

THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TENNESSEE

**State Farm Fire and Casualty Company**

a/s/o Marc Gasol

*Plaintiff*

v.

**No. 2:13-cv-2844 / Jury**

Anderson/Pham

**Interline Brands, Inc. and  
Albert Cook Plumbing, Inc.**

*Defendants*

**Plaintiff's Motion to Compel**

Upon consideration of the following, Plaintiff moves to compel Defendant Interline Brands, Inc. to respond fully to Plaintiff's First Interrogatories and Requests for Production.

- Exhibit 1: Memorandum in Support of Plaintiff's Motion to Compel.
- Exhibit 2: Rule 37 and LR 7.02 Meet and Confer Correspondence
- Exhibit 3: Interline's Responses to Plaintiff's First Interrogatories and Requests for Production.
- Exhibit 4: *Interline Brands, Inc. v. AIG Specialty Insurance Company et al*, No. 3:14-cv-00426 (M.D. Fla., filed April 14, 2014): Document 1, Interline's Complaint.
- Exhibit 5: *Interline Brands, Inc. v. AIG Specialty Insurance Company et al*, No. 3:14-cv-00426 (M.D. Fla., filed April 14, 2014): Document 16, Interline's Response to AIG's Motion to Dismiss.
- Exhibit 6: Declaration of Plaintiff's counsel Michael A. Durr.

Monday, August 04, 2014  
Knoxville, Tennessee

Respectfully submitted,  
QUIST, CONE & FISHER, PLLC

By: /s/ Michael A. Durr  
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*Attorney for Plaintiff State Farm Fire and  
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### **Certificate of Service**

I hereby certify that on Monday, August 04, 2014 that I served this document by electronic mail to the following counsel of record through the following e-mail addresses:

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By: /s/ Michael A. Durr  
Michael A. Durr

THE UNITED STATES DISTRICT COURT FOR THE  
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**Interline Brands, Inc. and  
Albert Cook Plumbing, Inc.**

*Defendants*

**Memorandum in Support of Plaintiff's Motion to Compel**

This products liability case arises out of a water leak caused by a failed supply line at the home of Memphis Grizzlies center Marc Gasol. The supply line was distributed by Defendant Interline Brands, Inc. under its trade name DuraPro. Interline has refused to: (1) disclose any of the many prior similar claims and lawsuits involving the supply line (it is the line's plastic coupling nut that fails); (2) identify those in the chain of distribution for the supply line; and (3) produce its indemnity demand to the importer of the supply line for this very claim. Plaintiff State Farm, who paid for the damage caused by the leak, now seeks an order compelling Interline to produce this discovery.

**1. Background and procedural history: This lawsuit arises out of a July 2013 water leak from a failed coupling nut for a DuraPro supply line.**

*The Leak.* Plaintiff State Farm brings this product liability lawsuit after a July 2013 water leak damaged the Memphis home of its insured, Marc Gasol. The leak occurred while Gasol was away on his honeymoon. The leak came from the cracked coupling nut for a water supply line to a first floor toilet. The water ran for a considerable period before being discovered by the Gasols' pool cleaning service. State Farm insured the Gasol home at the time and paid to repair the damage.

This is the line as it was found after the leak:



*The Product.* In a declaratory judgment action Interline that filed three months ago against AIG, its liability carrier here, Interline explained that it “has been (and continues to be) the subject of hundreds of lawsuits based upon materially identical facts – Interline’s distribution of ostensibly defective water supply lines allegedly resulting in property damage.”<sup>1</sup> This is one of those claims. It appears

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<sup>1</sup> See *Interline Brands, Inc. v. AIG Specialty Insurance Company et al*, No. 3:14-cv-00426-MMH-JRK (M.D. Fla., filed April 14, 2014): Document 16, Interline’s Response to

that Interline does not actually manufacture the supply lines, but that it does sell them with Interline's trademarked name *DuraPro*.<sup>2</sup> The supply line, we allege, was installed in October 2012 by Defendant Albert Cook Plumbing, Inc. ("ACP").

*The Lawsuit - Claims and Defenses.* State Farm filed suit in this Court on October 25, 2013. We have brought claims through the Tennessee Products Liability Act. We have alleged: (1) that the *DuraPro* supply line that caused the leak is dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it, with the ordinary knowledge common to the community as to its characteristics; and (2) that a reasonably prudent manufacturer would not have put the supply line on the market assuming that manufacturer knew of its dangerous condition. More specifically, that the threads within the coupling nut terminate in a way that focus and multiply the stress of installation well past what the nut's construction can tolerate over time. Because the actual supply line maker is beyond the jurisdiction of the Court and because Interline and ACP are both supply line "sellers," we have alleged that they may be held liable for the defective product. Interline has denied that the supply line is defective and suggested that its installation may have been responsible for the failure. ACP has denied selling or installing the supply line.

The parties having raised these claims and defenses, the following topics are fit for discovery under Federal Rule 26:

- The design and construction of the *DuraPro* supply line coupling nut.
- The nature and extent of the alleged hazard posed by the coupling nut.
- The nature of the supply line installation and its role, if any, in the failure.

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*AIG's Motion to Dismiss at 2, PageID 701. The Memorandum is Exhibit 5 to this Motion.*

<sup>2</sup> See *Interline Brands, Inc. v. AIG Specialty Insurance Company et al*, No. 3:14-cv-00426-MMH-JRK (M.D. Fla., filed April 14, 2014): Document 1, Interline's Complaint at ¶37, PageID 8. This Complaint is Exhibit 4 to this Motion. See also Interline's Answer to Interrogatory 5 here (acknowledging that *DuraPro* is trademarked name on certain Interline plumbing products). These answers are Exhibit 3 to this Motion.

- The damage caused by the leak and the cost to repair it.
- The identity and location of key witnesses and documents that speak to these issues.

*Discovery Proceedings.* We produced to the defendants State Farm's claim file, all its photographs, and its expert reporting in late 2013.<sup>3</sup> These disclosures provided a complete picture of our claim, documented to the penny.<sup>4</sup> Upon learning of that disclosure at the parties Scheduling Conference in February 2014, Magistrate Pham set an aggressive mediation deadline of May 20, 2014.<sup>5</sup> The parties met this deadline, but did not settle the case. Perhaps with the hope of resolving this matter without discovery, the defendants obtained extensions of time to respond to State Farm's written discovery until after the mediation.<sup>6</sup>

Interline ultimately responded to State Farm's written discovery on June 30, 2014.<sup>7</sup> In its responses, Interline objected to: (1) disclosing any of the many prior similar claims and lawsuits; (2) identifying the entities that may have sold the supply line; and (3) producing its indemnity demand and other communications with the apparent importer of the supply line. We believe we this information is discoverable and have attempted to secure its production from Interline informally to no avail.<sup>8</sup> This Motion follows on August 4, 2014, within the 45-day window called for by the Court's Scheduling Order for this case.<sup>9</sup>

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<sup>3</sup> Declaration of attorney Michael Durr at ¶3. This declaration is Exhibit 6 to this Motion.

<sup>4</sup> *Id.*

<sup>5</sup> Document 19.

<sup>6</sup> See Documents 21 and 24.

<sup>7</sup> See Exhibit 3, Interline's Responses to Plaintiff's Interrogatories and Requests for Production.

<sup>8</sup> See the Rule 37 correspondence at Exhibit 2.

<sup>9</sup> See Document 19 at 2.

**2. Having complied with Federal Rule 37, State Farm may now move to compel the documents and information sought here.**

Federal Rule of Civil Procedure 37(a)(1) allows a party to move to compel disclosure of discoverable information and remove objections to written discovery requests. Such a motion “must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.”<sup>10</sup> On the other hand, a court maintains discretion to consider a motion without it,<sup>11</sup> and can excuse a failure to meet if it would be futile.<sup>12</sup> We have engaged in one telephone conference and two e-mail exchanges with Interline to resolve the issues raised herein.<sup>13</sup> We have conferred or attempted to confer as called for by Federal Rule 37 and Local Rule 7.02(a)(1)(B). Therefore, this Motion is appropriate now.

**3. The Sixth Circuit interprets Rule 26 broadly to allow discovery of any matter that bears on any issue that may be in the case.**

“Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense . . . [or] appears reasonably calculated to lead to the discovery of admissible evidence.”<sup>14</sup> In the Sixth Circuit, Rule 26 “has been ‘construed broadly to encompass any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may

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<sup>10</sup> Fed. R. Civ. P. 37(a)(2)(A).

<sup>11</sup> See *Orillaneda v. French Culinary Institute*, No. 07 Civ. 3206, 2011 U.S. Dist. LEXIS at \*14 105793 (S.D. N.Y. September 19, 2011) and *Pulsecard, Inc. v. Discover Card Servs., Inc.*, 168 F.R.D. 295, 302 (D. Kan. 1996)(recognizing that even when a party fails to comply with the conference requirements, “it remains within the discretion of the court to consider the motion on its merits”).

<sup>12</sup> *Fleischer v. Phoenix Life Insurance Company*, No. 11Civ.8405, 2012 WL 6732905 at \*2 (S.D. N. Y. December 27, 2012) (“A failure to meet and confer may be excused when to do so would be futile.”).

<sup>13</sup> See the Rule 37 correspondence at Exhibit 2.

<sup>14</sup> Fed. R. Civ. P. 26(b)(1).

be in the case.”<sup>15</sup> The same rule also “provides that a party must provide information and documents it possesses, regardless of who else possesses that information.”<sup>16</sup>

**4. The Court should overrule Interline’s objections and compel it to answer State Farm’s discovery fully.**

**4.1 Similar claims and lawsuits are routinely discoverable and Interline should disclose this information here.**

In the Complaint it just filed against AIG for insurance coverage for the sort of claim made here, Interline acknowledged that “*Until recently*, the water supply line claims appeared to be isolated and, in any event, within the standard deviation for the failure of this type of product.”<sup>17</sup> The implication being that information *now* available suggests that the very product at issue here fails at a rate *in excess* of the standard deviation for this type of product. Having expressly relied on the accumulation of similar claims – so similar, in fact, that Interline contends that all these claims amount to a single “occurrence” under its insurance policies – to assert that the product here fails at an unusually high rate, Interline cannot now deny that an evaluation of these similar claims is relevant to assessing the supply line’s integrity.<sup>18</sup> And yet it has:

**Interrogatory 15:** Identify those that have notified you that the coupling nut for a DuraPro water supply line failed or was defective. And for each such

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<sup>15</sup> See *Abadeer v. Tyson Foods, Inc.*, 2014 U.S. Dist. LEXIS 4694, 11-12 (M.D. Tenn. Jan. 13, 2014) (quoting *Marsico v. Sears Holding Corp.*, 370 F. App’x 658, 664 (6th Cir. 2010)). See also *A.H. v. Knowledge Learning Corp.*, 2010 WL 4117508, at \*4 (D. Kan. Oct. 19, 2010) (“[A] request for discovery should be considered relevant if there is ‘any possibility’ that the information sought may be relevant to the claim or defense of any party.”).

<sup>16</sup> *U.S. ex rel. Mallavarapu v. Acadiana Cardiology, LLC*, 2012 WL 369896 at \*5 (W.D. La. Feb. 3, 2012). Thus, it generally is not proper to object on the basis that the party already has the information it is requesting or that information is in the public record or is otherwise available to the party. *Id.*

<sup>17</sup> Interline Complaint at ¶41 (emphasis added).

<sup>18</sup> Interline Complaint at ¶58 and ¶75.



notice, please: state the date the notice was made; state how the notice was communicated to you; and explain your response, if any, to the notice.

**Answer:** OBJECTION: Interline objects to this interrogatory to the extent that it is overbroad, unduly burdensome, is not limited in scope, time or location, and requests irrelevant information that is not admissible at the time of trial.

**Interrogatory 16:** For those lawsuits brought against you claiming that the coupling nut for a DuraPro water supply line failed or was defective, please identify the parties to the lawsuit and state: the date the lawsuit was filed, the court where the lawsuit was filed, the civil action or case number assigned to the lawsuit, and whether the deposition of your corporate representative was taken in the case.

**Answer:** OBJECTION: Interline objects to this interrogatory to the extent that it is overbroad, unduly burdensome, is not limited in scope, time or location, and requests irrelevant information that is not admissible at the time of trial. In addition, any and all such lawsuits are a matter of public record accessible to the plaintiff.

“For discovery purposes, the court need only find that the circumstances surrounding other accidents are similar enough that discovery concerning those incidents is reasonably calculated to lead to the uncovering of substantially similar occurrences.”<sup>19</sup> These interrogatories are directed to substantially similar occurrences; therefore, they are proper and should be answered. This is especially true here because Interline has not only recognized, but relied upon, these “materially identical” claims and lawsuits in other litigation. Indeed, Interline has probably already accumulated, organized, analyzed, and prepared for disclosure this very information as part of making its case in that other litigation. And while anyone with an internet connection can find other supply line lawsuits against

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<sup>19</sup> *Enron Corp. Savings Plan v. Hewitt Associates, L.L.C.*, 258 F.R.D. 149, 166 (S.D. Tex. 2009) (citing *Lohr v. Stanley-Bostitch, Inc.*, 135 F.R.D. 162, 164 (W.D. Mich. 1991)). See also *Orleman v. Jumpking, Inc.*, 2000 WL 1114849 (D. Kan. 2000) (finding that prior lawsuits involving the same make and model of trampoline as the one at issue in the lawsuit were discoverable) and *Stagl v. Delta Airlines, Inc.*, 52 F.3d 463, 474 (2d Cir. 1995) (overturning order denying plaintiff’s motion to compel production of reports of prior similar accidents, explaining “To begin with, an accident record of this sort would be directly germane to establishing the degree of risk generated by Delta’s method of luggage retrieval and hence whether its failure to institute some other means was, in fact, negligent.”).

Interline, we do not have anything approaching a verified, complete list of other claims and lawsuits. Only Interline does.

**4.2 Interline should identify those who may have sold the supply line.**

We have alleged that Interline is a “seller” of the supply line as that term is defined by the Tennessee Product Liability Act at section 29-28-102(7).

Accordingly, we asked Interline to provide those within the chain of supply line’s chain of distribution. Interline objected and refused to answer:

**Interrogatory 11:** Identify every entity that may have purchased or sold the Supply Line.

**Answer:** OBJECTION: Interline objects to this interrogatory to the extent that it is overbroad, unduly burdensome, and requests irrelevant information that is not admissible at the time of trial.

**Interrogatory 12:** Identify every entity that may have manufactured the Supply Line.

**Answer:** Upon information and belief, the Supply Line was manufactured by Dingbo Plumbing Manufacturing Co.

If identifying the manufacturer of the supply line is not objectionable, identifying those who sold the supply line shouldn’t be either. This information is reasonably calculated to lead to admissible evidence. This interrogatory can be answered easily and should be.

**4.3 Interline’s indemnity demand on the supply line importer is not privileged and is otherwise discoverable.**

In connection with this very claim, Interline demanded indemnity from the entity that apparently imported the supply line. Interline may have exchanged additional information with that entity. These exchanges should be produced.

**Request for Production 4:** All documents, recordings, photographs, communications, and electronic data that refer to this lawsuit or its underlying claim exchanged between you and MTD USA Corp.

**Response:** OBJECTION: Documents generated during the investigation by Interline’s attorney are protected by the attorney work product doctrine and/or attorney- client privilege and are not discoverable. In addition, documents generated during the investigation performed by Interline’s consulting expert(s) are not discoverable. Without waiving this objection, Interline sent a letter to MTD tendering the defense and indemnity to MTD.

The indemnity demand and everything that preceded were between adverse parties, so these communications cannot be attorney-client communications or work-product. Or if they were, these protections were waived through disclosure and through the failure to log these withholdings as required by [Federal Rule 26\(b\)\(5\)\(A\)](#). That rule requires that party to identify its withholdings and disclose sufficient information to permit the other party to assess whether the asserted privilege is proper. This mandatory disclosure is known as a “privilege log.”<sup>20</sup> A party’s failure to assert a privilege on a privilege log generally constitutes a waiver of that privilege.”<sup>21</sup> “As the Advisory Committee’s Note to Rule 26(b)(5) explains: ‘A party must notify other parties if it is withholding materials otherwise subject to disclosure under the rule or pursuant to a discovery request because it is asserting a claim of privilege or work production protection. To withhold materials without such notice is contrary to the rule, subjects the party to sanctions under Rule 37(b)(2), and may be viewed as a waiver of the privilege or protection.’”<sup>22</sup>

## 5. Conclusion/Relief Requested

The discovery we seek in this Motion goes to the heart of what Interline itself recognizes to be relevant in this sort of case. Accordingly, the Court should grant this Motion and provide any additional relief it deems appropriate.

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<sup>20</sup> See *Bowling v. Scott County, Tenn.*, No. 3:04-CV-554, 2006 U.S. Dist. LEXIS 56079, at \*8 n.1 (E.D. Tenn. Aug. 10, 2006).

<sup>21</sup> *John B. v. Goetz*, 879 F. Supp. 2d 787, 889-90 (M.D. Tenn. 2010)(collecting cases); *In re Powerhouse Licensing, LLC*, 441 F.3d 467, 473 (6th Cir. 2006)(stating that if party resisting production does not meet the burden in claiming privilege or protection, then the court’s inquiry ends and the documents must be produced); *Sonnino v. Univ. of Kansas Hosp. Auth.*, 221 F.R.D. 661, 668-69 (D. Kan. 2004)(holding that party cannot resurrect attorney client privilege or work product protection with late filed privilege log after waiver has been found due to general or blanket claims of privilege or protection).

<sup>22</sup> See *Bowling v. Scott County, Tenn.*, 2006 U.S. Dist. LEXIS 56079, at \*9 (citing Fed. R. Civ. P. 26(b)(5) advisory committee’s note, 1993 amendments.)

Monday, August 04, 2014  
Knoxville, Tennessee

Respectfully submitted,  
QUIST, CONE & FISHER, PLLC

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*Attorney for Plaintiff State Farm Fire and  
Casualty Company*

### **Certificate of Conference**

As called for by Local Rule 7.2(a)(1)(B) I have conferred with counsel for Interline about this Motion to no avail before filing it.

By: /s/ Michael A. Durr  
Michael A. Durr

### **Certificate of Service**

I hereby certify that on Monday, August 04, 2014 that I served this document by electronic mail to the following counsel of record through the following e-mail addresses:

- Russell Rutledge  
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By: /s/ Michael A. Durr  
Michael A. Durr

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE

STATE FARM FIRE AND CASUALTY )  
COMPANY a/s/o MARC GASOL, )  
 )  
Plaintiff )  
 )  
v. )  
 )  
INTERLINE BRANDS, INC., )  
and ALBERT COOK PLUMBING, INC., )  
 )  
Defendants. )

JUDGE S. THOMAS ANDERSON  
MAGISTRATE JUDGE TU M. PHAM  
CIVIL ACTION NO. 2:13-CV-02844

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**DEFENDANT INTERLINE BRANDS INC.’S RESPONSES TO PLAINTIFF’S FIRST  
SET OF INTERROGATORIES AND PRODUCTION OF DOCUMENTS**

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Defendant, Interline Brands, Inc., (hereinafter “Interline”) submits its responses to Plaintiff’s First Set of Interrogatories and Request for Production of Documents as follows:

**GENERAL OBJECTION**

Interline objects to and rejects Plaintiff’s “Definitions” and “Instructions” set forth in the prologue to its discovery requests. Interline responds to plaintiff’s discovery in accordance with the Federal Rules of Civil Procedure, Federal Rules of Evidence and applicable common law.

**INTERROGATORIES**

1. Identify everyone who may have personal knowledge of the design, construction, composition, or specifications of the Supply Line.

**ANSWER: OBJECTION:** Interline objects to this interrogatory to the extent that it is overbroad, unduly burdensome, and requests irrelevant information that is not admissible at the time of trial. Interline also objects to this interrogatory to the extent that it calls for the disclosure of the identity of consulting experts. Subject to and without

**waiving the above objections, the person at Interline Brands, Inc. who may have some knowledge of the Supply Line is Joseph Cangelosi III, Senior Quality Assurance Manager for Interline Brands, Inc.**

2. Identify everyone who may have personal knowledge of the leak or the damage it is alleged to have caused.

**ANSWER: OBJECTION: Interline objects to this interrogatory to the extent that it calls for the disclosure of the identity and/or opinions of consulting experts. Subject to and without waiving this objection, Interline does not know who may have personal knowledge of the leak or the damage.**

3. If at the time of the leak, the Supply Line was not in substantially the same condition in which it was sold, please describe in what way(s) you believe it had been changed, altered, or modified.

**ANSWER: OBJECTION: Interline objects to this interrogatory to the extent that it calls for the disclosure of the identity and/or opinions of consulting experts. Subject to and without waiving this objection, Interline does not know whether or not the supply line was in the same condition in which it was sold.**

4. List and describe with particularity the warranties, owner or operator manuals, diagrams, warnings, instructions, or other materials expected to reach the ultimate purchaser or end user of the Supply Line.

**ANSWER:** The last page of the Barnett Pro Contractor Supplies catalog contains General Terms and Conditions language.

5. Has DuraPro ever been a trade name, brand name, trademark, or other proprietary name used or owned by Interline Brands, Inc.? If so, when, how, and for what products?

**ANSWER:** DuraPro is a common law trademark placed on data tags that are attached to various plumbing products distributed by Interline Brands, Inc. Interline Brands, Inc. began using the DuraPro name in or around July 2001.

6. If you deny that the Supply Line is a genuine DuraPro tubular product, please state the basis for this contention.

**ANSWER:** **OBJECTION:** Interline objects to this interrogatory to the extent that it calls for the disclosure of the identity and/or opinions of consulting experts. Subject to and without waiving this objection, Interline does not know whether the subject Supply Line is a genuine DuraPro tubular product. Inspection of the tag and product will confirm authenticity of the product.

7. If you deny that the blue DuraPro tag on the Supply Line is genuine, please state the basis for this contention.

**ANSWER:** See Interline's response to Interrogatory 6.

8. In your Form 10-K “Filed 03/12/13 for the Period Ending 12/28/12” did you state: “We sell a broad range of plumbing products, from individual faucet parts to complete bathroom renovation kits. In addition, we sell both brand name and exclusive brand products. For example, we sell brand name products from manufacturers including Kohler, Moen and Delta. We also sell exclusive brand plumbing products under various proprietary trademarks, including Premier faucets and water heaters, DuraPro tubular products and ProPlus retail plumbing accessories.”

**ANSWER: The foregoing statement appears to be consistent with the language contained within the referenced Form 10-K.**

9. Is the aforementioned statement true?

**ANSWER: Upon information and belief, the statement is true.**

10. If you contend that this Court may exercise personal jurisdiction over the manufacturer of the Supply Line, please state the bases for this contention.

**ANSWER: Interline does not know whether the Court may exercise personal jurisdiction over the manufacturer of the Supply Line.**

11. Identify every entity that may have purchased or sold the Supply Line.

**ANSWER: OBJECTION: Interline objects to this interrogatory to the extent that it is overbroad, unduly burdensome, and requests irrelevant information that is not admissible at the time of trial.**



12. Identify every entity that may have manufactured the Supply Line.

**ANSWER: Upon information and belief, the Supply Line was manufactured by Dingbo Plumbing Manufacturing Co.**

13. What caused the leak?

**ANSWER: Unknown.**

14. List and describe any material inaccuracies in the expert report attached as Exhibit A.

**ANSWER: OBJECTION: Interline objects to this interrogatory to the extent that it calls for the disclosure of the identity and/or opinions of consulting experts. Subject to and without waiving this objection, no Exhibit A was attached or received.**

15. Identify those that have notified you that the coupling nut for a DuraPro water supply line failed or was defective. And for each such notice, please: state the date the notice was made; state how the notice was communicated to you; and explain your response, if any, to the notice.

**ANSWER: OBJECTION: Interline objects to this interrogatory to the extent that it is overbroad, unduly burdensome, is not limited in scope, time or location, and requests irrelevant information that is not admissible at the time of trial.**

16. For those lawsuits brought against you claiming that the coupling nut for a DuraPro water supply line failed or was defective, please identify the parties to the lawsuit and state: the date the lawsuit was filed, the court where the lawsuit was filed, the civil action or case number assigned to the lawsuit, and whether the deposition of your corporate representative was taken in the case.

**ANSWER: OBJECTION: Interline objects to this interrogatory to the extent that it is overbroad, unduly burdensome, is not limited in scope, time or location, and requests irrelevant information that is not admissible at the time of trial. In addition, any and all such lawsuits are a matter of public record accessible to the plaintiff.**

17. Describe the manner and extent to which you collect, catalogue and store data or information that refer to allegations of defect or malfunction within a DuraPro water supply line.

**ANSWER: OBJECTION: Information and documents generated during the investigation by Interline's attorney are protected by the attorney work product doctrine and/or attorney-client privilege and are not discoverable. In addition, documents generated during the investigation performed by Interline's consulting expert(s) are not discoverable.**

18. Describe the manner and extent to which you collect, catalogue, and store data or information that refer to warranty claims, repair requests, or post sale third- party inquiries, reports, or complaints about DuraPro water supply lines.

**ANSWER: OBJECTION: Information and documents generated during the investigation by Interline's attorney are protected by the attorney work product doctrine and/or attorney-client privilege and are not discoverable. In addition, documents**

**generated during the investigation performed by Interline's consulting expert(s) are not discoverable. The manner in which this type of information is collected, catalogued, and stored is irrelevant. The interrogatory is overbroad, unduly burdensome and harassing.**

19. If you contend that the sums State Farm paid to honor the property insurance claim arising out of overflow (and now seeks to recover here) were excessive, unreasonable, or voluntary, please set forth the basis for this contention.

**ANSWER: OBJECTION: This interrogatory is premature. The interrogatory is also objectionable to the extent that it requests information generated during the investigation by Interline's attorney, which is protected by the attorney work product doctrine and/or attorney-client privilege. In addition, information generated during the investigation performed by Interline's consulting expert(s) is not discoverable.**

20. Set forth the bases for each of your affirmative defenses.

**ANSWER: OBJECTION: This interrogatory is overbroad and unduly burdensome. The interrogatory is also objectionable to the extent that it requests information generated during the investigation by Interline's attorney, which is protected by the attorney work product doctrine and/or attorney-client privilege. In addition, information generated during the investigation performed by Interline's consulting expert(s) is not discoverable. Without waiving and subject to the foregoing objections, the affirmative defenses speak for themselves.**

21. What has been your document retention policy since January 1, 2010? And, have you issued any “litigation holds” in connection with documents, recordings, photographs, communications, or electronic data that refer to DuraPro water supply lines? If so, when, how, and why?

**ANSWER: See Interline Brands, Inc. Document Retention Policy attached hereto.**

22. Has anything requested in Plaintiffs’ interrogatories or requests for production in this lawsuit been lost, discarded, destroyed, or transferred to a third party? If so, for each such loss: describe as completely as possible such information, document or item; state the date, manner and reason for such loss, disposal, destruction or transfer; and identify the person(s) who lost or disposed of or transferred the item.

**ANSWER: Upon information and belief, no.**

**REQUESTS FOR PRODUCTION**

1. All documents, recordings, photographs, communications, and electronic data that refer to the leak, any potential cause of the cause of the leak, or the damages alleged to have been caused by the leak.

**RESPONSE: None, other than documents produced by Plaintiff.**

2. All warranties, owner or operator manuals, diagrams, warnings, instructions, or other materials expected to reach the ultimate purchaser or end user of the Supply Line.

**RESPONSE: See attached copy of Barnett Pro Contractor Supplies General Terms and Conditions page.**

3. All documents, recordings, photographs, communications, and electronic data that refer to the Supply Line.

**RESPONSE: OBJECTION: Documents generated during the investigation by Interline's attorney are protected by the attorney work product doctrine and/or attorney-client privilege and are not discoverable. In addition, documents generated during the investigation performed by Interline's consulting expert(s) are not discoverable. Without waiving this objection, Interline has not identified any documents specific to the "Supply Line."**

4. All documents, recordings, photographs, communications, and electronic data that refer to this lawsuit or its underlying claim exchanged between you and MTD USA Corp.

**RESPONSE: OBJECTION: Documents generated during the investigation by Interline's attorney are protected by the attorney work product doctrine and/or attorney-client privilege and are not discoverable. In addition, documents generated during the investigation performed by Interline's consulting expert(s) are not discoverable. Without waiving this objection, Interline sent a letter to MTD tendering the defense and indemnity to MTD.**

5. All documents, recordings, photographs, communications, and electronic data that refer to this lawsuit or its underlying claim exchanged between you and the Supply Line manufacturer.

**RESPONSE: None.**

6. All operating, installation, customer, and maintenance instructions, guides and manuals for the Supply Line.

**RESPONSE: None.**

7. All documents, recordings, photographs, communications, and electronic data that refer to FMEA analysis for the Supply Line.

**RESPONSE: None.**

8. All documents, recordings, photographs, communications, and electronic data that refer to what may cause the pressure switch hose for the Washer to clog.

**RESPONSE: None.**

9. All documents, recordings, photographs, communications, and electronic data that refer a claim or allegation that the coupling nut for a DuraPro water supply line failed and caused a leak.

**RESPONSE: None, other than the notice of claim originally submitted by counsel for State Farm related to the supply line at issue. Please refer to Interline's response to RFP 4 regarding its letter to MTD.**

10. All documents, recordings, photographs, communications, and electronic data that refer a lawsuit that the coupling nut for a DuraPro water supply line failed and caused a leak.

**RESPONSE: None, other than the Complaint filed by counsel for State Farm related to the supply line at issue. Please refer to Interline's response to RFP 4 regarding its letter to MTD.**

11. All documents, recordings, photographs, communications, and electronic data that you rely on to support your affirmative defenses in this lawsuit.

**RESPONSE: OBJECTION: This Request is premature. Documents generated during the investigation by Interline's attorney are protected by the attorney work product doctrine and/or attorney-client privilege and are not discoverable. In addition, documents**

generated during the investigation performed by Interline's consulting expert(s) are not discoverable.

12. All documents, recordings, photographs, communications, and electronic data that you rely on to support your contention that the claimed damages in this lawsuit are excessive, unreasonable, or unrecoverable.

**RESPONSE: OBJECTION: This Request is premature. Documents generated during the investigation by Interline's attorney are protected by the attorney work product doctrine and/or attorney-client privilege and are not discoverable. In addition, documents generated during the investigation performed by Interline's consulting expert(s) are not discoverable.**

Respectfully submitted,



---

**MICHAEL A. GERACIOTI, #11497**  
**BRIAN D. CUMMINGS, #19354**  
**LINDA A. NATHENSON, #16494**  
Attorneys for Defendant, Interline Brands, Inc.  
**LEVINE, ORR & GERACIOTI, PLLC**  
210 Third Avenue North  
P. O. Box 190683  
Nashville, Tennessee 37219  
(615) 244-4944



**CERTIFICATE OF SERVICE**


The undersigned hereby certifies that a true and exact copy of the foregoing has been served upon the persons listed below this 30<sup>th</sup> day of June, 2014:

Michael A. Durr  
Quist, Cone & Fisher, PLLC  
2121 First Tennessee Plaza  
Knoxville, TN 37929

Russell Rutledge  
Law Office of Craig J. Lazarov  
5350 Poplar Avenue, Suite 306  
Memphis, TN 38119

by the following indicated method(s), in compliance with the requirements of Rule 5 of the Federal Rules of Civil:

- U.S.P.S. first class postage pre-paid
- Hand delivery to the address(es) shown above
- Overnight Courier
- Certified Mail, Return Receipt Requested \_\_\_\_\_
- Facsimile

  
\_\_\_\_\_  
Michael A. Geraeion #11497  
Brian Cummings #19354  
Linda A. Nathenson #16494

gasol INTERLINE RESPONSES TO PLF 1st INT-RFP 6-30-14/E1000-15958



**INTERLINE BRANDS, INC.  
DOCUMENT RETENTION POLICY**

Interline Brands, Inc. ("Interline") shall retain records for the period of their immediate or current use, unless longer retention is necessary for historical reference or to comply with contractual or legal requirements. Records and documents outlined in this policy includes paper, electronic files (including e-mail) and voicemail records regardless of where the document is stored, including network servers, desktop or laptop computers and handheld computers and other wireless devices with text messaging capabilities.

In accordance with 18 U.S.C. Section 1519 and the Sarbanes Oxley Act, Interline shall not knowingly destroy a document with the intent to obstruct or influence an "investigation or proper administration of any matter within the jurisdiction of any department agency of the United States . . . or in relation to or contemplation of such matter or case." If an official investigation is underway or even suspected, document purging must stop in order to avoid criminal obstruction.

In order to eliminate accidental or innocent destruction, Interline has the following document retention policy:

<b><u>Type of Document</u></b>	<b><u>Retention Period</u></b>
General ledgers, trial balance journals, chart of accounts and accounts receivable and payable ledgers and schedules	7 years
Annual audited financial statements, external audit reports and internal audit reports	Permanently
Articles of Incorporation, Charter, Bylaws, minutes and other incorporation records	Permanently
Bank Reconciliations, bank statements, deposit records, electronic fund transfer documents, and cancelled checks	3 years
Contracts, mortgages, notes and leases (still in effect)	Permanently
Contracts, mortgages, notes and leases (expired)	7 years
Correspondence (legal and important matters)	Permanently
Correspondence (with customers and vendors)	2 years

**INTERLINE BRANDS, INC.****RECORD RETENTION AND DESTRUCTION POLICY**

<b><u>Type of Document</u></b>	<b><u>Retention Period</u></b>
Fixed asset records and depreciation schedules (still in place)	Permanently
Fixed asset records and depreciation schedules (disposed)	7 years
Garnishments	7 years
Insurance policies, records, current accident reports, claims (still in effect)	Permanently
Insurance policies, records, accident reports, claims (expired)	3 years
Inventory records	7 years
Invoices (to customers, from vendors)	7 years
Personnel files and payroll records	2 years
Retirement records and summary plan descriptions (ERISA)	Permanently
Tax Returns and worksheets	7 years
Trademark registrations and copyrights	Permanently
Workers Compensation documentation	7 years after 1st closure

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

INTERLINE BRANDS, INC.,

*Plaintiff,*

vs.

CASE NO. \_\_\_\_\_

AIG SPECIALTY INSURANCE COMPANY,  
f/k/a Chartis Specialty Lines Insurance Company,  
f/k/a American International Specialty Lines Insurance  
Company; LIBERTY MUTUAL FIRE INSURANCE  
COMPANY; LIBERTY INSURANCE  
CORPORATION,

*Defendants.*

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**COMPLAINT FOR DECLARATORY RELIEF AND DAMAGES**

Interline Brands, Inc. (“Interline”), sues AIG Specialty Insurance Company (“AIG”), formerly known as Chartis Specialty Insurance Company (“Chartis”) and American International Specialty Lines Insurance Company (“AISLIC”), Liberty Insurance Corporation (“Liberty Insurance”), and Liberty Mutual Fire Insurance Company (“Liberty Fire”) (collectively, “Liberty”) as follows:

**NATURE OF ACTION**

1. This is an action for declaratory relief and damages, pursuant to 28 U.S.C. §§ 2201 and 2202, arising out of the refusal of AIG and Liberty to unconditionally indemnify and defend Interline in relation to, currently, eleven underlying actions and other cases of a like nature for property damage allegedly caused by Interline’s distribution of what are claimed to be defectively designed water supply lines.

**PARTIES, JURISDICTION AND VENUE**

2. Interline is a New Jersey corporation with its principal place of business in Jacksonville, Florida. Interline at all material times transacted business in Duval County, Florida.

3. AIG is, upon information and belief, an Illinois corporation with its principal place of business in New York, New York and is doing business in the State of Florida.

4. Liberty Fire is, upon information and belief, a Wisconsin corporation with its principal place of business in Boston, Massachusetts and is doing business in the State of Florida.

5. Liberty Insurance is, upon information and belief, an Illinois corporation with its principal place of business in Boston, Massachusetts and is doing business in the State of Florida.

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a), as the parties' respective states of incorporation and principal places of business are diverse, thus establishing diversity of citizenship between the parties, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

7. Venue is proper pursuant to 28 U.S.C. § 1391(a)(2) because the insurance policies described below were all issued for delivery and delivered to Interline in this District; the causes of action accrued in this District; Interline's principal place of business is in this District; AIG and Liberty conduct business in this District; and a substantial part of the events or omissions giving rise to the claims under the subject policies occurred in this District.

**THE POLICIES**

8. The AIG Primary Policies: AIG issued a series of five consecutive annual

commercial general liability policies to Interline, all bearing Policy No. 2067728, and covering the time period November 1, 2007 to November 1, 2014 (“Primary Policies”).

9. Prior to changing its name to AIG Specialty Insurance Company and assuming the rights and obligations of its predecessor entities, AIG was known as AISLIC and/or Chartis. The Primary Policies issued for the period of November 1, 2007 to November 1, 2010 were issued by AIG while operating as AISLIC; the Primary Policies issued for the period of November 1, 2010 to November 1, 2014 were issued by AIG while operating as Chartis.

10. The Primary Policies’ material terms are identical, including the relevant coverage grants and exclusions. A copy of one of the Primary Policies, issued for the period of November 1, 2007 to November 1, 2008, is attached as Exhibit A.

11. The Primary Policies were issued for delivery to and delivered to Interline in Jacksonville, Florida.

12. Interline paid the full premiums on the Primary Policies and satisfied all other conditions to maintain the Primary Policies in full force and effect at all relevant times.

13. The Primary Policies afford \$1,000,000.00 each occurrence, \$2,000,000.00 general aggregate, and \$2,000,000.00 products completed operations aggregate limits.

14. The deductible for Coverage A (Bodily Injury and Property Damage Liability) is \$75,000.00 each occurrence and applies to indemnity only. Legal fees and other defense costs do not erode this deductible, and are paid outside of and in addition to the limits of the Primary Policies.

15. Under the terms of the Primary Policies, AIG agreed to “pay those sums that the insured becomes legally obligated to pay as damages because of ... **property damage** ...” occurring “during the policy period” and “caused by an **occurrence**” and to “defend the insured

against any **suit** seeking those damages.” AIG’s duty to defend “ends when [AIG] has used up the applicable limit of insurance in the payment of judgments or settlements under Coverage A or B.”

16. Under the terms of the Primary Policies, “Property Damage” means “[p]hysical injury to tangible property, including all resulting loss of use of that property. All such loss shall be deemed to occur at the time of the physical injury that caused it; or “[l]oss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **occurrence** that caused it.”

17. Under the terms of the Primary Policies, “Occurrence” means “an accident, including continuous or repeated exposure to substantially the same general harmful conditions.”

18. The Liberty Fire Umbrella Excess Policies: Liberty Fire issued three consecutive annual Umbrella Excess Liability policies to Interline, all bearing policy number TH2-631-509477, and covering the period of November 1, 2007 to November 1, 2011 (“Liberty Fire Policies”). The Liberty Fire Policies’ material terms are identical, including the relevant coverage grants and exclusions. A copy of one of the Liberty Fire Policies, issued for the period of November 1, 2007 to November 1, 2008, is attached as Exhibit B.

19. The Liberty Fire Policies provide \$25,000,000.00 per occurrence, \$25,000,000.00 general aggregate and \$25,000,000.00 products-completed operations aggregate limits with a “Retention” of \$25,000.00.

20. The insuring agreement in the Liberty Fire Policies, as amended by Endorsement, requires Liberty Fire to “pay those sums in excess of the **retained limit** that the insured becomes legally obligated to pay as damages because of ... **property damage** ...” occurring “during the

policy period” and “caused by an **occurrence**” and to “defend any **suit** seeking damages covered by [the] policy.”

21. Under the terms of the Liberty Fire Policies, “Property damage” means “[p]hysical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or “[l]oss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **occurrence** that caused it.”

22. Under the terms of the Liberty Fire Policies, “Occurrence” with respect to property damage means “an accident, including continuous or repeated exposure to substantially the same general harmful conditions.”

23. Under the terms of the Liberty Fire Policies, “Retained limit” means, as to each occurrence, “the relevant ‘each person,’ ‘each occurrence’ or similar limit or sublimit of liability in [any **underlying policy**]; plus [a]ll amounts payable under other insurance, if any; but not less than the amount shown in the Declarations as the Insured’s Retention” and is “reduced by the amount the relevant limit or sublimit stated in the applicable underlying policy is reduced due to the impairment or exhaustion of an overriding aggregate limit of liability.”

24. Under the terms of the Liberty Fire Policies, “Underlying Policy” means “a policy listed as an **underlying policy** in the Declarations.”

25. The Liberty Fire Policies identify the AIG Primary Policies covering November 1, 2007 to November 1, 2011 as “Underlying Policies.”

26. The Liberty Insurance Umbrella Excess Policies: Liberty Insurance issued two consecutive Umbrella Excess Liability policies to Interline, all bearing policy number TH7-631-509477, and covering the period of November 1, 2011 to November 1, 2014 (“Liberty Insurance



Policies”). The Liberty Insurance Policies’ material terms are identical, including the relevant coverage grants and exclusions. A copy of one of the Liberty Insurance Policies, issued for the period of November 1, 2011 to November 1, 2012, is attached as Exhibit C.

27. The Liberty Insurance Policies provide \$25,000,000.00 per occurrence, \$25,000,000.00 general aggregate and \$25,000,000.00 products-completed operations aggregate limits with a “Self-Insured Retention” of \$25,000.00.

28. Under the Liberty Insurance Policies, Liberty agreed to “pay those sums in excess of the **retained limit** that the insured becomes legally obligated to pay because of ... **property damage** ...” occurring “during the policy period” and “caused by an **occurrence**.”

29. Liberty Insurance also agreed to “defend any **suit** seeking damages covered by this insurance ... when: (1) The total applicable limits of **underlying insurance** have been exhausted by payment of judgments or settlements; or (2) The damages sought because of ... **property damage** ... to which this insurance applies would not be covered by **underlying insurance** or other insurance.”

30. Under the Liberty Insurance Policies, “Property damage” means “[p]hysical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or [l]oss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **occurrence** that caused it.”

31. Under the Liberty Insurance Policies, “Occurrence” means, with respect to property damage, “an accident, including continuous or repeated exposure to substantially the same general harmful conditions.”

32. Under the Liberty Insurance Policies, “Retained limit” means as to each occurrence ... “[t]he total applicable limits of the **underlying insurance** plus any applicable **other insurance**” and is “reduced by the amount by which the applicable **underlying insurance** has been reduced due to the reduction or exhaustion of the applicable aggregate limit of insurance by payment of judgments or settlements. The **retained limit** is not reduced or exhausted by defense costs, loss adjustment expenses, supplementary payments or similar amounts that reduce or exhaust the policy limits of **underlying insurance**.”

33. Under the Liberty Insurance Policies, “Underlying Insurance” means “any policies of insurance or self-insurance listed in the Declarations under the Schedule of **underlying insurance**.”

34. The Liberty Insurance Policies list the AIG Primary Policies covering November 1, 2011 to November 1, 2014 as “Underlying Insurance.”

#### **THE UNDERLYING LAWSUITS AND CLAIMS**

35. A series of ten “bundled” subrogation lawsuits and one individual lawsuit were brought by the Law Offices of Robert A. Stutman, P.C. in New Jersey on behalf of various insurance carriers – including Liberty Fire and Liberty Insurance – as subrogees of their insureds, alleging products liability, failure to warn, breach of warranty, strict liability, and fraudulent concealment against Interline and various manufacturers and distributors of water supply lines (“Underlying Lawsuits”).

36. In addition to the individual claims asserted against Interline in the Underlying Lawsuits, Interline is defending numerous other cases of a like nature relating to property damage incurred as a result of allegedly defective water supply lines (the “Outstanding Claims”).

37. The water supply lines at issue in the Underlying Lawsuits and Outstanding Claims were designed and manufactured by entities other than Interline. Interline does not design or manufacture any water supply lines, but sells certain supply lines to its customers under its private label name, Durapro.

38. The eleven Underlying Lawsuits, which consist of 218 individual claims (41 of which allege property damage occurring in Florida including some of the claims for which subrogation is sought by Liberty), are currently styled as follows:

- a) *American Mercury Insurance Co. et al. v. Interline Brands, Inc. et al.*, No. 001942-13 (N.J. Super. Ct. Law Div. 2013);
- b) *Cincinnati Insurance Co. v. Interline Brands, Inc. et al.*, No. 001941-13 (N.J. Super. Ct. Law Div. 2013);
- c) *Erie Insurance Exchange et al. v. Interline Brands, Inc. et al.*, No. L216-13 (N.J. Super. Ct. Law Div. 2013);
- d) *First Liberty Insurance Corp. v. Interline Brands, Inc. et al.*, No. L-007652-12 (N.J. Super. Ct. Law Div. 2012);
- e) *Liberty Lloyds of Texas Insurance Co. v. Interline Brands, Inc. et al.*, No. L219-13 (N.J. Super. Ct. Law Div. 2013);
- f) *Liberty Mutual Fire Insurance Co. v. Interline Brands, Inc. et al.*, No. L007653-12 (N.J. Super. Ct. Law Div. 2012);
- g) *Safeco Insurance Co. of America et al. v. Interline Brands, Inc. et al.*, No. 001944-13 (N.J. Super. Ct. Law Div. 2013);
- h) *United Services Automobile Association et al. v. Interline Brands, Inc. et al.*, No. L-845-13 (N.J. Super. Ct. Law Div. 2013);
- i) *United Services Automobile Association a/s/o Emmet T. Mannix v. Interline Brands, Inc. et al.* No. L-303-13 (N.J. Super. Ct. Law Div. 2013);
- j) *Westfield Insurance Co. v. Interline Brands, Inc. et al.*, No. 1:12-cv-06775-JBS-JS (D. N.J. 2012); and
- k) *Liberty Insurance Corp. et al. v. Interline Brands, Inc. et al.*, No. ATL-L-452-14 (N.J. Super. Ct. Law Div. 2014).

The Underlying Lawsuit Complaints, and amendments<sup>1</sup> thereto, are attached as Composite Exhibit D.

39. The Underlying Lawsuits and Outstanding Claims arise from Interline's alleged distribution of water supply lines claimed to be defective, which allegedly failed and caused property damage. The alleged property damage spans from September 7, 2007 to January 23, 2014.

40. The Plaintiffs in the Underlying Lawsuits, including Interline's own insurers (Liberty Insurance and Liberty Fire), seek damages exceeding \$7.8 million<sup>2</sup> and other relief for the harm allegedly caused by Interline's acts or omissions. The Outstanding Claims likewise seek substantial damages from Interline.

41. **Until recently, the water supply line claims appeared to be isolated and, in any event, within the standard deviation for the failure of this type of product.**

42. Some of the claims arising out of Interline's distribution of the allegedly defective water supply lines settled at a time when it was not clear that the lawsuits bore common characteristics and were not merely isolated events.

43. Until recently, Interline has been defended and indemnified by the suppliers from whom Interline purchased its water supply lines. One of those suppliers, however, has recently informed Interline that it is presently unable to fully indemnify or defend Interline due to financial issues.

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<sup>1</sup> The Plaintiffs in the Underlying Lawsuits filed a First Amended Schedule "A" to the Complaints identified in subsection (a) through (h) above.

<sup>2</sup> This figure is based on a damages spreadsheet produced by the Law Offices of Robert A. Stutman, P.C. to Interline on March 14, 2014 (the "Spreadsheet"). The number of claims and dates of loss set forth in paragraphs 38 and 39 are also based on the updated information contained in the Spreadsheet.

44. Interline timely notified AIG and Liberty (which already knew of the claims) of, and requested that each insurer defend and indemnify it with respect to, the Underlying Lawsuits and Outstanding Claims.

45. AIG agreed to defend Interline with respect to some, if not all, of the Underlying Lawsuits under a purported reservation of rights. AIG's reservation of rights letters with respect to two of the Underlying Lawsuits are attached as Composite Exhibit E.

46. Interline itself has paid close to \$75,000.00 toward exhaustion of its contractual deductible obligation and any applicable retention<sup>3</sup>, and jointly liable parties have paid substantial additional sums, serving to fully erode Interline's deductible and any applicable retention.

47. Liberty has thus far declined to defend or indemnify Interline entirely, claiming, amongst other things, that Interline failed to provide timely notice under the Liberty Insurance and Liberty Fire Policies. Liberty's partially redacted denial letter, in which it purportedly reserved its right to modify its position, is attached as Exhibit F.

48. Mediation of the Underlying Lawsuits is scheduled for early June 2014. In light of the looming mediation, the refusal of jointly and principally liable parties other than Interline to fully protect and hold Interline harmless, the nearly \$8 million being sought in the Underlying Lawsuits, and numerous Outstanding Claims which likewise seek substantial damages relating to property damage incurred as a result of allegedly defective water supply lines, an impending settlement well in excess of the limits of at least one of the underlying Primary Policies is reasonably likely.

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<sup>3</sup> The Liberty Fire Policies refer to a "Retention," whereas the Liberty Insurance Policies refer to a "Self-Insured Retention."

49. All conditions precedent to this action have been performed, waived, or are the subject of an estoppel.

50. Interline has engaged counsel to represent its interests in this action and is obligated to pay the firm a reasonable fee.

**COUNT I: DECLATORY RELIEF – AIG**

51. Interline re-alleges paragraphs 1 through 50.

52. Interline made timely payment of all premiums and otherwise satisfied all conditions precedent for coverage under the Primary Policies.

53. The Primary Policies constitute valid and enforceable contracts under the laws of the State of Florida.

54. The Primary Policies require AIG to defend and indemnify Interline against third-party claims alleging “property damage” occurring “during the policy period” which is “caused by an occurrence.”

55. The eleven Underlying Lawsuits and Outstanding Claims seek damages for “property damage” occurring during the policy period, caused by an “occurrence.”

56. No exclusions, including exclusions identified in Composite Exhibit E attached hereto, apply under the circumstance to relieve AIG of its duties to defend and indemnify Interline in relation to the Underlying Lawsuits or to Outstanding Claims.

57. AIG is therefore obligated to defend and indemnify Interline with respect to the Underlying Lawsuits and Outstanding Claims, but continues to disagree with Interline’s position and, while providing a defense, maintains its right to deny coverage under the Primary Policies.

58. Specifically, AIG disagrees with Interline that the Underlying Lawsuits and Outstanding Claims arise from a single occurrence, being the distribution in commerce by Interline of a product containing a like alleged design or manufacturing defect.

59. Further, AIG disagrees with Interline as to:

- a) how, and to what extent, payments by Interline and/or other liable parties exhaust Interline's deductible obligations, to the extent remaining;
- b) how, and to what extent, AIG's obligation to indemnify is to be calculated, including whether one, or more than one, policy is triggered by payment of settlements or judgments, including the role, if any, of policy provisions designed to collapse continuing harm into a single policy period;
- c) when, and under what circumstances, AIG's per-occurrence and aggregate limits exhaust, thus affecting the obligations of Liberty; and
- d) the extent and nature of AIG's defense obligations given resolution of these issues.

60. Interline believes that there is a single occurrence presented by the Underlying Lawsuits and Outstanding Claims, that it has exhausted its deductible obligations, and that AIG must completely defend – pending exhaustion of limits – Interline's interests.

61. Accordingly, an actual and justiciable controversy exists among the parties as to which a declaratory judgment setting forth their respective rights and obligations under the Primary Policies in relation the Underlying Lawsuits and Outstanding Claims is necessary and appropriate.

**COUNT II: DECLATORY RELIEF – LIBERTY**

62. Interline re-alleges paragraphs 1 through 50.

63. Interline made timely payment of all premiums and otherwise satisfied all

conditions precedent for coverage under the Liberty Insurance and Liberty Fire Policies (collectively, the “Liberty Policies”), including timely notice.

64. The Liberty Policies constitute valid and enforceable contracts under the laws of the State of Florida.

65. The Liberty Policies require both Liberty Insurance and Liberty Fire to indemnify Interline for damages incurred in excess of the applicable Primary Policies for “property damage” occurring “during the policy period” that is “caused by an occurrence.” The Liberty Policies also require both insurers to defend Interline against any third-party claim asserting “property damage” occurring “during the policy period” “caused by an occurrence.”

66. The eleven Underlying Lawsuits and Outstanding Claims seek damages for “property damage” occurring during the policy period, caused by an “occurrence,” and collectively well exceed the limits of one of the Primary Policies.

67. No exclusions, including exclusions identified in Exhibit F attached hereto, apply under the circumstances to relieve Liberty Insurance or Liberty Fire of their duties to defend and indemnify Interline in relation to the Underlying Lawsuits or Outstanding Claims.

68. Liberty Insurance and Liberty Fire themselves have sued Interline as subrogees in two of the Underlying Lawsuits, which presents inherent conflicts of interest here.

69. Both Liberty Insurance and Liberty Fire have extensive knowledge independently learned of the Underlying Lawsuits and Outstanding Claims and the basis for such claims, which the carriers seem bent on using against their own insured. Such knowledge, Interline believes, defeats an assertion by Liberty Insurance and Liberty Fire of late notice or prejudice from such allegedly delayed notice.



70. Liberty Insurance and Liberty Fire have and had actual and/or constructive knowledge of the claims against Interline long before the Marsh letter referred to in their lengthy reservation of rights/denial letter, but never offered any assistance to Interline in managing or resolving these claims.

71. Liberty Insurance and/or Liberty Fire asserted claims (as the subrogating insurer on behalf of the insured homeowner) against Interline at least as early as January 2012.

72. Further, Liberty Insurance and/or Liberty Fire have had notice of property damage claims involving losses alleged caused by Interline's products at least as early as May 2008.

73. Liberty Insurance and Liberty Fire conducted lengthy internal investigations of Interline's liability and defenses to property damage claims in connection with the aforementioned claims.

74. Liberty Insurance was further aware of the Outstanding Claims at least as early as October 2012 in connection with Interline's policy renewals.

75. **Interline believes that the allegations in the Underlying Lawsuits and Outstanding Claims are one "occurrence" as defined by the Liberty Policies and under applicable law.** Liberty Insurance and Liberty Fire feign ignorance of what that "occurrence" might be, despite having sued their own insured, thus disagreeing with this position.

76. Liberty Insurance and Liberty Fire also claim that certain provisions in the Liberty Policies may operate to collapse continuing harm into one of the insurance policy terms, but have not taken a position as to whether this impacts the AIG Primary Policies, and if so, how, or which if any of the Liberty Policies should respond.

77. Liberty Insurance and Liberty Fire assert that there are upwards of 20 reasons they may not provide defense or indemnity to Interline as disclosed by Exhibit F; Interline disagrees that any of these asserted reasons for limiting or denying coverage apply.

78. Currently, Interline is exposed to nearly \$8 million in damages sought in the Underlying Lawsuits, which far exceeds the limits of at least one of the Underlying Primary Policies, and additional damages in Outstanding Claims which, by themselves, exceed the limits of one or all of the applicable Primary Policies. Given this exposure, and the approaching mediation, Liberty owes Interline a fiduciary obligation to assist Interline in resolving these suits and in negotiating in good faith towards settlement.

79. Despite both Liberty Insurance and Liberty Fire's obligations, both insurers have refused to contribute funds toward Interline's defense of the Underlying Lawsuits and Outstanding Claims, or otherwise participate or negotiate in the process.

80. Accordingly, an actual and justiciable controversy exists among the parties as to which a declaratory judgment setting forth their respective rights and obligations under the Liberty Policies in relation the Underlying Lawsuits and Outstanding Claims is necessary and appropriate.

**WHEREFORE**, Interline Brands, Inc. prays for entry of judgment declaring the rights and interests of the parties in the issues and for the reasons described above, and if necessary to provide full relief, awarding damages to Interline to the extent it has paid or agreed to pay any sums which should be borne by some or all of the insurers, interest on such sums as provided by law, legal fees if allowed by law, including Section 627.428 of the Florida Statutes, and such other and further relief as may be equitable, just, and proper.

**TRIAL BY JURY**

Interline demands a trial by jury of all issues so triable as a matter of right.

Dated this 11th day of April, 2014.

Respectfully submitted,



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**VER PLOEG & LUMPKIN, P.A.**

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Telephone: (305) 577-3996

Facsimile: (305) 577-3558

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

INTERLINE BRANDS, INC.,

Plaintiff,

vs.

CASE NO. 3:14-cv-426-J-34JRK

AIG SPECIALTY INSURANCE COMPANY,  
f/k/a Chartis Specialty Insurance Company,  
f/k/a American International Specialty Lines Insurance  
Company; LIBERTY MUTUAL FIRE INSURANCE  
COMPANY; LIBERTY INSURANCE  
CORPORATION,

Defendants.

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**PLAINTIFF'S RESPONSE TO DEFENDANT, AIG SPECIALTY  
INSURANCE COMPANY'S, MOTION TO DISMISS, OR IN THE  
ALTERNATIVE, FOR MORE DEFINITE STATEMENT IN PART**

Plaintiff, Interline Brands, Inc. ("Interline"), submits its response, pursuant to Local Rule 3.01 of the Middle District of Florida, to Defendant, AIG Specialty Insurance Company's ("AIG"), motion to dismiss the complaint in part or, in the alternative, for a more definite statement in part [D.E. 13], and demonstrates as follows that the motion must be denied in its entirety.

**I. INTRODUCTION**

This is an action seeking a declaration as to the principal issues informing AIG's indemnity and defense obligations under the commercial general liability ("CGL") policies (the "Policies") issued to Interline by AIG for the policy periods November 1, 2007 to November 1, 2014.

Interline has been (and continues to be) the subject of hundreds of lawsuits based upon materially identical facts—Interline’s distribution of ostensibly defective water supply lines allegedly resulting in property damage throughout the policy period(s) at issue. For years, these suits have been defended and paid for by Interline’s three suppliers or their insurance carriers pursuant to certain hold harmless and indemnification agreements. Recently, however, one supplier informed Interline that it no longer has the financial resources to honor its obligations, forcing Interline to resolve three claims out-of-pocket and leaving Interline exposed to the claims that comprise the Underlying Lawsuits and Outstanding Claims<sup>1</sup> at issue here.

While the Complaint complies with all Federal Rules concerning the relief sought by Interline and the details upon which such relief is based, AIG asserts that the Complaint should be dismissed because: (1) the issues related to AIG’s indemnity obligations, as outlined in paragraph 59(a)-(c) of the Complaint, are conclusory and “devoid of any factual allegations to support them” and “premature” because “there has been no verdict or judgment against Interline” in the Underlying Lawsuits or Outstanding Claims; (2) resolution of AIG’s duty to defend is premature because “there has been no denial of a defense and no facts stated which give rise to any actual controversy;” and (3) Interline’s request for “damages” is improper because “[t]he Complaint does not allege any breach of contract or other cause of action which gives rise to damages....” [D.E. 13 at 6-7, 13-14]. In the alternative, AIG seeks a more definite statement with respect to the declarations sought in paragraph 59 of the

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<sup>1</sup> The Underlying Lawsuits are a bundled subset of the currently pending suits brought against Interline for its distribution of allegedly defective water supply lines. The Outstanding Claims consist of the other water supply line suits currently pending against Interline. The number of Outstanding Claims is in flux, however, as numerous additional claims are asserted on a weekly basis.

Complaint because “they are so vague and ambiguous that AIG cannot reasonably prepare a response,” and any relief pertaining to the “Outstanding Claims” because “the Complaint does not contain facts identifying the claims.” [D.E. 13 at 14-17].

None of the advanced grounds permit dismissal or warrant a more definite statement. First, Interline does not seek a declaration as to the *coverage* aspect of AIG’s duty to indemnify—AIG has not disputed coverage. Rather, as set forth in paragraphs 58 and 59 of the Complaint, Interline seeks a declaration as to (1) the number of occurrences applicable to the Underlying Lawsuits and Outstanding claims, and (2) whether Interline’s deductible obligations have been satisfied by past payments made by Interline and/or its suppliers.<sup>2</sup> These issues, while related to AIG’s indemnity obligations, do not require resolution of the pending lawsuits where, as here, the facts necessary to the resolution of those issues are well-established and settlement of the suits is imminent. Frankly, if a resolution of the Underlying Lawsuits as craved by AIG was first required, the very harm sought to be avoided by the declarations sought would befall both AIG and Interline.

Similarly, although AIG is currently defending under a purported reservation of rights, the Court’s resolution of AIG’s duty to defend is ripe and, frankly, critical under the circumstances of this case. AIG has taken full control of Interline’s defense in several of the pending suits and, in doing so, reserved the right to seek reimbursement from Interline for all defense fees incurred on Interline’s behalf. Thus, the Court’s abstention on this issue would

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<sup>2</sup> Interline has also sought a declaration as to the number of policies implicated by the Underlying Lawsuits and Outstanding Claims. This issue is ripe because that determination will dictate the number of deductibles which must be satisfied. The number of deductibles owed, in turn, is directly relevant to the disputed issue listed above – whether Interline’s deductible obligations have been exhausted to date by prior payments. The issue of the number of policies implicated is also ripe because it will determine the limits available to AIG to settle the Underlying Lawsuits and Outstanding Claims that are the subject of ongoing settlement discussions.

leave Interline exposed to substantial defense fees incurred at AIG's sole discretion, as well as indemnity within the scope of Interline's deductible, assuming those deductibles have not already exhausted – one of the very issues sought to be resolved by this proceeding.

AIG also seeks a more definite statement with respect to the Outstanding Claims—other cases filed against Interline likewise alleging property damage incurred as a result of Interline's distribution of allegedly defective water supply lines. The Outstanding Claims are, for purposes of the declarations sought herein, materially identical to the bundled claims, and are pleaded as such in the Complaint. Interline seeks a declaration in this action regarding "Outstanding Claims" to ensure that this Court's adjudication of the issues presented with respect to the Underlying Lawsuits are applied equally to the Outstanding Claims. Moreover, the details sought by AIG regarding other claims are more appropriately the subject of discovery.

Lastly, AIG's contention that Interline's request for damages in the "wherefore clause" of the Complaint is inappropriate in an action for declaratory relief is without merit and the result of a misunderstanding of this Court's inherent authority under the Declaratory Judgment Act. Interline requested damages merely to preserve the Court's jurisdiction to enforce its judgment in this action under 28 U.S.C. § 2202. While such a request is not *necessary* to preserve the Court's jurisdiction to award subsequently incurred monetary damages, it does not provide AIG with grounds for dismissal.

## **II. ANALYSIS**

### **A. LEGAL STANDARDS**

#### **i. Motion to Dismiss Pursuant To Fed. R. Civ. P. 12(b)(6)**

The threshold of sufficiency necessary to survive a motion to dismiss is “exceedingly low.” *New Lenox Indus. v. Fenton*, 510 F. Supp. 2d 893, 900 (M.D. Fla. 2007). A complaint must supply only enough facts to “raise a reasonable expectation that discovery will reveal evidence” in support of the claim. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007). All facts contained in the complaint must be construed liberally in the plaintiff’s favor and all pleaded factual allegations must be accepted as true. *Id.* If the complaint asserts enough facts to provide the defendant with fair notice of the claims asserted and the basis therefore, a motion to dismiss under Rule 12(b)(6) must fail. *See Powers v. Hartford Ins. Co. of the Midwest*, No. 8:10-cv-1279-T-24 WEP, 2010 WL 2889759, at \*1 (M.D. Fla. July 22, 2010).

**ii. Motion to Dismiss Pursuant To Fed. R. Civ. P. 12(b)(1)**

Jurisdictional challenges, such as lack of ripeness, are treated as a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1). *See Digital Prop., Inc. v. City of Plantation*, 121 F.3d 586, 591 (11th Cir. 1997). A “ripeness” determination under the federal Declaratory Judgment Act (“DJA”)<sup>3</sup> must be made on a case-by-case basis. *Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273 (1941). An action is “ripe” where the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *Id.* Courts in this Circuit are required to consider the following when conducting such an analysis: (1) whether there is an actual dispute that the Court can rest its judgment upon and (2) the hardship to the parties of withholding court consideration. *See Digital Prop., Inc.*, 121 F.3d at 589. Where the actual dispute prompts concern as to an

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<sup>3</sup> In a federal diversity action, the DJA governs whether a declaratory judgment action could lie in a particular case. *Nirvana Condo. Ass’n, Inc. v. QBE Ins. Corp.*, 589 F. Supp. 2d 1336, 1343 (S.D. Fla. 2008).



injury not yet in existence, the dispute is ripe for consideration where there is “a substantial likelihood that the plaintiff will suffer [such] future injury....” *Axis Surplus Ins. Co. v. Contravest Constr. Co.*, 921 F. Supp. 2d 1338, 1343 (M.D. Fla. 2012). The contingent nature of the right or obligation in controversy will not bar a litigant from obtaining declaratory relief when the circumstances reveal a need for a present adjudication. *See, e.g., Browning-Ferris Indus. of Ala., Inc. v. Ala. Dep’t of Env’tl. Mgmt.*, 799 F.2d 1473, 1478 (11th Cir. 1986) (“It is clear that in some instances a declaratory judgment is proper even though there are future contingencies that will determine whether a controversy ever actually becomes real ... [t]he practical likelihood that the contingencies will occur and that the controversy is a real one should be decisive in determining whether an actual controversy exists....”). The Court’s discretion in deciding whether to grant or deny declaratory relief “should be exercised liberally in favor of granting such relief....” *Coregis Ins. Co. v. McCollum*, 955 F. Supp. 120, 123 (M.D. Fla. 1997).

**iii. Motion For More Definite Statement Under Fed. R. Civ. P. 12(e)**

Rule 12(e) “allows a party to move for a more definite statement of a pleading to which a responsive pleading is allowed, but which is so vague or ambiguous that the party cannot reasonably prepare a response.” *Phoenix Ins. Co. v. WSG Mgmt. Co.*, No. 10-22706, 2011 WL 13860, at \*3 (S.D. Fla. Jan. 4, 2011). “A motion for a more definite statement ‘must point out the defects complained of and the details desired.’” *Sabatula v. State Farm Mut. Auto. Ins. Co.*, No. 5:11-CV-368-OC-37TBS, 2011 WL 4345302, at \*5 (M.D. Fla. Sept. 16, 2011). “Motions for a more definite statement are generally disfavored in the federal system,” *Scott v. Merchants Ass’n Collection Div., Inc.*, No. 12-23018-CIV, 2012 WL

4896175, at \*2 (S.D. Fla. Oct. 15 2012), and “cannot be used as a substitute for discovery and deposition procedures.” *Donovan v. Am. Leader Newspapers, Inc.*, 524 F. Supp. 1144, 1146 (M.D. Fla. 1981).

**B. AIG’S MOTION TO DISMISS SHOULD BE DENIED BECAUSE THE DECLARATIONS REGARDING THE NUMBER OF OCCURRENCES AND WHETHER INTERLINE’S DEDUCTIBLE OBLIGATIONS HAVE BEEN SATISFIED WERE PLEADED WITH SUFFICIENT SPECIFICITY AND ARE RIPE FOR THIS COURT’S DETERMINATION**

**i. Interline’s Complaint Fully Complies With the Detail Requirements of the Federal Rules**

AIG contends that the declarations sought by Interline related to aspects of AIG’s duty to indemnify, outlined in paragraph 59(a)–(c) of the Complaint, are “conclusory” and “devoid of any factual allegations to support them.” Rule 8, however, requires only that a complaint contain “a short and plain statement of the claim showing that the pleader is entitled to relief” sufficient to “give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Twombly*, 550 U.S. at 555.

Interline’s Complaint, including paragraphs 58 and 59, satisfies this pleading standard—Interline provided fair notice of and sufficient detail regarding the disputed issues and facts necessary to their resolution. Interline makes clear that it seeks a declaration regarding: (1) the number of occurrences implicated by the Underlying Lawsuits and Outstanding Claims and (2) whether Interline’s deductible obligation(s) (contingent on the number of occurrences) have been exhausted by prior payments.<sup>4</sup> The facts relevant to those issues—Interline’s distribution of allegedly defective water supply lines resulting in property damage taking place during the policy period—have also been pleaded with sufficient

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<sup>4</sup> Interline also seeks a declaration as to the number of policies implicated by the Underlying Lawsuits and Outstanding Claims for the reasons discussed in footnote 2, *supra*.

particularity. Because the Complaint gives AIG fair notice of Interline's claims and the bases therefore, it satisfies Rule 8(a), and AIG's motion to dismiss should be denied accordingly.

**ii. These Issues Are Ripe For Adjudication Because An Actual Dispute Of Sufficient Immediacy Exists Between The Parties, And Because Withholding Judicial Consideration Would Cause Harm To Interline**

a. Actual Dispute

Despite AIG's argument to the contrary, a ripe and actual dispute exists between the parties with respect to: (1) the number of occurrences implicated by the Underlying Lawsuits and Outstanding Claims, and (2) whether Interline's deductible(s) have been exhausted to date.<sup>5</sup> AIG's Answer to Interline's Complaint confirms as much. For example, in paragraph 46 of its Answer, AIG specifically denies Interline's allegation that its deductible obligations have been satisfied by payments made to date:

[Complaint ¶ 46]. Interline itself has paid close to \$75,000 toward exhaustion of its contractual deductible obligation and any applicable retention, and jointly liable parties have paid substantial additional sums, serving to fully erode Interline's deductible....

[Answer ¶ 46]. Denied that Interline's deductible obligations are eroded.

Similarly, AIG's contention that an actual controversy does not exist with respect to the number of occurrences implicated is belied by its own admission:

[Complaint ¶ 58]. Specifically, AIG disagrees with Interline that the Underlying Lawsuits and Outstanding Claims arise from a single occurrence, being the distribution in commerce by Interline of a product containing a like alleged design or manufacturing defect

[Complaint ¶ 59(c)]. AIG disagrees with Interline as to: ... when and under what circumstances AIG's per-occurrence and aggregate limits exhaust, thus

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<sup>5</sup> Interline also seeks a declaration as to the number of policies implicated by the Underlying Lawsuits and Outstanding Claims for the reasons discussed in footnote 2, supra.

affecting the obligations of Liberty

[Answer ¶ 58]. [A]dmitted that **AIG disagrees with Interline that the claims arise from a single occurrence**, being the distribution in commerce by Interline of a product containing a like alleged design or manufacturing defect

Thus, because (1) Interline believes that all claims of property damage arose out of a single occurrence and that, as a result, only a single deductible is implicated, and that any deductible obligation(s) have already been satisfied by payments made toward the previously-resolved water supply line claims, and (2) AIG disagrees with those contentions,<sup>6</sup> an actual and substantial controversy exists between the parties.

b. Of Sufficient Immediacy

The dispute between the parties regarding the number of occurrences and exhaustion of the deductible(s)<sup>7</sup> is sufficiently immediate. A ripeness determination must be decided under the facts of each case, *Maryland Casualty*, 312 U.S. at 273, and the fact “[t]hat the liability may be contingent does not necessarily defeat jurisdiction of a declaratory judgment action.” *Assoc. Indem. Corp. v. Fairchild Indus., Inc.*, 961 F.2d 32, 35 (2d Cir. 1992).<sup>8</sup> Rather, courts focus on the “practical likelihood” that the contingencies will occur. *E.g., id.*

First, it must be conceded that the deductible issue is ripe. Interline takes the position that its deductible can and has been exhausted by both defense and indemnity costs paid by

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<sup>6</sup> In addition to the concessions in AIG’s Answer, AIG confirmed that these issues are disputed—stating to Interline that each individual claim of property damage constitutes a separate “occurrence” and triggers a separate \$75,000.00 deductible obligation under the Policies. AIG has also asserted that if it were to settle any claims, it would seek reimbursement from Interline for the corresponding number of deductibles.

<sup>7</sup> Interline also seeks a declaration as to the number of policies implicated by the Underlying Lawsuits and Outstanding Claims for the reasons discussed in footnote 2, *supra*.

<sup>8</sup> See also, e.g., *Kunkel v. Cont’l Cas. Co.*, 866 F.2d 1269, 1274 (10th Cir. 1989) (“The contingent nature of the right or obligation in controversy will not bar a litigant from seeking declaratory relief when the circumstances reveal a need for a present adjudication.”); *Icarom, PLC v. Howard Cnty., Md.*, 904 F. Supp. 454, 458 (D. Md. 1995) (“This disagreement presents a definite and concrete dispute which is ripe for adjudication [because] [a]ll the salient facts establishing a right to declaratory relief have already occurred.”).

Interline and others on Interline's behalf. Specifically, Interline's deductible has been satisfied by the substantial defense and indemnity payments made by Interline's suppliers and, most recently, amounts paid by Interline itself. AIG disagrees with this proposition, thereby exposing Interline – presently – to additional deductible obligations pertinent to each unresolved claim, and may be due reimbursement for monies already paid. Thus, the contingency has already occurred.

AIG also argues that a declaration regarding its duty to indemnify is not ripe until the underlying claims have been resolved, since its duty to indemnify depends on their outcome. While this principle governs most cases, the facts and circumstances of this case prohibit its application. Unlike the insureds in the cases cited by AIG, Interline is the subject of pending suits that mirror a number of like suits, some of which have resolved already, all premised on the same facts necessary to adjudicate the declarations sought by Interline—that is, **property damage** occurring **during the policy periods** resulting from **Interline's distribution** of defective water supply lines. Federal courts have long recognized that where underlying pending suits are merely links in a chain of materially identical suits and do not involve new facts necessary to resolve the declarations sought, resolution of the underlying suits is unnecessary and the declaratory action is ripe. *See, e.g., Riehl v. Travelers Ins. Co.*, 772 F.2d 19, 22 (3d Cir. 1985); *Seguros Tepeyac, S. A. v. Jernigan*, 410 F.2d 718, 729 (5th Cir. 1969); *Flintkote Co. v. Gen. Acc. Assur. Co. of Canada*, No. C 04-01827 MHP, 2006 WL 1867538, at \*5 (N.D. Cal. July 5, 2006); *Icarom, PLC v. Howard Cnty., Md.*, 904 F. Supp. 454, 458 (D. Md. 1995); *Keene Corp. v. Ins. Co. of N. Am.*, 667 F.2d 1034, 1040 (D.C. Cir. 1981).

In *Keene*, an insured-manufacturer sought a declaration of its rights and obligations

under a CGL policy with respect to litigation arising out of its manufacture of products containing asbestos. 667 F. 2d at 1038. The insurer moved to dismiss the complaint, arguing that the action was not ripe because “the rights and obligations created by the insurance policies cannot be determined without consideration of the facts of a particular underlying suit.” *Id.* at 1040. The court disagreed, emphasizing that, as here, the contingencies were likely to occur and the pending and future suits were materially identical— “[the insured] has been, and will continue to be, sued for injuries that result from the use of its asbestos products.” *Id.*<sup>9</sup> The court also rejected the insurer’s argument, like AIG’s here, that facts from the underlying suits were needed to render a declaration, stressing that the relevant policy terms and necessary facts were already before the court:

[The insurer] implies that the rights and obligations created by the insurance policies cannot be determined without consideration of the facts of a particular tort suit. We have before us, however, the terms of the insurance policies and the facts of the particular types of diseases whose coverage is at issue. We are not aware or informed of any facts that would come to light in a particular tort suit that would be relevant to the determination of the policies’ applicability to the [insured’s] liability for asbestos-related injury.

*Id.* Accordingly, the court held that a real, substantial and justiciable controversy existed, “and the rights and obligations of [the insured] and its insurers must be resolved.” *Id.*

Similarly, in *ACandS, Inc. v. Aetna Casualty & Surety Co.*, 666 F.2d 819 (3d Cir. 1981), the insured, like Interline, was sued as a co-defendant in over 800 suits resulting from

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<sup>9</sup> See also *In re Amatex Corp.*, 107 B.R. 856, 865 (E.D. Pa. 1989) (holding a declaration regarding the extent of insurers’ liability for past and pending lawsuits arising out of insured’s manufacture of products containing asbestos ripe, reasoning that “[the insured] herein is, and will continue to be, sued for injuries that result from the use of its products which contained asbestos”); *Flintkote*, 2006 WL 1867538, at \*2, 4-5 (rejecting insurer’s contention that declaratory action regarding coverage for pending and future asbestos claims was unripe as to claims in which a judgment or settlement had yet to be rendered, underscoring that the insured “has already tendered many cases to [the insurers] for defense and indemnification, and will continue to do so in the future as the asbestos-related claims against plaintiff continue to be filed.”; “Extending the scope of the declaratory relief to additional similar lawsuits, which will be filed in the future with a high degree of certainty, does not exceed the court’s authority under Article III.”).

its installation of products containing asbestos. For years, the insured was defended and indemnified until a disagreement arose regarding, *inter alia*, which “trigger theory” applied to the insured’s alleged misconduct. *Id.* As here, the crux of the declaratory judgment action was the interpretation of policy terms as applied to the common thread of facts applicable to all of the underlying suits. *Id.* at 821-822. The Third Circuit Court of Appeals found the case justiciable, reversing the district court’s finding that the case was unripe because “the facts of the underlying asbestos suits were not before the court; ... [and] [the insured] had not yet become liable to pay any judgment....” *Id.* at 822. The Third Circuit emphasized that “the factors that will determine the relative duties and benefits of the insurance contracts are independent of the underlying claims” and “[d]eclaratory suits to determine the scope of insurance coverage have often been brought independently of the underlying claims albeit the exact sums to which the insurer may be liable to indemnify depend on the outcome of the underlying suits.” *Id.* at 822-23.<sup>10</sup> *Icarom* is also instructive. There, the insurer sought a declaration as to whether the damages alleged and to be alleged in underlying pending and future suits constituted “property damage” caused by an “occurrence.” 904 F. Supp. at 456-57. The insured argued that the declaratory action was unripe because any decision would be merely “an advisory opinion based on hypothetical scenarios and unalleged facts.” *Id.* at 457. The court disagreed, finding the case justiciable because, as here, the facts necessary to resolve the issues presented were already known and settlement discussions with many of the plaintiffs in the pending suits had already begun:

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<sup>10</sup> See also *Riehl*, 772 F.2d 19, 21-22 (holding declaratory action justiciable because, even though liability and amount of damages had yet to be determined in underlying action, “the essential facts establishing rights to relief, including declaratory relief, have already occurred....”).

This disagreement presents a definite and concrete dispute which is ripe for adjudication. All the salient facts establishing a right to declaratory relief have already occurred. For example, several off-site residents have already instituted claims against [the insured]. In fact, according to [the insured's] July 11, 1994, letter to [the insurer], the process of negotiating settlements with seven aggrieved landowners has already begun. Thus, a declaratory judgment of the issues presented, in advance of the institution of a lawsuit or the entry of a formal judgment, would not be 'an abstract discussion and premature adjudication of factual issues that are not yet concrete.'

*Id.* at 458.<sup>11</sup>

Here, as in *Keene*, *ACandS*, and *Icarom*, the facts necessary to resolve the declarations sought—Interline distributed allegedly defective water supply lines resulting in property damage during the policy period(s) at issue—are already known. Indeed, these are the very facts that formed the basis for Interline's liability as a co-defendant in the hundreds of past and pending water supply line suits—three of which have recently been settled and paid for by Interline, while many others are the subject of on-going settlement discussions. It is equally well established that the suppliers for years paid substantial amounts, on Interline's behalf, in connection with the past, materially-identical water supply line suits arising out of the same pertinent facts as those at issue in this action.

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<sup>11</sup> Additionally, federal courts in this District have recognized that declaratory actions involving an insurer's duty to indemnify are ripe for adjudication under certain circumstances even where the underlying suits upon which such duty is based have yet to be resolved. *See, e.g., State Farm Mut. Auto. Ins. Co. v. Sampson*, 305 F. Supp. 50, 52 (M.D. Fla. 1969) ("Neither of the injured motorcycle riders, nor their parents, have as yet filed actions against the other parties in this suit for personal injuries and property damage. However, it is obvious that suit is imminent pending the outcome of this litigation and the Court finds that under the circumstances the lack of a pending claim or a court suit by the injured parties should not be a barrier to jurisdiction and a declaration of rights in this action."); *Powers*, 2010 WL 2889759 at \*4 ("[The insurer] also argues that declaratory relief is not warranted because there is no issue regarding whether the damage to [the insured's] property is covered under the policy, as [the insurer] is not contesting coverage. This argument misses the mark, as [the insured] points out that she is seeking a declaration regarding the proper method of repairing her property that she is entitled to under the policy.").



In sum, because an actual, present and substantial dispute of sufficient immediacy exists, the declarations sought by Interline with respect to the Underlying Lawsuits and Outstanding Claims are ripe for this Court's consideration.

c. Hardship to Interline

Abstention by this Court would cause unnecessary hardship to Interline. The majority of individual claims that comprise the Underlying Lawsuits and Outstanding Claims allege property damage in amounts below Interline's \$75,000.00 per-occurrence deductible. Many of these claims are ripe for settlement. Because AIG maintains that *each* claim constitutes a separate "occurrence," each claim is allegedly subject to a \$75,000.00 deductible. The Court's resolution of: (1) the number of occurrences, and (2) whether past payments with respect to similar claims have satisfied Interline's deductible obligation(s),<sup>12</sup> thus will have a direct, immediate and substantial impact on the defense and settlement of the Underlying Lawsuits and Outstanding Claims. This Court's guidance is important to aid Interline and AIG in formulating their litigation strategy, streamlining the settlement process, and conserving their respective resources. *See, e.g., Kunkel*, 866 F. 2d at 1275 ("The dispute over the meaning of '40,000 Each Claim' can only add uncertainty to a settlement process where certainty is sought. A declaration ... might very well affect both parties' settlement strategy."); *ACandS*, 666 F.2d at 823 ("The respective ... obligations of insured and insurers, when disputed, require determination much in advance of judgment since they will designate the bearer of ultimate liability in the underlying cases and hence the bearer of the onus and

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<sup>12</sup> Interline also seeks a declaration as to the number of policies implicated by the Underlying Lawsuits and Outstanding Claims for the reasons discussed in footnote 2, *supra*.

risks of settlement ... To delay for the sake of more concrete development would prevent the litigants from shaping a settlement strategy and thereby avoiding unnecessary costs.”<sup>13</sup>

In sum, although the Underlying Lawsuits and Outstanding Claims are still pending, their resolution is unnecessary under the circumstances of this case, as many cases have already resolved and the exposures presented thus quantified can reasonably be anticipated to recur. As confirmed above, an actual dispute exists between Interline and AIG. Moreover, given that Interline has been, is being, and will continue to be sued for property damage allegedly caused by its distribution of allegedly defective water supply lines—the only facts necessary to resolve the declarations sought—the issues sought to be resolved in this suit are substantial and sufficiently immediate to warrant this Court’s consideration.

**C. AIG’S MOTION TO DISMISS SHOULD BE DENIED BECAUSE WHETHER AIG HAS A DUTY TO DEFEND INTERLINE IN THE UNDERLYING LAWSUITS AND OUTSTANDING CLAIMS IS AN ISSUE RIPE FOR CONSIDERATION DESPITE AIG’S AGREEMENT TO DEFEND UNDER A RESERVATION OF RIGHTS**

AIG’s duty to defend Interline in the Underlying Lawsuits and Outstanding Claims is ripe because, unlike the insurers in the cases relied upon by AIG, AIG has asserted complete control over the defense while retaining the right to seek reimbursement from Interline for all fees and costs incurred at AIG’s sole discretion. Where a party to an insurance contract acts in such a way that exposes the other to substantial monetary obligations, federal courts in this District find a declaration as to those issues ripe for consideration. *See generally United Nat.*

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<sup>13</sup> *Eureka Fed. Sav. & Loan Ass’n v. Am. Cas. Co.*, 873 F.2d 229, 232 (9th Cir. 1989) (“[T]here was a definite and real dispute that made settlement of the underlying litigation a virtual impossibility prior to the resolution of the coverage issue.”); *Rubins Contractors, Inc. v. Lumbermens Mut. Ins. Co.*, 821 F.2d 671, 674 (D.C. Cir. 1987) (“If insurance provided only a right to reimbursement for final judgments entered against the insured, a finding of ripeness might be difficult on the facts of this case. But the policies’ protections are considerably broader, including a right to the insurer’s provision of a defense and active participation in settlement ... It seems inescapable that uncertainty over coverage would skew the settlement process.”).

*Ins. Co. v. Jacobs*, 754 F. Supp. 865, 870 (M.D. Fla. 1990) (holding that when an insurer assumes an insured's defense, the insurer gains exclusive control of the defense and is entitled to make strategic and economic decisions on behalf of the insured); *McCollum*, 955 F. Supp. at 123-24 (“If this Court denied Plaintiff a declaration of its rights and obligations under its policy with Defendants McCollum and Johnson, it would be exposing the Plaintiff to a ‘very substantial and perhaps a binding obligation for providing a defense’ to those Defendants without Plaintiff’s knowing whether it owes such an obligation.”).

If this Court were to abstain from deciding whether AIG has a duty to defend the Underlying Lawsuits and Outstanding Claims, Interline would be left potentially exposed to substantial defense and indemnity costs (to the extent falling within the deductible as claimed by AIG) incurred by AIG at AIG’s sole discretion. A decision by this Court will enable Interline to better assess settlement, its involvement in managing the defense, and its general litigation strategy. Accordingly, an actual and substantial dispute of sufficient immediacy exists and warrants this Court’s consideration.

**D. AIG’S MOTION TO DISMISS SHOULD BE DENIED BECAUSE INTERLINE’S REQUEST FOR DAMAGES “IF NECESSARY TO PROVIDE FULL RELIEF” DOES NOT PROVIDE AIG WITH GROUNDS FOR DISMISSAL**

AIG’s claim that Interline’s “request for damages in the ‘wherefore’ clause should be dismissed for failure to state a claim upon which relief may be granted and because it is premature” fails as a matter of law. A request for damages is appropriate in a declaratory action to preserve the Court’s jurisdiction to enforce the resulting judgment.<sup>14</sup> *See, e.g.*, 28 U.S.C. § 2202; *Nat’l Fire Ins. Co. of Hartford v. Bd. of Pub. Instruction of Madison Cnty.*,

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<sup>14</sup> For example, Interline may be entitled to substantial reimbursements on its deductible obligations depending on this Court’s declarations.

*Fla.*, 239 F.2d 370, 376 (5th Cir. 1956) (“The [DJA] contemplates that all necessary or proper relief based on the declaratory judgment should be granted.”). While a request for damages is not *necessary* to preserve the Court’s jurisdiction to enforce its declaratory judgment with respect to subsequently accrued damages, such a request is not grounds for dismissal. *See Sonic Momentum B, LP v. Motorcars of Distinction, Inc.*, No. 11-80591-CIV, 2011 WL 4738190, at \*3 (S.D. Fla. Oct. 7, 2011) (rejecting defendant’s contention that the complaint for declaratory relief should be dismissed in part because an assertion of damages was inappropriate); *see also Auto-Owners Ins. Co. v. Johnson, Rast & Hays Ins. of S. Ala., Inc.*, 820 F.2d 380, 384 (11th Cir. 1987) (holding recognizing that in a declaratory judgment action, a court may “properly award[] monetary relief as well as a declaration of the rights and obligations of the parties.”).

**E. AIG’S MOTION FOR MORE DEFINITE STATEMENT SHOULD BE DENIED BECAUSE THE ALLEGATIONS IN THE COMPLAINT ARE SUFFICIENT TO ELICIT A RESPONSE FROM AIG AND THE ADDITIONAL INFORMATION REQUESTED BY AIG SHOULD BE OBTAINED THROUGH DISCOVERY**

**i. Paragraph 59(a) – (c)**

Interline has adequately pleaded its claim and AIG fails to offer a reason why it cannot prepare a response. *See Gombos v. Cent. Mortg. Co.*, No. 10-81296-CIV, 2011 WL 832878, at \*1 (S.D. Fla. Mar. 3, 2011) (“Rule 12(e) is intended to provide a remedy for an unintelligible pleading, rather than a vehicle for obtaining greater detail.”). Specifically, paragraph 59(a)–(c) of Interline’s Complaint merely sets forth the aspects of AIG’s duty to indemnify that AIG itself has admitted are currently in dispute:

- (a) how, and to what extent, payments by Interline and/or other liable parties exhaust Interline’s deductible obligations, to the extent remaining;
- (b) how, and to what extent, AIG’s obligation to indemnify is to be calculated,

including whether one, or more than one, policy is triggered by payment of settlements or judgments, including the role, if any, of any policy provisions designed to collapse continuing harm into a single policy period;

(c) when, and under what circumstances, AIG's per-occurrence and aggregate limits exhaust, thus affecting the obligations of Liberty

Paragraph 59 makes clear that Interline seeks a declaration as to: (1) the number of occurrences, (2) the number of applicable policies, as that determination impacts the issue of whether Interline's deductible obligations have been satisfied to date, and (3) whether Interline's deductible obligations (contingent on the number of occurrences and number of applicable policies) have been satisfied to date.

The additional information sought by AIG includes a clarification of the declarations sought and the policy provisions upon which the declarations are based. As discussed herein, however, the declarations sought by Interline are sufficient under Rule 8 as they provide AIG with fair notice of the issues Interline seeks to resolve in this action. Additionally, because the issue of the number of deductibles is directly tied to the number of "occurrences" implicated by the Underlying Lawsuits and Outstanding Claims, the definition of "occurrence" set forth in the Complaint is sufficient for AIG to form a response as to these declarations. (Elsewise, AIG would necessarily concede that its own policy language is sufficiently unclear to enable a declaration as to its meaning). For the foregoing reasons, AIG's motion for more definite statement with respect to paragraph 59 fails.

## **ii. Outstanding Claims**

The Complaint's definition of "Outstanding Claims" is likewise sufficient for AIG to form a response.<sup>15</sup> Interline defines "Outstanding Claims" to mean "other cases of a like

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<sup>15</sup> AIG's contention that Interline's Complaint is so vague and ambiguous as to prevent AIG from forming an

nature relating to property damage incurred as a result of allegedly defective water supply lines.” Interline seeks a declaration regarding “Outstanding Claims” to ensure that this Court’s adjudication of the issues with respect to the Underlying Lawsuits are applied equally to the Outstanding Claims. This is sensible, since the Outstanding Claims are lawsuits identical to the Underlying Lawsuits (and hundreds of similarly identical suits that have been previously resolved) in every respect material to the dispositions sought in this case. Indeed, where the insured has been, is being, and will continue to be sued in substantially similar lawsuits, courts have found similar definitions sufficient to justify a declaration regarding an insurer’s duty to defend and indemnify the insured in like pending and future suits.

In *Flintkote*, for example, the insured sought a declaration regarding its insurers’ defense and indemnity obligations with respect to pending and future “asbestos related claims”—defined by the insured to mean “claims of bodily injury from asbestos exposure implicating [the insured]...” 2006 WL 1867538 at \*2. The insurers argued that the Court’s declaration with respect to “future, unmade asbestos claims, the parameters of which are entirely unknown ... would constitute a prohibited advisory opinion.” *Id.* at \*5. The Court disagreed, noting that the insurer’s contention was “predicated on the absurd assumption that plaintiff must individually litigate defendants’ obligations with respect to each asbestos-related lawsuit that is filed.” *Id.* at \*4-5. Because the definition of “asbestos-related lawsuits” clarified that “[t]he relief sought by [the insured] ... [was] categorical, imposing a

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intelligible response is belied by the fact that Liberty, AIG’s co-defendant, did in fact respond. *See Cox v. Maine Mar. Acad.*, 122 F.R.D. 115, 117 (D. Me. 1988) (“That the other defendants were able to file responsive pleadings is ‘some evidence’ that a response is possible.”).

duty to defend and indemnify plaintiff asbestos-related suits,” the court held a declaration as to pending and additional “asbestos-related suits” justiciable where such suits would be filed with a high degree of certainty. *See id.* at \*5.

Like in *Flintkote*, all facts necessary to determine the number of occurrences implicated by Interline’s distribution of allegedly defective water supply lines are contained in Interline’s definition of Outstanding Claims. The additional information sought by AIG—the identity of the claimant, the location and date of the alleged damage, the property allegedly damaged, and whether any lawsuit has been filed against Interline with respect to the Outstanding Claims—has already been set forth in the Complaint and/or is irrelevant to the issues presented in this action—the number of occurrences, the exhaustion of deductibles,<sup>16</sup> and AIG’s duty to defend.

Moreover, the additional details sought by AIG are more appropriately the subject of discovery. *See, e.g., Boldstar Technical, LLC v. Home Depot, Inc.*, 517 F. Supp. 2d 1283, 1291 (S.D. Fla. 2007) (denying a Rule 12(e) motion and finding that the purpose of the pleading standards under Rule 8 is to “strike at unintelligibility rather than want of detail and allegations that are unclear due to a lack of specificity are more appropriately clarified by discovery rather than by an order for a more definite statement”).

### III. CONCLUSION

For the foregoing reasons, Defendant, AIG Specialty Insurance Company’s, motion to dismiss the complaint in part or, in the alternative, for a more definite statement in part [D.E. 13], should be denied in its entirety.

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<sup>16</sup> Interline also seeks a declaration as to the number of policies implicated by the Underlying Lawsuits and Outstanding Claims for the reasons discussed in footnote 2, *supra*.

Dated this July 3, 2014.

Respectfully submitted,

/s/R. Hugh Lumpkin

**R. Hugh Lumpkin**

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**VER PLOEG & LUMPKIN, P.A.**

COUNSEL FOR PLAINTIFFS

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Miami, Florida 33131

Telephone: (305) 577-3996

Facsimile: (305) 577-3558

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 3, 2014, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List via transmission of Notice of Electronic Filing generated by CM/ECF.

By: s/R. Hugh Lumpkin

R. Hugh Lumpkin



**SERVICE LIST**

<p>Frank Morreale, Esq.                  Nelson Mullins Riley &amp; Scarborough, LLP                  50 N. Laura Street                  Suite 2850                  Jacksonville, FL 32202                  Tel: 904-665-3651                  frank.morreale@nelsonmullins.com                  Via CM/ECF  <i>Attorneys for Liberty Insurance Co. and                  Liberty Mutual Fire Insurance Co.</i></p>	<p>Irene Porter, Esq.                  Jedidiah D. Vander Klok, Esq.                  Hicks Porter Ebenfield &amp; Stein, P.A.                  799 Brickell Plaza                  Suite 900                  Miami, FL 33131                  Tel: 305-374-8171                  iporter@mhicksllaw.com                  jvanderklok@mhicksllaw.com                  Via CM/ECF  <i>Attorneys for AIG Specialty Ins. Co.</i></p>
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214704\_1

THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TENNESSEE

**State Farm Fire and Casualty Company**

a/s/o Marc Gasol

*Plaintiff*

v.

**No. 2:13-cv-2844 / Jury**

Anderson/Pham

**Interline Brands, Inc. and  
Albert Cook Plumbing, Inc.**

*Defendants*

**Declaration**

I, Michael A. Durr, as allowed through 28 U.S.C. § 1746, under penalty of perjury under the laws of the United States of America, state that the following is true and correct:

1. I am counsel of record for Plaintiff State Farm.
2. The exhibits attached to this Motion are true and correct copies of what they purport to be. While I do not have personal knowledge that some of the photographs are what they have been represented to be in this Motion, I have been informed that they are that from persons with personal knowledge of the photographs and what they show.
3. In late 2013, I forwarded to the defendants in this case State Farm's adjustment file, all of its photographs of the failed line and the property damage it caused, and the report of its expert documenting the alleged defects in the water supply line at issue. This disclosure was a complete picture of State Farm's claim, documented to the penny.

Monday, August 04, 2014

Respectfully submitted,

By: 

Michael A. Durr

THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TENNESSEE

**State Farm Fire and Casualty Company**

a/s/o Marc Gasol

*Plaintiff*

v.

**No. 2:13-cv-2844 / Jury**

Anderson/Pham

**Interline Brands, Inc. and  
Albert Cook Plumbing, Inc.**

*Defendants*

**Plaintiff's Amended Notice of Deposition**

**To:** Interline Brands, Inc.

c/o Michael Geraciotti

Levine, Orr & Geraciotti, PLLC

Nashville, Tennessee

[MGeraciotti@levineorr.com](mailto:MGeraciotti@levineorr.com)

Plaintiff will take the deposition of Interline Brands, Inc. ("Interline") at a time and location mutually agreeable to the parties.

[Federal Rule 30\(b\)\(6\)](#) is designed to avoid the possibility that several officers and managing agents might be deposed in turn, with each disclaiming personal knowledge of facts that are clearly known to persons within the organization and thus to the organization itself.<sup>1</sup> Therefore, you must make a conscientious good-faith endeavor to designate the persons having knowledge of the matters sought by the party noticing the deposition and to *prepare* those persons in order that they can answer fully, completely, un-evasively, the questions posed as to the relevant subject matters.<sup>2</sup> The duty to present and prepare a Rule 30(b)(6) designee goes beyond matters personally known to that designee or to matters in which that designee was personally involved: You must prepare the designee to the extent matters are reasonably available, whether from documents, past employees, or other sources.<sup>3</sup>

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<sup>1</sup> See *Brazos River Authority v. GE Ionics, Inc.* 469 F.3d 416, 432-34 (5th Cir. 2006).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

Plaintiff requests that the deponent Interline designate one or more persons to testify on its behalf on the following specified subjects. Unless otherwise noted these requests cover the period January 1, 2008 through the present.

1. The entities involved in the manufacture, labelling, distribution, importation, marketing, and sale of the DuraPro Mfg #231271 3/8" Compression 7/8" x Ballcock Nut 12" Long Stainless Steel Toilet Tank Connector and the role of each such entity.
  - a. Interline's relationship with these entities, if any.
  - b. Whether Interline Brands, Inc.'s has assumed the liabilities of any of these entities.
2. The date, substance, and parties to the contracts that govern the manufacture, labelling, distribution, importation, marketing, and sale of the DuraPro Mfg #231271 3/8" Compression 7/8" x Ballcock Nut 12" Long Stainless Steel Toilet Tank Connector.
3. Whether and over what period Interline has sold and distributed the DuraPro Mfg #231271 3/8" Compression 7/8" x Ballcock Nut 12" Long Stainless Steel Toilet Tank Connector.
4. The nature and extent of changes to the design or construction of the DuraPro Mfg #231271 3/8" Compression 7/8" x Ballcock Nut 12" Long Stainless Steel Toilet Tank Connector.
5. The differences, if any, in the design or construction of the coupling nuts for DuraPro model/part numbers 231270-71, 231274-75, 231280-81, and 231291.
6. The bases for your contention in ¶41 of Interline's Complaint in *Interline Brands, Inc. v. AIG Specialty Insurance Company et al*, No. 3:14-cv-00426 (M.D. Fla., filed April 14, 2014), that "Until recently, the water supply line claims appeared to be isolated and, in any event, within the standard deviation for the failure of this type of product."
  - a. What exactly do you mean here by "Until recently?"
  - b. How did Interline make this determination?
  - c. Who made this determination?
  - d. When did Interline made this determination?
  - e. What is the "standard deviation for the failure of this type of product?" And, how did Interline determine this?

- f. Whether, in fact, said water supply line claims are outside the standard deviation for the failure of this type of product.
        - g. Is the claim here one of the “said water supply line claims?”
        - h. Is the claim here the same type as “said water supply line claims?”
- 7. The date, nature, method, and results of any statistical analysis of the failure rate (or alleged failure rate) of the DuraPro part numbers 231270-71, 231274-75, 231280-81, or 231291.
- 8. The bases for your contention in ¶42 of Interline’s Complaint in *Interline Brands, Inc. v. AIG Specialty Insurance Company et al*, No. 3:14-cv-00426 (M.D. Fla., filed April 14, 2014), that “Some of the claims arising out of Interline’s distribution of the allegedly defective water supply lines settled at a time when it was not clear that the lawsuits bore a common characteristics and were not merely isolated events.”
  - a. Do these claims now bear common characteristics? If so, when and how did this become apparent to Interline?
  - b. Do these claims now appear to be isolated events? If not, when and how did this become apparent to Interline?
- 9. The bases for your contention in ¶75 Interline’s Complaint in *Interline Brands, Inc. v. AIG Specialty Insurance Company et al*, No. 3:14-cv-00426 (M.D. Fla., filed April 14, 2014), that “Interline believes that the allegation in the Underlying Lawsuits and Outstanding Claims are one ‘occurrence.’”
  - a. The similarities among the “Underlying Lawsuits and Outstanding Claims.”
  - b. The number and nature of the “Underlying Lawsuits and Outstanding Claims.”
- 10. Since 2006, the date, number, nature, and substance of changes you have suggested or recommended for the coupling nut for DuraPro model/part numbers 231270-71, 231274-75, 231280-81, or 231291.
- 11. The date, nature, and substance of complaints you have made about the design or construction of the coupling nut for DuraPro model/part numbers 231270-71, 231274-75, 231280-81, or 231291.

12. The date, nature, and substance of claims you have received that the coupling nut for DuraPro model/part numbers 231270-71, 231274-75, 231280-81, or 231291 is defective, unreasonably dangerous, or failed in a way that caused a water leak.
13. Since 2006, the date, number, nature, and substance of your communications with MTD (USA) Corp. about the soundness of the design or manufacture of the coupling nut for DuraPro model/part numbers 231270-71, 231274-75, 231280-81, or 231291.
14. The date, nature, and substance of your communications with MTD (USA) Corp. about claims that the coupling nut for DuraPro model/part numbers 231270-71, 231274-75, 231280-81, or 231291 is defective, unreasonably dangerous, or failed in a way that caused a leak.
15. The date, nature, and substance of your communications with Dingbo Plumbing Manufacturing Co. about the soundness of the design or manufacture of the coupling nut for DuraPro model/part numbers 231270-71, 231274-75, 231280-81, or 231291.
16. The date, nature, and substance of your communications with Dingbo Plumbing Manufacturing Co. about claims that the coupling nut for DuraPro part numbers 231270-71, 231274-75, 231280-81, or 231291 is defective, unreasonably dangerous, or failed in a way that caused a leak.
17. The reason MTD (USA) Corp. no longer supplies Interline with the DuraPro Mfg #231271 3/8" Compression 7/8" x Ballcock Nut 12" Long Stainless Steel Toilet Tank Connector.
18. Your method of recording, organizing, and tracking claims you have received that the coupling nut for DuraPro model/part numbers 231270-71, 231274-75, 231280-81, or 231291 is defective, unreasonably dangerous, or failed in a way that caused a leak.
19. The date, nature, and scope of your evaluation, if any, of the soundness of the design and manufacture of the coupling nut for DuraPro model/part numbers 231270-71, 231274-75, 231280-81, and 231291.
20. The nature of the defect referenced in pages 74-77 of your May 13, 2014 deposition in *National Surety Corporation v. MTD (USA) Corporation et al.*, No. 2:13cv6461 in the United States District Court for the District of New Jersey (see attached Exhibit A).

21. The nature and extent of your internal discussions referenced in pages 96–97 of your May 13, 2014 deposition in *National Surety Corporation v. MTD (USA) Corporation et al.*, No. 2:13cv6461 in the United States District Court for the District of New Jersey.
22. Your evaluation, if any of the changes made to the coupling nut referenced in page 116 of your May 13, 2014 deposition in *National Surety Corporation v. MTD (USA) Corporation et al.*, No. 2:13cv6461 in the United States District Court for the District of New Jersey.
23. The nature and result of any audit of MTD (USA) Corporation that would have encompassed or accounted for the design and manufacture of the coupling nuts for DuraPro model/part numbers 231270–71, 231274–75, 231280–81, or 231291.
24. The nature and result of any audit of Dingbo Plumbing Manufacturing Co. that would have encompassed or accounted for the design and manufacture of the coupling nuts for DuraPro model/part numbers 231270–71, 231274–75, 231280–81, or 231291.
25. Whether the supply line at issue here is a genuine DuraPro Mfg #231271 3/8" Compression 7/8" x Ballcock Nut 12" Long Stainless Steel Toilet Tank Connector.
  - a. The evidence that suggests that the supply line at issue here is a genuine DuraPro Mfg #231271 3/8" Compression 7/8" x Ballcock Nut 12" Long Stainless Steel Toilet Tank Connector.
  - b. The evidence that suggests that the supply line at issue here is not a genuine DuraPro Mfg #231271 3/8" Compression 7/8" x Ballcock Nut 12" Long Stainless Steel Toilet Tank Connector.
26. The cause(s) or suspected cause(s) of the alleged coupling nut failure in this case.
27. The identity and nature of the evidence, if any, that suggests the alleged coupling nut failure here was caused by something other than a defect in the nut itself.
28. The bases for Interline’s discovery answers in this lawsuit.

Wednesday, August 06, 2014  
Knoxville, Tennessee

Respectfully submitted,  
QUIST, CONE & FISHER, PLLC

By: /s/ Michael A. Durr

Michael A. Durr (TBA 26746)

800 South Gay Street, Suite 2121

Knoxville, Tennessee 37929

Direct: 865/312-0440

E-Mail: [mdurr@qcflaw.com](mailto:mdurr@qcflaw.com)

*Attorney for Plaintiff State Farm Fire &  
Casualty Company*

### **Certificate of Service**

I hereby certify that on Wednesday, August 06, 2014 that I served this document by electronic mail to the following counsel of record through the following e-mail addresses:

- Russell Rutledge  
[rutler1@nationwide.com](mailto:rutler1@nationwide.com)
- Michael Alva Geraciotti  
[mgeraciotti@levineorr.com](mailto:mgeraciotti@levineorr.com)  
[dcooper@levineorr.com](mailto:dcooper@levineorr.com)
- Linda Alaine Nathenson  
[lnathenson@levineorr.com](mailto:lnathenson@levineorr.com)

By: /s/ Michael A. Durr  
Michael A. Durr



# ***Riley Reporting & Associates, Inc.***

Transcript of the Testimony of **Joseph Cangelosi**

**Date:** May 13, 2014

**Case:** National Surety Corporation v. MTD (USA) Corporation and  
Interline Brands

Riley Reporting & Associates, Inc.  
Phone: 904-358-1615  
Fax: 904-356-5751  
Email: [info@rileyreporting.com](mailto:info@rileyreporting.com)  
Internet: <http://www.rileyreporting.com>

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

NATIONAL SURETY CORPORATION,  
as subrogee of Kevin and Doris  
Hurley,

Plaintiff,

-vs.-

Civil Action No.:  
2:13-cv-06461-KM-MCA

MTD (USA) CORPORATION and  
INTERLINE BRANDS, INC.,

Defendants.

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DEPOSITION OF INTERLINE BRANDS, INC.,  
by and through its designated corporate representative,  
JOSEPH CANGELOSI, III

Taken on behalf of Plaintiff

Pursuant to Amended Notice of Deposition and Request for  
Production to Interline Brands, Inc., Pursuant to  
Federal Rule of Civil Procedure Rule 30(b)(2) and (6)

DATE TAKEN: Tuesday, May 13, 2014

TIME: 2:16 p.m. - 5:27 p.m.

PLACE: Assessment Technologies Group  
4887 Belfort Road, Suite 105  
Jacksonville, Florida 32256

Examination of the witness taken before:  
Susan B. Wilson, RPR, CRR, FPR

---

RILEY REPORTING & ASSOCIATES, INC.  
1660 Prudential Drive, Suite 210  
Jacksonville, Florida 32207

## A P P E A R A N C E S

DANIEL C. THEVENY, Esquire (by videoconference)

Cozen O'Connor  
Liberty View, Suite 300  
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Cherry Hill, New Jersey 08002  
dtheveny@cozen.com  
215-665-4194,

appearing on behalf of Plaintiff.

MARCO P. DiFLORIO, Esquire (in person)

Salmon, Ricchezza, Singer & Turchi LLP  
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mdiflorio@srstlaw.com  
856-842-0730,

appearing on behalf of Defendant  
Interline Brands, Inc.

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## I N D E X

Witness	Page
JOSEPH CANGELOSI, III	
Direct Examination By Mr. Theveny.....	4

## EXHIBITS

Number	Description	For ID
1	Amended Notice of Deposition and Request For Production to Interline Brands, Inc., Pursuant to Federal Rule of Civil Procedure Rule 30(b)(2) and 30(b)(6)	6
2	Photograph	37
3	Photograph	37
4	Interline Brands Import Partnership Agreement dated 7/5/05 (no Bates labels)	40
5	Interline Brands Import Partnership Agreement dated 7/5/05, Bates-labelled INT000087 through 000094	40
6	Catalog page Bates-labelled INT000097	64
7	E-mail dated 11/7/07 from Mark Allen to Chen Zheng and Joe Cangelosi, plus preceding e-mails (total 13 pages)	65
8	Defendants' Answers to Plaintiff's First Set of Interrogatories and Responses to Plaintiff's Request for Production	115

1           A     That is correct.

2           Q     Why were those changes made?

3           A     The changes were made in response to our  
4 complaints to MTD that there were some reported failures  
5 of that particular nut.

6           Q     It also goes on as part of the exhibit, this  
7 e-mail, and says "Also, please pay attention to the new  
8 issues described by Jeffery."

9                     Who is "Jeffery" there?

10          A     Jeffery is Jeffery Liu, L-i-u. He is our  
11 engineering and quality manager in our Shenzhen office  
12 in China.

13          Q     And is he still employed by Interline Brands?

14          A     Yes, he is.

15          Q     Do you know what the new issues are that are  
16 referred to there in this part of the e-mail?

17          A     No, sir, not without looking through here  
18 further. I don't know.

19          Q     Directly below that there's a response from  
20 Mr. Zheng to Mark where he says in part "As for the  
21 design problem, we corrected it in Jan already. Now the  
22 problem only occurs from the old inventory."

23                     Do you see where I am?

24          A     Yes, sir.

25          Q     What was the design problem that's being

1 referred to there?

2 A The only design problem that I recall that was  
3 being addressed at that time was the style of the nut  
4 that they were using.

5 Q Is that the nut on the DuraPro Model 231271  
6 toilet connector?

7 A That's correct.

8 Q What was the problem with the style?

9 A As I've stated previous, I don't recall -- you  
10 know, I don't know what the specific problem is. We  
11 wouldn't have had direct access to that information.  
12 All I can tell you is that we were dealing with some  
13 sporadic failures in the field and I wanted to make sure  
14 that the supplier's design was adequate to address the  
15 possibility that customers could overtighten these.

16 Q All right. It goes on to state "Now the  
17 problem occurs only from the old inventory." Do you see  
18 that?

19 A I do.

20 Q Do you know whether that's a reference to the  
21 inventory that was already in existence as of the date  
22 of this e-mail, November 7th of 2007?

23 A I don't know. I can't speak to any of that.

24 Q All right. Continuing on the first page of  
25 Exhibit 7, there's another e-mail at the bottom from

1 Mark Allen to Chen Zheng under the number stamp  
2 IBI 01126. Mark says, "I don't think so. Please make  
3 sure all issues are communicated properly with our China  
4 office staff to ensure that there are no  
5 misunderstandings. If there is a design flaw in the  
6 connectors, Dingbo must improve it immediately. We  
7 cannot afford to have continued failures of these."

8 Do you see where I am?

9 A Yes, sir.

10 Q So my understanding is that Jeffery Liu was  
11 employed by Interline at that time and is still employed  
12 by Interline. Is that right?

13 A That is correct.

14 Q And he was at the office of Interline in  
15 China?

16 A That is correct.

17 Q Does Interline maintain an office in China  
18 today?

19 A Yes, sir. In Shenzhen, China.

20 Q Okay. Shenzhen, China.

21 And what's the Dingbo reference there? Is  
22 that the manufacturer?

23 A Yes. Dingbo is actually our pet name for the  
24 manufacturer, who's Zhejiang Dingbo Plumbing  
25 Manufacturing Company, Limited.

1 Q Where in relation to the Dingbo manufacturing  
2 facility is the Interline Brands office in China?

3 A The Dingbo manufacturing facility, as best I  
4 can recall, is in the Ningbo area, which is close to  
5 Shanghai, a little south of Shanghai, which is about  
6 around -- between 300 to 500 miles north of where our  
7 office is in Shenzhen.

8 Q All right. And I may have asked this. What  
9 were the design flaws that were being referred to there  
10 in this e-mail here?

11 A As I stated earlier, I don't know what they're  
12 referring to here.

13 MR. DiFLORIO: And I'm going to still object  
14 to the term "design flaws" to the extent it calls  
15 for a legal conclusion.

16 MR. THEVENY: That's what this document says.

17 BY MR. THEVENY:

18 Q The next page of Exhibit 7 at the top starts  
19 with an e-mail from Chen Zheng sent on November 7th,  
20 2007, to Mark Allen, Wu Bo, and John Ouyang,  
21 O-u-y-a-n-g, and the subject is "MTD Supply Connectors."

22 Do you see where I am?

23 A On the top of Page No. 2, on the top of our  
24 second page?

25 Q Yes.



1           THE WITNESS: The request was framed as a  
2           negative, so the answer to that is no.

3 BY MR. THEVENY:

4           Q     You never had those discussions?

5           A     No, you asked me -- you said, "You never" --  
6           you asked me, "You never had the discussions," and I'm  
7           saying no, we never -- no, we never had the discussions.  
8           The discussions did take place.

9           Q     All right. So you do admit that there were  
10          discussions internally among Interline employees about  
11          changing the size of the nut or making the nut more  
12          robust in response to these complaints about failures of  
13          the DuraPro 231271 toilet connectors?

14          A     We discussed about the possibility that  
15          changing the nut would resolve the customer complaints  
16          in the field. Inasmuch as that's what was discussed  
17          internally, yes.

18          Q     Did you ever communicate those internal  
19          discussions in any way to anyone at MTD (USA)?

20          A     As I recall, I wasn't having conversations  
21          with MTD regarding this. Any discussions there would  
22          have taken place with our engineers in our China office.

23          Q     Did you ever have any of those discussions,  
24          i.e., perhaps a larger nut or making the nut more  
25          robust, with the manufacturer of the DuraPro

1 Model 231271 toilet connector?

2 A No.

3 MR. DiFLORIO: And I'm going to object to the  
4 form of the question. This gets back to "you"  
5 versus IBI.

6 But you may answer it as you understand it.

7 THE WITNESS: No, we did not.

8 BY MR. THEVENY:

9 Q Okay. Again, unless I indicate otherwise, my  
10 questions to you are questions to you as the corporate  
11 designee for Defendant Interline Brands.

12 MR. DiFLORIO: And, Dan, I'm going to  
13 respectfully suggest that if you listen to your  
14 questions in the context of the e-mails that we're  
15 discussing, it is incredibly confusing and very  
16 difficult for a witness to respond to your  
17 questions always knowing that he's responding on  
18 behalf of Interline when you're referring to his  
19 own e-mails and his own actions in 2007. You can  
20 solve the problem very simply by using the term  
21 "Interline" rather than "you."

22 With that said, if you want to save time, I'll  
23 save the objections when they relate to that issue  
24 and I'll assert a continuing objection to the  
25 extent there's confusion raised by the term "you"

1 without waiving the objection, the answer goes on to  
2 state "The current DuraPro Model No. 231271 has a  
3 different pattern plastic nut, having two additional  
4 ribs added between the bi-wings."

5 Do you see where I am?

6 A Yes, sir.

7 Q When was that change implemented?

8 A That was the change we just recently discussed  
9 that was implemented in late 2007/early 2008.

10 Q What involvement did Interline Brands have in  
11 coming up with this particular change that was made, a  
12 different pattern plastic nut with two additional ribs  
13 added between the bi-wings?

14 A Well, as we stated earlier, Interline Brands  
15 only made the recommendation to the manufacturer that  
16 they look at their design. And their solution was to  
17 add four additional ribs to the nut, and I believe they  
18 increased the width of the wall nut a little bit more,  
19 and the product is just a little heavier, a little more  
20 robust.

21 Q Was a recall instituted for those DuraPro  
22 Model No. 231271 tank connector nuts that were already  
23 out in the field?

24 A No, sir.

25 Q Was any warning issued to any of the customers

THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TENNESSEE

**State Farm Fire and Casualty Company**

a/s/o Marc Gasol

*Plaintiff*

v.

**No. 2:13-cv-2844 / Jury**

Anderson/Pham

**Interline Brands, Inc. and  
Albert Cook Plumbing, Inc.**

*Defendants*

**Plaintiff's Second Requests for Admission  
To Interline Brands, Inc.**

Your answers to these requests must be provided to the offices of Plaintiff's attorneys within 30 days from the date of service of this instrument.

These Requests for Admission and your answers thereto may be offered in evidence at the trial of the above cause. You must furnish all such information as is available to you that is requested in these Requests in accordance with Rule 36 of the Federal Rules of Civil Procedure. This means you are to furnish information which is known by or in the possession of you, your employees, or agents, including your attorney or any agent or investigator of your attorney.

These Requests for Admission are continuing in nature and require you to supplement your responses whenever you later obtain information that renders your previous responses inaccurate or incomplete. See [Fed. R. Civ. P. 26\(e\)\(1\)](#).

Do not respond to any Requests for Admission with the assertion: "This involves a question of law, not fact." [Federal Rule of Civil Procedure 36\(a\)\(1\)\(A\)](#) specifically requires a response to a Request for Admission that relates to the "application of law to fact."

If you deny any Requests for Admission, your "answer shall specifically deny it or state in detail the reasons why the answering party cannot truthfully admit or deny it." [Fed. R. Civ. P. 36\(a\)\(4\)](#).

Do not completely deny any Request for Admission simply because one aspect of a Request can be denied. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. [Fed. R. Civ. P. 36\(a\)\(4\)](#).

You may not claim that you have insufficient knowledge of the requested matter only if you state that you have “made reasonable inquiry and that the information known or readily obtainable by [you] is insufficient to enable [you] to Admit.” Fed. R. Civ. P. 36(a)(4).

When reference to an entity (including you, Interline Brands, Inc.) is made herein, that reference includes present and former directors, officers, employees, agents, representatives, investigators, consultants, attorneys, and predecessors and successors in interest.

For the convenience of the Court and the parties, please restate each Request for Admission prior to your written response.

**Please admit or deny the following:**

6. Attached is a true and correct copy of the transcript for your May 13, 2014 deposition in *National Surety Corporation v. MTD (USA) Corporation et al.*, No. 2:13cv6461 in the United States District Court for the District of New Jersey.

Wednesday, August 06, 2014  
Knoxville, Tennessee

Respectfully submitted,  
QUIST, CONE & FISHER, PLLC

By: /s/ Michael A. Durr  
Michael A. Durr (TBA 26746)  
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Knoxville, Tennessee 37929  
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*Attorney for Plaintiff State Farm Fire and  
Casualty Company*

**Certificate of Service**

I hereby certify that on Wednesday, August 06, 2014 that I served this document by electronic mail to the following counsel of record through the following e-mail addresses:

- Russell Rutledge  
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By: /s/ Michael A. Durr  
Michael A. Durr

# ***Riley Reporting & Associates, Inc.***

## Transcript of the Testimony of **Joseph Cangelosi**

**Date:** May 13, 2014

**Case:** National Surety Corporation v. MTD (USA) Corporation and  
Interline Brands

Riley Reporting & Associates, Inc.  
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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

NATIONAL SURETY CORPORATION,  
as subrogee of Kevin and Doris  
Hurley,

Plaintiff,

-vs.-

Civil Action No.:  
2:13-cv-06461-KM-MCA

MTD (USA) CORPORATION and  
INTERLINE BRANDS, INC.,

Defendants.

---

DEPOSITION OF INTERLINE BRANDS, INC.,  
by and through its designated corporate representative,  
JOSEPH CANGELOSI, III

Taken on behalf of Plaintiff

Pursuant to Amended Notice of Deposition and Request for  
Production to Interline Brands, Inc., Pursuant to  
Federal Rule of Civil Procedure Rule 30(b)(2) and (6)

DATE TAKEN: Tuesday, May 13, 2014

TIME: 2:16 p.m. - 5:27 p.m.

PLACE: Assessment Technologies Group  
4887 Belfort Road, Suite 105  
Jacksonville, Florida 32256

Examination of the witness taken before:  
Susan B. Wilson, RPR, CRR, FPR

---

RILEY REPORTING & ASSOCIATES, INC.  
1660 Prudential Drive, Suite 210  
Jacksonville, Florida 32207

Riley Reporting & Associates, Inc.  
904-358-1615

## A P P E A R A N C E S

DANIEL C. THEVENY, Esquire (by videoconference)

Cozen O'Connor  
Liberty View, Suite 300  
457 Haddonfield Road  
Cherry Hill, New Jersey 08002  
dtheveny@cozen.com  
215-665-4194,

appearing on behalf of Plaintiff.

MARCO P. DiFLORIO, Esquire (in person)

Salmon, Ricchezza, Singer & Turchi LLP  
123 Egg Harbor Road, Suite 406  
Sewell, New Jersey 08080  
mdiflorio@srstlaw.com  
856-842-0730,

appearing on behalf of Defendant  
Interline Brands, Inc.

- - -



## I N D E X

Witness	Page
JOSEPH CANGELOSI, III	
Direct Examination By Mr. Theveny.....	4

## EXHIBITS

Number	Description	For ID
1	Amended Notice of Deposition and Request For Production to Interline Brands, Inc., Pursuant to Federal Rule of Civil Procedure Rule 30(b)(2) and 30(b)(6)	6
2	Photograph	37
3	Photograph	37
4	Interline Brands Import Partnership Agreement dated 7/5/05 (no Bates labels)	40
5	Interline Brands Import Partnership Agreement dated 7/5/05, Bates-labelled INT000087 through 000094	40
6	Catalog page Bates-labelled INT000097	64
7	E-mail dated 11/7/07 from Mark Allen to Chen Zheng and Joe Cangelosi, plus preceding e-mails (total 13 pages)	65
8	Defendants' Answers to Plaintiff's First Set of Interrogatories and Responses to Plaintiff's Request for Production	115

1 JOSEPH CANGELOSI, III,  
2 having been produced and first duly sworn as a witness  
3 on behalf of Plaintiff, and after responding "I do" to  
4 the oath, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. THEVENY:

7 Q Good afternoon, Mr. Cangelosi. For the  
8 record, my name is Dan Theveny. I'm an attorney  
9 representing National Surety Corporation in a lawsuit  
10 that's been filed in federal court in New Jersey against  
11 Defendant Interline Brands and Defendant MTD (USA). And  
12 you're here today to give your deposition testimony.

13 Before we start, why don't you state your  
14 name, address, date of birth, and current employer.

15 A Name, Joseph Cangelosi, III. 53 years old.  
16 Date of birth is 09/08/60. 6072 Taylor Road,  
17 Jacksonville, Florida, 32234, is the present address.  
18 And I am currently employed as quality assurance manager  
19 for Interline Brands.

20 Q Have you had your deposition taken before?

21 A Yes, sir.

22 Q On about how many prior occasions?

23 A Approximately 13 times.

24 Q All right. So you're pretty familiar with the  
25 procedure?

1           A     I would say yes, sir.

2           Q     I'll just briefly go over some of the  
3 procedures.

4                     For one thing, this is somewhat unique in that  
5 I'm taking your deposition from here in my Philadelphia  
6 office whereas you are with your attorney at the offices  
7 of a court reporting service down in Florida. It's not  
8 being videotaped, which was the original intention, but  
9 through agreement between your counsel and myself we  
10 agreed that we don't need to videotape it. But I can at  
11 least see you and interact with you by way of any  
12 exhibits I want to show you and that sort of thing.

13                    There's a little bit of a delay, it seems,  
14 perhaps an echo. Normally in depositions it's important  
15 anyway, as you know, to let the questioner, the  
16 attorney, finish the question before you answer so we  
17 don't cut each other off and for me to let you finish  
18 your answer as well before I ask my next question, but  
19 we should probably be particularly sensitive to that.  
20 There should probably be a little bit longer of a delay  
21 between question and answer. So will you try and  
22 remember that?

23           A     Yes, sir.

24           Q     I'll remind you that you are testifying under  
25 oath. You know that?

1 A Yes, sir.

2 Q If you need to take a break, let me know and  
3 I'll be happy to accommodate you. All right?

4 A Very well.

5 MR. THEVENY: I'm going to have the court  
6 reporter hand you what we'll mark as Deposition  
7 Exhibit 1.

8 Let me know when that's done.

9 (Exhibit No. 1 was marked for identification.)

10 MR. THEVENY: For the record, Deposition  
11 Exhibit 1 is a document entitled "Amended Notice of  
12 Deposition and Request For Production to Interline  
13 Brands, Inc., Pursuant to Federal Rule of Civil  
14 Procedure Rule 30(b)(2) and (6)."

15 BY MR. THEVENY:

16 Q Have you seen that document before?

17 A Yes, sir.

18 Q Have you had an opportunity to review  
19 Exhibit 1 in preparation for your deposition here today?

20 A Yes, sir, briefly.

21 Q And do you understand that pursuant to  
22 Exhibit 1 that you have been designated as the corporate  
23 representative of Defendant Interline Brands in order to  
24 testify as to the matters set forth in Exhibit A to  
25 Exhibit 1?

1           A     Yes, sir.

2           Q     Have you had an opportunity to prepare  
3 yourself to testify to the best of your ability as the  
4 corporate designee on those areas of testimony?

5           A     To the best of my ability, yes, sir.

6           Q     And you understand that as the designated  
7 corporate representative of Defendant Interline Brands,  
8 your testimony is by the corporation?

9           A     Yes, sir.

10          Q     Okay. You also were asked to produce a series  
11 of documents which are also identified on Exhibit A to  
12 Exhibit 1. The items that are listed there in  
13 sequential order relate to the areas of Testimony 1  
14 through 12.

15                   Did you bring any documents today in response  
16 to this Exhibit 1 notice of deposition?

17          A     In Exhibit 1 or the "Documents to be  
18 Produced," No. 13?

19          Q     Yes, exactly. It's Exhibit A to Exhibit 1,  
20 "Documents to be Produced," identified as Paragraph  
21 No. 13. Specifically you were asked to produce "Any and  
22 all documents, including plans, schematics, diagrams,  
23 sketches, specifications, test results, product studies,  
24 photographs, video recordings, audio recordings,  
25 warnings, instructions, packaging, marketing material,

1 labeling, correspondence, memoranda, e-mail  
2 communications, pleadings, discovery, and also including  
3 any of the foregoing kept or maintained in an electronic  
4 format, and in any way related to the Areas of Testimony  
5 1 through 12 identified above."

6 Do you see where I am?

7 A Yes, sir.

8 Q Did you bring any documents today in response  
9 to this request to produce?

10 A No, sir, I did not.

11 MR. DiFLORIO: And, Dan, let me just add to  
12 that. On behalf of Interline I had a chance to  
13 communicate with you via e-mail indicating that  
14 we're relying upon primarily our responses to our  
15 answers to interrogatories and responses to  
16 documents requested because a lot of the topic  
17 areas overlap. But there aren't many additional  
18 documents to produce.

19 However, I did supply you, on behalf of  
20 Interline, with copies of sample pleadings involved  
21 with the New Jersey litigation on the Stutman  
22 claims that include claims from around the country,  
23 just so you have an example at least of the  
24 complaints in those cases. But we are still at the  
25 pleading stage of litigation so there's not much

1 more to produce there either.

2 MR. THEVENY: I'm sorry. The other documents  
3 that were produced in the defendant's discovery  
4 responses were Interline Brands' import partnership  
5 agreement, which I'll eventually mark as Exhibit 2,  
6 and then a copy of the last policy of insurance.

7 All right.

8 BY MR. THEVENY:

9 Q Mr. Cangelosi, what did you review in  
10 preparation for your deposition testimony here today?

11 A I reviewed this document, which is the notice  
12 of deposition. I reviewed our discovery responses, our  
13 request for production responses, and I also reviewed  
14 the photographs of the case.

15 Q All right. When you say the notice of  
16 deposition, you're referring to Exhibit 1?

17 A Yes, sir.

18 Q And then you said you looked at the written  
19 responses to interrogatories and requests for production  
20 of the defendant and some photographs?

21 A Briefly, yes, sir.

22 Q And I have some that I'll mark as well.

23 Anything else that you reviewed in preparation  
24 for your testimony here today?

25 A No, sir.

1 Q Other than meeting with your counsel, did you  
2 meet with anyone in preparation for your deposition  
3 testimony here today?

4 A No, sir.

5 Q Could you return to Exhibit 1, please, the  
6 amended notice of deposition, and in particular  
7 Exhibit A, which is the last page of Exhibit 1, "Areas  
8 of Testimony." I just want to briefly ask you the scope  
9 of your knowledge with respect to each of the areas of  
10 testimony identified and then I will probably go into  
11 some detail later on on some of the issues.

12 But in reviewing the areas of testimony 1  
13 through 12, would you have both personal knowledge of  
14 some or all of these areas of testimony as well as  
15 corporate knowledge in connection with your designation  
16 here as a corporate designee of Defendant Interline?

17 A Yes, sir, that's a fair assumption, that I  
18 have some personal knowledge and some corporate  
19 knowledge.

20 Q Just quickly, with regard to areas of  
21 testimony No. 1, communications between Interline  
22 Brands, Inc., and MTD (USA) Corporation concerning the  
23 items identified in Paragraph No. 1, do you have both  
24 personal and corporate knowledge or just one or the  
25 other?



1           A     Most of my knowledge there would be probably  
2 personal knowledge.

3           Q     And then for Item No. 2 in the areas of  
4 testimony, communications between Interline Brands,  
5 Inc., and product manufacturers concerning the items  
6 identified in Paragraph 2, would you have personal  
7 knowledge or corporate knowledge?

8           A     Let me clarify No. 1, as I'm looking through  
9 all the different points that are in here. I would have  
10 both personal and corporate knowledge of that.

11          Q     Very well. Then back to No. 2, please,  
12 communications between Interline Brands and the product  
13 manufacturers.

14          A     I would have some personal knowledge and  
15 corporate knowledge of that.

16          Q     Item No. 3 in the areas of testimony on  
17 Exhibit A to Exhibit 1, other claims and lawsuits  
18 against Interline Brands, Inc., involving alleged  
19 failures of DuraPro Model 231271 toilet tank connectors  
20 within the past eight years, personal and corporate  
21 knowledge or just one or the other?

22          A     I would have some personal and some corporate  
23 knowledge.

24          Q     Item No. 4 with regard to areas of testimony,  
25 the design of DuraPro Model 231271 toilet tank

1 connectors, personal and corporate knowledge or just one  
2 or the other?

3 A Just corporate knowledge.

4 Q Item No. 5 of the areas of testimony, labeling  
5 of DuraPro Model No. 231271 toilet tank connectors,  
6 personal and corporate knowledge or just one or the  
7 other?

8 A Personal and corporate.

9 Q And then Item No. 6, installation instructions  
10 for DuraPro Model No. 231271 toilet tank connectors,  
11 corporate and personal knowledge or just one or the  
12 other?

13 A Corporate and personal.

14 Q And then Item No. 7 under "Areas of  
15 Testimony," Exhibit A to Exhibit 1, warnings for DuraPro  
16 Model No. 231271 toilet tank connectors, personal and  
17 corporate knowledge or just one or the other?

18 A Personal and corporate knowledge.

19 Q And then Item No. 8, product specifications,  
20 same question.

21 A Personal and corporate knowledge.

22 Q And then Item No. 9 with regard to testing of  
23 the DuraPro Model No. 231271, same question.

24 A Corporate and personal.

25 Q And then Item No. 11, Interline Brands, Inc.'s

1 involvement in and/or approval of the selection of  
2 manufacturers of DuraPro Model No. 231271 toilet tank  
3 connectors, corporate or personal knowledge or both?

4 A I would say both.

5 Q And then the last item in the areas of  
6 testimony, Interline Brands' decision to change  
7 manufacturers of DuraPro Model No. 231271 toilet tank  
8 connectors over the past eight years, corporate and  
9 personal knowledge or just one or the other?

10 A Corporate and personal.

11 Q Taking those in detail, my questions will be  
12 directed to you based on your corporate knowledge in  
13 connection with your designation as the corporate  
14 representative of Defendant Interline Brands unless I  
15 say otherwise. Do you understand that?

16 A Understood.

17 Q If I want your personal knowledge, I will also  
18 ask you to give me what personal knowledge you have as  
19 well. Okay?

20 A Very well.

21 Q I'm going to get your background very briefly.  
22 You testified that you are the quality  
23 assurance manager for Interline Brands. Is that right?

24 A That is correct.

25 Q And how long have you held that position?

1 A For a little over 17 years.

2 Q And when did you first become employed by  
3 Interline Brands?

4 A October 1996.

5 Q And have you always held the position of  
6 quality assurance manager since employed by Interline  
7 Brands beginning in 1996?

8 A Yes, sir.

9 Q And where were you employed prior to that?

10 A With the exception of a very short stint with  
11 Lockheed Martin, I was employed by the U.S. Navy.

12 Q In the service or a civilian?

13 A I was a service member.

14 Q All right. And you may have -- I lost the  
15 thread. I apologize. Did you tell me you've always  
16 been the quality assurance manager for Interline Brands  
17 since you've been employed by them in 1996?

18 A I've always been employed by Interline or one  
19 of its business brands and in the position as a quality  
20 assurance manager. Interline Brands has only existed  
21 since around 2002 or 2000, and so therefore I belonged  
22 to one of the brands prior to that, one of the brands  
23 that was acquired.

24 Q Which brand was that?

25 A Barnett, Incorporated.

1 Q Describe your job duties and responsibilities  
2 as the quality assurance manager for Interline Brands.

3 A Well, they're very broad, but in a nutshell,  
4 I'm responsible for the quality of our exclusive brand  
5 products -- those would be our private-label products --  
6 responsible to ensure that the products that we source  
7 meet certain codes and criteria, meet certain  
8 performance requirements, that they have certain  
9 certifications.

10 And then there are a number of ancillary  
11 responsibilities regarding HAZMAT and regarding  
12 production of different types of, you know, supporting  
13 marketing documents, as well as working with our  
14 engineers overseas and working with suppliers just on  
15 routine product issues, various things like that.

16 Q Who do you report to?

17 A That's a good question. And I'd love to give  
18 you an answer, but today I don't have a direct report.  
19 My boss left the company last week and I haven't been  
20 given a formal assignment yet.

21 Q Who was your boss up until last week?

22 A Ramesh Bulusu, R-a-m-e-s-h B-u-l-u-s-u.

23 Q What was his or her job title?

24 A Vice president, marketing and e-commerce.

25 Q Do you have a staff that works with you?

1           A     I do.

2           Q     And how many are on the staff that work for  
3 you?

4           A     Three people.

5           Q     And who are they and what are their job  
6 titles?

7           A     Matthew Dyszel, product engineer. Gordon  
8 Quan, Advanced Premier Support. And Lizia, L-i-z-i-a,  
9 Erazo, E-r-a-z-o, HAZMAT communications administrator.

10          Q     Matt Dyszel, product engineer, what are his  
11 job duties and responsibilities?

12          A     Matt joined us a little over a year ago, and  
13 his responsibility is working with the product  
14 management team to define product requirements and  
15 document those product requirements as well as  
16 production of supporting marketing documents, general  
17 training, and various other ancillary activities.

18          Q     In connection with the DuraPro Model 231271  
19 toilet connector at issue in this lawsuit and the model  
20 that was supplied to Interline by Defendant MTD (USA),  
21 who was the project engineer with those responsibilities  
22 for that Model 231271?

23               MR. DiFLORIO: I'm going to object to the form  
24 of the question, but you may answer.

25               THE WITNESS: We didn't have a product

1 engineer on staff at that time.

2 BY MR. THEVENY:

3 Q With regard to the description of the job  
4 duties for the project manager, did you have someone  
5 fulfilling those job duties with respect to the DuraPro  
6 Model 231271 toilet connector?

7 A No, sir.

8 Q Why is it that you now have a project engineer  
9 with those job -- well, let me ask this: My  
10 understanding is that Interline no longer utilizes MTD  
11 (USA) for the supply of the DuraPro Model 231271 toilet  
12 connector. Is that right?

13 A That is correct.

14 Q Does Interline still sell a Model 231271  
15 toilet connector?

16 A Not actively.

17 Q What do you mean when you say "not actively"?

18 A The product is still in inventory and there  
19 are probably still some sales demands against it, but  
20 the product is no longer in our catalogs.

21 Q Why is that?

22 A The supplier, in this case MTD, could no  
23 longer supply the product to us, and in doing so we were  
24 forced to find another supplier.

25 Q Why is it MTD (USA) could no longer supply

1 Model No. 231271 to Interline?

2 A I don't have that knowledge.

3 Q Who's the current supplier of Model 231271  
4 toilet connectors to Interline?

5 A A company known by the initials HKP, which  
6 stands for Hangzhou Kaiyue, K-a-i-y-u-e, Plumbing.

7 Q When did that relationship start?

8 A In and around 2012.

9 Q Back to my initial question, with regard to  
10 the description of the job duties that are now performed  
11 by Matt Dyszel as a project engineer, were those types  
12 of job duties as you described being performed by  
13 someone at Interline with respect to the Model 231271  
14 toilet connector that was being supplied to Interline by  
15 MTD (USA)?

16 A All of the duties that Matt performs today  
17 were not being performed at the time the product was  
18 sourced from MTD Corporation. A good portion of the  
19 decisions and whatnot that were made around the  
20 procurement of that product from MTD would have been  
21 made in conjunction between myself and the product  
22 manager of record at the time, which I believe was Brian  
23 Wertheimer.

24 Q Were any of those types of job duties that you  
25 described being performed by anyone with MTD (USA) or



1 the manufacturer of Model 231271 toilet tank connectors?

2 MR. DiFLORIO: Let's hold for just a moment.

3 There was a sound on our end. I don't know if  
4 you heard that on your end. But could you restate  
5 the question or we'll have it read back?

6 (Discussion off the record.)

7 (Question read by reporter.)

8 THE WITNESS: I can't speak to the engineering  
9 and business activities of either of those  
10 organizations.

11 BY MR. THEVENY:

12 Q You don't know what was done with regard to  
13 those particular job duties that are now being performed  
14 with respect to toilet connectors by project engineers  
15 employed by MTD?

16 A I don't understand your question. You're  
17 asking me to answer what was going on at two separate  
18 companies for which I don't have any influence or input.  
19 I can tell you what happens today with our engineer, but  
20 I can't tell you what their engineers did. We don't  
21 have access to that.

22 Q You just answered my question.

23 A Okay.

24 Q Maybe you did answer it twice and I didn't  
25 pick up on it the first time. Thank you.

1           A     No problem.

2           Q     I got sidetracked a little bit. Why don't you  
3 describe for me the business of Interline Brands, Inc.

4           A     Well, conceptually Interline Brands is a  
5 conglomeration of different catalog brands and  
6 businesses that the corporate entity, Interline Brands,  
7 has purchased over a period of years.

8                     And so when we buy a brand, when we buy a  
9 particular business or a particular business brand, we  
10 bring that in. We incorporate the business. We fold  
11 that particular brand's back-end operations, accounting  
12 and general management operations, into the Interline  
13 umbrella, and then we allow the business brand itself to  
14 keep its own unique and distinct identity.

15                    And so today there's 13 or 14 catalog brands,  
16 as we call them, and so each one of those brands  
17 services a different type of market with very much  
18 similar and same types of products.

19                    I'll give you an example. Wilmar is our brand  
20 for the multifamily industry, which is the apartment  
21 trade, the condo trade. Barnett is our brand that sells  
22 to the pro contractor brands. Hardware Express is our  
23 brand that sells to the retail outlets, retail hardware  
24 opportunities there. Maintenance USA brand sells to the  
25 hospitality industry, the hotel/motel industry.

1           And so we've got a U.S. Lock brand, obviously  
2 locks. Leran brand for gas products. Copperfield for  
3 chimney products. We've got three brands, Clean Source,  
4 AmSan, and Janpak, which all sell products into the  
5 janitorial space. And we have one other brand, which is  
6 the -- two other brands, the Trayco brand and Sexauer  
7 brand, which are institutional brands which sell  
8 primarily to the institutional-type -- those are like  
9 prisons, schools, those types of things.

10           Q     You mentioned gas products, plumbing products.  
11 Can you give me some idea of the specific products?  
12 Obviously toilet connectors at one time or another and  
13 through today. What other types of products are we  
14 talking about here, be it in a commercial, residential,  
15 multi-residential, or whatever context?

16           A     Well, the various types of products that we  
17 sell are pretty much sold universally throughout the  
18 brands with different types of product sales being  
19 concentrated in those specific catalog brands because  
20 they're targeted to specific markets.

21                     So, you know, we run the gamut of all types of  
22 plumbing products, all types of electrical products, all  
23 types of hardware products, all types of janitorial and  
24 sanitation products, pretty much with the exception of  
25 lumber and, you know, the exterior-type building

1 products that you would see at like a Home Depot or  
2 Lowe's. We sell a large majority of those types of  
3 products.

4 Q How many employees does Interline have?

5 A Unfortunately I can't give you an exact  
6 number. I can tell you it's several thousand.

7 Q And where is Interline Brands' main office?

8 A In Jacksonville, Florida.

9 Q You mentioned in 1996 you were in the U.S.  
10 Navy and employed -- or I'm not sure what the right word  
11 is -- at Lockheed Martin. Is that right?

12 A Well, I was employed at Lockheed Martin for  
13 about a week between leaving the Navy and coming to work  
14 at Interline.

15 Q How long were you in the U.S. Navy?

16 A Nine years, 363 days, I believe. That's how  
17 we count them.

18 Q And rank upon discharge?

19 A I was a first class, which is an E-6.

20 Q And honorably discharged?

21 A Yes, sir.

22 Q And prior to the U.S. Navy, where were you  
23 employed?

24 A A number of --

25 Q Going back too far?

1           A       Yeah.  A number of various types of jobs.

2           Q       Nothing similar to the business that you're  
3 now in with Interline?

4           A       Well, not similar in scale, but certainly  
5 similar product-wise.  Jobs I held in high school and  
6 college were all in the construction industry as well as  
7 in and throughout various aspects of the hardware  
8 business.

9           Q       You mentioned college.  Do you have a college  
10 degree?

11          A       No, sir, I do not.

12          Q       Where did you attend college?

13          A       Southeastern Louisiana University.

14          Q       What course of study did you pursue?

15          A       Industrial technology.

16          Q       Did you attend any trade schools, technical  
17 schools or vocational schools?

18          A       I attended numerous technical and vocational  
19 and trade schools through my tenure with the Navy.

20          Q       What was your specialty in the Navy?

21          A       I was an avionics technician.

22          Q       Do you hold any certificates or licenses,  
23 other than a driver's license, in connection with your  
24 work?

25          A       No, sir.

1           Q     I wanted to ask you a little bit more about  
2 the areas of testimony by reference to Exhibit 1, the  
3 amended notice of deposition, Exhibit A to that, and  
4 then in particular Item No. 3, which asks you to testify  
5 to, quote, "Other claims and lawsuits against Interline  
6 Brands involving alleged failures of DuraPro  
7 Model 231271 toilet tank connectors that have occurred  
8 within the past eight years."

9                     Do you see where I am there?

10          A     Yes, sir.

11          Q     Can you tell me what other claims you're aware  
12 of?

13          A     Well, I know in our discovery responses we  
14 talked about that there were ten docket numbers there.  
15 And of those ten docket numbers, you know, that  
16 translates into around 200, 250 individual claims that  
17 are distributed in some way throughout those docket  
18 numbers. I don't know what more you would need from  
19 that.

20          Q     Are you aware of any other claims other than  
21 the ones that are referenced in the interrogatory  
22 response of Defendant Interline?

23          A     Aware that there have been other claims.  
24 Aware of what the concentration of those claims are or  
25 what the numbers are, I can't speak to that.

1 Q Are you aware of what the basis for the claims  
2 that are made against Interline Brands is, other claims  
3 that have been identified in the interrogatory  
4 responses?

5 A It's my understanding that most of the claims  
6 that are involved here involved a failure of a supply  
7 connector, whether it be a toilet supply connector or a  
8 kitchen supply connector.

9 Q Are you aware that there's an allegation that  
10 the Model No. 231271 toilet connector was defective?

11 A Am I aware that there's an allegation? No.

12 Q Do you know the factual basis for any reason  
13 why there was a failure of Model 231271 toilet  
14 connectors in any of the other lawsuits?

15 A A factual basis other than what's in -- you  
16 know, I periodically will see an engineering report and  
17 they'll give their impression of why the failures are  
18 occurring. I mean, I've maintained all along it's my  
19 understanding that the products were just being  
20 overtightened.

21 Q Did you conduct any investigation to make any  
22 determination with regard to your belief that these  
23 failures are due to overtightening of Model 231271  
24 toilet connectors?

25 A Well, investigations are difficult to conduct

1 on a product that's been through the IAPMO certification  
2 process that's been determined to be compliant with ASME  
3 standards for -- the ASME A112.18.6 standard for  
4 conformance for flexible water connectors. So for me to  
5 undertake any study would have paled in comparison to  
6 what the product was put through as far as its  
7 performance paces go, so to speak, relative to the  
8 performance requirements as set forth in that standard.

9 That being said, you know, we did try to  
10 determine whether or not the product itself was  
11 inherently faulty, as I recall. But, again, the product  
12 met the standard criteria so, you know, we wouldn't know  
13 exactly where to test or what to test against in order  
14 to verify that.

15 Q So the answer to my question is you have not  
16 conducted any investigation to determine why the DuraPro  
17 Model 231271 toilet connector nuts failed in connection  
18 with those claims which are the subject of the  
19 litigation identified in defendant's answers to  
20 interrogatories?

21 MR. DiFLORIO: I'm going to object to the form  
22 of the question, but you may answer.

23 THE WITNESS: That is correct. We have not.

24 BY MR. THEVENY:

25 Q You mentioned engineering reports. Have you



1 ever seen any engineering report or any written  
2 communication of any type indicating there was a  
3 determination made as to the reason for the failure in  
4 some or any of these Model 231271 toilet connector nuts?

5 A I have.

6 MR. DiFLORIO: I'm sorry. Before I decide  
7 whether or not to object, could you read that  
8 question back to me?

9 (Question read by reporter.)

10 MR. DiFLORIO: I'll just object to the  
11 question to the extent it may be overly broad. But  
12 the answer is already there.

13 THE WITNESS: And let me clarify my response.

14 MR. THEVENY: Before you do that, I want to  
15 make sure I know what the answer was. What was the  
16 answer?

17 (Answer read by reporter.)

18 BY MR. THEVENY:

19 Q My next question was going to be anyway what  
20 have you seen, coming up to why you want to clarify  
21 this. So let me know what you've seen.

22 A Yes. What we've seen is we've seen periodic  
23 engineering reports. I don't study them in depth. I  
24 just gloss over them. My primary function here is not  
25 to determine how or why these things fail; my primary

1 function is to identify who the supplier or manufacturer  
2 of the product was where I can.

3 That being said, these engineering reports,  
4 they ran the gamut from, you know, installation error to  
5 claimed, you know, product design error. I can't speak  
6 to all the details of all the different reports that  
7 I've seen, but suffice to say that, you know, I don't  
8 know that any of these reports, quote/unquote, are  
9 definitive. You asked me if I'd seen the reports, and I  
10 have.

11 Q Apart from reports, have you ever seen any  
12 written communication with regard to a determination as  
13 to the reason why there was failure of a Model 231271  
14 toilet connector?

15 MR. DiFLORIO: Object to the extent the  
16 question is overly broad.

17 You may answer.

18 THE WITNESS: Yeah. I agree. I don't  
19 understand what you mean when you talk about  
20 written communications. What does that mean?

21 BY MR. THEVENY:

22 Q Correspondence, letters, e-mail -- well, to  
23 the extent that e-mail is printed, so I guess my  
24 question also picks up electronic communication. But  
25 letters and e-mails.

1           You seem to be fixing on engineering reports.  
2           I want to make sure I'm not limiting my question to just  
3           engineering reports. I want to know if you've seen any  
4           other written communications. And what I'm talking  
5           about really would be correspondence, whether or not in  
6           electronic format by way of an e-mailed letter or even  
7           an e-mail itself, where there's been a determination  
8           made as to the reason why there may have been failures  
9           in these Model 231271 toilet connectors.

10           MR. DiFLORIO: I'm going to object to the  
11           question to the extent that it's overly broad.

12           You may answer.

13           THE WITNESS: Yeah. It's difficult to answer  
14           your question because, you know, I have to make a  
15           product identification in any case where there's a  
16           product failure. And that's not just in this case  
17           with connectors. That's pretty much across the  
18           board for the organization.

19           That being said, you know, there's -- even in  
20           the engineering reports, that's the engineer's  
21           opinion of the failure. And typically I would  
22           never see anything in a written communication  
23           outside of that engineering report which would give  
24           any conjecture as to how or why a product failed.

25           BY MR. THEVENY:

1 Q With regard to these engineering reports, who  
2 at Interline Brands would have been responsible for  
3 preparing these reports?

4 MR. DiFLORIO: I'm going to object to the  
5 question to the extent it may be vague and  
6 ambiguous.

7 You may answer.

8 THE WITNESS: Yes.

9 These are not our engineering reports. These  
10 are engineering reports that come in as part of  
11 subrogation demands. They're not internally  
12 prepared reports.

13 BY MR. THEVENY:

14 Q Does or did Interline Brands have anyone in  
15 its employ who is charged with investigating claims  
16 involving failures of DuraPro Model 231271 toilet  
17 connectors and then issuing reports in connection with  
18 same?

19 MR. DiFLORIO: I'm going to object to the  
20 question to the extent it's overly broad and  
21 potentially ambiguous as to "investigating."

22 But you may answer.

23 THE WITNESS: No, we do not.

24 BY MR. THEVENY:

25 Q Are you aware of any allegation of a

1 particular or specific defect involving the DuraPro  
2 Model 231271 toilet connector with regard to why it  
3 fails?

4 MR. DiFLORIO: I'm going to object to the  
5 extent of any ambiguity associated with the term  
6 "defect."

7 But you may answer.

8 THE WITNESS: The only thing that I would be  
9 able to answer that with is based on some of the  
10 engineering reports that I receive in order to make  
11 product identifications, they attempt to give --  
12 they attempt to define and assign cause. And in  
13 those cases they may make the statement or they may  
14 have made the statement that the product was faulty  
15 in some way.

16 BY MR. THEVENY:

17 Q Anything in specific in regard to why they may  
18 have said it was faulty in some way?

19 A Without looking at a specific engineering  
20 report, I couldn't comment on that.

21 Q And Defendant Interline does not employ anyone  
22 to investigate the reason for the failures of DuraPro  
23 Model 231271 toilet connectors?

24 MR. DiFLORIO: I'm going to object to the  
25 question to the extent "investigation" may be

1           overly broad as that term is construed or  
2           understood.

3           But you may answer.

4           THE WITNESS: From our standpoint of view, we  
5           don't have anybody on staff to do that. We would  
6           take a complaint and we would forward the complaint  
7           to the supplier, and from our position it's the  
8           supplier's responsibility to investigate that for  
9           cause.

10          BY MR. THEVENY:

11           Q       Have you ever made any recommendation for any  
12           change in the design of DuraPro Model 231271 toilet  
13           connectors as a result of these claims being made for  
14           failure of these toilet connectors?

15           A       In and around 2007 we reported some complaints  
16           to our supplier, MTD, and at that point in time we asked  
17           them if they would review the issue with the supplier  
18           and determine if there were any alternative options  
19           available for a different style of nut.

20           Q       I believe you testified that you asked MTD  
21           (USA) to review the issue with their supplier. Is that  
22           correct? Do I have that right?

23           A       That's correct. We would have asked MTD to  
24           review the current nut design with their supplier to  
25           ensure that it was adequate.

1           Let me make this statement: The nut as it was  
2 was an approved product as part of a final assembly as  
3 certified by -- UPC-certified by the IAPMO. And so for  
4 us to go back to them was merely asking them to say that  
5 it was our belief that the nuts could be overtightened  
6 or they were being overtightened in periodic cases, and  
7 so what we asked them to do is go back and look at their  
8 design to see if there was anything else they could do.

9           Q     My question -- I'll ask you something about  
10 that, but I was trying to get more basic, just so the  
11 record is clear, because we've got a chain of  
12 distribution going on here and we've got suppliers  
13 possibly being mixed in with other entities.

14           You would agree with me, would you not, that I  
15 could say that for the Model No. 231271 toilet  
16 connector, that was supplied to Interline by MTD (USA);  
17 right?

18           A     That is correct.

19           Q     So when you use the term "supplier" in your  
20 answer, would it be fair for me to assume that what you  
21 are referring to is whatever entity was supplying the  
22 Model No. 231271 to MTD (USA), which was then in turn  
23 supplied to Interline?

24           A     When I use the term "supplier" I am  
25 specifically referring to the supplier that supplied to

1 Interline Brands. In this case it would be the term  
2 MTD. We would characterize their supplier as the  
3 manufacturer.

4 Q And that's why -- I think what you did was you  
5 referred to MTD's supplier. And am I correct now that  
6 you mean the manufacturer?

7 A That is correct. We would refer to MTD's  
8 supplier, but they would also be considered the  
9 manufacturer in this case.

10 Q I understand, but I wanted to make sure the  
11 record is clear because it was getting lost in the fray.

12 All right. Does Interline Brands manufacture  
13 any products at all?

14 A Yes, we do.

15 Q What type of products?

16 A In our facility in North Carolina we  
17 manufacture chimney caps and different types of  
18 chimney-cover-type products. And we have a facility in  
19 Washington state that does chemical mixing and chemical  
20 blending.

21 Q For what?

22 A For different types of chemicals. Cleaning  
23 chemicals. Cleaning products.

24 Q So what's referred to as maintenance?

25 A No, sir. This is part of our AmSan brand.



1 Q That's what I meant. All right.

2 Is there currently a business relationship  
3 between Interline Brands and MTD (USA)?

4 A To my knowledge, yes, there is.

5 Q For what type of products?

6 A Different types of plumbing products, to  
7 include different types of fittings, valves, different  
8 types of hanger products, pipe-hanging products.

9 Q I think you may have answered this, but just  
10 so I'm clear, does MTD (USA) still supply DuraPro Model  
11 No. 231271 toilet connectors to Interline?

12 A No, sir.

13 Q When did that relationship cease?

14 A We ceased purchasing products from MTD, those  
15 particular products, 231271, from MTD in 2012, towards  
16 the mid/late part of the year.

17 Q When, again? I'm sorry.

18 A 2012.

19 Q When did Interline first start to purchase  
20 DuraPro Model 231271 toilet connectors from MTD (USA)?

21 A In and around August 2005.

22 Q Is DuraPro a trade name owned by Interline  
23 Brands?

24 A It is a -- it is a product brand name. It's a  
25 trademarked name but not registered.

1 Q Is it a trademarked name of Interline Brands?

2 A Yes, sir.

3 Q If a product here in the United States bears  
4 the DuraPro trademark, does that mean it was distributed  
5 in the U.S. by Interline Brands?

6 A That would depend upon whether or not it was a  
7 DuraPro product that we provided. The DuraPro brand  
8 name is also used by several other companies  
9 domestically here in the U.S. for different types of  
10 products. However, to our knowledge, we're the only  
11 ones that supply plumbing parts and products under the  
12 DuraPro brand.

13 Q I'll ask it more precisely then as well. If a  
14 toilet connector here in the United States bears the  
15 DuraPro trademark, would that toilet connector have been  
16 supplied by Interline Brands?

17 A Yes.

18 Q Was MTD (USA) the sole supplier of DuraPro  
19 Model 231271 toilet connectors to Interline Brands from  
20 approximately August of 2005 until the relationship  
21 ended in 2012?

22 A Yes.

23 MR. THEVENY: I'll show you what we'll mark as  
24 Exhibits 3 and 4, I guess.

25 COURT REPORTER: Did we mark 2?

1 MR. THEVENY: I'm going to refer to these  
2 photographs. The first one, Susan, will be --  
3 Exhibit 3 will be the photograph that has the label  
4 on it where the top of it says "Mfg# 231271," and  
5 Exhibit 4 will be the photograph that has the label  
6 at the top that says "Manufactured to conform to."  
7 Are you with me?

8 MR. DiFLORIO: Dan, did we ever get around to  
9 dealing with Exhibit 2?

10 MR. THEVENY: Actually I skipped ahead here.  
11 Those should be 2 and 3. I apologize.

12 (Exhibits No. 2 and 3 were marked for  
13 identification.)

14 MR. DiFLORIO: And, Dan, I have to interpose a  
15 belated objection before we continue, and it ties  
16 into one of your questions regarding the DuraPro  
17 label, whether that would be associated  
18 automatically with an Interline product. I'm just  
19 going to object to the extent that Mr. Cangelosi  
20 may not have sufficient knowledge to answer that  
21 question, may not have the requisite foundational  
22 knowledge to answer that.

23 With that said, we can move on.

24 MR. THEVENY: Just so I'm clear, Exhibit 2 now  
25 is the photograph with the label that has

1 "Mfg# 231271" at the top?

2 THE WITNESS: Correct.

3 MR. THEVENY: And then Exhibit 3 is the  
4 photograph that has the label with the first line  
5 at the top "Manufactured to conform to"?

6 THE WITNESS: Correct.

7 BY MR. THEVENY:

8 Q All right. First I have placed in front of  
9 you Exhibit 2, which is a photograph of this water  
10 supply line toilet connector. And I will represent to  
11 you that this photograph was provided to MTD (USA) and  
12 Interline representatives prior to retention of counsel  
13 and it was photographs taken by plaintiff's consulting  
14 engineer at the home of the Hurleys who was retained by  
15 me to investigate this connector failure.

16 Looking at Exhibit 2, I want to know: Have  
17 you ever seen that type of label before?

18 A Yes, sir. It appears to be consistent with a  
19 DuraPro label for a Model 231271.

20 Q And would that be a toilet connector, then,  
21 that would have been supplied by Interline Brands?

22 A If the label is original to the product, yes,  
23 sir.

24 Q Take a look at Exhibit 3, which is the back  
25 side of this photograph, the back side of the label.

1 The top of this label begins with, quote, "Manufactured  
2 to conform to ANSI/NSF-61 and Proposition 65 standards  
3 for use in exposed locations only," and then it goes on  
4 from there. Do you see where I am?

5 A Yes, sir.

6 Q And I will also represent to you, as I did  
7 before, that this was a photograph that was supplied to  
8 representatives of MTD (USA) and Interline prior to this  
9 lawsuit and that this photograph was also taken by  
10 plaintiff's consulting expert, a mechanical engineer  
11 that I retained to investigate the loss, and he took  
12 this photograph of the subject toilet connector line and  
13 toilet connector nut while he was investigating the  
14 failure.

15 Have you seen a label like that before?

16 A This appears to be -- the answer to your  
17 question is yes. It appears to be the opposite side  
18 from Exhibit 2.

19 Q This would be a label that would be affixed to  
20 a DuraPro 231271 model connector nut that would have  
21 been supplied by Interline Brands?

22 A Yes, sir.

23 MR. THEVENY: I'll probably come back to  
24 those.

25 Let's take a look at Exhibit No. 4 which I'll

1 have marked, which, Susan, will be the Interline  
2 Brands import partnership agreement.

3 (Exhibit No. 4 was marked for identification.)

4 MR. THEVENY: And then I'm also going to ask  
5 Susan to mark as Exhibit 5 the second copy of the  
6 Interline Brands import partnership agreement with  
7 the number stamping in the lower right-hand corner  
8 beginning on the first page INT000087 through  
9 000094.

10 MR. DiFLORIO: Dan, these are both the same  
11 contracts, right, except for the last page?

12 MR. THEVENY: Correct. And I'll put that on  
13 the record when Susan's done.

14 (Exhibit No. 5 was marked for identification.)

15 BY MR. THEVENY:

16 Q Susan has placed in front of you exhibits that  
17 have now been marked 4 and 5. And they are essentially  
18 the same, with the exception of Exhibit 5 having that  
19 last page to it that Exhibit 4 does not.

20 And for the record I will tell you that  
21 Exhibit 4 was produced by the defendants in this  
22 lawsuit, the pending lawsuit in the District Court of  
23 New Jersey, and Exhibit 5 was the exhibit to your  
24 earlier deposition in the case of National Surety  
25 Corporation as subrogee of Timothy Horner and Peggy

1 Horner versus Interline Brands, pending in the United  
2 States District Court for the Eastern District of Texas,  
3 Civil Action No. 4:12-CV-00205-RC-ALM. That's where I  
4 got Exhibit 5.

5 My question to you, first question, is: Do  
6 you know why this Exhibit 5 has a last page attached to  
7 it that was not produced in this lawsuit in conjunction  
8 with Exhibit 4? And the last page of Exhibit 5 is  
9 titled "Vendor Rebate/Co-op Program Summary" and then it  
10 goes on from there.

11 A No, sir.

12 Q Okay. Do you know whether or not the last  
13 page of Exhibit 5 is in fact part of the Interline  
14 import partnership agreement?

15 A No, sir.

16 Q Do you know who at Interline Brands might know  
17 the answer to that question?

18 A The director of global sourcing.

19 Q And who would that be?

20 A Mark Allen.

21 Q Is Mark Allen based down there in Florida?

22 A Yes, sir.

23 Q Are you familiar with this rebate program  
24 summary that's noted here on the last page of Exhibit 5?

25 A No, sir. This is the first time I've seen it.

1 Q Do you have any understanding at all about  
2 whether or not there was a rebate agreement between  
3 Interline Brands and MTD (USA)?

4 A Outside of seeing this, I have no idea.

5 Q So no knowledge as the corporate designee of  
6 whatever the rebate program was, if any, between  
7 Interline and MTD?

8 A That is correct. I have no knowledge.

9 Q You think that Mark Allen might be represented  
10 to have that knowledge?

11 A Possibly, yes, sir.

12 Q Anybody else who might know?

13 A Not that I know.

14 MR. THEVENY: I'm not going to go back to  
15 Exhibit 5. I'll just go to Exhibit 4, which was  
16 the partnership agreement produced in this lawsuit.

17 BY MR. THEVENY:

18 Q Exhibit 4, the Interline Brands import  
19 partnership agreement with MTD (USA), have you seen this  
20 document before?

21 A Yes, sir.

22 Q Other than having seen it in your deposition  
23 in the other case I referenced, what I'll call the  
24 Horner case, pending in the United States District Court  
25 in Texas, have you seen it any other time?



1           A     I may have seen it periodically, but it's not  
2 a document that I would normally have access to or have  
3 occasion to read.

4           Q     Do you know who wrote this document?

5           A     No, sir.

6           Q     Based on your knowledge of the corporation of  
7 Interline Brands, do you have an understanding of who  
8 might have been responsible for drafting this Exhibit 4  
9 import partnership agreement?

10          A     No, sir.

11          Q     Does Interline Brands have a legal department?

12          A     Yes, sir.

13          Q     Do you know who heads up the legal department?

14          A     Mike Agliata.

15          Q     Can you spell it for the court reporter?

16          A     Yeah. A-g-l-i-a-t-a.

17          Q     All right. If you'll turn to the  
18 second-to-the-last page in Exhibit 4, the signature  
19 page.

20          A     Yes, sir.

21          Q     I think -- who's Brian Wertheimer?

22          A     Brian Wertheimer was a product manager for  
23 Interline Brands.

24          Q     My understanding is he's no longer employed by  
25 Interline Brands. Is that right?

1           A     That is correct.

2           Q     Do you know where he is today?

3           A     No, sir, I do not.

4           Q     Who is the present international plumbing  
5 product manager for Interline Brands?

6           A     That would have been Brian. That would have  
7 been his title as he signed it there.

8           Q     Who is it today? Does somebody else hold that  
9 position today?

10          A     We don't have that position today.

11          Q     With regard to the job duties and  
12 responsibilities that were handled by Mr. Wertheimer, do  
13 you know who at Interline Brands handles those  
14 responsibilities today?

15          A     I believe that falls under Mark Allen's  
16 umbrella.

17          Q     Did you report to Brian Wertheimer in 2005 at  
18 the time this agreement was entered into?

19          A     No, sir, I did not.

20          Q     And who is Mr. Chen Zheng?

21          A     Chen Zheng is -- C-h-e-n Z-h-e-n-g -- is  
22 the --

23          Q     I gave it to her before the deposition.

24          A     According to this, he's the president of MTD  
25 Corporation.

1 Q Have you ever dealt with Mr. Zheng?

2 A I have.

3 Q In what kind of context? What kind of  
4 interaction have you had with Mr. Zheng?

5 A Most communications with Chen Zheng are --  
6 generally, if he comes to our annual partner conference,  
7 I will go by his table and speak with him briefly. Or  
8 if I happen to be in the building if he ever comes to  
9 visit, I may visit with him. But I generally don't  
10 communicate directly with him.

11 Q Who does at Interline Brands?

12 A I don't know who exactly. He's not -- he's  
13 not our -- it would probably be Mark Allen, but he's not  
14 our -- he's not my primary contact.

15 Q Who is your primary contact at MTD (USA)?

16 A Wu Bo. W-u B-o.

17 Q And was she your primary contact as well  
18 during this 2005 to 2012 time period when MTD (USA) was  
19 supplying DuraPro Model 231271 toilet connectors to  
20 Interline?

21 A She was a primary contact source for us, so if  
22 we had any type of, you know, challenge with any type of  
23 product in any way, shape or form, needed maybe a cut  
24 sheet or something on it, Wu Bo would be our contact  
25 point.

1 Q Can you give an example? If you needed a --  
2 what did you say?

3 A A cut sheet on all of the different types of  
4 products. A cut sheet is just a specification sheet.

5 Q Describe the specifications included with the  
6 cut sheet for the DuraPro Model 231271 toilet connectors  
7 that were supplied to Interline by MTD (USA).

8 A Well, I was speaking in generalities. You  
9 asked me regarding my conversations with Wu Bo would be  
10 in generalities for something such as a cut sheet. In  
11 this case, to my knowledge a cut sheet was never  
12 provided for these products.

13 Q Do you know if there was a cut sheet prepared  
14 for this DuraPro Model 231271 toilet connector?

15 A Not that I ever recall.

16 Q I want you to take a look, if you would,  
17 please, at Exhibit 4, Section 6, the section titled  
18 "Quality," and in particular Section 6.1, which is found  
19 on the second page of Exhibit 4.

20 And it reads as follows: "6.1.  
21 Specifications. Prior to the first shipment, supplier  
22 must provide for company's review and approval written  
23 material specifications, including engineering drawings,  
24 as required by company for all products sold to the  
25 company. At no time may specification changes,

1 sub-vendor changes or major component changes be made  
2 without the prior written approval of company. Supplier  
3 shall notify the company in the event that supplier  
4 becomes aware that supplier may not be capable of  
5 delivering products which conform to the  
6 specifications."

7 Do you see where I am?

8 A Yes, sir.

9 Q My first question to you is: As referred to  
10 in this Section 6.1 which I quoted for the record, am I  
11 correct that the reference to "supplier" there is MTD  
12 (USA)?

13 A That is correct.

14 Q And that the reference to "company" within  
15 this Section 6.1 would be Interline Brands, Inc.?

16 A That is correct.

17 Q So tell me what MTD (USA) provided to  
18 Interline Brands, Inc., with regard to written material  
19 specifications, including engineering drawings, for the  
20 approval of Interline Brands.

21 A Well, at this point in time when we sourced  
22 the product from MTD, they didn't provide us  
23 specification sheets. What we asked for in lieu of  
24 specification sheets would have been the IAPMO  
25 certification showing that the product was tested and

1 certified conformal to the ASME standards.

2 Also I just want to draw your point to the  
3 statement that you made here on the second line of 6.1,  
4 where you said, and I'll begin from the beginning,  
5 "Specifications. Prior to the first shipment, supplier  
6 must provide for company review and approval written  
7 material specifications, including engineering  
8 drawings," and you used the term there "as required,"  
9 and what's written in the spec here is "as requested."

10 So I just want to confirm that this --

11 Q No --

12 A -- was not a requirement. It was a request.  
13 And in our case we were able to accept the performance  
14 verification of IAPMO or by IAPMO in lieu of the  
15 specifications.

16 Q I apologize. I did mean to say "request."

17 So I'm clear, Interline Brands, Inc., did not  
18 request any written material specifications or  
19 engineering drawings as referenced here in Section 6.1  
20 of this import partnership agreement, Exhibit 4?

21 A That is correct. And, again, for the record,  
22 I want to say that what we accepted is we accepted  
23 something in lieu of that, which was the IAPMO  
24 certification.

25 Q I understand.

1           So the record's clear, Interline Brands, Inc.,  
2 did not request for approval written material  
3 specifications, including engineering drawings, for  
4 DuraPro Model 231271 toilet connectors?

5           A       That's right. And as stated in 6.1, it is up  
6 to us to make that determination. We made that  
7 determination in lieu of receiving the verification from  
8 IAPMO that the product had been tested or at least  
9 caused to be tested by IAPMO and found to be compliant  
10 and conformal to the ASME A112.18.6 and related  
11 standards as specified in said standard.

12          Q       The answer to my question is no, you did not  
13 make the request for the written material  
14 specifications, including engineering drawings?

15          A       That is correct.

16          Q       Can you answer yes or no?

17          A       No, we did not.

18          Q       You did not.

19                 Now, with regard to -- for the court reporter,  
20 we talked about these other standards that you received  
21 with regard to the product specification. You said  
22 IAPMO and -- what were the other items you referred to?

23          A       Well, there's IAPMO. You mentioned earlier  
24 about --

25          Q       Let me just stop you right there. Could you

1 spell that for the court reporter, please?

2 A Yes. I-A-P-M-O.

3 Q What was the other standard you referred to?

4 A Sorry? Say again?

5 Q What was the other -- you referred to one  
6 other standard.

7 A Oh. We referred to ASME. That's American  
8 Society of Mechanical Engineers. And the specific  
9 standard for flexible water connectors is ASME  
10 A112.18.6.

11 Q And your testimony as the corporate designee  
12 is that you received written confirmation that the IAPMO  
13 and ASME standards were met by MTD (USA) with regard to  
14 the DuraPro Model 231271 toilet connectors that were  
15 being supplied to Interline Brands?

16 MR. DiFLORIO: I'm going to object to the form  
17 of the question.

18 You may answer.

19 THE WITNESS: Yeah, I don't recall exactly  
20 what -- you know, the exact exchange of  
21 documentation, but we confirmed that the product  
22 was certified.

23 IAPMO maintains a product listing directory  
24 that can be searched, and as I recall we used the  
25 product listing directory to verify that the



1 product was certified. And if we hadn't used that,  
2 we would have confirmed that with the product  
3 manager at the time, who was Brian Wertheimer.

4 BY MR. THEVENY:

5 Q All right. Have you produced any  
6 documentation in this lawsuit to confirm that the IAPMO  
7 and ASME specification requirements with regard to the  
8 DuraPro Model 231271 toilet connectors were met?

9 A Not to my knowledge.

10 Q And you've brought no documents with you today  
11 either; is that correct?

12 A No, sir.

13 Q And you understood as the corporate designee  
14 with regard to Exhibit 1, the amended notice of  
15 deposition, that in addition to the areas of testimony  
16 you were also required to produce documents related to  
17 these areas of testimony?

18 A Sir, I can't read your mind where the  
19 testimony will go, the questioning will go. All I can  
20 tell you is that I don't have that with me today.

21 Q And you understood --

22 MR. DiFLORIO: And, Dan, if it helps, I am  
23 actually trying to get that information through MTD  
24 because they are one step closer to having access  
25 to those documents. So before that deposition, I

1           hope to have those certifications.

2       BY MR. THEVENY:

3           Q       Back to Exhibit 1, Mr. Cangelosi, you  
4       understood that one of the areas of testimony was,  
5       quote, "Product specifications for DuraPro Model  
6       No. 231271 toilet connector nut," end quote; is that  
7       correct?

8           A       I'm sorry. Rephrase the question.

9           Q       Yes.

10                    You understood that pursuant to Deposition  
11       Exhibit 1 in Exhibit A to Deposition Exhibit 1 that one  
12       of the areas of testimony was No. 8, quote, "Product  
13       specifications for DuraPro Model No. 231271 toilet tank  
14       connectors," end quote?

15           A       I'm aware that that's an area of testimony,  
16       correct.

17           Q       Right. And you had read that before your  
18       deposition today?

19           A       Yes, sir.

20                    I don't understand --

21           Q       I'm just asking you a question.

22                    And you understood that included in the  
23       documents to be produced were any documents including,  
24       among other things, specifications related to the areas  
25       of testimony also identified in Exhibit A to Exhibit 1

1 to your deposition; is that correct?

2 A That is correct. And, again, I'll come back  
3 to my point from earlier in that we didn't have  
4 specifications for these products nor did we request  
5 specifications for these products in lieu of the fact  
6 that the product was IAPMO certified.

7 And to my knowledge, had we used the IAPMO  
8 certification verification program, their product  
9 listing directory, we probably didn't even have a copy  
10 of it. We had validated it and that was sufficient.

11 Q Have you ever run into a situation where any  
12 product that was either sold or supplied by Interline  
13 Brands or even manufactured by Interline Brands met  
14 particular industry standards that might be applicable  
15 to it such as IAPMO or ASME where subsequent  
16 down-the-line production problems would occur in the  
17 production which would render the product no longer  
18 compliant with the applicable standards?

19 MR. DiFLORIO: I'm going to object to the  
20 extent that question may be vague, overly broad,  
21 and implicate legal standards beyond the scope of  
22 his knowledge.

23 But you may answer.

24 THE WITNESS: Yeah, I can't recall any  
25 specific thing. I mean, when a product is

1 certified, a product is certified to the standard.  
2 When the product's tested to the standard, it's  
3 tested to the standard.

4 If the supplier deviates from that standard by  
5 making, you know, an erroneous product selection or  
6 through some, you know, error in their production  
7 process forgot to put Part A on Part B, whatever,  
8 we might be able to see that, the symptoms of that,  
9 but we have no knowledge of what the true events  
10 are because we don't design the product and we  
11 don't construct the product. So therefore we  
12 really have to just rely on the certification  
13 process as set forth by those third-party  
14 certifiers such as IAPMO.

15 BY MR. THEVENY:

16 Q If I understand your testimony just now, you  
17 have run into situations where an initial product  
18 specification meets the specifications of the applicable  
19 industry standard but then three, six months later when  
20 it's in production some type of problem occurs in  
21 production which renders it no longer compliant with the  
22 standards that it was initially designed to.

23 A Well, I think we have to take a very broad  
24 approach to that in that all products, 100 percent of  
25 every product manufactured by man, has a susceptibility

1 for some type of failure. Everything we do in the  
2 quality world is to try to prevent that.

3 So to answer your question directly, yes,  
4 you're correct. But I just want to, you know, add a  
5 caveat to that in that I can't walk out on the  
6 production floor and tell exactly how those product  
7 failures are occurring.

8 Q Is it your testimony that you had no knowledge  
9 of any problem with the production of the DuraPro  
10 Model 231271 toilet connectors prior to the claims that  
11 have now arisen in connection with the New Jersey  
12 lawsuit, the United States District Court federal  
13 lawsuit and this current case?

14 MR. DiFLORIO: I'm going to object to the  
15 question to the extent it's overly broad.

16 But you may answer.

17 THE WITNESS: We had some complaints early on  
18 following the introduction of the product from MTD,  
19 but they were extremely sporadic. And when I say  
20 "early on," I mean, you know, not right out of the  
21 gate, but within the first couple of years of that  
22 product, probably 2006/2007, we had a few  
23 complaints here and there, but nothing that would  
24 have triggered me to think in any way, shape or  
25 form that the product was, quote/unquote, wholesale

1           deficient.

2       BY MR. THEVENY:

3           Q       Continuing on, back to Exhibit 4, the second  
4       page, Section 6, "Quality," I want to ask you about  
5       Section 6.2, which states as follows: "6.2. Quality  
6       Control. Prior to the first shipment, supplier must  
7       provide in writing a description of its quality control  
8       procedures, including all subcontractor inspection  
9       protocols, to the company for review and approval.  
10      Inspection procedures shall conform to MIL STD 105D.  
11      Inspection reports are to be required on an as-ordered  
12      basis as requested by the company or company's overseas  
13      agent. Supplier will provide samples to the company  
14      upon request."

15                   Do you see where I am?

16           A       Yes, sir.

17           Q       Tell me what quality control procedures were  
18      provided by MTD (USA) to Interline Brands, Inc.

19                   MR. DiFLORIO: I'll object to the form to the  
20      extent it may be beyond the scope of his knowledge.

21                   But you may answer.

22                   THE WITNESS: I don't know. I can't speak to  
23      that.

24       BY MR. THEVENY:

25           Q       Who at Interline Brands would know what

1 quality control procedures were provided by MTD (USA) to  
2 Interline Brands, Inc., pursuant to this Section 6.2 of  
3 the import partnership agreement?

4 A In this case I'm not sure that there's anybody  
5 here that would know that.

6 Q Do you know whether or not there are any  
7 written records related to quality control procedures  
8 that might have been provided by MTD (USA) to Interline  
9 Brands, Inc., in connection with the DuraPro  
10 Model 231271 toilet connector?

11 A Not to my knowledge, no.

12 Q Were any subcontractor inspection protocols  
13 provided by MTD (USA) to Interline Brands, Inc.,  
14 pursuant to this Section 6.2 of the import partnership  
15 agreement, Exhibit 4?

16 A Not to my knowledge.

17 Q Do you know who might have that knowledge at  
18 Interline Brands, Inc.?

19 A No, sir.

20 Q Do you know whether there might be any written  
21 records of any subcontractor inspection protocol related  
22 to the DuraPro Model No. 231271 toilet connector?

23 A Not to my knowledge.

24 Q This reference here to MIL STD 105D, what is  
25 that reference?

1           A       It's a military standard, Military Standard  
2       105D, which is the standard for quality control sampling  
3       procedures.

4           Q       Do you know whether or not the quality control  
5       procedures required pursuant to MIL STD 105D were  
6       followed here in connection with this DuraPro  
7       Model 231271 toilet connector?

8           A       Well, I can tell you that the Mil Standard  
9       105D, which has been superseded by the 105E, has a  
10       specific schedule for sampling rates based on production  
11       quantities, production lots. And in this case the  
12       manufacturer of the product, which was Dingbo, was  
13       performing a 100 percent water test, so they were  
14       actually surpassing what Mil Standard 105D required,  
15       which would have just been a random sampling plan.

16          Q       How do you know that?

17          A       That was my understanding from conversations  
18       with Mr. Wertheimer. And then at some point after we  
19       had been doing business with MTD on these products, I  
20       had visited the factory and had witnessed that  
21       inspection.

22          Q       Do you have any records related to these  
23       inspection procedures in compliance with the standards  
24       that you've discussed?

25          A       No, sir.



1           Q     What samples did MTD (USA) provide to  
2 Interline Brands, Inc., as referenced here in  
3 Subsection 6.2 of this import partnership agreement?

4           A     This particular section, 6.2, samples that  
5 would have been requested here would have been samples  
6 of quality control or samples for quality control  
7 purposes. We would not have requested any samples in  
8 this case.

9           Q     Why not?

10          A     There was no need for us to request product  
11 samples for quality control. Quality control was  
12 handled by the manufacturer.

13          Q     Describe for me to whom Interline Brands,  
14 Inc., would sell these DuraPro Model 231271 toilet tank  
15 connectors.

16               MR. DiFLORIO: I'm sorry. Could you read that  
17 back?

18               MR. THEVENY: Let me reask the question  
19 because I can see some confusion.

20               MR. DiFLORIO: Thank you.

21 BY MR. THEVENY:

22          Q     What I'm really just asking is: Generally  
23 during the time period that Interline Brands, Inc., was  
24 selling the DuraPro Model 231271 toilet connectors that  
25 were supplied to it by MTD (USA), who here in the USA

1 was the market to whom Interline Brands, Inc., was then  
2 selling these toilet connectors?

3 A Well, I think we could probably specifically  
4 narrow that down to the catalog brands that would have  
5 sold the product and then specifically to the markets  
6 that they typically market to.

7 So the catalog brands that typically would  
8 have sold it would have been Barnett pro contracting,  
9 would have been Wilmar, would have been Sexauer,  
10 Hardware Express, Maintenance USA, Trayco. And I think  
11 that would have pretty much encompassed most all of the  
12 particular catalog brands that were selling the product.

13 I'm not saying that we wouldn't have sold some  
14 through some of our, you know, less -- you know, like  
15 the AmSan brands, because they may have sold some  
16 through some of those, but it would have been very small  
17 quantities.

18 The primary market for these products were the  
19 multifamily, so that's Wilmar; the hospitality, that's  
20 Maintenance USA; the pro contracting supplies, that  
21 would have been the Barnett brand; and then Hardware  
22 Express for the hardware and the resell brands; and  
23 Wilmar for the multifamily.

24 Q What records does Interline Brands, Inc., have  
25 of sales of DuraPro Model 231271 toilet tank connectors?

1           A       That's a very vague question. Can you be a  
2 little more specific in what you mean by sales records?

3           Q       What I'm getting at is: When these DuraPro  
4 Model 231271 toilet connectors were marketed through the  
5 catalogs you described and orders were placed, what  
6 records would there be of the orders that were placed  
7 with regard to who made the order and to where they were  
8 shipped and how much quantity was the subject of each  
9 order? Those types of records.

10          A       There would be some history of that in our  
11 transactional database that houses all of our sales  
12 transactions, and that history goes back about as far as  
13 2008.

14          Q       Why doesn't it go back further if you started  
15 selling these DuraPro Model 231271 toilet connectors in  
16 around August of 2005?

17          A       Well, this particular system that we use today  
18 was a new system in 2008, and so that's when we began  
19 capturing those sales and housing them in a central  
20 point so that we bring sales in from all of the  
21 different types of brands and capture each of those  
22 transactions. Prior to that, those transactions would  
23 have been spread over some --

24          Q       Go ahead.

25          A       Those transactions would have been spread over

1 some older legacy systems.

2 Q Are they still around?

3 A The legacy systems are still around, but I  
4 don't think the records are there to the degree that you  
5 probably would think that they would be there.

6 Q Well, what I'm getting at, would it be  
7 possible to get a list, for example, of sales in a  
8 particular geographic region?

9 A I would say it's possible to get a list of  
10 sales in a geographic region, but again, only going back  
11 as far as 2008.

12 Q I should clarify that. This particular  
13 DuraPro Model No. 231271 toilet connector that was in  
14 the Hurley home which I think was in Edgewater, New  
15 Jersey, we're fairly certain probably was installed  
16 during or prior to 2007. So based on your testimony,  
17 those records are pretty scattered and may no longer be  
18 available if we were to even attempt trying to identify  
19 who in that geographic region might have been companies  
20 to which Interline Brands sold these toilet connectors.

21 A That is correct, to the best of my knowledge.

22 Q Looking back at Exhibit Nos. 2 and 3, is there  
23 anything on the label particularly on Exhibits 2 and 3  
24 which would indicate from where this particular DuraPro  
25 Model 231271 toilet connector might have been purchased?

1           A     No, sir.

2           Q     Describe for me the input that Interline  
3 Brands, Inc., had on the specifications for the DuraPro  
4 Model 231271 toilet tank connector which was supplied to  
5 it by MTD (USA).

6           A     Well, at this point in our sourcing process,  
7 one of the tools that we used to provide information --  
8 and you used the term "specification" -- to a supplier  
9 would have been to provide them a copy of our catalog or  
10 catalogs, provide them the catalog pages. The catalog  
11 pages contain most of the information specific to each  
12 type of what we call USN, or universal stock number, or  
13 model number, if you want to use that.

14                     So we would provide them a copy of a catalog  
15 page. It could be a Wilmar catalog or a Barnett  
16 catalog, could be a combination of catalogs. And then  
17 from there we would provide some specific details to  
18 the -- the sourcing agent would provide some specific  
19 details to the supplier that might be an addendum to the  
20 catalog.

21                     You know, for example, the catalog might not  
22 have "UPC" on it. It might not show the logo, even  
23 though we would require that. They might say the  
24 product would have to have UPC.

25                     Now, that's typical. Every single product is

1 a little bit different. In the case of DuraPro supply  
2 connectors, I wasn't there at the time but, you know, it  
3 would have been normal procedure for our sourcing  
4 manager or product manager in this case, Brian  
5 Wertheimer, to provide MTD with a copy of our catalog as  
6 well as possibly even exemplars of our current product  
7 offering.

8 Q Do you know whether he did either or both?

9 A I can't speak specifically as to what was done  
10 in 2005.

11 MR. THEVENY: Let's mark as Exhibit 6 the  
12 one-page document, Susan, I'm holding up to the  
13 camera. It's the product literature with the  
14 800 number at the top.

15 (Exhibit No. 6 was marked for identification.)

16 BY MR. THEVENY:

17 Q The court reporter has placed in front of you  
18 what's been marked as Exhibit 6, which is a document  
19 produced in the Texas federal court case that I  
20 referenced earlier, the Horner case, I call it. It was  
21 an exhibit to your deposition in that case as well.

22 Have you seen this document before?

23 A I don't know that I've seen this specific  
24 document, but I'm familiar with the content.

25 Q In your testimony just now a short while ago

1 you indicated that you believe Brian Wertheimer, based  
2 on your standard practice and procedure, may have  
3 provided product specifications from your product  
4 catalog and possibly exemplars.

5 Do you recognize this document as product  
6 specifications for the DuraPro Model 231271 toilet  
7 connector from one of your catalogs?

8 A Well, I would recognize it as a -- I would  
9 recognize it as what appears to be a reduced-down  
10 version of a catalog page.

11 Q That's what I meant.

12 Would this be the type of specification that  
13 you were referring to that Brian Wertheimer would have  
14 provided to MTD (USA)?

15 A Yes.

16 MR. THEVENY: I want to mark as the next  
17 exhibit a series of e-mail communications. It will  
18 be Exhibit 7, I believe.

19 (Exhibit No. 7 was marked for identification.)

20 BY MR. THEVENY:

21 Q The court reporter has handed you what's been  
22 marked as Exhibit 7. I will tell you for the record  
23 that Exhibit 7 are documents that were produced by  
24 Interline Brands, Inc. There are a number stamping to  
25 that effect on the documents. They were produced in a

1 lawsuit captioned State Farm Fire and Casualty Company  
2 versus Interline Brands, Maricopa County Superior Court,  
3 Arizona, Case No. CV 2011-016034.

4 And I would ask you, Mr. Cangelosi, to take a  
5 look at that, page through it, and I'm going to ask you  
6 some questions based on these e-mails.

7 Further for the record, they were produced in  
8 that lawsuit number-stamped IBI Bates 01126 through  
9 IBI 01147.

10 MR. DiFLORIO: I'm reviewing these as well, so  
11 you're going to have to give us a little bit of  
12 time here because I'm seeing this for the first  
13 time.

14 MR. THEVENY: Yeah. You know, this deposition  
15 was at 2:00 o'clock today. A bunch of documents  
16 were thrown my way by my paralegal, and I first  
17 looked at this today as well.

18 THE WITNESS: (Examining documents.)

19 (Discussion off the record.)

20 MR. DiFLORIO: Dan, we're making some copies  
21 of that so that I'm not holding him up nor you  
22 during the questioning so I can review it as well.

23 MR. THEVENY: That's fine.

24 MR. DiFLORIO: Dan, if you want to start with  
25 the questioning. He has done his best to try to



1           briefly scan that e-mail but he hasn't had a chance  
2           to review it in detail. I don't know to what  
3           extent you want him to get into anything specific.

4           MR. THEVENY: We'll have to see where it goes.  
5           You know, I have a question not for the witness  
6           but, I mean, I think this probably should have been  
7           produced to me before this deposition. But putting  
8           that aside, I'll -- you know, they're certainly  
9           records that were available to Interline Brands,  
10          Inc., before the deposition.

11 BY MR. THEVENY:

12          Q        Anyway, let's plow ahead and see what you  
13          recall and testify to based on this exchange of e-mails,  
14          Mr. Cangelosi.

15                 The court reporter has now placed in front of  
16          you Exhibit 7. You've taken a few minutes to review the  
17          string of e-mails that comprises Exhibit 7; is that  
18          correct?

19          A        That is correct.

20          Q        I'm just going to start on the first page and  
21          ask you some pretty basic questions.

22                 First of all, on Page 1, starting at the top,  
23          the first e-mail states it's from Mark Allen. And you  
24          told me. Again, who is Mark Allen? What's his title  
25          with Interline Brands?

1           A     He's senior director of global sourcing.

2           Q     Right.

3                     And it looks like it was sent to Mr. Chen  
4 Zheng at MTD. Do you see that e-mail there, e-mail  
5 address?

6           MR. DiFLORIO:   Chen Zheng?

7           MR. THEVENY:   Yes.

8           THE WITNESS:   Yes, Chen Zheng.

9   BY MR. THEVENY:

10          Q     Do you recognize that e-mail address as  
11 Mr. Zheng's e-mail address?

12          A     I can't tell you if that's his e-mail address  
13 or not. Mine just pre-populates if I would discuss  
14 anything with him.

15          Q     Mark in the e-mail says to Mr. Zheng that --  
16 he asked for some changes that were made, that they be  
17 sent to Joe's attention, and he asked further to pay  
18 attention to new issues described by Jeffery.

19                     My first question is: Do you know who the  
20 Jeffery is that's referred to there?

21          A     Yes. Jeffery is our manager of our quality  
22 and engineering program in our office in Shenzhen,  
23 China.

24          Q     What's Jeffery's last name?

25          A     Liu, L-i-u.

1 Q Is he still with the company?

2 A Yes, he is.

3 Q It references new issues. Do you know what  
4 that reference is to?

5 A What's this, now?

6 Q The reference in this e-mail message on the  
7 first page of Exhibit 7 to "new issues described by  
8 Jeffery," do you know what that reference means, the  
9 "new issues"?

10 A No, sir.

11 Q Continuing just below that, the e-mail goes on  
12 by way of a response to Mr. Zheng to Mark Allen,  
13 stating, "As for the design problem, we corrected" --

14 MR. DiFLORIO: You know what? We may have to  
15 actually number the pages, because we -- I don't  
16 even think we have the same order. Hold on a  
17 second.

18 THE WITNESS: You've got 7, which is -- this  
19 is 7; correct?

20 MR. DiFLORIO: It says 7. It's supposed to be  
21 Exhibit 7. But the pages are out of order here.

22 (Discussion off the record.)

23 MR. DiFLORIO: Let's just do this to make sure  
24 we have the right pages in order. 7 is on the top.  
25 The next page starts with "Can you lean"? Is that

1 correct?

2 MR. THEVENY: I have the following. The first  
3 page of Exhibit 7 that I have, it starts at the top  
4 "Document Preview, Showing 1 of 1 pages."

5 MR. DiFLORIO: Got it.

6 MR. THEVENY: All right. The next page after  
7 that at the very top says "From: Chen Zheng."

8 MR. DiFLORIO: Oh. That's not what I have.  
9 Hold on. (Examining documents.)

10 All right. I'm there now.

11 MR. THEVENY: All right. The third page then  
12 at the very top says "Can you lean on Chen."

13 MR. DiFLORIO: Got it.

14 MR. THEVENY: The fourth page says "Quality  
15 Manager, Interline Brands."

16 MR. DiFLORIO: Got it.

17 MR. THEVENY: The fifth page has the number  
18 stamp IBI 01132.

19 MR. DiFLORIO: Okay. Got it.

20 MR. THEVENY: The next page has an e-mail that  
21 says "e-mail:<mailto:jcangelosi@interlinebrands.com."

22 Got that?

23 MR. DiFLORIO: Okay. Got it.

24 MR. THEVENY: Next page says "We don't agree  
25 with your assessment."

1 MR. DiFLORIO: Got it.

2 MR. THEVENY: The next page has Joe's e-mail  
3 address again.

4 MR. DiFLORIO: Yep.

5 MR. THEVENY: The next page says at the top "I  
6 will be sending a 231271 SS closet connector."

7 MR. DiFLORIO: Got it.

8 MR. THEVENY: The next page, "Regardless of  
9 the pricing and market conditions."

10 MR. DiFLORIO: Yep.

11 MR. THEVENY: The next page says "Original  
12 Message - From: Jeffery Liu."

13 MR. DiFLORIO: Got it.

14 MR. THEVENY: The next page says "Received the  
15 defective connector with thanks."

16 MR. DiFLORIO: Got it.

17 MR. THEVENY: And the last page, "And I  
18 understand that there will be costs to implement  
19 these modifications."

20 MR. DiFLORIO: Okay. Great.

21 So did you get that in the same order?

22 THE WITNESS: Uh-huh.

23 MR. DiFLORIO: Do you want me to --

24 THE WITNESS: Are you talking about numbering  
25 them?

1           MR. DiFLORIO: I'm going to staple these so  
2           they're in the right order.

3           (Brief recess.)

4 BY MR. THEVENY:

5           Q     Okay. Back now to Exhibit 7, continuing on  
6           with the original message from Chen Zheng to Mark  
7           Allen --

8           MR. DiFLORIO: You know what, Dan? I didn't  
9           catch the original because I was on a different  
10          page. I think that was part of the problem. Do  
11          you mind backtracking?

12          MR. THEVENY: No. I will.

13 BY MR. THEVENY:

14          Q     Let's start from the beginning. Exhibit 7, do  
15          you have that in front of you, Mr. Cangelosi?

16          A     Yes, I do.

17          Q     We've now coordinated the correct order of the  
18          pages, so I will start again fresh so the record is  
19          clear.

20          On Exhibit 7, Page 1, the very first e-mail  
21          says "From Mark Allen." And you told us who Mark Allen  
22          was earlier. Could you just repeat that again for the  
23          record?

24          A     Yes. Mark Allen is senior director, global  
25          sourcing.

1 Q And did he hold that position on November 7,  
2 2007, the date this e-mail was sent?

3 A I can't speak to that. I don't know.

4 Q Was he employed by Interline Brands at that  
5 time?

6 A Yes.

7 Q All right. And then it goes to Chen Zheng at  
8 MTD. Do you see that e-mail address there?

9 A Yes, sir.

10 Q And apparently it was sent to you as well.  
11 Your name is there. Do you see that?

12 A Yes, sir.

13 Q Okay. And then the subject is "Re: MTD  
14 Supply Connectors," and Mark is writing Chen and saying,  
15 among other things, "Please forward the changes that  
16 were made to Joe's attention."

17 Do you see where I am?

18 A Yes, sir.

19 Q Do you know what changes are being referred to  
20 there?

21 A These would probably be the changes that the  
22 manufacturer made to the design of the plastic coupling  
23 nut.

24 Q The plastic coupling nut for the DuraPro  
25 Model 231271 toilet connector?

1           A     That is correct.

2           Q     Why were those changes made?

3           A     The changes were made in response to our  
4 complaints to MTD that there were some reported failures  
5 of that particular nut.

6           Q     It also goes on as part of the exhibit, this  
7 e-mail, and says "Also, please pay attention to the new  
8 issues described by Jeffery."

9                     Who is "Jeffery" there?

10          A     Jeffery is Jeffery Liu, L-i-u. He is our  
11 engineering and quality manager in our Shenzhen office  
12 in China.

13          Q     And is he still employed by Interline Brands?

14          A     Yes, he is.

15          Q     Do you know what the new issues are that are  
16 referred to there in this part of the e-mail?

17          A     No, sir, not without looking through here  
18 further. I don't know.

19          Q     Directly below that there's a response from  
20 Mr. Zheng to Mark where he says in part "As for the  
21 design problem, we corrected it in Jan already. Now the  
22 problem only occurs from the old inventory."

23                     Do you see where I am?

24          A     Yes, sir.

25          Q     What was the design problem that's being



1 referred to there?

2 A The only design problem that I recall that was  
3 being addressed at that time was the style of the nut  
4 that they were using.

5 Q Is that the nut on the DuraPro Model 231271  
6 toilet connector?

7 A That's correct.

8 Q What was the problem with the style?

9 A As I've stated previous, I don't recall -- you  
10 know, I don't know what the specific problem is. We  
11 wouldn't have had direct access to that information.  
12 All I can tell you is that we were dealing with some  
13 sporadic failures in the field and I wanted to make sure  
14 that the supplier's design was adequate to address the  
15 possibility that customers could overtighten these.

16 Q All right. It goes on to state "Now the  
17 problem occurs only from the old inventory." Do you see  
18 that?

19 A I do.

20 Q Do you know whether that's a reference to the  
21 inventory that was already in existence as of the date  
22 of this e-mail, November 7th of 2007?

23 A I don't know. I can't speak to any of that.

24 Q All right. Continuing on the first page of  
25 Exhibit 7, there's another e-mail at the bottom from

1 Mark Allen to Chen Zheng under the number stamp  
2 IBI 01126. Mark says, "I don't think so. Please make  
3 sure all issues are communicated properly with our China  
4 office staff to ensure that there are no  
5 misunderstandings. If there is a design flaw in the  
6 connectors, Dingbo must improve it immediately. We  
7 cannot afford to have continued failures of these."

8 Do you see where I am?

9 A Yes, sir.

10 Q So my understanding is that Jeffery Liu was  
11 employed by Interline at that time and is still employed  
12 by Interline. Is that right?

13 A That is correct.

14 Q And he was at the office of Interline in  
15 China?

16 A That is correct.

17 Q Does Interline maintain an office in China  
18 today?

19 A Yes, sir. In Shenzhen, China.

20 Q Okay. Shenzhen, China.

21 And what's the Dingbo reference there? Is  
22 that the manufacturer?

23 A Yes. Dingbo is actually our pet name for the  
24 manufacturer, who's Zhejiang Dingbo Plumbing  
25 Manufacturing Company, Limited.

1 Q Where in relation to the Dingbo manufacturing  
2 facility is the Interline Brands office in China?

3 A The Dingbo manufacturing facility, as best I  
4 can recall, is in the Ningbo area, which is close to  
5 Shanghai, a little south of Shanghai, which is about  
6 around -- between 300 to 500 miles north of where our  
7 office is in Shenzhen.

8 Q All right. And I may have asked this. What  
9 were the design flaws that were being referred to there  
10 in this e-mail here?

11 A As I stated earlier, I don't know what they're  
12 referring to here.

13 MR. DiFLORIO: And I'm going to still object  
14 to the term "design flaws" to the extent it calls  
15 for a legal conclusion.

16 MR. THEVENY: That's what this document says.

17 BY MR. THEVENY:

18 Q The next page of Exhibit 7 at the top starts  
19 with an e-mail from Chen Zheng sent on November 7th,  
20 2007, to Mark Allen, Wu Bo, and John Ouyang,  
21 O-u-y-a-n-g, and the subject is "MTD Supply Connectors."

22 Do you see where I am?

23 A On the top of Page No. 2, on the top of our  
24 second page?

25 Q Yes.

1 A Yes.

2 Q Okay. Who is John Ouyang?

3 A John Ouyang was the general manager of our  
4 Shenzhen office.

5 Q Is he still employed by Interline Brands?

6 A No.

7 Q Do you know where he is today?

8 A No.

9 Q Chen Zheng refers to the following in his  
10 e-mail: "As for the recent Dingbo's defective, I think  
11 there is a design 'failure' cause POM can't work NBR  
12 together. Please kindly check your drawing about it.  
13 Thanks."

14 Do you see where I am?

15 A I do.

16 Q What is meant by "design failure cause POM  
17 can't work NBR together"?

18 A The POM is the type of material that the nut  
19 is made out of, and NBR is the type of material in the  
20 washer, in the cone washer. And the exemplars that we  
21 would have provided to MTD originally would have had  
22 EPDM -- I'm sorry -- would have had NBR washers, and  
23 when we provided those exemplars, as I recall, it was  
24 part of our requirement to them that they match the  
25 exemplar of the current manufacturer's product and

1 provide the product or supply us with product that had  
2 NBR washers and not EPDM washers.

3 Q Were you aware of this issue being raised  
4 here, "a design failure cause POM can't work NBR  
5 together," back in 2007?

6 A Yeah, I recall that there were some  
7 conversations around that. But also, as best I can  
8 recall, it was dismissed, that they weren't a -- that  
9 there was no interaction problem through some later  
10 investigation.

11 Q He also says, "Please kindly check your  
12 drawing about it." Do you know what drawing he's  
13 referring to?

14 A Again, we would not have had drawings on these  
15 products. And I think Jeffery even alluded to that.  
16 Somewhere I've read that somewhere in the e-mail chain  
17 here, that I think Jeffery made the statement that we  
18 don't have the drawings that Chen was referring to.  
19 That's not something that we would have.

20 Q At the very bottom of Page 2 of Exhibit 7  
21 there's an e-mail from you sent November 7th, 2007, to  
22 Mark Allen, reference "MTD Supply Connectors." Do you  
23 see that there down at the bottom?

24 A Yes, sir.

25 Q Do you remember sending that e-mail?

1           A     Oh, no, absolutely not.

2           Q     All right. In the e-mail, if you continue on  
3 to the third page, it does indicate on the signature  
4 line block that -- is that your identifying information  
5 there on the signature block for this e-mail that was  
6 found in production in this Arizona Superior Court case  
7 at IBI 01128 through IBI 01129?

8           A     Yeah, that appears to be my signature.

9           Q     In the e-mail itself, in the body of it, going  
10 back to the second page of Exhibit 7, it says, quote,  
11 "Mark, we are trying to increase the pattern on the MTD  
12 plastic closet nuts on their closet connectors and we  
13 are getting more open-ended promises from Chen," end  
14 quote.

15                     Do you see where I am there?

16           A     I do.

17           Q     What was meant when you said "trying to  
18 increase the pattern on the MTD plastic closet nuts on  
19 their closet connectors"?

20           A     Well, I go back to the original statements  
21 that I've made prior, in that it was our understanding  
22 that customers were overtightening these products.

23                     I mean, let's remember, as I've stated several  
24 times here, the product had IAPMO certification. As we  
25 sourced it, as it was supplied, the product was IAPMO

1 certified. So to my mind at least, and I think maybe to  
2 some others in the organization, having a little bit  
3 heavier nut to withstand those extra forces that a  
4 customer may use in placing a tool or some type of, you  
5 know, pliers or wrench or whatnot on a nut to tighten it  
6 would offer some more substantial mechanical opposition  
7 to the failures.

8           Again, we didn't design the nut, so we don't  
9 know what those design parameters were. We don't have  
10 any indication as to what goes into designing the nut.  
11 We wouldn't have any knowledge or experience. But we do  
12 know that, even though the product was certified by  
13 IAPMO and IAPMO certified it, that there had been some  
14 complaints where customers were complaining. And our  
15 belief was the product was overtightened, and so  
16 consequently we believed that using a little heavier nut  
17 would probably be one of the best solutions to help  
18 address that.

19           Q     You came to that conclusion in 2007; is that  
20 right?

21           A     It was sometime around in that time, yes, sir.

22           Q     All right. And you also formed the belief  
23 back in 2007 that the problems here with the failures  
24 were due to overtightening by customers when they were  
25 installing these DuraPro 231271 toilet connectors?

1           MR. DiFLORIO: I'm sorry. You're going to  
2           have to read back the beginning of that question.  
3           I did not hear it.

4           (Question read by reporter.)

5           MR. DiFLORIO: Okay.

6           THE WITNESS: And I will use -- I will add --  
7           I'll illuminate that a little bit, your question,  
8           in my answer and state that -- remember I said we  
9           had a few complaints in 2006, late 2006? We had a  
10          few more in 2007. And so there weren't a lot of  
11          complaints, but there were enough -- and we had  
12          already had some complaints with the prior  
13          supplier's product. There was enough for me to go  
14          back to the manufacturer and say, "Yes, the product  
15          is IAPMO approved; yes, the product is certified;  
16          but I believe that we would be well served to go  
17          back to the supplier and see if there isn't any  
18          other possibility that they could do on the  
19          material side or the mechanical side that can help  
20          the customer and help the installer were they to  
21          overtighten the product.

22          BY MR. THEVENY:

23           Q        So that was the solution, the proposal to  
24           increase the size of the connector nut? Is that how you  
25           decided --



1           A     Yeah. I certainly don't want to call it a  
2 solution because we don't design the nut so we don't  
3 know. You know, from our point of view it could have  
4 been something maybe as simple as a material change. We  
5 don't know that. And I don't know how --

6           Q     But you proposed -- I'm sorry.

7           A     What's that?

8           Q     But you proposed as a solution changing the  
9 size or the strength of the nut?

10          A     I would say -- I think the term I used here  
11 was increasing the pattern. "Pattern" is a term that we  
12 use for how the whole thing lays out and plays out. So  
13 it would be --

14          Q     You made that recommendation with respect to  
15 the design of the nut back in 2007?

16          A     I'm not going to say I made that with respect  
17 to the design of the nut. I made that as a  
18 recommendation to counteract the problems that we were  
19 having.

20                    Again, I don't know what the design elements  
21 are for the nut, other than I can hold the nut in my  
22 hand and I can see the end product, but I don't know  
23 what the decisions were that went into that specific  
24 product.

25          Q     You made a recommendation with regard to

1 changing the nut in response to these complaints you  
2 were getting about the failure of the DuraPro  
3 Model 231271 toilet connector?

4 A In a roundabout way. What we did was we made  
5 a recommendation for them to look at their design and  
6 see if there was an alternative that they could come up  
7 with that would address some of the problems that we had  
8 begun to see in the field.

9 Q So you made a recommendation to make a change  
10 to the nut in order to address that issue?

11 MR. DiFLORIO: Just for clarification, you're  
12 referring to "you" as in Joseph Cangelosi here;  
13 correct?

14 MR. THEVENY: I'm referring to him as the  
15 corporate designee.

16 MR. DiFLORIO: This is where it gets  
17 confusing, where you're referring to things that he  
18 did or he said specifically in an e-mail as opposed  
19 to as designee. So --

20 MR. THEVENY: Look, I don't want speaking  
21 objections. It's not appropriate.

22 BY MR. THEVENY:

23 Q Can you answer the question yes or no? Your  
24 counsel has objected to it. He obviously thinks the  
25 question is defective in several different ways. The

1 Court will resolve it at some point. But can you answer  
2 the question?

3 The question simply is: Did you make a  
4 recommendation to change the nut in response to these  
5 complaints you were receiving about the failure of the  
6 DuraPro 231271 toilet connector back in 2007?

7 THE WITNESS: Can you be a little more  
8 specific in your question?

9 BY MR. THEVENY:

10 Q Yeah. Well, I'll quote directly what you  
11 said.

12 Did you tell Mr. Zheng in an e-mail on  
13 November 7th of 2007 to try to increase the pattern on  
14 the MTD plastic closet nut on their closet connectors in  
15 response to complaints you were receiving about failures  
16 of the DuraPro Model 231271 toilet tank connectors?

17 A Okay. Well, you've made that I made that  
18 comment to Chen. I made that comment to Mark Allen.  
19 The comment to Chen --

20 Q I'm sorry.

21 A Yes. The comment to Chen that was made to  
22 Chen in communications with Chen through our China  
23 office would have been to ask them to take a look at  
24 that design and see if there wasn't something that could  
25 be done differently to accommodate some of the product

1 failures that we had, we were experiencing in the field,  
2 that we attributed to overtightening.

3 I don't know how else to answer that question.

4 MR. DiFLORIO: This ties into my objections as  
5 well. If possible -- I'll make the suggestion; you  
6 can decide if you want to follow the suggestion --  
7 to use the term "Interline" when you're referring  
8 to questions relating to Interline rather than  
9 "you," which could easily refer to Joseph Cangelosi  
10 specifically, especially when you're dealing with  
11 an exchange of e-mails. It may make things a lot  
12 easier, but I'll leave it up to you.

13 BY MR. THEVENY:

14 Q You recall, Mr. Cangelosi, that I said at the  
15 beginning of the deposition that the questions I would  
16 pose to you were questions as corporate designee for  
17 Defendant Interline Brands unless I indicated otherwise?  
18 Do you remember me asking you that --

19 A Yes, sir.

20 Q -- in the beginning of the deposition?

21 And you indicated you understood that. And  
22 you do understand that?

23 A I do understand that, yes.

24 Q So unless I indicate otherwise, I'm asking  
25 you -- even though using "you," I'm asking you in your

1 capacity as designee for Defendant Interline Brands.

2 All right?

3 A Agreed.

4 MR. DiFLORIO: My suggestion still stands.

5 MR. THEVENY: I understand.

6 MR. DiFLORIO: If you care to clarify.

7 BY MR. THEVENY:

8 Q Did you communicate in some way to MTD (USA)  
9 through Mr. Zheng a recommendation that they try to  
10 increase the pattern on the MTD plastic closet nuts on  
11 their closet connectors in response to these complaints  
12 you were receiving about failures of the DuraPro  
13 Model 231271 toilet tank connectors?

14 A To the best of my knowledge, no.

15 Q Did you communicate that suggestion to Mark  
16 Allen back in 2007?

17 A Possibly.

18 Q Is that what you were doing here in this  
19 e-mail which is on the bottom of Page 2 of Exhibit 7?

20 MR. DiFLORIO: You're referring to Joe  
21 Cangelosi rather than Interline, I take it?

22 MR. THEVENY: I'm referring to -- the e-mail  
23 itself says --

24 BY MR. THEVENY:

25 Q Let me just ask it this way.

1           MR. DiFLORIO: Do you understand my confusion?  
2 Do you understand why it's so easy to clarify this  
3 issue by simply using the term "Interline" rather  
4 than "you"? And you know that it's a lot easier to  
5 do that. It's a simple correction.

6           MR. THEVENY: Let me just try it one more  
7 time.

8 BY MR. THEVENY:

9           Q     This e-mail, you agree, states "Mark, we are  
10 trying to increase the pattern on the MTD plastic closet  
11 nuts on their closet connectors and we're getting more  
12 open-ended promises from Chen," end quote? Do you agree  
13 that that's what it says?

14          A     I agree that that's what the e-mail says.

15          Q     Do you agree that you, Joe Cangelosi, were the  
16 author of this e-mail message which was sent to Mark  
17 Allen at Interline Brands?

18          A     I agree. But let me add a caveat to that.  
19 And I think you used -- you used the word "we." There's  
20 more than just me involved in the "we."

21          Q     I quoted directly. I don't want to argue with  
22 you. I was just asking you to agree because I was going  
23 to ask my next question in any event, my next two or  
24 three questions. The e-mail says, quote, "We are trying  
25 to increase the pattern on the MTD plastic closet nut on

1 their closet connectors" and goes on from there. You  
2 agree that's what it says; right?

3 A I agree that that's what it says.

4 Q And you, Joseph Cangelosi, were the author of  
5 this e-mail message?

6 A That is correct.

7 Q And you sent it to Mark Allen, who was  
8 employed by Interline Brands, Inc.; is that right?

9 A That is correct.

10 Q And my next question was: Was the "we" that  
11 you're referring to there Interline Brands, Inc., and  
12 MTD (USA), or simply other individuals at Interline  
13 Brands, Inc.?

14 A It would have been individuals within  
15 Interline Brands.

16 Q All right. So individuals within Interline  
17 Brands were, quote, "trying to increase the pattern on  
18 the MTD plastic closet nuts," quote, for this DuraPro  
19 Model No. 231271 toilet connector?

20 A Based on exactly what's written there, yes,  
21 sir.

22 Q All right. Well, you've told me already what  
23 you meant by increasing the pattern. That would be --  
24 well, what do you mean by that, just so it's clear?

25 A Well, understand, when we say increasing the

1 pattern, it's a very, very broad cast because we didn't  
2 design the nut. I want to make sure that that's  
3 understood, that we didn't design the nut.

4 We had no design drawings. Regardless of what  
5 Chen says here about sending a drawing, we didn't have  
6 the drawings. We didn't possess the drawings. We  
7 didn't design the nut. We didn't design the molds. We  
8 didn't determine the material that goes into the nut.  
9 None of these things were designed by Interline Brands.  
10 So I have no --

11 Q Did you -- go ahead.

12 A So we have no knowledge as to what  
13 specifically goes into the design and manufacture of  
14 that nut.

15 Q You've made that clear. That's your  
16 testimony. I understand that. But you also just told  
17 me, and I want to make sure I understand, "we," meaning  
18 internally at Interline Brands, were considering ways in  
19 which to change the pattern of the nut in response to  
20 these complaints; is that right?

21 A You phrased it as a question, so I'll answer  
22 the question what I've stated all along, that we believe  
23 that the nut was -- that a larger nut would help solve  
24 the customer issues that the customers were experiencing  
25 in the field; a little heavier, little more robust nut.



1 How they come about that through the design process we  
2 have no knowledge of. And if there was --

3 Q [Unintelligible] --

4 A I'm still answering my question.

5 If there was an alternative design to that or  
6 an alternative material to that, we certainly would have  
7 entertained that solution from the supplier as long as  
8 they could have gotten an IAPMO certification on that.

9 Q And that was being done internally among  
10 employees of Interline Brands, Inc., changing the size  
11 of the nut, making it more robust and so forth; is that  
12 right? That was being discussed internally at Interline  
13 Brands?

14 A I wouldn't say changing the size. We couldn't  
15 change it. We didn't design it. All I can tell you is  
16 we may ask for it to be changed. We may ask for them to  
17 look at what they can do to increase the size of the  
18 nut. But I can't change something that I didn't design  
19 and build.

20 Q I'm not asking whether you were changing the  
21 design. I'm not asking you whether you were engaged in  
22 design work. All I'm asking you is: According to this  
23 e-mail, you internally, you and other Interline  
24 employees, were discussing changes to the composition of  
25 the nut for the DuraPro 231271 toilet connector?

1 A No, sir.

2 Q You were not having that discussion at all?

3 A Not -- no, sir.

4 Q It's your sworn testimony that you never  
5 considered internally, either yourself or Interline  
6 Brands, Inc., other employees, changing the nut in some  
7 way by making it larger, perhaps being more robust, by  
8 using a different material, as a way you would address  
9 the complaints you were receiving about the failure of  
10 the DuraPro Model 231271 toilet connector?

11 MR. DiFLORIO: I'm going to have to have you  
12 read that back, please.

13 (Question read by reporter.)

14 MR. DiFLORIO: I'm going to object to that  
15 question as overly broad.

16 You may answer.

17 THE WITNESS: Yeah. And the reason I objected  
18 to your earlier question is because you  
19 specifically used the word "composition." We've  
20 never had a conversation with our supplier -- very  
21 important: Composition goes to material; design  
22 goes to the physical style, the dimensions of the  
23 nut itself.

24 So I think it's very important that we  
25 understand that we're using the right terminology

1 here. If you'd like to get an affirmative answer  
2 out of me, I certainly will give it if you'll ask  
3 me a question that I can give an affirmative answer  
4 to.

5 BY MR. THEVENY:

6 Q You can't answer my prior question?

7 A I can't answer the prior question about the  
8 material because we never specified the material type  
9 for the nut. As best I can recall, it was never done.

10 MR. DiFLORIO: And before you answer a  
11 question, give me a chance to object, too.

12 I'm going to repeat the same objection, overly  
13 broad, to the last question.

14 MR. THEVENY: Read back the question that was  
15 pending. If the word "material" is in it, I'll  
16 take it out. I'm not sure I said "material" or  
17 not.

18 THE WITNESS: It was the word "composition."  
19 (Discussion off the record.)

20 (Testimony read by reporter as follows:

21 Question: "I'm not asking whether you were  
22 changing the design. I'm not asking you whether  
23 you were engaged in design work. All I'm asking  
24 you is: According to this e-mail, you internally,  
25 you and other Interline employees, were discussing

1 changes to the composition of the nut for the  
2 DuraPro 231271 toilet connector?"

3 Answer: "No, sir."

4 Question: "You were not having that  
5 discussion at all?"

6 Answer: "Not -- no, sir.")

7 BY MR. THEVENY:

8 Q You can't answer that question because I used  
9 the word "composition"?

10 A The word "composition" to me means the  
11 material, the things that go into it, not the physical  
12 mechanical design of it.

13 MR. DiFLORIO: And off the record you  
14 referenced the term "material," which was not part  
15 of that question either, so that may have created  
16 additional confusion.

17 BY MR. THEVENY:

18 Q Well, my point is you -- it's your testimony  
19 that you never had any discussions about changing the  
20 composition of the toilet connector nut for the DuraPro  
21 Model 231271 toilet connector because that would be a  
22 design issue that you just would not have any discussion  
23 about with anyone?

24 MR. DiFLORIO: Object to the form. I'm not  
25 sure if I even understand the whole question.

1 But you may answer it if you understand it.

2 THE WITNESS: Yeah, it didn't come up in the  
3 topic of even consideration in this case.

4 BY MR. THEVENY:

5 Q So let me ask you the question, then, without  
6 using "composition."

7 Is it your sworn testimony that you never  
8 had -- you or any other Interline employees never had  
9 any discussions internally about changing the size of  
10 the nut or perhaps making the nut more robust in  
11 response to these complaints about failure of the  
12 DuraPro 231271 toilet connectors?

13 MR. DiFLORIO: I'll object to the form of the  
14 question to the extent it implies that that  
15 question was asked previously.

16 But you may answer.

17 MR. THEVENY: It's a new question. For the  
18 purpose of that question, I'm representing that  
19 I've not asked that. That's a different question.

20 THE WITNESS: Madam Court Reporter, can you  
21 read the question back, please?

22 (Question read by reporter.)

23 MR. DiFLORIO: And I'm going to still offer  
24 the same objection.

25 You may answer.

1           THE WITNESS: The request was framed as a  
2           negative, so the answer to that is no.

3 BY MR. THEVENY:

4           Q     You never had those discussions?

5           A     No, you asked me -- you said, "You never" --  
6           you asked me, "You never had the discussions," and I'm  
7           saying no, we never -- no, we never had the discussions.  
8           The discussions did take place.

9           Q     All right. So you do admit that there were  
10          discussions internally among Interline employees about  
11          changing the size of the nut or making the nut more  
12          robust in response to these complaints about failures of  
13          the DuraPro 231271 toilet connectors?

14          A     We discussed about the possibility that  
15          changing the nut would resolve the customer complaints  
16          in the field. Inasmuch as that's what was discussed  
17          internally, yes.

18          Q     Did you ever communicate those internal  
19          discussions in any way to anyone at MTD (USA)?

20          A     As I recall, I wasn't having conversations  
21          with MTD regarding this. Any discussions there would  
22          have taken place with our engineers in our China office.

23          Q     Did you ever have any of those discussions,  
24          i.e., perhaps a larger nut or making the nut more  
25          robust, with the manufacturer of the DuraPro

1 Model 231271 toilet connector?

2 A No.

3 MR. DiFLORIO: And I'm going to object to the  
4 form of the question. This gets back to "you"  
5 versus IBI.

6 But you may answer it as you understand it.

7 THE WITNESS: No, we did not.

8 BY MR. THEVENY:

9 Q Okay. Again, unless I indicate otherwise, my  
10 questions to you are questions to you as the corporate  
11 designee for Defendant Interline Brands.

12 MR. DiFLORIO: And, Dan, I'm going to  
13 respectfully suggest that if you listen to your  
14 questions in the context of the e-mails that we're  
15 discussing, it is incredibly confusing and very  
16 difficult for a witness to respond to your  
17 questions always knowing that he's responding on  
18 behalf of Interline when you're referring to his  
19 own e-mails and his own actions in 2007. You can  
20 solve the problem very simply by using the term  
21 "Interline" rather than "you."

22 With that said, if you want to save time, I'll  
23 save the objections when they relate to that issue  
24 and I'll assert a continuing objection to the  
25 extent there's confusion raised by the term "you"

1           versus "Interline." Or I can object to each and  
2           every question. I'll do whatever you think is more  
3           efficient. But it's a sincere issue that I have  
4           concern about.

5           MR. THEVENY: All right. Let's move ahead.

6           MR. DiFLORIO: So shall we agree to a  
7           continuing objection on that issue?

8           MR. THEVENY: You object as you deem  
9           appropriate.

10          MR. DiFLORIO: Well, there has to be agreement  
11          among counsel. So, in other words, you're not  
12          agreeing to that, which means I have to revisit the  
13          objection to each and every question where I think  
14          confusion arises. And that's unfortunate.

15          MR. THEVENY: Interpose the objection. I'll  
16          try to meet the objection and we'll get through it.

17          MR. DiFLORIO: Well ...

18          MR. THEVENY: I think I'm trying to do that  
19          already. But let's get through it and see where it  
20          goes. Interpose your objection where you think  
21          it's appropriate and I'll try to meet the  
22          objection.

23 BY MR. THEVENY:

24          Q       Will you refer, please, to the third page of  
25          Exhibit 7. There's an e-mail down at the bottom of the



1 page, just under the number designation IBI 01130. Just  
2 above that, it says "Original Message," from Joseph  
3 Cangelosi, sent looks like November 6, 2007, to Jeffery  
4 Liu with a cc to Eddie Zuo, Z-u-o.

5 Let me ask you first: Who is Eddie Zuo?

6 A Eddie Zuo was our plumbing engineer.

7 Q Was he an employee of Interline Brands?

8 A He was.

9 Q Is he still employed by Interline Brands?

10 A No, sir.

11 MR. THEVENY: All right. I'll ask the  
12 question two different ways. Okay? So hold your  
13 objection. See where it goes.

14 BY MR. THEVENY:

15 Q In this bottom e-mail, "Thanks and best  
16 regards, Joseph Cangelosi," and then on the next page,  
17 Page 4 of Exhibit 7, it ends with your signature block.

18 Is that your signature block?

19 A Yes.

20 Q Do you recall sending this e-mail message?

21 A No, I don't.

22 Q This e-mail message says "We continue to  
23 receive complaints about failing plastic ballast [sic]  
24 nuts (see attachment)."

25 Do you see that part of the e-mail?

1 MR. DiFLORIO: I don't see that. We're on  
2 Page 3?

3 MR. THEVENY: Yeah, right down at the bottom.

4 THE WITNESS: Here.

5 MR. DiFLORIO: Got it.

6 THE WITNESS: Yeah. The only -- I will make  
7 an injection there that -- "We continue to receive  
8 complaints about failing plastic ballcock nuts."

9 BY MR. THEVENY:

10 Q Yeah. I knew that, too. I don't know why I  
11 said it that way.

12 "We continue to receive complaints about  
13 failing plastic ballcock nuts," end quote. Do you see  
14 where I am?

15 A Yes.

16 Q Is that a "yes"? I didn't hear you.

17 A Yes.

18 Q Is the "we" there referring to Interline  
19 Brands, Inc.?

20 A I'm sorry. What?

21 Q Is the "we" there referring to Interline  
22 Brands, Inc.?

23 A Yes, sir.

24 Q Now, I'll ask you this in your individual  
25 capacity.

1           First, you individually, Joseph Cangelosi,  
2 say, quote, "I'm working on getting these back for  
3 analysis."

4           Do you see where I am?

5           A     Yes.

6           Q     What were you working on getting back for  
7 analysis? What is that in reference to?

8           A     That would mean what we're trying to do is get  
9 failed products back from the field. So if a customer  
10 complained that they had a product failure in the field,  
11 whatever that failure cause was, we would ask for that  
12 product back so that we could send it to the supplier  
13 for analysis.

14          Q     You were doing that in conjunction with your  
15 role as quality assurance manager for Interline Brands,  
16 Inc.?

17          A     That is correct.

18          Q     You weren't doing that just on your own?

19          A     No. No, no. As part of my role as quality  
20 assurance -- as part of the quality assurance  
21 department, that's part of our role.

22          Q     All right. And Jeffery Liu, again, was your  
23 project engineer employed by Interline Brands in China?

24          A     No, sir, not our project engineer. Jeffery  
25 Liu was our --

1 Q Who was he?

2 A He was our engineering and quality manager.

3 Q All right. I forgot his title.

4 You go on to state -- you individually, Joseph  
5 Cangelosi -- quote, "In the interim, can you please  
6 provide a status for my request to upgrade the plastic  
7 ballcock nut design?" Do you see that?

8 A Okay. Yes.

9 Q You used the word "design" there, didn't you?

10 A Well, I used it in a general --

11 Q First of all, answer yes or no. I'll be happy  
12 to have you explain.

13 But you used the word "design" there, didn't  
14 you?

15 A Yeah. Let me say yes and then let me finish  
16 my statement, if you don't mind.

17 Q Absolutely.

18 A Okay. So, yes, I used the term "design." I  
19 use the term "design" many times throughout the day  
20 despite the fact that I don't design a product. The  
21 design is the inherent style of a product, its function,  
22 its performance. All of those kind of things go into  
23 the design.

24 So when I use the term "design," I don't  
25 mean -- again, I keep making this statement. I want to

1 drive this home. We don't design the product. I don't  
2 have design prints. I don't have the manufacturing data  
3 and whatnot that talks about the various things that  
4 need to go into the design, you know, as far as those  
5 various manufacturing elements, the molding and all of  
6 that sort of stuff, materials, cooling rates, shrinkage  
7 rates, all of those things. We don't have that. We  
8 will never have that. We're a distributor of the  
9 product.

10 Q But you did make a request to upgrade the  
11 plastic ballcock nut design?

12 A As it's written right there. I say, "Can you  
13 please provide a status for my request to upgrade the  
14 plastic ballcock nut design?" Those are my own words.

15 Q All right. And you made that request in your  
16 capacity as the quality assurance manager for Interline  
17 Brands company?

18 A That is correct.

19 Q If you can turn to the fifth page of  
20 Exhibit 7, which has at the very top the number stamp  
21 IBI 01132. Let me know when you're there.

22 A I'm there.

23 Q And this starts with an e-mail from you sent  
24 on October 10th of 2007 to Jeffery Liu, with a copy to  
25 Mark Allen, John Ouyang, Eddie Zuo, and Jason Pepe,

1 P-e-p-e. Do you see that there?

2 A Yes, sir.

3 Q Who is Jason Pepe?

4 A Jason Pepe was one of our marketing managers.

5 Q Employed by Interline?

6 A Yes.

7 Q Is he still employed by Interline?

8 A No.

9 Q It again appears, based on the bottom of  
10 Page 5 of Exhibit 7, that you were the author of this  
11 e-mail. There's a signature block there at the end. Do  
12 you see that there?

13 A Yes, I do.

14 Q This e-mail references a "231271 SS closet  
15 connector" at the very beginning of the e-mail. Do you  
16 see that there?

17 A Yes, I do.

18 Q Is that the DuraPro 231271 toilet connector?

19 A Yes.

20 Q The same one at issue in this case?

21 A It would be the same model number at issue in  
22 this case.

23 Q Yes.

24 You indicate there in the e-mail, the first  
25 paragraph, "The failure was a separation of the upper

1 portion of the nut, where the cap end meets the threaded  
2 riser." Do you see that?

3 A The last sentence of that first paragraph,  
4 yes.

5 Q Do you know if that's what happened in this  
6 case in connection with the DuraPro 231271 connector nut  
7 that was in the Hurley family home?

8 A No. Different failure.

9 Q The e-mail that you sent to Jeffery Liu goes  
10 on to say "In the interim, I would ask you to do the  
11 following," and then you list in numbered paragraph  
12 fashion several items, 1 through 4. Do you see that  
13 there?

14 A Yes, I do.

15 Q Am I correct that you asked Mr. Liu to do,  
16 among other things, Item No. 3, "Investigate as soon as  
17 possible redesigning the plastic ballcock nuts with a  
18 more robust design that will resist overtightening"? Do  
19 you see that there?

20 A At Item 3, yes.

21 Q And you sent that to Mr. Liu?

22 A That is correct.

23 Q And you sent that to Mr. Liu in your capacity  
24 as the quality assurance manager for Interline Brands,  
25 Inc., at that time?

1           A     That is correct.

2           Q     There was an asterisk below that Paragraph  
3 No. 3, and the asterisk says -- it refers to a sample  
4 here. You're waiting for a sample, or there's a sample  
5 to be received. And it says, quote, "When you receive  
6 this sample, you will see the failure mode was that the  
7 material simply yielded under the vertical load  
8 compression," end quote.

9                     Do you see that?

10          A     Yes.

11          Q     How was it that you made the determination  
12 that the material simply yielded under the vertical load  
13 compression?

14          A     Because the two pieces had separated.

15          Q     Do you know if that's what happened here in  
16 connection with the DuraPro Model 231271 toilet  
17 connector nut in the Hurley home?

18          A     No. That was a different mode of failure.

19          Q     The one you're referring to in this e-mail or  
20 the one in the Hurley home?

21          A     I'm talking about the one in the Hurley home  
22 was a different mode.

23          Q     What was your understanding of the mode of  
24 failure of the DuraPro Model 231271 toilet connector in  
25 the Hurley home?



1           A     Well, as I could see in the product  
2 photographs that I reviewed in preparation for the case,  
3 the separation that we described here in this particular  
4 event was circumferential failure around the side of the  
5 nut, the lower portion of the nut. In the case of the  
6 Hurley failure, which I don't have evidence photos here  
7 to refer to, but those products had -- the product that  
8 I could see there, the entire bottom just blew out of  
9 the nut.

10           Q     You state in this particular e-mail on Page 5  
11 of Exhibit 7, again under the asterisk, quote, "This nut  
12 does not show any tool marks but does show permanent  
13 deformation of the cone washer, indicating significant  
14 compression. This probably led to a latent stress  
15 failure."

16                     Do you see that?

17           A     Correct.

18           Q     Do you know if that's what happened in  
19 connection with the DuraPro Model 231271 toilet  
20 connector in the Hurley home?

21           A     I can't speak to any details regarding the  
22 failure. I've only been able to witness this through  
23 photographs.

24           Q     Earlier you testified that you formed the  
25 belief that the failure of the DuraPro Model 231271

1 toilet connectors might have been due to overtightening  
2 during installation. Do you remember that testimony?

3 A Well, I've made that -- I haven't been  
4 bashful. I've made that statement many times. That's  
5 my belief today, that failures such as this that we're  
6 dealing with in this e-mail are a product of  
7 overtightening. As a matter of fact, we've even stated  
8 that in No. 3 there of the section of the e-mail that  
9 we're referring to.

10 MR. DiFLORIO: And I'm going to belatedly  
11 object to the form of the question to the extent  
12 that it was unclear whether you were referring to  
13 Joe Cangelosi's belief or Interline's belief.

14 MR. THEVENY: Well, I'll ask it both ways.  
15 BY MR. THEVENY:

16 Q Is that Joe Cangelosi's belief or is that the  
17 belief of Defendant Interline Brands, Inc.?

18 A That's Joe Cangelosi's belief.

19 Q Do you know whether or not Defendant Interline  
20 Brands, Inc., has a position on whether or not these  
21 failures are due to overtightening of the connector nut  
22 for the DuraPro Model 231271 toilet connectors?

23 MR. DiFLORIO: And I'm going to object to that  
24 question solely to the extent that it calls for  
25 opinion testimony of experts prematurely.

1 THE WITNESS: No, I do not.

2 BY MR. THEVENY:

3 Q You don't have an answer either way.

4 Your belief as to overtightening being related  
5 to the reason for the failures of these DuraPro  
6 Model 231271 toilet connector nuts, did you communicate  
7 that belief to anyone at Interline Brands in connection  
8 with your role as quality assurance manager for  
9 Interline Brands?

10 A Well, I think this e-mail indicates that.  
11 This e-mail was written by me. It has my signature at  
12 the bottom. And it also has the names of people in the  
13 "To" line there. All those people would have been  
14 people that I would have communicated with.

15 Q So you did communicate that belief to others  
16 with Interline Brands, Inc., in connection with your  
17 role as quality assurance manager?

18 A That is correct.

19 Q All right.

20 A And those -- let me make sure I clarify that.  
21 It would have been those people that would have been  
22 included on this "To" portion of this e-mail. Those  
23 were people that had a need to know.

24 Q Including the actual "To" recipient, Jeffery  
25 Liu, and then those you copied on it, which included

1 Mark Allen, Joe Ouyang, Eddie Zuo, and Jason Pepe?

2 A John Ouyang, yes. And him as well.

3 Q All right. And Eddie Zuo and Jason Pepe?

4 A Yes.

5 (Brief interruption by court reporter.)

6 Q My question was: So you were communicating  
7 this belief in connection with your role as quality  
8 assurance manager for Interline Brands, Inc., and you  
9 were communicating it to those at Interline Brands that  
10 you believed needed to know, which included the  
11 recipient, Jeffery Liu, of this e-mail message and those  
12 who you copied on this e-mail message, Mark Allen, John  
13 Ouyang, Eddie Zuo, and Jason Pepe; is that right?

14 A That is correct.

15 Q And this was back in 2007; right?

16 A According to the e-mail, yes.

17 Q And you've had that belief with regard to  
18 overtightening from 2007 up until today?

19 A Yes.

20 Q Do you still communicate that position to  
21 others at Interline Brands in connection with your role  
22 as quality assurance manager for Interline Brands?

23 A Yes.

24 Q If you'll refer back to Exhibit 1, the amended  
25 notice of deposition, in particular Exhibit A to

1 Deposition Exhibit 1, the areas of testimony.

2 I want to direct your attention in particular  
3 to the areas of testimony identified in Paragraph No. 7,  
4 "Warnings for DuraPro Model No. 231271 toilet tank  
5 connectors."

6 Do you see where I am?

7 A Yes.

8 Q Did Interline Brands, Inc., issue any warnings  
9 after the date of this e-mail of October 10th, 2007,  
10 with regard to the need to make sure that the connector  
11 nut for the DuraPro Model 231271 toilet tank connector  
12 not be overtightened during installation?

13 A Yeah. One of the things that we did,  
14 according to this e-mail, is we asked that the  
15 manufacturer consider placing "Hand-tighten only" as  
16 raised letters on the bottom of the nut.

17 Q Was that done?

18 A Yes.

19 Q Is it depicted anywhere on the photographs,  
20 Exhibits 2 and 3?

21 A You don't show any plastic closet nuts in  
22 these photographs.

23 Q I have another photograph.

24 When was that change implemented?

25 A In late 2007/early 2008.

1 Q All right. So did Interline Brands, Inc.,  
2 undertake any steps to issue warnings about checking for  
3 whether a connector nut had been overtightened for those  
4 DuraPro Model 231271 tank connectors that were already  
5 sold and were out in the field prior to this change that  
6 was made in late 2007 with regard to not overtightening?

7 MR. DiFLORIO: I'll object to the form of the  
8 question.

9 You may answer if you understand it.

10 THE WITNESS: No.

11 BY MR. THEVENY:

12 Q You didn't issue any bulletins, consumer  
13 warnings, letters, recommendations to any of the  
14 companies to whom you sold these DuraPro Model 231271  
15 toilet connectors that were already out in the field  
16 about "You need to check to make sure they weren't  
17 overtightened during installation"?

18 A No.

19 Q All right.

20 I want to direct your attention to Page 6 of  
21 Exhibit 7.

22 Down at the bottom there, under the number  
23 stamp designation IBI 01135, Mr. Zheng is sending an  
24 e-mail. And it's not entirely clear to whom he's  
25 sending it, but it appears, as near as I can tell, it

1 might have been sent to Jeffery Liu, Wu Bo, and Mark  
2 Allen.

3 He states in this e-mail, quote, "Please note  
4 that every part of the connector is made based on your  
5 drawing. It is your requirement to start the business.  
6 It is not us who designed the drawing. Before the  
7 business, we got your drawing and samples approved by  
8 you," end quote.

9 Do you see that there?

10 A Yes, sir.

11 Q Do you know whether or not Mr. Zheng was  
12 referring to drawings and the design pursuant to  
13 drawings that were prepared by Interline Brands, Inc.,  
14 and submitted to MTD (USA)?

15 A Well, as I stated in previous testimony, we  
16 would not have provided any drawings.

17 Q If Mr. Zheng is referring to drawings which he  
18 contends were submitted to MTD (USA) by Interline  
19 Brands, Inc., you're not aware of it?

20 A I'm not aware of any. Not only am I not  
21 aware, we would not have created those drawings. As I  
22 stated in earlier testimony, our main source of  
23 information for MTD to source these products would have  
24 been our catalog page or pages.

25 Q In fairness, continue on to Page 7 of

1 Exhibit 7. Mr. Zheng was responding to an e-mail  
2 apparently from Jeffery Liu, who sent the e-mail that  
3 starts at the bottom of Page 6 of Exhibit 7 from Jeffery  
4 Liu to Chen Zheng, with copies to Eddie Zuo, John  
5 Ouyang, yourself, and Mark Allen.

6 It says "Mr. Zheng," continuing on to Page 7  
7 of Exhibit 7, "we don't agree with your assessment.  
8 When we sourced these, MTD's manufacturer was already  
9 making these and we didn't actually design them, just  
10 verified performance. For these quality claims from  
11 customers, MTD must accept all reimbursements, totaling  
12 \$27,868."

13 Do you see that?

14 A Yes.

15 Q Apparently Mr. Zheng disputed that. But  
16 you're not aware of any drawings that are referred to by  
17 Mr. Zheng in response to this e-mail, are you?

18 A That is correct.

19 Q Mr. Zheng again raised that issue directly  
20 below, the e-mail that's found on Page 7 of Exhibit 7,  
21 when he responds to Jeffery and says in Paragraph 1, "We  
22 made the connector according to your drawing, and all  
23 the samples were confirmed before the business."

24 Again, you don't know what drawing he's  
25 referring to there?



1 A No, sir.

2 MR. THEVENY: Can we take five minutes?

3 MR. DiFLORIO: Sure.

4 MR. THEVENY: We've been going at it over two  
5 hours. Give me five minutes so I can look at my  
6 notes.

7 MR. DiFLORIO: Sure. Take your time.

8 (Recess from 5:04 p.m. until 5:12 p.m.)

9 MR. THEVENY: I'll have the court reporter  
10 mark as Exhibit 8 defendants' answers to  
11 interrogatories.

12 (Exhibit No. 8 was marked for identification.)

13 BY MR. THEVENY:

14 Q The court reporter has handed you what's  
15 marked as Exhibit 8, which is Defendants' Answers to  
16 Plaintiff's First Set of Interrogatories and Response to  
17 Plaintiff's Request For Production.

18 I want to direct your attention to Page 6 of  
19 Exhibit 8, Interrogatory No. 13, and the answer to that.

20 Interrogatory No. 13 states "Identify any  
21 changes subsequent to the sale of the subject coupling  
22 nut that have been made to products substantially  
23 similar to the subject coupling nut to reduce the  
24 chances of water flowing from the plastic coupling nut."

25 And after objections are interposed, and

1 without waiving the objection, the answer goes on to  
2 state "The current DuraPro Model No. 231271 has a  
3 different pattern plastic nut, having two additional  
4 ribs added between the bi-wings."

5 Do you see where I am?

6 A Yes, sir.

7 Q When was that change implemented?

8 A That was the change we just recently discussed  
9 that was implemented in late 2007/early 2008.

10 Q What involvement did Interline Brands have in  
11 coming up with this particular change that was made, a  
12 different pattern plastic nut with two additional ribs  
13 added between the bi-wings?

14 A Well, as we stated earlier, Interline Brands  
15 only made the recommendation to the manufacturer that  
16 they look at their design. And their solution was to  
17 add four additional ribs to the nut, and I believe they  
18 increased the width of the wall nut a little bit more,  
19 and the product is just a little heavier, a little more  
20 robust.

21 Q Was a recall instituted for those DuraPro  
22 Model No. 231271 tank connector nuts that were already  
23 out in the field?

24 A No, sir.

25 Q Was any warning issued to any of the customers

1 to whom Interline Brands, Inc., sold the DuraPro  
2 Model 231271 tank connector nuts about this change?

3 A No, sir.

4 Q Quickly, because a lot of this we've already  
5 gone over and I don't want to be repetitive, are ANSI  
6 standards applicable to this DuraPro Model 231271 toilet  
7 connector?

8 A Well, the ANSI, which is the American National  
9 Standards Institute standard for what would be  
10 Model 231271 is an ASME-derived standard. That's  
11 American Society of Mechanical Engineers. The specific  
12 designation is ASME A112.18.6. It's the American  
13 national standard for flexible water connectors.

14 Q Who would make the submission to ANSI with  
15 regard to confirmation that this model of DuraPro 231271  
16 met that standard you just identified?

17 A Can you rephrase the question or restate the  
18 question?

19 Q Yeah.

20 Who would have been responsible for making the  
21 required submission to ANSI to confirm that the standard  
22 you identified was complied with, as between yourself,  
23 MTD (USA) or the manufacturer?

24 A Well, as I stated earlier in previous  
25 testimony, we would have required the product to be

1 IAPMO certified. And this was the standing document  
2 that IAPMO would have had the product certified,  
3 quote/unquote, to.

4 Q Other than Exhibit 6, which is the information  
5 found in the product catalog, does Interline Brands have  
6 any other product literature for this DuraPro  
7 Model 231271 toilet tank connector?

8 A There is a generic product data sheet for all  
9 water connectors, not specifically for 231271 but just  
10 all water connectors in general.

11 For DuraPro -- let me qualify. For DuraPro  
12 brand water connectors in general.

13 Q All right. Is there an instruction manual of  
14 any sort for the DuraPro Model 231271 toilet connector?

15 A No, sir.

16 Q Do you or Interline Brands, Inc., have any  
17 knowledge of the chain of distribution of the DuraPro  
18 Model 231271 toilet connector nut depicted in Exhibits 2  
19 and 3, the photographs that have been marked here, how  
20 they came from China through MTD (USA) through Interline  
21 Brands to whoever Interline Brands sold it to to whoever  
22 bought it and how it ended up in the home of the  
23 Hurleys?

24 A Well, as I stated earlier in previous  
25 testimony, the manufacturer for the product was Dingbo

1 Plumbing Manufacturing Company, who in turn would have  
2 whatever their relationship was with MTD and their  
3 arrangements with MTD to ship the product to the United  
4 States to one of our facilities.

5 MTD handled that transaction. Exactly what  
6 they did, how they were involved in that, I don't know.  
7 From there the product would have gone from any one of  
8 several distribution centers, most probably our national  
9 distribution center in Nashville, Tennessee, out to one  
10 of our local distribution centers, where it was either  
11 picked up by a customer or sold and shipped to a  
12 customer, our customer, an Interline customer. And  
13 after that we would have no knowledge of, you know,  
14 where the chain of commerce or chain of installation  
15 went beyond that.

16 Q Who determined the specifications for the  
17 polyacetal nut for the DuraPro Model No. 231271 toilet  
18 connector?

19 A I can tell you that it would not be Interline  
20 Brands. And typically that's a function of a  
21 manufacturer or the manufacturer of the specific nut  
22 itself, if it's not the actual product assembler or  
23 ultimate product manufacturer.

24 Q You don't know for certain?

25 A All I can do is tell you who generally handles

1 it, and I can tell you Interline does not.

2 Q Same question. Who determines the  
3 specifications for the composition of the polyacetal nut  
4 used for this DuraPro Model 231271 tank connector?

5 A As I stated earlier, Interline Brands would  
6 have no knowledge of that. And whether MTD does or not,  
7 I can't speak to that. Typically it would be for a  
8 manufacturer of the nut or the manufacturer of the  
9 assembly itself to know that.

10 Q Who determines the specifications for the  
11 polymers to be used in the polyacetal nut for the  
12 DuraPro Model 231271?

13 A I have no idea.

14 Q Who determines the specifications for the  
15 length of the DuraPro Model 231271 toilet connector?

16 A Well, the length of the 231271, as with all  
17 connectors, is a nominal length. And that is as stated  
18 in our catalogs.

19 Q So would the answer be Interline Brands, Inc.,  
20 for that particular specification, that is, the length  
21 of the toilet connector?

22 A Yeah. But just make sure that we state that  
23 that's a nominal length. And it would be a nominal  
24 length as stated by Interline Brands.

25 Q Who determines the diameter of the polyacetal

1 nut for the DuraPro Model 231271 tank connector?

2 A Well, again, we're back to a nominal  
3 dimension, so it's very important we understand the  
4 difference between the finite technical dimensions which  
5 are necessary for the manufacturer to make the nut in  
6 accordance with the standards. But Interline Brands  
7 would be responsible for specifying the fact that it  
8 needed to be seven-eighths-inch ballcock size.

9 Q Who determines the specifications for the lock  
10 nuts for the DuraPro Model 231271 toilet tank connector?

11 A The Model 231271 toilet tank connector does  
12 not have lock nuts.

13 Q All right. And that may be a bad question on  
14 my part.

15 I referred to it earlier, but just so I can  
16 clarify, do you recall giving a videotaped deposition on  
17 November 15th, 2013, as the corporate designee of  
18 Interline Brands, Inc., in the case of National Surety  
19 Corporation, as subrogee of Timothy A. Horner and Peggy  
20 Horner, versus Interline Brands, Inc., United States  
21 District Court, Eastern District of Texas, Case  
22 No. 4:12-CV-00205?

23 A I vaguely recall it, yes.

24 Q Did you review that deposition testimony  
25 before your deposition here today?

1           A     Very briefly.

2           Q     Okay.  Do you adopt the deposition testimony  
3     in that other case, that is, the federal district court  
4     of Texas case?

5           MR. DiFLORIO:  I'm going to object to the  
6     question to the extent it's overly broad.

7           But you may answer if you feel capable.

8           THE WITNESS:  Restate your question so I'm  
9     going to understand your phraseology, "adopt."

10          BY MR. THEVENY:

11          Q     Well, I'll make it more simple because I don't  
12     want to confuse you with the word "adopt."  I wasn't  
13     trying to ask anything confusing.

14                 You recall that you gave that testimony under  
15     oath?

16          A     As I recall, yes.  I know I had a deposition,  
17     and I know that it was regarding the Horner case, but,  
18     you know, I don't remember very many specific details.

19          Q     In the brief review of it before your  
20     deposition here today, did you note the need to make any  
21     changes to your prior testimony in the Texas federal  
22     district court case, the Horner case?

23                 MR. DiFLORIO:  I'm going to object to the  
24     question to the extent that I think it is overly  
25     broad.



1           You may answer.

2           THE WITNESS: No, I did not.

3 BY MR. THEVENY:

4           Q     Did you take the opportunity to read and sign  
5 your deposition testimony as corporate designee for  
6 Interline Brands, Inc., in this Texas federal district  
7 court case?

8           A     I did not sign.

9           MR. THEVENY: That's all I have. I may have  
10 some more questions after your counsel asks you  
11 some questions. Or maybe he won't.

12          MR. DiFLORIO: We have no questions. We'll  
13 reserve questions for the time of trial, if  
14 necessary.

15          MR. THEVENY: It was a long and tedious day,  
16 Mr. Cangelosi, with patience on both sides. I  
17 appreciate your patience. I know how difficult it  
18 is to answer questions, particularly when there are  
19 nuance disputes between counsel and the witness. I  
20 was not trying to do anything incorrect. But I  
21 appreciate your time very much.

22          THE WITNESS: You're welcome. Understood.

23          MR. DiFLORIO: Okay, Dan.

24                 And thanks for accommodating the pushback for  
25 one week in the testimony. And for MTD, for Chen,

1 we can start at 8:00 o'clock in the morning, under  
2 the circumstances?

3 MR. THEVENY: Yeah. Tuesday; right?

4 MR. DiFLORIO: Yeah. I know it's coming up  
5 very soon. Okay.

6 Do you have any interest in expediting the  
7 transcript? Is it worth it for both of us to share  
8 the cost of expediting it and just having it so you  
9 can follow up on it? And for me it will be easier.

10 MR. THEVENY: I don't know. I don't know if I  
11 need an expedited copy or not.

12 MR. DiFLORIO: Okay.

13 (Discussion off the record.)

14 MR. DiFLORIO: Monday.

15 MR. THEVENY: Monday.

16 (Witness excused.)

17 (And at 5:27 p.m., taking of the above  
18 deposition was concluded.)

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C E R T I F I C A T E   O F   O A T H

STATE OF FLORIDA    )

COUNTY OF DUVAL    )

I, the undersigned authority, certify that  
JOSEPH CANGELOSI, III, personally appeared before me on  
May 13, 2014, and was duly sworn.

WITNESS my hand and official seal this 19th  
day of May, 2014.



\_\_\_\_\_  
Susan B. Wilson  
Notary Public State of Florida.  
My Commission No. EE 052177  
Expires: February 17, 2015

Personally known  
Produced Identification    XX  
Type of Identification Produced:  
Florida Driver's License

C E R T I F I C A T E

STATE OF FLORIDA )

COUNTY OF DUVAL )

I, Susan B. Wilson, RPR, CRR, FPR, certify that I was authorized to and did stenographically report the deposition of JOSEPH CANGELOSI, III; that a review of the transcript was not requested; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 19th day of May, 2014.

*Susan B. Wilson*



Susan B. Wilson, RPR, CRR, FPR

E R R A T A S H E E T

Re: NATIONAL SURETY CORPORATION, as subrogee of Kevin and Doris Hurley v. MTD (USA) CORPORATION and INTERLINE BRANDS, INC.

Case No. 2:13-cv-06461-KM-MCA

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Under penalties of perjury, I declare that I have read my deposition and that it is true and correct, subject to any changes in form or substance entered here.

\_\_\_\_\_  
JOSEPH CANGELOSI, III SW

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

NATIONAL SURETY CORPORATION, )  
as subrogee of Kevin and Doris Hurley, )

Plaintiff, )

vs. )

MTD (USA) CORPORATION )

and )

INTERLINE BRANDS, INC., )

Defendants. )

Civil Action No.: 2:13-cv-06461-KM-MCA

**AMENDED NOTICE OF DEPOSITION AND REQUEST FOR PRODUCTION TO  
INTERLINE BRANDS, INC. PURSUANT TO FEDERAL RULE OF CIVIL  
PROCEDURE RULE 30(b)(2) AND (6)**

TO: Defendant INTERLINE BRANDS, INC., by and through its counsel of record, Marco P. DiFlorio, Esq., Salmon, Ricchezza, Singer & Turchi LLP, 123 Egg Harbor Road, Suite 406, Sewell, NJ 08080

PLEASE TAKE NOTICE that Plaintiff NATIONAL SURETY CORPORATION as subrogee of Kevin and Doris Hurley ("Plaintiff"), by and through its attorneys, pursuant to the provisions of Fed. R. Civ. P. 30(b)(2) and (6) hereby notices the videotaped deposition of the Corporate Representative of Defendant Interline Brands, Inc., as follows:

WITNESS: Joseph Cangelosi III, or other duly designated corporate representative of Defendant Interline Brands, Inc. as per the requirements hereinafter stated within this Notice of Deposition

DATE and TIME: May 13, 2013 at 2:00 p.m.

PLACE: Riley Court Reporting & Associates  
1660 Prudential Drive  
Suite 210  
Jacksonville, FL 32207



The deposition will be recorded by stenographic means and will be taken by an officer duly authorized by law to administer oaths and take depositions. The deposition also will be videotaped. The deposition will continue from day to day until completed. You are invited to attend and cross-examine.

**PLEASE TAKE FURTHER NOTICE** that pursuant to Fed. R. Civ. P. 30(b)(2) and (6) Defendant Interline Brands, Inc. shall produce the documents and things identified within Exhibit "A", and designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf as to the matters identified in Exhibit "A", which is attached hereto and incorporated herein by reference for all purposes.

DATED: May 2, 2014

/s/ Daniel C. Theveny  
Daniel C. Theveny, Esq.  
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457 Haddonfield Road  
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(215) 665-4194  
dtheveny@cozen.com  
Attorneys for Plaintiff National Surety  
Corporation

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2<sup>nd</sup> day of May 2014, a true and correct copy of the above and foregoing document was served on the following counsel of record electronically and via regular U.S. mail:

Marco P. DiFlorio, Esquire  
Salmon, Ricchezza, Singer & Turchi LLP  
123 Egg Harbor Road  
Suite 406  
Sewell, NJ 08080  
Tel: 856-354-8074  
mdiflorio@srstlaw.com  
*Attorneys for Defendant MTD (USA) Corporation and  
Defendant Interline Brands, Inc.*

s/ Daniel C. Theveny  
Daniel C. Theveny

**Exhibit "A"**  
**Areas of Testimony**

1. **Communications between Interline Brands, Inc. and MDT (USA) Corporation concerning the design, specifications, labeling, warnings, installation instructions, packaging, marketing and product testing of DuraPro Model #231271 toilet tank connectors.**
2. **Communications between Interline Brands, Inc. and product manufacturers concerning the design, specifications, labeling, warnings, installation instructions, packaging, marketing and product testing of DuraPro Model #231271 toilet tank connectors,**
3. **Other claims and lawsuits against Interline Brands, Inc. involving alleged failures of DuraPro model # 231271 toilet tank connectors that have occurred within the past eight (8) years.**
4. **Design of DuraPro Model #231271 toilet tank connectors.**
  
5. **Labeling of DuraPro Model #231271 toilet tank connectors.**
6. **Installation instructions for DuraPro Model #231271 toilet tank connectors.**
7. **Warnings for DuraPro Model #231271 toilet tank connectors.**
8. **Product specifications for DuraPro Model #231271 toilet tank connectors.**
9. **Testing of DuraPro Model #231271 toilet tank connectors.**
10. **Marketing of DuraPro Model #231271 toilet tank connectors.**
11. **Interline Brands, Inc.'s involvement in and/or approval of the selection of manufacturers of DuraPro Model #231271 toilet tank connectors.**
12. **Interline Brands, Inc.'s decision to change manufacturers of DuraPro Model #231271 toilet tank connectors over the past eight (8) years.**

**Documents to be Produced**

- (13) **Any and all documents, including plans, schematics, diagrams, sketches, specifications, test results, product studies, photographs, video recordings, audio recordings, warnings, instructions, packaging, marketing material, labeling, correspondence, memoranda, e-mail communications, pleadings, discovery, and also including any of the foregoing kept or maintained in electronic format, and in any way related to the Areas of Testimony (1) through (12) identified above.**

Mfg# 231271  
3/8" Compression  
x 1/8" Ballcock Nut  
12" LONG  
**DuraPro**  
STAINLESS STEEL  
TOILET TANK  
CONNECTOR

PENGAD 800-631-6989  
3/15/14  
PLAINTIFF'S  
EXHIBIT  
NO. 2  
Anselosi

Manufactured to conform to  
ANSI/NF-61 and Proposition  
65 Standards

For use in exposed  
locations only

ASME M12.18.6



**DURAPRO™**  
Wilmington, Delaware  
Made in China



0 76335 23901 19

PENGAD 800-631-6989  
PLAINTIFF'S  
EXHIBIT  
NO. 3  
5/15/14  
Lange/Loisi

MTD  
V#13157



### Import Partnership Agreement

This Import Partnership Agreement (this "Agreement") is entered into as of 7/5, 2005 (the "Effective Date") by and between Interline Brands and its wholly owned subsidiaries, including and not limited to any other company procured by Interline Brands (the "Company") with Corporate offices at 200 E. Park Drive, Suite 200, Mt. Laurel, N.J. 08054 and 801 W Bay St. Jacksonville, Fl. 32204, and MTD (USA) Corp., (the "Supplier") with Corporate offices at 310 North Zhong Shan Road, Hang Zhou, China 310003

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### TERMS AND CONDITIONS

#### 1. QUANTITIES

- 1.1. Minimum Packaging/Buy Quantity - To be negotiated at time of quote.
- 1.2. Inner/master carton quantities will be specified at time of quote and may not be changed without prior written approval of the Company.

#### 2. PRICING AND ALLOWANCES

- 2.1. Product Prices - To be negotiated at time of quote, and should include packaging/label cost.
- 2.2. All FOB prices shall be inclusive of sales tax (including VAT), transportation costs and any other levies imposed by authorities to the designated port of shipment, unless explicitly stated in the quote.
- 2.3. Price Changes - Any request for a price increase must be received no later than September 1<sup>st</sup> of the current year, with an effective date no sooner than January 1<sup>st</sup> of the following year. Increase requests received after the September 1<sup>st</sup> deadline will be held and reviewed the following year. At no time shall a supplier hold or delay Company orders during the price increase process. The Company must have opportunity to place additional orders at the then current price prior to new price effective date. This price change notification must include current price and proposed price changes listed by item using the Company's part number and reason for change.

#### 3. SLOTTING ALLOWANCE -

- 3.1. A one time slotting allowance will be due from the Supplier upon placement of initial order at \$1,500 per new product page or \$250 per illustration, whichever is lower.

#### 4. PAYMENT TERMS

- 4.1. Standard Pay Terms - TT at sight + 45 days.



5. SHIPMENT TERMS AND POLICY

- 5.1. The Company will provide a purchase order ("Purchase Order") for all orders. All Purchase Orders will specify shipping information.
- 5.2. Terms of Delivery - FOB Port of [\_\_\_\_\_]. The Company shall be responsible for shipping arrangements and costs of transportation from (\_\_\_\_\_) to the designated destination unless otherwise specified. All information will be provided to each vendor per shipment basis by the Import Coordinator. The shipping line, final destination, and service contract number will be sent, via email. The Supplier must send pro forma or sales confirmation 45 days prior to first shipment.
- 5.3. Air Freight - Any and all requests for priority shipments such as air freight must be approved in writing by the Company's appropriate Inventory Control manager before shipment.
- 5.4. Late Shipment Policy - No full or partial containers will be allowed to ship late without authorization. For any delay, immediately notify the appropriate Company Inventory Manager.
- 5.5. Back Order Policy- The Company does not accept back orders on short shipments of any Purchase Order. Thus stock orders are handled strictly on a ship or cancel basis. A new Purchase Order must be generated for any regular stock merchandise, which is not shipped with the original Purchase Order.
- 5.6. Order Fulfillment Time -- All shipments to be effected within \_\_\_\_\_ days from date of Purchase Order.
- 5.7. Service/Service Level - Supplier shall not exceed \_\_\_\_\_ days from date of Purchase Order to date of shipment with a 95% service level. Delayed orders may not be combined and shipped with current orders without prior written permission. Order documentation including invoice, packing list, and bill of lading must be faxed within 10 days of date of shipment.
- 5.7.1 The Company has the right to cancel orders without the Supplier's prior approval should the Supplier not comply with Section 5.7.
- 5.7.2 Service Level/Infractions -- Any violations of Sections 5.7 will be subject to a payment by the Supplier of \$1000 per occurrence- (without limiting any other remedies of the Company).

6. QUALITY

- 6.1. Specifications - Prior to the first shipment, Supplier must provide for Company's review and approval written material specifications, including engineering drawings, as requested by Company, for all products sold to the Company. At no time may specification changes, sub-vendor changes, or major component changes be made without the prior written approval of the Company. Supplier shall notify the Company in the event that Supplier becomes aware that Supplier may not be capable of delivering products which conform to the specifications.
- 6.2. Quality Control - Prior to the first shipment, Supplier must provide in writing a description of its quality control procedures, including all subcontractor inspection protocols, to the Company for review and approval. Inspection procedures should conform to MIL STD 105D. Inspection reports are to be required on an as ordered basis as requested by the Company or Company's Overseas Agent. Supplier will provide samples to the Company upon request.



- 6.3. Defectives - Small amounts of low-ticket merchandise will be "field scrapped" and replacement cost to the customer of Company ("Customer") deducted from the next payment to Supplier. Where credit is issued to the Customer, the Company will provide Supplier with documentation of a "Monthly Scrap/Credit Report" which includes 20% freight and handling for replacement items shipped from the Company to Customer. Any larger defective returns will be addressed on a case-by-case basis, provided Supplier agrees to pay all credits, costs and expenses incurred by the Company, including associated handling and freight costs incurred in such a case.

## 7. PACKAGING

- 7.1. Carton Markings - All master cartons must be in accordance with the Company's packaging design specifications & contain the following information: purchase order number, item number (in letters/characters at least 1" high), description, carton quantity, shipping mark and country of origin. Bar code scanable label is required; the Company will furnish protocol standards. Reference Import Vendor Guide.
- 7.2. Packaging Design/Artwork - Packaging design/artwork for display boxes, cards, printed bags, labels, etc. will be furnished by the Company and is to be printed in accordance with the Company's specifications. All rights in the package design and artwork are the exclusive property of the Company and are not to be copied, distributed and/or modified without prior written permission of the Company. The company has the right to request the return of artwork at any time. Violation of this may result in immediate termination of business. All artwork for branded items will be supplied by Interline Brands via film (positive or negative) or Electronic File (IBM or Macintosh EPS format),
- 7.3. See Import Vendor Guide for barcode generic labeling. Country of origin marking is required on all packaging and must conform to U.S. Customs regulations.
- 7.4. Bilingual Requirements - the Company requires English and Neutral Spanish on all warning labels and instructions. Specifically: All Safety warnings and instructions must be in two languages. All Warnings and Instructions should be on or inside the package.

## 8. INSURANCE

- 8.1. Certificate Supplier must submit a Product Liability Insurance Certificate from a US based insurance company showing the Company as listed as being insured for such amount and with such scope of coverage as is appropriate for a Supplier of like size and activity.

Company Name \_\_\_\_\_  
Policy Number \_\_\_\_\_

## 9. WARRANTY AND INDEMNIFICATION

- 9.1. Warranties - Supplier represents and warrants (i) that the products sold by it to the Company are fit for the purposes for which they are intended; (ii) that the products comply with all applicable US and foreign laws and regulations governing the acceptable levels of hazardous and/or toxic materials contained in or used in the production of such products; (iii) that the Company will have, and at and after delivery to Company's Customers or on behalf of the Company, the Customers will have, all rights and authorizations necessary to sell such products to end users, and that neither the products, nor the manufacture, importation or sale of such products by the Supplier to the Company or the Company to the Customers, will infringe on the rights of any third party.

9.2. Indemnification - Supplier agrees to defend, indemnify and hold the Company, its officers, directors, employees, agents and any Customer harmless from and against any and all losses, liabilities, penalties, costs and expenses (including fees and disbursements of counsel) arising out of or relating to any breaches or alleged breaches of the foregoing representations and warranties by Supplier. Further, Supplier shall defend, indemnify and hold the Company, its officers, directors, employees, agents harmless from all losses, liabilities, penalties, costs and expenses (including fees and disbursements of counsel) incurred in the defense of any claim against the Company by a third party alleging that the Company's marketing, use, importation, sale or offer for sale of the products infringes, misappropriates or constitutes a violation of any third-party patent, copyright, trade secret or other, related intellectual property right. If the Company believes that any of the products provided by Supplier hereunder may violate a third-party's intellectual property rights, Company shall notify Supplier of such belief in writing and Supplier shall either (i) modify the products so as to render them non-infringing or (ii) obtain a license at Supplier's sole cost sufficient to permit the Company and any Customer to continue to import, sell, offer for sale, and distribute such products.

#### 10. CONFIDENTIALITY

- 10.1. Data related to the terms of the Agreement; Company's products purchased, purchase orders, and marketing and business plans, including but not limited to information provided by the Supplier or Company related to such products or orders or developed by the Supplier at the instruction of the Company such as product designs, drawings, specifications, concepts, and product names; ("Purchase Information") will be kept confidential and will be used only to process orders, manufacture and deliver products, and support the business relationship between the Company and Supplier.
- 10.2. Purchase Information will not be disclosed or sold to any third party without the expressed written authorization of the Company or used by the Supplier for any purpose other than in conjunction with this Agreement.

#### 11. NON-COMPETE

- 11.1. Supplier agrees that [during the Term], it will not, and will cause its affiliates not, directly or indirectly, anywhere in the world, either as principal, agent, representative, supplier, purchaser, partner or investor, to sell, assist in selling, or distributing, to any Customer or any Customer's affiliates, products, similar products, or products which are in the same categories or functionality of products that are purchased by the Company from the Supplier or any of Supplier's affiliates.

#### 12. AUDITS

- 12.1. Right to Audit - Client has the right to audit during the Term and for a period of three (3) years following the Term all of Supplier's records which relate specifically to the work performed for the Company as described in this Agreement.

#### 13. TERM & SURVIVAL

- 13.1. This Agreement shall initiate on the day of signature by the parties and shall remain in full force and effect until mutually terminated in writing (the "Term"). Notwithstanding anything to the contrary herein, Section 10 and Sections 13 - 19 shall survive the termination of this Agreement.

#### 14. GOVERNING LAW AND DISPUTES

- 14.1. **Governing Law** - The agreement between Supplier and the Company shall be governed by US Law. The competent courts of the United States shall resolve any dispute that might arise between Supplier and the Company in connection with any Agreement concluded with customer by Supplier or in connection with any further agreements that might result therefrom. Specifically, this Agreement shall be governed and construed in accordance with the laws of the State of Delaware applicable to agreements made and to be performed within such State without regard to the principles of conflicts of laws.

**15. ENTIRETY OF AGREEMENT**

- 15.1. This Agreement, together with applicable Purchase Orders, shall constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and representations, whether oral or written, with respect to such subject matter.

**16. AMENDMENT AND WAIVER**

- 16.1. This Agreement may be modified or amended only by the mutual written consent of each of the parties hereto. Such modifications or amendments must be reduced to writing, dated and executed by both parties.
- 16.2. No provision of this Agreement shall be deemed waived by the Company unless such waiver is in writing and signed by a duly authorized officer of the Company.
- 16.3. The course of conduct between the parties shall not act to modify or alter the provisions of this Agreement.
- 16.4. If any provision or portion of a provision of this Agreement is held to be invalid, illegal or unenforceable under any circumstances, such provision or portion will be deemed omitted with respect to those circumstances, and the remaining provisions of this Agreement shall continue to be valid and enforceable as to the parties thereto.

**17. ASSIGNMENTS**

- 17.1. Supplier agrees that its rights and responsibilities under this Agreement may not be assigned to any other party. Subject to the foregoing restriction on assignment by Supplier, it is agreed that this Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns.

**18. NOTICE**

- 18.1. All contract related notices required hereunder shall be in writing and be deemed given when mailed certified U.S. Mail, postage prepaid, to the address below:

If to Interline Brands (the "Company")

Interline Brands  
801 W. Bay Street  
Jacksonville, FL 32258  
Attn: [Mark Allen, Merchandising Manager Import Sourcing]

If to \_\_\_\_\_ (the Supplier")

Name, Title \_\_\_\_\_  
Supplier Company Name \_\_\_\_\_  
Supplier Street Address \_\_\_\_\_  
City State Zip \_\_\_\_\_

19. AUTHORITY

19.1. Supplier represents and warrants that the person executing this Agreement on its behalf has full right and authority to enter into this Agreement on Supplier's behalf.

IN WITNESS WHEREOF, the Company and the Supplier have caused this Agreement to be executed by their duly authorized representatives as of the effective date.

Interline Brands  
The Company

Brian C Wertheimer  
Authorized Signature

Brian C Wertheimer  
Printed Name

International Plumbing Product Manager  
Title

7/6/05  
Date

MTD (USA) Corp.  
Supplier Company Name (Print)

[Signature]  
Authorized Signature

Chen Zheng  
Printed Name (English)

President  
Title

6/3/05  
Date

**This agreement goes into affect for all companies in the corporation and any new companies that may be procured in the future.**

**Note: This original form must be signed and not a retyped version. Any change requires the consent of both parties.**

MTD

5.



Import Partnership Agreement

This Import Partnership Agreement (this "Agreement") is entered into as of 7/5, 2005 (the "Effective Date") by and between Interline Brands and its wholly owned subsidiaries, including and not limited to any other company procured by Interline Brands (the "Company") with Corporate offices at 200 E. Park Drive, Suite 200, Mt. Laurel, N.J. 08054 and 801 W Bay St. Jacksonville, FL 32204, and MTD (USA Corp., (the "Supplier") with Corporate offices at 310 North Zhong Shan Road, Hang Zhou, China 310003

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

TERMS AND CONDITIONS

1. QUANTITIES

- 1.1. Minimum Packaging/Buy Quantity - To be negotiated at time of quote.
- 1.2. Inner/master carton quantities will be specified at time of quote and may not be changed without prior written approval of the Company.

2. PRICING AND ALLOWANCES

- 2.1. Product Prices - To be negotiated at time of quote, and should include packaging/label cost.
- 2.2. All FOB prices shall be inclusive of sales tax (including VAT), transportation costs and any other levies imposed by authorities to the designated port of shipment, unless explicitly stated in the quote.
- 2.3. Price Changes - Any request for a price increase must be received no later than September 1<sup>st</sup> of the current year, with an effective date no sooner than January 1<sup>st</sup> of the following year. Increase requests received after the September 1<sup>st</sup> deadline will be held and reviewed the following year. At no time shall a supplier hold or delay Company orders during the price increase process. The Company must have opportunity to place additional orders at the then current price prior to new price effective date. This price change notification must include current price and proposed price changes listed by item using the Company's part number and reason for change.

6.

3. SLOTTING ALLOWANCE -

- 3.1. A one time slotting allowance will be due from the Supplier upon placement of initial order at \$1,500 per new product page or \$250 per illustration, whichever is lower.

4. PAYMENT TERMS

- 4.1. Standard Pay Terms - TT at sight + 45 days.



INT000087

## 5. SHIPMENT TERMS AND POLICY

- 5.1. The Company will provide a purchase order ("Purchase Order") for all orders. All Purchase Orders will specify shipping information.
- 5.2. Terms of Delivery - FOB Port of [\_\_\_\_\_]. The Company shall be responsible for shipping arrangements and costs of transportation from (\_\_\_\_\_) to the designated destination unless otherwise specified. All information will be provided to each vendor per shipment basis by the Import Coordinator. The shipping line, final destination, and service contract number will be sent, via email. The Supplier must send pro forma or sales confirmation 45 days prior to first shipment.
- 5.3. Air Freight - Any and all requests for priority shipments such as air freight must be approved in writing by the Company's appropriate Inventory Control manager before shipment.
- 5.4. Late Shipment Policy - No full or partial containers will be allowed to ship late without authorization. For any delay, immediately notify the appropriate Company Inventory Manager.
- 5.5. Back Order Policy- The Company does not accept back orders on short shipments of any Purchase Order. Thus stock orders are handled strictly on a ship or cancel basis. A new Purchase Order must be generated for any regular stock merchandise, which is not shipped with the original Purchase Order.
- 5.6. Order Fulfillment Time - All shipments to be effected within \_\_\_\_\_ days from date of Purchase Order.
- 5.7. Service/Service Level - Supplier shall not exceed \_\_\_\_\_ days from date of Purchase Order to date of shipment with a 95% service level. Delayed orders may not be combined and shipped with current orders without prior written permission. Order documentation including invoice, packing list, and bill of lading must be faxed within 10 days of date of shipment.
- 5.7.1 The Company has the right to cancel orders without the Supplier's prior approval should the Supplier not comply with Section 5.7.
- 5.7.2 Service Level/Infractions - Any violations of Sections 5.7 will be subject to a payment by the Supplier of \$1000 per occurrence, (without limiting any other remedies of the Company).

## 6. QUALITY

- 6.1. Specifications - Prior to the first shipment, Supplier must provide for Company's review and approval written material specifications, including engineering drawings, as requested by Company, for all products sold to the Company. At no time may specification changes, sub-vendor changes, or major component changes be made without the prior written approval of the Company. Supplier shall notify the Company in the event that Supplier becomes aware that Supplier may not be capable of delivering products which conform to the specifications.
- 6.2. Quality Control - Prior to the first shipment, Supplier must provide in writing a description of its quality control procedures, including all subcontractor inspection protocols, to the Company for review and approval. Inspection procedures should conform to MIL STD 105D. Inspection reports are to be required on an as ordered basis as requested by the Company or Company's Overseas Agent. Supplier will provide samples to the Company upon request.

- 6.3. Defectives - Small amounts of low-ticket merchandise will be "field scrapped" and replacement cost to the customer of Company ("Customer") deducted from the next payment to Supplier. Where credit is issued to the Customer, the Company will provide Supplier with documentation of a "Monthly Scrap/Credit Report" which includes 20% freight and handling for replacement items shipped from the Company to Customer. Any larger defective returns will be addressed on a case-by-case basis, provided Supplier agrees to pay all credits, costs and expenses incurred by the Company, including associated handling and freight costs incurred in such a case.

## 7. PACKAGING

- 7.1. Carton Markings - All master cartons must be in accordance with the Company's packaging design specifications & contain the following information: purchase order number, item number (in letters/characters at least 1" high), description, carton quantity, shipping mark and country of origin. Bar code scanable label is required; the Company will furnish protocol standards. Reference Import Vendor Guide.
- 7.2. Packaging Design/Artwork - Packaging design/artwork for display boxes, cards, printed bags, labels, etc. will be furnished by the Company and is to be printed in accordance with the Company's specifications. All rights in the package design and artwork are the exclusive property of the Company and are not to be copied, distributed and/or modified without prior written permission of the Company. The company has the right to request the return of artwork at any time. Violation of this may result in immediate termination of business. All artwork for branded items will be supplied by Interline Brands via film (positive or negative) or Electronic File (IBM or Macintosh EPS format).
- 7.3. See Import Vendor Guide for barcode generic labeling. Country of origin marking is required on all packaging and must conform to U.S. Customs regulations.
- 7.4. Bilingual Requirements - the Company requires English and Neutral Spanish on all warning labels and instructions. Specifically: All Safety warnings and instructions must be in two languages. All Warnings and Instructions should be on or inside the package.

## 8. INSURANCE

- 8.1. Certificate - Supplier must submit a Product Liability Insurance Certificate from a US based insurance company showing the Company as listed as being insured for such amount and with such scope of coverage as is appropriate for a Supplier of like size and activity.

Company Name \_\_\_\_\_  
Policy Number \_\_\_\_\_

## 9. WARRANTY AND INDEMNIFICATION

- 9.1. Warranties - Supplier represents and warrants (i) that the products sold by it to the Company are fit for the purposes for which they are intended; (ii) that the products comply with all applicable US and foreign laws and regulations governing the acceptable levels of hazardous and/or toxic materials contained in or used in the production of such products; (iii) that the Company will have, and at and after delivery to Company's Customers or on behalf of the Company, the Customers will have, all rights and authorizations necessary to sell such products to end users, and that neither the products, nor the manufacture, importation or sale of such products by the Supplier to the Company or the Company to the Customers, will infringe on the rights of any third party.



9.2. Indemnification - Supplier agrees to defend, indemnify and hold the Company, its officers, directors, employees, agents and any Customer harmless from and against any and all losses, liabilities, penalties, costs and expenses (including fees and disbursements of counsel) arising out of or relating to any breaches or alleged breaches of the foregoing representations and warranties by Supplier. Further, Supplier shall defend, indemnify and hold the Company, its officers, directors, employees, agents harmless from all losses, liabilities, penalties, costs and expenses (including fees and disbursements of counsel) incurred in the defense of any claim against the Company by a third party alleging that the Company's marketing, use, importation, sale or offer for sale of the products infringes, misappropriates or constitutes a violation of any third-party patent, copyright, trade secret or other, related intellectual property right. If the Company believes that any of the products provided by Supplier hereunder may violate a third-party's intellectual property rights, Company shall notify Supplier of such belief in writing and Supplier shall either (i) modify the products so as to render them non-infringing or (ii) obtain a license at Supplier's sole cost sufficient to permit the Company and any Customer to continue to import, sell, offer for sale, and distribute such products.

#### 10. CONFIDENTIALITY

- 10.1. Data related to the terms of the Agreement, Company's products purchased, purchase orders, and marketing and business plans, including but not limited to information provided by the Supplier or Company related to such products or orders or developed by the Supplier at the instruction of the Company such as product designs, drawings, specifications, concepts, and product names, ("Purchase Information") will be kept confidential and will be used only to process orders, manufacture and deliver products, and support the business relationship between the Company and Supplier.
- 10.2. Purchase Information will not be disclosed or sold to any third party without the expressed written authorization of the Company or used by the Supplier for any purpose other than in conjunction with this Agreement.

#### 11. NON-COMPETE

- 11.1. Supplier agrees that [during the Term], it will not, and will cause its affiliates not, directly or indirectly, anywhere in the world, either as principal, agent, representative, supplier, purchaser, partner or investor, to sell, assist in selling, or distributing, to any Customer or any Customer's affiliates, products, similar products, or products which are in the same categories or functionality of products that are purchased by the Company from the Supplier or any of Supplier's affiliates.

#### 12. AUDITS

- 12.1. Right to Audit - Client has the right to audit during the Term and for a period of three (3) years following the Term all of Supplier's records which relate specifically to the work performed for the Company as described in this Agreement.

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- 13.1. This Agreement shall initiate on the day of signature by the parties and shall remain in full force and effect until mutually terminated in writing (the "Term"). Notwithstanding anything to the contrary herein, Section 10 and Sections 13 - 19 shall survive the termination of this Agreement.

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14.1. **Governing Law** - The agreement between Supplier and the Company shall be governed by US Law. The competent courts of the United States shall resolve any dispute that might arise between Supplier and the Company in connection with any Agreement concluded with customer by Supplier or in connection with any further agreements that might result therefrom. Specifically, this Agreement shall be governed and construed in accordance with the laws of the State of Delaware applicable to agreements made and to be performed within such State without regard to the principles of conflicts of laws.

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16. **AMENDMENT AND WAIVER**

16.1. This Agreement may be modified or amended only by the mutual written consent of each of the parties hereto. Such modifications or amendments must be reduced to writing, dated and executed by both parties.

16.2. No provision of this Agreement shall be deemed waived by the Company unless such waiver is in writing and signed by a duly authorized officer of the Company.

16.3. The course of conduct between the parties shall not act to modify or alter the provisions of this Agreement.

16.4. If any provision or portion of a provision of this Agreement is held to be invalid, illegal or unenforceable under any circumstances, such provision or portion will be deemed omitted with respect to those circumstances, and the remaining provisions of this Agreement shall continue to be valid and enforceable as to the parties thereto.

17. **ASSIGNMENTS**

17.1. Supplier agrees that its rights and responsibilities under this Agreement may not be assigned to any other party. Subject to the foregoing restriction on assignment by Supplier, it is agreed that this Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns.

18. **NOTICE**

18.1. All contract related notices required hereunder shall be in writing and be deemed given when mailed certified U.S. Mail, postage prepaid, to the address below:

If to Interline Brands (the "Company")

Interline Brands  
801 W. Bay Street  
Jacksonville, FL 32258  
Attn: [Mark Allen, Merchandising Manager Import Sourcing]

If to \_\_\_\_\_ (the Supplier")

Name, Title \_\_\_\_\_  
Supplier Company Name \_\_\_\_\_  
Supplier Street Address \_\_\_\_\_  
City State Zip \_\_\_\_\_

19. AUTHORITY

19.1. Supplier represents and warrants that the person executing this Agreement on its behalf has full right and authority to enter into this Agreement on Supplier's behalf.

IN WITNESS WHEREOF, the Company and the Supplier have caused this Agreement to be executed by their duly authorized representatives as of the effective date.

Interline Brands  
The Company

Brian C Wertheimer  
Authorized Signature

Brian C Wertheimer  
Printed Name

International Plumbing Products  
Title

7/15/05  
Date

MTD (USA) Corp.  
Supplier Company Name (Print)

[Signature]  
Authorized Signature

Chen Zheng  
Printed Name (English)

President  
Title

6/3/05  
Date

**This agreement goes into affect for all companies in the corporation and any new companies that may be procured in the future.**

**Note: This original form must be signed and not a retyped version. Any change requires the consent of both parties.**

INT000083

**Vendor Rebate/Co-op Program Summary**

**Vendor:** MTD  
**Vendor #:** 13751

**Rebate:** 2% Rebate on all purchases \$0 - \$500,000  
3% Rebate on all purchases \$500,001 - \$1,000,000  
4% Rebate on all purchases \$1,000,001 - \$1,500,000  
5% Rebate on all purchases \$1,500,001 - \$2,000,000  
6% Rebate on all purchases \$2,000,001 and up.

**Co-op:** n/a

**Collection:** End of year check.

**Comments:**

800-286-2000  
www.e-Barnett.com

CONNECTORS

**DuraPro** NSF 61  
  
 STAINLESS STEEL  
 LAVATORY  
**WATER CONNECTOR**  
 NSF approved high temperature reinforced inner liner • 304 non-rust stainless steel braided jacket • 100% neoprene cone washer seal • Avoid premature bursting - 2500 psi burst pressure • Nickel plated brass fittings with solid brass inserts • Easy to install, can be hand tightened • Cone washer UPO bar code


**BONUS PAK #231232**  
ORDER IN MULTIPLES OF 25 AND PAY

3/4" COMP x 1/2" IP			
231230	12'	BULK	1/25
231231	15'	BULK	1/25
231232	20'	BULK	1/25
231265	48"	BULK	1/25
1/2" COMP x 1/2" IP			
231239	12'	BULK	1/25
231242	20'	BULK	1/25


**DuraPro** NSF 61  
  
 STAINLESS STEEL  
 TOILET TANK  
**WATER CONNECTOR**  
 NSF approved high temperature reinforced inner liner • 304 non-rust stainless steel braided jacket • 100% neoprene cone washer seal • Avoid premature bursting - 2500 psi burst pressure • Solid brass inserts • Easy to install, can be hand tightened • UPO bar code

**BONUS PAK #231271**  
ORDER IN MULTIPLES OF 25 AND PAY

3/4" COMP x 7/8" BALLCOCK NUT			
231270	9'	BULK	1/25
231271	12'	BULK	1/25
231274	16'	BULK	1/25
1/2" COMP x 7/8" BALLCOCK NUT			
231280	9'	BULK	1/25
231281	12'	BULK	1/25
231275	16'	BULK	1/25
1/2" IP x 7/8" BALLCOCK NUT			
231291	12'	BULK	1/25

**FLARE STAINLESS STEEL WATER CONNECTOR**  
  
 • NSF approved high temperature reinforced inner liner  
 • 304 non-rust stainless steel braided jacket • 100% neoprene cone washer seal • Avoid premature bursting - 2500 psi burst pressure  
 • Solid brass inserts • Easy to install, can be hand tightened

LAVATORY - 3/4" FLARE x 1/2" IPS			
231121	12'	BULK	1/25
231122	15'	BULK	1/25
231123	20'	BULK	1/25
TOILET - 3/4" FLARE x 7/8" BALLCOCK NUT (PLASTIC)			
231162	12'	BULK	1/25

**Fluidmaster** NSF 61  
  
**NO BURST TOILET TANK WATER CONNECTOR**  
 • Stainless steel • Stainless ferrules  
 • FDA and NSF 14 approved polymer inner core

3/4" COMP x 7/8" BC			
231362	9'	BULK	1/25
231364	12'	BULK	1/25
231367	16'	BULK	1/25
1/2" IP x 7/8" BC			
231382	12'	BULK	1/25

**DuraPro** NSF 61  
  
 STAINLESS STEEL  
 TOILET TANK  
**WATER CONNECTOR**  
 • NSF approved high temperature reinforced inner liner • 304 non-rust stainless steel braided jacket • 100% neoprene cone washer seal  
 • Avoid premature bursting - 2500 psi burst pressure • Solid brass inserts  
 • Easy to install, can be hand tightened • UPO bar code

3/4" COMP x 7/8" BALLCOCK NUT			
231272	9'	BULK	1/25
231273	12'	BULK	1/25

**Quality!**  
**Quantity!**  
**Price!**  
**We Have It**  
**All!**

CONNECTORS

PLAINTIFF'S EXHIBIT  
 NO. 6  
 Pengad 800-631-6969  
 5-13-19  
 Cangelosi

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**Document Preview**

Showing 1 of 1 pages

From: Mark Allen Sent: Wednesday, November 07, 2007 5:14 PM To: 'chenzheng\_mtd@hotmail.com'; Joe Cangelosi Subject: Re: MTD Supply Connectors

**Chen,**

Ok, thanks. Please forward the changes that were made to Joe's attention. Also please pay attention to the new issues described by Jeffery.

Thanks, Mark

-----Original Message-----From: **Chen Zheng** <chenzheng\_mtd@hotmail.com> To: Mark Allen Sent: Wed Nov 07 18:54:48 2007 Subject: RE: MTD Supply Connectors

Mark,

Thanks.

As for the design problem, we corrected it in Jan already. Now the problem occurs only from the old inventory. Thanks!

Sincerely,

**Chen Zheng**

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From: Mark Allen [mailto:mallen@interlinebrands.com] Sent: 2007?11?7? 10:32 To: **Chen Zheng** Cc: Wu Bo; John Ouyang Subject: RE: MTD Supply Connectors

**Chen,**

IBI 01126

I didn't think so. Please make sure all issues are communicated properly with our China office staff to ensure there are no misunderstandings. If there is a design flaw on the connectors, Dingbo must improve it immediately. We can not afford to have continued failures of these.

Thanks,

Mark Allen

Global Sourcing Director

Interline Brands

801 W Bay St

Jacksonville, FL 32204



Can you lean on Chen and have them pick up the pace on this development. We have begun to receive sporadic complaints about failing plastic ballcock nuts with MTD's connectors.

Anything you can do here would be greatly appreciated.

Thanks!

Joe Cangelosi

Quality Manager

Interline Brands

Voice: (904) 899-0138 x4324

Mobile: (904) 497-2690

Fax: (904) 389-7753

e-mail: <mailto:jcangelosi@interlinebrands.com> jcangelosi@interlinebrands.com

Visit our website at <<http://www.interlinebrands.com/>> <http://www.interlinebrands.com>

IBI 01129

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From: Jeffery Liu Sent: Wednesday, November 07, 2007 2:52 AM To: Joe Cangelosi Cc: Eddie Zuo Subject: RE: MTD Supply Connectors  
Importance: High

Dear Joe,

Eddie and I met with Mr .Chen & Ms. Wu of MTD in Shenzhen on Oct.16, and they promised to give us improved samples based on your direction three weeks later.

But now, as you know, three weeks had passed, no any feedback from MTD, so we had to think MTD's service after sale is very poor.....

Actually, we have been contacting MTD from Monday, and hope to get the improved samples earlier, today MTD finally told us the samples could be okay this weekend. but.....we still don't know this promise is true or false.....just as their promise three weeks before!!!

Sorry to keep you waiting the improved samples for so long time, we will forward the samples to you as soon as we get them from MTD.

We sincerely wish MTD could keep their promise and would not let us feel disappointed this time.....!!!

Thanks & Best Regards,

Jeffery

-----Original Message----- From: Joe Cangelosi Sent: 2007-11-6 (???) 10:48 To: Jeffery Liu Cc: Eddie Zuo Subject: RE: MTD Supply Connectors

Jeffery,

IBI 01130

We continue to receive complaints about failing plastic ballcock nuts (see attachment). I'm working on getting these back for analysis. In the interim, can you please provide a status for my request to upgrade the plastic ball cock nut design?

Thanks & best regards,

Joe Cangelosi



Quality Manager

Interline Brands

Voice: (904) 899-0138 x4324

Mobile: (904) 497-2690

Fax: (904) 389-7753

e-mail: <mailto:jcangelosi@interlinebrands.com> jcangelosi@interlinebrands.com

Visit our website at <http://www.interlinebrands.com/> http://www.interlinebrands.com

---

From: Jeffery Liu Sent: Wednesday, October 17, 2007 1:42 AM To: Joe Cangelosi Cc: Eddie Zuo Subject: RE: MTD Supply Connectors

Dear Joe,

Received the defective connector with thanks!

We've asked MTD to give us the authorization for the deduction, but don't get any feedback from MTD yet at the moment.

We are going to communicate with MTD furtherly, if there is any progress, we like to let you know at once.

Thanks & Best Regards,

IBI 01131

Jeffery

-----Original Message----- From: Joe Cangelosi Sent: 2007-10-12 (???) 13:48 To: Jeffery Liu Cc: Eddie Zuo Subject: FW: MTD Supply Connectors

Jeffery,

I'm sending a defective 231271 supply connector, supplied by MTD, to your attention today. There is a claim (#143) for \$8,135.00 USD associated with this failure.

Please coordinate review of the failure with the MTD and have them authorize deduction/payment as soon as possible.

Attached are copies of the customer's invoices.

Thanks!

Joe Cangelosi

Quality Manager

Interline Brands

Voice: (904) 899-0138 x4324

Mobile: (904) 497-2690

Fax: (904) 389-7753

e-mail: <mailto:jcangelosi@interlinebrands.com> jcangelosi@interlinebrands.com

Visit our website at <http://www.interlinebrands.com/> http://www.interlinebrands.com

IBI 01132

From: Joe Cangelosi Sent: Wednesday, October 10, 2007 7:40 AM To: Jeffery Liu Cc: Mark Allen; John Ouyang; Eddie Zuo; Jason Pepe Subject: MTD Supply Connectors

Jeffery,

I will be sending a 231271 SS closet connector to you in the next few days. There is a damage claim on this product for what looks to be a total of \$8,135 USD. All physical characteristics indicate this is an MTD connector. In this case the plastic ballcock nut failed, which led to the water damage. The failure was a separation of the upper portion of the nut, where the cap end meets the threaded riser.

In the interim, I would like ask you to do the following...

1. Effective as soon as possible for all future shipments, work with the supplier to have them begin to date code each data tag with the actual production date.

\* This code needs to be printed directly to the data tag. \* This needs to be done by year and week of production. \* This needs to be done for all water connectors (closet and lavatory)- both SS over-braided as well as braided poly.

2. Effective as soon as possible for all future shipments, work with the supplier to have them begin to put a manufacturer's code on each data tag.

\* This code needs to be printed directly to the data tag. \* This can be part of the date code. \* This will allow us to track failures per manufacturer as well help us (and them) make identification should they ever change manufacturers. \* MTD must tell us who the codes are assigned to. \* This needs to be done for all water connectors (closet and lavatory)- both SS over-braided as well as braided poly.

3. Investigate as soon as possible, re-designing the plastic ballcock nuts with a more robust design that will resist over-tightening.

\* When you receive this sample, you will see the failure mode was that the material simply yielded under the vertical load of compression. \* This nuts does not show any tool marks but does show some permanent deformation of the cone washer indicating significant compression. This probably led to a latent stress failure.

4. Investigate as soon as possible, the possibility of modifying the plastic ballcock injection tooling to incorporate a statement to the top of the plastic ballcock nuts that states... "HAND TIGHTEN ONLY".

\* This text needs to be raised, not molded in (sunken). \* Text needs to be radial, bold, block type.

IBI 01133

If you have any questions, please let me know.

And... I understand that there will be costs to implement these modifications. We need to ask MTD and their supplier to pick these costs up. It doesn't take many \$8K claims for these changes to pay for themselves... It's ultimately in their best interest to do this.

Please review and advise.

Thanks!

Joe Cangelosi

Quality Manager

Interline Brands

Voice: (904) 899-0138 x4324

Mobile: (904) 497-2690

Fax: (904) 389-7753

e-mail: <mailto:jcangelosi@interlinebrands.com> jcangelosi@interlinebrands.com

Visit our website at <http://www.interlinebrands.com/> http://www.interlinebrands.com

IBI 01134

From: Joe Cangelosi Sent: Thursday, January 03, 2008 11:58 AM To: Jeffery Liu Cc: Mark Allen; John Ouyang; Eddie Zuo Subject: RE: MTD Supply Connectors

Attachments: FW: MTD Supply Connectors

Jeffery,

Mr. Chen is looking for documents for his insurance carrier for the two current closet connector claims (#143 & #144). I sent you all the paperwork I have for each claim. Can you please process with Chen ASAP.

Please advise.

Thanks! Joe Cangelosi Quality Manager Interline Brands Voice: (904) 899-0138 x4324 Mobile: (904) 497-2690 Fax: (904) 389-7753 e-mail: jcangelosi@interlinebrands.com <mailto:jcangelosi@interlinebrands.com> Visit our website at http://www.interlinebrands.com <http://www.interlinebrands.com>

-----Original Message-----From: Jeffery Liu Sent: Tuesday, December 11, 2007 11:20 PM To: Chen Zheng Cc: Mark Allen; John Ouyang; Joe Cangelosi; Eddie Zuo Subject: ??: MTD Supply Connectors Importance: High

Mr. Chen,

For these \$27,868 USD reimbursements, we have communicated with you for long time. However, everytime your reply was so disappointed that customers had already losted their patience. As you know, without customers, how can we do business with you again??? Please note that customer's claims for these \$27,868 USD reimbursements must be finished at once, we are going to deduct them from the payment of your previous shipments in next few days, which is expected to get your support and understanding again!!!

Thanks,

Jeffery \_\_\_\_\_

???: Chen Zheng (chenzheng\_mtd@hotmail.com) ?????: 200712?11? 10:12 ???: Jeffery Liu ???: 'Wu Bo'; Mark Allen ???: RE: MTD Supply Connectors

Jeffery,

IBI 01135

Please note that every part of the connector is made based on your drawing. It is your requirement to start the business. It is not us who designed the drawing. Before the business, we got your drawing and samples approved by you.

It is very important to maintain the good relationship with Interline since you are support us a lot for years. But please note that this year we could hardly make any money at the connectors because of material, RMB, and rebate. We should have made some money if we could increase our price in May. As a response to Ken's policy, we had to keep the price unbelievably low to support you. And actually the containers we shipped after May, which is about 10 containers of connectors, we were losing the money.

Please re-consider it. We have to work together to solve it. Thanks!

Sincerely, Chen Zheng

-----Original Message-----From: Jeffery Liu [mailto:jliu@interlinebrands.com] Sent: 200712?11? 2:21 To: Chen Zheng Cc: Eddie Zuo; John Ouyang; Joe Cangelosi; Mark Allen Subject: ??: MTD Supply Connectors Importance: High

Mr. Chen,

We don't agree with your assessment. When we sourced these, MTD's manufacturer was already making these and we didn't actually design them just verified performance. For these quality claims from customer, MTD must accept all reimbursements totaling \$27,868 USD.

I called you just now and your mobile was off, as Ms. Wu Bo said you were in USA at present. For meeting customer's requirements and maintaining good business relationship between us for the future, i hope get your agreements at once.

Thanks,

Jeffery

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???: Chen Zheng [chenzheng\_mtd@hotmail.com] ????: 2007?12?3? 20:50 ????: Jeffery Liu ??: 'Wu Bo' ??: RE: MTD Supply Connectors

Jeffery,

We are sorry that we can't agree with the reimbursement,

1. We made the connector according to your drawing, and all the samples were confirmed before the business.

IBI 01136

2. The problem caused by POM and NBR, which shown on your drawing.

3. We do not make any money this year for the connectors since Interline did not increase enough percentage for the rebate dropping, RMB and material.

Please kindly check the A/M matters and let me know. Thanks!

Sincerely, Chen Zheng

-----Original Message-----From: Jeffery Liu [mailto:jliu@interlinebrands.com] Sent: 2007?12?3? 20:24 To: chenzheng\_mtd@hotmail.com Cc: Joe Cangelosi; Carolyn Morris; John Ouyang; Eddie Zuo; Hully Lao; Celia Wu; bwu@zjmt.com.cn Subject: ??: MTD Supply Connectors Importance: High

Mr. Chen,

Do you agree the \$8,135 reimbursement for the failed closet connector? If we can't get any reply from you before 4 p.m. today, which means you have accepted this reimbursement.

Thanks for your support and understanding!!!

Jeffery 12-4

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???: Joe Cangelosi ????: 2007?12?3? 9:59 ????: Jeffery Liu ??: Eddie Zuo; Carolyn Morris ??: FW: MTD Supply Connectors

Jeffery,

Any status on the \$8,135 failed MTD closet connector nut claim...?

Please advise.

Thanks!

Joe Cangelosi Quality Manager Interline Brands Voice: (904) 899-0138 x4324 Mobile: (904) 497-2690 Fax: (904) 389-7753 e-mail:

IBI 01137

jcancelosi@interlinebrands.com <mailto:jcancelosi@interlinebrands.com> Visit our website at <http://www.interlinebrands.com><<http://www.interlinebrands.com/>>

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From: Carolyn Morris Sent: Monday, December 03, 2007 9:56 AM To: Joe Cangelosi Subject: RE: MTD Supply Connectors

Please provide update.

Thanks. Carolyn Morris Return and Allowance Manager 1-(800) 288-2000 Extension 4181 Fax: (904) 680-3624 [cmorris@interlinebrands.com](mailto:cmorris@interlinebrands.com)<<mailto:cmorris@interlinebrands.com>>

From: Joe Cangelosi Sent: Thursday, November 08, 2007 12:32 PM To: Jeffery Liu Cc: Eddie Zuo Subject: RE: MTD Supply Connectors

Jeffery,

Any status here...? The customer is inquiring about their claim (#143) for \$8,135 reimbursement. Please advise.

Thanks & best regards,

Joe Cangelosi Quality Manager Interline Brands Voice: (904) 899-0138 x4324 Mobile: (904) 497-2690 Fax: (904) 389-7753 e-mail: [jcancelosi@interlinebrands.com](mailto:jcancelosi@interlinebrands.com)<<mailto:jcancelosi@interlinebrands.com>> Visit our website at <http://www.interlinebrands.com><<http://www.interlinebrands.com/>>

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From: Jeffery Liu Sent: Wednesday, October 17, 2007 1:42 AM To: Joe Cangelosi Cc: Eddie Zuo Subject: RE: MTD Supply Connectors Dear Joe,

Received the defective connector with thanks! We've asked MTD to give us the authorization for the deduction, but don't get any feedback from MTD yet at the moment. We are going to communicate with MTD furtherly, if there is any progress, we like to let you know

IBI 01138

at once.

Thanks & Best Regards,

Jeffery

-----Original Message-----From: Joe Cangelosi Sent: 2007-10-12 (???) 13:48 To: Jeffery Liu Cc: Eddie Zuo Subject: FW: MTD Supply Connectors  
Jeffery,

I'm sending a defective 231271 supply connector, supplied by MTD, to your attention today. There is a claim (#143) for \$8,135.00 USD associated with this failure.

Please coordinate review of the failure with the MTD and have them authorize deduction/payment as soon as possible.

Attached are copies of the customer's invoices.

Thanks!

Joe Cangelosi Quality Manager Interline Brands Voice: (904) 899-0138 x4324 Mobile: (904) 497-2690 Fax: (904) 389-7753 e-mail: [jcancelosi@interlinebrands.com](mailto:jcancelosi@interlinebrands.com)<<mailto:jcancelosi@interlinebrands.com>> Visit our website at <http://www.interlinebrands.com><<http://www.interlinebrands.com/>>

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From: Joe Cangelosi Sent: Wednesday, October 10, 2007 7:40 AM To: Jeffery Liu Cc: Mark Allen; John Ouyang; Eddie Zuo; Jason Pepe Subject: MTD Supply Connectors Jeffery,

I will be sending a 231271 SS closet connector to you in the next few days. There is a damage claim on this product for what looks to be a total of \$8,135 USD. All physical characteristics indicate this is an MTD connector. In this case the plastic ballcock nut failed, which led to the water damage. The failure was a separation of the upper portion of the nut, where the cap end meets the threaded riser.

In the interim, I would like ask you to do the following..

1. Effective as soon as possible for all future shipments, work with the supplier to have them begin to date code each data tag with the actual production date.

\* This code needs to be printed directly to the data tag.

IBI 01139

\* This needs to be done by year and week of production. \* This needs to be done for all water connectors (closet and lavatory)- both SS over-braided as well as braided poly.

1. Effective as soon as possible for all future shipments, work with the supplier to have them begin to put a manufacturer's code on each data tag.

\* This code needs to be printed directly to the data tag. \* This can be part of the date code. \* This will allow us to track failures per manufacturer as well help us (and them) make identification should they ever change manufacturers. \* MTD must tell us who the codes are assigned to. \* This needs to be done for all water connectors (closet and lavatory)- both SS over-braided as well as braided poly.

1. Investigate as soon as possible, re-designing the plastic ballcock nuts with a more robust design that will resist over-tightening.

\* When you receive this sample, you will see the failure mode was that the material simply yielded under the vertical load of compression. \* This nuts does not show any tool marks but does show some permanent deformation of the cone washer indicating significant compression. This probably led to a latent stress failure.

1. Investigate as soon as possible, the possibility of modifying the plastic ballcock injection tooling to incorporate a statement to the top of the plastic ballcock nuts that states... "HAND TIGHTEN ONLY".

\* This text needs to be raised, not molded in (sunken). \* Text needs to be radial, bold, block type. If you have any questions, please let me know.

And... I understand that there will be costs to implement these modifications. We need to ask MTD and their supplier to pick these costs up. It doesn't take many \$8K claims for these changes to pay for themselves... It's ultimately in their best interest to do this.

Please review and advise.

Thanks!

Joe Cangelosi Quality Manager Interline Brands Voice: (904) 899-0138 x4324 Mobile: (904) 497-2690 Fax: (904) 389-7753 e-mail: [jcangelosi@interlinebrands.com](mailto:jcangelosi@interlinebrands.com) <<mailto:jcangelosi@interlinebrands.com>> Visit our website at <http://www.interlinebrands.com> <<http://www.interlinebrands.com/>>

IBI 01140

This attachment is now a shortcut and requires that you open the message first before opening the attachment.

IBI 01141

From: Mark Allen Sent: Tuesday, December 11, 2007 7:22 AM To: Chen Zheng; Jeffery Liu Cc: Wu Bo; John Ouyang; Eddie Zuo; Joe Cangelosi Subject: RE: MTD Supply Connectors

Chen,

We have always relied on the manufacturers to support the quality of their products. We QA the products as part of our due diligence, but we are not manufacturers and have never designed products. Dingbo was supplying connectors well before Interline started business with them & we have always held them accountable for maintaining the quality and responsibility for the products they produce. This is the same as all other manufacturers we buy from & is even stated in our agreements with you.

Regardless of the pricing and market conditions, it is imperative that the claims are honored. If not by Dingbo, then it should fall to your liability insurance.

Thanks, Mark

-----Original Message-----From: Chen Zheng [mailto:chenzheng\_mtd@hotmail.com] Sent: Tuesday, December 11, 2007 10:13 AM To: Jeffery Liu Cc: Wu Bo; Mark Allen Subject: RE: MTD Supply Connectors

Jeffery,

Please note that every part of the connector is made based on your drawing. It is your requirement to start the business. It is not us who designed the drawing. Before the business, we got your drawing and samples approved by you.

It is very important to maintain the good relationship with Interline since you are support us a lot for years. But please note that this year we could hardly make any money at the connectors because of material, RMB, and rebate. We should have made some money if we could increase our price in May. As a response to Ken's policy, we had to keep the price unbelievably low to support you. And actually the containers we shipped after May, which is about 10 containers of connectors, we were losing the money.

Please re-consider it. We have to work together to solve it. Thanks!

Sincerely, Chen Zheng

-----Original Message-----From: Jeffery Liu [mailto:jliu@interlinebrands.com] Sent: 2007?12?11? 2:21 To: Chen Zheng Cc: Eddie Zuo; John Ouyang; Joe Cangelosi; Mark Allen

IBI 01142

Subject: ??: MTD Supply Connectors Importance: High

Mr. Chen,

We don't agree with your assessment. When we sourced these, MTD's manufacturer was already making these and we didn't actually design them just verified performance. For these quality claims from customer, MTD must accept all reimbursements totaling \$27,868 USD.

I called you just now and your mobile was off, as Ms. Wu Bo said you were in USA at present. For meeting customer's requirements and maintaining good business relationship between us for the future, i hope get your agreements at once.

Thanks,

Jeffery

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???: Chen Zheng [chenzheng\_mtd@hotmail.com] ????: 2007?12?3? 20:50 ???: Jeffery Liu ??: Wu Bo' ??: RE: MTD Supply Connectors

Jeffery,

We are sorry that we can't agree with the reimbursement,

1. We made the connector according to your drawing, and all the samples were confirmed before the business.
2. The problem caused by POM and NBR, which shown on your drawing.
3. We do not make any money this year for the connectors since Interline did not increase enough percentage for the rebate dropping, RMB and material.

Please kindly check the A/M matters and let me know. Thanks!

Sincerely, Chen Zheng

-----Original Message-----From: Jeffery Liu (mailto:jlui@interlinebrands.com) Sent: 2007?12?3? 20:24 To: chenzheng\_mtd@hotmail.com Cc: Joe Cangelosi; Carolyn Morris; John Ouyang; Eddie Zuo; Hully Lao; Celia Wu; bwu@zjmttd.com.cn Subject: ??: MTD Supply Connectors Importance: High

IBI 01143

Mr. Chen,

Do you agree the \$8,135 reimbursement for the failed closet connector? If we can't get any reply from you before 4 p.m. today, which means you have accepted this reimbursement.

Thanks for your support and understanding!!!

Jeffery 12-4

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???: Joe Cangelosi ????: 2007?12?3? 9:59 ??: Jeffery Liu ??: Eddie Zuo; Carolyn Morris ??: FW: MTD Supply Connectors

Jeffery,

Any status on the \$8,135 failed MTD closet connector nut claim...?

Please advise.

Thanks!

Joe Cangelosi Quality Manager Interline Brands Voice: (904) 899-0138 x4324 Mobile: (904) 497-2690 Fax: (904) 389-7753 e-mail: jcangelosi@interlinebrands.com <mailto:jcangelosi@interlinebrands.com> Visit our website at <http://www.interlinebrands.com> <<http://www.interlinebrands.com/>>

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From: Carolyn Morris Sent: Monday, December 03, 2007 9:56 AM To: Joe Cangelosi Subject: RE: MTD Supply Connectors

Please provide update.

Thanks. Carolyn Morris Return and Allowance Manager 1-(800) 288-2000 Extension 4181 Fax: (904) 680-3624 cmorris@interlinebrands.com <mailto:cmorris@interlinebrands.com>

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From: Joe Cangelosi Sent: Thursday, November 08, 2007 12:32 PM

IBI 01144

To: Jeffery Liu Cc: Eddie Zuo Subject: RE: MTD Supply Connectors

Jeffery,

Any status here...? The customer is inquiring about their claim (#143) for \$8,135 reimbursement. Please advise.

Thanks & best regards,

Joe Cangelosi Quality Manager Interline Brands Voice: (904) 899-0138 x4324 Mobile: (904) 497-2690 Fax: (904) 389-7753 e-mail: jcangelosi@interlinebrands.com <mailto:jcangelosi@interlinebrands.com> Visit our website at <http://www.interlinebrands.com> <<http://www.interlinebrands.com/>>

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From: Jeffery Liu Sent: Wednesday, October 17, 2007 1:42 AM To: Joe Cangelosi Cc: Eddie Zuo Subject: RE: MTD Supply Connectors Dear Joe,



Received the defective connector with thanks! We've asked MTD to give us the authorization for the deduction, but don't get any feedback from MTD yet at the moment. We are going to communicate with MTD furtherly, if there is any progress, we like to let you know at once.

Thanks & Best Regards,

Jeffery

-----Original Message-----From: Joe Cangelosi Sent: 2007-10-12 (???) 13:48 To: Jeffery Liu Cc: Eddie Zuo Subject: FW: MTD Supply Connectors  
Jeffery,

I'm sending a defective 231271 supply connector, supplied by MTD, to your attention today. There is a claim (#143) for \$8,135.00 USD associated with this failure.

Please coordinate review of the failure with the MTD and have them authorize deduction/payment as soon as possible.

IBI 01145

Attached are copies of the customer's invoices.

Thanks!

Joe Cangelosi Quality Manager Interline Brands Voice: (904) 899-0138 x4324 Mobile: (904) 497-2690 Fax: (904) 389-7753 e-mail: jcangelosi@interlinebrands.com <mailto:jcangelosi@interlinebrands.com> Visit our website at <http://www.interlinebrands.com><<http://www.interlinebrands.com/>>

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From: Joe Cangelosi Sent: Wednesday, October 10, 2007 7:40 AM To: Jeffery Liu Cc: Mark Allen; John Ouyang; Eddie Zuo; Jason Pepe Subject: MTD Supply Connectors Jeffery,

I will be sending a 231271 SS closet connector to you in the next few days. There is a damage claim on this product for what looks to be a total of \$8,135 USD. All physical characteristics indicate this is an MTD connector. In this case the plastic ballcock nut failed, which led to the water damage. The failure was a separation of the upper portion of the nut, where the cap end meets the threaded riser.

In the interim, I would like ask you to do the following...

1. Effective as soon as possible for all future shipments, work with the supplier to have them begin to date code each data tag with the actual production date.

\* This code needs to be printed directly to the data tag. \* This needs to be done by year and week of production. \* This needs to be done for all water connectors (closet and lavatory)- both SS over-braided as well as braided poly.

1. Effective as soon as possible for all future shipments, work with the supplier to have them begin to put a manufacturer's code on each data tag.

\* This code needs to be printed directly to the data tag. \* This can be part of the date code. \* This will allow us to track failures per manufacturer as well help us (and them) make identification should they ever change manufacturers. \* MTD must tell us who the codes are assigned to. \* This needs to be done for all water connectors (closet and lavatory)- both SS over-braided as well as braided poly.

1. Investigate as soon as possible, re-designing the plastic ballcock nuts with a more robust design that will resist over-tightening.

IBI 01146

\* When you receive this sample, you will see the failure mode was that the material simply yielded under the vertical load of compression. \* This nuts does not show any tool marks but does show some permanent deformation of the cone washer indicating significant compression. This probably led to a latent stress failure.

1. Investigate as soon as possible, the possibility of modifying the plastic ballcock injection tooling to incorporate a statement to the top of the plastic ballcock nuts that states... "HAND TIGHTEN ONLY".

\* This text needs to be raised, not molded in (sunken). \* Text needs to be radial, bold, block type. If you have any questions, please let me know.

MS

From: **Chen Zheng** [mailto:chenzheng\_mtd@hotmail.com] Sent: Wednesday, November 07, 2007 10:21 AM To: Mark Allen Cc: 'Wu Bo'; John Ouyang Subject: RE: **MTD** Supply Connectors

Mark,

I do not think there is any problem, and Wu Bo would not refuse to supply the approval list, as I know she is working on it. I believe there is a misunderstanding. Please do not think it is a trouble blocking our cooperation. Thanks!

As for the recent Ding Bo's defective, I think there is a design 'failure' cause POM can't work NBR together. Please kindly check your drawing about it. Thanks.

Sincerely,

**Chen Zheng**

IBI 01127

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From: Mark Allen [mailto:mallen@interlinebrands.com] Sent: 2007?11?7? 10:04 To: **Chen Zheng** Subject: FW: **MTD** Supply Connectors Importance: High

**Chen,**

Is there a problem that I should know about? In addition to the QA complaints mentioned here, John mentioned last week that **MTD** "refused" to provide product approval listings after our QA requested them. This is not the service we expect from **MTD**. Please advise.

Also, the quality complaints on the connectors are not going to help Dingbo's request for the increase. Please make sure they expedite the improvements.

Thanks,

Mark Allen

Global Sourcing Director

Interline Brands

801 W Bay St

Jacksonville, FL 32204

Ph. 904-384-6530 ext. 5465

IBI 01128

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From: Joe Cangelosi Sent: Wednesday, November 07, 2007 6:58 AM To: Mark Allen Subject: FW: **MTD** Supply Connectors Importance: High

Mark,

We are trying to increase the pattern on the **MTD** plastic closet nuts on their closet connectors and we are getting more open-ended promises from **Chen**.

There definitely seems to be a pattern with **MTD**... as Jeffery puts it "... after sale service is very poor..."

And... I understand that there will be costs to implement these modifications. We need to ask MTD and their supplier to pick these costs up. It doesn't take many \$8K claims for these changes to pay for themselves... It's ultimately in their best interest to do this.

Please review and advise.

Thanks!

Joe Cangelosi Quality Manager Interline Brands Voice: (904) 899-0138 x4324 Mobile: (904) 497-2690 Fax: (904) 389-7753 e-mail: [jcangelosi@interlinebrands.com](mailto:jcangelosi@interlinebrands.com) <<mailto:jcangelosi@interlinebrands.com>> Visit our website at <http://www.interlinebrands.com> <<http://www.interlinebrands.com/>>

IBI 01147

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

NATIONAL SURETY CORPORATION, ) Civil Action No.: 2:13-cv-06461-KM-MCA  
as subrogee of Kevin and Doris Hurley, )  
)  
Plaintiff, )  
)  
vs. )  
)  
MTD (USA) CORPORATION )  
)  
and )  
)  
INTERLINE BRANDS, INC., )  
)  
Defendants. )

DEFENDANTS' ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES  
AND RESPONSES TO PLAINTIFF'S REQUESTS FOR PRODUCTION

GENERAL OBJECTIONS

1. We object to any request for discovery, instruction and/or definition to the extent it seeks to impose obligations beyond those set forth in the applicable Rules of Court, any applicable laws, any Court Order, or other legal obligations.
2. We object to any request for discovery, instruction and/or definition to the extent that calls for discovery protected by the attorney-client privilege, attorney work-product doctrine, self-critical analysis, or any other applicable privilege, law or rule. All privileges are asserted to their fullest extent and no statement herein or any corresponding response to discovery shall constitute a waiver thereof.
3. We object to any request for discovery to the extent that information and/or documents sought or not reasonably calculated to lead to the discovery of admissible evidence.
4. We object to any discovery requested to the extent that it is overly broad, unduly burdensome, calls for undue expense, time and/or effort under these circumstances applicable to this litigation.
5. Discovery is objected to the extent that any request seeks information or documentation that is a matter of public record, that is in the custody, care and/or control of third parties, or that is at least equally available to those seeking it and/or

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obtainable from another source that is more convenient, less burdensome or less expensive.

6. We assert a continuing objection to any request for discovery where a response is offered, in whole or in part, and no objection should be duly waived for this reason.
7. We object to any definitions, especially those that refer to any persons or entities other than this answering party. Any request for discoveries is objected to if it is directed to other parties in this litigation and not specifically the answering party. Discoveries supplied will only be based on those documents within the possession, custody or control of this answering party if documents are, in fact, produced herewith.
8. We object to any requests for discovery to the extent that it calls for the disclosure of confidential, proprietary, secrets, financial, commercially protected, and/or non-public information.
9. We object to any discovery to the extent that it is protected by the joint defense privilege or the deliberative process privilege or the extent that it relates to privilege settlement communications and/or offers of compromise and/or litigation strategy and/or confidential internal management communications and/or subject to any other privilege, doctrine, exemption or immunity.
10. We object to any discovery to the extent that a request for documents or information purports to serve as a continuing request and this party does not accept any condition that such request for discovery is continuing and this party will undertake no duty to supplement his responses other than as required by the applicable Rules of Court.

All responses to the discovery set forth to the discovery requested herein are made without waiver of any rights or privileges, but instead with the specific intent to preserve the following:

1. All questions as to competency, relevancy, materiality, privilege and admissibility for any purpose in any subsequent proceeding, the trial of this action, or any other action.
2. The right to object on grounds of relevance, hearsay, or any other proper ground to the use of any of these responses or documents, or the subject matter thereof, in any subsequent proceeding, the trial of this action, or any other acts.
3. The right to object on any grounds at any time to a demand for further responses to these or any other discovery proceedings involving or relating to the subject matter of these requests herein answered.
4. The right at any time to advise, correct, supplement, clarify, and/or amend the responses and objections set forth herein.

## DEFENDANTS' ANSWERS TO INTERROGATORIES

**INTERROGATORY NO. 1:** Please identify those persons believed by you, your agents, representatives, employees or attorneys to have information regarding facts or circumstances relating to the cause of the subject incident with a description of what information such person is believed to have.

**ANSWER:** Objection to this extent this Interrogatory requests attorney-client privileged information or the opinions of experts beyond the scope of the applicable Rules. Without waiver, if the data tag on the subject coupling nut is authentic and original to the product, the following persons may have information related to the product:

1. Joseph Cangelosi, III, Interline Brands, Inc., (IBI) Quality Assurance Manager. Mr. Cangelosi has information and knowledge concerning IBI's involvement with the DuraPro flexible water supply line.
2. Zheng Chen, MTD (USA) Corporation, President. Mr. Chen has information and knowledge concerning MTD's involvement with the DuraPro water supply line.
3. Employees at Zhejiang Dingbo Plumbing Manufacturing Co., Ltd., 1 Long Shen Industrial Zone, Shifu Road, Wenzho China, 0086-577-8899-5101 or 0086-577-8866-8928
4. All other persons identified by the parties to date in their Initial Disclosures or otherwise during discovery.

**INTERROGATORY NO. 2:** As to the subject coupling nut from which the leak is alleged in the Complaint to have originated, identify the manufacturer of the subject coupling nut (as the term "the subject coupling nut" is defined above).

**ANSWER:** If the data tag on the subject coupling nut is authentic and original to the product, the manufacturer is Zhejiang Dingbo Plumbing Manufacturing Co., Ltd., 1 Long Shen Industrial Zone, Shifu Road, Wenzho China, 0086-577-8899-5101 or 0086-577-8866-8928

**INTERROGATORY NO. 3:** As to the subject coupling nut from which the leak is alleged in the Complaint to have originated, identify the transactions involved in all sales and deliveries of the subject coupling nut from the time it was slated for manufacture to the time of the sale to the first retail purchaser, starting with the transactions between the entity that manufactured the subject coupling nut and the next purchaser(s) and continuing to the next series of sales and deliveries until reaching the last sale and delivery to the final owner. For point of reference, you should consult with such transactions/documents as production logs, daily sheets, contracts, contract terms, warnings, warranties, limitations, instructions, manuals, specifications, bills of lading, invoices, consignment sheets, manifests, delivery receipts, order forms, proposals, or labels that were on the container to the subject coupling nut or were stapled to or taped to or stuck to or affixed to toilet supply line or otherwise accompanied or were provided with toilet supply line prior to or at the time of or after the delivery of the subject coupling nut to the first retail purchaser.

**ANSWER:** Objection to the extent this request is overly broad and calls for documents outside the control of the answering Defendants. Without waiver, if the data tag on the subject coupling nut is authentic and original to the product, then MTD (USA) Corp. sold it to Interline Brands, Inc. (IBI) sometime after it was manufactured by Zhejiang Dingbo Plumbing Manufacturing Co., Ltd. Thereafter, it was purchased by other persons who remain unknown, including potentially the contractor(s) who installed the subject product into the Hurley home in or around 2007.

**INTERROGATORY NO. 4:** If you cannot or are unwilling to provide an actual exemplar of the toilet supply line and its coupling nut, which has been requested in the Request for Production below, state why you are unable or unwilling to provide same and set forth any information available to you on how to procure same for the purpose of giving Plaintiffs and their expert(s) an opportunity to inspect and/or test such exemplar.

**ANSWER:** If the data tag on the subject coupling nut is authentic and original to the product, then Answering Defendants no longer sell or distribute the same style DuraPro model # 231271, which is the subject of this action, and it is unknown to what extent exemplar products are still available elsewhere.

**INTERROGATORY NO. 5:** In view of your affirmative allegations signed by counsel on your behalf alleging that some persons, unrelated parties or entities other than Defendant caused or contributed to the cause of the subject incident, identify any person, unrelated party, or entity or evidence showing a cause or party other than those alleged in the Complaint upon which the allegations blaming others have been asserted in good faith.

**ANSWER:** Objection to this extent this Interrogatory requests attorney-client privileged information or the opinions of experts beyond the scope of the applicable Rules. Without waiver, if the data tag on the subject coupling nut is authentic and original to the product, answering Defendants are investigating improper installation of the subject water supply line, which is why they have requested from Plaintiff the names of the contractor(s) who installed it at Hurley home in or around 2007.

**INTERROGATORY NO. 6:** Identify any person, unrelated party, entity or evidence that would show that the subject incident happened in a way other than alleged in the Complaint.

**ANSWER:** Objection to this extent this Interrogatory requests attorney-client privileged information or the opinions of experts beyond the scope of the applicable Rules. Without waiver, if the data tag on the subject coupling nut is authentic and original to the product, answering Defendants suspect improper installation of the subject product warrants further investigation.

**INTERROGATORY NO. 7:** Identify the person or team of persons or the entity or teams of entities that designed and/or patented the design of the subject coupling nut, including the patent number if any.

**ANSWER:** Objection to the extent this Interrogatory seeks the discovery of information outside the custody, care and/or control of the answering Defendants. Without waiver, unknown to the answering Defendants.

**INTERROGATORY NO. 8:** Identify the materials comprising and the grade of the polymer for the subject coupling nut.

**ANSWER:** Objection to the extent this Interrogatory seeks the discovery of information outside the custody, care and/or control of the answering Defendants. Without waiver, the exact materials and grade of polymer are unknown to the answering Defendants.

**INTERROGATORY NO. 9:** Identify and describe the process whereby the subject coupling nut would have been placed into a mold in liquid form and then hardened and/or cured and then examined and/or tested to determine if it was of sufficient quality to be used, including the quality control procedures that were used during the process to assure that the product as molded would not have impurities, voids, or any other condition that would tend to increase its chances of cracking during use.

**ANSWER:** Objection to the extent this Interrogatory is overly broad and seeks the discovery of information outside the custody, care and/or control of the answering Defendants. Without waiver, unknown to the answering Defendants.

**INTERROGATORY NO. 10:** If the quality control process that was used to form and determine the quality of the subject coupling nut is a quality control process that is the subject of certification or recognition in the industry (for example, the ISO 9001 certification process), please identify and describe that process and how that process is the subject of certification or recognition in the industry.

**ANSWER:** Objection to the extent this Interrogatory seeks the discovery of information outside the custody, care and/or control of the answering Defendants. Without waiver, if the data tag on the subject coupling nut is authentic and original to the product, the product was UPC certified by IAPMO, and subject to the requirements of ASME A112.18.6.

**INTERROGATORY NO. 11:** If a plastic coupling substantially similar to the subject coupling nut has ever been examined, inspected or tested for its ability to withstand water pressure and/or external forces either by you or by an independent organization (such as Underwriters Laboratories or Intertech or IAPMO Research & Testing Lab or International Approval Services (IAS) or any other company, person or entity), identify all inspections and testing, all persons or entities that performed such examination or inspection or testing and they dates of such examinations or inspections or and testing, and the results of such examinations or inspections or testing.



**ANSWER:** Objection to the extent this Interrogatory seeks the discovery of information outside the custody, care and/or control of the answering Defendants. Without waiver, if the data tag on the subject coupling nut is authentic and original to the product, the product was UPC certified by IAPMO, and subject to the requirements of ASME A112.18.6.

**INTERROGATORY NO. 12:** Identify any occasion of which you are aware in which a person or entity has claimed (either to you or to other persons or entities of which you are now aware) that a product substantially similar to the subject coupling nut was defective in that the water flowed through a crack in plastic coupling nut where it fractured at the base of the threaded portion.

**ANSWER:** Objection to the extent this Interrogatory is overly broad and seeks the discovery of information that is readily available publicly. Without waiver, litigation is pending in the State of New Jersey under the following dockets: Docket No.: ATL-L-845-13; Docket No.: ATL-L-303-13; Docket No.: ATL-L-1941-13; Docket No.: ATL-L-1942-13; Docket No. ATL-L-1944-13; Docket No.: ATL-L-219-13; Docket No.: ATL-L-7652-12; Docket No.: ATL-L-7653-12; ATL-L-216-13; Docket No.: ATL-L-452-14. Litigation is also pending in other venues, including Texas where National Surety is named as Plaintiff.

**INTERROGATORY NO. 13:** Identify any changes subsequent to the sale of the subject coupling nut that have been made to products substantially similar to the subject coupling nut to reduce the chances of water flowing from the plastic coupling nut.

**ANSWER:** Objection to the extent this Interrogatory is overly broad and seeks the discovery of information outside the custody, care and/or control of the answering Defendants. Without waiver, the current DuraPro model # 231271 has a different pattern plastic nut having two additional ribs added between the bi-wings.

**INTERROGATORY NO. 14:** Identify all of the parts that comprise the toilet supply line of which the subject coupling nut was a part, and a full description of all documents depicting these parts, including but not limited to diagrams, schematics, and part description sheets (including documents that would show the call-out bubble or circle for such part numbers).

**ANSWER:** Objection to the extent this Interrogatory is overly broad and seeks the discovery of information outside the custody, care and/or control of the answering Defendants. Without waiver, DuraPro model # 231271 includes a compression nut, washers, hose, crimp, ferrule, ballcock nut and other components.

**INTERROGATORY NO. 15:** If you are not the original manufacturer but you were in the line of distribution of the sale of the subject coupling nut, and if when you delivered the subject coupling nut you also delivered an express written warranty and/or disclaimer on that product, please describe whether and to what extent the manufacturer authorized you to extend this warranty and/or disclaimer to prospective purchasers.

**ANSWER:** Defendant Interline does not receive nor distribute individual plastic toilet supply line coupling nuts similar to the one at issue in this lawsuit. Further, Defendant Interline does not offer a warranty on its toilet supply lines. Defendant Interline does guarantee our merchandise to be free of defect in workmanship and material for one year from the date of purchase.

**INTERROGATORY NO. 16:** If you have not been able to identify the manufacturer of the subject coupling nut, identify any differences between the similar products that you have sold or manufactured and the remains of the subject coupling nut with regard to any measurable, physical standard (e.g., length; width; circumference; weight; mass; shape; chemical composition; type, amount, and nature of component parts; and other measurable physical characteristics).

**ANSWER:** Not applicable.

**INTERROGATORY NO. 17:** If you are unable to identify the manufacturer or seller of the subject coupling nut and you have reason to suspect that an entity other than you manufactured or sold the subject coupling nut, please identify manufacturers or sellers, other than you, of products similar to the subject coupling nut.

**ANSWER:** Not applicable.

**INTERROGATORY NO. 18:** Please provide the identity of those dealers or distributors or vendors or sellers that from 2003 to 2013 was authorized to sell one of your coupling nuts or toilet supply lines and the terms of any agreements between your company and the dealer or distributor or vendor or seller by which they were authorized to sell such products.

**ANSWER:** DuraPro is a private brand of Interline Brands, Inc. MTD (USA) Corp. sold DuraPro model # 231271 to Interline Brands, Inc. from 2005-2013 pursuant to an Import Partnership Agreement dated July 5, 2005.

**INTERROGATORY NO. 19:** Identify any and all policies of insurance which you contend cover or may cover you for the allegations set forth in Plaintiff's Complaint, detailing as to such policies: the name of the insurer; number of the policy; the effective dates of the policy; the available limits of liability; and the name and address of the custodian of the policy.

**ANSWER:** AIG general liability policy for Interline Brands, Inc. (with limits of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate) is in the custody of Salmon, Ricchezza, Singer & Turchi, LLP.

## **DEFENDANTS' RESPONSES TO REQUESTS FOR PRODUCTION**

1. As to the subject coupling nut from which the leak is alleged in the Complaint to have originated, please produce documents that would show or lead to the identity of the person or entity that manufactured the subject coupling nut.

**RESPONSE:** Objection to the extent this Request is vague or seeks the production of documents that are either attorney-client or work product privileged. Without waiver, Answering defendants are not in possession of any responsive documents as this request is understood.

2. As to toilet supply line of which the subject coupling nut was a part, produce copies of all documents that would comprise or reference or lead to information regarding the transactions involved in all from the time its component parts were slated for manufacture to the time of the sale to the first retail purchaser, starting with the transactions between the entity that manufactured the subject coupling nut and/or other parts of the subject toilet supply line and the next purchaser(s) and continuing to the next series of sales and deliveries until reaching the last sale and delivery by you. Such documents would include production logs, daily sheets, contracts, contract terms, warnings, warranties, limitations, instructions, manuals, specifications, bills of lading, invoices, consignment sheets, manifests, delivery receipts, order forms, proposals, or labels that were on the container to the subject toilet supply line or were stapled to or taped to or stuck to or affixed to the subject toilet supply line or otherwise accompanied or were provided with the subject toilet supply line prior to or at the time of or after the delivery of the subject toilet supply line to the first retail purchaser.

**RESPONSE:** Objection to the extent this Request is vague, overly broad, unduly burdensome, requests documents outside the control of answering Defendants or seeks the production of documents that are either attorney-client or work product privileged. Without waiver, if the data tag on the subject coupling nut is authentic and original to the product, Plaintiff is referred to the documentation still affixed to the subject product itself along with the Import Partnership Agreement dated July 5, 2005 produced with answering Defendants Initial Disclosures.

3. Provide the documents what would tend to show the stages of production and sale of the toilet supply line of which the subject coupling nut was a part, including information from the time the toilet supply line was first assembled and continuing to the date that the toilet supply line was sold and delivered to the first retail purchaser, including the production logs and any other documents that would show inspections that were performed during and between those stages to assure that all parts of the subject toilet supply line, including the subject coupling nut, were correctly formed, assembled, and functional.

**RESPONSE:** Objection to the extent this Request is vague, overly broad, unduly burdensome, requests documents outside the control of answering Defendants or seeks the production of documents that are either attorney-client or work product privileged. Without waiver, if the data tag on the subject coupling nut is authentic and original to the product, Plaintiff is referred to the documentation still affixed to the subject product itself

along with the Import Partnership Agreement dated July 5, 2005 produced with answering Defendants Initial Disclosures.

4. In view of your affirmative allegations signed by counsel on your behalf alleging that some persons or unrelated parties or entities other than Defendant caused or contributed to the cause of the subject incident, produce all documents, items, or things that would tend to show a cause or party other than those alleged in the Complaint upon which the allegations blaming others have been asserted in good faith.

**RESPONSE:** Objection to the extent this Request is premature or seeks the production of documents that are either attorney-client or work product privileged, including those containing the opinions of consulting experts.

5. Produce any document or evidence that would show that the subject incident happened in a way other than alleged in the Complaint.

**RESPONSE:** Objection to the extent this Request is premature or seeks the production of documents that are either attorney-client or work product privileged, including those containing the opinions of consulting experts.

6. Produce documents reflecting the identities of the persons or entities that designed the subject coupling nut, including but not limited to any patent applications or grants.

**RESPONSE:** Objection to the extent this Request is premature or seeks the production of documents that are either attorney-client or work product privileged. Without waiver, Answering defendants are not in possession of any responsive documents at this time.

7. Produce the materials safety data sheet(s) for the materials comprising the polymer used to manufacture the plastic coupling nut.

**RESPONSE:** Answering Defendants are not in possession of responsive documents at this time.

8. Produce copies of any documents comprising or referring to any Technical Service Bulletins (TSBs), Special Service Messages (SSMs), Internal Service Messages (ISM), and Field Review Committee (FRC) files that you have received or become aware of in the past ten years as to the safety of ability of coupling nuts substantially similar to the subject coupling nut to withstand water pressures under normal and abuse scenarios.

Objection to the extent this Request is overly broad and requests documents outside the control of answering Defendants or seeks the production of documents that are either attorney-client or work product privileged. Without waiver, Answering defendants are not in possession of responsive documents as this Request is understood.

9. Provide documents which mention, describe, or in any way refer to a claim of a failure of a coupling nut substantially similar to the subject coupling nut.

**RESPONSE:** Objection to the extent this Request is overly broad, unduly burdensome, seeks the discovery of information that is readily available publicly, requests documents outside the control of answering Defendants or seeks the production of documents that are either attorney-client or work product privileged. Without waiver, please see the Answer to Interrogatory No. 12.

10. If a plastic coupling nut substantially similar to the subject coupling nut has ever been examined, inspected or tested for its ability to withstand water pressure and/or external forces either by you or by an independent organization (such as Underwriters Laboratories or Intertech or IAMPO Research & Testing Lab or International Approval Services (IAS) any other company, person or entity), produce copies of all documents comprising or showing or leading to the production of documents showing all inspections and testing; all persons or entities that performed such examination or inspection or testing; the dates such examinations, inspections, and testing were done; and the results of such examinations, inspections, and testing.

**RESPONSE:** Objection to the extent this Request is overly broad, unduly burdensome, requests documents outside the control of answering Defendants or seeks the production of documents that are either attorney-client or work product privileged. Without waiver, Answering Defendants are not in possession of responsive documents at this time.

11. Please provide documents comprising, referencing or showing any laboratory test results of the use of a plastic coupling nut substantially similar to the subject coupling nut under normal and abuse scenarios, including failures due aging, temperature variation, cycling variation, pressure, including Mean Time Between Failure (MTBF).

**RESPONSE:** Objection to the extent this Request is overly broad, unduly burdensome, requests documents outside the control of answering Defendants or seeks the production of documents that are either attorney-client or work product privileged. Without waiver, Answering Defendants are not in possession of responsive documents at this time.

12. Please provide the documents, items, artifacts, or other tangible things or tangible evidence compromising any design and development manuals, memos, emails, PowerPoints, DVDs, CDs, or other documents that discuss the steps that your company follows in the design and development of products including the subject coupling nut.

**RESPONSE:** Not applicable to the answering Defendants.

13. Please provide the documents, items, artifacts, or other tangible things or tangible evidence compromising any operations and/or procedures manuals, memos, emails, PowerPoints, DVDs, CDs, or other documents that discuss the steps that your company follows in the operations and/or procedures for manufacturing products including the subject coupling nut.

**RESPONSE:** Not applicable to the answering Defendants.

14. Please provide the documents, items, artifacts, or other tangible things or tangible evidence compromising any quality control manuals, memos, emails, PowerPoints, DVDs, CDs, or other documents that discuss the steps that your company follows in the operations and/or procedures for determining the quality of products including the subject product.

**RESPONSE:** Objection to the extent this Request is ambiguous, overly broad, requests documents outside the control of answering Defendants or seeks the production of documents that are either attorney-client or work product privileged. Without waiver, Answering defendants are not in possession of any responsive documents as this Request is understood.

15. Please provide the documents, items, artifacts, or other tangible things or tangible evidence compromising any design and development manuals or materials, or operations or procedures manuals or materials, or quality control manuals or materials that cite to or apply ISO 9001.

**RESPONSE:** Objection to the extent this Request is ambiguous, overly broad, requests documents outside the control of answering Defendants or seeks the production of documents that are either attorney-client or work product privileged. Without waiver, Answering defendants are not in possession of any responsive documents as this Request is understood.

**RESPONSE:**

16. Please provide the documents, items, artifacts, or other tangible things or tangible evidence reflecting any tests or inspections made on any models of the subject coupling nut during the design stage of the model of the subject coupling nut.

**RESPONSE:** Objection to the extent this Request seeks production of documents outside the control of answering Defendants. Without waiver, Answering defendants are not in possession of any responsive documents.

17. Please provide the documents, items, artifacts, or other tangible things or tangible evidence reflecting any tests or inspections made on any models of the subject coupling nut that were done to assure that the product in question would be safe in its design and manufacture.

**RESPONSE:** Objection to the extent this Request seeks production of documents outside the control of answering Defendants. Without waiver, Answering defendants are not in possession of any responsive documents.

18. Please provide the documents, items, artifacts, or other tangible things or tangible evidence reflecting any tests or inspections made on any models of the subject coupling nut that were done to minimize the chances of errors in the manufacturing and assembling processes for the subject coupling nut.

**RESPONSE:** Objection to the extent this Request seeks production of documents outside the control of answering Defendants. Without waiver, Answering defendants are not in possession of any responsive documents.

19. Please provide the documents, items, artifacts, or other tangible things or tangible evidence reflecting any tests or inspections made on the subject coupling nut after its manufacture and assembly but prior to its delivery to the first purchaser of the product.

**RESPONSE:** Objection to the extent this Request is vague or seeks production of documents outside the control of answering Defendants. Without waiver, Answering defendants are not in possession of any responsive documents as this Request is understood.

20. Please provide documents comprising, referencing or showing any videos and digital media related to testing of a plastic coupling nut substantially similar to the subject coupling nut under normal and abuse scenarios.

**RESPONSE:** Objection to the extent this Request seeks production of documents outside the control of answering Defendants. Without waiver, Answering defendants are not in possession of any responsive documents.

21. Please provide documents comprising, referencing or showing any float logic diagrams pertaining to a plastic coupling nut substantially similar to the subject coupling nut.

**RESPONSE:** Objection to the extent this Request seeks production of documents outside the control of answering Defendants. Without waiver, Answering defendants are not in possession of any responsive documents.

22. Provide copies of all pleadings filed by all parties and every legal proceeding arising within the last 10 years, which involved allegations of any malfunction of or defect to a product similar to the subject coupling nut leading to water flowing through a crack in plastic coupling nut.

**RESPONSE:** Objection to the extent this Request is overly broad, unduly burdensome and seeks the discovery of information that is readily available publicly. Without waiver, Plaintiff is referred to Interrogatory answer No. 12 for docket information on point.

23. Provide copies of all expert reports prepared in the course of legal proceeding and which was produced by another party prior to trial or during trial which contained or referred to an allegation of a failure of a coupling nut substantially similar to the subject coupling nut.

**RESPONSE:** Objection to the extent this Request is overly broad, seeks disclosure of documentation subject to confidentiality, seeks information available from third-parties through the exercise of subpoena power or seeks the discovery of documents no longer in the possession of answering Defendants.

24. Produce copies of documents comprising or referencing any communications (whether received via online reporting or via email, letter, memo, or phone call or other communication) from an owner or plumber or dealer or supplier or insurer or adjuster or attorney or government entity or any other person or entity received by you in the past 10 years wherein it was reported or alleged that there was a malfunction of or defect to a product similar to the subject coupling nut leading to water flowing through a crack in a plastic coupling nut.

**RESPONSE:** Objection to the extent this Request is vague, overly broad, unduly burdensome, requests documents outside the control of answering Defendants or seeks the production of documents that are either attorney-client or work product privileged. Without waiver, Answering defendants are not in possession of any responsive documents as this Request is understood.

25. Please provide any and all documents reflecting any evidence that any person or entity sent any safety recall notices to the owner(s) of toilet supply lines substantially similar to the toilet supply line of which the subject coupling nut was a part that warned of the potential for a water leak.

**RESPONSE:** Objection to the extent this Request is overly broad, requests documents outside the control of answering Defendants or seeks the production of documents that are either attorney-client or work product privileged. Without waiver, Answering defendants are not in possession of any responsive documents as this Request is understood.

26. Please provide any and all documents reflecting any evidence that any person or entity sent any communication or other form of information to the owner of the subject coupling nut that warned of the potential for cracking at the plastic coupling nut.

**RESPONSE:** Objection to the extent this Request is overly broad, requests documents outside the control of answering Defendants or seeks the production of documents that are either attorney-client or work product privileged. Without waiver, Answering defendants are not in possession of any responsive documents.

27. Produce documents that would depict the parts that comprise the toilet supply line, of which the subject coupling nut was a part, including but not limited to diagrams, schematics, and part description sheets (including documents that would show the call-out bubble or circle for such part numbers).

**RESPONSE:** Objection to the extent this Request seeks production of documents outside the control of answering Defendants or seeks the production of documents that are either attorney-client or work product privileged. Without waiver, Answering defendants are not in possession of any responsive documents.

28. ~~Provide two~~ (2) actual exemplars of the subject coupling nut or provide information sufficient to allow Plaintiffs to procure access to same for the purpose of inspecting and/or testing same.



**RESPONSE:** Objection to the extent this Request seeks production of items outside the control of answering Defendants and/or exist in very limited supply. By way of further response, please see answer to Interrogatory No. 4.

29. Please produce color copies of any photographs, diagrams, charts, maps, plats, schematics, drawings, motion picture, videotape, DVD, CD, or other depictions of things pertaining to any fact or issue involved in this controversy.

**RESPONSE:** Objection to the extent this Request is vague, overly broad, requests documents outside the control of answering Defendants or seeks the production of documents that are either attorney-client or work product privileged. Without waiver, Answering defendants are not in possession of any responsive documents as this Request is understood.

30. Produce a copy of all policies of insurance which you contend cover or may cover you for the allegations set forth in plaintiff's complaint.

**RESPONSE:** Objection to the extent this Request calls for or implies a legal conclusion related to coverage available to the answering Defendants. Without waiver, please see the attached AIG general liability policy for Interline Brands, Inc.

31. Please produce documents comprising, referring to, or leading to the discovery of any reservation of rights letters that you have received from your liability insurance carrier(s).

**RESPONSE:** Answering Defendants are not in possession of responsive documents.

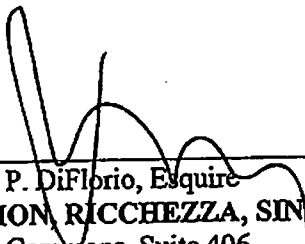
32. Please provide a copy of all documents that your liability carrier(s) have provided to you regarding liability coverage for the incident in question.

**RESPONSE:** Answering Defendants are not in possession of responsive documents.

33. Please produce any agreements you have or have had with anyone which you believe absolves you from liability or limits your liability for the damages claimed by Plaintiff.

**RESPONSE:** Objection to the extent this Request calls for or implies a legal conclusion related to coverage available to the answering Defendants. Without waiver, please see the attached Import Partnership Agreement between Interline Brands, Inc. and MTD (USA) Corp. dated July 5, 2005.

By:

  
\_\_\_\_\_  
Marco P. DiFlorio, Esquire  
**SALMON, RICCHEZZA, SINGER & TURCHI, LLP**  
Tower Commons, Suite 406  
123 Egg Harbor Road  
Sewell, NJ 08080  
(856) 354-8074  
[mdiflorio@srstlaw.com](mailto:mdiflorio@srstlaw.com)

Attorneys for Defendants,  
MTD (USA) Corporation and Interline Brands, Inc.

Dated: 4-24-14

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

NATIONAL SURETY CORPORATION, )  
as subrogee of Kevin and Doris Hurley, )  
 )  
Plaintiff, )

vs. )

MTD (USA) CORPORATION )  
 )  
and )  
 )  
INTERLINE BRANDS, INC., )  
 )  
Defendants. )

Civil Action No.: 2:13-cv-06461-KM-MCA

**AMENDED NOTICE OF DEPOSITION AND REQUEST FOR PRODUCTION TO MTD  
(USA) CORPORATION PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE  
RULE 30(b)(2) AND (6)**

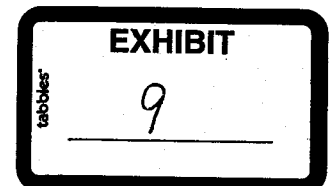
TO: Defendant MTD (USA) CORPORATION, by and through its counsel of record, Marco P. DiFlorio, Esq., Salmon, Ricchezza, Singer & Turchi LLP, 123 Egg Harbor Road, Suite 406, Sewell, NJ 08080

PLEASE TAKE NOTICE that Plaintiff NATIONAL SURETY CORPORATION as subrogee of Kevin and Doris Hurley ("Plaintiff"), by and through its attorneys, pursuant to the provisions of Fed. R. Civ. P. 30(b)(2) and (6) hereby notices the videotaped deposition of the Corporate Representative of Defendant MTD (USA) Corporation, as follows:

WITNESS: Zheng Chen, or other duly designated corporate representative of Defendant MTD (USA) Corporation as per the requirements hereinafter stated within this Notice of Deposition

DATE and TIME: May 22, 2014 at a Mutually Convenient Time

PLACE: Representative will be in China and counsel will be at Magna Legal Services, 1635 Market Street, 8<sup>th</sup> Floor, Philadelphia, PA 19103



The deposition will be recorded by stenographic means and will be taken by an officer duly authorized by law to administer oaths and take depositions. The deposition also will be videotaped. The deposition will continue from day to day until completed. You are invited to attend and cross-examine.

**PLEASE TAKE FURTHER NOTICE** that pursuant to Fed. R. Civ. P. 30(b)(2) and (6) Defendant MTD (USA) Corporation shall produce the documents and things identified within Exhibit "A", and designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf as to the matters identified in Exhibit "A", which is attached hereto and incorporated herein by reference for all purposes.

DATED: May 2, 2014

/s/ Daniel C. Theveny  
Daniel C. Theveny, Esq.  
Cozen O'Connor  
Liberty View, Suite 300  
457 Haddonfield Road  
Cherry Hill, New Jersey 8002  
(215) 665-4194  
dtheveny@cozen.com  
Attorneys for Plaintiff National Surety  
Corporation

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2<sup>nd</sup> day of May 2014, a true and correct copy of the above and foregoing document was served on the following counsel of record electronically and via regular U.S. mail:

Marco P. DiFlorio, Esquire  
Salmon, Ricchezza, Singer & Turchi LLP  
123 Egg Harbor Road  
Suite 406  
Sewell, NJ 08080  
Tel: 856-354-8074  
mdiflorio@srstlaw.com  
*Attorneys for Defendant MTD (USA) Corporation and  
Defendant MTD (USA) Corporation*

s/ Daniel C. Theveny  
Daniel C. Theveny

Exhibit "A"  
Areas of Testimony

1. Communications between Interline Brands, Inc. and MDT (USA) Corporation concerning the design, specifications, labeling, warnings, installation instructions, packaging, marketing and product testing of DuraPro Model #231271 toilet tank connectors.
2. Communications between MDT (USA) Corporation and product manufacturers concerning the design, specifications, labeling, warnings, installation instructions, packaging, marketing and product testing of DuraPro Model #231271 toilet tank connectors,
3. Other claims and lawsuits against MDT (USA) Corporation involving alleged failures of DuraPro model # 231271 toilet tank connectors that have occurred within the past eight (8) years.
4. Design of DuraPro Model #231271 toilet tank connectors.
5. Labeling of DuraPro Model #231271 toilet tank connectors.
6. Installation instructions for DuraPro Model #231271 toilet tank connectors.
7. Warnings for DuraPro Model #231271 toilet tank connectors.
8. Product specifications for DuraPro Model #231271 toilet tank connectors.
9. Testing of DuraPro Model #231271 toilet tank connectors.
10. Marketing of DuraPro Model #231271 toilet tank connectors.
11. MDT (USA) Corporation's involvement in and/or approval of the selection of manufacturers of DuraPro Model #231271 toilet tank connectors.
12. MDT (USA) Corporation's decision to change manufacturers of DuraPro Model #231271 toilet tank connectors over the past eight (8) years.

Documents to be Produced

- (13) Any and all documents, including plans, schematics, diagrams, sketches, specifications, test results, product studies, photographs, video recordings, audio recordings, warnings, instructions, packaging, marketing material, labeling, correspondence, memoranda, e-mail communications, pleadings, discovery, and also including any of the foregoing kept or maintained in electronic format, and in any way related to the Areas of Testimony (1) through (12) identified above.

From: Mark Allen  
Sent: Wednesday, November 07, 2007 5:14 PM  
To: 'chenzheng\_mtd@hotmail.com'; Joe Cangelosi  
Subject: Re: MTD Supply Connectors

Chen,

Ok, thanks. Please forward the changes that were made to Joe's attention. Also please pay attention to the new issues described by Jeffery.

Thanks,  
Mark

-----Original Message-----

From: Chen Zheng <chenzheng\_mtd@hotmail.com>  
To: Mark Allen  
Sent: Wed Nov 07 18:54:48 2007  
Subject: RE: MTD Supply Connectors

Mark,

Thanks.

As for the design problem, we corrected it in Jan already. Now the problem occurs only from the old inventory. Thanks!

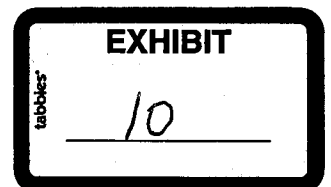
Sincerely,

Chen Zheng

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From: Mark Allen [mailto:mallen@interlinebrands.com]  
Sent: 2007-11-07 10:32  
To: Chen Zheng  
Cc: Wu Bo; John Ouyang  
Subject: RE: MTD Supply Connectors

Chen,



IBI 01126

I didn't think so. Please make sure all issues are communicated properly with our China office staff to ensure there are no misunderstandings. If there is a design flaw on the connectors, Dingbo must improve it immediately. We can not afford to have continued failures of these.

Thanks,

Mark Allen

Global Sourcing Director

Interline Brands

801 W Bay St

Jacksonville, FL 32204

Ph. 904-384-6530 ext. 5465

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From: Chen Zheng [mailto:chenzheng\_mtd@hotmail.com]  
Sent: Wednesday, November 07, 2007 10:21 AM  
To: Mark Allen  
Cc: 'Wu Bo'; John Ouyang  
Subject: RE: MTD Supply Connectors

Mark,

I do not think there is any problem, and Wu Bo would not refuse to supply the approval list, as I know she is working on it. I believe there is a misunderstanding. Please do not think it is a trouble blocking our cooperation. Thanks!

As for the recent Ding Bo's defective, I think there is a design 'failure' cause POM can't work NBR together. Please kindly check your drawing about it. Thanks.

Sincerely,

Chen Zheng



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From: Mark Allen [mailto:mallen@interlinebrands.com]  
Sent: 2007-11-27 10:04  
To: Chen Zheng  
Subject: FW: MTD Supply Connectors  
Importance: High

Chen,

Is there a problem that I should know about? In addition to the QA complaints mentioned here, John mentioned last week that MTD "refused" to provide product approval listings after our QA requested them. This is not the service we expect from MTD. Please advise.

Also, the quality complaints on the connectors are not going to help Dingbo's request for the increase. Please make sure they expedite the improvements.

Thanks,

Mark Allen

Global Sourcing Director

Interline Brands

801 W Bay St

Jacksonville, FL 32204

Ph. 904-384-6530 ext. 5465

---

From: Joe Cangelosi  
Sent: Wednesday, November 07, 2007 6:58 AM  
To: Mark Allen  
Subject: FW: MTD Supply Connectors  
Importance: High

Mark,

We are trying to increase the pattern on the MTD plastic closet nuts on their closet connectors and we are getting more open-ended promises from Chen.

There definitely seems to be a pattern with MTD... as Jeffery puts it "... after sale service is very poor...".

Can you lean on Chen and have them pick up the pace on this development. We have begun to receive sporadic complaints about failing plastic ballcock nuts with MTD's connectors.

Anything you can do here would be greatly appreciated.

Thanks!

Joe Cangelosi

Quality Manager

Interline Brands

Voice: (904) 899-0138 x4324

Mobile: (904) 497-2690

Fax: (904) 389-7753

e-mail: <<mailto:jcangelosi@interlinebrands.com>> [jcangelosi@interlinebrands.com](mailto:jcangelosi@interlinebrands.com)

Visit our website at <<http://www.interlinebrands.com/>> <http://www.interlinebrands.com>

---

From: Jeffery Liu  
Sent: Wednesday, November 07, 2007 2:52 AM  
To: Joe Cangelosi  
Cc: Eddie Zuo  
Subject: RE: MTD Supply Connectors  
Importance: High

Dear Joe,

Eddie and I met with Mr.Chen & Ms. Wu of MTD in Shenzhen on Oct.16, and they promised to give us improved samples based on your direction three weeks later.

But now, as you know, three weeks had passed, no any feedback from MTD, so we had to think MTD's service after sale is very poor.....

Actually, we have been contacting MTD from Monday , and hope to get the improved samples earlier, today MTD finally told us the samples could be okay this weekend. but.....we still don't know this promise is true or false.....just as their promise three weeks before!!!

Sorry to keep you waiting the improved samples for so long time, we will forward the samples to you as soon as we get them from MTD.

We sincerely wish MTD could keep their promise and would not let us feel disappointed this time.....!!!

Thanks & Best Regards,

Jeffery

-----Original Message-----

From: Joe Cangelosi  
Sent: 2007-11-6 (???) 10:48  
To: Jeffery Liu  
Cc: Eddie Zuo  
Subject: RE: MTD Supply Connectors

Jeffery,

We continue to receive complaints about failing plastic ballcock nuts (see attachment). I'm working on getting these back for analysis. In the interim, can you please provide a status for my request to upgrade the plastic ball cock nut design?

Thanks & best regards,

Joe Cangelosi

Quality Manager

Interline Brands

Voice: (904) 899-0138 x4324

Mobile: (904) 497-2690

Fax: (904) 389-7753

e-mail: <<mailto:jcangelosi@interlinebrands.com>> [jcangelosi@interlinebrands.com](mailto:jcangelosi@interlinebrands.com)

Visit our website at <<http://www.interlinebrands.com/>> <http://www.interlinebrands.com>

---

From: Jeffery Liu  
Sent: Wednesday, October 17, 2007 1:42 AM  
To: Joe Cangelosi  
Cc: Eddie Zuo  
Subject: RE: MTD Supply Connectors

Dear Joe,

Received the defective connector with thanks!

We've asked MTD to give us the authorization for the deduction, but don't get any feedback from MTD yet at the moment.

We are going to communicate with MTD furtherly, if there is any progress, we like to let you know at once.

Thanks & Best Regards,

Jeffery

-----Original Message-----

From: Joe Cangelosi  
Sent: 2007-10-12 (???) 13:48  
To: Jeffery Liu  
Cc: Eddie Zuo  
Subject: FW: MTD Supply Connectors

Jeffery,

I'm sending a defective 231271 supply connector, supplied by MTD, to your attention today. There is a claim (#143) for \$8,135.00 USD associated with this failure.

Please coordinate review of the failure with the MTD and have them authorize deduction/payment as soon as possible.

Attached are copies of the customer's invoices.

Thanks!

Joe Cangelosi

Quality Manager

Interline Brands

Voice: (904) 899-0138 x4324

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e-mail: <<mailto:jcangelosi@interlinebrands.com>> [jcangelosi@interlinebrands.com](mailto:jcangelosi@interlinebrands.com)

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---

From: Joe Cangelosi  
Sent: Wednesday, October 10, 2007 7:40 AM  
To: Jeffery Liu  
Cc: Mark Allen; John Ouyang; Eddie Zuo; Jason Pepe  
Subject: MTD Supply Connectors

Jeffery,

I will be sending a 231271 SS closet connector to you in the next few days. There is a damage claim on this product for what looks to be a total of \$8,135 USD. All physical characteristics indicate this is an MTD connector. In this case the plastic ballcock nut failed, which led to the water damage. The failure was a separation of the upper portion of the nut, where the cap end meets the threaded riser.

In the interim, I would like ask you to do the following...

1. Effective as soon as possible for all future shipments, work with the supplier to have them begin to date code each data tag with the actual production date.

- \* This code needs to be printed directly to the data tag.
- \* This needs to be done by year and week of production.
- \* This needs to be done for all water connectors (closet and lavatory)- both SS over-braided as well as braided poly.

2. Effective as soon as possible for all future shipments, work with the supplier to have them begin to put a manufacturer's code on each data tag.

- \* This code needs to be printed directly to the data tag.
- \* This can be part of the date code.
- \* This will allow us to track failures per manufacturer as well help us (and them) make identification should they ever change manufacturers.
- \* MTD must tell us who the codes are assigned to.
- \* This needs to be done for all water connectors (closet and lavatory)- both SS over-braided as well as braided poly.

3. Investigate as soon as possible, re-designing the plastic ballcock nuts with a more robust design that will resist over-tightening.

- \* When you receive this sample, you will see the failure mode was that the material simply yielded under the vertical load of compression.
- \* This nuts does not show any tool marks but does show some permanent deformation of the cone washer indicating significant compression. This probably led to a latent stress failure.

4. Investigate as soon as possible, the possibility of modifying the plastic ballcock injection tooling to incorporate a statement to the top of the plastic ballcock nuts that states... "HAND TIGHTEN ONLY".

- \* This text needs to be raised, not molded in (sunken).
- \* Text needs to be radial, bold, block type.

If you have any questions, please let me know.

And... I understand that there will be costs to implement these modifications. We need to ask MTD and their supplier to pick these costs up. It doesn't take many \$8K claims for these changes to pay for themselves... It's ultimately in their best interest to do this.

Please review and advise.

Thanks!

Joe Cangelosi

Quality Manager

Interline Brands

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Visit our website at <<http://www.interlinebrands.com/>> <http://www.interlinebrands.com>

From: Joe Cangelosi  
Sent: Thursday, January 03, 2008 11:58 AM  
To: Jeffery Liu  
Cc: Mark Allen; John Ouyang; Eddie Zuo  
Subject: RE: MTD Supply Connectors

Attachments: FW: MTD Supply Connectors



Joe Cangelosi  
Quality Manager  
Interline Brands  
Voice: (904) 899-0138 x4324  
Mobile: (904) 497-2690  
Fax: (904) 389-7753  
e-mail: jcangelosi@interlinebrands.com <mailto:jcangelosi@interlinebrands.com>  
Visit our website at <http://www.interlinebrands.com> <http://www.interlinebrands.com>

-----Original Message-----

From: Jeffery Liu  
Sent: Tuesday, December 11, 2007 11:20 PM  
To: Chen Zheng  
Cc: Mark Allen; John Ouyang; Joe Cangelosi; Eddie Zuo  
Subject: ??: MTD Supply Connectors  
Importance: High

Mr. Chen,

For these \$27,868 USD reimbursements, we have communicated with you for long time. However, everytime your reply was so disappointed that customers had already losted their patience. As you know, without customers, how can we do business with you again???

Please note that customer's claims for these \$27,868 USD reimbursements must be finished at once, we are going to deduct them from the payment of your previous shipments in next few days, which is expected to get your support and understanding again!!!

Thanks,

Jeffery

---

???: Chen Zheng [chenzheng\_mtd@hotmail.com]  
???: 2007?12?11? 10:12  
???: Jeffery Liu  
?: 'Wu Bo'; Mark Allen  
?: RE: MTD Supply Connectors

Jeffery,



Please note that every part of the connector is made based on your drawing. It is your requirement to start the business. It is not us who designed the drawing. Before the business, we got your drawing and samples approved by you.

It is very important to maintain the good relationship with Interline since you are support us a lot for years. But please note that this year we could hardly make any money at the connectors because of material, RMB, and rebate. We should have made some money if we could increase our price in May. As a response to Ken's policy, we had to keep the price unbelievably low to support you. And actually the containers we shipped after May, which is about 10 containers of connectors, we were losing the money.

Please re-consider it. We have to work together to solve it. Thanks!

Sincerely,  
Chen Zheng

-----Original Message-----

From: Jeffery Liu [mailto:jliu@interlinebrands.com]  
Sent: 2007-12-11 2:21  
To: Chen Zheng  
Cc: Eddie Zuo; John Ouyang; Joe Cangelosi; Mark Allen  
Subject: ??: MTD Supply Connectors  
Importance: High

Mr. Chen,

We don't agree with your assessment. When we sourced these, MTD's manufacturer was already making these and we didn't actually design them just verified performance. For these quality claims from customer, MTD must accept all reimbursements totaling \$27,868 USD.

I called you just now and your mobile was off, as Ms. Wu Bo said you were in USA at present. For meeting customer's requirements and maintaining good business relationship between us for the future, i hope get your agreements at once.

Thanks,

Jeffery

---

???: Chen Zheng [chenzheng\_mtd@hotmail.com]  
????: 2007-12-31 20:50  
???: Jeffery Liu  
?: 'Wu Bo'  
?: RE: MTD Supply Connectors

Jeffery,

We are sorry that we can't agree with the reimbursement,

1. We made the connector according to your drawing, and all the samples were confirmed before the business.

2. The problem caused by POM and NBR, which shown on your drawing.

3. We do not make any money this year for the connectors since Interline did not increase enough percentage for the rebate dropping, RMB and material.

Please kindly check the A/M matters and let me know. Thanks!

Sincerely,  
Chen Zheng

-----Original Message-----

From: Jeffery Liu [mailto:jliu@interlinebrands.com]

Sent: 2007?12?3? 20:24

To: chenzheng\_mtd@hotmail.com

Cc: Joe Cangelosi; Carolyn Morris; John Ouyang; Eddie Zuo; Hully Lao; Celia Wu; bwu@zjmtd.com.cn

Subject: ??: MTD Supply Connectors

Importance: High

Mr. Chen,

Do you agree the \$8,135 reimbursement for the failed closet connector?

If we can't get any reply from you before 4 p.m. today, which means you have accepted this reimbursement.

Thanks for your support and understanding!!!

Jeffery 12-4

---

???: Joe Cangelosi

????: 2007?12?3? 9:59

???: Jeffery Liu

?: Eddie Zuo; Carolyn Morris

?: FW: MTD Supply Connectors

Jeffery,

Any status on the \$8,135 failed MTD closet connector nut claim...?

Please advise.

Thanks!

Joe Cangelosi

Quality Manager

Interline Brands

Voice: (904) 899-0138 x4324

Mobile: (904) 497-2690

Fax: (904) 389-7753

e-mail:

jcangelosi@interlinebrands.com<mailto:jcangelosi@interlinebrands.com>  
Visit our website at  
<http://www.interlinebrands.com><<http://www.interlinebrands.com/>>

---

From: Carolyn Morris  
Sent: Monday, December 03, 2007 9:56 AM  
To: Joe Cangelosi  
Subject: RE: MTD Supply Connectors

Please provide update.

Thanks.  
Carolyn Morris  
Return and Allowance Manager  
1-(800) 288-2000 Extension 4181  
Fax: (904) 680-3624  
cmorris@interlinebrands.com<mailto:cmorris@interlinebrands.com>

---

From: Joe Cangelosi  
Sent: Thursday, November 08, 2007 12:32 PM  
To: Jeffery Liu  
Cc: Eddie Zuo  
Subject: RE: MTD Supply Connectors

Jeffery,

Any status here...? The customer is inquiring about their claim (#143) for \$8,135 reimbursement. Please advise.

Thanks & best regards,

Joe Cangelosi  
Quality Manager  
Interline Brands  
Voice: (904) 899-0138 x4324  
Mobile: (904) 497-2690  
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e-mail:  
jcangelosi@interlinebrands.com<mailto:jcangelosi@interlinebrands.com>  
Visit our website at  
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---

From: Jeffery Liu  
Sent: Wednesday, October 17, 2007 1:42 AM  
To: Joe Cangelosi  
Cc: Eddie Zuo  
Subject: RE: MTD Supply Connectors

Dear Joe,

Received the defective connector with thanks!

We've asked MTD to give us the authorization for the deduction, but don't get any feedback from MTD yet at the moment.

We are going to communicate with MTD furtherly, if there is any progress, we like to let you know

at once.

Thanks & Best Regards,

Jeffery

-----Original Message-----

From: Joe Cangelosi  
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To: Jeffery Liu  
Cc: Eddie Zuo  
Subject: FW: MTD Supply Connectors  
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Please coordinate review of the failure with the MTD and have them authorize deduction/payment as soon as possible.

Attached are copies of the customer's invoices.

Thanks!

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Interline Brands  
Voice: (904) 899-0138 x4324  
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jcangelosi@interlinebrands.com<mailto:jcangelosi@interlinebrands.com>  
Visit our website at  
<http://www.interlinebrands.com><<http://www.interlinebrands.com/>>

---

From: Joe Cangelosi  
Sent: Wednesday, October 10, 2007 7:40 AM  
To: Jeffery Liu  
Cc: Mark Allen; John Ouyang; Eddie Zuo; Jason Pepe  
Subject: MTD Supply Connectors  
Jeffery,

I will be sending a 231271 SS closet connector to you in the next few days. There is a damage claim on this product for what looks to be a total of \$8,135 USD. All physical characteristics indicate this is an MTD connector. In this case the plastic ballcock nut failed, which led to the water damage. The failure was a separation of the upper portion of the nut, where the cap end meets the threaded riser.

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1. Investigate as soon as possible, re-designing the plastic ballcock nuts with a more robust design that will resist over-tightening.

- \* When you receive this sample, you will see the failure mode was that the material simply yielded under the vertical load of compression.
- \* This nuts does not show any tool marks but does show some permanent deformation of the cone washer indicating significant compression. This probably led to a latent stress failure.

1. Investigate as soon as possible, the possibility of modifying the plastic ballcock injection tooling to incorporate a statement to the top of the plastic ballcock nuts that states... "HAND TIGHTEN ONLY".

- \* This text needs to be raised, not molded in (sunken).
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- If you have any questions, please let me know.

And... I understand that there will be costs to implement these modifications. We need to ask MTD and their supplier to pick these costs up. It doesn't take many \$8K claims for these changes to pay for themselves... It's ultimately in their best interest to do this.

Please review and advise.

Thanks!

Joe Cangelosi  
Quality Manager  
Interline Brands  
Voice: (904) 899-0138 x4324  
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Fax: (904) 389-7753  
e-mail:  
jcangelosi@interlinebrands.com<mailto:jcangelosi@interlinebrands.com>  
Visit our website at  
<http://www.interlinebrands.com><<http://www.interlinebrands.com>/>

This attachment is now a shortcut and requires that you open the message first before opening the attachment.

From: Mark Allen  
Sent: Tuesday, December 11, 2007 7:22 AM  
To: Chen Zheng; Jeffery Liu  
Cc: 'Wu Bo'; John Ouyang; Eddie Zuo; Joe Cangelosi  
Subject: RE: MTD Supply Connectors

Chen,

We have always relied on the manufacturers to support the quality of their products. We QA the products as part of our due diligence, but we are not manufacturers and have never designed products. Dingbo was supplying connectors well before Interline started business with them & we have always held them accountable for maintaining the quality and responsibility for the products they produce. This is the same as all other manufacturers we buy from & is even stated in our agreements with you.

Regardless of the pricing and market conditions, it is imperative that the claims are honored. If not by Dingbo, then it should fall to your liability insurance.

Thanks,  
Mark

-----Original Message-----

From: Chen Zheng [mailto:chenzheng\_mtd@hotmail.com]  
Sent: Tuesday, December 11, 2007 10:13 AM  
To: Jeffery Liu  
Cc: 'Wu Bo'; Mark Allen  
Subject: RE: MTD Supply Connectors

Jeffery,

Please note that every part of the connector is made based on your drawing. It is your requirement to start the business. It is not us who designed the drawing. Before the business, we got your drawing and samples approved by you.

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Please re-consider it. We have to work together to solve it. Thanks!

Sincerely,  
Chen Zheng

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From: Jeffery Liu [mailto:jliu@interlinebrands.com]  
Sent: 2007-12-11 2:21  
To: Chen Zheng  
Cc: Eddie Zuo; John Ouyang; Joe Cangelosi; Mark Allen

Subject: ??: MTD Supply Connectors  
Importance: High

Mr. Chen,

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For these quality claims from customer, MTD must accept all reimbursements totaling \$27,868 USD.

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Thanks,

Jeffery

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Cc: Joe Cangelosi; Carolyn Morris; John Ouyang; Eddie Zuo; Hully Lao; Celia Wu; bwu@zjmt.com.cn  
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Jeffery 12-4

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???: Joe Cangelosi  
????: 2007?12?3? 9:59  
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?: Eddie Zuo; Carolyn Morris  
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Jeffery,

Any status on the \$8,135 failed MTD closet connector nut claim...?

Please advise.

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Joe Cangelosi  
Quality Manager  
Interline Brands  
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Carolyn Morris  
Return and Allowance Manager  
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cmorris@interlinebrands.com<mailto:cmorris@interlinebrands.com>

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Subject: RE: MTD Supply Connectors

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Sent: Wednesday, October 10, 2007 7:40 AM  
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Cc: Mark Allen; John Ouyang; Eddie Zuo; Jason Pepe  
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Please review and advise.

Thanks!

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