

RELEASE AND INDEMNIFICATION AGREEMENT

The parties to this Release and Indemnification Agreement are:

- (a) Jack Levine and Dorothy Levine, his wife (“Releasors”); and,
- (b) The City of Duluth, Minnesota and its officers, agents, employees, representatives, and assigns, as of the date of execution of this Release and Indemnification Agreement, (collectively, “Releasee”). This Release and Indemnification Agreement applies completely and without limitation or qualification to the above Releasee.

This Release and Indemnification Agreement is made in recognition of the following facts, which are set out here to more fully and clearly express the intention of the parties entering into this Agreement.

A. Releasors have retained and employed Karst & von Oiste LLP as their attorneys to prosecute a products liability lawsuit against multiple defendants, for alleged injuries and damages sustained by Jack Levine and Dorothy Levine, allegedly caused by Jack Levine’s exposure to asbestos-containing products manufactured, distributed, or sold or used by these defendants, among others.

B. Releasee has denied the claims made against it by Releasors but has tendered an amount in the sum of \$50,000.00, and other good and valuable consideration in settlement. It is the express intention of Releasors and of Releasee that this amount will settle and satisfy any and all claims for damages against Releasee asserted by Releasors,

C. It is the intention of Releasors and Releasee that this settlement shall extinguish any and all liability of Releasee arising out of Jack Levine’s exposure to asbestos-containing products, specifically including any and all claims, crossclaims, third-party claims, or counterclaims made by any other person, party, entity or source for contribution or indemnity against Releasee presently pending or asserted in the future; and that this paragraph is to be construed and applied in accordance with *Pierringer v. Hoyer*, 21 Wis.2d 182, 124 N.W.2d 106 (1963), and *Frey v. Snelgrove*, 269 N.W.2d 918 (Minn. 1978).

WHEREFORE, in consideration of the sum of \$50,000.00, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Releasors grant and agree as follows:

1.1 Releasors fully and forever release and discharge Releasee from all claims, demands, damages, actions and rights to actions which Releasors now or hereafter may have arising out of Jack Levine’s use of or exposure to asbestos-containing products, including claims for any patent or latent damages and injuries, known or unknown, developed or undeveloped, and all developments and results therefrom, including cancer and death, allegedly caused by or arising out of Jack Levine’s

exposure to asbestos-containing products, some of which may have been manufactured, distributed, sold or used by Releasee.

1.2. Releasors accept such consideration as compensation for this Release and Indemnification Agreement and agree that the payment of such consideration is not to be construed as an admission of any liability whatsoever by or on behalf of Releasee, which expressly denies liability. The parties further agree that this Agreement shall not be admissible as evidence in any suit or proceeding whatsoever as evidence or admission of any liability.

1.3. Releasors agree to indemnify and hold Releasee harmless from any claims, crossclaims, third-party claims, or counterclaims for contribution or indemnity made by others, including other defendants and third-party defendants in this or other product liability lawsuits, against Releasee. Releasors release and discharge that fraction, portion or percentage of the total of any past, present or future cause of action or claims for damages and injuries that Releasors now or hereafter may have against all parties responsible for Releasors' damages and injuries, which by trial or other disposition may be determined to be the percentage of causal fault for Releasors' damages which may be attributable to Releasee. Releasors agrees to satisfy any future judgment which may be rendered in favor of Releasors, in such fraction, portion or percentage of the judgment as the causal fault of Releasee are adjudged to be of all causal fault of all persons adjudged responsible for Releasors' damages. It is also agreed and understood that this Release and Indemnification Agreement encompasses any and all claims based on the amount of any subsequent judgment determined to be uncollectible in accordance with Minn. Stat. Section 604.02 (1980) and reallocated to Releasee.

1.4. Releasors specifically reserves their right to proceed with any and all claims against any other party. This Release and Indemnification Agreement releases only those claims as against Releasee and is not intended to release any other claims or parties.

1.5. It is specifically agreed that Releasee reserves all claims it may have for contribution or indemnity against all other persons or entities who may be found, or may be, jointly and severally liable to Releasors.

1.6. The parties to this Release and Indemnification Agreement further understand and agree that nothing in this Release and Indemnification Agreement is intended to settle, waive or relinquish any claim that Dorothy Levine may have against Releasees, or any other entity for an asbestos-related injury or disease which is the result of her personal exposure to asbestos fibers and/or products manufactured, sold, used, or distributed by Releasee, or any other manufacturer, supplier or distributor of asbestos-containing products.

1.7. Releasors agree and represent that this Release and Indemnification Agreement is made on their sole judgment, belief and knowledge as to all phases of their claims. Releasors are not relying on representations or statements made by Releasee or anyone representing Releasees or by any physician or surgeon employed by Releasee. Releasors further represent and agree to execute a Stipulation of Dismissal with Prejudice as against Releasee and hereby authorizes Karst & von Oiste

LLP to do so on their behalf in the matter of *Jack Levine and Dorothy Levine, his wife v. 3M Company, et al. Ramsey County, Minnesota Court File No. 62-CV-18-4398.*

MEDICARE DISCLOSURES AND INDEMNITY AGREEMENT

2.1 Releasors understand that Medicare Secondary Payer Act (42 U.S.C. §1395y (b)) (“Act”) applies to any personal injury and/or wrongful death settlement involving a Medicare beneficiary and requires that Medicare be reimbursed for any of its conditional payments made on behalf of the Medicare beneficiary. As part of the Act, Releasors may have an obligation to verify status as a Medicare beneficiary and resolve conditional payments made on Releasors’ behalf by Medicare, if any. In the event it is determined that Jack Levine was a Medicare beneficiary, Releasee and/or Releasee’s Insurer(s) may have an obligation to report the settlement amount and other requisite information to Medicare. Releasee and/or Releasee’s Insurer(s) will report this settlement as per the Act and all applicable reporting guidelines provided by the Centers for Medicare and Medicaid Services (CMS).

2.2 If Releasors, Releasee and/or Releasee’s Insurer(s) determine that was Medicare eligible, there may be a Medicare reimbursement right or an obligation to report the settlement amount to Medicare. The parties expressly agree that payment of settlement proceeds is not conditioned upon Releasors providing proof that all Medicare reimbursement claims and obligations have been satisfied. Rather, Releasee and/or Releasee’s Insurer(s) agree to forward the settlement proceeds to Releasors’ attorney once the executed Release and Form B have been provided by Releasors’ counsel. If Releasors or Releasee and/or Releasee’s Insurer(s) determine that Jack Levine was a Medicare beneficiary, Releasors’ attorneys, Karst & von Oiste LLP, shall hold sufficient settlement proceeds in a client trust account or similar account to be used to reimburse Medicare per Paragraphs 9 a) through c) of the First Addendum to the Court’s Case Management Order of November 25, 2008, whose provisions are incorporated herein by reference and made a part of this Release and Indemnification Agreement. Once Releasors’ counsel has received a waiver, final demand or no conditional payment letter from CMS, and Releasors’ counsel has paid the Medicare recovery claim, if any; Releasors’ counsel shall provide to Releasee a copy of the waiver, final demand, or no conditional payment letter and proof of payment of said amount. Proof of payment pursuant to terms of this Release and the First Addendum to the Court’s Case Management Order of November 25, 2008, means a copy of a draft payable to Medicare or its recipient entity with an amount matching that of the final demand. Releasors’ counsel may redact the bank name, routing number, account number and signature from the check. As part of this settlement, Releasors agrees to indemnify, defend, and hold Releasee and/or Releasee’s Insurer(s) harmless against and from any Medicare claims, actions, judgments or settlements asserted by any entity arising from the personal injuries that are the subject of this settlement, except to the extent of Releasee’s active negligence, if any, including but not limited to Releasee’s failure to pay or report the settlement.

2.3 Additionally, as further consideration of the parties’ willingness to settle the claim referenced herein, and to induce said settlement, Releasors agrees on behalf of their heirs, executors, administrators, and assigns, that they will hold harmless and indemnify each and every

On this _____ day of _____, 2019, Dorothy Levine appeared before me, known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

Notary Public

CITY OF DULUTH

By _____
Mayor

Attest _____
City Clerk

By _____
Chief Administrative Officer

Countersigned:

City Auditor

Approved as to form:

City Attorney