

FILED

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

2018 NOV -9 AM 9:28

COVESTRO, LLC

v.

AXIALL CORPORATION,
ALLTRANSTEK LLC and RESCAR
COMPANIES

JOSEPH M. RUSKI

CASE NO. 18-C-202

JUDGE HUMMEL

§
§
§
§
§

AXIALL CORPORATION'S COMPLAINT TO JOIN THIRD PARTY DEFENDANT

Axiall Corporation ("Axiall"), by its undersigned counsel, files this Complaint to Join Third Party Defendant Superheat FGH Services, Inc. ("Superheat") pursuant to Rule 14(a) averring as follows:

1. Axiall is a Delaware corporation that maintains its principal place of business at 2801 Post Oak Boulevard, Houston, Texas 77056.
2. Upon information and belief, Superheat is a Delaware corporation with a place of business at 313 Garnet Drive, New Lenox, Illinois 60451.
3. Plaintiff, Covestro, LLC, initiated this Action by filing a Complaint and Summons naming as original defendants Axiall, AllTranstek LLC ("AllTranstek") and Rescar Companies ("Rescar").
4. Axiall filed its Answer with Cross-Claims against original defendants AllTranstek LLC and Rescar Companies on October 31, 2018.
5. Solely for purposes of the within Complaint to Join Third Party Defendant, Axiall incorporates Plaintiff's original Complaint and Axiall's Answer thereto as though set forth in full.
6. Superheat, as Rescar's subcontractor, is subject to Rescar's applicable contract's venue and jurisdiction provisions.

7. Axiall owns and operates a facility in Natrium, Marshall County, West Virginia (the “Natrium facility”), where it manufactures chlorine and other products.
8. Axiall owns and operates a fleet of railroad tank cars it uses to transport chlorine from the Natrium facility.
9. Axiall employs a routine maintenance program for its railroad tank cars.
10. Upon information and belief, Superheat provides remote heat treatment operations and services in connection with the repair and modification of railroad tank cars.
11. Upon information and belief, Superheat provided these heat treatment services as a subcontractor to Rescar in connection with work Rescar performed for Axiall at the Natrium Facility.
12. Axiall sent railroad tank car AXLX1702 to AllTranstek/Rescar in January of 2016 for routine inspection, maintenance and repairs.
13. Rescar reported that it performed various work on AXLX1702, including welding, heat treating and hardness testing.
14. Upon information and belief, Superheat performed remote heat treating operations and monitoring services on AXLX1702 as a subcontractor to Rescar.
15. On July 20, 2016, AllTranstek inspected the railroad tank car, including Rescar and Superheat’s work, and pronounced AXLX1702 ready for chlorine service. AllTranstek’s work was performed pursuant to Axiall Purchase Order No. 4200002099 (the “Axiall/AllTranstek Purchase Order”).¹

¹ Exhibit 1.

16. On August 27, 2016, just after AXLX1702 had been loaded with a cargo of liquefied chlorine for the first time work performed by Superheat, Rescar and AllTranstek, AXLX1702 ruptured.

17. The resulting 42 inch long crack formed in an area where Rescar and its subcontractor Superheat had performed welding and other work.

18. The cargo, more than 178,000 pounds of liquefied chlorine, escaped from AXLX1702 and formed a chlorine plume which was transported by wind through Axiall's facility, and for some distance down the Ohio River Valley until it dissipated.

19. The rupture, release and plume caused significant property damage to Axiall's facility, and neighboring property owners have reported significant property damage.

3. Covestro filed suit claiming many damages in unspecified amounts, allegedly incurred because of the rupture. As of this filing, Axiall knows of third party claims totaling approximately \$125 million.

21. Within Axiall's facility, the chlorine plume damaged or destroyed everything in its path. This includes, but is not limited to, instrumentation, lagging and banding, electronics, communications equipment, fixed equipment, rotating equipment and electrical infrastructure.

22. Axiall is still obtaining bids for the work required to address the damage caused by the rupture. It is clear, however, that the total damage to Axiall's facility will significantly exceed \$50,000,000.

COUNT I

**Negligence
(Against Superheat)**

23. Axiall incorporates paragraphs 1 through 22 as though set forth in full.

24. Superheat had a legal duty to Axiall to perform its work in such a way that routine loading of the railroad tank car would not result in catastrophic failure of the railroad tank car's shell, causing a chlorine release and resultant property damage to materials with which the chlorine made contact.

25. Through its negligent acts and omissions, Superheat breached its duty of care in at least these ways:

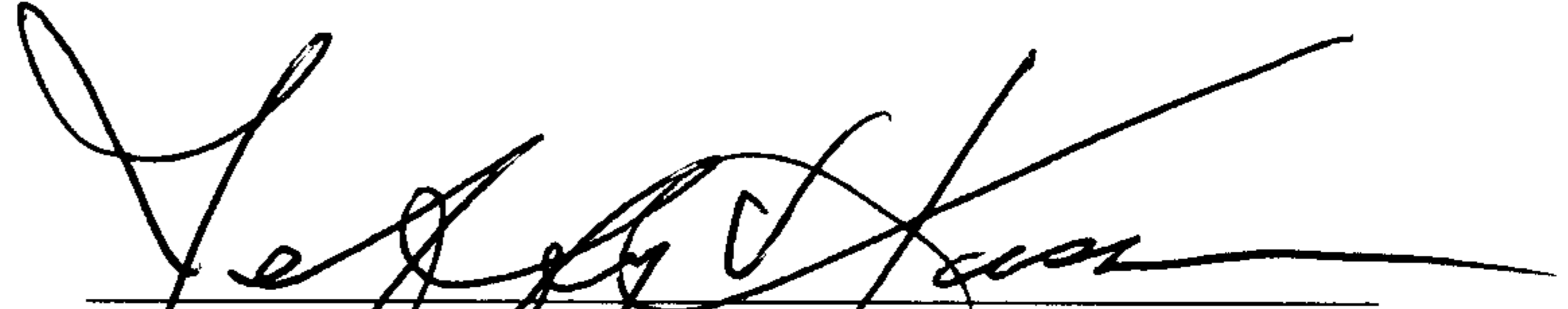
- a) In failing to use ordinary care in fulfilling their work on or in connection with the railroad tank car;
- b) In failing to comply with the standard of care in the industry in performing their work on or in connection with the railroad tank car;
- c) In failing to adhere to the standard of care required in monitoring heat treating during the course of railroad tank car repairs; and
- d) Other facts and omissions yet unknown to Axiall.

26. Axiall has been damaged as a direct and proximate result of Superheat's negligent acts and omissions.

WHEREFORE, plaintiff Axiall Corporation demands judgment in its favor against third party defendant Superheat FGH Services, Inc. for damages in excess of \$35,000, together with interest and costs, and such other and further relief as this Court deems just and proper.

AXIALL CORPORATION

By Counsel



Jeffrey V. Kessler, Esquire
WV State Bar ID No. 2026
Co-Counsel for Axiall Corporation
Berry, Kessler, Crutchfield, Taylor & Gordon
514 Seventh Street
Moundsville, West Virginia 26041
Telephone: (304) 845-2580
Facsimile: (304) 845-9055
E-Mail: jkessler@bkctg.com



Axiall Corporation
 11 Stanwix Street
 Suite 1900
 Pittsburgh, PA 15222

THIS PURCHASE ORDER NUMBER AND ITEM IDENTIFICATION NUMBER MUST APPEAR ON ALL INVOICES, PACKING LISTS, BILLS OF LADING, CARTONS, CONTAINERS, FREIGHT INVOICE(S) IF APPLICABLE, AND ALL CORRESPONDENCE RELATED TO THIS PURCHASE ORDER. IF NO PRICE IS SHOWN, MAXIMUM TOTAL PURCHASE COMMITMENT IS \$606.

Purchase order

Billing Address
 Axiall Corporation
 Atlanta Shared Services Center
 P. O. Box 105197
 Atlanta, GA 30348
 Telephone: 865-333-6099
 Fax Number: 868-277-5770
 Email: Atlanta.AP@axiall.com

Vendor Address
 ALLTRANSTEK LLC
 STE 200
 1101 W 31ST
 DOWNERS GROVE IL 60515

Information
 Purchase Order No. 4500309931
 Date 02/29/2016
 Vendor No. 3005708
 Currency USD
 Buyer Crp Axiall Support
 Buyer Email Stephanie.Ball@axiall.com
 Phone 770-351-4129
 Fax
 Sales and Use Tax Blanket
 Exemption Certificate:
 Delivery Date 12/31/2016

Shipping Address: Pittsburgh
 Axiall, LLC
 11 Stanwix Street
 PITTSBURGH PA 15222
 USA
 Currency USD

Terms of Payment: Net due in 45 days

Terms of Delivery: FOB(Free on Board) /DESTINATION

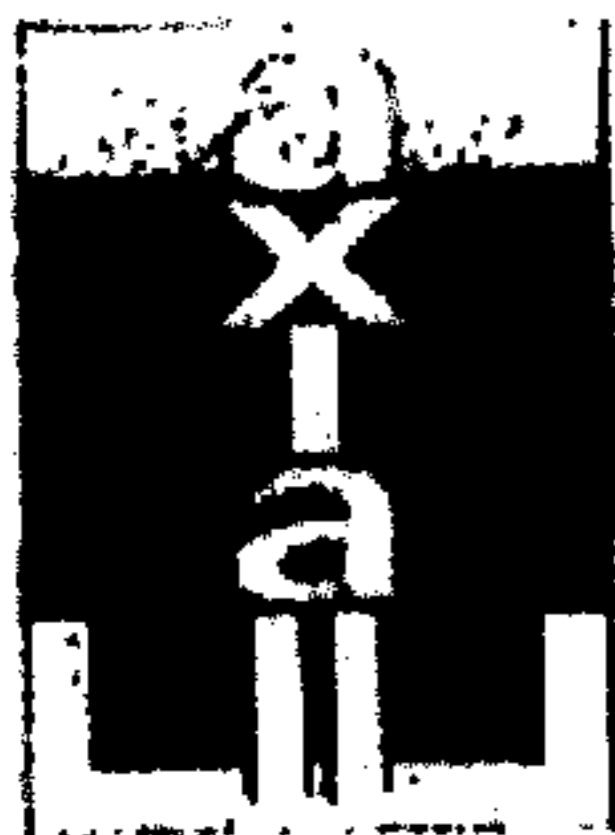
Item	Material/Description	Quantity	UM	Unit Price	Net Amount
10	Railcar Fleet Management *** Item partially delivered *** Expected value of unplanned services: 500,000.00	1.00	AU	500,000.00 / AU	500,000.00
Total net value excl. tax USD				500,000.00	

THIS PURCHASE ORDER IS SUBJECT TO, INCLUDES AND INCORPORATES HEREIN BY REFERENCE THE UNITED STATES PURCHASE ORDER GENERAL CONDITIONS (CURRENT AS OF THE DATE OF THIS PURCHASE ORDER) FOR AXIALL, LLC LOCATED AT [HTTP://WWW.AXIALL.COM](http://www.axiall.com) COMPANY. IF YOU ARE UNABLE TO ACCESS THIS WEB SITE, PLEASE CONTACT THE BUYER NAMED IN THIS PURCHASE ORDER TO HAVE THESE GENERAL CONDITIONS FAXED TO YOU. AXIALL, LLC EXPRESSLY REJECTS ANYTHING IN YOUR DOCUMENTS THAT IS INCONSISTENT WITH AXIALL, LLC'S PURCHASE ORDER GENERAL CONDITIONS. EXCEPTIONS, IF ANY, MUST BE RECEIVED BY AXIALL, LLC IN WRITING WITHIN TEN DAYS OF THE DATE OF THIS PURCHASE ORDER OR BY THE PURCHASE ORDER DELIVERY DATE, WHICHEVER IS EARLIEST; OTHERWISE, THESE PURCHASE ORDER GENERAL CONDITIONS ARE DEEMED ACCEPTED BY YOU.

AXIALL, LLC SIGNATURE: _____ Date: _____

INSTRUCTIONS TO VENDOR: TO CONFIRM RECEIPT AND ACCEPTANCE OF THIS PURCHASE ORDER, PLEASE SIGN & RETURN AOKNOWLEDGMENT TO THE BUYER NAMED ON THIS PURCHASE ORDER. SHOW CORRECT PRICE & FREIGHT TERMS IF NOT SHOWN OR IF DIFFERENT FROM PURCHASE ORDER; INVOICE PRICE MUST EXACTLY MATCH PURCHASE ORDER PRICE IN ORDER TO BE PROCESSED FOR PAYMENT.

VENDOR SIGNATURE REQUIRED: _____ DATE: _____ FAX TO NUMBER ABOVE



Eagle US 2 LLC
 Pittsburgh
 11 Stanwix st Suite 1900
 PITTSBURGH PA 15222
 USA

09/13/2016 17:44:17

THIS PURCHASE ORDER NUMBER AND ITEM IDENTIFICATION NUMBER MUST APPEAR ON ALL INVOICES, PACKING LISTS, BILLS OF LADING, CARTONS, CONTAINERS, FREIGHT INVOICE(S) IF APPLICABLE, AND ALL CORRESPONDENCE RELATED TO THIS PURCHASE ORDER. IF NO PRICE IS SHOWN, MAXIMUM TOTAL PURCHASE COMMITMENT IS \$500.

Purchase Order

Billing Address
 Axiall Corporation
 Atlanta Shared Services Center
 PO Box 105197
 ATLANTA GA 30348
 USA
 Telephone :855-333-6099
 Fax :866-277-5770
 AtlantaAPIinvoices@axiall.com

Information
 Purchase Order No. 4200002099
 Date 04/01/2016
 Vendor No. 7005367
 Currency USD
 Delivery Date 12/31/2016
 Buyer LARRY WILHITE
 Buyer Email Larry.wilhite@axiall.com
 Telephone 678-221-5689
 Sales and Use Tax Blanket LOUISIANA 1668965-001, CALCASIEU 00044901

Vendor Address
 ALLTRANSTEK LLC
 1101 WEST 31ST STREET SUITE 200
 DOWNERS GROVE IL 60515
 630-829-9458
 630-325-9978
 CHASE@ALLTRANSTEK.COM

Shipping Address: Pittsburgh Admin Office
 11 Stanwix st Suite 1900
 PITTSBURGH PA 15222
 USA
Terms of Payment: Net due in 45 days
Terms of Delivery: FOB(Free on board) /DESTINATION
Our Reference: 4500309931
Your Reference: 4500309931
 Currency: USD

Item	Material/Description	Quantity	UM	Unit Price	Net Amount
10	Railcar Fleet Management	1.00	AU	270,221.38 / AU	270,221.38
	Expected value of unplanned services:			270,221.38	
Total net value excl. tax				USD	270,221.38



Eagle US 2 LLC
 Pittsburgh
 11 Stanwix st Suite 1900
 PITTSBURGH PA 15222
 USA

Purchase Order

PO Number/Date 4200002099 / 04/01/2016

THIS PURCHASE ORDER IS SUBJECT TO, INCLUDES AND INCORPORATES HEREIN BY REFERENCE THE UNITED STATES PURCHASE ORDER GENERAL CONDITIONS (CURRENT AS OF THE DATE OF THIS PURCHASE ORDER) FOR Eagle US 2 LLC LOCATED AT [HTTP://WWW.AXIALL.COM/COMPANY](http://www.axiall.com/company). IF YOU ARE UNABLE TO ACCESS THIS WEB SITE, PLEASE CONTACT THE BUYER NAMED IN THIS PURCHASE ORDER TO HAVE THESE GENERAL CONDITIONS FAXED TO YOU. Eagle US 2 LLC EXPRESSLY REJECTS ANYTHING IN YOUR DOCUMENTS THAT IS INCONSISTENT WITH Eagle US 2 LLC'S PURCHASE ORDER GENERAL CONDITIONS. EXCEPTIONS, IF ANY, MUST BE RECEIVED BY Eagle US 2 LLC IN WRITING WITHIN TEN DAYS OF THE DATE OF THIS PURCHASE ORDER OR BY THE PURCHASE ORDER DELIVERY DATE, WHICHEVER IS EARLIEST; OTHERWISE, THESE PURCHASE ORDER GENERAL CONDITIONS ARE DEEMED ACCEPTED BY YOU.

Eagle US 2 LLC SIGNATURE: _____ DATE: _____

INSTRUCTIONS TO VENDOR: TO CONFIRM RECEIPT AND ACCEPTANCE OF THIS PURCHASE ORDER, PLEASE SIGN & RETURN ACKNOWLEDGMENT TO THE BUYER NAMED ON THIS PURCHASE ORDER. SHOW CORRECT PRICE & FREIGHT TERMS IF NOT SHOWN OR IF DIFFERENT FROM PURCHASE ORDER; INVOICE PRICE MUST EXACTLY MATCH PURCHASE ORDER PRICE IN ORDER TO BE PROCESSED FOR PAYMENT.

VENDOR SIGNATURE REQUIRED: _____ DATE: _____ FAX TO NUMBER ABOVE

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

COVESTRO, LLC

v.

AXIALL CORPORATION,
ALLTRANSTEK LLC and RESCAR
COMPANIES

§
§
§
§
§
§
§

CASE NO. 18-C-202

JUDGE HUMMEL

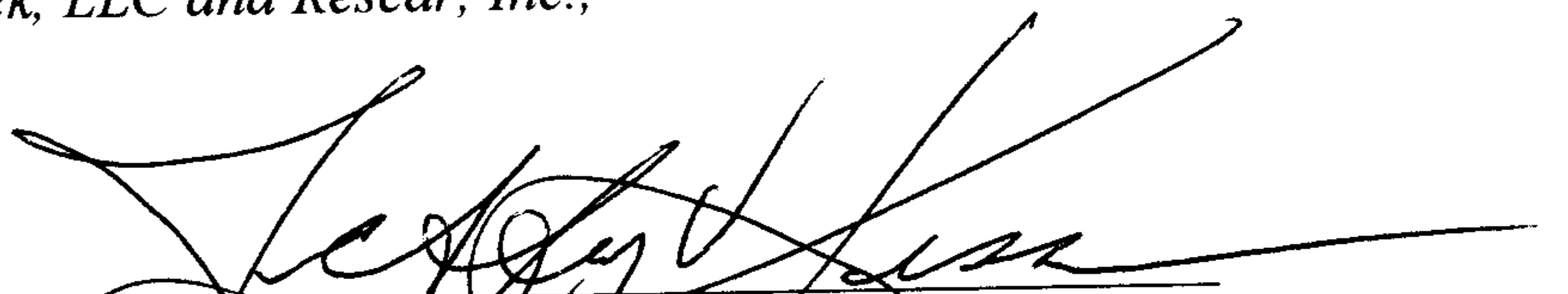
CERTIFICATE OF SERVICE

I, Kathryn M. Kenyon, counsel for Defendant Axiall Corporation, do hereby certify that on the 5th day of November, 2018 service of the foregoing **COMPLAINT TO JOINT THIRD PARTY DEFENDANT** has been made upon the parties or counsel of record by mailing and true and exact copy thereof to:

Kevin M. Eddy, Esquire
BLANK ROME LLP
501 Grant Street, Suite 850
Pittsburgh, PA 15219
Counsel for Covestro, LLC

Michelle L. Gorman, Esquire
Lewis Brisbois
3054 Pennsylvania Avenue
Weirton, WV 26062

Thomas Mannion
Lewis Brisbois
1375 East 9th Street
Suite 2250
Cleveland, OH 44114
*Counsel for Defendants AllTranstek, LLC and Rescar, Inc.,
t/d/b/a Rescar Companies*



Jeffrey V. Kessler, Esquire
WV State Bar ID No. 2026
Co-Counsel for Axiall Corporation
Berry, Kessler, Crutchfield, Taylor & Gordon
514 Seventh Street
Moundsville, West Virginia 26041
Telephone: (304) 845-2580
Facsimile: (304) 845-9055
E-Mail: jkessler@bkctg.com

CIVIL CASE INFORMATION STATEMENT
CIVIL CASE

FILED

In the Circuit Court of Marshall County, West Virginia
2/14/2019 AM 9:27

JOSEPH M. RUCKI

I. CASE STYLE:

Covestro, LLC

Case No. 18-C-202

Judge – David W. Hummel, Jr.

Plaintiffs,

vs.

<u>Defendant(s)</u>	<u>Days to Answer</u>	<u>Type of Service</u>
Superheat FGH Services, Inc. c/o Miles Brown 313 Garnet Drive New Lenox, IL 60451-3503	30	Certified Mail

Please Note: All other parties served by U.S. Mail by counsel for Axiall Corporation.

Original and two (2) copies of Complaint are furnished herewith.

Plaintiffs: Covestro, LLC Defendant: Axial Corporation, et al.	CASE NUMBER: 18-C-202
---	---------------------------------

II. TYPE OF CASE:

TORTS		OTHER CIVIL
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate Court
<input type="checkbox"/> Professional Malpractice	<input checked="" type="checkbox"/> Contract	<input type="checkbox"/> Petition for Modification of Magistrate Sentence
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Real Property	<input type="checkbox"/> Miscellaneous Civil
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Other:
<input type="checkbox"/> Other Tort	<input type="checkbox"/> Appeal of Administrative Agency	

III. JURY DEMAND: Yes No

CASE WILL BE READY FOR TRIAL BY (month/year): _____

IV. Do your or any of your clients or witnesses in this case require special accommodation due to a disability or age? Yes No
If yes, please specify:

- Wheelchair accessible hearing room and other facilities
- Interpreter or other auxiliary aid for the hearing impaired
- Reader or other auxiliary aid for the visually impaired
- Spokesperson or other auxiliary aid for the speech impaired
- Other:

Attorney Name: Jeffrey V. Kessler, Esquire
WV Bar ID No.: 2026
Firm: Berry, Kessler, Crutchfield, Taylor & Gordon
Address: 514 Seventh Street
 Moundsville, WV 26041
Telephone: (304) 845-2580
Facsimile: (304) 845-9055

Representing:

- Plaintiffs
- Defendant Axiall
- Cross-Complainant
- Cross-Defendant
- Other _____

Signature _____

Date: November 9, 2018