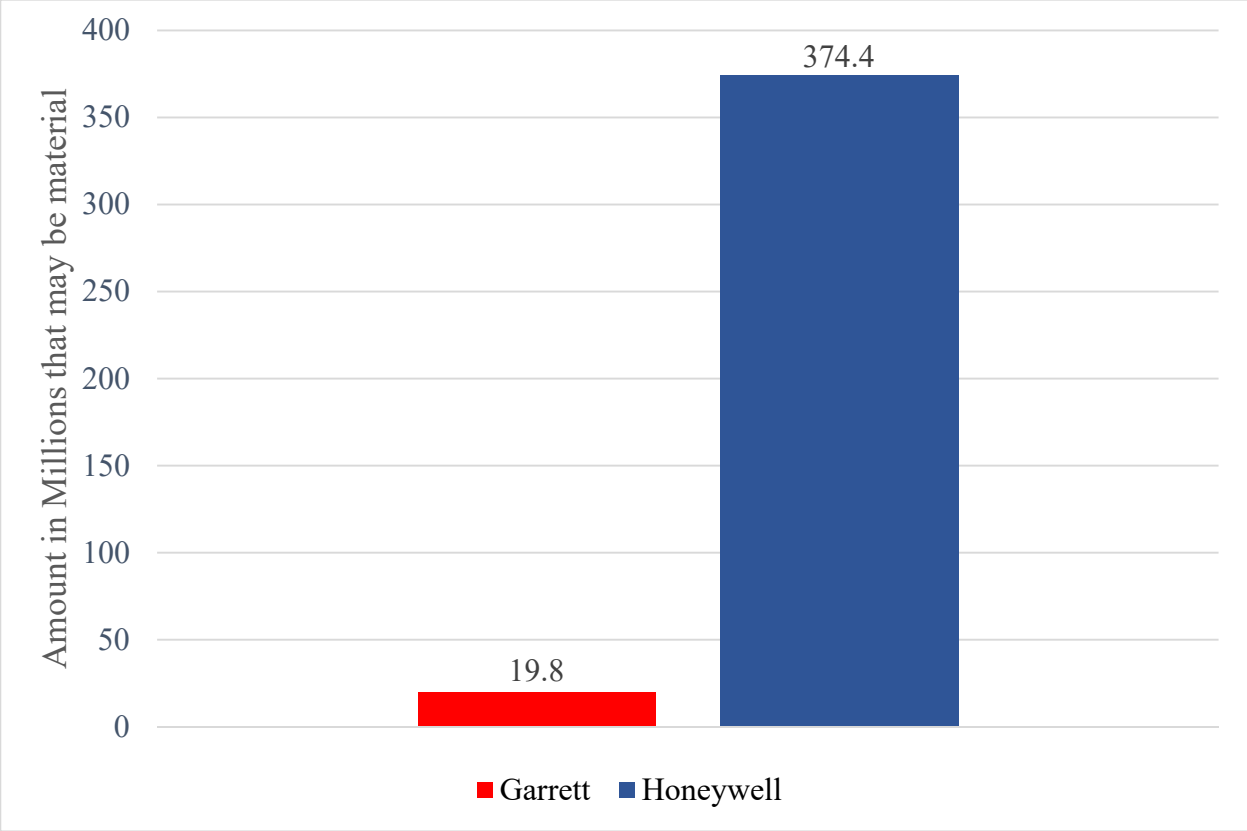
146. Garrett's recorded liability for its indemnity obligation as of December 31, 2018 is 59.1% of its total assets and 26.5% of its total liabilities; Honeywell's recorded Bendix-related asbestos liability (before considering Garrett's future indemnity payments) as of December 31, 2018 accounts for only 2.5% of its total assets and 3.7% of its total liabilities.[13]

	Garrett	**Honeywell**
Bendix Liability	$1,244 M	$1,453 M
Total Assets	$2,104 M	$57,773 M
% of Total Assets	**59.1%**	**2.5%**
Total Liabilities 12/31/2018	$4,697 M	$39,415 M
% of Total Liabilities	**26.5%**	**3.7%**

147. Materiality for Honeywell is worlds apart from Garrett's materiality. For example, using five percent of each company's 2018 pre-tax income as an estimated proxy for materiality

[13] The listed "Bendix Liability" amounts are net of insurance recoveries and do not include defense costs.

results in a $19.8 million materiality estimate for Garrett and a $374.4 million materiality estimate for Honeywell. Based on these estimates, a 23% adjustment to the Bendix liability would be required for Honeywell to reach its materiality estimate, while only a 1.6% adjustment would be required for Garrett to reach its materiality estimate.



148. Given Honeywell's lack of incentive, Garrett has sought information from Honeywell regarding the reasonableness of the legal defense spend, including information regarding the law firms involved, the cases or claims to which legal fees and costs are expensed, and underlying information regarding the fees for experts, consultants, vendors, and any other non-lawyer expenses in connection with Honeywell's defense of asbestos claims. Garrett has not been provided with case-specific information on the legal defense spend.

149. Nor does Garrett have any input or even insight into the individual cases, the management of those claims, or the "scientific studies" it is being charged for.

V. Honeywell Materially Breached The Indemnification Agreement

150. The Indemnification Agreement also imposes an additional information-sharing obligation on Honeywell. Honeywell is obligated to provide information to Garrett necessary for Garrett to satisfy its obligations as an SEC registrant. Section 2.2(i) provides that, "[u]pon reasonable request, the Claim Manager shall provide such additional information from time to time as may be necessary for Payor to satisfy its obligations as an SEC registrant."

151. The estimates, statements, and reports described above are insufficient to satisfy Garrett's obligations as an SEC registrant. These documents provide high-level, aggregate information that gives Garrett no insight into the underlying claims.

152. Garrett must assess and estimate the Bendix-related asbestos liability that may be subject to indemnification under the Indemnification Agreement. Honeywell withheld information that Garrett needed to accomplish that task.

153. Given the complexities of accounting for environmental and asbestos liability, companies with such liability are subject to various standards under generally accepted accounting principles ("**GAAP**") and SEC rules and regulations in how they estimate and account for such liability. Even though Garrett is an indemnifying party and is not primarily responsible for the payment of asbestos-related claims, Garrett must still assess its potential losses under the Indemnification Agreement in order to comply with GAAP and SEC rules and regulations. And since such losses are contingent upon Honeywell's losses, Garrett cannot independently assess its exposure without first independently assessing Honeywell's exposure. As the indemnity obligation hinges on Honeywell's environmental and Bendix-related asbestos liability, Garrett is subject to these rules, regulations, and standards.

154. Remarkably, Honeywell claimed in a January 31, 2019 letter that "[t]he procedures and reports established in Sections 2.2(a)–(e) of the Agreement," *see supra* § IV.B, were

"sufficient to allow Garrett to accomplish [its] goals." But Garrett's compliance with its obligations as an SEC registrant is not a "goal"—it is an obligation under the federal securities laws, with serious consequences for non-compliance. And Honeywell has a contractual obligation to Garrett under Section 2.2(i) of the Indemnification Agreement to provide Garrett with information it needs as an SEC registrant. Contrary to Honeywell's assertions, the 2.2(a)–(e) reports and procedures are insufficient. This is because the reports and procedures in Sections 2.2(a)–(e) do not provide for the provision of *any* underlying data.

155. [redacted], one of Honeywell's advisors, is tasked by Honeywell with estimating the value of future liabilities for alleged asbestos-related personal injury claims asserted against Bendix. [redacted]; *see generally infra* ¶ 172.

156. The various reports, estimates, and statements that Honeywell is required to provide under Section 2.2(a)-(e) do not allow Garrett to estimate and account for *future* liability. For instance, the Claims Activity Report, *see supra* ¶ 135, provides only the number of claims by year and quarter, broken down by type of disease and whether the claims are "new claims," "settled claims," "dismissed claims," "other changes to pending," or "ending pending." There is no individual information provided on these claims, other than the associated disease and case status, which are tallied in the aggregate.

157. Additionally, the Resolution Value Experience Report, *see supra* ¶ 136, provides only aggregate values and average settlements—there is no breakdown of the settlements or resolution amounts per claim.

158. The Interim, Liability and Defense Costs Reports, *see supra* ¶ 137, also only provide interim and year-end "indemnity spend," "defense spend," and total.

159. These reports do not allow Garrett to estimate and account for *future* liability without any underlying data. Even if these reports provided more granular information, this information, provided for only a quarterly or yearly period, is grossly insufficient for Garrett to estimate thirty years of liability under the Indemnification Agreement.

160. Under GAAP, Garrett must accrue a liability for its indemnity obligation that is based on both the probability of unfavorable outcomes from asserted and unasserted claims and whether the loss can be reasonably estimated. These are complex determinations that must be made upon the consideration of a host of factors.

161. For instance, with respect to asserted litigation, claims, and assessments, to determine whether a liability must be accrued and/or disclosed, Financial Accounting Standards Board ("**FASB**") Accounting Standards Codification ("**ASC**") 450-20-55-10 requires that the following facts be considered: the period of the underlying cause, the degree of probability of an unfavorable outcome, and the ability to make a reasonable estimate of the amount of that loss. Pursuant to ASC 450-20-55-12, the following factors should be considered in determining the probability of an asserted liability resulting in an unfavorable outcome: the nature of the litigation, the progress of the case, the opinions or view of legal counsel and other advisors, the experience of the entity in similar cases, the experience of other entities, and the decision as to how the entity plans to respond to the lawsuit, claim, or assessment.

162. Garrett must also account for losses arising from unasserted claims. Pursuant to ASC 450-20-55-14, Garrett must determine the degree of probability that a suit may be filed or claim asserted and the possibility of an unfavorable outcome.

163. As discussed in Staff Accounting Bulletin Topic 5.Y, the SEC staff has voiced its belief that "product and environmental remediation liabilities typically are of such significance that detailed disclosures regarding the judgments and assumptions underlying the recognition and measurement of the liabilities are necessary to prevent the financial statements from being misleading and to inform readers fully regarding the range of reasonably possible outcomes that could have a material effect on the registrant's financial condition, results of operations, or liquidity." Among the possible disclosures that may be necessary are circumstances affecting the reliability and precision of loss estimates, the extent to which unasserted claims are reflected in any accrual or may affect the magnitude of the contingency, disclosure of the nature and terms of cost-sharing arrangements with other potentially responsible parties, and the time frame over which the accrued or presently unrecognized amounts may be paid out.

164. Honeywell maintains complete control over its historical and current Bendix-related asbestos claims data. There are no meaningful avenues Garrett can pursue to obtain this information other than through Honeywell.

165. The indemnity obligation is one of the biggest liabilities on Garrett's balance sheet, yet Honeywell withheld information that was crucial for Garrett to fulfill its obligations as an SEC registrant. The Indemnification Agreement recognizes these obligations, and requires Honeywell to provide sufficient information to Garrett. *See supra* ¶ 150. As discussed below, Honeywell's refusal to do so was a material breach that caused Garrett to disclose a material weakness in internal control over financial reporting in its SEC filings. *See infra* ¶¶ 177–79.

A. Garrett's Information Requests To Honeywell

166. Given the insufficiency of the Section 2.2(a)−(e) reports, Garrett has had to invoke its information rights under Section 2.2(i) of the Indemnification Agreement, which requires Honeywell to "provide such additional information from time to time as may be necessary for Payor to satisfy its obligations as an SEC registrant."

167. Garrett sought information from Honeywell (1) to properly account for its indemnification obligations and (2) to ensure that its estimates account for only those amounts under the Indemnification Agreement that are properly indemnifiable under New York law.

168. On January 22, 2019, Garrett sought certain preliminary categories of information from Honeywell that Garrett determined it needed to assist in curing its material weakness and to ensure that any payments under the Indemnification Agreement represent only amounts that are properly indemnifiable under New York law.

169. For instance, Garrett sought "the information and analysis that forms the basis for Honeywell's publicly-disclosed estimates of its Bendix-related asbestos liability" and the basis, including underlying data, for the Estimated Initial US Bendix Obligation and the Estimated Annual US Bendix Loss Statement for 2019.

170. Relatedly, Garrett also requested certain specific documents that were not given to Garrett after the spin-off, including schedules to certain of the parties' Spin-off Transactions, certain Garrett Board of Directors resolutions, and the Assignment Agreement. Nonetheless, Garrett continued to make payments and comply with its purported obligations under the Indemnification Agreement, subject to a reservation of rights.

171. On January 31, 2019, Honeywell responded to Garrett's letter, indicating that it was "Honeywell's view" that "[t]he procedures and reports established in Sections 2.2(a)–(e) of the

Agreement," *see supra* § IV.B, are "sufficient to allow Garrett to accomplish" its "goals." Honeywell further communicated its belief that the information Garrett requested was not "necessary for Garrett to validate its reserves or comply with its obligation as an SEC registrant." Of course, what information Garrett needs to comply with its obligations under the federal securities laws is for Garrett to determine, not Honeywell.

172. Nevertheless, Honeywell indicated it was "prepared to direct its outside counsel at McDermott, Will & Emery to send Garrett [redacted]

173. On February 2, 2019, McDermott provided [redacted],[14] [redacted].

174. This information provided only *aggregate* data, requiring Garrett to rely on the accuracy and completeness of undisclosed data and the analyses of professionals who do not work for Garrett, who Garrett had not retained, and who did not have authority to provide the underlying data to Garrett.

175. On March 8, 2019, Garrett sent another letter to Honeywell, repeating the January 22, 2019 information requests that remained outstanding and adding a limited number of additional requests that asked for clarification or further information stemming from the materials that were

[14] [redacted]

provided in response to the January 22, 2019 information requests. Garrett also reiterated its need for certain essential documents like the Assignment Agreement.

176. On March 15, 2019, over *seven weeks* after Garrett's January 22, 2019 letter, Honeywell provided the September 14, 2018 Assignment Agreement. Honeywell finally provided this essential document to Garrett nearly *two months* after it was requested on January 22, 2019, nearly *six months* after it should have been provided to Garrett at the time of the spin-off, and *over six months* after it was purportedly executed by Garrett. This was representative of the months Garrett spent seeking basic information from Honeywell, and Honeywell's bad faith refusal to cooperate. No other responsive documents were provided by Honeywell at that time.

B. Honeywell's Refusal To Provide Information Caused Garrett To Disclose Another Material Weakness In March 2019

177. Garrett was forced to disclose another material weakness in its 2018 10-K as a result of the information vacuum Honeywell created.

178. Garrett's March 1, 2019 10-K stated, in pertinent part:

> In the course of preparing this Annual Report on Form 10-K and our Consolidated and Combined Financial Statements for the year ended December 31, 2018, our management determined that there is a material weakness in our internal control over financial reporting relating to the supporting evidence for our liability to Honeywell under the Indemnification and Reimbursement Agreement. Specifically, we were unable to independently verify the accuracy of certain information Honeywell provided to us that we used to calculate the amount of our Indemnification Liability, including information provided in Honeywell's actuary report and the amounts of settlement values and insurance receivables. For example, Honeywell did not provide us with sufficient information to make an independent assessment of the probable outcome of the underlying asbestos proceedings and whether certain insurance receivables are recoverable.

179. Honeywell put Garrett in the position of needing to report a material weakness by not providing Garrett with the information it needed, in material breach of Section 2.2(i) of the Indemnification Agreement.

180. The material weakness prompted a renewed negotiation over information sharing, and on March 19, 2019, the parties met in New York to discuss Garrett's need for information and the steps Honeywell would take to provide Garrett with that information. This meeting was incredibly important to Garrett—so much so that its President and CEO, Olivier Rabiller, and several other executives, flew in from Switzerland to attend. Also in attendance were Garrett's former Chief Financial Officer, Alessandro Gili; General Counsel and Corporate Secretary, Jérôme Maironi; Corporate Controller, Russell James; and former Deputy General Counsel, Brendan O'Connor. In scheduling the meeting, Honeywell represented that Adamczyk and its CFO Greg Lewis would attend. Neither showed up to the meeting, illustrating yet again that Honeywell was not serious about its obligations under the Indemnification Agreement.

181. At that meeting, Honeywell told Garrett that Honeywell had provided all of the information that Garrett needs and all of the information that Garrett is entitled to. At this point, some of the confusion as to why Honeywell did not understand Garrett's need for this information became clear—[redacted]

182. An additional meeting was held with Honeywell on March 27, 2019. Garrett met with Honeywell as well as representatives from McDermott, [redacted] But again, this was just a façade of cooperation. Honeywell still would not provide Garrett with the information that Garrett needed to independently validate and estimate the asbestos liability, which Garrett had been requesting for months.

183. On April 9, 2019, Honeywell reaffirmed its position that "it already has provided Garrett with all documents and information to which Garrett is entitled under the Indemnification and Reimbursement Agreement . . . , including under section 2.2(i) of the Agreement," despite not providing Garrett with *any* underlying data. Honeywell remained steadfast as ever in its attempt to withhold information from Garrett.

184. Thereafter, Garrett initiated the Indemnification Agreement's Section 4.3 dispute resolution process, *see infra* ¶ 283, which triggered another wave of correspondence between the parties in Garrett's efforts to obtain information on the indemnity obligation.

C. Exchange of Information-Sharing Proposals

185. On April 30, 2019, Paul Weiss sent Garrett "a proposed process" for the provision of information to Garrett.[15] Garrett, finding this proposal wholly insufficient, sent a revised proposal to Honeywell on May 19, 2019, which both adjusted the process and added additional data fields Garrett required. This revised proposal was followed by a conference call on May 24, 2019 between Honeywell and Garrett, and their respective legal counsel and advisors, in which the proposals were discussed in-depth, and Garrett's need for all of the information requested was thoroughly explained to Honeywell.

186. The May 19, 2019 proposal requested a range of information. For instance, Garrett requested data on Bendix-related asbestos claims filed since January 1, 2004, including the following (among other) data fields:

- Claimant date of birth
- Plaintiff firm

[15] Honeywell engaged Paul Weiss to represent it adverse to Garrett when Garrett raised issues with the Indemnification Agreement in late 2018 and early 2019. Paul Weiss did so, notwithstanding that it was counsel to both Garrett and Honeywell in connection with the execution of the Indemnification Agreement. Paul Weiss subsequently withdrew, but only after Garrett was forced to so insist.

- Jurisdiction
- Disease
- Status
- Settlement amount
- Settlement date
- Insurance recoveries on the claim
- Legal expenses for the claim

187. Garrett also made specific requests regarding legal expenses and insurance receipts, as well as requests for information on Honeywell's specific databases and procedures. This range of information is necessary as a consequence of the many detailed reporting requirements imposed on a public company that must account for and estimate the costs associated with extensive asbestos liability. *See supra* ¶¶ 160–63.

188. Despite Garrett fully explaining its need for all of the information requested just weeks earlier, Honeywell's June 19, 2019 revised proposal removed a vast amount of the information Garrett asked for and needs, and *again* asked for an explanation from Garrett as to why it needed the information requested, as if the May 24 meeting never happened.

189. In the interest of obtaining at least a subset of the information Garrett had been trying to obtain for months, and trying to expeditiously resolve Garrett's material weakness, Garrett sent Honeywell a July 15, 2019 letter accepting the information Honeywell agreed to provide in its June 19, 2019 letter, but reserving its right to continue its requests for the additional information it was entitled to and still requires.

190. On September 4, 2019, Garrett received access to a subset of agreed-upon information from Honeywell's June 19, 2019 letter. This information—received nearly a year after the spin—gave Garrett its first look at the underlying data for the Bendix-related asbestos claims. Although this was an important step forward after Honeywell's months of stone-walling,

this information was still not adequate to allow Garrett to independently estimate the indemnity obligation.

191. This information was deficient in both substance and the format in which it was provided.

192. Honeywell purported to provide data on claims [redacted]. However, this dataset was not complete. [redacted]

193. The dataset also did not provide enough historical data, which is necessary to determine the appropriate calibration period for estimating liability and the appropriate forecast horizon—both of which are necessary for Garrett to estimate future liability. Garrett requested data going back to 2004.

194. [redacted]

195. Honeywell also provided data in such a way that severely restricted Garrett's ability to review, use, and analyze the data. The data was provided in the form of three Excel files, which prohibit any analysis of the data from being saved or retained. Data cannot be copied or imported into any software programs that could allow for analyses of large datasets. [redacted]

196. Even ignoring the additional data fields and information Garrett requested that Honeywell refused to provide, the dataset was deficient.

197. [redacted] This data contains the same restrictions as the initial load of data, substantially restricting Garrett's ability to review, use, and analyze the data. *See supra* ¶ 195. [redacted].

198. Despite Honeywell's refusal to provide Garrett with the information it needed, in material breach of the Indemnification Agreement, and despite Honeywell's failure to adequately establish its right to indemnification, Garrett has made all required payments under the Indemnification Agreement, while reserving all of its rights and remedies.

VI. Honeywell Is Not Entitled To Indemnification

199. Under New York law, Honeywell must establish its right to indemnification for each expense or settlement for which it seeks indemnification. That includes, among other things, establishing that: (1) each settlement for which Honeywell seeks indemnification was reasonable and entered into in good faith; (2) Honeywell would or could have been liable for the claims underlying each settlement for which it seeks indemnification; (3) the fees and expenses that Honeywell incurred and for which it seeks indemnification are reasonable and on account of indemnifiable claims; and (4) no amounts for which Honeywell seeks indemnification are attributable to non-indemnifiable claims, including claims for punitive damages or claims arising from Honeywell's intentional misconduct. Honeywell has not and cannot meet those requirements.

200. Since the spin, Honeywell has never satisfied its obligation to establish its right to indemnification. By way of example, Garrett was expected to pay the Estimated Initial US Bendix Obligation based solely on the following information:

[redacted]

201. Under the terms of the Indemnification Agreement, Garrett was required to pay [redacted] based *entirely* on an estimated loss amount and an estimated amount for insurance receipts. When payment was required thirty days after the Distribution Date, Garrett had *no information on this* [redacted] *payment*. Nor did Garrett have any information on what claims were encompassed in the loss estimate—indeed, this information did not exist because the claims within the estimate had not even been settled yet. The [redacted] estimate was entirely made-up by Honeywell through some process entirely unknown to Garrett.

202. The actual initial obligation was verified based solely on the following information:

203. Unlike the Estimated Initial US Bendix Obligation, actual claims presumably underlie the values included in the Initial Prior Year Aggregate Loss Statement. Despite this, Garrett *still* had no insight into how these amounts were calculated. Honeywell did not identify a single claim that was paid out to reach the [redacted] that Garrett was responsible for under the Indemnification Agreement. Garrett had no opportunity or ability to ensure that these amounts were indemnifiable, that settlements were reasonable and made in good faith, that Honeywell was actually liable for these claims, or that these claims actually existed. Indeed, Garrett could not even check for simple computational errors. Nonetheless, Garrett was expected to pay.

204. Further, as to Garrett's quarterly payments in 2019, Garrett was provided with the following information:

Again, under the terms of the Indemnification Agreement, Garrett was required to pay [redacted] in quarterly installments based almost *entirely* on an estimated loss amount and an estimated amount for insurance receipts. Again, when this was received, Garrett had no insight or information on how these estimates were calculated. The [redacted] estimate was entirely made-up by Honeywell through a process entirely unknown to Garrett.

205. The additional reports that Honeywell provides under the Indemnification Agreement, *see supra* ¶¶ 131–39, similarly do not establish Honeywell's right to indemnification, as they give no underlying information and no opportunity to verify that Honeywell is seeking indemnification for only indemnifiable amounts and for settlements that are reasonable, entered into in good faith, and based on Honeywell's actual liability.

A. Honeywell Impermissibly Seeks Indemnification For Amounts Attributable To Punitive Damages And Its Own Intentional Misconduct

206. Under New York law, Garrett cannot be required to indemnify Honeywell for any amount attributable to punitive damages or Honeywell's own intentional misconduct. That includes settlement amounts attributable to claims for punitive damages and Honeywell's intentional misconduct, and attorneys' fees and related costs incurred in defending against or settling such claims.

207. Honeywell has refused to provide sufficient information to show that it is not seeking indemnification from Garrett for amounts attributable to punitive damages or Honeywell's intentional misconduct.

208. Honeywell's sole argument has been the conclusory assertion that it does not pay amounts for punitive damages in settlements. This assertion is belied by Honeywell's litigation history, its own judicial admissions, the realities of asbestos litigation and settlements, and the near universal acknowledgment that punitive damages drive settlements and increase the ultimate settlement amount.

209. Honeywell must show that it is requesting indemnification only for indemnifiable amounts for each and every claim for which it is seeking indemnification. To the extent any claim is settled in avoidance of both compensatory and punitive damages, Honeywell must allocate the settlement amount between the portion attributable to avoidance of compensatory damage and the portion attributable to the avoidance of punitive damages.

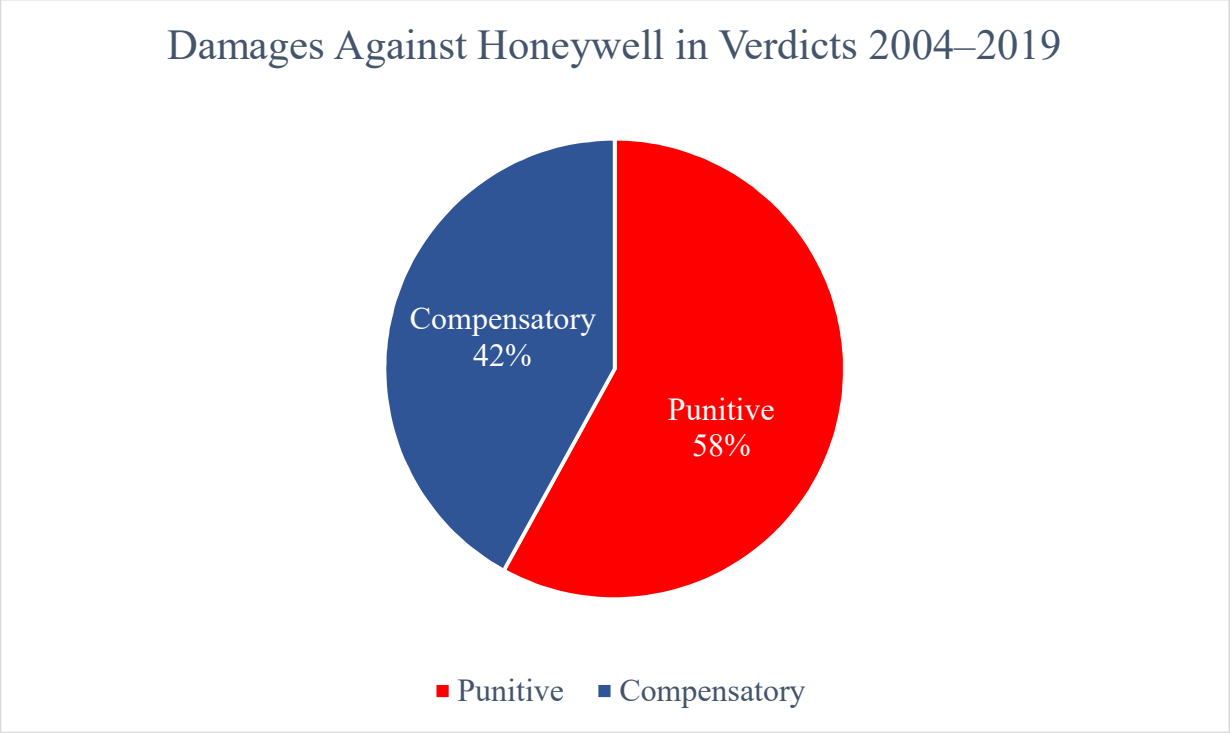
1. *Honeywell Has Significant Exposure To Punitive Damages And Damages For Intentional Misconduct*

210. Honeywell has been forthcoming about its significant exposure to punitive damages. For instance, in *In re New York City Asbestos Litigation*, Honeywell admitted that the "threats are real" for punitive damages: "While most asbestos cases in fact settle, staggering punitive damages verdicts have occasionally been awarded in cases that have gone to trial."[16]

211. Honeywell's litigation history also reveals significant exposure to punitive damages. Since 2004, Honeywell has lost six times in non-conspiracy cases taken to trial,

[16] Joint Brief for Defendants-Appellants, *In re N.Y.C. Asbestos Litig.*, 2015 WL 13664501, at *33 (N.Y. App. Div. 1st Dep't Mar. 6, 2015); Joint Brief for Defendants-Appellants Cargill, Inc., et al., *In re N.Y.C. Asbestos Litig.*, 2015 WL 8777569 (N.Y. App. Div. 1st Dep't. Mar. 6, 2015) (Honeywell joinder).

excluding reversals.[17] In the six cases in which Honeywell lost, punitive damages represented 58% of the jury verdicts.[18]



(a) Jury Verdicts Awarding Punitive Damages Against Honeywell

212. Honeywell settles the vast majority of its Bendix-related asbestos claims—they rarely go to trial. For instance, according to data provided by Honeywell and publicly-available information on verdicts:

a. In 2014, Honeywell settled or dismissed [redacted] claims. Upon information and belief, only 3 went to verdict.

[17] The "conspiracy" cases are unique, and Honeywell admits that it is rarely named in conspiracy cases and when it has been named, Honeywell has been able to have them promptly dismissed.

[18] Given Garrett's lack of information, *see supra* § V, these verdicts were pulled from publicly available data and may not represent the full universe of Honeywell verdicts.

b. In 2015, Honeywell settled or dismissed [redacted] claims. Upon information and belief, only 2 went to verdict.

c. In 2016, Honeywell settled or dismissed [redacted] claims. Upon information and belief, only 2 went to verdict.

d. In 2017, Honeywell settled or dismissed [redacted] claims. Upon information and belief, only 1 went to verdict.

e. In 2018, Honeywell settled or dismissed [redacted] claims. Upon information and belief, only 1 went to verdict.

213. Depicted graphically, it is inescapable that the number of cases Honeywell tries to verdict is dwarfed by the number of claims it settles or dismisses each year.

214. Those cases that have gone to trial show that Honeywell has material exposure to punitive damages. Indeed, as depicted above, *see supra* ¶ 211, of the six non-conspiracy cases that

have gone to verdict since 2004 (and have not been reversed) in which Honeywell lost, punitive damages represent 58% of the total damages.

215. Two recent cases specifically illustrate Honeywell's continued exposure to punitive damages arising from its Bendix-related asbestos liability.

216. In *Phillips v. Honeywell International Inc.*, Honeywell was sued individually and as the successor-in-interest to Bendix for asbestos-related personal injuries in California state court. The jury found Honeywell liable in 2014 for (1) negligence based on Bendix's negligence in manufacturing asbestos-containing brakes, and (2) strict liability based on the substantial risks posed by Bendix products and Bendix's failure to warn consumers.

217. The jury awarded $3.5 million in punitive damages, finding clear and convincing evidence that "one or more of Bendix's officers, directors or managing agents acted with malice or oppression in the conduct upon which the finding of liability was based." The punitive award surpassed the $2.4 million compensatory damages award by over a million dollars.

218. In 2017, the appellate court found there was "substantial evidence in the record to support the jury's finding of malice."

219. In *Thomas v. Ford Motor Co.*, on January 29, 2019 in the Eastern District of Arkansas, a jury found Honeywell "supplied a product in a defective condition," i.e., the brakes that exposed the decedent to asbestos, rendering it unreasonably dangerous and causing the decedent's death.

220. As to punitive damages, the jury found, "by clear and convincing evidence, that Honeywell International, Inc. knew or should have known that its conduct would naturally and probably result in injury and that it continued such conduct in reckless disregard of the

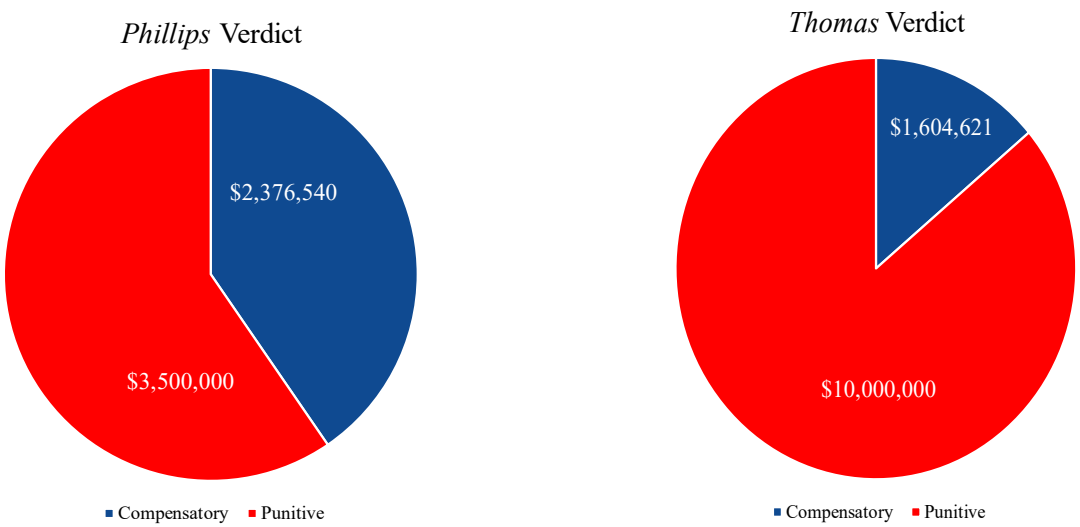
consequences of its actions." The jury awarded the plaintiff $10 million in punitive damages against Honeywell.

221. Immediately prior to the jury's decision, Honeywell reached a [redacted] settlement with the plaintiff, but the jury's verdict was still released publicly. Honeywell ultimately paid [redacted] to settle *Thomas*. It cannot be credibly argued that no portion of the settlement amount was attributable to the risk of a punitive damages award which, as evidenced by the jury's $10 million punitive damages assessment, was substantial. Indeed, that punitive award dwarfed Honeywell's share of the compensatory damages verdict, which would have amounted to approximately $1.6 million.

222. The jury's recent award of substantial punitive damages provides an anchoring figure that impacts Honeywell's negotiations with asbestos plaintiffs going forward. Both Honeywell and asbestos plaintiffs know that Honeywell is vulnerable to punitive damage awards, and this verdict provides substantial leverage for plaintiffs in settlement negotiations, as it proves Honeywell's exposure. *See infra* § VI.A.2(b).

223. Moreover, on September 23, 2019, [redacted]. While Honeywell's settlements contain a punitive component in every case in which a punitive damages claim is alleged, its settlement in *Thomas* is the clearest example of Honeywell settling for punitive damages, and requiring Garrett to indemnify it for the settlement amount in clear contravention of New York law.

224. Looking at the *Phillips* and *Thomas* verdicts, it is clear that the punitive components of those verdicts exceed the compensatory components:



225. While there have only been two recent jury verdicts awarding punitive damages against Honeywell, this is a function of Honeywell's litigation strategy of not trying many cases, *see supra* ¶¶ 212–13, and not a reflection of Honeywell's limited risk for punitive damages. Indeed, "there could be very few judgments at trial in which punitive damages are awarded, yet settlement amounts might reflect a substantial component of punitive damages."[19]

(b) Events That Increased Punitive Risk [redacted]

226. Since 2014, there have been three significant events that have increased Honeywell's punitive risk: (1) the end of the deferment of punitive damages in New York City, (2) a $3.5 million punitive damage award against Honeywell, affirmed on appeal (*Phillips*), *see supra* ¶¶ 217–18, and (3) a $10 million punitive damage verdict against Honeywell (*Thomas*), *see supra* ¶ 220. While Garrett does not have any 2019 data on Honeywell's settlements to assess the impact of the January 2019 $10 million punitive damage verdict, [redacted]

[19] A. Mitchell Polinsky, *Are Punitive Damages Really Insignificant, Predictable, and Rational? A Comment on Eisenberg et al.*, 26 J. Legal Stud. 663, 666 (1997).

[redacted]

[redacted]

(i) The End Of Deferment In The New York City Asbestos Litigation

227. In 1996, the judge overseeing the New York City Asbestos Litigation ("**NYCAL**") docket entered a case management order deferring all punitive damages in NYCAL cases indefinitely.

228. In 2013, plaintiffs involved in the NYCAL moved to modify the case management order to allow punitive damages. This motion was opposed by defendants, who sought to continue the deferral.

229. In April 2014, the judge overseeing the NYCAL docket granted the plaintiffs' motion, enabling plaintiffs to seek punitive damages again. Defendants appealed the decision.

230. In July 2015, the Appellate Division, First Department found the NYCAL judge had the power to end the deferral of punitive damages.

231. Litigators in the asbestos litigation field at the 2019 New York City Asbestos Litigation Conference recognized that this "changed the risk profile" for defendants.

232. [redacted]

[redacted]

233. [redacted]

(ii) The *Phillips* Judgment

234. The *Phillips* court entered the $3.5 million punitive damages judgment in September 2014 in California state court. [redacted]

[redacted]

235. [redacted]

236. These events—both the *Phillips* verdict and the end of deferment of punitive damages in the NYCAL—were significant events, the former for Honeywell specifically and the latter for all defendants in asbestos litigation with punitive exposure in New York. [redacted]

(c) Complaints Filed In The Indemnification Period Seek Punitive Damages And Assert Intentional Misconduct Claims

237. Despite requests, Honeywell has not provided Garrett with claimant-level information for claims filed against Honeywell for which Honeywell has sought or will be seeking indemnification. Consequently, Garrett has undertaken an independent search to identify this information. Publicly available complaints filed against Honeywell illustrate that Honeywell faces intentional misconduct claims and claims for punitive damages for Bendix-related asbestos claims.

238. In 2018 and 2019, the following non-exhaustive list of cases were filed in or removed to federal court, bringing asbestos-related claims against Honeywell individually and/or as successor-in-interest to Bendix, accompanied by a claim for punitive damages and/or claims for intentional misconduct:

a. *Toy v. Honeywell International Inc.*, No. 19-336 (N.D. Cal.) seeks punitive damages against Honeywell as successor-in-interest to Bendix. Compl. at 48. The plaintiffs in *Toy* also bring a fraud and concealment claim against Honeywell. *Id.* ¶¶ 77–85 Fraud is an intentional tort, for which damages cannot be indemnified.

b. *Papineau v. Brake Supply Co.*, No. 18-168 (W.D. Ky.) seeks punitive damages against Honeywell as successor-in-interest to Bendix. Compl. ¶ 43 ("The aforesaid actions of the Defendants constitute intentional, malicious, willful and wanton conduct and gross negligence making them liable to the Plaintiffs for punitive damages.").

c. *Hunt v. Public Service Co. of New Mexico*, No. 18-1069 (D.N.M.) seeks punitive damages against Honeywell individually and as successor-in-

interest to Bendix. Compl. ¶¶ 80–85 (seeking punitive damages against all defendants).

d. *Cope v. A.I.I. Acquisitions, LLC*, No. 19-728 (M.D. Pa.) seeks punitive damages against Honeywell, formerly known as Bendix.

e. *Haney v. Brenntag North America, Inc.*, No. 19-42 (D. Mont.) seeks punitive damages against Honeywell as successor-in-interest to Bendix.

f. *Houston v. 3M Company*, 19-cv-157 (E.D. Cal.) seeks punitive damages against Honeywell as successor-in-interest to Bendix. The plaintiff in *Houston* also brings a fraud claim against Honeywell. Fraud is an intentional tort, for which damages cannot be indemnified.

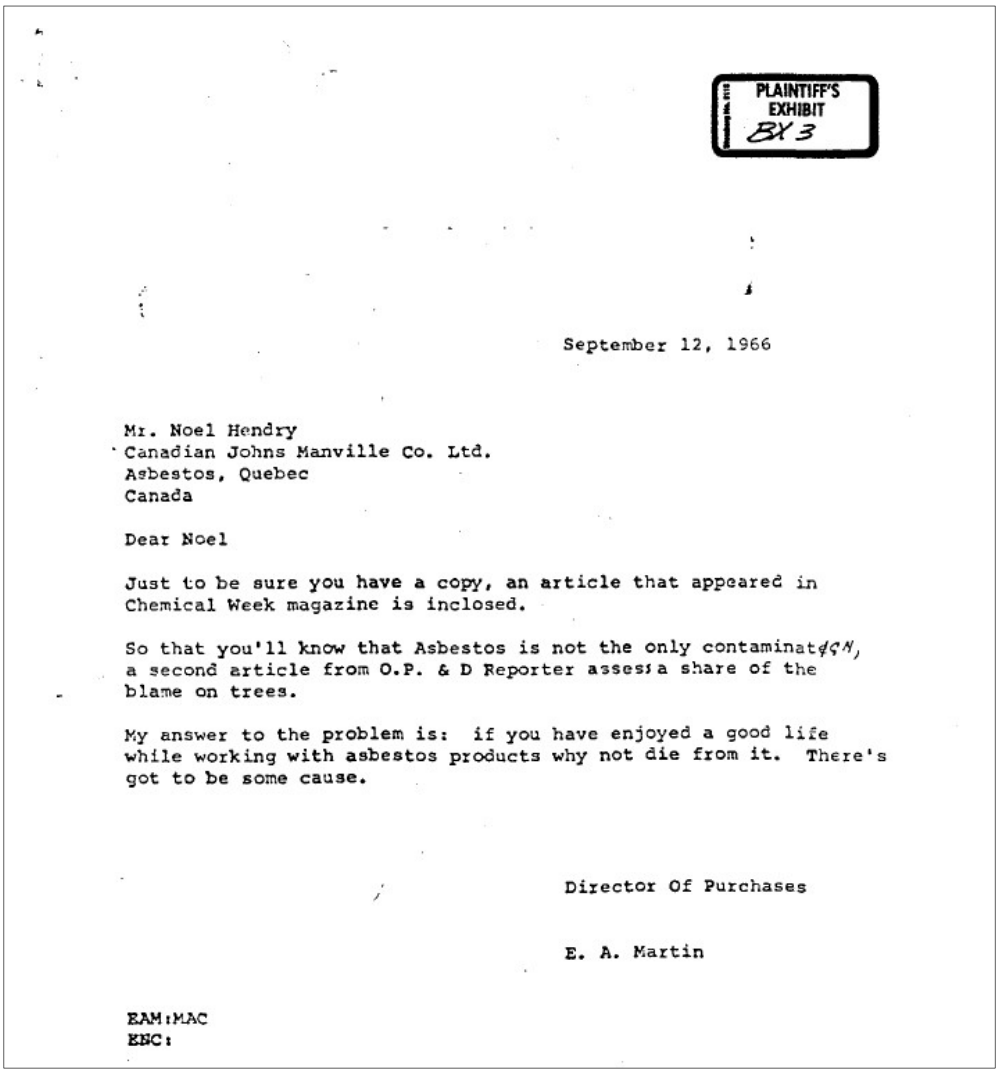
(d) Honeywell's Historical Use Of Asbestos Validates Its Exposure And Substantial Risk For Intentional Misconduct And Punitive Damage Claims

239. The prevalence of punitive damages claims against Honeywell is unsurprising, given the publicly-available information used by plaintiffs to show malice and otherwise egregious conduct, including knowledge of the dangers of asbestos for decades before taking sufficient action. Indeed, Honeywell continued manufacturing and selling brakes with asbestos for over *six decades*—from 1939 to 2001—well after courts have found sufficient evidence that Honeywell could have become aware of the fatal dangers of asbestos.[20]

240. In what one California court called a "now-infamous letter," E.A. Martin, director of purchases at Bendix's Troy facility, wrote in September 1966 to Noel Hendry at Canadian Johns Manville, the company that supplied asbestos to Bendix: "My answer to the problem is: if you

[20] *Phillips v. Honeywell Int'l Inc.*, No. F070761 (Cal. Ct. App. Mar. 17, 2017) (unpublished portion).

have enjoyed a good life while working with asbestos products why not die from it. There's got to be some cause." The letter speaks for itself:



PLAINTIFF'S EXHIBIT BX 3

September 12, 1966

Mr. Noel Hendry
Canadian Johns Manville Co. Ltd.
Asbestos, Quebec
Canada

Dear Noel

Just to be sure you have a copy, an article that appeared in Chemical Week magazine is inclosed.

So that you'll know that Asbestos is not the only contaminat[illegible], a second article from O.P. & D Reporter assess a share of the blame on trees.

My answer to the problem is: if you have enjoyed a good life while working with asbestos products why not die from it. There's got to be some cause.

Director Of Purchases

E. A. Martin

EAM:MAC
ENC:

241. This letter has been admitted into evidence by courts. *See, e.g.*, *Cook v. Borg Warner Corp.*, No. 1122-cc-9667 (Mo. Cir. Ct. Mar. 13, 2013) ("The Court hereby denies Defendant Honeywell International's Motion In Limine to Preclude the 'Martin Letter' or, in the Alternative, Motion in Limine to Redact Portions of the 'Martin Letter.'"); *Franklin v. Gen. Motors Corp.*, No. 04-CI-274 (Ky. Cir. Ct. Aug. 9, 2007) ("The Court overrules Defendant, Honeywell's Motion in Limine to Exclude the Letter of E.A. Martin. The Court finds that this

document is admissible at the trial of this matter."). Honeywell undoubtedly faces a substantial risk of punitive damages in every case in which this letter is admitted.

242. The *Phillips* court specifically allowed this letter to be admitted into evidence. *Phillips v. Honeywell Int'l Inc.*, 217 Cal. Rptr. 3d 147, 165 (Ct. App. 2017) (finding "the trial court did not abuse its discretion by admitting the Martin letter into evidence").

243. The *Thomas* court, while allowing the letter into evidence, required redaction of the last paragraph—the most supportive of a punitive damage award. *See Thomas v. Ford Motor Co.*, 14-cv-522 (E.D. Ark. Jan. 4, 2019), Dkt. 480. *Despite this*, the jury *still* found sufficient evidence to support a $10 million punitive damage award.

244. Plaintiffs also rely on an October 1966 internal memorandum from E.A. Martin to other Bendix officials. *See, e.g.*, First Amended Complaint, *Rigor v. 3M Co.*, BC660976, 2017 WL 9288766 (Cal. Super. Ct. Aug. 8, 2017); Complaint, *Bell v. BorgWarner Morse Tec, Inc.*, No. 18-1057 (D. Md.). The memorandum states: "A copy of page 7, Chemical Week Magazine of October 8, 1966, discloses a couple of letters refuting the article appearing in the same periodical on Sept. 10, 1966. This may help to quiet the fear that was aroused by Dr. Selikoff's stigmatic report on 'Lung Cancer from Asbestos.' The Purchasing Department has a file on the entire subject including the Canadian Health Department report of May 30, 1949."

245. Honeywell has admitted under oath that it was on notice of the dangers of the type of asbestos found in Bendix's brakes in 1968.[21] However, courts have found indicia that Honeywell could have been aware of the dangers of using asbestos long before 1968. *See Phillips*

[21] *Phillips v. Honeywell Int'l Inc.*, 217 Cal. Rptr. 3d 147, 158 (Ct. App. 2017) (recounting testimony from Honeywell's corporate representative, stating: "I can tell you that in 1968 [Bendix] did receive this letter [from Johns-Manville], and I believe that's what put [Bendix] on notice." (alterations in original)).

v. Honeywell Int'l Inc., No. F070761 (Cal. Ct. App. Mar. 17, 2017) (unpublished portion) ("The jury could have found that Bendix became aware of the *probable* dangerous consequences . . . well before 1968."); *Schwartz v. Honeywell Int'l, Inc.*, 66 N.E.3d 118, 134 (Ohio Ct. App. 2016) ("There was documentary evidence in the case showing Bendix's awareness of the reports of dangers of asbestos in the 1960s . . . ."), *rev'd on other grounds*, 102 N.E.3d 477 (Ohio 2018). Preliminarily, both the September 12, 1966 letter from E.A. Martin, *see supra* ¶ 240, and the October 1966 internal memorandum, *see supra* ¶ 244, predate 1968. Even before 1966, Honeywell received a 1960 article establishing that mesothelioma was caused by asbestos exposure and a 1965 article which confirmed the increased incidence of mesothelioma in family members exposed to asbestos dust on workers' clothing. Even as far back as the 1940s, Bendix implemented dust control measures at its Troy facility, was subject to 1956 regulations in New York setting a maximum allowable concentration of airborne asbestos, and began giving employees at the Troy facility annual chest x-rays in the 1950s. These facts have been used by plaintiffs and considered by courts to show Honeywell's awareness of the dangers of asbestos. *See, e.g.*, *Phillips v. Honeywell Int'l Inc.*, No. F070761 (Cal. Ct. App. Mar. 17, 2017) (unpublished portion); Complaint, *Bell v. BorgWarner Morse Tec, Inc.*, No. 18-1057 (D. Md.).

246. Much of Honeywell's knowledge of the dangers of asbestos came from Bendix's membership in the Friction Materials Standard Institute (FMSI) since 1949 and the Asbestos Information Association of North America (AIA) since the early 1970s. These organizations discussed the dangers of asbestos at various meetings and conferences, and also disseminated materials to their memberships discussing asbestos.

247. While Honeywell admits to being on notice of the dangers of asbestos in 1968, and could have been on notice long before, Bendix did not include any warnings on its asbestos-laden

products until 1973. In *Phillips*, the court found "a jury reasonably could have found that Bendix acted despicably by not placing warnings on its product packaging until 1973, five years after it become aware of the probable dangerous consequences of using [asbestos]." *Phillips v. Honeywell Int'l Inc.*, No. F070761 (Cal. Ct. App. Mar. 17, 2017) (unpublished portion).

248. More egregious, Honeywell's asbestos supplier, Johns Manville, sent Bendix a warning in 1968—five years before it provided any warning on its own products. Johns Manville's warning also included advice on protective devices. Bendix did not provide such information until 1986.[22]

249. Even after issuing mediocre warnings, which often did not meet end-users, Honeywell continued to manufacture all of its brake products with twenty-five to fifty percent asbestos. It was not until 1983—ten years after it began issuing warnings and *fifteen* years after Honeywell admits it had notice of the dangers of asbestos—that Honeywell began offering asbestos-free brakes. Even then, Honeywell continued to manufacture and sell brakes that contained asbestos for nearly two more decades, until 2001.

250. The recent complaints filed against Honeywell which bring a claim for punitive damages contain compelling allegations for a punitive damage award in the plaintiff's favor.[23] By way of example, in *Rigor v. 3M Company*, BC660976, 2017 WL 9288766 (Cal. Super. Ct. Aug.

[22] Plaintiff's Consolidated Response in Opposition to Honeywell International, Inc.'s Motions for Summary Judgment, *Thomas v. Ford Motor Co.*, No. 17-522 (E.D. Ark. Oct. 4, 2018).

[23] Garrett has been unable to determine the full scope of Honeywell's exposure to punitive damage claims because of the information vacuum it has been placed in by Honeywell. Garrett is limited by Honeywell's pro-settlement litigation strategy, *see supra* ¶¶ 212–13, [redacted], *see infra* ¶¶ 258–66, and the difficult nature of searching through hundreds of complaints across all jurisdictions, particularly in state courts where case dockets are often not as easily accessible. These difficulties only compound Garrett's need for information as an indemnitee under New York law.

8, 2017), the plaintiff pleaded the following allegations, among others, in its First Amended Complaint against Honeywell:

a. "On or about September 12, 1966, E.A. Martin, who was then Director of Purchases at Bendix's Troy, New York, plant, sent a letter to Noel Hendry, a Sales Manager of Canadian Johns Manville Company, an asbestos mining company in Asbestos, Quebec and Defendant's supplier of asbestos fiber, and referred to a report linking lung cancer to asbestos. The letter stated, 'My answer to the problem is: if you have enjoyed a good life while working with asbestos products why not die from it.'"

b. "On or about October 18, 1966, E.A. Martin, the Director of Purchasing sent an internal memorandum entitled 'ASBESTOS Health Report' to BENDIX'S senior management . . . [which] demonstrates Defendant's awareness of Dr. Selikoffs work and his 'stigmatic report on "lung cancer" from asbestos.' The letter also notes that [Defendant's] purchasing department has a file on the entire subject, including the Canadian Health Department report of May 30, 1949, 'when the subject was previously incited.'"

c. "Th[e] Bendix file produced by Bendix's attorney who admitted the documents contained in the file are genuine and authentic corporate documents, also contains several news articles linking asbestos to cancer. Two articles in particular, from the Times-Union and Journal News, both dated October 6, 1964, note 'medical specialists pointed a strong finger of suspicions today at asbestos as a cause not only of lung cancer, but also of

another extremely rare form of fatal human cancer. This cancer, known as mesothelioma, involves the lining of the abdominal and chest cavities.' The articles assert that 'dust from products containing asbestos' might be exposing people [to] risk of cancers and that asbestos is used 'not only for insulation but as flooring material, in automotive brake shoes, and in many other applications.' Another article reports that work with asbestos has been 'held [a] cancer factor.'"

d. "Bendix admits it has been [a] member of the Friction Materials Standard Institute ('FMSI') since 1949. . . . An Internal Memo from Defendant indicates that documents were received from FMSI. . . . FMSI organized an Asbestos Study Committee sometime in 1970 and held meetings on asbestos in Vail, Colorado, in 1973. F. E. Messier attended for Bendix Corporation."

e. "In November 1972, Bendix received correspondence from FMSI expressing concern that those working with Bendix brake linings could be exposed to asbestos concentrations above the OSHA standard. 'When customers of yours drill linings, chamfer linings, cut linings, or grind linings, they may very well raise the asbestos concentrations in the atmosphere to above the OSHA standard . . . Therefore, if a customer of yours started drilling or grinding without having proper dust collectors, he would probably be in violation of the OSHA standard. It therefore becomes your responsibility, as the supplier of the brake lining, to warn the customer of this possibility."

f. "In an internal memorandum, dated August 21, 1973, Bendix conceded 'the fact that ingested or inhaled asbestos is harmful to health is not questioned. What Drs. Selikoff and Lewisson are both saying, in effect, is that the safe exposure levels, if any, are not known.'"

g. "Defendant did not put language on its products warning that using them could cause the user terminal cancer; Bendix did not conduct any studies to determine whether brake repair workers followed warnings, nor did Bendix publish a work practice manual or warning regarding the hazards of brake work, or test to determine asbestos exposure levels for brake repairmen. Finally, Bendix performed no analysis on the effectiveness of the warning on its packaging. Bendix did not even tell the people working with their products that they contained asbestos."

251. These complaints pose real threats, as Honeywell has decades of adverse rulings against it that reflect its punitive risk. For instance, the court in *Schwartz v. Honeywell International Inc.*, 66 N.E.3d 118 (Ohio Ct. App. 2016), *rev'd on other grounds*, 102 N.E.3d 477 (Ohio 2018) found the "plaintiffs presented substantial competent evidence" and that there was sufficient evidence presented to let the question of whether "Bendix manifested a flagrant disregard of the safety of persons who might be harmed by the product" go to a jury. *Id.* at 135; *see also Walter v. A.W. Chesterton Co.*, No. 34-2012-124037, 2012 WL 7985772 (Cal. Super. Ct. Nov. 14, 2012) ("Plaintiffs have demonstrated that there is a triable issue of material fact as to whether Honeywell consciously disregarded customer safety by not providing warnings on its brake products."). As noted, Honeywell has already been found liable for punitive damages, and the facts supporting punitive damages are not unique to any particular case.

2. The Threat Of Punitive Damages Drives Honeywell's Settlements With Asbestos Plaintiffs And Increases Settlement Value

(a) Honeywell's Own Judicial Admissions Recognize The Threat Of Punitive Damages Increases Settlements

252. Honeywell's conclusory assertion that it does not pay money in settlements for punitive damages is contradicted by its own judicial admissions. In a 2015 brief, Honeywell and other asbestos defendants argued against a case management order that would allow plaintiffs to seek punitive damages in the NYCAL. In that brief, Honeywell and the other defendants acknowledged (and indeed asserted in support of their argument) that:

- "Fears of punitive verdicts undoubtedly will inflate settlement values . . . ."
- "In truth, the end of the deferral of punitive damages in New York will only tilt the settlement advantage even further in plaintiffs' favor, enabling them to inflate settlement demands and thereby cause additional depletion of the resources available for compensation of future claimants."
- "It is undeniable that 'as a general proposition the specter of a large punitive damages award is a very powerful factor in encouraging settlements of entire cases.'"
- "When defendants face punitive damages, as when they face class action lawsuits, they are forced to 'stake their companies on the outcome of a single jury trial, or be forced by fear of the risk of bankruptcy to settle even if they have no legal liability . . . .' These threats are real. While most asbestos cases in fact settle, staggering punitive damages verdicts have occasionally been awarded in cases that have gone to trial."[24]

(b) There Is Universal Acknowledgment That Settlements Include Punitive Exposure

253. Consistent with Honeywell's above admissions, it is well recognized that the threat of punitive damages drives settlements and increases settlement values.

[24] Joint Brief for Defendants-Appellants, *In re N.Y.C. Asbestos Litig.*, 2015 WL 13664501, at *32, 32–33, 33, 34 (N.Y. App. Div. 1st Dep't Mar. 6, 2015) (citation omitted); Joint Brief for Defendants-Appellants Cargill, Inc., et al., *In re N.Y.C. Asbestos Litig.*, 2015 WL 8777569 (N.Y. App. Div. 1st Dep't. Mar. 6, 2015) (Honeywell joinder).

254. Courts and legal commentators widely acknowledge that punitive awards, and the accompanying risk of future punitive awards, are a driver of large settlement amounts.

- "[T]he potential for punitive awards is a weighty factor in settlement negotiations and inevitably results in a larger settlement agreement than would ordinarily be obtained."[25]

- "It is obvious and indisputable that a punitive damages claim increases the magnitude of the ultimate settlement and, indeed, affects the entire settlement process, increasing the likelihood of litigation."[26]

- "The mere threat of multiple punitive damages awards causes defendants to factor such a possibility into the settlement process. This, in turn, unnecessarily escalates the settlement amount . . . ."[27]

- "Ex post of the commencement of a mass tort action, the risk of suffering a crushing punitive damages penalty gives rise to so-called 'blackmail settlements' in which defendants pay more than the relevant mass tort claims are reasonably worth. . . . Mass tort plaintiffs are able to exploit risks of crushing punitive awards and managers' risk averseness, extracting excessive, socially-wasteful blackmail settlements."[28]

- "The genuine threat of a punitive award . . . can inflate settlement values . . . ."[29]

- "[P]unitive damages have a higher marginal effect on settlements than compensatory damages, since being liable for punitive damages sends a particularly strong signal that the defendant is vulnerable to asbestos claims."[30]

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[25] *Dunn v. HOVIC*, 1 F.3d 1371, 1398 (3d Cir. 1993) (Weis, J., dissenting).

[26] George L. Priest, *Punitive Damages Reform: The Case of Alabama*, 56 La. L. Rev. 825, 830 (1996); *accord* Mark A. Behrens & Barry M. Parsons, *Responsible Public Policy Demands an End to the Hemorrhaging Effect of Punitive Damages in Asbestos Cases*, 6 Tex. Rev. L. & Pol. 137, 144 (2001) (noting the "*in terrorem* effect of punitive damages on cases that settle").

[27] Jim Gash, *Solving the Multiple Punishments Problem: A Call for a National Punitive Damages Registry*, 99 Nw. U. L. Rev. 1613, 1627 (2005) (footnote omitted).

[28] James A. Henderson, Jr., *The Impropriety of Punitive Damages in Mass Torts*, 52 Ga. L. Rev. 723, 747 (2018).

[29] Mark A. Behrens & Cary Silverman, *Punitive Damages in Asbestos Personal Injury Litigation: The Basis for Deferral Remains Sound*, 8 Rutgers J.L. Pub. Pol'y 50, 70 (2011).

[30] Michelle J. White, *Understanding the Asbestos Crisis* 20 (2003).

- "[W]hen there is a smoking gun, the threat of a punitive damages award constitutes valuable leverage in settlement negotiations."[31]

- "Although punitive damage payouts in asbestos cases are proportionately very small, the potential threat of such assessments remains a significant factor in the litigation and settlement calculus."[32]

- "[W]hile punitive damages may make headlines in a relatively few cases that proceed to final verdict, they actually exert most of their influence by casting a shadow on the much larger number of civil cases that settle before that point. The shadow of a punitive demand enhances the case's settlement value . . . ."[33]

- "The plaintiffs' bar is well aware of the impact of [a punitive damage] claim and uses it as leverage to demand exponentially inflated values in litigated matters."[34]

- "The potential for punitive damages in many jurisdictions has . . . raised the settlement value of claims."[35]

- "[T]he demand itself, which always involves initially an open-ended amount potentially many times larger than the actual damages at issue, operates as a major factor in increasing the settlement value of a case and in some instances giving strength to what otherwise would be a barely viable allegation."[36]

- "Plaintiffs may threaten a punitive damages claim to force a greater settlement as the possible exposure is enhanced . . . ."[37]

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[31] Michael Rustad, *In Defense of Punitive Damages in Products Liability: Testing Tort Anecdotes with Empirical Data*, 78 Iowa L. Rev. 1, 43 (1992).

[32] David G. Owen, *A Punitive Damages Overview: Functions, Problems and Reform*, 39 Villanova L. Rev. 363, 394 n.108 (1994).

[33] Walter Olson, *More Punitive to the People!*, Manhattan Inst. (June 2004).

[34] Joseph J. Welter, *Punitive Damages in Mass Tort Cases: Discovery and Trial Strategies*, InsideCounsel (Aug. 10, 2015).

[35] Victor E. Schwartz et al., *Congress Should Act to Resolve the National Asbestos Crisis: The Basis in Law and Public Policy for Meaningful Progress*, 44 S. Tex. L. Rev. 839, 877 (2003).

[36] John H. Sullivan, *New State Data Confirms Runaway Abuse of Punitive Damages*, Legal Backgrounder (Feb. 7, 1997).

[37] Wilson Elser, *Punitive Damages Review* 3 (2014).

- "Perhaps some portion of the sums paid in settlements reflect an anticipation of the likelihood and extent of punitive damages that might have been awarded . . . ."[38]

255. At the 2019 New York Asbestos Litigation Conference, plaintiffs' lawyers made clear that the punitive aspect of a case is factored into settlements. Specifically, members of the plaintiffs' bar stated that punitive damages are "an effective variable to get cases resolved" and are useful when a plaintiff is not given a settlement offer that is commensurate with what the case is worth.

256. Not only is the risk of large punitive damage awards itself a substantial driver of settlements, but defendants facing this risk also have the additional concern for "adverse publicity over revelation of their misconduct," which for a punitive damage award to stand, likely has to be flagrant and malicious, further making the punitive damages risk a catalyst for inflated settlements.[39] A punitive damage award also signals to potential plaintiffs that Honeywell is "vulnerable to asbestos claims," thus having the potential to result in more filings against Honeywell.[40]

257. This catalyst makes sense, given both the substantial sums that have historically been awarded to plaintiffs in asbestos litigation, *see, e.g.*, *infra* ¶ 262, and the unpredictability of juries in calculating such damages.[41]

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[38] *Simpson v. Pittsburgh Corning Corp.*, 901 F.2d 277, 282 (2d Cir. 1990).

[39] *See* Owen, *supra* note 32, at 397 n.120.

[40] *See* White, *supra* note 30, at 20 ("It is not surprising that punitive damages have a higher marginal effect on settlements than compensatory damages, since being liable for punitive damages sends a particularly strong signal that the defendant is vulnerable to asbestos claims.").

[41] *See* Behrens & Silverman, *supra* note 29, at 70 ("[D]efendants that proceed to trial under such circumstances [where punitive damage awards are allowed] play a game of Russian roulette.").

(c) [redacted]

258. [redacted]

259. [redacted]

260. [redacted]

261. [redacted]

262. Significantly, Madison County has one of the most prolific asbestos dockets in the country, described by Griffin Bell, former Attorney General of the United States and Circuit Judge

for the Fifth Circuit, as "a Mecca for asbestos lawsuits."[42] Legal commentators similarly refer to the county as "a national clearinghouse for asbestos malignancy claims"[43] and "the epicenter of asbestos litigation."[44] Despite the volume of cases, the pre-trial and trial procedures in place in Madison County are favorable to plaintiffs, and create significant leverage for plaintiffs to obtain substantial settlement amounts. Madison County also has a history of exorbitant punitive damage awards in asbestos cases. For instance, in the early 2000s, three cases resulted in substantial punitive damages awards for the plaintiffs: $200 million in 2003, $7 million in 2001, and $25 million in 2000. "These verdicts stand as a bold warning to defendants: settle or face the risk of a potentially enormous verdict . . . ."[45] "The impetus to settle consistently allows plaintiffs to obtain higher settlement values in Madison County than for comparable claims in other jurisdictions."[46]

263. [redacted].[47]

[42] Victor E. Schwartz et al., *Asbestos Litigation in Madison County, Illinois: The Challenge Ahead*, 16 Wash. U. J.L. & Pol'y 235, 243 (2004).

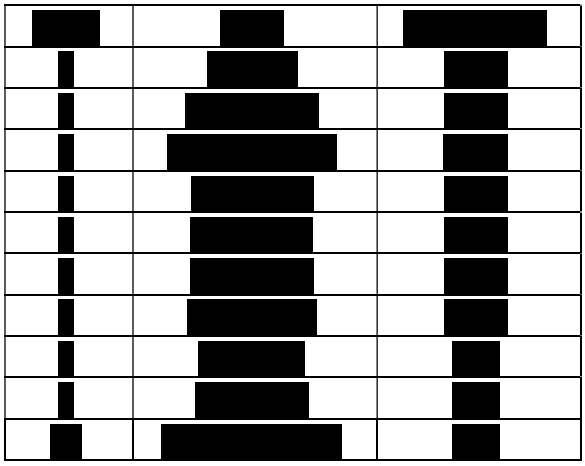
[43] Inst. for Legal Reform, Litigation in the Field of Dreams 1 (2013)

[44] Heather Insringhausen Gvillo, *The Future of Asbestos Litigation in Madison County*, Wash. Examiner (Apr. 3, 2014).

[45] Schwartz, *supra* note 42, at 251–52.

[46] *Id.* at 252.

[47] As previously mentioned, the dataset provided is deficient, and many claims are missing filing date information. *See supra* ¶¶ 190–97. These amounts come only from the claims data provided that includes a filing date.



264. [redacted]

265. [redacted] 27% of asbestos claims filed in 2018 among all defendants were filed in Madison County, Illinois.[48]

266. The volume of claimants stemming from Madison County further compounds Honeywell's exposure to punitive damages, and further inflates Honeywell's settlements [redacted]

B. Honeywell Has Failed To Establish Other Prerequisites For Indemnification

267. Honeywell is also not entitled to indemnification because it has failed to establish other prerequisites for indemnification under New York law.

[48] KCIC, Asbestos Litigation: 2018 Year in Review 4 (2019).

268. Honeywell enters into settlements without any notice to Garrett or opportunity for Garrett to participate. *See supra* ¶¶ 141–42. Honeywell is entitled to indemnification for properly indemnifiable amounts only if (1) Honeywell would or could be liable for the settled claims and (2) the settlements are reasonable and entered into in good faith.

269. Honeywell has not given Garrett notice of any of the claims against Honeywell for which Honeywell seeks indemnification.

270. Honeywell has not given Garrett an opportunity to participate in the defense or settlement of any of the claims against Honeywell for which Honeywell seeks indemnification. In fact, Honeywell specifically drafted the Indemnification Agreement in a manner designed to prohibit Garrett from participating in the defense and settlement of the claims. IA § 2.9; *see supra* ¶¶ 141–42.

271. Because Honeywell has not given Garrett notice or any opportunity to defend, Honeywell, as matter of law, must show it would have been actually liable for each and every one of the underlying claims. Honeywell has not proved, or sought to prove, that it would be actually liable for even a single claim asserted against it and for which Honeywell seeks indemnification. Nor has Honeywell proved, or sought to prove, that even a single settlement it has entered into was entered into in good faith and was reasonable.

272. Similarly, Honeywell is entitled to indemnification for legal fees and expenses only if those legal fees and expenses are reasonable, and only if those legal fees and expenses were incurred in defending against indemnifiable claims.

273. Legal fees and expenses represent a substantial portion of the indemnity obligation. By way of example, Honeywell provided an April 12, 2019 Annual and Year-to-Date Indemnity

and Defense Costs Report, representing the total indemnity spend and defense spend for 2017 and 2018:

274. According to this data provided by Honeywell, legal costs represented [redacted] of the total aggregate spend for both 2017 and 2018.

275. According to the most recent 2019 data provided by Honeywell, legal costs represented [redacted] of the total aggregate spend for 2019:

276. Honeywell must show that legal fees and expenses for each and every case it seeks indemnity for are reasonable, and were expended in good faith and in defense of an indemnifiable claim. Honeywell has not proved, or sought to prove, that legal fees and expenses incurred for

even a single claim were reasonable or were expended in good faith and in defense of an indemnifiable claim.

277. Honeywell has refused to provide any information to establish these prerequisites, and thus is not entitled to indemnification. *See, e.g.*, *supra* ¶¶ 154, 171, 181.

C. Honeywell Seeks Indemnification For Amounts That Do Not Qualify As "Losses" Under the Indemnification Agreement

278. Honeywell also improperly seeks indemnification from Garrett for amounts that are not indemnifiable under the very terms of the Indemnification Agreement.

279. The Indemnification Agreement defines "Losses" to include "Cash Amounts in respect of losses, damages, liabilities, deficiencies, judgments, interest, awards, penalties, fines, costs, financial assurance or expenses of whatever kind in respect of Managing, investigating, responding to, remediating, defending, settling, compromising or resolving Claims, including attorneys' fees and costs." IA § 1.1, at 10. "Managing" is defined as, "*with respect to any Claim*, the defense, settlement and payment of such Claim." *Id.* (emphasis added).

280. Upon information and belief, Honeywell is seeking indemnification from Garrett for amounts incurred in conducting various studies on asbestos and brake dust. Such research is not tied to any individual claim Honeywell is seeking indemnification for.

281. "Losses," as contemplated by the Indemnification Agreement, does not encompass amounts expended by Honeywell to fund general research, and thus Garrett cannot be required to indemnify Honeywell for such losses under the Indemnification Agreement.

VII. Dispute Resolution Efforts

282. Section 4.3 of the Indemnification Agreement contains a "Dispute Resolution" provision. It provides:

> In the event that any Party, acting reasonably, forms the view that another Party has caused a material breach of the terms of this Agreement, then the Party that forms

> such a view shall serve written notice of the alleged breach on the other Parties and the Parties shall work together in good faith to resolve any such alleged breach within thirty (30) days of such notice (a "**Dispute**"). If any such alleged breach is not so resolved, then a senior executive of each Party shall, in good faith, attempt to resolve any such alleged breach within the following thirty (30) days of the referral of the matter to the senior executives.

If the parties are unable to resolve their dispute, the parties may proceed to litigation.

283. Garrett initiated the Section 4.3 dispute resolution process on April 16, 2019, with a letter stating "Garrett's position that Honeywell has caused material breaches of the Indemnification Agreement and . . . that the Indemnification Agreement is unenforceable in whole or in part."

284. Pursuant to the parties' mutual obligation to "work together in good faith to resolve any such alleged breach," IA § 4.3, Garrett and Honeywell, and their respective outside counsel, attended an in-person meeting on April 24, 2019.

285. Following that meeting, Garrett and Honeywell continued to attempt to resolve the parties' disputes, including in a June 25, 2019 meeting between Honeywell's and Garrett's respective General Counsels and outside counsel.

286. Throughout the following months, the parties had various written correspondence, conference calls, and in-person meetings to attempt to resolve the dispute, including an in-person mediation session in September 2019. None of these efforts were successful.

287. Garrett has satisfied all conditions and prerequisites to commencing litigation under the Indemnification Agreement.

288. The purported release that Honeywell gave itself in the Separation Agreement does not apply to Plaintiffs' claims and is unenforceable because, among other reasons, it is unconscionable and was the result of breaches of fiduciary duties.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
Declaratory Judgment – Based on Unconscionability
(Against Honeywell ASASCO LLC, Honeywell ASASCO 2 LLC, Honeywell Holdings International Inc., and Honeywell International)

289. Plaintiffs repeat and reallege the foregoing allegations as though they were fully set forth in this paragraph.

290. Pursuant to CPLR 3001, this Court is authorized to issue a declaratory judgment.

291. An actual and justiciable controversy presently exists between Plaintiffs and the Corporate Defendants concerning the Indemnification Agreement.

292. A judicial determination is necessary and required at this stage to adjudicate the parties' respective rights and obligations herein.

293. At all relevant times following the execution of the September 14, 2018 Assignment Agreement, Honeywell International and Garrett ASASCO Inc. were parties to the Indemnification Agreement. Honeywell ASASCO 2 LLC was the Payee under the Indemnification Agreement from September 12, 2018 to October 13, 2018, at which point Honeywell Holdings International Inc. became Payee.

294. Plaintiffs had no meaningful choice in the negotiation and execution of the Indemnification Agreement or Garrett's assumption thereof. Rather, Honeywell used its control and authority over Garrett to essentially contract with itself. There was no real and voluntary meeting of the minds associated with the execution and assumption of the Indemnification Agreement.

295. Honeywell and Adamczyk caused Su Ping Lu to sign the Indemnification Agreement on behalf of both the indemnitor and indemnitee, and to execute the Assignment Agreement on behalf of both the assignor and assignee (Garrett ASASCO Inc.). Honeywell and

Adamczyk also ensured that Lu had no opportunity to inform herself as to the Indemnification Agreement and its impact on Garrett's business going forward.

296. Honeywell and Adamczyk also caused Garrett to be represented by the same counsel as Honeywell, but Honeywell retained complete control over that counsel.

297. The provisions of the Indemnification Agreement are unreasonably favorable to Honeywell, including: (1) imposing onerous covenants and cross defaults on Garrett, which violate Delaware law, including section 141(a) of the Delaware General Corporation Law; (2) requiring Garrett to make indemnification payments for 90% of Honeywell's legacy Bendix-related asbestos liability, including punitive damages, liability for Honeywell's wrongful conduct, and Honeywell's legal fees and costs associated with defending and managing the thousands of asbestos-related claims brought against Honeywell each year; and (3) giving Honeywell International full control over management of the asbestos liability despite Honeywell bearing at most 10% of the economic risk; and (4) locking Garrett into a thirty-year term under the Indemnification Agreement without any way for Garrett to refinance the obligation.

298. Plaintiffs are thus entitled to a declaration that the Indemnification Agreement is an unconscionable contract and is unenforceable.

299. Plaintiffs are further entitled to a declaration that the covenants in the Indemnification Agreement violate Delaware law and thus are unenforceable.

300. Plaintiffs are further entitled to restitution of all payments made by Garrett ASASCO Inc. under the Indemnification Agreement, as Defendants would be unjustly enriched if they were permitted to keep any payments they have received under an unconscionable and unenforceable contract.

SECOND CAUSE OF ACTION
Declaratory Judgment – Based on Lack of Consideration
(Against Honeywell ASASCO LLC, Honeywell ASASCO 2 LLC, Honeywell Holdings International Inc., and Honeywell International)

301. Plaintiffs repeat and reallege the foregoing allegations as though they were fully set forth in this paragraph.

302. Pursuant to CPLR 3001, this Court is authorized to issue a declaratory judgment.

303. An actual and justiciable controversy presently exists between Plaintiffs and the Corporate Defendants concerning the Indemnification Agreement.

304. A judicial determination is necessary and required at this stage to adjudicate the parties' respective rights and obligations herein.

305. On September 12, 2018, Honeywell ASASCO LLC, Honeywell ASASCO 2 LLC, and Honeywell International Inc. were parties to the Indemnification Agreement.

306. At all relevant times following the execution of the September 14, 2018 Assignment Agreement, Honeywell International and Garrett ASASCO Inc. were parties to the Indemnification Agreement. Honeywell ASASCO 2 LLC was the Payee under the Indemnification Agreement from September 12, 2018 to October 13, 2018, at which point Honeywell Holdings International Inc. became Payee.

307. As the original "Payor" under the Indemnification Agreement, Honeywell ASASCO LLC was responsible for making indemnification payments to Honeywell ASASCO 2 LLC for 90% of Honeywell's legacy Bendix-related asbestos liability, including punitive damages and Honeywell's legal fees and costs of defending the thousands of asbestos-related claims brought against Honeywell each year.

308. Under the Indemnification Agreement, Honeywell ASASCO LLC did not receive any rights, interests, profits, or benefits, and Honeywell ASASCO 2 LLC did not undertake or

suffer any forbearance, detriment, losses, or responsibilities. To the extent that Honeywell ASASCO LLC received any previous rights, interests, profits, or benefits, or Honeywell ASASCO 2 LLC undertook or suffered forbearance, detriment, losses, or responsibilities, such consideration was not valid consideration as it was not expressed in writing in the Indemnification Agreement as required by N.Y. Gen. Oblig. Law. Section 5-1105.

309. Under New York law, a contract is null, void, invalid, and unenforceable if not supported by consideration.

310. Plaintiffs are thus entitled to a declaration that the Indemnification Agreement is null, void, invalid, and unenforceable due to lack of valid consideration.

311. Plaintiffs are further entitled to restitution of all payments made by Garrett ASASCO Inc. under the Indemnification Agreement, as Defendants would be unjustly enriched if they were permitted to keep any payments they have received under a contract that is null, void, invalid, and unenforceable due to lack of consideration.

THIRD CAUSE OF ACTION
Breach of Fiduciary Duty
(Against Honeywell ASASCO LLC, Honeywell ASASCO 2 LLC, Honeywell Holdings International Inc., Honeywell International, and Su Ping Lu)

312. Plaintiffs repeat and reallege the foregoing allegations as though they were fully set forth in this paragraph.

313. In September 2018, at the time the Spin-off Transactions were entered into, Su Ping Lu was an officer and the sole director of Garrett Motion Inc. and an officer and the sole director of Garrett ASASCO Inc.

314. As an officer and director of Garrett Motion Inc. and Garrett ASASCO Inc. prior to the spin-off, Su Ping Lu owed fiduciary duties to those entities, including duties of care and loyalty.

315. Su Ping Lu breached her duty of care to Garrett Motion Inc. and Garrett ASASCO Inc. by (1) failing to inform herself regarding the implications of the Indemnification Agreement; (2) failing to inform herself regarding her purported reliance on the Solvency Opinion; and (3) entering into the Indemnification Agreement and causing Garrett's assumption thereof notwithstanding that such agreement is unconscionable and inhibits Plaintiffs' ability to transact business.

316. The Corporate Defendants were corporate promoters of Plaintiffs. They caused Garrett Motion Inc. and Garrett ASASCO Inc. to be incorporated by filing certificates of incorporation with the Secretary of State of the State of Delaware on March 14, 2018 and September 13, 2018, respectively.

317. The Corporate Defendants' activities as corporate promoters of Garrett Motion Inc. and Garrett ASASCO Inc. also included, among other things, causing Garrett ASASCO Inc. to assume obligations under the Indemnification Agreement. In connection with those activities, the Corporate Defendants (1) purposefully left no time for meaningful analysis of the Solvency Opinion, (2) created an information vacuum that deprived Su Ping Lu (sole director of Garrett Motion Inc. and Garrett ASASCO Inc.) of opportunities to assess the Indemnification Agreement and its implications on Garrett's future business, and (3) persisted despite their knowledge that Su Ping Lu was uninformed about the transactions.

318. The Corporate Defendants also caused Garrett ASASCO Inc. to be assigned the Indemnification Agreement, which violates Delaware law and New York public policy.

319. Plaintiffs have suffered unquantifiable damages as a direct and proximate result of the Corporate Defendants' and Su Ping Lu's breach of fiduciary duty such that there is no complete or adequate remedy at law.

320. Rescission of the Indemnification Agreement is the appropriate remedy. The status quo can easily be restored here by rescinding the Indemnification Agreement. Honeywell—which insisted in the Indemnification Agreement on continuing to manage the claims and paying the costs associated with such claims and their management in the first instance—will not be harmed by rescission. Further, Honeywell International has exploited its position as Claim Manager under the Indemnification Agreement to deprive Plaintiffs of information that would have exposed its wrongdoing, further entitling Plaintiffs to rescission of the Indemnification Agreement.

321. Plaintiffs are further entitled to restitution of all payments made by Garrett ASASCO Inc. under the Indemnification Agreement, as Defendants would be unjustly enriched if they were permitted to keep any payments they have received under a contract that has been rescinded due to a breach of fiduciary duty.

322. In the alternative, to the extent it is determined that there is an adequate remedy at law or that rescission is impracticable, Plaintiffs seek compensatory or rescissory damages.

FOURTH CAUSE OF ACTION
Aiding and Abetting Breach of Fiduciary Duty
(Against Honeywell ASASCO LLC, Honeywell ASASCO 2 LLC, Honeywell Holdings International Inc., Honeywell International, and Darius Adamczyk)

323. Plaintiffs repeat and reallege the foregoing allegations as though they were fully set forth in this paragraph.

324. The Corporate Defendants aided and abetted Su Ping Lu's and eachothers' breaches of fiduciary duty. Adamczyk aided and abetted the Corporate Defendants' and Su Ping Lu's breaches of fiduciary duty. Each did so by: (1) knowingly participating in the breaches of fiduciary duty; (2) purposefully leaving no time for meaningful analysis of the Solvency Opinion, (3) creating an information vacuum that deprived Su Ping Lu (sole director of Garrett Motion Inc. and Garrett ASASCO Inc.) of opportunities to assess the Indemnification Agreement and its

implications on Plaintiffs' future business, and (4) persisting despite their knowledge that Su Ping Lu was uninformed about the transactions.

325. Plaintiffs have suffered unquantifiable damages as a direct and proximate result of Su Ping Lu's and the Corporate Defendants' breaches of fiduciary duty and the Corporate Defendants' and Adamczyk's aiding and abetting of those breaches such that there is no complete or adequate remedy at law.

326. Rescission of the Indemnification Agreement is the appropriate remedy. The status quo can easily be restored here be rescinding the Indemnification Agreement. Honeywell—which insisted in the Indemnification Agreement on continuing to manage the claims and paying the costs associated with such claims and their management in the first instance—will not be harmed by rescission. Further, Honeywell International has exploited its position as Claim Manager under the Indemnification Agreement to deprive Plaintiffs of information that would have exposed its wrongdoing, further entitling Plaintiffs to rescission of the Indemnification Agreement.

327. Plaintiffs are further entitled to a restitution of all payments made by Garrett ASASCO Inc. under the Indemnification Agreement, as Defendants would be unjustly enriched if they were permitted to keep any payments they have received under a contract that has been rescinded due to a breach of fiduciary duty.

328. In the alternative, to the extent it is determined that there is an adequate remedy at law or that rescission is impracticable, Plaintiffs seek compensatory or rescissory damages.

FIFTH CAUSE OF ACTION
Corporate Waste
(Against Su Ping Lu)

329. Plaintiffs repeat and reallege the foregoing allegations as though they were fully set forth in this paragraph.

330. The provisions of the Indemnification Agreement are so unreasonably unfavorable to Garrett and favorable to Honeywell that no person of ordinary, sound business judgment would agree to them. Such provisions include: (1) imposing onerous covenants and cross defaults on Garrett, which violate Delaware law, including section 141(a) of the Delaware General Corporation Law; (2) requiring Garrett ASASCO Inc. to make indemnification payments for 90% of Honeywell's legacy Bendix-related asbestos liability, including punitive damages, liability for Honeywell's wrongful conduct, and Honeywell's legal fees and costs associated with defending and managing the thousands of asbestos-related claims brought against Honeywell each year; (3) giving Honeywell International full control over management of the asbestos liability despite bearing at most 10% of the economic risk; and (4) locking Garrett into a thirty-year term under the Indemnification Agreement without any way for Garrett to refinance the obligation.

331. As a result of the waste of corporate assets, Su Ping Lu is liable to Plaintiffs.

332. Rescission of the Indemnification Agreement is the appropriate remedy. The status quo can easily be restored here be rescinding the Indemnification Agreement. Honeywell—which insisted in the Indemnification Agreement on continuing to manage the claims and paying the costs associated with such claims and their management in the first instance—will not be harmed by rescission. Further, Honeywell International has exploited its position as Claim Manager under the Indemnification Agreement to deprive Plaintiffs of information that would have exposed its wrongdoing, further entitling Plaintiffs to rescission of the Indemnification Agreement.

333. Plaintiffs are further entitled to a restitution of all payments made by Garrett ASASCO Inc. under the Indemnification Agreement, as Defendants would be unjustly enriched if they were permitted to keep any payments they have received under a contract that has been rescinded due to the waste of corporate assets.

334. In the alternative, to the extent it is determined that there is an adequate remedy at law or that rescission is impracticable, Plaintiffs seek compensatory or rescissory damages.

SIXTH CAUSE OF ACTION
Declaratory Judgment – No Right To Indemnification
(Against Honeywell ASASCO 2 LLC and Honeywell Holdings International Inc.)

335. Plaintiffs repeat and reallege the foregoing allegations as though they were fully set forth in this paragraph.

336. Pursuant to CPLR 3001, this Court is authorized to issue a declaratory judgment.

337. An actual and justiciable controversy presently exists between Garrett ASASCO Inc. and Honeywell ASASCO 2 LLC and Honeywell Holdings International Inc. concerning the Indemnification Agreement.

338. A judicial determination is necessary and required at this stage to adjudicate the parties' respective rights and obligations herein.

339. At all relevant times following the execution of the September 14, 2018 Assignment Agreement, Honeywell and Garrett were parties to the Indemnification Agreement.

340. Honeywell ASASCO 2 LLC and Honeywell Holdings International Inc. seek indemnification pursuant to the Indemnification Agreement, but have not established their right to indemnification under applicable New York law for any of the claims for which they seek indemnification.

341. Plaintiffs are thus entitled to a declaration that:

a. The Indemnification Agreement is unenforceable to the extent it provides for indemnification of amounts attributable to claims for punitive damages and intentional misconduct.

b. Honeywell ASASCO 2 LLC and Honeywell Holdings International Inc. are not entitled to indemnification under the Indemnification Agreement unless

they establish that Honeywell would have been liable (or, in the alternative, could have been liable) for each and every one of the settled claims for which they seek indemnification.

c. Honeywell ASASCO 2 LLC and Honeywell Holdings International Inc. are not entitled to indemnification for any settlement under the Indemnification Agreement unless they establish that such settlement was reasonable and entered into in good faith.

d. Honeywell ASASCO 2 LLC and Honeywell Holdings International Inc. are not entitled to indemnification for fees and expenses for any claim unless they establish the reasonableness of those fees and expenses for each and every claim.

e. The amounts for which Honeywell ASASCO 2 LLC and Honeywell Holdings International Inc. seek indemnity include amounts attributable to claims for punitive damages and intentional misconduct.

f. Honeywell ASASCO 2 LLC and Honeywell Holdings International Inc. have not, and are unable to, allocate between indemnifiable and non-indemnifiable amounts for any claim for which they seek indemnification, and thus Honeywell ASASCO 2 LLC and Honeywell Holdings International Inc. are not entitled to indemnification.

g. In the alternative, to the extent Honeywell ASASCO 2 LLC and Honeywell Holdings International Inc. are able to make a non-speculative allocation between indemnifiable and non-indemnifiable amounts, Honeywell ASASCO 2 LLC and Honeywell Holdings International Inc. are required to

do so for each and every future indemnification request, and can only seek indemnification for indemnifiable amounts.

h. Honeywell ASASCO 2 LLC and Honeywell Holdings International Inc. have not established and cannot establish their right to indemnification under the Indemnification Agreement for any amount.

SEVENTH CAUSE OF ACTION
Unjust Enrichment
(Against Honeywell ASASCO 2 LLC, Honeywell Holdings International Inc., Honeywell International)

342. Plaintiffs repeat and reallege the foregoing allegations as though they were fully set forth in this paragraph.

343. The Indemnification Agreement is unenforceable under New York law to the extent it provides for indemnification for punitive damages or for intentional misconduct.

344. Honeywell ASASCO 2 LLC and Honeywell Holdings International Inc. are not entitled to indemnification because they improperly seek indemnification for amounts attributable to punitive damages and intentional misconduct, and because they have failed to establish other prerequisites for indemnification under New York law. Those prerequisites include a showing that the settlements for which they seek indemnification were reasonable and made in good faith, and that Honeywell would (or, in the alternative, could) have been liable on the underlying claims.

345. Under a reservation of rights, Garrett ASASCO Inc. has paid the entirety of the amounts that have purportedly come due under the Indemnification Agreement, including: the Estimated Initial US Bendix Obligation, the January 2019 Quarterly Payment, the Initial Deficiency Amount, the April 2019, July 2019, and October 2019 Quarterly Payments, and the 2019 4Q Payment to Honeywell ASASCO 2 LLC's and Honeywell Holdings International Inc.'s benefit.

346. Garrett ASASCO Inc. made payments under the Indemnification Agreement at its own expense because Honeywell ASASCO 2 LLC and Honeywell Holdings International Inc. failed (and refused) to apportion between indemnifiable and non-indemnifiable damages, and because Garrett risked a cross-default under the Credit Agreement if it ceased making payments.

347. Equity and good conscience require that the amounts Garrett ASASCO Inc. paid to Honeywell ASASCO 2 LLC and Honeywell Holdings International Inc. under the Indemnification Agreement be paid back to Garrett ASASCO Inc. as restitution either (1) for the portion of those payments that represent indemnity for punitive damages or (2) in full, to the extent the Corporate Defendants fail to establish that such amounts are indemnifiable under New York law.

EIGHTH CAUSE OF ACTION
Breach of Contract: Section 2.2—Past Payments
(Against Honeywell ASASCO 2 LLC, Honeywell Holdings International Inc., and Honeywell International)

348. Plaintiffs repeat and reallege the foregoing allegations as though they were fully set forth in this paragraph.

349. At all relevant times following the execution of the September 14, 2018 Assignment Agreement, Honeywell and Garrett were parties to the Indemnification Agreement.

350. Plaintiffs have performed all of the material conditions, covenants, and promises required to be performed in accordance with the terms and conditions of the Indemnification Agreement.

351. The Indemnification Agreement is unenforceable under New York law to the extent it provides for indemnification for punitive damages or for intentional misconduct.

352. Honeywell ASASCO 2 LLC and Honeywell Holdings International Inc. are not entitled to indemnification because they improperly seek indemnification for amounts attributable to punitive damages and intentional misconduct, and because they have failed to establish other

prerequisites for indemnification under New York law. Those prerequisites include a showing that the settlements for which they seek indemnification were reasonable and made in good faith, and that Honeywell would (or, in the alternative, could) have been liable on the underlying claims.

353. Under a reservation of rights, Garrett ASASCO Inc. has paid the entirety of the amounts that have purportedly come due under the Indemnification Agreement, including: the Estimated Initial US Bendix Obligation, the January 2019 Quarterly Payment, the Initial Deficiency Amount, the April 2019, July 2019, and October 2019 Quarterly Payments, and the 2019 4Q Payment to Honeywell ASASCO 2 LLC's and Honeywell Holdings International Inc.'s benefit.

354. Garrett ASASCO Inc. made payments under the Indemnification Agreement at its own expense because Honeywell ASASCO 2 LLC and Honeywell Holdings International Inc. failed (and refused) to apportion between indemnifiable and non-indemnifiable damages, and because Garrett risked a cross-default under the Credit Agreement if it ceased making payments.

355. Honeywell ASASCO 2 LLC's and Honeywell Holdings International Inc.'s breach of the Indemnification Agreement was willful, intentional, and material, or otherwise grossly negligent in the performance of, or in reckless disregard of, their duties under the Indemnification Agreement.

356. Plaintiffs have suffered substantial damages as a direct and proximate result of Honeywell ASASCO 2 LLC's and Honeywell Holdings International Inc.'s breach of the Indemnification Agreement in an amount at least equal to the amounts it has paid to Honeywell ASASCO 2 LLC and Honeywell Holdings International Inc. under the Indemnification Agreement.

357. Garrett ASASCO Inc. is excused from further performance under the Indemnification Agreement due to Honeywell ASASCO 2 LLC's and Honeywell Holdings International Inc.'s material breach of Section 2.2 of the Indemnification Agreement.

NINTH CAUSE OF ACTION
Declaratory Judgment – Covenants Are Not Enforceable
(Against Honeywell ASASCO LLC, Honeywell ASASCO 2 LLC, Honeywell Holdings International Inc., and Honeywell International)

358. Plaintiffs repeat and reallege the foregoing allegations as though they were fully set forth in this paragraph.

359. Pursuant to CPLR 3001, this Court is authorized to issue a declaratory judgment.

360. An actual and justiciable controversy presently exists between Plaintiffs and the Corporate Defendants concerning the Indemnification Agreement.

361. A judicial determination is necessary and required at this stage to adjudicate the parties' respective rights and obligations herein.

362. At all relevant times following the execution of the September 14, 2018 Assignment Agreement, Honeywell and Garrett were parties to the Indemnification Agreement.

363. The Indemnification Agreement contains covenants prohibiting or restricting Plaintiffs' ability to, among other things: (1) engage in significant corporate transactions, such as mergers and acquisitions; (2) incur debt or grant liens; (3) make investments; (4) sell assets; (5) pay dividends to its shareholders; (6) amend material agreements in a way that would be materially adverse to Honeywell; and (7) engage in certain prohibited business activities. *See* IA, Ex. L Art. III.

364. Because Garrett cannot refinance or pay off its purported obligations under the Indemnification Agreement, the covenants are unconscionable and, if enforced, would illegally

usurp managerial control over key business decisions in violation of Delaware law, including section 141(a) of Delaware General Corporate Law.

365. Plaintiffs are thus entitled to a declaration that:

a. The covenants set forth in Exhibit L to the Indemnification Agreement are unconscionable;

b. Those covenants violate Delaware law; and

c. Thus the covenants are not enforceable against Garrett.

TENTH CAUSE OF ACTION
Breach of Contract: Section 2.2—Right to Information
(Against Honeywell International)

366. Plaintiffs repeat and reallege the foregoing allegations as though they were fully set forth in this paragraph.

367. At all relevant times following the execution of the September 14, 2018 Assignment Agreement, Honeywell International and Garrett ASASCO Inc. were parties to the Indemnification Agreement. Honeywell ASASCO 2 LLC was the Payee under the Indemnification Agreement from September 12, 2018 to October 13, 2018, at which point Honeywell Holdings International Inc. became Payee.

368. Honeywell International is the "Claim Manager" under the Indemnification Agreement.

369. Garrett has performed all of the material conditions, covenants, and promises required to be performed in accordance with the terms and conditions of the Indemnification Agreement.

370. Under the Indemnification Agreement, Honeywell International is required to "provide such additional information from time to time as may be necessary for Payor to satisfy its obligations as an SEC registrant." IA § 2.2(i).

371. Garrett invoked Section 2.2(i) and sought information it needed to satisfy its obligations as an SEC registrant.

372. Honeywell International materially breached the Indemnification Agreement by failing to provide Garrett with the information it needed to satisfy its obligations as an SEC registrant.

373. As a consequence of Honeywell International's material breach, Garrett disclosed a material weakness in its internal controls over financial reporting.

374. Honeywell International's breach of the Indemnification Agreement was willful, intentional, and material, or otherwise grossly negligent in the performance of, or in reckless disregard of, Honeywell International's duties under the Indemnification Agreement.

375. Plaintiffs have suffered substantial damages as a direct and proximate result of Honeywell International's breach of the Indemnification Agreement in an amount to be proven at trial. Such damages include Plaintiffs' incurrence of fees and expenses in seeking to obtain information from Honeywell International pursuant to Section 2.2(i) of the Indemnification Agreement.

ELEVENTH CAUSE OF ACTION
Breach of Contract: Section 4.2
(Against Honeywell ASASCO LLC, Honeywell International, Honeywell ASASCO 2 LLC, and Honeywell Holdings International Inc.)

376. Plaintiffs repeat and reallege the foregoing allegations as though they were fully set forth in this paragraph.

377. At all relevant times following the execution of the September 14, 2018 Assignment Agreement, Honeywell and Garrett were parties to the Indemnification Agreement.

378. Garrett has performed all of the material conditions, covenants, and promises required to be performed in accordance with the terms and conditions of the Indemnification Agreement.

379. Under the Indemnification Agreement, the Corporate Defendants made various representations and warranties to the Payor, including:

a. that the Indemnification Agreement is "enforceable in accordance with the terms thereof," IA § 4.2(b); and

b. that "neither the execution, delivery or performance by each such Person of this Agreement, nor the consummation of the transactions contemplated hereby, will . . . conflict with or result in a violation of, or give any Governmental Authority or other Person the right to challenge any of the transactions contemplated hereby under, any Law or Order applicable to such Party," IA § 4.2(c).

380. The Corporate Defendants materially breached the representation and warranty in Section 4.2(b) of the Indemnification Agreement by requiring the Payor to indemnify for punitive losses and losses resulting from intentional misconduct, which is contrary to New York law, rendering that part of the Indemnification Agreement unenforceable in violation of Section 4.2(b).

381. The Corporate Defendants materially breached the representation and warranty in Section 4.2(c) of the Indemnification Agreement by requiring the Payor to indemnify for punitive losses and losses resulting from intentional misconduct, which is contrary to New York law.

382. The Corporate Defendants' breach of the Indemnification Agreement was willful, intentional, and material, or otherwise grossly negligent in the performance of, or in reckless disregard of, the Corporate Defendants' duties under the Indemnification Agreement.

383. Plaintiffs have suffered substantial damages as a direct and proximate result of the Corporate Defendants' breach of the Indemnification Agreement in an amount to be proven at trial. Such damages include payments Garrett ASASCO Inc. has made under the Indemnification Agreement that are not indemnifiable.

384. Plaintiffs are excused from further performance under the Indemnification Agreement due to the Corporate Defendants' material breach of Section 4.2 of the Indemnification Agreement.

TWELFTH CAUSE OF ACTION
Breach of the Implied Covenant of Good Faith and Fair Dealing
(Against Honeywell ASASCO LLC, Honeywell ASASCO 2 LLC, Honeywell Holdings International Inc., and Honeywell International)

385. Plaintiffs repeat and reallege the foregoing allegations as though they were fully set forth in this paragraph.

386. At all relevant times following the execution of the September 14, 2018 Assignment Agreement, Honeywell and Garrett were parties to the Indemnification Agreement.

387. Plaintiffs have performed all of the material conditions, covenants, and promises required to be performed in accordance with the terms and conditions of the Indemnification Agreement.

388. Implicit in all contracts governed by New York law is a covenant of good faith and fair dealing in the course of contract performance. The covenant of good faith and fair dealing provides that a party shall not do anything that will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.

389. The Corporate Defendants materially breached the implied covenant of good faith and fair dealing by not giving Plaintiffs access to information on its asbestos liabilities and refusing

or delaying in bad faith to provide Plaintiffs with certain basic documents relating to the Indemnification Agreement and whether it was appropriately authorized.

390. When Honeywell International ultimately provided some of the requested data, the manner in which it provided the information was indicative of bad faith. The way the information was provided prohibited any analysis of the data from being saved or retained. Data could not be copied or imported into any software programs that could allow for analyses of large datasets.

391. The Corporate Defendants have also been acting in bad faith by trying to force Garrett ASASCO Inc. to indemnify the Corporate Defendants for non-indemnifiable amounts, and by refusing to allocate between indemnifiable and non-indemnifiable amounts.

392. The Corporate Defendants' breach of the implied covenant of good faith and fair dealing in the Indemnification Agreement was willful, intentional, and material, or otherwise grossly negligent in the performance of, or in reckless disregard of, the Corporate Defendants' duties under the Indemnification Agreement.

393. Plaintiffs have suffered substantial damages as a direct and proximate result of the Corporate Defendants' breach of the Indemnification Agreement in an amount to be proven at trial. Such damages include fees and costs incurred in seeking to obtain information from Honeywell International, and payments made by Garrett ASASCO Inc. for non-indemnifiable amounts.

394. Plaintiffs are excused from further performance under the Indemnification Agreement due to the Corporate Defendants' material breach of the implied covenant of good faith and fair dealing.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that this Court enter judgment in favor of Plaintiffs and against Defendants:

A. Rescinding the Indemnification Agreement or declaring that the Indemnification Agreement is not enforceable;

B. Awarding damages in an amount to be proven at trial, including but not limited to (1) the return of all payments made by Garrett under the Indemnification Agreement and (2) amounts incurred by Garrett in seeking information from Honeywell;

C. Declaring the Corporate Defendants in material breach of the Indemnification Agreement and excusing Garrett from further performance under the Indemnification Agreement;

D. Declaring that the Corporate Defendants are not entitled to indemnification under the Indemnification Agreement and ordering the return of all payments made by Garrett ASASCO Inc. under the Indemnification Agreement;

E. Declaring that the Corporate Defendants can only seek indemnification for indemnifiable amounts, determining the amount (if any) for which the Corporate Defendants are entitled to indemnification, ordering the return of all or a portion of the payments made by Garrett ASASCO Inc. under the Indemnification Agreement representing non-indemnifiable amounts, as determined by the Court, and declaring that for all future indemnification requests under the Indemnification Agreement, the Corporate Defendants are required to make a non-speculative allocation that excludes non-indemnifiable amounts, and to provide Plaintiffs with sufficient information to verify that allocation;

F. Declaring the covenants set forth in Exhibit L to the Indemnification Agreement are not enforceable;

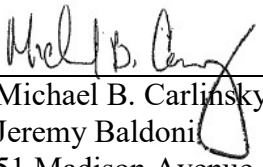
G. Awarding reasonable costs and expenses incurred in this action, including attorneys' fees;

H. Awarding pre-judgment interest on all such damages, monetary or otherwise; and

I. Awarding such other, further, and different relief as the Court may deem just and proper.

Dated: New York, New York
January 15, 2020

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By: 

Michael B. Carlinsky
Jeremy Baldoni
51 Madison Avenue, 22nd Floor
New York, New York 10010
(212) 849-7000
michaelcarlinsky@quinnemanuel.com
jeremybaldoni@quinnemanuel.com

Michael Liftik (*pro hac vice*)
1300 I Street NW Suite 900
Washington, D.C. 20005
(202)-538-8000
michaelliftik@quinnemanuel.com

Matthew Scheck
865 S. Figueroa St.
Los Angeles, CA 90017
(213) 443-3190
matthewscheck@quinnemanuel.com

Attorneys for Garrett Motion Inc. and Garrett ASASCO Inc.