UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re	:	Chapter 11
SPECIALTY PRODUCTS HOLDING CORP., *et al.*,[1]	:	Case No. 10-_____ (___)
	:	(Jointly Administered)
Debtors.	:	

INFORMATIONAL BRIEF OF THE DEBTORS

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[1] The Debtors are the following two entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Specialty Products Holding Corp. (0857); and Bondex International, Inc. (4125). The Debtors' address is 4515 St. Clair Avenue, Cleveland, Ohio 44103.

TABLE OF ATTACHMENTS

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Debtors Specialty Products Holding Corp. ("SPHC") and Bondex International, Inc. ("Bondex" and, together with SPHC, the "Debtors") have commenced these proceedings under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") to obtain a comprehensive and permanent resolution of their asbestos liability. This brief provides a short description of the Debtors' purported asbestos liability and a summary of the Debtors' approach to, and objectives in, these cases.

Background: Company History

In 1966, SPHC[2] purchased the assets of the Reardon Company, a Missouri enterprise that manufactured a line of patch and repair products, some of which contained asbestos. These products included joint compound[3] that contained a small amount of asbestos, and a basement sealant product called "Bondex" that contained no asbestos. Although SPHC made substantial changes in the Reardon business operations, it continued to manufacture and sell the product line until it formed Bondex as a wholly owned subsidiary. The assets and liabilities of the Reardon Division were transferred to Bondex at that time and Bondex continued to manufacture and sell these joint compound products containing limited amounts of asbestos until approximately 1977 and some

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2 Before the acquisition of the Reardon Company in 1966, SPHC (then known as Republic Powdered Metals, Inc., an Ohio Corporation) manufactured a line of roof coating and sealant products, some of which contained asbestos in an encapsulated form. SPHC continued production of the roof coating and sealant products as the Republic Powdered Metals Division until 1972, when SPHC transferred the assets and liabilities of that division to a non-operating entity known as Republic Powdered Metals, Inc. ("New Republic"). New Republic then produced most of these products, some of which contained asbestos into the 1980s. Because of their encapsulated nature, these roof coating products have never generated significant numbers of claims for asbestos-related disease.

3 Joint compounds are typically applied over the seams in wallboard to create a smooth appearance. Exposures for all practical purposes occurred only when (a) mixing a dry powder compound with water or (b) sanding the final layer to smooth the surface. Mixing exposures occurred only with the dry powder and not with the wet "pre-mix" product. Exposures could occur with clean-up depending on how that was accomplished.

other products that contained asbestos into the 1980s.[4] Bondex ceased all business operations in approximately 1999.

The Debtors Had a Fractional Share of the "Do-it-Yourself" Market.

The line of products manufactured and sold by SPHC and Bondex included many products that had no asbestos, and the ones that did generally had asbestos content in the range of three to seven percent, with one product containing just under 15 percent at certain times. The Debtors' products were sold to local hardware stores for ultimate sale in the home repair market. None of the Debtors' products was sold in any container larger than 25 pounds (dry) or five gallons (wet), and most product packages were much smaller for home do-it-yourself use. The Debtors did not participate in the commercial construction market, and, for example, did not sell product by the pallet-load as many of the larger companies did.

United States Gypsum Company ("USG") reported in a memorandum dated January 8, 1975[5] entitled "The Market and Our Position on Joint Treatment," that:

> [W]e estimate that we [USG] have some 30% of the joint compound market; Georgia Pacific approximately 20%; Proko perhaps 10%; National Gypsum 7%; Hamilton 4%; Welco 3%; Paco 3% and the balance shared by some 77 competitors probably none of which have as much as 2% of the market.

Thus, Bondex did not even make the USG listing, but was lumped with 77 other "competitors probably none of which have as much as 2% of the market." A study commissioned by the Debtors in 2005 in an attempt to understand the deluge of claims that occurred following bankruptcy filings of other defendants in 2000 and 2001 indicates

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4 A recent set of Bondex's responses to discovery that contains a product listing is included as Attachment A.

5 Memorandum from C.M. Howard, Jr. to S. Kurlandsky dated January 28, 1975, retrieved from the document archives at the USG Asbestos Trust, attached hereto as Attachment B.

that Reardon's and later the Debtors' share of the joint compound market during the period 1950-1975 ranged from 0.09% to 0.61%, with the most likely median market share being 0.29%.[6] As best as can be reconstructed, total sales of the asbestos-containing joint compound during the Debtors' 11-year production period (1966-77) likely did not exceed approximately $6.4 million.

The Debtors Complied with Applicable Regulations Regarding Warnings and Phased Asbestos Out of Their Joint Compound Products in Accordance with the Consumer Product Safety Commission Ban.

When federal regulations indicated that warnings should be applied to asbestos-containing products, Bondex placed the warning contained in the federal regulations on its joint compound products.[7]

After concerns regarding asbestos in joint compounds began to appear in the medical and scientific literature,[8] Bondex, in 1976, instituted an internal program to remove asbestos from its joint compound products and by mid-1977, Bondex joint compounds were free of asbestos.[9] When the Consumer Product Safety Commission (the "CPSC") was considering a ban on asbestos-containing joint compounds in 1977, Bondex was invited as a small manufacturer[10] to appear before the CPSC, and spoke in support of the ban. Bondex's only request of the CPSC was that it adopt a phased ban of asbestos-containing joint compounds that allowed stocks in hardware stores and similar outlets to be sold up to the date of the ban — a request that the CPSC found reasonable

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6 Bondex: Market Share Estimate Final Report dated August 23, 2005 (NERA Economic Consulting).

7 A photo of the product with a warning is attached as Attachment C (from a product package produced by a plaintiffs' counsel).

8 See, e.g., document at Attachment D.

9 See Memo from Julius Nemeth, President of Bondex, Attachment E.

10 Attachment F.

and, after considering all of the circumstances, adopted.[11] Bondex in all respects complied with the CPSC orders regarding the phasing out of asbestos-containing joint compound materials.

The Debtors Are Not "Newly Discovered" Entrants into the Tort System; They Are Just Newly Targeted.

Bondex was served with its first asbestos-related lawsuit in 1980. SPHC received its first asbestos-related lawsuit in 1992. Therefore, as early as 1980, even before the bankruptcy filing by Johns Manville, the world's largest vertically integrated asbestos producer, on August 26, 1982, plaintiffs' counsel in the asbestos litigation clearly knew that the Debtors existed and that they had manufactured and sold joint compound. Yet, during the 19-year period from 1980-1999, the Debtors paid a total of only $1.6 million in asbestos-related indemnity costs, demonstrating that before any major bankruptcy filing in the joint compound market, plaintiffs' counsel viewed the Debtors' joint compound products as a non-factor that played no material role in the causation of asbestos-related disease.[12] Significantly, even this relatively small amount of money ($1.6 million over 19 years, including third party insurance payments) represents to some extent inflated value because most of these claims arose after the Johns Manville bankruptcy filing and during the intervening bankruptcies of other asbestos giants, including Eagle-Picher, UNARCO and Celotex.[13]

Although the Debtors were named in a limited number of asbestos lawsuits prior to 1999, the floodgates opened after the asbestos bankruptcy wave of 2000-2001. As they had in the past, plaintiffs' counsel began searching for new sources

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11 Attachment G.

12 See Attachment H.

13 A listing of asbestos bankruptcies through 2005 is included in Attachment I.

of revenue to replace the payments that had up until that time come from then-bankrupt defendants, including USG. In the years following the USG bankruptcy, the Debtors' asbestos costs increased with a rapidity that is statistically and grossly out of proportion with any realistic assessment of Debtors' place in the joint compound market:[14]

From 1980-1999:	$1.6 million
Fiscal Year[15] 2000:	$8.2 million
Fiscal Year 2001:	$10.6 million
Fiscal Year 2002:	$43.0 million
Fiscal Year 2003:	$52.0 million
Fiscal Year 2004:	$63.0 million
Fiscal Year 2005:	$67.4 million
Fiscal year 2006:	$59.9 million
Fiscal year 2007:	$67.0 million
Fiscal year 2008:	$82.5 million
Fiscal year 2009:	$69.4 million
Fiscal year 2010:	$75.0 million

Additionally, since 2001, mesothelioma claims have increased against the Debtors substantially out of proportion to the incidence of mesothelioma filings in the tort system. This anomalous increase in mesothelioma filings again reflects over-naming or erroneous

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14 Through the first quarter of fiscal year 2004, third party insurers paid approximately 90% of Debtors' indemnity and defense costs. Accordingly, the Debtors' share of asbestos costs in fiscal years 2000 through 2004 was as follow:

Fiscal Year 2000:	$586,000
Fiscal Year 2001:	$2.3 million
Fiscal Year 2002:	$2.8 million
Fiscal Year 2003:	$6.7 million
Fiscal Year 2004:	$54 million

In 2003, certain insurers filed declaratory judgment actions alleging exhaustion of limits, and the Debtors filed their own declaratory judgment action disputing exhaustion. The insurers stopped paying claims in the summer of 2003, and the matter remains in litigation.

15 The Debtors' fiscal year runs from June 1 to May 31.

naming of the Debtors, as opposed to any realistic assessment of liability. The Debtors' mesothelioma filings, as compared with tort system filings of mesothelioma claims in general, demonstrate this striking difference:

Year	Tort System Meso Filings[16]	Meso Filings vs. Debtors
2001	1600	150
2002	1700	200
2003	1750	650
2004	1850	600
2005	1775	790
2006	1775	1100
2007	1600	975
2008	1650	1025
2009	1800	1125

Note: all numbers approximate.

As these figures demonstrate, while the tort system in general has experienced an approximate 12.5% increase in mesothelioma filings from 2001 to 2009, the Debtors, with their less than 1% historical market share, have experienced an increase of **685%** during that same time period. The backlog of mesothelioma claims against the Debtors currently exceeds 2,000. Many of these claims are clearly unjustified on a variety of factual, industrial hygiene, epidemiological and biostatistical grounds, including the following:

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[16] Charles H. Mullin, Ph.D. (Bates White, LLC), Current and Emerging Trends: Update on US Tort Filings, Perrin Conference, Beverly Hills CA February 25-26, 2010, Attachment J.

- The Debtors' virtually non-existent market share and low sales volume over time make the statistical likelihood that any given plaintiff was actually exposed to a Bondex product manufactured and sold by the Debtors exceedingly small.
- Naming practices of many plaintiffs' counsel appear to be without serious investigation or a reasonable belief that the plaintiff was exposed to the products of a particular defendant to a degree sufficient to induce that plaintiff's disease.
- Uncorroborated naming of the Debtors and others, and the current tendency that plaintiffs name each of the active joint compound defendants with virtually equal frequency regardless of the facts or circumstances, raise serious questions regarding the validity of the claims.
- A substantial volume of epidemiological study indicates that joint compound in general does not substantially cause or contribute to asbestos-related disease. The Debtors' products used predominantly if not exclusively shorter fiber chrysotile asbestos fiber,[17] which has been demonstrated statistically and epidemiologically to be at least 100 times less likely to cause a mesothelioma than amosite and perhaps 500 times less likely to cause a mesothelioma than crocidolite asbestos. The Debtors never used these two types of amphibole fibers, but many manufacturers of other types of products, including many who are now bankrupt, did. As a result, even assuming that the Debtors' joint compound products were used as alleged by the plaintiffs, when all the facts and circumstances of the

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17 Experts retained by plaintiffs' counsel have tested some of Debtors' joint treatment materials found years after manufacture and discovered very small, nearly trace levels of tremolite asbestos, which is in the same family of minerals as crocidolite and amosite. However, other tests showed no tremolite. Even where purportedly present, however, the tremolite level was low; *i.e.*, less than 1%. The likelihood that in any given case this low level of tremolitic contamination contributed to any asbestos-related disease is slight at best.

plaintiffs' exposure history, including the use of other products, is contrasted with the use of the Debtors' products, the likelihood that the Debtors' products substantially caused or contributed to an asbestos-related disease in any given case is almost statistically non-existent.

- Many of the claims in the tort system have already been satisfied from the enormous sums of money, estimated in the range of $30 billion or more,[18] available in existing bankruptcy trusts. Nonetheless, through various tactics, plaintiffs have become very adept at delaying, concealing or manipulating their revenues from these trusts in order to deny tort system defendants access to this information. As a result, courts in the state court system have virtually no information regarding recoveries plaintiffs have received or could receive from the trusts.[19] As stated in a recent publication:

> Over the past decade asbestos litigation has driven dozens of defendants into bankruptcy reorganization. The remaining solvent defendants have since been faced with the burden of indemnifying plaintiffs in full due to the joint and several liability rules that govern the asbestos tort system. As a result, while their former codefendants go through the process of chapter 11 reorganization, these solvent defendants pay well above their equitable share of liability in the tort system. Many of these asbestos related bankruptcy reorganizations have since established 524(g) settlement trusts designed to cover the reorganized

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18 See Attachment K, Bates and Mullin, "The Claiming Game" in Mealey's Litigation Report: Asbestos, Vol. 25, No. 1 (February 3, 2010). The total amount estimated to be available from existing and emerging trusts is more than $30 billion.

19 An exception to this rule occurred recently in the Wagner case, which was tried in 2009 in Missouri. Attachment L. In that case, Bondex and other codefendants were given full credit for $900,000 stipulated between plaintiffs' counsel and now bankrupt defendant THAN to be paid to the Wagners. Notwithstanding this stipulated payment, the plaintiffs refused to agree to the credit and the court imposed it over the plaintiffs' objection. Similarly, in the Willis case, which was tried in August-September 2009 in McLean County, IL and resulted in a $2 million award against Bondex, the plaintiffs were required in post-trial proceedings to disclose that the entire verdict was offset by prior payments and settlements. See Attachment H. As a result, Bondex will receive a defense verdict in the Willis case.

> defendants' share of present and future asbestos liability....[T]he trust system has been funded with tens of billions of dollars since 2005, assets sufficient to fully cover the former tort liability of the reorganized defendants. However, solvent defendants do not know how much individual plaintiffs are receiving or will receive from 524(g) settlement trusts in the future. This lack of transparency between the tort and trust systems prevents solvent defendants from returning to their appropriate several shares. As a result, solvent defendants continue to pay well above their historical liability share while plaintiffs double collect, once from tort settlements and then again from the asbestos trust settlements.

Attachment K, (reprint at p. 2) (footnotes omitted in text).

In sum, based on (a) the enormous and unjustified increases in tort system filings against the Debtors, (b) the ever-increasing demands made by plaintiffs upon the Debtors for settlement, (c) the dramatic rise in both defense and indemnity costs that are grossly out of proportion to any liability that could reasonably exist based on the amount of products sold and the Debtors' market share, (d) the obvious over-naming and over-identification of the Debtors in asbestos-related cases in the tort system and (e) the absence of any meaningful opportunity to take into account the substantial assets available to plaintiffs in the existing bankruptcy trusts, the Debtors were compelled to seek protection under chapter 11 to comprehensively and finally resolve their asbestos liability in a fair and equitable manner that is reflective of their actual liability.

The Debtors' Objectives in These Cases

The Debtors have no intention of avoiding any legitimate liability that may exist for any asbestos-containing products they manufactured and sold. At the same time, however, the Debtors have a responsibility to the meritorious claimants, present and future, to ensure that individuals with no cognizable claims are weeded out, as individuals with meritless claims have no right to participate in these proceedings, no

right to vote on any plan of reorganization, and no right to recover from any ultimate trust created under section 524(g) of the Bankruptcy Code.

Because their financial resources are limited, the Debtors are similarly determined to pursue a process that results in an accurate and fair assessment of their actual liability based on all the relevant considerations, including realistic claim values, the Debtors' market share, actual corroborated product identification, the epidemiological and biostatistical likelihood of causation based on dose computations and risk assessment contribution data, causation as a result of exposures to products manufactured and sold by others, contributions (actual or potential) from other bankruptcy trusts and an estimation procedure that fully and appropriately considers all of these elements.

The Debtors expect to pursue the following courses of action in these chapter 11 cases:

1. Bar Date. The Debtors currently have more than 10,000 claims pending against one or both of them, all for the same products. The Debtors expect to seek an early bar date and in conjunction with that bar date, propose a claim form that contains all the relevant information necessary to assess all aspects of a claimant's claim, including, but not limited to:

- claimant level disease information, including disease claimed, diagnosing physicians, diagnosing facilities and social history;
- claimant's law firm;
- entire occupational and non-occupational claimed exposure history as to all products that the claimant knows or believed, or that claimant's attorneys believe, contained asbestos;

- all claimed bystander exposure to any asbestos containing product;
- all bankruptcy trusts to which claimant has submitted a claim, intends to submit a claim, or will disavow an intent ever to submit a claim;
- all bankruptcy proceedings in which claimant has voted;
- all bankruptcy trusts from which claimant has received payment;
- all settlements claimant has received in the tort system;
- all other recoveries on the claim, from any source; and
- all testimony claimant has given in any proceeding.

2. Discovery. The Debtors expect to seek detailed information about the settlement history of each claimant identified either in existing claims or in proofs of claim submitted on or before the bar date, and as to the specific basis for naming each defendant named in any complaints filed against the Debtors.[20] The Debtors also expect that, to the extent that an estimation expert for the asbestos claimants' committee or the asbestos futures representative posits a gross "tort system claim value" for a particular disease, to seek discovery of the aggregate value of claims by disease process for each claimant's firm that submits proofs of claim. The Debtors also expect to seek detailed discovery from each bankruptcy trust concerning claimants identified in existing claims or in proofs of claim submitted on or before the bar date.

3. Shaping Litigation. The Debtors expect that upon the completion of the analysis of the bar date information and discovery outlined above, there will be a period of "shaping litigation" leading to a formal proceeding to estimate the Debtors'

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[20] Attachment M contains examples of current complaints: The sheer number of defendants named belies any suggestion that good faith has been brought to bear in the naming of the defendants being sued, and brings into question the validity of any individual defendant's name in the case.

asbestos liability. The purpose of the shaping litigation will be to determine the types of claims that can be properly considered in conducting the ultimate estimation of liability. Issues to be addressed in the shaping litigation would include, but not be limited to:

- disease processes that can be compensated;
- specificity of product identification;
- inclusive dates of alleged exposure;
- degree of product identification corroboration and reliability of identification;
- dose estimation;
- proper claim values to be used in estimation; and
- estimation methodology.

4. Estimation. The Debtors expect that, upon conclusion of the shaping litigation, the rulings and information obtained from those proceedings will be used as the basis for formulating an appropriate estimation of liability.

5. Plan of Reorganization. Using this estimation of liability, the Debtors anticipate negotiating and developing a confirmable plan of reorganization. Notwithstanding the anticipated shaping and estimated litigation described above, however, the Debtors are committed to conducting plan of reorganization negotiations with the asbestos claimants' committee and asbestos future claimants' representative at any appropriate stage during the chapter 11 process.

Conclusion

The Debtors have sought bankruptcy protection because the tort system has become unable to protect both the legitimate plaintiffs and the defendants, and has

become instead an endless search for a solvent company to satisfy claims irrespective of their merit. Because no meaningful relief from the relentless onslaught of cases is available in the tort system and because mesothelioma cases in particular can be expected to continue for at least another twenty or more years,[21] the statutory protection afforded by section 524(g) provides the last and only opportunity for the Debtors to obtain a fair and complete resolution of these legacy liabilities. With this Court's assistance, the Debtors will endeavor to achieve fair and appropriate treatment of legitimate asbestos claims — treatment that the tort system simply cannot provide.

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[21] Occupational level cases are expected to continue, with estimates of 1,000 or more mesothelioma cases by 2025 and substantial numbers occurring for decades thereafter. See generally Attachment J.

Dated: May 31, 2010

Respectfully submitted,

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