

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

SERVCOR INTERNATIONAL, INC., a)
Florida corporation,)

Plaintiff,)

v.)

Case # _____

BAYER MATERIALSCIENCE, LLC, a)
Delaware limited liability company,)

URETHANE OF KENTUCKIANA,)

INCORPORATED, a Kentucky)

corporation, and MIKE GOMEZ)

CONSTRUCTION CONSULTING, INC., a)

Florida corporation,)

Defendants)

COMPLAINT

The Plaintiff, SERVCOR INTERNATIONAL, INC., a Florida corporation, by and through its undersigned attorneys, hereby sues the Defendants, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability company (hereinafter referred to as "Bayer"), in its own right, and as successor by merger with BaySystems North America, LLC, a former Delaware limited liability company and wholly owned subsidiary of Bayer, URETHANE OF KENTUCKIANA, INCORPORATED, a Kentucky corporation doing business under the name of "Insulated Roofing Contractors" or "IRC", and MIKE GOMEZ CONSTRUCTION, CONSULTING, INC., a Florida corporation, and alleges as follows:

Identification of the Plaintiff and Its Representatives

1. Servcor International, Inc. (hereinafter referred to as "Servcor") is a Florida corporation formed in May, 2002, and whose principal place of business is in Pinellas County, Florida.
2. David Looney was, at all times relevant to this action, the President of Servcor and a

State Certified Roofing Contractor.

3. Robert "Bob" Lyons was, at all times relevant to this action, the Executive Vice President of Servcor.

Corporate Structure of the Bayer Companies

4. Bayer MaterialScience AG is a German corporation which operates internationally, including in the United States, and constitutes one of the three (3) business groups or sectors (Healthcare, CropScience, and MaterialScience) of the German holding company, Bayer Aktiengesellschaft, also known as Bayer AG.
5. Bayer MaterialScience AG is composed of four (4) different "Business Units": (1) polyurethanes, (2) polycarbonates, (3) coatings, adhesives and specialties, and (4) thermoplastic polyurethanes.
6. Defendant, Bayer MaterialScience, LLC ("Bayer") is the U.S. entity through which Bayer MaterialScience AG operates within North America. Bayer's Polyurethanes Business Unit's operations include the manufacturing and distribution within the United States and the State of Florida of polyurethane component products which, when combined at the point of application on a roof structure, create a sprayed-on polyurethane foam roof insulation and coating system.
7. Bayer is a Delaware limited liability corporation whose offices are located in Pittsburgh, Pennsylvania and Spring, Texas. It is one of numerous subsidiaries and affiliated companies which are integrated into the structure of Bayer MaterialScience AG, and which operates and conducts business using the Bayer MaterialScience AG brand name of "BaySystems."
8. BaySystems North America, LLC (hereinafter "BSNA"), was a Delaware limited liability company whose offices were located in Spring, Texas. It was a wholly owned subsidiary

of another subsidiary or affiliated company which is integrated into the structure of Bayer MaterialScience AG, and which operated and conducted business under the Bayer MaterialScience brand name of "BaySystems." Subsequent to the events set forth in this Complaint, BaySystems North America, LLC was merged into Bayer with Bayer being the successor entity by merger.

9. Bayer conducted business in polyurethane materials and manufacturing and distribution under its own name and through the former BSNA as well as through other affiliated companies, all of which operate jointly under the "BaySystems" brand name and the "Bayer" trademark. It was a common occurrence for both the Bayer representatives and the BSNA representatives with whom Servcor had written communications to not identify themselves as acting on behalf of, or being an employee or agent of, any specific Bayer Defendant entity. Often, the representatives of these companies would use only the brand name "BaySystems," or a partial corporate name such as "BaySystems of North America," or to simply use the Bayer logo. In so doing, Bayer and BSNA acted in disregard of the then distinct corporate entities and conducted business as a single business entity under the "BaySystems" brand name and the Bayer logo.

Bayer's Entry Into the Spray Polyurethane Foam Roofing Market

10. In approximately 2005, Bayer acquired Polythane Systems, Inc. (hereinafter "PSI"), a supplier of spray polyurethane foam roofing systems. PSI had been the exclusive distributor and representative for General Electric's (hereinafter "GE") GE Roofing System for more than a decade. The GE Roofing System, a time proven roofing system for commercial roofs, was introduced in approximately 1976 by the GE Sealants and Adhesives division of GE and consisted of spray polyurethane foam (manufactured by others) coated with a GE Silicone coating (manufactured by GE). PSI also manufactured

other coating products under PSI's brand name.

11. GE sold its entire silicone sealants and adhesives division to Momentive Performance Materials, Inc. (hereinafter "Momentum") in 2006. Momentum acquired the rights to the GE Roofing System name and logo; however, Momentum almost immediately turned the warranty obligations under the GE Roofing Systems roofs over to Bayer. Bayer initially marketed and promoted the GE Roofing System line of products and continued to do so until approximately 2007 when Bayer ceased using the GE name and logo altogether, and began marketing its roofing system as "Bayseal Spray Foam Roof Systems" (hereinafter referred to as the "Bayer Bayseal Roofing System"). Momentum continues to manufacture the silicone sealant coating for Bayer. Bayer continues to administer the older GE Roofing System warranties it and Momentum acquired from GE.

Identification of Key Representatives of Bayer

12. Ridge Stockdale was a principal shareholder of Polythane Systems, Inc. (hereinafter "PSI"), was the Vice President of the company, and was responsible for sales and marketing for PSI prior to Bayer's acquisition of PSI in 2005. Ridge Stockdale remained with PSI which had become a wholly owned subsidiary of Bayer, until his retirement at the end of 2007. Ridge Stockdale was Sercor's primary contact in regard to both the GE Roofing Systems and the Bayer Bayseal Roofing Systems until his retirement. He had actual and apparent authority to transact business with Sercor on behalf of Bayer and BSNA.
13. Charles Valentine had previously been a sales manager for Bayer in Bayer's chemical division, unrelated to roofing or roofing products, until he was named the General Manager of BSNA after Bayer and BSNA entered the spray polyurethane foam roofing business. Shortly after the fiasco on the Miami International Airport project addressed in greater

detail below, and prior to Ridge Stockdale's retirement, Charles Valentine became Servcor's primary contact with Bayer and BSNA until Mr. Valentine was replaced by Rene Zierden, at which time Mr. Valentine informed Servcor that he was no longer allowed to discuss matters with Servcor.

14. Keith Common had previously worked under Charles Valentine in Bayer's chemicals division and was named the Sales Manager for BSNA by Charles Valentine when Charles Valentine moved to the roofing division.
15. Joe Stockdale, the brother of Ridge Stockdale, was the President of Everest Coatings, a Polythane Coating Division of Bayer, and is believed to now be in charge of national accounts for Bayer and BSNA. Joe Stockdale became a primary contact person for Servcor after Charles Valentine's employment with Bayer and BSNA was terminated, and during the time period that Rene Zierden (see below) refused to communicate with Servcor.
16. Prior to his retirement, Ridge Stockdale was responsible for teaching both Charles Valentine and Keith Common the spray polyurethane foam roofing business.
17. In December, 2008, Charles Valentine notified Servcor that Rene Zierden would be starting in January, 2009 as the new General Manager, replacing Valentine. Charles Valentine's employment with Bayer was terminated a few months thereafter. Rene Zierden had no background or experience in the roofing industry prior to her transfer to the General Manager position of BSNA in January, 2009.

Identification of the Remaining Defendants

18. URETHANE OF KENTUCKIANA, INCORPORATED (hereinafter referred to as "IRC") is a Kentucky corporation which conducts business in the State of Florida as a roofing contractor, and which conducts business under the fictitious names of "Insulated Roofing

Contractors” and/or “IRC.”

19. MIKE GOMEZ CONSTRUCTION CONSULTING, INC. (hereinafter referred to as “Gomez”), is a Florida corporation and is licensed as a state certified general contractor. For the time period relevant to this action, Gomez was a Miscellaneous Construction Contracts Contractor for the Miami-Dade Aviation Department (hereinafter referred to as “MDAD”).

Formation and Development of the Bayer-Servcor Partnership

20. Long before the formation of Servcor, David Looney had a business relationship with Ridge Stockdale of PSI. As a result of that business relationship David Looney began discussions and negotiations with Ridge Stockdale - the authorized representative of GE with regard to the GE Roofing Systems - as to becoming a distributor and Authorized Representative of PSI and the GE Roofing Systems products. In early 2000, David Looney secured an agreement to do so under the corporate name of Weather-Tech, Inc., a roof consulting and independent roofing material representative firm which later became Servcor. A material provision of the agreement between Weather-Tech, Inc./Servcor and PSI/GE was that Servcor could not offer competing roofing products to those manufactured and sold by PSI/GE.
21. Throughout the course of the business relationship between Servcor and PSI/GE, Servcor had discussions and negotiations with PSI/GE, through Ridge Stockdale, as to the broad expansion of Servcor’s role as a partner with GE’s Roofing Systems Division in the marketing, promotion and sales of the GE Roofing Systems products. Servcor’s expanded role as a partner would include the promotion and marketing of the GE Roofing Systems products through Servcor’s development of marketing programs, promotional materials (brochures, sales videos, etc...), business strategies, technical

consulting/support, applicator training/instruction programs and proprietary procurement/end user value added services, hereafter referred to collectively as the "Servcor Programs," for the use of GE Roofing Systems products on commercial, industrial, multi-family home and public roofing projects. The fact that the Servcor Programs would remain the intellectual property of Servcor was always a material aspect of these discussions and negotiations and was agreed to by PSI/GE.

22. In 2001, Servcor, PSI and GE entered into a multi-year partnership agreement that, in addition to serving as a distributor and Authorized Representative, Servcor would begin implementing the Servcor Programs. Servcor was authorized by GE and PSI to proceed within the territorial boundaries of PSI's contract with GE (North America and its Territories). Servcor was authorized to operate under the title of "GE Roofing Solutions," with Servcor identified as the exclusive administrator on business cards, letterhead, and marketing/promotional materials. "GE Roofing Solutions" later became known as "GE Exterior Systems" when exterior surfaces in addition to roofs became part of the products, services, programs and offerings being marketed and promoted by GE, PSI and Servcor.
23. By the end of 2001, the partnership between Servcor and PSI/GE was deemed successful by all three parties based upon successful projects including NAV Canada (an airport facility in Ontario Canada), a DuPont manufacturing facility in Chattanooga, TN, an office complex in Baltimore, MD, as well as other projects in Texas and Florida.
24. From 2001 to 2005, Servcor continued to develop, devise, test market, and refine Servcor's Programs through GE Roofing Solutions and GE Exterior Systems as well as in Servcor's capacity as distributor and Authorized Representative selling products to and providing sales, marketing and technical support to approved applicators.

25. Bayer acquired PSI and acquired the license and right to the GE Roofing Systems products sometime in the last fiscal quarter of 2006, and in so doing, also acquired the PSI asset of the partnership agreement with Servcor. After that time, Ridge Stockdale remained Servcor's primary contact - now with Bayer - and Servcor continued to provide Servcor's Programs and the services described herein and above. Additionally, discussions and negotiations continued between Servcor and Bayer/BSNA, through Ridge Stockdale, Charles Valentine, and the new management team for BSNA, as to further expanding the role of Servcor with regard to Bayer's/BSNA's roofing products and the GE Roofing Systems product line, later to be renamed the "Bayseal Spray Foam Roof Systems."
26. The new management team for Bayer/BSNA, and primarily Charles Valentine, immediately requested that Servcor remain a distributor, Authorized Representative and partner with Bayer/BSNA with regard to Bayer's roofing systems and products. Bayer/BSNA, through Charles Valentine, requested that Servcor continue without interruption in providing the Servcor Programs that Servcor had successfully provided to PSI/GE under the partnership agreement. Servcor agreed and continued providing these services without interruption, thus confirming the existence of the partnership which is referred to hereinafter as "the Bayer-Servcor Partnership."
27. Throughout 2006, Servcor continued developing and providing the Servcor Programs and continued in all respects with regard to Bayer/BSNA as Servcor had previously with PSI/GE. At the request of Charles Valentine, Servcor was asked to develop a roofing industry training seminar for the management team of Bayer/BSNA and a master business plan for Bayer's/BSNA's roofing business. These requests were of particular importance to Charles Valentine as neither he nor his immediate subordinate, Keith Common, had any prior experience in the roofing industry.

28. Throughout 2006, meetings were held and many phone calls and emails were exchanged between Servcor and Ridge Stockdale developing the 2007 strategic business plan and the programs and ventures which were part of the Bayer-Servcor Partnership. This was in addition to Servcor's role as a distributor and an Authorized Representative of Bayer and BSNA and the GE Roofing Systems products (later to be called the Bayseal Spray Foam Roof Systems).
29. On December 28th and 29th, 2006, David Looney and Bob Lyons of Servcor held a two day business conference with management personnel of Bayer and BSNA at Bayer's/BSNA's corporate offices in Spring, Texas. The first day of the conference consisted of a full day roofing industry seminar provided by Servcor. The second day of the conference consisted of the presentation of the 2007 Strategic Business Plan that Servcor, along with Ridge Stockdale, had been working on throughout 2006 for the Bayer-Servcor Partnership. This Strategic Business Plan, in brief, covered short term 2007 goals as well as long term goals for increasing the SPF roofing manufacturers' (such as Bayer) overall market share of the commercial roofing market, and for the emergence of Bayer as the primary or dominant player in the SPF roofing industry. Servcor's plan detailed how unique programs developed by Servcor for the Bayer-Servcor Partnership would help achieve these goals and distinguish Bayer in the SPF roofing market. Specific focus and detail was provided regarding Servcor's role in the Bayer-Servcor Partnership, including Servcor's services, the Servcor programs, processes, budgeting, profit projections, etc....
30. At this December meeting, Servcor and Charles Valentine agreed that a document should be prepared detailing the basic nature, intention and general understanding between Servcor and Bayer/BSNA with regard to the Bayer-Servcor Partnership, and agreed that Servcor would prepare a "memorandum of understanding" for this purpose. A meeting

- was scheduled for February 5, 2007 in Orlando, Florida with David Looney, Bob Lyons, Charles Valentine, and Ridge Stockdale to finalize the memorandum of understanding.
31. Meanwhile, in January, 2007, Servcor secured the Miami International Airport Central Terminal Project ("MIA Central Terminal Project") for the Bayer-Servcor Partnership. Servcor had recommended several of the specialty programs that it had developed for the Bayer-Servcor Partnership to the Miami-Dade Aviation Department ("MDAD") for the project, including the "Full System Maintenance Warranty" and "Contract Direct" - owners contracting directly with the Bayer-Servcor Partnership, thereby including the roofing materials manufacturer (Bayer), the roofing applicator (the Bayer-Servcor Partnership's contracting entity), the warranty provider (Bayer) and the warranty administrator (Servcor). Numerous conversations and discussions took place involving David Looney, Charles Valentine and Ridge Stockdale regarding the MIA Central Terminal Project and the details regarding the Bayer-Servcor Partnership.
 32. In preparation for the February 5, 2007 meeting in Orlando, Florida, Servcor prepared a 23 page Memorandum of Understanding and provided an advance copy of the document to Charles Valentine and Ridge Stockdale, with the plan being that the parties would finalize the document at the February 5, 2007 meeting.
 33. Initially, Bayer/BSNA and Servcor agreed that David Looney, as a State Certified Roofing Contractor, would use his roofing contractor's license to "qualify" a newly formed corporation as a "qualified business organization" pursuant to Florida Statutes Chapter 489, thereby enabling the new corporation to perform work as a roofing contractor statewide in Florida for purposes of the Contract Direct Program Servcor developed for the Bayer-Servcor Partnership. In this manner, the Bayer-Servcor Partnership, through the new corporation, would be able to offer select owners of commercial properties a turnkey roofing or re-roofing package of the programs developed by Servcor, and more

immediately, so that the Bayer-Servcor Partnership entity could bid on the MIA Central Terminal Project as a roofing contractor.

34. In furtherance of and in reliance upon the Bayer-Servcor Partnership, Servcor formed Bay Construction International, Inc. and David Looney's state certified roofing contractor's license was used to qualify Bay Construction International, Inc. with the State of Florida Department of Business and Professional Regulation, Construction Licensing Board so that Bay Construction International, Inc. could perform the work on the MIA Central Terminal Project and future projects.
35. Shortly before the pre-bid conference on the MIA Central Terminal Project, Bayer expressed a preference for Servcor and David Looney to instead qualify BSNA as a qualified business under Florida Statutes Chapter 489 so that BSNA could be used as the Bayer-Servcor Partnership entity to bid on the MIA Central Terminal Project if there was sufficient time to process the license transfer, and on future projects. The specific details as to this procedure and the relationship of the Bayer-Servcor Partnership's partners were set forth in a written memorandum of February 1, 2007, prepared by Servcor, which was agreed to by Bayer/BSNA. A true and correct copy of the memorandum is attached hereto as Exhibit "1."
36. During the course of the relationship between Servcor and Bayer/BSNA many drafts of written agreements were prepared and exchanged by Servcor and Bayer/BSNA attempting to set forth all of the terms of the Bayer-Servcor Partnership, under which each party was already operating. During this time, the partnership's partners were documenting and acknowledging via various draft agreements, emails and verbal statements by Bayer's/BSNA's senior management that the "Servcor programs were evolving and would change over time and could never be full documented until they matured." For this reason, coupled with the fact that Servcor had already committed

thousands of hours of work in developing, refining and presenting programs and services to its partners, Bayer/BSNA, a high degree of trust and good faith was required between and among the partners in the Bayer-Servcor Partnership.

37. Bayer's/BSNA's senior management, specifically Charles Valentine, constantly assured Servcor that Bayer was a company of honor and good will and, if for no other reason than their vast size and valuable reputation and brand, could not and would not act in a predatory, unethical or backhanded way against a partner. Mr. Valentine advised that reaching formal signed agreements with a corporation the size of Bayer required several years and that it was customary for these types of partnerships to proceed based upon "Memoranda of Understanding," emails, draft agreements and other documents that showed the intent of the parties should there ever be a major disagreement. The words of assurance offered most frequently by Charles Valentine to Servcor was that "trust was required of Servcor." The drafts of the Bayer-Servcor Partnership Agreement prepared by Bayer/BSNA even included the following agreed wording:

Servcor and BMS [Bayer MaterialScience, LLC] both acknowledge the business model and service programs are new and considered a "work in progress." As such, both parties agree to work together in good faith as these Programs evolve. Neither party will act in a "predatory" fashion and agree to work towards building a mutually beneficial business arrangement. It is the intent of this partnership that these programs be developed for inclusion in the product offerings of Bayer's insulation and roofing materials group.

38. Meanwhile, Servcor continued to develop leads for roofing projects where Bayer's roofing products could be specified by the architect or roofing consultant preparing the bid or construction specifications for the roofing work, and continued to devote one hundred percent (100%) of their efforts diligently marketing Bayer's roofing materials and the Programs and Services developed for the Bayer-Servcor Partnership by Servcor. Bayer/BSNA even developed marketing materials which were distributed and presented by Bayer and BSNA and Servcor to third party roofing contractors and potential

commercial consumers/customers regarding Bayer's roofing materials and the Programs and Services Servcor developed for use by the Bayer-Servcor Partnership wherein Servcor was expressly specifically identified as Bayer's "partner." Several years in a row Servcor also presented, at Bayer's/BSNA's request, presentations as to Servcor's services and certain of Servcor's proprietary Programs and Services which were being offered exclusively to Bayer/BSNA by Servcor, to all of Bayer's approved contractors at Bayer's annual contractor meeting held in conjunction with the National Spray Foam Convention. At these presentations, Bayer/BSNA explained to their contractors the partnership relationship between Bayer/BSNA and Servcor and the proprietary Services and Programs that Servcor was providing to the Bayer-Servcor Partnership as set forth and described more fully herein and below.

39. One of Servcor's contributions to the Bayer-Servcor Partnership was educating Bayer's management and sales agents on the commercial roofing industry and the conventional roofing materials market, which had previously not included SPF roofing, and developing "Programs" and "Value Added Services" which would distinguish Bayer from all other SPF roofing materials manufacturers, and which would help grow the SPF roofing industries share of the overall commercial roofing market from approximately three percent (3%) to approximately ten to fifteen percent (10-15%) over a five (5) to ten (10) year period. Using the unique Programs and Services developed by Servcor for the Bayer-Servcor Partnership, Bayer would be able to command a dominant role in the expanding SPF roofing market.
40. The "Value Added Services" Programs which Servcor developed and finalized for offering by the Bayer-Servcor Partnership included: the "Proactive Hurricane Preparedness Program," the "Watchdog Consulting Program," the "Spec-Check Program," the "Network Partners Program," the "Full System Maintenance Warranty," the "Sustainable Roof

System Program," the "Engineered Solutions Program" (which Servcor had provided to PSI/GE), the "Portfolio Management Program," and the "Contract Direct Program." Each of these programs was not simply an idea or concept, but a fully detailed and completed, ready-to-be-implemented, program consisting of professional quality promotional videos, print materials, PowerPoint™ presentations, "Pitch Books," webinars, website links, a written plan, training materials, support materials, and some even had fully developed software programs. Bayer/BSNA agreed that each of these programs was also the proprietary intellectual property of Servcor.

41. In addition to the "Value Added Service" Programs Servcor developed for the Bayer-Servcor Partnership, Servcor also developed numerous procurement Programs for the Bayer-Servcor Partnership, including the "20 for 10 Program," the "Unit Cost Contracting Program," the "Direct Purchase Program," and the "Repair Cost Recovery Program." As with the "Value Added Service" Programs, these procurement Programs were fully detailed and completed, ready-to-be-implemented, program consisting of professional quality promotional videos, print materials, PowerPoint™ presentations, "Pitch Books," webinars, website links, a written plan, training materials, support materials, and some even had fully developed software programs. As with the "Value Added Services," each of these procurement Programs were agreed by Bayer/BSNA to be the proprietary intellectual property of Servcor,
42. One of the unique Programs created by Servcor for use in the Bayer-Servcor Partnership was the "BaySystems Full System Maintenance Warranty" which gave the Bayer-Servcor Partnership a unique and valuable marketing advantage over all other competitors with regard to the commercial, multi-family, industrial or government building owner when compared with any other warranty program available for similarly performing roofing materials. The most significant feature of the BaySystems Full System Maintenance

Warranty developed by Servcor is that it provides the owner of the building with not only a leak-free roof for the life of the 10-30 year warranty period, but more importantly, it provides the owner with a maintenance-free and repair-free roof for the entire warranty period. Servcor's BaySystems Full System Maintenance Warranty provides the owner of the large commercial facility with the only truly worry-free and hassle-free SPF roofing system on the market.

43. The February 5, 2007 meeting discussed above was held in Orlando, Florida and was attended by David Looney, Bob Lyons, Charles Valentine and Ridge Stockdale. At this meeting, Charles Valentine and Ridge Stockdale were very excited about Servcor's development of the BaySystems Full System Maintenance Warranty program and Servcor's other "Value Added Services" Programs and other Servcor Programs, and agreed to proceed in accordance with the Memorandum of Understanding which Servcor had prepared and circulated prior to the meeting, with certain issues set forth in the Memorandum of Understanding still to be finalized. Servcor and Bayer/BSNA agreed that Servcor would provide its intellectual property exclusively to Bayer/BSNA, and Servcor would act as the exclusive nationwide Manager of these Programs and Services, including the BaySystems Full System Maintenance Warranty program, with the intellectual property rights of all of Servcor's "Value Added Services" Programs and other Programs and Services to remain the property of Servcor.
44. In March, 2007, a two day meeting was held at the Bayer's offices in Spring Texas and was attended by David Looney, Bob Lyons, Charles Valentine, and Ridge Stockdale, with several other management personnel of Bayer attending select portions of the meetings. At this meeting, the final details regarding the MIA Central Terminal Project, the BaySystems Full System Maintenance Warranty program and the Contract-Direct program were worked out and agreed to between Servcor and Bayer/BSNA. The

direction given to Servcor at this meeting was for Servcor to “go out there and get a big job” so that Charles Valentine and/or Ridge Stockdale could report to their superiors about the success of the Bayer-Servcor Partnership and its “Value Added Services” and Programs.

45. In reliance upon the Bayer-Servcor Partnership Agreement and the direction given to Servcor by Bayer/BSNA, and as the National Manager of the BaySystems Full System Maintenance Warranty program, Servcor began aggressively marketing the warranty program to the owners of targeted large commercial, industrial, multi-family residential, and public structures where the roofing or reroofing costs would be substantial.
46. Although Servcor continued performance under the Bayer-Servcor Partnership without benefit of an executed partnership agreement throughout the period of time from 2007 to the present, Servcor was continuously requesting a written contract memorializing the terms of the partnership. Bayer/BSNA purposely stalled and delayed in preparing a written contract, and even occasionally tendered to Servcor a written partnership agreement that was nothing more than the terms of the distributorship arrangement Servcor already had with Bayer.
47. Servcor continued to put pressure on Bayer/BSNA to memorialize the Bayer-Servcor Partnership in writing, at least as to the BaySystems Full System Maintenance Warranty program, as Servcor had and was expended countless hours in marketing the warranty program and was successfully marketing the warranty program to owners of commercial buildings with existing multi-million dollar reroofing needs.
48. Finally, Charles Valentine, as General Manager of Bayer/BSNA, by correspondence dated September 24, 2007, outlined all of the material terms of the Bayer-Servcor Partnership as it related to the BaySystems Full System Maintenance Warranty program. A true and correct copy of this correspondence is attached hereto as Exhibit “2.”

49. Pursuant to Bayer-Servcor Partnership Agreement, Bayer/BSNA and Servcor co-branded the two major components of a spray polyurethane foam roofing system. The foam was co-branded as "BaySystems SRS foam" and the sealant product was co-branded as the "GE SRS Silicone." The "SRS" refers to Servcor's exclusive line of "Sustainable Roof System" products.

FACTUAL BACKGROUND AS TO MIAMI INTERNATIONAL AIRPORT PROJECT

50. Prior to the formation of Servcor and prior to the formation of the Bayer-Servcor Partnership, David Looney, as a roofing contractor and consultant, began developing a business relationship with the representatives of MDAD who were responsible for the maintenance, repair and replacement of the roofs of the numerous large existing structures which comprise the Miami International Airport (hereinafter the "MIA"), as well as substantial planned expansions to the existing structures. With as much as 80 acres of roof surfaces, MIA and MDAD were typical of the size and type of project and owner that the Bayer-Servcor Partnership would be seeking.
51. Upon the formation of Servcor, Servcor continued the development of the existing business relationship with MDAD and its consulting firm which David Looney had established as early as 1999, and promoted MDAD's use of the GE Roofing Systems products, and later the Bayer-Servcor Partnership's BaySystems SRS foam and the GE SRS Silicone sealant for MIA.
52. In 2005, MDAD let out for bid a roofing project entitled "MIA Terminal Building Roof Remediation & Reroofing Bid Package," dated 07-29-05, Project # Z184A, involving the demolition and reroofing of a portion of the terminal building and using a roofing system other than a SPF roof. When all bids came in substantially higher than MDAD had expected and hoped, with the low bid being approximately \$15,000,000.00 (for a roofing area only approximately one-third (1/3) the size of the Central Terminal roofing area that is

a subject of this action), consequently, MDAD decided to not award a contract for the project.

53. In December, 2006, Servcor was contacted by MDAD's architects in regard to "MDAD Project No. Z184A," which is referred to hereinafter as the "MIA Central Terminal Project." The architects inquired about the viability of the GE Roofing System spray polyurethane foam roof system that David Looney had initially proposed for the MIA project in 1999, and asked Servcor to design a roofing system that would save MDAD money. Servcor seized upon this opportunity to promote the use of the Bayer-Servcor Partnership's BaySystems SRS foam and GE SRS Silicone sealant to MDAD's architects. From then until the date that bids were due on the project, Servcor worked closely with MDAD's architects who were responsible for the development of the specifications for the roofs on MIA projects. Servcor successfully promoted the use of the Bayer-Servcor Partnership's BaySystems SRS foam and GE SRS Silicone sealant, as had been agreed to by Bayer/BSNA.
54. The MIA Central Terminal Project was only one of several large scale construction projects taking place at MIA, and covered approximately 450,000 square feet, or over ten (10) acres, of roofing surface. In 2007, as the result of the efforts of Servcor, MDAD's project architect specified the use of the Bayer-Servcor Partnership's BaySystems SRS foam and GE SRS Silicone sealant for the MIA Central Terminal Project, and required the contractor to provide the BaySystems Full System Maintenance Warranty developed for the Bayer-Servcor Partnership by Servcor.
55. MDAD realized a substantial benefit as a result of Servcor's services in this regard. As a result of Servcor's services, the roofing cost on the MIA Central Terminal Project was approximately \$15,000,000, whereas the lowest bid received by MDAD in the failed 2005 bid process, for a roof area that was approximately one-third (1/3) the size of that of the MIA Central Terminal Project, was approximately \$15,000,000. Using the 2005 bid

numbers, the parties responsible for budgeting for MDAD extrapolated that the cost of the MIA Central Terminal Project would be \$45,000,000.00. Consequently, MDAD and the taxpayers in Miami-Dade County realized a savings of approximately \$30,000,000.00 solely as a result of Servcor's design and creative approach to the MIA Central Terminal Project using the Bayer-Servcor Partnership's co-branded roofing materials, and Servcor's negotiations with the Miami-Dade County building officials.

56. Instead of being included in the phased construction plans as set forth in MDAD's Capital Improvements Program for MIA, MDAD contracted with Gomez for the performance of the MIA Central Terminal Project. Gomez had previously been awarded MDAD's Miscellaneous Construction Contracts (hereinafter "MCC"); consequently, by categorizing the project under the MCC heading allowed MDAD to proceed with awarding the MIA Central Terminal Project to Gomez as the MCC Contractor without having to waste additional time on an already delayed project (due to the unsuccessful 2005 bid process) by conducting an extensive bid advertising and bid invitation process.
57. A specific requirement of the bid package for the MIA Central Terminal Project was that each bidder had to provide a letter from Bayer/BSNA stating that if the bidder were awarded the roofing subcontract to Gomez on the project, the bidder would be able to provide MDAD with the BaySystems Full System Maintenance Warranty. Bayer/BSNA in fact provided this express written assurance to MDAD stating, in part, that Bayer/BSNA were prepared to issue the warranty to any BaySystems North America qualified contractor so long as the warranty "requirements have been met and confirmed by Servcor International, the administrators of our Total Maintenance warranty program." Such written correspondence from Bayer/BSNA, issued with the intent that MDAD rely upon the statements therein, clearly establishes both the existence of the BaySystems Full System Maintenance Warranty program and the Bayer-Servcor Partnership, despite

Bayer's/BSNA's subsequent statements to the contrary.

58. Pursuant to the Bayer-Servcor Partnership, Servcor performed an exhaustive analysis of the MIA Central Terminal Project roof area, and developed specifications for numerous areas of the roof surface requiring greater detail, more work, and more expense to the roofing contractor than that which was specified in the project specifications prepared by the architect, in order to decrease the risk of water intrusion, reduce the future maintenance which would need to be performed, reduce the risk that repairs would be required during the warranty period, extend the useful life of the roof system, and reduce the cost of the labor, services and materials to be furnished by the Bayer-Servcor Partnership pursuant to the Full System Maintenance Warranty.
59. Under the express terms of the Bayer-Servcor Partnership, Servcor alone had the discretion and authority to determine the cost to bidders of the Full System Maintenance Warranty, the majority of which amount was to be paid to Servcor as its fee to compensate it for the work it had already performed in the design and specification of the Bayer-Servcor Partnership's roofing materials and successful negotiations with the Miami-Dade building officials, and for securing the project on behalf of the Bayer-Servcor Partnership and Bayer/BSNA. Servcor established the cost of the BaySystems Full System Maintenance Warranty on the MIA Central Terminal Project at \$3,800,000.00. Of this amount, \$3,000,000.00 represented the fee to be paid to Servcor at the front end of the project by the winning bidder - expected by MDAD, Gomez, and the Bayer-Servcor Partnership to be the Bayer-Servcor Partnership's roofing contracting entity. The remaining \$800,000.00 represented the amount that Servcor estimated as the hard costs of future semi-annual inspections of the roof, sampling and laboratory testing of roof samples if required, the preparation of written reports to MDAD on the condition of the roof as determined by the inspections, routine roof maintenance and any necessary repairs of

the completed roof, for the life of the fifteen (15) year warranty. Pursuant to the Bayer-Servcor Partnership agreement, this \$800,000.00 was to be placed in an account to fund the annual payments to Servcor for the life of the roof warranty for these services.

60. The MIA Central Terminal Project was only a small part of MDAD's overall construction planned for MIA. The next phase of construction at MIA was the MIA North Terminal Project which is scheduled for completion in 2011. The MIA North Terminal Project is larger and will include significantly more roofing area, and the roofing contract has not yet been awarded. The MIA North Terminal Project includes the construction of a 400,000 square foot Federal Inspection Services area. To put the scale of the project into perspective, the completed MIA North Terminal structure will be one (1) mile in length. Moreover, in addition to the terminal structures which are part of the MIA Central Terminal Project and the MIA North Terminal Project, MDAD is responsible for the maintenance of many additional existing and planned buildings which are part of MIA, including aircraft hangars, office buildings, service buildings, fire departments, etc....., making MDAD an extremely important and valuable roofing customer.

COUNT I

(breach of the Bayer-Servcor Partnership agreement against Bayer as to the warranty for the MIA Central Terminal Project)

61. This is a cause of action for breach of contract for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.
62. Servcor realleges paragraphs one through sixty, above, as if recited in full herein.
63. For reasons as set forth in greater detail below, IRC was awarded the roofing subcontract to Gomez on the MIA Central Terminal Project.
64. Bayer/BSNA breached the Bayer-Servcor Partnership agreement with Servcor by reneging on its promise to offer and provide the BaySystems Full System Maintenance

Warranty after the completion of the work by IRC on the MIA Central Terminal Project.

65. On July 28, 2009, unbeknownst to Servcor, Rene Zierden, on behalf of Bayer/BSNA, issued written correspondence to IRC, to be provided to MDAD, stating that the BaySystems Full System Maintenance Warranty was not available to MDAD on the MIA Central Terminal Project. Bayer/BSNA, even as of the date of the filing and service of the Complaint in this action, failed to even notify, much less consult with Servcor in this regard. Servcor only discovered this correspondence as a result of documents produced by MDAD in response to a statutory public records request.
66. Servcor has been damaged as a result of Bayer's and BSNA's breach of the Bayer-Servcor Partnership agreement to provide the BaySystems Full System Maintenance Warranty for the MIA Central Terminal Project in that Servcor did not receive the \$3,000,000.00 fee it had already earned in regard to the project.
67. Servcor was further damaged as a result of Bayer's and BSNA's breach of the Bayer-Servcor Partnership agreement in that Servcor was deprived of the profits Servcor would have earned out of the \$800,000.00 that was to be paid to Servcor for the administration of the BaySystems Full System Maintenance Warranty, which services are described in detail above, for the life of the fifteen (15) year warranty.
68. All conditions precedent to the bringing of this action have been performed, have otherwise occurred or have been waived.
69. Venue is proper in Pinellas County, Florida as to Bayer as Servcor, a partner in the Bayer-Servcor Partnership, is located in Pinellas County, Florida, the activities of the Bayer-Servcor Partnership were carried out in Pinellas County, Florida, certain acts by Bayer and BSNA which form the basis for the causes of action herein occurred in Pinellas County, Florida, the financial harm or damages incurred by Servcor was incurred in Pinellas County, Florida, and payment was due to Servcor in Pinellas County, Florida.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability company, for compensatory damages in excess of three and one-half million dollars (\$3,500,000.00), prejudgment interest, court costs, and for such other and further relief as may be just and proper.

COUNT II
**(breach of the Bayer-Servcor Partnership agreement against
Bayer as to bidding the MIA Central Terminal Project)**

70. This is a cause of action for breach of contract for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.
71. Servcor realleges paragraphs one through sixty, and sixty-nine, above, as if recited in full herein.
72. The universe of potential subcontractor bidders to Gomez for the roofing work on the MIA Central Terminal Project was greatly limited by several qualifications and factors, including, but not limited to, the following:
- A. The applicator had to be experienced in spray on polyurethane foam roofing;
 - B. The applicator had to be a "Bayer Approved" applicator;
 - C. The applicator had to have the financial strength to obtain a bid bond in the amount of five percent (5%) of the bid amount;
 - D. The applicator had to have the financial strength to obtain a payment and performance bond in the amount of the roofing subcontract, which was known would exceed \$15,000,000.00;
 - E. The applicator had to know about the project despite the fact that the project was not specifically identified or included in MDAD's Capital Improvement Program, and the contract was awarded to Gomez under the pre-existing MCC (MDAD

Contract No. MCC-7-2005);

- F. The publication of the invitation to bid the roofing subcontract to Gomez was not advertised in any publications outside of the State of Florida or even in any major or typical publications in the Miami-Dade area, and was not advertised in the Dodge Reports or any of the typical publications or means of publication used for projects of this size and scope;
 - G. The specifications for the roofing materials to be used on the MIA Central Terminal Project, although allowing for substitution of an equivalent roofing material, were written so as to virtually assure that the Bayer-Servcor Partnership's BaySystems SRS foam and GE SRS Silicone sealant, which materials were co-branded by Servcor and Bayer/BSNA and had not yet been marketed under those names, would be used on the project; and
 - H. Servcor suggested the roofing contractors to whom an invitation to bid the roofing subcontract to Gomez was extended.
73. Initially, Bayer/BSNA and Servcor agreed that David Looney, as a State Certified Roofing Contractor, would use his roofing contractor's license to "qualify" a newly formed corporation as a "qualified business organization" pursuant to Florida Statutes Chapter 489, thereby enabling the new corporation to perform work as a roofing contracting statewide in Florida. This would enable the Bayer-Servcor Partnership to offer Contractor Direct Program which was part of the Value Added Services being offered by the Bayer-Servcor Partnership. Under the Contract Direct Program, the property owner would enter into a single contract with the newly formed Bayer-Servcor Partnership contracting entity, so that the owner would be contracting directly with the combination of the roof designer and specifier, the roofing contractor, the materials manufacturer, the warrantor, and the warranty administrator. In this manner, Bayer/BSNA and Servcor, through the contracting

entity, would be able to offer select owners of commercial properties a turnkey roofing or re-roofing package of the programs developed by Servcor, and more immediately, so that Bayer/BSNA and Servcor could bid on the MIA Central Terminal Project as a roofing contractor.

74. In furtherance of and in reliance upon the Bayer-Servcor Partnership agreement, Servcor formed Bay Construction International, Inc. and David Looney's state certified roofing contractor's license was used to qualify Bay Construction International, Inc. with the State of Florida Department of Business and Professional Regulation, Construction Licensing Board so that Bay Construction International, Inc. could bid on the MIA Central Terminal Project and future projects.
75. Shortly before the pre-bid conference on the MIA Central Terminal Project, Bayer/BSNA expressed a preference for Servcor and David Looney to instead qualify BSNA as a qualified business under Florida Statutes Chapter 489 so that BSNA could be used as the contracting entity to bid on the MIA Central Terminal Project and future projects. The specific details as to this procedure and the relationship between Bayer/BSNA and Servcor were set forth in the Exhibit "1" written memorandum of February 1, 2007, prepared by Servcor, which was agreed to by Bayer/BSNA.
76. Servcor obtained and prepared the necessary forms for the transfer of David Looney's state certified roofing contractor's license from Bay Construction International, Inc. to BSNA as requested by Bayer/BSNA. Servcor then provided the forms to Bayer/BSNA so that Bayer/BSNA could supply the only missing information - the corporate and financial information regarding BSNA; however, Bayer and BSNA failed and refused to provide the necessary information so that the license transfer could take place because of a problem created in regard to the MIA Central Terminal Project by Bayer/BSNA.
77. Ultimately, Bayer/BSNA breached the Bayer-Servcor Partnership agreement by failing and

refusing to proceed with the qualification of BSNA, or any other company jointly with Servcor, for purposes of bidding on the MIA Central Terminal Project and future projects.

78. Had Bayer/BSNA not breached the Bayer-Servcor Partnership agreement in this manner, Servcor and Bayer/BSNA, through whatever corporate form they chose for the roofing contracting entity, would have been virtually guaranteed to be the qualified bidder submitting the lowest bid on the roofing subcontract to Gomez on the MIA Central Terminal Project, which would have enabled Bayer/BSNA and Servcor to have realized profits in excess of \$7,000,000.00 (not including the fee to be paid to Servcor under the Full System Maintenance Warranty as more fully described in the immediately preceding Count of this Complaint).
79. The Bayer-Servcor Partnership would have had a substantial advantage over any other party bidding on the roofing subcontract to Gomez on the MIA Central Terminal Project, and would have been virtually guaranteed to be awarded the roofing subcontract as:
 - A. The Bayer-Servcor Partnership obviously had tremendous experienced and expertise in spray on polyurethane foam roofing.
 - B. Bayer/BSNA controlled which applicators were "Bayer Approved" applicators.
 - C. Bayer, with sales in excess of \$9.7 billion dollars in 2008, and the Polyurethanes Business Unit (of which the SPF roofing products are part) accounting for approximately fifty percent (50%) of that sales total, would have had no difficulty in obtaining both the bid bond and the payment and performance bond required on the MIA Central Terminal Project.
 - D. Servcor had immeasurable advance knowledge of the approximately ten (10) acre roof surface consisting of fifty-six (56) different roof levels which were included in the complicated MIA Central Terminal Project as well as the roofing requirements by virtue of the substantial work that Servcor had performed in investigating and

inspecting the project, the preparation of the roof system design at the request of MDAD's architects, the preparation of the additional specifications for the project required for the Full System Maintenance Warranty, and approximately ten (10) years of work that David Looney had invested in developing MDAD as a roofing customer. This background knowledge could not reasonably be obtained by any roofing contractor in the short time between the publication of the project (June 12, 2007) and the deadline for submitting a subcontract bid to Gomez (June 20, 2007).

- E. Obviously, the Bayer-Servcor Partnership was aware of the opportunity to submit a subcontract bid to Gomez for the roofing work on the MIA Central Terminal Project.
- F. The Bayer-Servcor Partnership was the only potential bidder who had any knowledge of the partnership's co-branded BaySystems SRS foam and GE SRS Silicone sealant which were specified for the MIA Central Terminal Project.
- G. The specifications for the MIA Central Terminal Project were written in such a manner as to virtually require the products to be offered by Bayer-Servcor Partnership, including the requirement of the BaySystems Full System Maintenance Warranty (which Servcor and Bayer/BSNA controlled) and requiring Dade County Approvals, which the Bayer-Servcor Partnership had.
- H. Only about twelve (12) of Bayer's/BSNA's approximately fifty (50) Approved Applicators for SPF roofing systems had the "Quality Professional" designation required by the specifications of anyone who wanted to bid on the roofing subcontract to Gomez. Of these twelve (12), only three (3) had the additional credentials necessary to meet the requirements of the specifications such as having a Florida Roofing Contractor's license, a minimum of ten (10) years experience in the application of foam roofing, adequate bonding capacity, etc....

The Bayer-Servcor Partnership had these credentials.

- I. Servcor had not extended an invitation to bid the subcontract for the roofing work on the MIA Central Terminal Project to any of the very few individual roofing contractors who could meet the bidding requirements set forth above, as all parties, including MDAD, its architects and Gomez, had expected from the beginning that the Bayer-Servcor Partnership would be awarded the subcontract and would be performing the work.
- J. There would be substantial opportunities for cost savings as to the amount of the subcontract bid on the MIA Central Terminal Project by the roofing subcontractor being a partnership of the roofing materials manufacturer (Bayer) and the warranty administrator (Servcor).

80. Servcor has been damaged as a result of Bayer's and BSNA's breach of the Bayer-Servcor Partnership's agreement to bid on the subcontract to Gomez for the roofing work on the MIA Central Terminal Project in that Servcor lost its share of the substantial profits that would have been made on the project had the Bayer-Servcor Partnership bid the project as a roofing subcontractor to Gomez as agreed.

81. All conditions precedent to the bringing of this action have been performed, have otherwise occurred or have been waived.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability company, for compensatory damages in excess of six million dollars (\$6,000,000.00), prejudgment interest, court costs, and for such other and further relief as may be just and proper.

COUNT III

**(breach of the Bayer-Servcor Partnership agreement against
Bayer as to warranties on future projects)**

82. This is a cause of action for breach of contract for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.
83. Servcor realleges paragraphs one through sixty, and sixty-nine, above, as if recited in full herein.
84. In addition to the MIA Central Terminal Project, Servcor had been expending considerable effort in diligently marketing the Bayer-Servcor Partnership's Value Added Services and Programs, including the BaySystems Full System Maintenance Warranty Program, to other select owners of large commercial projects.
85. One of the owners to whom Servcor promoted the BaySystems Full System Maintenance Warranty is the Broward County Schools, who, as a result of Servcor's efforts, specified that warranty in the bid package for four Broward County Schools. Bayer/BSNA were aware of the fact that Servcor had made the presentation to the Broward County Schools along with Tarheel Roofing, Inc., a Bayer Approved applicator of the SPF roofing systems, and had promoted and encouraged Servcor in that regard.
86. By correspondence dated December 18, 2009, the Broward County Schools representative notified Tarheel Roofing, Inc. that although it was the third lowest bidder on the project with a bid of approximately \$8,000,000.00, the two lower bidders were going to be disqualified as they could not provide the BaySystems Full System Warranty, and the contract would be awarded to Tarheel Roofing, Inc. if it could provide the specified warranty. Tarheel Roofing, Inc. provided Servcor and Bayer/BSNA with a copy of the correspondence and requested assurances that the Bayer could and would provide the specified warranty.

87. As of the date of the December 18, 2009 correspondence from the Broward County Schools and the resulting email from Tarheel Roofing, Inc., Bayer/BSNA had still not had the integrity or decency or shown the good faith required of parties to any contract in Florida, to have even notified Servcor of the fact that Bayer/BSNA had breached and terminated the Bayer-Servcor Partnership - a fact that Bayer/BSNA had communicated in writing to IRC five (5) months earlier.
88. In order to continue concealing its position from Servcor, Bayer/BSNA failed and refused to give Tarheel Roofing, Inc. a straight and truthful answer to its request for confirmation that the BaySystems Full System Maintenance Warranty would still be offered to the Broward County Schools. A true and correct copy of the exchange of email communications between Tarheel Roofing, Inc. and Bayer/BSNA in this regard is attached hereto as Composite Exhibit "3."
89. Servcor would have earned a substantial profit on the Broward County Schools projects as the warranty administrator for the investigation, roof design and warranty administration, as the warranty fee was a substantial portion of the \$8,000,000.00 bid amount. Additionally, Servcor would have earned a profit for the administration of the warranty from the monies escrowed to cover these costs.
90. The Broward County Schools contract for four schools was only the initial project with that governmental owner and constitutes only a very small portion of the potential roofing and warranty business available, as the Broward County School System consists of more than two hundred and fifty (250) public elementary, middle and high schools in Broward County.
91. In addition to the Broward County Schools project, the MIA Central Terminal Project, as noted above, was to be followed closely in time by the MIA North Terminal Project, which is approximately a forty percent (40%) larger project than the MIA Central Terminal

Project. The North Terminal Project is to be completed in 2011. Since the terminal buildings are connected, and the North Terminal extends from the Central Terminal, as well as for administrative and other reasons, MDAD and its architect has specifically expressed the preference that the roofs on the terminal buildings be covered by the same warranty and the same warrantor. Consequently, if MDAD had been provided the BaySystems Full System Maintenance Warranty on the MIA Central Terminal Project as promised, the Bayer-Servcor Partnership would have been requested to provide the same warranty on the MIA North Terminal Project.

92. In addition to the MIA North Terminal Project, it is estimated that there may be as many as eighty (80) acres of roofing at MIA, and the Central and North Terminals combined constitute only a small percentage of the total roof area at MIA. Again, if Bayer/BSNA had not breached and wrongfully terminated the Bayer-Servcor Partnership, and had Bayer/BSNA not breached their promise to MDAD, the reasonable expectation in the construction industry would be that the same roofing system and warranties would be used by MDAD and its contractor on the roofing or reroofing of these additional buildings.
93. In addition to losing the profit it would have made from the fees for the issuance of the BaySystems Full System Maintenance Warranty on these known specific projects, Servcor has been deprived of the profits it would have earned for administering the BaySystems Full System Maintenance Warranty on all future projects for which the owner or the project specified that warranty in its bid package or contract. Because the process by which large institutional and governmental property owners follow from initial planning through contract issuance often takes years (as it did with both the MIA projects and the Broward County Schools projects), the Bayer-Servcor Partnership was only beginning to see the rewards from Servcor's solo efforts in marketing the Bayer-Servcor Partnership's Value Added Services and specialty Programs developed by Servcor.

94. Since Bayer/BSNA were unable to prepare a written contract accurately outlining the terms and conditions of the Bayer-Servcor Partnership that both parties were already operating under during the three years prior to the filing of this lawsuit, and since a five (5) year initial term for the Bayer-Servcor Partnership is one which was specifically discussed, and due to the nature of the partnership and the fact that results are often not seen until years after the sales presentations are made, Servcor has been deprived of profits it would reasonably have expected to earn in the tens of millions of dollars during only just the next five (5) years of the Bayer-Servcor Partnership.

95. All conditions precedent to the bringing of this action have been performed, have otherwise occurred or have been waived.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability company, for damages in excess of ten million dollars (\$10,000,000.00), prejudgment interest, court costs, and for such other and further relief as may be just and proper.

COUNT IV

**(breach of the Bayer-Servcor Partnership agreement against
Bayer as to bidding future projects under the Contract Direct Program)**

96. This is a cause of action for breach of contract for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.

97. Servcor realleges paragraphs one through sixty, and sixty-nine, above, as if recited in full herein.

98. The financial savings to be realized by property owners through the Contract Direct Program, among other tangible factors, would have enabled the Bayer-Servcor Partnership to have had a substantial market advantage in both the bidding process and in negotiating contracts on the large commercial, multi-family, industrial and public roofing

projects on which the joint venture had agreed to target.

99. By Bayer's/BSNA's breach of the Bayer-Servcor Partnership Agreement to bid on large commercial, multi-family residential, industrial and governmental roofing projects as a roofing contractor for the application of either the BaySystems SRS foam and the GE SRS Silicone sealant roof system, or Bayer's/BSNA's Bayseal Roofing System, Servcor has been damaged.
100. In addition to the specific projects identified above and herein, the Bayer-Servcor Partnership would have the resources and ability to perform roofing work throughout North America and Canada on select large roofing projects, using the competitive advantages described above and herein, with no real competition, could reasonably have earned profits in excess of one hundred million dollars over the course of several years as the only single source partnership entity in the SPF roofing market combining the resources of the roofing materials manufacturer, warrantor, contractor and warranty administrator. By subcontracting the work to other local Bayer Approved SPF roofing applicators, the Bayer-Servcor Partnership had the capability to manage and oversee a significant number of large commercial roofing projects being performed concurrently.
101. Servcor has been damaged as described herein by Bayer's/BSNA's breach of the Bayer-Servcor Partnership agreement.
102. All conditions precedent to the bringing of this action have been performed, have otherwise occurred or have been waived.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability company, for compensatory damages in excess of thirty million dollars (\$30,000,000.00), prejudgment interest, court costs, and for such other and further relief as may be just and proper.

COUNT V
**(breach of distributorship agreement against
Bayer as to the MIA Central Terminal Project)**

103. This is a cause of action for breach of contract for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.
104. Servcor realleges paragraphs one through sixty and sixty-nine, above, as if recited in full herein.
105. Under the oral distributorship agreement between Servcor and Bayer/BSNA, Servcor is entitled to a commission on Bayer's/BSNA's sale of roofing materials on several projects including the MIA Central Terminal Project, the Eli Lilly project, the Orlando Convention Center project and the N.A.S.A project.
106. To add insult onto injury, not only did Bayer/BSNA breach the Bayer-Servcor Partnership agreement with Servcor in regard to both bidding the MIA Central Terminal Project and offering the BaySystems Full System Maintenance Warranty promised on that project, Bayer/BSNA breached the oral distributorship contract with Servcor by not paying Servcor the commission on the materials sold on the MIA Central Terminal Project and these other projects.
107. Servcor has been damaged as a direct and proximate result of Bayer's/BSNA's breach of the distributorship agreement as described herein.
108. All conditions precedent to the bringing of this action have been performed, have otherwise occurred or have been waived.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability company, for damages, prejudgment interest, court costs, and for such other and further relief as may be just and proper.

COUNT VI
(breach of fiduciary duty against Bayer)

109. This is a cause of action for breach of fiduciary duty for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.
110. Servcor realleges paragraphs one through sixty, and sixty-nine, above, as if recited in full herein.
111. Under Florida law, Bayer/BSNA owed Servcor, as their partner, a fiduciary duty of loyalty and due care as set forth more fully in F.S. § 620.8404, Florida's Revised Uniform Partnership Act.
112. Bayer/BSNA were aware of the need to maintain confidentiality and secrecy with regard to the MIA Central Terminal Project.
113. Keith Common, of Bayer, was aware of the existence of the Bayer-Servcor Partnership and the partnership's plan to bid on the MIA Central Terminal Project as a subcontractor to Gomez, and of the Bayer-Servcor Partnership's BaySystems Full System Maintenance Warranty Program. Mr. Common was also aware of the critical importance of not publicizing and preserving as confidential the information as to the MIA Central Terminal Project. Servcor and Bayer/BSNA had specifically agreed not to inform any other contractors about the MIA Central Terminal Project prior to the Bayer-Servcor Partnership being awarded the roofing subcontract to Gomez, and Keith Common was aware of this fact.
114. One of Keith Common's responsibilities as a Sales Manager for Bayer/BSNA is to develop and maintain personal and professional relationships with Bayer's/BSNA's largest national customers and their top management/ownership, in order to increase purchases of roofing materials and products by such customers, and to develop leads on potential new customers and projects.

115. Only days prior to the scheduled pre-bid conference on the MIA Central Terminal Project, Mr. Common traveled to Kentucky, to IRC's principal place of business, for the sole purpose of entertaining Mel Stumler and Sean Stumler, the President and Vice President, respectively, of IRC, Bayer's/BSNA's highest volume SPF roofing contractor customer and a "Bayer approved" applicator of Bayer's/BSNA's Bayseal Roofing System.
116. Bayer/BSNA knew, or reasonably should have known, that IRC was capable of obtaining bid bonds and payment and performance bonds in the amounts as required on MIA Central Terminal Project. Consequently, neither Bayer/BSNA nor Servcor intended to notify IRC about the MIA Central Terminal Project as Bayer/BSNA did not want to be in a position of bidding a project against their best customer. IRC had not been invited by Servcor to bid the MIA Central Terminal Project.
117. During the course of the evening when Mr. Common was entertaining the Stumlers over drinks and dinner, Mr. Common consumed alcoholic beverages and became under the influence of the alcoholic beverages to the point that his normal faculties were impaired. While drunk, Mr. Common leaked the confidential information about the MIA Central Terminal Project and the upcoming pre-bid conference on the project to the Stumlers.
118. The Stumlers and IRC did not know about the MIA Central Terminal Project prior to Mr. Common' drunken disclosure, nor would the Stumlers or IRC reasonably have found out about the MIA Central Terminal Project prior to the deadline for submitting subcontract bids to Gomez.
119. Upon Mr. Common leaking the confidential information to the Stumlers about the MIA Central Terminal Project, one or both of the Stumlers immediately made travel arrangements to visit the project and to attend the pre-bid conference, so that IRC could participate in the bidding process and submit a subcontract bid to Gomez for the roof work on the MIA Central Terminal Project.

120. Immediately after realizing the seriousness of what he had done, Mr. Common called Ridge Stockdale and informed him that he had been drunk and had leaked the confidential information about the MIA Central Terminal Project to IRC. Shortly thereafter, and with only days remaining prior to the pre-bid conference on the MIA Central Terminal Project, Charles Valentine conveyed this news to Servcor.
121. When Charles Valentine informed Servcor that Keith Common had leaked the confidential information about the MIA Central Terminal Project to IRC while drunk, Mr. Valentine also informed Servcor that Bayer/BSNA had chosen to breach the Bayer-Servcor Partnership agreement to bid on the MIA Central Terminal Project as a contractor. Mr. Valentine stated that Bayer/BSNA could not compete with one of their customers.
122. Bayer's/BSNA's conduct in the form of Keith Common's drunken disclosure of confidential joint venture information, constituted a breach of Bayer's/BSNA's fiduciary duty to Servcor.
123. Servcor was damaged as a direct and proximate result of Bayer's/BSNA's breach of fiduciary duty in this regard.
124. Bayer's/BSNA's breach of fiduciary duty through the conduct and statements of Keith Common as set forth herein and above falls squarely within the language of the statutory exception to limits on punitive damages as set forth in Florida Statutes § 768.736, thereby removing any statutory limits on the amount of punitive damages Servcor is entitled to recover upon compliance with Florida Statutes § 768.72(1).
125. After the act in breach of the fiduciary duty by Keith Common, the officers, directors and/or managers of Bayer/BSNA condoned, ratified and/or consented to the breach of fiduciary duty in that Bayer/BSNA refused to move forward with bidding the MIA Central Terminal Project as the Bayer-Servcor Partnership. Moreover, the officers, directors and/or managers of Bayer/BSNA further condoned, ratified and/or consented to the breach of fiduciary duty in that Bayer/BSNA embarked upon a course of conduct of

conspiring with IRC and Gomez to defraud MDAD and Servcor by attempting to convince MDAD that not only had there never been any partnership with Servcor, but that MDAD had never been offered the BaySystems Full System Maintenance Warranty on the MIA Central Terminal Project. Consequently, Bayer/BSNA, by virtue of Florida Statutes § 768.72(3)(b), are not shielded from any liability for punitive damages due to the fact the breach of fiduciary duty was committed by an employee or agent of Bayer/BSNA.

126. Servcor specifically reserves the right to seek leave to amend this Complaint to seek an award of punitive damages pursuant to Florida Statutes § 768.72(1) upon a reasonable showing by evidence in the record or proffered by Servcor.
127. All conditions precedent to the bringing of this action have been performed, have otherwise occurred or have been waived.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability company, for damages, prejudgment interest, court costs, and for such other and further relief as may be just and proper.

COUNT VII
(breach of fiduciary duty against Bayer)

128. This is a cause of action for breach of fiduciary duty for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.
129. Servcor realleges paragraphs one through sixty and sixty-nine, above, as if recited in full herein.
130. Under Florida law, Bayer/BSNA owed Servcor, as their partner, a fiduciary duty of loyalty and due care as set forth more fully in F.S. § 620.8404, Florida's Revised Uniform Partnership Act.
131. After attending the pre-bid conference on the MIA Central Terminal Project, IRC contacted

Servcor by telephone to request details as to the cost of the BaySystems Full System Maintenance Warranty required by the project's written specifications. In response, Servcor asked that IRC make the request in writing by email so that Servcor could document both IRC's request and Servcor's response in order to document that it was providing the same information regarding the warranty and its cost to all bidders on the project.

132. Instead of contacting Servcor, IRC contacted Bayer/BSNA. In response, according to IRC, Bayer/BSNA informed IRC that there was no such warranty as the BaySystems Full System Maintenance Warranty.
133. Falsely informing IRC that there was no such warranty as the BaySystems Full System Maintenance Warranty constituted a further and additional breach of Bayer's/BSNA's fiduciary duty owed to Servcor.
134. As a result of Bayer's/BSNA's breach of fiduciary duty in this regard, IRC did not follow up and contact Servcor in regard to either the requirements or cost of the BaySystems Full System Maintenance Warranty, and in fact never provided the BaySystems Full System Maintenance Warranty to MDAD on the MIA Central Terminal Project.
135. Servcor was damaged as a direct and proximate result of Bayer's/BSNA's breach of fiduciary duty in this regard as IRC did not purchase the BaySystems Full System Maintenance Warranty, thereby depriving Servcor of the fee it had earned and would have received as a result of the issuance of the warranty, and the profit Servcor would have earned from the administration of the warranty. At the time of making the false representation to IRC in breach of the fiduciary duty owed to Servcor, Bayer/BSNA had a dual intent in making the false statement. Bayer/BSNA were motivated by a financial self-interest in currying favor with IRC, Bayer/BSNA's largest customer of its SPF roofing systems and products, but also a specific intent to harm Servcor by depriving Servcor of

not only the \$3,000,000.00 fee Servcor had earned on the MIA Central Terminal Project and the profit Servcor would earn from the administration of the warranty, but also on the future profits Servcor would be entitled to from the Bayer-Servcor Partnership's future earnings generated from the marketing and promotion efforts of the partnership and the offering of the Value Added Services and Programs developed by Servcor for the partnership. Consequently, Bayer's/BSNA's breach of fiduciary duty as set forth herein and above falls squarely within the exception of Florida Statutes § 768.73(1)(c), thereby removing any statutory limits on the amount of punitive damages Servcor is entitled to recover upon compliance with Florida Statutes § 768.72(1).

136. The false statement made to IRC as to the existence of the BaySystems Full System Maintenance Warranty was condoned, ratified and/or consented to by the officers, directors and/or managers of Bayer/BSNA in that Bayer/BSNA refused to further confirm with MDAD that the BaySystems Full System Maintenance Warranty had been available and offered by Bayer/BSNA on the MIA Central Terminal Project. Moreover, Bayer/BSNA embarked upon a course of conduct of conspiring with IRC and Gomez to defraud MDAD and Servcor by reiterating the false statement to IRC, Gomez and MDAD. Consequently, Bayer/BSNA, by virtue of Florida Statutes § 768.72(3)(b), are not shielded from any liability for punitive damages due to the fact the breach of fiduciary duty was committed by an employee or agent of Bayer/BSNA.
137. Servcor specifically reserves the right to seek leave to amend this Complaint to seek an award of punitive damages pursuant to Florida Statutes § 768.72(1) upon a reasonable showing by evidence in the record or proffered by Servcor.
138. All conditions precedent to the bringing of this action have been performed, have otherwise occurred or have been waived.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a

judgment against the Defendant, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability company, for damages, prejudgment interest, court costs, and for such other and further relief as may be just and proper.

COUNT VIII
(breach of fiduciary duty against Bayer)

139. This is a cause of action for breach of fiduciary duty for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.
140. Servcor realleges paragraphs one through sixty and sixty-nine, above, as if recited in full herein.
141. Under Florida law, Bayer/BSNA owed Servcor, as their partner, a fiduciary duty of loyalty and due care as set forth more fully in F.S. § 620.8404, Florida's Revised Uniform Partnership Act.
142. After Bayer/BSNA falsely informed IRC that there was no such warranty as a BaySystems Full System Maintenance Warranty available for the MIA Central Terminal Project, IRC informed Gomez, MDAD and others that the BaySystems Full System Maintenance Warranty was not available for the MIA Central Terminal Project and instead offered MDAD only a standard roofing contractor's warranty backed only by IRC and not by Bayer/BSNA, which warranty did not include semi-annual inspections, laboratory testing and reports, and which warranty did not include the costs of all maintenance and repairs which would be required to maintain the roof in a warrantable and serviceable condition throughout the life of the warranty.
143. When Servcor became aware that MDAD had been informed that there was no BaySystems Full System Maintenance Warranty, Servcor notified MDAD that this assertion was false and that IRC had simply never contacted Servcor as directed to obtain the information as to the requirements and the cost of the BaySystems Full System

Maintenance Warranty.

144. Servcor requested that Bayer/BSNA promptly notify MDAD that the information it had been provided by IRC was incorrect.
145. Bayer/BSNA had an obligation to correct the misinformation and to notify MDAD that there was a BaySystems Full System Maintenance Warranty and that this warranty could have been, or still could be, issued with regard to the MIA Central Terminal Project.
146. Instead, Bayer/BSNA breached their fiduciary duty to Servcor and failed and refused to correct the misinformation provided to MDAD as to the BaySystems Full System Maintenance Warranty and further failed to support Servcor or confirm the accuracy of Servcor's position in this regard.
147. Servcor was damaged as a direct and proximate result of Bayer/Servcor's breach of fiduciary duty in this regard as MDAD did not require Gomez or IRC to comply with the terms of the project specifications and the contract based upon the belief that there was no BaySystems Full System Maintenance Warranty program and no such warranty had been available for the MIA Central Terminal Project. Consequently, Servcor was deprived of the fee it had earned and would have been paid as a result of the issuance of the warranty and the profit it would have earned from the administration of the warranty.
148. Bayer's/BSNA's failure and refusal to correct the misinformation provided to MDAD, and the failure to truthfully advise MDAD that the BaySystems Full System Maintenance Warranty had been available and offered on the MIA Central Terminal Project, and further that the warranties being offered to MDAD by IRC were grossly inferior to the BaySystems Full System Maintenance Warranty, had a dual intent on the part of Bayer/BSNA. Bayer/BSNA were motivated not only by a financial self-interest in currying favor with IRC, Bayer/BSNA's largest customer of its roofing systems and products, but were also motivated by a specific intent to harm Servcor by depriving Servcor of not only the

\$3,000,000.00 fee Servcor had earned on the MIA Central Terminal Project and the profit Servcor would earn from the administration of the warranty, and also on the future profits Servcor would be entitled to from the Bayer-Servcor Partnership's future earnings generated from the marketing and promotion efforts of the Bayer-Servcor Partnership and the offering of the Value Added Services and Programs developed by Servcor for the partnership. Consequently, Bayer's/BSNA's breach of fiduciary duty as set forth herein and above falls squarely within the exception of Florida Statutes § 768.73(1)(c), thereby removing any statutory limits on the amount of punitive damages Servcor is entitled to recover upon compliance with Florida Statutes § 768.72(1).

149. The false statement made to IRC as to the existence of the BaySystems Full System Maintenance Warranty was condoned, ratified and/or consented to by the officers, directors and/or managers of Bayer/BSNA in that Bayer/BSNA refused to further confirm with MDAD that the BaySystems Full System Maintenance Warranty had been available and offered by Bayer/BSNA on the MIA Central Terminal Project. Moreover, Bayer/BSNA embarked upon a course of conduct of conspiring with IRC and Gomez to defraud MDAD and Servcor by reiterating the false statement to IRC, Gomez and MDAD. Consequently, Bayer/BSNA, by virtue of Florida Statutes § 768.72(3)(b), are not shielded from any liability for punitive damages due to the fact the breach of fiduciary duty was committed by an employee or agent of Bayer/BSNA.
150. Servcor specifically reserves the right to seek leave to amend this Complaint to seek an award of punitive damages pursuant to Florida Statutes § 768.72(1) upon a reasonable showing by evidence in the record or proffered by Servcor.
151. All conditions precedent to the bringing of this action have been performed, have otherwise occurred or have been waived.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a

judgment against the Defendant, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability company, for damages, prejudgment interest, court costs, and for such other and further relief as may be just and proper.

COUNT IX
(breach of fiduciary duty against Bayer)

152. This is a cause of action for breach of fiduciary duty for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.
153. Servcor realleges paragraphs one through sixty and sixty-nine, above, as if recited in full herein.
154. Under Florida law, Bayer/BSNA owed Servcor, as their partner, a fiduciary duty of loyalty and due care as set forth more fully in F.S. § 620.8404, Florida's Revised Uniform Partnership Act.
155. As a result of a bid protest filed by Tarheel Roofing on behalf of a joint venture it formed in order to submit a bid on the MIA Central Terminal Project, MDAD, through one of its authorized agents, made a specific written request of Bayer/BSNA as to whether there was a BaySystems Full System Maintenance Warranty which satisfied the requirements of the project specifications and MDAD's contract with Gomez for the MIA Central Terminal Project.
156. Again, instead of correcting the misinformation and advising MDAD that there was indeed a BaySystems Full System Maintenance Warranty and that Bayer/BSNA had agreed to offer this warranty on the MIA Central Terminal Project, Bayer/BSNA breached its fiduciary duty to Servcor and purposely chose to either not respond to the request, or to respond to the request in such a manner as to not correct the misunderstanding.
157. Servcor was damaged as a direct and proximate result of Bayer's/BSNA's breach of fiduciary duty in this regard as MDAD did not require Gomez and IRC to comply with the

terms of the project specifications and the contract based upon the belief that there was no BaySystems Full System Maintenance Warranty program and no such warranty had been available for the MIA Central Terminal Project. Consequently, Servcor was deprived of the profit it would have made as a result of the issuance of the warranty.

158. Bayer's/BSNA's breach of fiduciary duty in this regard had a dual intent on their part. Bayer/BSNA were motivated not only by a financial self-interest in currying favor with IRC, Bayer's/BSNA's largest customer of its roofing systems and products, but were also motivated by a specific intent to harm Servcor by depriving Servcor of not only the \$3,000,000.00 fee Servcor had earned on the MIA Central Terminal Project and the profit Servcor would earn from the administration of the warranty, but also on the future profits Servcor would be entitled to from the Bayer-Servcor Partnership's future earnings generated from the marketing and promotion efforts of the partnership and the offering of the Value Added Services and Programs developed by Servcor for the partnership. Consequently, Bayer's/BSNA's breach of fiduciary duty as set forth herein and above falls squarely within the exception of Florida Statutes § 768.73(1)(c), thereby removing any statutory limits on the amount of punitive damages Servcor is entitled to recover upon compliance with Florida Statutes § 768.72(1).
159. The breach of fiduciary duty was condoned, ratified and/or consented to by the officers, directors and/or managers of Bayer/Servcor in that Bayer/BSNA embarked upon a course of conduct of conspiring with IRC and Gomez to defraud MDAD and Servcor by reiterating the false statement to IRC, Gomez and MDAD. Consequently, Bayer/BSNA, by virtue of Florida Statutes § 768.72(3)(b), are not shielded from any liability for punitive damages due to the fact the breach of fiduciary duty was committed by an employee or agent of Bayer/BSNA.
160. Servcor specifically reserves the right to seek leave to amend this Complaint to seek an

award of punitive damages pursuant to Florida Statutes § 768.72(1) upon a reasonable showing by evidence in the record or proffered by Servcor.

161. All conditions precedent to the bringing of this action have been performed, have otherwise occurred or have been waived.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability company, for damages, prejudgment interest, court costs, and for such other and further relief as may be just and proper.

COUNT X
(breach of fiduciary duty against Bayer)

162. This is a cause of action for breach of fiduciary duty for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.
163. Servcor realleges paragraphs one through sixty and sixty-nine, above, as if recited in full herein.
164. Under Florida law, Bayer/BSNA owed Servcor, as their partner, a fiduciary duty of loyalty and due care as set forth more fully in F.S. § 620.8404, Florida's Revised Uniform Partnership Act.
165. Servcor informed Bayer/BSNA that IRC failed to contact Servcor to obtain information as to the requirements and cost of the BaySystems Full System Maintenance Warranty for the MIA Central Terminal Project. Servcor further informed Bayer/BSNA as to the bid protest filed by Tarheel Roofing, Inc. IRC either stopped purchasing materials from Bayer/BSNA or threatened to do so. In response, Bayer/BSNA began refusing to accept phone calls from Servcor, refused to return phone messages left by Servcor, refused to respond to written communications from Servcor, and completely ceased all communications with Servcor in regard to the MIA Central Terminal Project.

166. During the time that Bayer/BSNA were refusing to communicate in any way with Servcor with regard to the MIA Central Terminal Project, Bayer/BSNA were continuing to have communications with IRC and MDAD in regard to the project.
167. Bayer's/BSNA's failure to communicate with Servcor in regard to the MIA Central Terminal Project constitutes a breach of the fiduciary duty owed to Servcor.
168. Servcor has been damaged as a direct and proximate result of Bayer's/BSNA's breach of fiduciary duty in this regard as Servcor was deprived of an opportunity to present its position in regard to the MIA Central Terminal Project to Bayer/BSNA, an opportunity to present Bayer/BSNA with the written evidence of Bayer's/BSNA's promise to issue the warranty, and the opportunity to participate in the decision making in regard to the offering of the BaySystems Full System Maintenance Warranty to MDAD on the MIA Central Terminal Project.
169. Bayer/BSNA's breach of fiduciary duty in this regard had a dual intent. Bayer/BSNA were motivated not only by a financial self-interest in currying favor with IRC, but were also motivated by a specific intent to harm Servcor by depriving Servcor of not only the \$3,000,000.00 fee Servcor had earned on the MIA Central Terminal Project and the profit Servcor would earn from the administration of the warranty, but also on the future profits Servcor would be entitled to from the Bayer-Servcor Partnership's future earnings generated from the marketing and promotion efforts of the partnership and the offering of the Value Added Services and Programs developed by Servcor for the partnership. Consequently, Bayer's/BSNA's breach of fiduciary duty as set forth herein and above falls squarely within the exception of Florida Statutes § 768.73(1)(c), thereby removing any statutory limits on the amount of punitive damages Servcor is entitled to recover upon compliance with Florida Statutes § 768.72(1).
170. The breach of fiduciary duty was condoned, ratified and/or consented to by the officers,

directors and/or managers of Bayer/BSNA in that during the period of time that Bayer/BSNA were refusing to communicate with Servcor in regard to the MIA Central Terminal Project, Bayer/BSNA secretly and covertly issued written communications to IRC to be provided to MDAD falsely denying the existence of the Bayer-Servcor Partnership and denying that Bayer/BSNA had promised to provide the BaySystems Full System Maintenance Warranty to MDAD on the MIA Central Terminal Project. Consequently, Bayer/BSNA, by virtue of Florida Statutes § 768.72(3)(b), are not shielded from any liability for punitive damages due to the fact the breach of fiduciary duty was committed by an employee or agent of Bayer/BSNA.

171. Servcor specifically reserves the right to seek leave to amend this Complaint to seek an award of punitive damages pursuant to Florida Statutes § 768.72(1) upon a reasonable showing by evidence in the record or proffered by Servcor.
172. All conditions precedent to the bringing of this action have been performed, have otherwise occurred or have been waived.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability company, for damages, prejudgment interest, court costs, and for such other and further relief as may be just and proper.

COUNT XI
(breach of fiduciary duty against Bayer)

173. This is a cause of action for breach of fiduciary duty for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.
174. Servcor realleges paragraphs one through sixty and sixty-nine, above, as if recited in full herein.
175. Under Florida law, Bayer/BSNA owed Servcor, as their partner, a fiduciary duty of loyalty

and due care as set forth more fully in F.S. § 620.8404, Florida's Revised Uniform Partnership Act.

176. At the request of IRC, Charles Valentine, on behalf of Bayer/BSNA, attempted to create a new warranty by merging two existing roof warranties offered by Bayer/BSNA - the "Limited Warranty" and the "System Warranty" - despite the fact that the two warranties had conflicting terms and had never previously been combined as a single warranty by Bayer/BSNA, solely in order to assist IRC in avoiding having to pay for the BaySystems Full System Maintenance Warranty which Bayer/BSNA (through Charles Valentine) had promised in writing to provide on the MIA Central Terminal Project. Bayer/BSNA not only secretly aided and abetted IRC in crafting the fictional warranty, but also executed the warranty documents.
177. Bayer's/BSNA's actions in this regard constitute a breach of the fiduciary duty owed to Servcor.
178. Servcor has been damaged as a direct and proximate result of Bayer's/BSNA's breach of fiduciary duty in this manner.
179. Bayer's/BSNA's breach of fiduciary duty in this regard had a dual intent. Bayer/BSNA were motivated not only by a financial self-interest in currying favor with IRC, but were also motivated by a specific intent to harm Servcor by depriving Servcor of not only the \$3,000,000.00 fee Servcor had earned on the MIA Central Terminal Project and the profit Servcor would earn from the administration of the warranty, but also on the future profits Servcor would be entitled to from the Bayer-Servcor Partnership's future earnings generated from the marketing and promotion efforts of the partnership and the offering of the Value Added Services and Programs developed by Servcor for the partnership. Consequently, Bayer's/BSNA's breach of fiduciary duty as set forth herein and above falls squarely within the exception of Florida Statutes § 768.73(1)(c), thereby removing any

statutory limits on the amount of punitive damages Servcor is entitled to recover upon compliance with Florida Statutes § 768.72(1).

180. The breach of fiduciary duty was condoned, ratified and/or consented to by the officers, directors and/or managers of Bayer/BSNA in that during the period of time that Bayer/BSNA were refusing to communicate with Servcor in regard to the MIA Central Terminal Project, Bayer/BSNA secretly and covertly issued correspondence to be provided by IRC and/or Gomez to MDAD falsely denying the existence of the Bayer-Servcor Partnership and that Bayer/BSNA had promised to provide MDAD with the BaySystems Full System Maintenance Warranty on the MIA Central Terminal Project. Consequently, Bayer/BSNA, by virtue of Florida Statutes § 768.72(3)(b), are not shielded from any liability for punitive damages due to the fact the breach of fiduciary duty was committed by an employee or agent of Bayer/BSNA.
181. Servcor specifically reserves the right to seek leave to amend this Complaint to seek an award of punitive damages pursuant to Florida Statutes § 768.72(1) upon a reasonable showing by evidence in the record or proffered by Servcor.
182. All conditions precedent to the bringing of this action have been performed, have otherwise occurred or have been waived.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability company, for damages, prejudgment interest, court costs, and for such other and further relief as may be just and proper.

COUNT XII
(breach of fiduciary duty against Bayer)

183. This is a cause of action for breach of fiduciary duty for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.

184. Servcor realleges paragraphs one through sixty and sixty-nine, above, as if recited in full herein.
185. Under Florida law, Bayer/BSNA owed Servcor, as their partner, a fiduciary duty of loyalty and due care as set forth more fully in F.S. § 620.8404, Florida's Revised Uniform Partnership Act.
186. At the request of IRC so that IRC could avoid incurring the cost of performing the additional work required by the BaySystems Full System Maintenance Warranty on the MIA Central Terminal Project and could avoid paying Servcor the cost of the BaySystems Full System Maintenance Warranty, and without any notification to or communication with Servcor, Rene Zierden, on behalf of Bayer/BSNA, issued written correspondence dated July 28, 2009, to IRC, stating that the MIA Central Terminal Project was the first project on which the BaySystems Full System Maintenance Warranty was to have been issued, but that the "venture" with Servcor in that regard had been terminated and the warranty had not been offered. Bayer/BSNA prepared this July 28, 2009 correspondence so that IRC could provide a copy of the correspondence to Gomez and MDAD in order to enable IRC and Gomez to receive payment on the project and not have to provide the Full System Maintenance Warranty that Bayer/BSNA had agreed to provide on project, and for which warranty protection MDAD had paid.
187. As of the date of the July 28, 2009 correspondence from Bayer/BSNA to IRC, Bayer/BSNA were still refusing to communicate with Servcor in regard to the MIA Central Terminal Project, and Bayer/BSNA had not provided Servcor with any notice, in any form, that Bayer had breached and unilaterally terminated and secretly disassociated from the Bayer-Servcor Partnership.
188. As of the date of the July 28, 2009 correspondence from Bayer/BSNA to IRC, Servcor was still actively and aggressively marketing the BaySystems Full System Maintenance

Warranty and other Value-Added Services and Programs of the Bayer-Servcor Partnership to other owners of large commercial projects, unaware of the fact that Bayer/BSNA were communicating to third parties that Bayer/BSNA had terminated the Bayer-Servcor Partnership and disassociated from the partnership.

189. Bayer's/BSNA's failure to provide Servcor with any form of notice that Bayer/BSNA had breached and unilaterally terminated the Bayer-Servcor Partnership, and had disassociated from the partnership, constitutes a breach of the fiduciary duty Bayer/BSNA owed to Servcor.
190. Servcor has been damaged as a direct and proximate result of the breach of fiduciary duty by Bayer/BSNA as described above and herein. Such damages include, but are not limited to, the damage to Servcor's advantageous business relationship with MDAD, the damage to Servcor's advantageous business relationship with the Broward County School System, the public embarrassment to Servcor and damage to Servcor's business reputation of having been continuing to market the Bayer-Servcor Partnership's Value Added Services and other Programs pursuant to the Bayer-Servcor Partnership agreement, unaware of the fact that Bayer/BSNA had breached and unilaterally terminated the Bayer-Servcor Partnership agreement and had disassociated from the partnership. Further, Bayer/BSNA have exposed Servcor and Bayer/BSNA to possible legal action from those owners and contractors to whom Servcor represented that the BaySystems Full System Maintenance Warranty would be provided for specific projects.
191. Bayer's/BSNA's breach of fiduciary duty in this regard had a dual intent. Bayer/BSNA were motivated not only by a financial self-interest in currying favor with IRC, but were also motivated by a specific intent to harm Servcor by depriving Servcor of not only the \$3,000,000.00 fee Servcor had earned on the MIA Central Terminal Project and the profit Servcor would earn from the administration of the warranty, but also on the future profits

Servcor would be entitled to from the Bayer-Servcor Partnership's future earnings generated from the marketing and promotion efforts of the partnership and the offering of the Value Added Services and Programs developed by Servcor for the partnership.

Consequently, Bayer's/BSNA's breach of fiduciary duty as set forth herein and above falls squarely within the exception of Florida Statutes § 768.73(1)(c), thereby removing any statutory limits on the amount of punitive damages Servcor is entitled to recover upon compliance with Florida Statutes § 768.72(1).

192. The breach of fiduciary duty was condoned, ratified and/or consented to by the officers, directors and/or managers of Bayer/BSNA in that Bayer/BSNA did not copy Servcor on the July 28, 2009 correspondence to IRC and did not notify Servcor of Bayer's/BSNA's decision to not provide the BaySystems Full System Maintenance Warranty to MDAD on the MIA Central Terminal Project as promised. Further, Bayer/BSNA continued to respond to Servcor's inquiries as to the status of the BaySystems Full System Maintenance Warranty on the MIA Central Terminal Project, long after the July 28, 2009 correspondence from Rene Zierden to IRC, by stating that Bayer/BSNA would "look into it." Consequently, Bayer/BSNA, by virtue of Florida Statutes § 768.72(3)(b), are not shielded from any liability for punitive damages due to the fact the breach of fiduciary duty was committed by an employee or agent of Bayer/BSNA.
193. Servcor specifically reserves the right to seek leave to amend this Complaint to seek an award of punitive damages pursuant to Florida Statutes § 768.72(1) upon a reasonable showing by evidence in the record or proffered by Servcor.
194. All conditions precedent to the bringing of this action have been performed, have otherwise occurred or have been waived.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability

company, for damages, prejudgment interest, court costs, and for such other and further relief as may be just and proper.

COUNT XIII
(breach of fiduciary duty against Bayer)

195. This is a cause of action for breach of fiduciary duty for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.
196. Servcor realleges paragraphs one through sixty and sixty-nine, above, as if recited in full herein.
197. Under Florida law, Bayer/BSNA owed Servcor, as their partner, a fiduciary duty of loyalty and due care as set forth more fully in F.S. § 620.8404, Florida's Revised Uniform Partnership Act.
198. Upon information and belief, Bayer/BSNA communicated to third parties within the roofing community that Bayer/BSNA had terminated the Bayer-Servcor Partnership because of Servcor's alleged incompetence with regard to the MIA Central Terminal Project, when in fact Bayer/BSNA breached the Bayer-Servcor Partnership Agreement and disassociated from the partnership because of Bayer's/BSNA's drunken disclosure of the confidential information as to the MIA Central Terminal Project, which led Bayer/BSNA to engage in the efforts to cover up Bayer's/BSNA's incompetence, and to engage in defrauding MDAD and Servcor, all so that Bayer/BSNA could preserve its business relationship with its customer, IRC.
199. Bayer's/BSNA's false and deliberate misrepresentations to third parties in the roofing community as set forth herein constitute a breach of the fiduciary duty owed to Servcor, which duty continued to exist as Servcor continued to perform under the Bayer-Servcor Partnership as Bayer/BSNA had cowardly and shamefully failed to provide Servcor with notice of Bayer's/BSNA's breach and unilateral termination of the Bayer-Servcor

Partnership and Bayer/BSNA's disassociation from the partnership.

200. Servcor has been damaged as a direct and proximate result of Bayer's/BSNA's breach of fiduciary duty as described herein and above.
201. Bayer's/BSNA's breach of fiduciary duty in this regard had a dual intent. Bayer/BSNA were motivated not only by a financial self-interest in currying favor with IRC, but were also motivated by a specific intent to harm Servcor by depriving Servcor of not only the \$3,000,000.00 fee Servcor had earned on the MIA Central Terminal Project and the profit Servcor would earn from the administration of the warranty, but also on the future profits Servcor would be entitled to from the Bayer-Servcor Partnership's future earnings generated from the marketing and promotion efforts of the partnership and the offering of the Value Added Services and Programs developed by Servcor for the partnership. Additionally, Bayer/BSNA, by the time of making these false representations, had begun their concerted efforts to drive Servcor out of business. Consequently, Bayer's/BSNA's breach of fiduciary duty as set forth herein and above falls squarely within the exception of Florida Statutes § 768.73(1)(c), thereby removing any statutory limits on the amount of punitive damages Servcor is entitled to recover upon compliance with Florida Statutes § 768.72(1).
202. The breach of fiduciary duty was condoned, ratified and/or consented to by the officers, directors and/or managers of Bayer/BSNA in that Bayer/BSNA continued to fail and refuse to communicate with Servcor, failed and refused to even notify Servcor that Bayer/BSNA had unilaterally terminated the Bayer-Servcor Partnership agreement and had disassociated from the partnership, much less provide Servcor with any reason for the Bayer's/BSNA's breach of the Bayer-Servcor Partnership agreement, and continued to respond to Servcor's requests for information on the MIA Central Terminal Project in such a way as to cause Servcor to believe that the Bayer-Servcor Partnership was still in

operation. Further, Bayer/BSNA did not make any attempt or effort to correct the false statement as to the basis for their unilateral termination of the Bayer-Servcor Partnership. Consequently, Bayer/BSNA, by virtue of Florida Statutes § 768.72(3)(b), are not shielded from any liability for punitive damages due to the fact the breach of fiduciary duty was committed by an employee or agent of Bayer/BSNA.

203. Servcor specifically reserves the right to seek leave to amend this Complaint to seek an award of punitive damages pursuant to Florida Statutes § 768.72(1) upon a reasonable showing by evidence in the record or proffered by Servcor.

204. All conditions precedent to the bringing of this action have been performed, have otherwise occurred or have been waived.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability company, for damages, prejudgment interest, court costs, and for such other and further relief as may be just and proper.

COUNT XIV
(breach of fiduciary duty against Bayer)

205. This is a cause of action for breach of fiduciary duty for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.

206. Servcor realleges paragraphs one through sixty and sixty-nine, above, as if recited in full herein.

207. Under Florida law, Bayer/BSNA owed Servcor, as their partner, a fiduciary duty of loyalty and due care as set forth more fully in F.S. § 620.8404, Florida's Revised Uniform Partnership Act.

208. In order to attempt to avoid liability to Servcor for the numerous acts and omissions of Bayer/BSNA as set forth in the preceding counts for breach of fiduciary duty, Bayer/BSNA

engaged in a pattern of conduct clearly intended to put Servcor out of business so that Servcor would be financially unable to seek redress against Bayer/BSNA. Specifically, Bayer/BSNA have failed and refused to respond to Servcor's request for price quotations on Bayer's/BSNA's roofing materials on at least one large commercial project while providing the pricing information directly to roofing contractors so as to allow the roofing contractors to purchase the materials directly from Bayer/BSNA instead of through Servcor as Bayer's/BSNA's Florida distributor of Bayer's/BSNA's roofing materials. Such actions constitute a breach of fiduciary duty owed to Servcor.

209. Bayer/BSNA contend that Servcor owes them for materials sold on two projects where Servcor sold Bayer's/BSNA's roofing materials and supplies to a roofing contractor who defaulted on two projects and went out of business owing Servcor for the materials. Despite knowing that Bayer/BSNA owed Servcor far more in damages as a result of the MIA Central Terminal Project alone than Servcor owed Bayer/BSNA for the roofing materials on the two projects where the contractor defaulted, Bayer/BSNA imposed a surcharge of twenty-five percent (25%) of the cost of any roofing products and materials purchased by Servcor from Bayer/BSNA, thereby making it impractical if not impossible for Servcor to offer competitive prices to its customers. Meanwhile, Bayer/BSNA encouraged roofing contractors to purchase roofing products and materials directly from Bayer/BSNA so as to create a disincentive for roofing contractors to purchase the roofing products and materials from Servcor.
210. Bayer's/BSNA's predatory pricing structure and efforts to encourage contractors to circumvent Servcor as described herein was instituted for the purpose of putting Servcor out of business so that it could not pursue its substantial claims for damages as set forth in this Complaint. Such actions by Bayer/BSNA constitutes a breach of the fiduciary duty owed to Servcor.

211. Servcor has been damaged as a direct and proximate result of Bayer's/BSNA's breach of fiduciary duty as set forth herein.
212. Bayer's/BSNA's breach of fiduciary duty in this regard was motivated by a specific intent to harm Servcor by putting Servcor out of business so that it could not pursue its many claims for damages against Bayer/BSNA or IRC. Consequently, Bayer's/BSNA's breach of fiduciary duty as set forth herein and above falls squarely within the exception of Florida Statutes § 768.73(1)(c), thereby removing any statutory limits on the amount of punitive damages Servcor is entitled to recover upon compliance with Florida Statutes § 768.72(1).
213. The breach of fiduciary duty was condoned, ratified and/or consented to by the officers, directors and/or managers of Bayer/BSNA in that Bayer/BSNA continued to impose the predatory pricing structure on Servcor and by continuing to condition conducting any further business with Servcor upon Servcor's satisfaction of the "a/r issue," i.e., the monies owed to Bayer/BSNA on the two projects where the roofing contractor defaulted without paying Servcor for the materials it sold as Bayer's/BSNA's distributor, despite the fact that Bayer/BSNA owed Servcor far more in damages than any amount owed by Servcor to Bayer/BSNA on those two projects. Consequently, Bayer/BSNA, by virtue of Florida Statutes § 768.72(3)(b), are not shielded from any liability for punitive damages due to the fact the breach of fiduciary duty was committed by an employee or agent of Bayer/BSNA.
214. Servcor specifically reserves the right to seek leave to amend this Complaint to seek an award of punitive damages pursuant to Florida Statutes § 768.72(1) upon a reasonable showing by evidence in the record or proffered by Servcor.
215. All conditions precedent to the bringing of this action have been performed, have otherwise occurred or have been waived.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability company, for damages, prejudgment interest, court costs, and for such other and further relief as may be just and proper.

COUNT XV

(breach of implied covenant of good faith and fair dealing against Bayer)

216. This is a cause of action for breach of the implied covenant of good faith and fair dealing for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.
217. Servcor realleges paragraphs one through sixty and sixty-nine, above, as if recited in full herein.
218. There is an implied covenant of good faith and fair dealing in every contract entered into in the State of Florida. Moreover, F.S. § 620.8404(4) of Florida's Uniform Partnership Act requires a partner to act toward other partners in a manner consistent with the obligation of good faith and fair dealing.
219. The Bayer-Servcor Partnership agreement was entered into in the State of Florida.
220. Bayer/BSNA breached the implied covenant of good faith and fair dealing by Bayer's/BSNA's conduct, including, but not limited to, the following:
- A. Disclosing the confidential information about the MIA Central Terminal Project to IRC.
 - B. Failing and refusing to direct IRC to deal directly and exclusively with Servcor in regard to the MIA Central Terminal Project as to the BaySystems Full System Maintenance Warranty requirements.
 - C. Negotiating directly with IRC in regard to warranty matters relating to the MIA Central Terminal Project.

- D. Failing and refusing to clarify for MDAD and its representatives the obvious substantial differences between the BaySystems Full System Maintenance Warranty and the warranties being offered to MDAD by IRC on the MIA Central Terminal Project.
- E. Assisting IRC in trying to concoct some hybrid form of existing, albeit contradictory and inconsistent warranties offered by Bayer/BSNA for IRC to offer to MDAD so that IRC would not be required to purchase the BaySystems Full System Maintenance Warranty on the MIA Central Terminal Project.
- F. Continuing to communicate and work with IRC in an effort to assist IRC in avoiding having to comply with the requirements of the project specifications and the contract documents on the MIA Central Terminal Project so as to avoid having to purchase the warranty while during the same time failing and refusing to take Servcor's phone calls, return Servcor's phone messages, or respond or communicate in any manner with Servcor in regard to the MIA Central Terminal Project. Bayer/BSNA purposely excluded Servcor from any involvement in or information about the MIA Central Terminal Project warranty discussions so as to enable IRC and Gomez to obtain final payment on the project without having to purchase the BaySystems Full System Maintenance Warranty.
- G. Communicating in a written communication that Bayer/BSNA knew was going to be provided to MDAD, the false statement that Bayer/BSNA had not promised the BaySystems Full System Maintenance Warranty on the MIA Central Terminal Project and that the Bayer-Servcor Partnership had been terminated. In truth, Bayer/BSNA had previously reaffirmed in writing both before and after the subcontract was awarded to IRC that the BaySystems Full System Maintenance Warranty would be offered on the project. Moreover, Servcor was continuing to

perform its obligations under the Bayer-Servcor Partnership well after the date of Bayer's/BSNA's written statement to the effect that the warranty was not being offered on the MIA Central Terminal Project and the "venture" with Servcor had been terminated, since Bayer/BSNA had never advised Servcor, even as late as the date of the filing of this lawsuit, that Bayer/BSNA had unilaterally terminated the Bayer-Servcor Partnership and had disassociated from the partnership.

- H. Failing and refusing to compel IRC to compensate Servcor in regard to the loss of the BaySystems Full System Maintenance Warranty and the substantial work that Servcor had devoted to securing the MIA Central Terminal Project for Bayer/BSNA and by failing to require IRC to pay Servcor the monies it is due as the distributor of Bayer's/BSNA's roofing materials.
- I. Disparaging and defaming Servcor with regard to the MIA Central Terminal Project so as to discredit Servcor's attempts to inform MDAD of the truth as to the Bayer-Servcor Partnership and that Bayer/BSNA had committed to provide the Full System Maintenance Warranty to MDAD upon the completion of the roofing work to the satisfaction of Servcor.
- J. Attempting to put Servcor out of business in order to conceal Bayer's/BSNA's breach of fiduciary duty and fraud against Servcor and MDAD. Bayer/BSNA have engaged in predatory escalated pricing to Servcor on quotes for materials costs, have refused to provide timely price quotes to Servcor causing Servcor to miss bidding deadlines, and has failed to communicate pricing information to Servcor as its distributor while at the same time quoting prices directly to contractors in order to encourage the contractors to buy directly from Bayer/BSNA instead of from Servcor. Further, Bayer/BSNA have failed to credit against Servcor's account the monies Bayer/BSNA owe to Servcor as described and set forth more fully in this

Complaint, which monies greatly exceed any amounts Bayer/BSNA could claim to be owed by Servcor.

- 221. Servcor has been damaged as a direct and proximate result of Bayer's/BSNA's breach of the implied covenant of good faith and fair dealing.
- 222. All conditions precedent to the bringing of this action have been performed, have otherwise occurred or have been waived.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability company, for damages, prejudgment interest, court costs, and for such other and further relief as may be just and proper.

COUNT XVI
(negligence against Bayer)

- 223. This is a cause of action for negligence for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.
- 224. Servcor realleges paragraphs one through sixty and sixty-nine, above, as if recited in full herein.
- 225. Bayer/BSNA owed Servcor, their partner, a fiduciary duty to not publicly disclose confidential information as to the MIA Central Terminal Project to third parties beyond those selected by Servcor to be invited to submit bids on the project.
- 226. Bayer/BSNA breached this duty and were negligent by virtue of Keith Common becoming so intoxicated that he disclosed to IRC the confidential information as to the MIA Central Terminal Project.
- 227. IRC would not have known about the MIA Central Terminal Project but for the drunken and negligent actions of Keith Common.
- 228. Servcor has been damaged as a direct and proximate result of the negligent actions by

Bayer/BSNA.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability company, for damages, prejudgment interest, court costs, and for such other and further relief as may be just and proper.

COUNT XVII
(negligence against Bayer)

229. This is a cause of action for negligence for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.
230. Servcor realleges paragraphs one through sixty and sixty-nine, above, as if recited in full herein.
231. As validly formed corporations, and as partners with Servcor in the Bayer-Servcor Partnership, Bayer and BSNA had a duty to maintain adequate records of their business activities and ventures including, but not limited to, the existence and terms of the Bayer-Servcor Partnership. Further, Bayer and BSNA had a duty to manage and supervise their management personnel and to require a reasonable degree of reporting by, as well as oversight and supervision of, its management personnel who were empowered with actual as well as apparent authority to enter into multi-year, multi-million dollar contracts with third parties.
232. As is evidenced by Bayer's/BSNA's email communications with Tarheel Roofing, Inc. in regard to the Broward County Schools Project identified and described more fully above and herein, a copy of which chain of email communications are attached hereto as Exhibit "3," Bayer and BSNA were negligent and have breached this duty in that its upper level management failed to document and maintain records of the existence and scope of the Bayer-Servcor Partnership. Further, Bayer and BSNA breached the duty to supervise

their management personnel and to require a reasonable degree of reporting by, as well as oversight and supervision of, its management personnel who were empowered with actual as well as apparent authority to enter into multi-year, multi-million dollar contracts with third parties, in that no superior of Charles Valentine was apparently made aware of the existence or scope of the Bayer-Servcor Partnership, nor were records maintained in this regard for Charles Valentine's successor.

233. Servcor has been damaged as a direct and proximate result of Bayer's/BSNA's negligence as set forth herein in that Bayer/BSNa, in apparent blissful ignorance of both the existence and scope of the Bayer-Servcor Partnership, have taken actions which have caused substantial financial harm to Servcor. More specifically, Bayer/BSNA, among other acts and without limitation, failed and refused to provide the BaySystems Full System Maintenance Warranty to MDAD on the MIA Central Terminal Project and to the Broward County School System on the Broward County Schools Project.
234. All conditions precedent to the bringing of this action have been performed, have been waived or have otherwise occurred.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability company, for damages, prejudgment interest, court costs, and for such other and further relief as may be just and proper.

COUNT XVIII
(gross negligence against Bayer)

235. This is a cause of action for negligence for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.
236. Servcor realleges paragraphs one through sixty and sixty-nine, above, as if recited in full herein.

237. As validly formed corporations, and as partners with Servcor in the Bayer-Servcor Partnership, Bayer and BSNA had a duty to maintain adequate records of its business activities and ventures including, but not limited to, the existence and terms of the Bayer-Servcor Partnership. Further, Bayer and BSNA had a duty to manage and supervise their management personnel and to require a reasonable degree of reporting by, as well as oversight and supervision of, its management personnel who were empowered with actual as well as apparent authority to enter into multi-year, multi-million dollar contracts with third parties.
238. As is evidenced by Bayer's/BSNA's email communications with Tarheel Roofing, Inc. in regard to the Broward County Schools Project identified and described more fully above and herein, a copy of which chain of email communications are attached hereto as Exhibit "3," Bayer and BSNA have been grossly negligent and have breached this duty in that its upper level management failed to document and maintain records of the existence and scope of the Bayer-Servcor Partnership. Further, Bayer and BSNA breached the duty to supervise its management personnel and to require a reasonable degree of reporting by, as well as oversight and supervision of, its management personnel who were empowered with actual as well as apparent authority to enter into multi-year, multi-million dollar contracts with third parties, in that no superior of Charles Valentine was apparently made aware of the existence or scope of the Bayer-Servcor Partnership, nor were records maintained as to the partnership for Charles Valentine's successor.
239. Servcor has been damaged as a direct and proximate result of Bayer's/BSNA's gross negligence as set forth herein in that Bayer/BSNA, in apparent blissful ignorance of both the existence and scope of the Bayer-Servcor Partnership, have taken actions which have caused substantial financial harm to Servcor. More specifically, Bayer/BSNA, among other acts and without limitation, failed and refused to provide the BaySystems Full

System Maintenance Warranty to MDAD on the MIA Central Terminal Project and to the Broward County School System on the Broward County Schools Project.

240. All conditions precedent to the bringing of this action have been performed, have been waived or have otherwise occurred.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability company, for damages, prejudgment interest, court costs, and for such other and further relief as may be just and proper.

COUNT XIX
(usurping a business opportunity against Bayer)

241. This is a cause of action for damages for usurping a business opportunity for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.

242. Servcor realleges paragraphs one through sixty and sixty-nine, above, as if recited in full herein.

243. The issuance and servicing of the BaySystems Full System Maintenance Warranty on the MIA Central Terminal Project was a subject of the Bayer-Servcor Partnership, thereby, by definition, fitting into the present activities of the partnership business.

244. By disclosing confidential information as to the MIA Central Terminal Project to IRC, and by actively supporting IRC in securing the roofing subcontract on the project despite being able to comply with the contract requirements, and by actively aiding and abetting IRC in avoiding providing the BaySystems Full System Maintenance Warranty to MDAD on the project, Bayer/BSNA usurped a business opportunity of Bayer-Servcor Partnership in order to curry favor with IRC and reap monetary benefits therefrom as to the MIA Central Terminal Project.

245. Servcor has been damaged as a direct and proximate result of Bayer's/BSNA's usurping

of the business opportunity of the Bayer-Servcor Partnership.

246. Bayer's/BSNA's actions in usurping the business opportunity of the Bayer-Servcor Partnership had a dual intent. Bayer/BSNA were motivated not only by a financial self-interest in currying favor with IRC, but were also motivated by a specific intent to harm Servcor by depriving Servcor of not only the \$3,000,000.00 fee Servcor had earned on the MIA Central Terminal Project and the profit Servcor would earn from the administration of the warranty, but also on the future profits Servcor would be entitled to from the Bayer-Servcor Partnership's future earnings generated from the marketing and promotion efforts of the partnership and the offering of the Value Added Services and Programs developed by Servcor for the partnership. Consequently, Bayer's/BSNA's usurping of the business opportunity of the Bayer-Servcor Partnership as set forth herein and above falls squarely within the exception of Florida Statutes § 768.73(1)(c), thereby removing any statutory limits on the amount of punitive damages Servcor is entitled to recover upon compliance with Florida Statutes § 768.72(1).
247. Bayer's/BSNA's actions in usurping the business opportunity of the Bayer-Servcor Partnership was condoned, ratified and/or consented to by the officers, directors and/or managers of Bayer/BSNA in that Bayer/BSNA engaged in a conspiracy with IRC and Gomez, through several different persons, performed repeated acts of misrepresentation and fraud in order to not only complete the act of usurping the business opportunity of the Bayer-Servcor Partnership, but also to attempt to put Servcor out of business in order to avoid the consequences of Bayer's/BSNA's wrongful actions. Consequently, Bayer/BSNA, by virtue of Florida Statutes § 768.72(3)(b), are not shielded from any liability for punitive damages due to the fact the acts and omissions in furtherance of the plan to usurp the business opportunity of the Bayer-Servcor Partnership were committed by employees or agents of Bayer/BSNA.

248. Servcor specifically reserves the right to seek leave to amend this Complaint to seek an award of punitive damages pursuant to Florida Statutes § 768.72(1) upon a reasonable showing by evidence in the record or proffered by Servcor.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability company, for damages, prejudgment interest, court costs, and for such other and further relief as may be just and proper.

COUNT XX
(unjust enrichment against Bayer)

249. This is a cause of action for damages for unjust enrichment for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.

250. Servcor realleges paragraphs one through sixty and sixty-nine, above, as if recited in full herein.

251. Servcor literally devoted years of diligent work developing the advantageous business relationship with MDAD and its agents with regard to the MIA Central Terminal Project, ultimately succeeding in having the specifications for the project written as a single source specification, or equivalent, not only for the co-branded Bayer-Servcor Partnership's BaySystems SRS foam and GE SRS Silicone sealant, but also requiring the BaySystems Full System Maintenance Warranty on the project.

252. Even though Bayer/BSNA acted with a deplorable lack of any semblance of corporate integrity, honesty, fairness or good faith with regard to Servcor, its partner, with regard to the MIA Central Terminal Project, Servcor bestowed substantial financial benefits upon Bayer/BSNA through Servcor's years of hard work. Specifically, Bayer/BSNA made millions of dollars from the sale of their roofing materials and products to IRC for use in the MIA Central Terminal Project. Additionally, Bayer/BSNA were able to substantially

strengthen their business relationship with IRC by virtually insuring that IRC was the successful bidder on the project. Moreover, Bayer/BSNA stand to reap the same benefits again, only to a greater degree, on the MIA North Terminal Project.

253. If not compelled to pay Servcor the reasonable value for the services performed by Servcor and the benefits received by Bayer/BSNA, Bayer/BSNA will be unjustly enriched at the expense of Servcor.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability company, for damages, prejudgment interest, court costs, and for such other and further relief as may be just and proper.

COUNT XXI
(negligent misrepresentation against Bayer)

254. This is a cause of action for damages for negligent misrepresentation for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.

255. Servcor realleges paragraphs one through sixty and sixty-nine, above, as if recited in full herein.

256. When IRC inquired as to the BaySystems Full System Maintenance Warranty on the MIA Central Terminal Project, the representative of Bayer/BSNA owed a duty to Servcor, as its partner, to make a reasonable and diligent inquiry within Bayer's and BSNA's corporations as to the existence, terms and conditions of the warranty, and Servcor's role as the administrator of the warranty program.

257. Bayer/BSNA were negligent by failing to make a reasonable and diligent inquiry to obtain this information and relaying the false information to IRC, and by failing to direct IRC to communicate directly with Servcor in regard to the BaySystems Full System Maintenance Warranty.

258. Had Bayer/BSNA made a reasonable and diligent effort to obtain information as to the BaySystems Full System Maintenance Warranty on the MIA Central Terminal Project, it would have discovered the substantial written documentation as to the Bayer-Servcor Partnership, the promise Bayer/BSNA had made to issue the warranty on the MIA Central Terminal Project, and its reaffirmation that the Full System Maintenance Warranty would be provided to MDAD upon the completion of the roofing work to the satisfaction of Servcor. Had Bayer/BSNA conducted even the most basic and rudimentary inquiry and investigation and discovered this information, it would have directed IRC to communicate directly and exclusively with Servcor in that regard so that the BaySystems Full System Maintenance Warranty could have been obtained.
259. Instead, Bayer/BSNA negligently informed IRC that there was no such warranty as the BaySystems Full System Maintenance Warranty.
260. MDAD relied upon Bayer's/BSNA's negligent misrepresentation in this regard and consequently did not receive the BaySystems Full System Maintenance Warranty. Not only did MDAD receive a grossly inferior warranty to the BaySystems Full System Maintenance Warranty that was required by the specifications and contract documents for the MIA Central Terminal Project as a result of this misrepresentation by Bayer/BSNA, but Servcor was also damaged in that Servcor was deprived of the \$3,000,000.00 fee it was to have received for the services it had performed and the profit it would have made from the administration of the warranty.
261. It was reasonably foreseeable to Bayer/BSNA that Servcor would be damaged as a result of the negligent misrepresentation.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability

company, for damages, prejudgment interest, court costs, and for such other and further relief as may be just and proper.

COUNT XXII
(fraudulent misrepresentation against Bayer)

262. This is a cause of action for fraudulent misrepresentation for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.
263. Servcor realleges paragraphs one through sixty and sixty-nine, above, as if recited in full herein.
264. At the time that IRC made its initial inquiry of Bayer/BSNA as to the BaySystems Full System Maintenance Warranty, Bayer/BSNA were fully aware of the Bayer-Servcor Partnership and the details as to the BaySystems Full Systems Maintenance Warranty program and more specifically, the obligation to make such warranty available to MDAD on the MIA Central Terminal Project.
265. Despite this knowledge, Bayer/BSNA knowingly and intentionally prepared written correspondence to IRC stating that there was no "venture" with Servcor and that the BaySystems Full System Maintenance Warranty was never offered and was not available for the MIA Central Terminal project.
266. Bayer/BSNA knew that their representation to IRC in this regard was false at the time that the representation was made.
267. Bayer/BSNA made the false representation to IRC with the knowledge that IRC would provide the written representation to MDAD, and with the intent that MDAD rely upon this false representation to its detriment.
268. Not only was MDAD damaged by the fraudulent representation by Bayer/BSNA in that MDAD receive a grossly inferior warranty to the BaySystems Full System Maintenance Warranty that was required by the specifications and contract documents for the MIA

- Central Terminal Project and for which MDAD paid Gomez, but Servcor was also damaged by this fraudulent misrepresentation in that Servcor was deprived of the \$3,000,000.00 fee it was to receive for the services it had already performed and the profit it would have made as the administrator of the Full Systems Maintenance Warranty.
269. It was reasonably foreseeable to Bayer/BSNA that Servcor would be damaged as a result of the fraudulent misrepresentation.
270. Bayer/BSNA had actual knowledge of the wrongfulness of its conduct in regard to the false representation and the high probability that injury or damage to Servcor would result and, despite that knowledge, Bayer/BSNA intentionally pursued that course of conduct, resulting in injury or damage to Servcor.
271. Bayer's/BSNA's fraudulent misrepresentation had a dual intent. Bayer/BSNA were motivated not only by a financial self-interest in currying favor with IRC, but were also motivated by a specific intent to harm Servcor by depriving Servcor of not only the \$3,000,000.00 fee Servcor had earned on the MIA Central Terminal Project and the profit Servcor would earn from the administration of the warranty, but also on the future profits Servcor would be entitled to from the Bayer-Servcor Partnership's future earnings generated from the marketing and promotion efforts of the partnership and the offering of the Value Added Services and Programs developed by Servcor for the partnership. Consequently, Bayer's/BSNA's fraudulent misrepresentation as set forth herein and above falls squarely within the exception of Florida Statutes § 768.73(1)(c), thereby removing any statutory limits on the amount of punitive damages Servcor is entitled to recover upon compliance with Florida Statutes § 768.72(1).
272. The fraudulent misrepresentation was condoned, ratified and/or consented to by the officers, directors and/or managers of Bayer/BSNA in that Bayer/BSNA subsequently reiterated the fraudulent representation both verbally and in writing. Consequently,

Bayer/BSNA, by virtue of Florida Statutes § 768.72(3)(b), are not shielded from any liability for punitive damages due to the fact the fraudulent misrepresentation was made by an employee or agent of Bayer/BSNA.

273. Servcor specifically reserves the right to seek leave to amend this Complaint to seek an award of punitive damages pursuant to Florida Statutes § 768.72(1) upon a reasonable showing by evidence in the record or proffered by Servcor.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability company, for damages, prejudgment interest, court costs, and for such other and further relief as may be just and proper.

COUNT XXIII
(fraud against Bayer)

274. This is a cause of action for fraud for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.

275. Servcor realleges paragraphs one through sixty and sixty-nine, above, as if recited in full herein.

276. Despite being partners with Servcor, Bayer/BSNA engaged in an ongoing fraudulent scheme in order to deprive Servcor not only of the \$3,000,000.00 fee Servcor had earned on the MIA Central Terminal Project and the profit Servcor would earn from the administration of the warranty, but also on the future profits Servcor would be entitled to from the Bayer-Servcor Partnership's future earnings generated from the marketing and promotion efforts of the partnership and the offering of the Value Added Services and Programs developed by Servcor for the partnership.

277. Bayer/BSNA have perpetrated the fraud upon Servcor by:

A. Disclosing the confidential information about the MIA Central Terminal Project to

IRC.

- B. Failing and refusing to direct IRC to deal directly and exclusively with Servcor in regard to the MIA Central Terminal Project as to the BaySystems Full System Maintenance Warranty requirements.
- C. Negotiating directly with IRC in regard to warranty matters relating to the MIA Central Terminal Project.
- D. Failing and refusing to clarify for MDAD and its representatives the obvious substantial differences between the BaySystems Full System Maintenance Warranty and the warranties being offered to MDAD by IRC on the MIA Central Terminal Project.
- E. Assisting IRC in trying to concoct some hybrid form of existing, albeit contradictory and inconsistent warranties offered by Bayer for IRC to offer to MDAD so that IRC would not be required to purchase the BaySystems Full System Maintenance Warranty on the MIA Central Terminal Project.
- F. Continuing to communicate and work with IRC in an effort to assist IRC in avoiding having to comply with the requirements of the project specifications and the contract documents on the MIA Central Terminal Project so as to avoid having to purchase the warranty while during the same time failing and refusing to take Servcor's phone calls, return Servcor's phone messages, or respond or communicate in any manner with Servcor in regard to the MIA Central Terminal Project. Bayer/BSNA purposely excluded Servcor from any involvement in or information about the MIA Central Terminal Project warranty discussions so as to enable IRC to obtain final payment on the project without having to purchase the BaySystems Full System Maintenance Warranty.
- G. Communicating in a written communication that Bayer/BSNA knew was going to

be provided to MDAD, the false statement that Bayer/BSNA had not promised the BaySystems Full System Maintenance Warranty on the MIA Central Terminal Project and that the "venture" with Servcor had been terminated. In truth, Bayer/BSNA had previously reaffirmed in writing both before and after the subcontract was awarded to IRC that the BaySystems Full System Maintenance Warranty would be offered on the project and that Servcor was Bayer's/BSNA's partner.

- H. Allowing Servcor to continue to perform its obligations under the Bayer-Servcor Partnership well after the date of Bayer's/BSNA's written statement to the effect that the warranty was not being offered on the MIA Central Terminal Project and the "venture" with Servcor had been terminated, by Bayer's/BSNA's failure to advise Servcor that Bayer/BSNA had breached and unilaterally terminated the Bayer-Servcor Partnership agreement with Servcor and had disassociated from the partnership.
- I. Failing and refusing to compel IRC to compensate Servcor in regard to the loss of the BaySystems Full System Maintenance Warranty and the substantial work that Servcor had devoted to securing the MIA Central Terminal Project for Bayer/BSNA and by failing to require IRC to at least pay Servcor the monies it is due as the distributor of Bayer's/BSNA's roofing materials.
- J. Disparaging and defaming Servcor with regard to the MIA Central Terminal Project so as to discredit Servcor's attempts to inform MDAD of the truth as to the Bayer-Servcor Partnership and that Bayer/BSNA had committed to provide the Full System Maintenance Warranty to MDAD upon the completion of the roofing work to the satisfaction of Servcor.
- K. Attempting to put Servcor out of business in order to conceal the breach of

fiduciary duty and fraud against MDAD and Servcor. Bayer/BSNA have engaged in predatory escalated pricing to Servcor on quotes for materials costs, have refused to provide timely price quotes to Servcor causing Servcor to miss bidding deadlines, and has failed to communicate pricing information to Servcor as its distributor while at the same time quoting prices directly to contractors in order to encourage the contractors to bypass Servcor. Further, Bayer/BSNA failed to credit against any monies Servcor may owe Bayer/BSNA, the monies that Bayer/BSNA owe to Servcor as described and set forth more fully in this Complaint, which monies greatly exceed any amount Bayer/BSNA may claim to be owed by Servcor.

278. Servcor has been damaged as a direct and proximate result of the fraud by Bayer/BSNA.
279. In committing the fraud against Servcor, Bayer/BSNA had a dual intent. Bayer/BSNA were motivated not only by a financial self-interest in currying favor with IRC, but were also motivated by a specific intent to harm Servcor by depriving Servcor of not only the \$3,000,000.00 fee Servcor had earned on the MIA Central Terminal Project and the profit Servcor would earn from the administration of the warranty, but also on the future profits Servcor would be entitled to from the Bayer-Servcor Partnership's future earnings generated from the marketing and promotion efforts of the partnership and the offering of the Value Added Services and Programs developed by Servcor for the partnership. Consequently, Bayer's/BSNA's fraudulent conduct as set forth herein and above falls squarely within the exception of Florida Statutes § 768.73(1)(c), thereby removing any statutory limits on the amount of punitive damages Servcor is entitled to recover upon compliance with Florida Statutes § 768.72(1).
280. Each action or omission which constitutes a separate fraudulent act as set forth above was condoned, ratified and/or consented to by the officers, directors and/or managers of

Bayer/BSNA in that Bayer/BSNA continued to commit further and subsequent fraudulent acts. Consequently, Bayer/BSNA, by virtue of Florida Statutes § 768.72(3)(b), are not shielded from any liability for punitive damages due to the fact the fraud was committed by an employee or agent of Bayer/BSNA.

281. Servcor specifically reserves the right to seek leave to amend this Complaint to seek an award of punitive damages pursuant to Florida Statutes § 768.72(1) upon a reasonable showing by evidence in the record or proffered by Servcor.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability company, for damages, prejudgment interest, court costs, and for such other and further relief as may be just and proper.

COUNT XXIV

(action under Florida's Deceptive and Unfair Trade Practices Act against Bayer)

282. This is a cause of action for violation of Florida's Deceptive and Unfair Trade Practices Act, Florida Statutes § 501.201 et. seq., for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.

283. Servcor realleges paragraphs one through sixty and sixty-nine, above, as if recited in full herein.

284. Bayer's/BSNA's actions as set forth below constitute unfair and deceptive trade practices which were the direct and proximate cause of harm to Servcor:

- A. Disclosing the confidential information about the MIA Central Terminal Project to IRC.
- B. Failing and refusing to direct IRC to deal directly and exclusively with Servcor in regard to the MIA Central Terminal Project as to the BaySystems Full System Maintenance Warranty requirements.

- C. Negotiating directly with IRC in regard to warranty matters relating to the MIA Central Terminal Project.
- D. Negotiating in secret with IRC in regard to the warranty matters relating to the MIA Central Terminal Project.
- E. Failing and refusing to clarify for MDAD and its representatives the obvious substantial differences between the BaySystems Full System Maintenance Warranty and the warranties being offered to MDAD by IRC on the MIA Central Terminal Project.
- F. Assisting IRC in trying to concoct some hybrid form of existing, albeit contradictory and inconsistent warranties offered by Bayer/BSNA for IRC to offer to MDAD so that IRC would not be required to purchase the BaySystems Full System Maintenance Warranty on the MIA Central Terminal Project.
- G. Continuing to communicate and work with IRC in an effort to assist IRC in avoiding having to comply with the requirements of the project specifications and the contract documents on the MIA Central Terminal Project so as to avoid having to purchase the warranty while during the same time failing and refusing to take Servcor's phone calls, return Servcor's phone messages, or respond or communicate in any manner with Servcor in regard to the MIA Central Terminal Project. Bayer/BSNA purposely excluded Servcor from any involvement in or information about the MIA Central Terminal Project warranty discussions so as to enable IRC to obtain final payment on the project without having to purchase the BaySystems Full System Maintenance Warranty.
- H. Communicating in written correspondence to IRC that Bayer/BSNA knew was going to be provided to MDAD, the false statement that Bayer/BSNA had not promised MDAD the BaySystems Full System Maintenance Warranty on the MIA

Central Terminal Project and that the “venture” with Servcor had been terminated. In truth, Bayer/BSNA had previously reaffirmed in writing both before and after the subcontract was awarded to IRC that the BaySystems Full System Maintenance Warranty would be offered on the project. Moreover, Bayer/BSNA knew that Servcor was continuing to perform its obligations under the Bayer-Servcor Partnership agreement well after the date of Bayer’s/BSNA’s written statement to the effect that the warranty was not being offered on the MIA Central Terminal Project and that the “venture” with Servcor had been terminated, since Bayer/BSNA had never advised Servcor, even as of the date of the filing of this Complaint, that Bayer/BSNA had breached and unilaterally terminated the Bayer-Servcor Partnership agreement with Servcor and had disassociated from the partnership.

- I. Failing and refusing to compel IRC to compensate Servcor in regard to the loss of the BaySystems Full System Maintenance Warranty and the substantial work that Servcor had devoted to securing the MIA Central Terminal Project for Bayer/BSNA and by failing to require IRC to pay Servcor the monies it is due as the distributor of Bayer's/BSNA's roofing materials.
- J. Disparaging and defaming Servcor with regard to the MIA Central Terminal Project so as to discredit Servcor’s attempts to inform MDAD of the truth as to the Bayer-Servcor Partnership between Servcor and Bayer/BSNA and that Bayer/BSNA had committed to provide the Full System Maintenance Warranty to MDAD upon the completion of the roofing work to the satisfaction of Servcor.
- K. Refusing to respond to Servcor’s requests for price quotations and for warranty information on projects and for owners to whom Servcor had marketed and promoted Bayer’s/BSNA’s roofing materials and the Bayer-Servcor Partnership’s

Value Added Services and Programs.

- L. Providing price quotations and warranty information directly to roofing contractors but failing and refusing to provide the information on the same projects to Servcor in order to not only encourage but to compel roofing contractors to purchase the materials directly from Bayer/BSNA instead of through Servcor as Bayer's/BSNA's distributor.
- M. Failing and refusing to apply as a credit against Servcor's account with Bayer/BSNA the monies Bayer/BSNA owe to Servcor, the latter of which amounts greatly exceed any monies that Bayer/BSNA may claim they are owed by Servcor.
- N. Imposing a twenty-five percent (25%) surcharge on any roofing materials or products ordered by Servcor from Bayer/BSNA even though the monies Bayer/BSNA owe to Servcor greatly exceed any monies that Bayer/BSNA may claim they are owed by Servcor.
- O. Attempting to put Servcor out of business in order to conceal the breach of fiduciary duty and fraud engaged in by Bayer/BSNA. Bayer/BSNA have engaged in predatory escalated pricing to Servcor on quotes for materials costs, have refused to provide timely price quotes to Servcor causing Servcor to miss bidding deadlines, and has failed to communicate pricing information to Servcor as its distributor while at the same time quoting prices directly to contractors in order to not only encourage but to require the contractors to buy the materials from Bayer/BSNA. Further, Bayer/BSNA failed to credit against Servcor's account the monies which Bayer/BSNA owe to Servcor as described and set forth more fully in this Complaint, which monies greatly exceed any amounts which Bayer/BSNA may claim to be owed by Servcor.

285. Servcor has been damaged as a direct and proximate result of the deceptive and unfair

trade practices of Bayer/BSNA as set forth above.

286. Servcor has retained the undersigned attorneys to represent it in this action and is obligated to them for payment of their reasonable attorneys' fees, for which fees Bayer/BSNA are liable pursuant to Florida Statutes § 501.201, et. seq.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability company, for damages, prejudgment interest, court costs, reasonable attorneys' fees, and for such other and further relief as may be just and proper.

COUNT XXV
(unjust enrichment against Bayer)

287. This is an action for unjust enrichment over which this Court has jurisdiction.
288. Servcor realleges paragraphs one sixty and sixty-nine, above, as if recited in full herein.
289. Bayer/BSNA agreed that the Value Added Services and other Programs developed by Servcor for the Bayer-Servcor Partnership were the intellectual property of Servcor.
290. Bayer/BSNA never contributed anything of value to the Bayer-Servcor Partnership or to Servcor.
291. Servcor has bestowed a benefit upon Bayer/BSNA by training Bayer/BSNA's management and sales staff in regard to spray-on polyurethane foam roofing and the roofing industry; by providing Bayer/BSNA with valuable training, marketing, sales and promotional materials which Bayer/BSNA in turn provided to its roofing contractor customers; by developing the many Value Added Services Programs and procurement Programs for the Bayer-Servcor Partnership; and by providing Bayer/BSNA with substantial promotional materials relating to the Value Added Services Programs and procurement Programs.
292. Bayer will be unjustly enriched if it is not compelled to pay Servcor the reasonable value

for the services provided to Bayer by Servcor.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of judgment against the Defendant, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability company, for damages, prejudgment interest, court costs, and for such other and further relief as may be just and proper.

COUNT XXVI
(civil conspiracy against Bayer, Gomez and IRC)

293. This is a cause of action for civil conspiracy for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.
294. Servcor realleges paragraphs one sixty, above, as if recited in full herein.
295. Bayer/BSNA and Gomez were aware of the fact that David Looney and Servcor had spent years developing an advantageous business relationship with MDAD, and in working with MDAD's architects in regard to the roofing specifications for the MIA Central Terminal Project. IRC became aware of these facts at the time of or subsequent to attending the pre-bid conference on the MIA Central Terminal Project.
296. Bayer/BSNA and Gomez were aware of the fact that it was as a direct result of Servcor's years of effort, talent and abilities that the specifications for the MIA Central Terminal Project were prepared so as to require the SPF roofing materials which had been co-branded by Servcor and Bayer as "BaySystems SRS foam" and the sealant product which had also been co-branded and was identified as the "GE SRS Silicone," or an equivalent. Gomez knew that the "SRS" referred to Servcor's exclusive line of "Sustainable Roof System" products. IRC became aware of these facts at the time of or subsequent to attending the pre-bid conference on the MIA Central Terminal Project.
297. Bayer/BSNA and Gomez were aware of the fact that it was as a direct result of Servcor's years of effort, talent and abilities that the specifications for the MIA Central Terminal

- Project were prepared so as to require the winning bidder to provide the BaySystems Full System Maintenance Warranty. IRC became aware of these facts at the time of or subsequent to attending the pre-bid conference on the MIA Central Terminal Project.
298. Bayer/BSNA and Gomez were aware that the BaySystems Full System Maintenance Warranty was a Value Added Service which Servcor had developed for, and which was offered by, the Bayer-Servcor Partnership. IRC became aware of these facts at the time of or subsequent to attending the pre-bid conference on the MIA Central Terminal Project.
299. Bayer/BSNA, Gomez and IRC were aware of the fact that Servcor was the contact in regard to the BaySystems Full System Maintenance Warranty and that Servcor was the warranty administrator for the BaySystems Full System Maintenance Warranty.
300. Bayer/BSNA, Gomez and IRC were aware of, or reasonably should have been aware of the scope of coverage of the basic warranties that were available for SPF roofing systems and other roofing systems available for flat roofs. Bayer/BSNA, Gomez and IRC were aware of the fact that the warranty required by the specifications for the MIA Central Terminal Project was substantially broader in coverage than any warranty offered by any other SPF roofing material manufacturer in that it obligated Bayer/BSNA, as the warrantor, to perform and pay for all required roof maintenance for the approximately ten (10) acre roof on the MIA Central Terminal Project for the fifteen (15) year term of the warranty in addition to providing MDAD with semi-annual inspection reports on the condition of the roof during the fifteen (15) year warranty term. Consequently, Bayer/BSNA, Gomez and IRC were all aware that the costs associated with obtaining such extensive and broad warranty coverage would be substantially more expensive than the standard warranties offered by Bayer/BSNA and other SPF roofing materials manufacturers.
301. Bayer/BSNA, Gomez and IRC were specifically aware that the costs to IRC of obtaining the 15 year Limited Warranty, the 15 Year System Warranty, and the Wind Warranty

which Bayer/BSNA, Gomez and IRC ultimately provided to MDAD on the MIA Central Terminal Project was only approximately \$91,113.00.

302. Bayer/BSNA, Gomez and IRC were aware that the cost of obtaining the BaySystems Full System Maintenance Warranty on the MIA Central Terminal Project was \$3,800,000.00.
303. Bayer/BSNA, Gomez and IRC were aware that the MIA North Terminal Project was to follow closely in time the MIA Central Terminal Project, that the MIA North Terminal Project was approximately forty percent (40%) larger in size than the MIA Central Terminal Project, and that MDAD wanted to have the same SPF roof system warranty on both projects.
304. Despite the foregoing knowledge, Bayer/BSNA, Gomez and IRC entered into an agreement to defraud both MDAD and Servcor, and to cause financial harm to each, through a series of false and fraudulent representations to MDAD, resulting in MDAD accepting warranties on the MIA Central Terminal Project that were grossly inferior to the BaySystems Full System Maintenance Warranty, and by giving MDAD a credit or backcharge on the contracts in the amount of only \$60,000.00, rather than the more than 3.7 million dollar difference between the costs of the BaySystems Full System Maintenance Warranty and the warranties which Bayer/BSNA, Gomez and IRC ultimately provided to MDAD.
305. In addition to defrauding MDAD, the fraudulent scheme and plan entered into by Bayer/BSNA, Gomez and IRC had the known and intended purpose of causing financial harm to Servcor in that Servcor would be deprived of the \$3,000,000.00 fee it had already earned on the MIA Central Terminal project for the work it had already performed, which was to be paid out of the \$3,800,000.00 cost of the warranty. Additionally, the scheme and plan by Bayer/BSNA, Gomez and IRC deprived Servcor of the profit Servcor would have earned for the administration of the BaySystems Full System Maintenance Warranty

on the MIA Central Terminal Project for the fifteen (15) year life of that warranty. Finally, the scheme and plan by Bayer/BSNA, Gomez and IRC deprived Servcor of the profit it would have earned on the estimated cost of \$5,320,000.00 for the BaySystems Full System Maintenance Warranty on the MIA North Terminal Roof.

306. Gomez and IRC built into their contract amounts on the MIA Central Terminal Project a sufficient profit cushion so that they would each still make a substantial profit on the project even if they were unable to avoid having to comply with the project specifications and were required to obtain and provide the BaySystem Full System Maintenance Warranty, knowing that the conspiracy may not be successful and that MDAD might ultimately require that it be provided the BaySystems Full System Maintenance Warranty.
307. By providing MDAD with a credit of only \$60,000.00 for the failure to provide the BaySystems Full System Maintenance Warranty required by the specifications for the MIA Central Terminal Project, IRC reaped a substantial economic benefit. Further, even if this economic benefit was not shared with Gomez, Gomez reaped a substantial economic benefit as Gomez was compensated based upon a percentage of the IRC subcontract amount. Consequently, Gomez would retain its percentage of the more than 3.8 million dollar difference between the cost of the warranties provided to MDAD and the cost of obtaining the BaySystems Full System Maintenance Warranty.
308. Servcor has been damaged as a direct and proximate result of the conspiracy between and among Bayer/BSNA, Gomez and IRC in the manner as described above. In addition, Servcor has been further damaged in that the conspiracy succeeded in convincing MDAD that Servcor had been incorrect in its repeated assurances that the BaySystems Full System Maintenance Warranty was not the warranties being offered by IRC and Gomez, that Bayer/BSNA had agreed to provide the BaySystems Full System Maintenance Warranty on the MIA Central Terminal Project, and that BaySystems Full System

Maintenance Warranty obligated Bayer/BSNA to provide all required maintenance on the more than ten (10) acre roof for the life of the fifteen (15) year warranty whereas the Bayer/BSNA warranties proposed by IRC and Gomez did not. The result of convincing MDAD that these statements by Servcor was false, when in fact they were all true and correct, is that Servcor's credibility with MDAD and within the roofing industry has been severely damaged and Servcor has lost the advantageous business relationship it had established with MDAD as a result of a decade of work..

309. Servcor's principal place of business is in St. Petersburg, Pinellas County, Florida, and it is at that location that payment would have been made to Servcor for the cost of the BaySystems Full System Maintenance Warranty, and from that location that Servcor would have administered the warranty and received payment for the costs of administering the warranty. Due to the conspiracy by and among Bayer/BSNA, Gomez and IRC, Servcor was deprived of those payments and was unable to administer the warranty and incurred the damages and harm from the conspiracy in Pinellas County, Florida.
310. In conspiring against MDAD and Servcor, Bayer/BSNA, Gomez and IRC had a dual intent. Bayer/BSNA were motivated by a financial self-interest in currying favor with IRC, Bayer's largest customer of its SPF roofing systems and products. Gomez and IRC were each motivated by a financial self-interest in retaining virtually all of the cost of the BaySystems Full System Maintenance Warranty as additional profit on the MIA Central Terminal Project as set forth above. Bayer/BSNA, Gomez and IRC were also motivated by a specific intent to harm Servcor by depriving Servcor of not only the \$3,000,000.00 fee Servcor had earned on the MIA Central Terminal Project and the profit Servcor would earn from the administration of the warranty, but also on the future profits Servcor would be entitled to from the issuance of the BaySystems Full System Maintenance Warranty on

the MIA North Terminal Project. Further, IRC had a specific intent of damaging Servcor's relationship with Bayer/BSNA so that IRC would receive favorable consideration from Bayer/BSNA on future large commercial roofing projects. Consequently, Bayer's/BSNA's, Gomez' and IRC's actions in furtherance of the conspiracy as set forth herein and above falls squarely within the exception of Florida Statutes § 768.73(1)(c), thereby removing any statutory limits on the amount of punitive damages Servcor is entitled to recover upon compliance with Florida Statutes §768.72(1).

311. Each action or omission which constitutes an act in furtherance of the conspiracy was condoned, ratified and/or consented to by the officers, directors and/or managers of each of these Defendants in that each of these Defendants continued to make false representations as set forth herein to MDAD and committed further acts in an effort to put Servcor out of business so that Servcor would not bring the facts of the conspiracy to light. Consequently, Bayer/BSNA, Gomez and IRC, by virtue of Florida Statutes § 768.72(3)(b), are not shielded from any liability for punitive damages due to the fact the fraud was committed by an employee or agent of these Defendants.
312. Servcor specifically reserves the right to seek leave to amend this Complaint to seek an award of punitive damages pursuant to Florida Statutes § 768.72(1) upon a reasonable showing by evidence in the record or proffered by Servcor.
313. All conditions precedent to the bringing of this action have been performed, have been waived or have otherwise occurred.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendants, BAYER MATERIALSCIENCE, LLC, a Delaware limited liability company, MIKE GOMEZ CONSTRUCTION CONSULTING, INC., and URETHANE OF KENTUCKIANA, INCORPORATED, doing business as IRC, jointly and severally, for damages, prejudgment interest, court costs, reasonable attorneys' fees, and for such other and further relief

as may be just and proper.

COUNT XXVII
(negligence against IRC and Gomez)

314. This is a cause of action for negligence for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.
315. Servcor realleges paragraphs one through sixty, and three hundred through three hundred and three, above, as if recited in full herein.
316. Gomez and IRC, as the MCC general contractor and the roofing subcontractor, respectively, owed a duty to MDAD and Servcor to make a diligent inquiry and investigation as to both the SPF roofing materials and coating required by the specifications on the MIA Central Terminal Project and the specific warranty required by the specifications, i.e., the BaySystems Full System Maintenance Warranty.
317. Gomez and IRC were aware of the fact that David Looney and Servcor had spent years developing an advantageous relationship with MDAD.
318. Gomez and IRC were aware of the fact that it was as a direct result of Servcor's years of effort, talent and abilities that the specifications for the MIA Central Terminal Project were prepared so as to require the SPF roofing materials which had been co-branded by Servcor and Bayer as "BaySystems SRS foam" and the sealant product which had also been co-branded and was identified as the "GE SRS Silicone," or an equivalent. Gomez and IRC knew that the "SRS" referred to Servcor's exclusive line of "Sustainable Roof System" products.
319. Gomez and IRC were aware of the fact that it was as a direct result of Servcor's years of effort, talent and abilities that the specifications for the MIA Central Terminal Project were prepared so as to require the winning bidder to provide the BaySystems Full System Maintenance Warranty.

320. Gomez and IRC were aware of the fact that Servcor was the contact in regard to the BaySystems Full System Maintenance Warranty and that Servcor was the warranty administrator for the BaySystems Full System Maintenance Warranty.
321. Despite this knowledge, both Gomez and IRC were negligent in failing to contact Servcor to obtain clarification of the requirements for the issuance of the BaySystems Full System Maintenance Warranty. Further, both Gomez and IRC were negligent in ignoring Servcor when Servcor explained the requirements of the BaySystems Full System Maintenance Warranty and the substantial differences between that warranty and all other warranties provided by Bayer/BSNA as to its SPF roofing materials.
322. Servcor has been damaged as a result of Gomez' and IRC's negligence in that the confusion as to the warranty issues caused by Gomez' and IRC's negligence as described herein ultimately led to and allowed Gomez and IRC to coerce Bayer/BSNA to breach the promise Bayer/BSNA had made to issue the BaySystems Full System Maintenance Warranty on the MIA Central Terminal Project. Servcor has been damaged as a direct and proximate result of the negligence of Gomez and IRC in that Servcor has been deprived of the \$3,000,000.00 fee it had earned on the MIA Central Terminal project and the profit Servcor would earn from the administration of the warranty.
323. Moreover, Servcor has incurred further damage as a result of the negligence of IRC and Gomez as set forth above and herein in that the BaySystems Full System Maintenance Warranty will now not be available for the MIA North Terminal Project and Servcor has lost the profit it would have earned on the estimated cost of \$5,320,000.00 for the BaySystems Full System Maintenance Warranty on the MIA North Terminal Project.
324. Servcor's principal place of business is in St. Petersburg, Pinellas County, Florida, and it is at that location that payment would have been made to Servcor for the cost of the BaySystems Full System Maintenance Warranty, and from that location that Servcor

would have administered the warranty and received payment for the costs of administering the warranty. Due to the negligence of Gomez and IRC, Servcor was deprived of those payments and was unable to administer the warranty and incurred the damages and harm from Gomez' and IRC's negligence in Pinellas County, Florida.

325. All conditions precedent to the bringing of this action have been performed, have been waived or have otherwise occurred.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendants, MIKE GOMEZ CONSTRUCTION CONSULTING, INC., and URETHANE OF KENTUCKIANA, INCORPORATED, doing business as IRC, for damages, prejudgment interest, court costs, reasonable attorneys' fees, and for such other and further relief as may be just and proper.

COUNT XXVIII
(unjust enrichment against IRC and Gomez)

326. This is a cause of action for negligence for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.

327. Servcor realleges paragraphs one through sixty, above, as if recited in full herein.

328. Gomez and IRC knew that the specifications and the contract documents for the MIA Central Terminal Project required the winning bidder to provide Bayer's/BSNA's BaySystems Full System Maintenance Warranty.

329. Gomez and IRC were aware of, or reasonably should have been aware of the scope of coverage of the basic warranties that were available for SPF roofing systems and other roofing systems available for flat roofs. Gomez and IRC were aware of the fact that the warranty required by the specifications for the MIA Central Terminal Project was substantially broader in coverage than any warranty offered by any other SPF roofing material manufacturer in that it obligated Bayer/BSNA, as the warrantor, to perform and

pay for all required roof maintenance for the approximately ten (10) acre roof on the MIA Central Terminal Project for the fifteen (15) year term of the warranty in addition to providing MDAD with semi-annual inspection reports on the condition of the roof during the fifteen (15) year warranty term. Consequently, Gomez and IRC were both aware that the costs associated with obtaining such extensive and broad warranty coverage would be substantially more expensive than the standard warranties offered by Bayer/BSNA and other SPF roofing materials manufacturers.

330. Gomez and IRC were specifically aware that the costs to IRC of obtaining the 15 year Limited Warranty, the 15 Year System Warranty, and the Wind Warranty which Bayer/BSNA, Gomez and IRC ultimately provided to MDAD on the MIA Central Terminal Project was only approximately \$91,113.00.
331. Gomez and IRC were aware that the cost of obtaining the BaySystems Full System Maintenance Warranty on the MIA Central Terminal Project was \$3,800,000.00.
332. Gomez and IRC built into their contract amounts on the MIA Central Terminal Project a sufficient profit cushion so that they would each still make a substantial profit on the project even if they were compelled by MDAD to obtain and provide the BaySystem Full System Maintenance Warranty.
333. Gomez and IRC were aware that the MIA North Terminal Project was to follow closely in time the MIA Central Terminal Project, that the MIA North Terminal Project was approximately forty percent (40%) larger in size than the MIA Central Terminal Project, and that MDAD wanted to have the same SPF roof system warranty on both projects.
334. By giving MDAD a credit or backcharge on the contract in the amount of only \$60,000.00, rather than the more than 3.7 million dollar difference between the costs of the BaySystems Full System Maintenance Warranty and the warranties which Bayer/BSNA, Gomez and IRC ultimately provided to MDAD, Gomez and IRC have been unjustly

enriched.

335. Further, even if this additional profit of more than 3.7 million dollars was not shared by IRC with Gomez, Gomez reaped a substantial economic benefit as Gomez was compensated based upon a percentage of the IRC subcontract amount. Consequently, Gomez would retain its percentage of the more than 3.7 million dollar difference between the cost of the warranties provided to MDAD and the cost of obtaining the BaySystems Full System Maintenance Warranty.
336. As noted above, \$3,000,000.00 of the cost of the BaySystems Full System Maintenance Warranty on the MIA Central Terminal Project was to be a fee paid to Servcor to compensate Servcor for the services it had already performed in regard to the project. The balance of the cost of the warranty was to be escrowed to pay for the costs of the administration of the warranty. Servcor would have earned profit from the administration of the warranty.
337. Servcor has bestowed a substantial benefit upon Gomez and IRC by the services Servcor performed in regard to the MIA Central Terminal Project resulting in MDAD being able to award Gomez a contract for the MIA Central Terminal Project when the prior bid attempt by MDAD had not been successful. Additionally, Servcor has bestowed a benefit upon Gomez and IRC in that Gomez and IRC bid the project including in their bids an amount sufficient to pay for the cost of the BaySystems Full System Maintenance Warranty and still allowing a substantial profit on the project.
338. In addition to the foregoing, Servcor bestowed a substantial benefit upon Gomez and IRC by virtue of extensive forensic roof leak investigations conducted by Servcor prior to the bid process on the MIA Central Terminal Project. The MIA roofs had been plagued by over forty (40) leaks for a period of more than ten (10) years which many other companies had tried, unsuccessfully, to resolve. MDAD was preparing to spend over \$5,000,000.00

simply to attempt to repair the leaks. For no other compensation other than Gomez' promise that he would support Servcor's proposal to MDAD to replace the entire roof with a SPF roof and for MDAD to require the BaySystems Full System Maintenance Warranty, Servcor performed the following extensive services:

- A Servcor mapped out the forty (40) leaks on the building interior, documenting the exact location and severity of the leaks.
 - B Servcor met with the store managers for each retail store in which leaks were occurring in order to document the rain and wind conditions under which the leaks occurred.
 - C Servcor used a GPS analysis to pinpoint, map and correlate the interior water dripping with the precise location and conditions on the more than forty (40) acres of MIA roofing which consists of more than fifty (50) different roof levels.
 - D. Servcor performed extensive core sampling at each of the roof locations correlating to an interior leak in order to determine the extent of the wet roofing material that had to be replaced.
 - E. Servcor prepared scale DADD drawings of each area to be repaired in order to resolve the forty (40) leaks.
 - F. Servcor prepared detailed specifications for the performance of the roof repairs.
 - G. Servcor prepared and provided Gomez with repair cost estimates, backup documentation for the repair costs, and presentation materials for Gomez to submit to MDAD, and even made the presentation to MDAD on Gomez' behalf as Gomez had no prior substantial roofing experience.
339. As a result of all of the services Servcor performed as set forth in detail in the immediately preceding paragraph, Gomez was awarded an \$800,000.00 repair contract, MDAD and Gomez were convinced as to the qualities of a SPF roofing system and Servcor's

expertise in SPF roofing systems, MDAD decided to pursue total reroofing of the MIA using an SPF roofing system rather than attempting costly long-term repairs, and ultimately, Gomez was awarded the MIA Central Terminal Project, and IRC was awarded the roofing subcontract.

340. Consequently, if Gomez and IRC are not compelled to pay Servcor the reasonable value for the services Servcor performed and the benefit bestowed upon Gomez and IRC, Servcor will be damaged and Gomez and IRC will be unjustly enriched.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendants, MIKE GOMEZ CONSTRUCTION CONSULTING, INC., and URETHANE OF KENTUCKIANA, INCORPORATED, doing business as IRC, for damages, prejudgment interest, court costs, reasonable attorneys' fees, and for such other and further relief as may be just and proper.

COUNT XXIX
(fraud against IRC)

341. This is a cause of action against IRC for fraud for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.
342. Servcor realleges paragraphs one through sixty, above, as if recited in full herein.
343. IRC was aware of the fact that David Looney and Servcor had spent years developing an advantageous relationship with MDAD.
344. IRC was aware of the fact that it was as a direct result of Servcor's years of effort, talent and abilities that the specifications for the MIA Central Terminal Project were prepared so as to require the SPF roofing materials which had been co-branded by Servcor and Bayer/BSNA as "BaySystems SRS foam" and the sealant product which had also been co-branded and was identified as the "GE SRS Silicone," or an equivalent. IRC knew that the "SRS" referred to Servcor's exclusive line of "Sustainable Roof System" products.

345. IRC was aware of the fact that it was as a direct result of Servcor's years of effort, talent and abilities that the specifications for the MIA Central Terminal Project were prepared so as to require the winning bidder to provide the BaySystems Full System Maintenance Warranty.
346. IRC was aware that the BaySystems Full System Maintenance Warranty was a Value Added Service which Servcor had developed for, and which was offered by, the Bayer-Servcor Partnership.
347. IRC was aware of the fact that Servcor was the contact in regard to the BaySystems Full System Maintenance Warranty and that Servcor was the warranty administrator for the BaySystems Full System Maintenance Warranty.
348. IRC was familiar with the coverage and cost of the standard warranties Bayer/BSNA offered on its SPF roofing materials, and that the warranty required by the specifications for the MIA Central Terminal Project was substantially broader in coverage, and would therefore be substantially more expensive to obtain than the cost of the standard warranties offered by Bayer/BSNA.
349. IRC was aware that the cost of obtaining the BaySystems Full System Maintenance Warranty on the MIA Central Terminal Project was \$3,800,000.00.
350. IRC was aware that the MIA North Terminal Project was to follow closely in time the MIA Central Terminal Project, that the MIA North Terminal Project was approximately forty percent (40%) larger in size than the MIA Central Terminal Project, and that MDAD wanted to have the same SPF roof system warranty on both projects.
351. IRC viewed Servcor as a threat to its business due to the Value Added Services and Programs that Servcor and Bayer/BSNA were offering through the Bayer-Servcor Partnership.
352. IRC embarked upon a scheme to defraud MDAD and Servcor by either purposely and

intentionally directing its initial inquiry as to the requirements and costs of the BaySystems Full System Maintenance Warranty on the MIA Central Terminal Project to a representative of Bayer/BSNA who IRC knew would have no information as to the warranty or, in the alternative, ignoring the direction it was given by Bayer/BSNA to direct its inquiry as to the warranty requirements and costs to Servcor, with the intent and purpose to create enough confusion with Gomez and MDAD so as to hopefully avoid having to purchase the BaySystems Full System Maintenance Warranty on the project and thereby increase its profit on the project by the difference between the \$3,800,000.00 cost of the BaySystems Full System Maintenance Warranty and the approximately \$91,113.00 cost incurred by IRC in obtaining the warranties actually provided to MDAD.

353. Even after being specifically informed of the requirements of the BaySystem Full System Maintenance Warranty and the fact that the warranties IRC was offering to MDAD were grossly inferior to the BaySystems Full System Maintenance Warranty, IRC perpetuated its fraudulent scheme by committing perjury in the evidentiary hearing conducted on August 1-2, 2007 as a result of a bid protest filed by Tarheel Roofing, Inc. in regard to the award of the Gomez roofing subcontract on the MIA Central Terminal Project to IRC. IRC, through Sean Stumler, its Treasurer and a member of the family who owns all or a controlling interest in the stock in IRC, repeatedly testified that IRC was providing the warranty that was required by the project specifications, despite knowing that this testimony was blatantly false.

354. Moreover, IRC exerted pressure on Bayer/BSNA, withholding orders for materials and/or threatening to not place further orders for materials from Bayer/BSNA unless Bayer/BSNA aided and assisted IRC in not having to provide the BaySystems Full System Maintenance Warranty required by the specifications for the MIA Central Terminal Project. In so doing, IRC would also avoid having to pay Servcor the \$3,800,000.00 purchase price of the

BaySystems Full System Maintenance Warranty.

355. IRC had malicious intent in trying to harm Servcor and had previously demonstrated this ill will, motive and intent by having cheated Servcor out of monies Servcor was owed on a project referred to as the Eli Lilly project.
356. IRC was successful in its fraudulent scheme in that Bayer/BSNA succumbed to the economic pressure from IRC, its largest SPF roofing materials purchaser and system installer, and aided and abetted IRC in convincing MDAD that there was no Bayer-Servcor Partnership and that the BaySystems Full System Maintenance Warranty had not been offered by Bayer/BSNA or the Bayer-Servcor Partnership for the MIA Central Terminal Project.
357. IRC profited from its fraudulent scheme in that IRC, despite having factored the \$3,800,000.00 cost of the BaySystems Full System Maintenance Warranty into its subcontract bid on the MIA Central Terminal Project, avoided having to purchase the warranty, thereby increasing its estimated profit on the project to an unprecedented sixty-seven percent (67%) of the total subcontract bid amount. Ultimately, IRC offered a credit to Gomez and MDAD in the amount of only \$60,000.00 for its inability to provide the specified \$3,800,000.00 warranty which provided MDAD with substantial benefits greatly in excess of those provided by the warranties actually furnished to MDAD by IRC on the project.
358. Servcor was damaged as a direct and proximate result of IRC's fraudulent scheme in that Servcor has been deprived of the \$3,000,000.00 fee it had earned on the MIA Central Terminal project and the profit Servcor would make on the administration of the warranty. Further, Servcor has been damaged as a result of the fact that it will now not earn a fee or the profit from warranty administration for the BaySystems Full System Maintenance Warranty that, but for the fraud of IRC, would have been required by MDAD on the MIA

North Terminal Project. The estimated cost of the BaySystems Full System Maintenance Warranty on the MIA North Terminal Roof is \$5,320,000.00.

359. IRC had a dual intent in concocting and carrying out its fraudulent scheme as described herein. IRC was motivated by a financial self-interest in avoiding the cost of the BaySystems Full System Maintenance Warranty and thereby increasing its estimated profit margin on the MIA Central Terminal Project to an unprecedented sixty-seven percent (67%) of the bid amount. IRC was also motivated by a specific intent to harm Servcor by depriving Servcor of not only the \$3,000,000.00 fee Servcor had earned on the MIA Central Terminal Project and the profit Servcor would earn from the administration of the warranty, as well as the future profits Servcor would be entitled to from the Bayer-Servcor Partnership's future earnings generated from the marketing and promotion efforts of the partnership and the offering of the Value Added Services and Programs developed by Servcor for the partnership. IRC was also motivated by a specific desire and intent to discredit Servcor on the MIA Central Terminal Project in order to damage Servcor's advantageous business relationship with MDAD and to disrupt or destroy Servcor's partnership with Bayer/BSNA in the Bayer-Servcor Partnership. Consequently, IRC's actions in concocting and carrying out the fraudulent scheme as set forth herein and above falls squarely within the exception of Florida Statutes § 768.73(1)(c), thereby removing any statutory limits on the amount of punitive damages Servcor is entitled to recover upon compliance with Florida Statutes § 768.72(1).

360. Each action or omission which constitutes an act in furtherance of the fraudulent scheme was condoned, ratified and/or consented to by the officers, directors and/or managers of IRC in that the acts were known by the officers, directors and/or managers of IRC, such persons all participated in the fraudulent scheme, and all shared the intent and desire to cause financial harm to Servcor. Consequently, IRC, by virtue of Florida Statutes §

768.72(3)(b), is not shielded from any liability for punitive damages due to the fact the fraud was committed by an employee or agent of IRC.

361. Servcor specifically reserves the right to seek leave to amend this Complaint to seek an award of punitive damages pursuant to Florida Statutes § 768.72(1) upon a reasonable showing by evidence in the record or proffered by Servcor.

362. All conditions precedent to the bringing of this action have been performed, have been waived or have otherwise occurred.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, URETHANE OF KENTUCKIANA, INCORPORATED, doing business as IRC, for damages, prejudgment interest, court costs, reasonable attorneys' fees, and for such other and further relief as may be just and proper.

COUNT XXX
(fraud against IRC)

363. This is a cause of action against IRC for fraud for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.

364. Servcor realleges paragraphs one through sixty, above, as if recited in full herein.

365. When representatives of IRC attended the pre-bid conference on the MIA Central Terminal Project, they made the express verbal representation to David Looney of Servcor that IRC were there as part of the "Bayer group," and that they were on the same team as Servcor, and that they were not there in order to bid on the project as IRC in competition with other bidders.

366. IRC made these fraudulent misrepresentations with the intent that David Looney and Servcor rely upon such misrepresentations and divulge valuable information that Servcor had developed as a result of hundreds of hours of investigation and inspection of the MIA Central Terminal Project roofs as part of the Bayer-Servcor Partnership, including the

detailed take-off or cost-estimating information and the bid amount that Servcor had developed for the project as part of the Bayer-Servcor Partnership.

367. Servcor relied upon the fraudulent representations made by IRC at the pre-bid conference and shared the valuable and confidential information including the detailed take-off or cost-estimating information and the bid amount that Servcor had developed for the project as part of the Bayer-Servcor Partnership.

368. Servcor was damaged as a direct and proximate result of its reliance upon the fraudulent misrepresentations by IRC in that IRC was able to use the detailed take-off and cost-estimating information and the bid amount that Servcor had developed for the project to determine the amount of IRC's bid in order to be the lowest bid submitted and to obtain the award of the roofing subcontract from Gomez. Servcor was further damaged in that all other bidders on the project also included the cost of the BaySystems Full System Maintenance Warranty in their bids on the MIA Central Terminal Project, and these other bidders had acknowledged the obligation to pay Servcor the \$3,800,000.00 cost of obtaining the warranty; whereas, IRC intended to use its leverage and negotiating power as Bayer/BSNA's largest volume SPF roofing contractor customer and applicator to avoid having to pay Servcor for the warranty.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, URETHANE OF KENTUCKIANA, INCORPORATED, doing business as IRC, for damages, prejudgment interest, court costs, reasonable attorneys' fees, and for such other and further relief as may be just and proper.

COUNT XXXI
(tortious interference with contract against IRC)

369. This is a cause of action for tortious interference with contract for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.

370. Servcor realleges paragraphs one through sixty, above, as if recited in full herein.
371. IRC was aware of the Bayer-Servcor Partnership by virtue of the joint marketing and promotion efforts of Bayer/BSNA and Servcor.
372. IRC viewed Servcor as a threat to its business due to the Value Added Services and Programs that Servcor and Bayer/BSNA were offering through the Bayer-Servcor Partnership.
373. IRC intentionally and purposely interfered with Servcor's partnership agreement with Bayer/BSNA by falsely stating to Bayer/BSNA that Servcor had discriminated against IRC compared to other bidders by refusing to provide information on the requirements and costs of the BaySystems Full System Maintenance Warranty on the MIA Central Terminal Project, by threatening to cease doing business with Bayer/BSNA unless Bayer/BSNA aided and abetted IRC in avoiding having to provide the BaySystems Full System Maintenance Warranty to MDAD, by blaming Servcor for the confusion caused by IRC's false statements regarding the availability of the warranty to MDAD, and by discrediting Servcor on the MIA Central Terminal Project.
374. IRC had malicious intent in trying to harm Servcor and had previously demonstrated this ill will, motive and intent by having cheated Servcor out of monies Servcor was owed on a project referred to as the Eli Lilly project.
375. IRC had a dual intent in interfering with Servcor's partnership agreement with Bayer/BSNA as described herein. IRC was motivated by a financial self-interest in avoiding the cost of the BaySystems Full System Maintenance Warranty and thereby increasing its estimated profit margin on the MIA Central Terminal Project to an unprecedented sixty-seven percent (67%) of the bid amount. IRC was also motivated by a specific intent to harm Servcor by depriving Servcor of not only the \$3,000,000.00 fee Servcor had earned on the MIA Central Terminal Project and the profit Servcor would earn from the administration of the

warranty, but also on the future profits Servcor would be entitled to from the Bayer-Servcor Partnership's future earnings generated from the marketing and promotion efforts of the partnership and the offering of the Value Added Services and Programs developed by Servcor for the partnership. IRC was also motivated by a specific desire and intent to discredit Servcor on the MIA Central Terminal Project in order to damage Servcor's advantageous business relationship with MDAD and to disrupt or destroy Servcor's partnership with Bayer/BSNA in the Bayer-Servcor Partnership. Consequently, IRC's actions in interfering with Servcor's partnership agreement with Bayer/BSNA as set forth herein and above falls squarely within the exception of Florida Statutes § 768.73(1)(c), thereby removing any statutory limits on the amount of punitive damages Servcor is entitled to recover upon compliance with Florida Statutes § 768.72(1).

376. Each action or omission which constitutes an act in furtherance of the continued pattern of interference was condoned, ratified and/or consented to by the officers, directors and/or managers of IRC in that the acts were known by the officers, directors and/or managers of IRC, such persons all participated in the plan, and all shared the intent and desire to cause financial harm to Servcor. Consequently, IRC, by virtue of Florida Statutes § 768.72(3)(b), is not shielded from any liability for punitive damages due to the fact the fraud was committed by an employee or agent of IRC.

377. Servcor specifically reserves the right to seek leave to amend this Complaint to seek an award of punitive damages pursuant to Florida Statutes § 768.72(1) upon a reasonable showing by evidence in the record or proffered by Servcor.

378. All conditions precedent to the bringing of this action have been performed, have been waived or have otherwise occurred.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, URETHANE OF KENTUCKIANA, INCORPORATED, doing

business as IRC, for damages, prejudgment interest, court costs, reasonable attorneys' fees, and for such other and further relief as may be just and proper.

COUNT XXXII

(tortious interference with advantageous business relationship against IRC)

379. This is a cause of action for tortious interference with an advantageous business relationship for damages which exceed the sum of \$15,000.00, exclusive of interest, costs and attorneys' fees.
380. Servcor realleges paragraphs one through sixty, above, as if recited in full herein.
381. IRC was aware of the fact that David Looney and Servcor had spent years developing an advantageous business relationship with MDAD.
382. IRC was aware of the fact that it was as a direct result of Servcor's years of effort, talent and abilities that the specifications for the MIA Central Terminal Project were prepared so as to require the winning bidder to provide the BaySystems Full System Maintenance Warranty.
383. IRC was aware of Servcor's partnership with Bayer/BSNA and the Value Added Services and Programs that the Bayer-Servcor Partnership offered and was developing.
384. IRC viewed Servcor as a threat to its business due to the Value Added Services and Programs that Servcor and Bayer/BSNA were offering through the Bayer-Servcor Partnership.
385. IRC was aware that the BaySystems Full System Maintenance Warranty was a Value Added Service which Servcor had developed for, and which was offered by, the Bayer-Servcor Partnership.
386. IRC was aware of the fact that Servcor was the contact in regard to the BaySystems Full System Maintenance Warranty and that Servcor was the warranty administrator for the BaySystems Full System Maintenance Warranty.

387. IRC was familiar with the coverage and cost of the standard warranties Bayer/BSNA offered on its SPF roofing materials, and that the warranty required by the specifications for the MIA Central Terminal Project was substantially broader in coverage, and would therefore be substantially more expensive to obtain than the cost of the standard warranties previously offered by Bayer/BSNA.
388. IRC was aware that the cost of obtaining the BaySystems Full System Maintenance Warranty on the MIA Central Terminal Project was \$3,800,000.00.
389. IRC was aware that the MIA North Terminal Project was to follow closely in time the MIA Central Terminal Project, that the MIA North Terminal Project was approximately forty percent (40%) larger in size than the MIA Central Terminal Project, and that MDAD wanted to have the same SPF roof system warranty on both projects.
390. IRC intentionally and purposely interfered with Servcor's advantageous business relationship with MDAD by committing perjury at the August 1-2, 2007 evidentiary hearing by falsely testifying that IRC was providing the warranty required by the project specifications. Later, IRC intentionally and purposely interfered with Servcor's advantageous business relationship with MDAD by: misrepresenting to MDAD that there was no BaySystems Full System Maintenance Warranty; misrepresenting to MDAD that no such warranty had been available on the MIA Central Terminal Project, misrepresenting to MDAD that there was no manufacturer's warranty from Bayer/BSNA whereby Bayer/BSNA incurred the obligation to provide the routine maintenance on the roof system; by defaming Servcor with MDAD and by claiming that Servcor was not competent and that Servcor was at fault for the confusion in regard to the warranty requirements on the project when the confusion was intentionally created by IRC; and by otherwise discrediting Servcor on the MIA Central Terminal Project and in the roofing community and with Bayer/BSNA.

391. IRC had malicious intent in trying to harm Servcor and had previously demonstrated this ill will, motive and intent by having cheated Servcor out of monies Servcor was owed on a project referred to as the Eli Lilly project.
392. IRC had a dual intent in interfering with Servcor's advantageous business relationship with MDAD as described herein. IRC was motivated by a financial self-interest in avoiding the cost of the BaySystems Full System Maintenance Warranty and thereby increasing its estimated profit margin on the MIA Central Terminal Project to an unprecedented sixty-seven percent (67%) of the bid amount. IRC was also motivated by a specific intent to harm Servcor by depriving Servcor of not only the \$3,000,000.00 fee Servcor had earned on the MIA Central Terminal Project and the profit Servcor would earn from the administration of the warranty, but also on the future profits Servcor would be entitled to from the Bayer-Servcor Partnership's future earnings generated from the marketing and promotion efforts of the partnership and the offering of the Value Added Services and Programs developed by Servcor for the partnership. IRC was also motivated by a specific desire and intent to discredit Servcor on the MIA Central Terminal Project in order to damage Servcor's advantageous business relationship with MDAD and to disrupt or destroy Servcor's partnership with Bayer/BSNA in the Bayer-Servcor Partnership. Consequently, IRC's actions in interfering with Servcor's advantageous business relationship with MDAD as set forth herein and above falls squarely within the exception of Florida Statutes § 768.73(1)(c), thereby removing any statutory limits on the amount of punitive damages Servcor is entitled to recover upon compliance with Florida Statutes § 768.72(1).
393. Each action or omission which constitutes an act in furtherance of the continued pattern of interference was condoned, ratified and/or consented to by the officers, directors and/or managers of IRC in that the acts were known by the officers, directors and/or managers

of IRC, such persons all participated in the plan, and all shared the intent and desire to cause financial harm to Servcor. Consequently, IRC, by virtue of Florida Statutes § 768.72(3)(b), is not shielded from any liability for punitive damages due to the fact the fraud was committed by an employee or agent of IRC.

394. Servcor specifically reserves the right to seek leave to amend this Complaint to seek an award of punitive damages pursuant to Florida Statutes § 768.72(1) upon a reasonable showing by evidence in the record or proffered by Servcor.

395. All conditions precedent to the bringing of this action have been performed, have been waived or have otherwise occurred.

WHEREFORE, the Plaintiff, SERVCOR INTERNATIONAL, INC., demands entry of a judgment against the Defendant, URETHANE OF KENTUCKIANA, INCORPORATED, doing business as IRC, for damages, prejudgment interest, court costs, reasonable attorneys' fees, and for such other and further relief as may be just and proper.

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DEMAND FOR JURY TRIAL

The Plaintiff herein, SERVCOR INTERNATIONAL, INC., hereby demands trial by jury against all Defendants on all issues herein which are so triable.

MOODY & SHEA, P.A.

By: 

DANIEL L. MOODY, ESQ.

Board Certified in Construction Law

FBN: 436135

SHEILA D. SAYNE, ESQ.

FBN: 26971

14501 Walsingham Road

Largo, Florida 33774

Phone No.: (727) 596-3000

Fax No.: (727) 596-3006

Attorneys for the Plaintiff, Servcor International, Inc.

Memorandum of Understanding

To: BaySystems North America
From: Servcor International
Date: February 1, 2007

Part 1: Lets Get to Work**1) Purpose**

It is our hope to move forward immediately following our meeting 2/5/07. However, many issues that would better define our long-term relationship will have to be worked out and decided as this year progresses. Therefore, this Memorandum of Understanding (MOU) will serve as a starting point which details some minor specifics while also laying the foundation of the "big picture", the goal that we all desire to work towards and achieve.

2) Structure of the MOU**a) Part 1 – Short Term Incremental Sales**

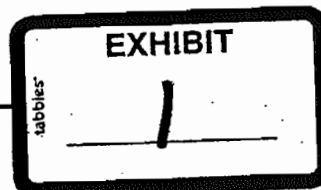
- i) The first section of the MOU (Part 1) defines the specific points that need to be agreed upon before Servcor can begin work.
- ii) Defines the initial investments, responsibilities and commitments of the parties for the first year.
- iii) Defines the expected results of the first year.

b) Part 2 – Growing the Business Exponentially

- i) Part 2 of the MOU defines in broad terms what the parties wish to achieve "long-term".
- ii) Provides information of the realities regarding what we face to grow exponentially with the specific intention of acknowledging our awareness of same.
- iii) A general outline of what each party will provide to overcome the challenges to reach our goal.
- iv) Will provide an acknowledgment of the parties understanding of future expectations and potential results.

3) Year 1 Focus – Incremental Sales Plan

- a) Servcor, as an independent rep, will focus on immediate sales. This will generally target customers that are still in their current year's budget and reroof cycle. Only minor efforts will be expended on larger, long-term customers (normally referred to as "Business Development".)
- b) Light travel is expected and performed once we are confident of a sale. More travel is performed when premium value added services are anticipated. Travel is at Servcor discretion.



Memorandum of Understanding

- c) In many cases, Servcor will rely on Bay reps, contractor estimators and web presentations in lieu of face to face meetings with customers. We intend to utilize our local resources for this function whenever possible.
- d) The goal of this first year is to generate immediate sales to help "carry" the program.

4) Length of Agreement:

This agreement is for five years and will automatically renew annually.

5) Servcor Designations:

Servcor will serve in the following official capacities:

- National Account Representatives
 - National Specifier/Consultant Representatives ("Specifier Development Team")
- a) These Servcor functions are to be officially communicated throughout the organization and market place with the intention that all customers of this type are referred to us for follow up.
 - b) Servcor will be provided all leads that are generated from advertising and marketing initiatives that are targeted to these audiences.
 - c) We would also suggest that Servcor serve as a clearing house for all leads from the marketing and advertising initiatives. For this opportunity we will agree to follow up on all leads promptly and provide the Bay Systems sales manager with a written report on the status of leads every 30 days.

6) Commissions

Servcor will be paid commissions on the following:

- a) All work generated by specifiers and consultants.
- b) All orders placed by new contractors signed up by Servcor.
- c) All accounts and customers worked on by Servcor which includes subsequent projects and work for subsidiary companies, all within the broadest parameters and lenient definition of same.
- d) All of the above for a period of three years after the termination of this agreement.
- e) Servcor price structure: GE Silicone: \$20 per gallon, Polyurethane foam: \$1.52 per pound.
- f) Shipping costs will be the standard BaySystems shipping arrangements.
- g) Future price increases will only be for actual production cost increases incurred by Bay.
- h) All price increases will be provided to Servcor 90 days in advance.

Memorandum of Understanding

7) Commission Payments

During this stage of our agreement, it is necessary for us to track projects to receive a commission. Due to the nature of the roofing business, this is difficult at best. Projects, customer names and property names can vary between how they are commonly referred to in the sales process versus their correct legal names. Often, the customer is one entity i.e. a consultant or a management company and the actual project name is something entirely different. Therefore, they can be easily misidentified. It is anticipated that Servcor projects will "fall through the cracks" and that we will be relying to a large extent on the good faith efforts of Bay to help prevent this.

- a) Servcor will attempt to track projects internally and notify Bay.
- b) Bay will set up internal processes to track and identify Servcor sales and customers.
- c) A mutually agree upon, revised order form will be used for contractors to use when placing orders to better track sales.
- d) Bay will pay Servcor retroactively if it is later found that a project "fell through the cracks."
- e) Payment terms: Servcor will be paid within 10 days business days of Bay being paid.

8) Products

Servcor will sell all Bay products and will be supplied a fair discounted price structure commensurate with the foam and silicone price structures defined herein.

9) Servcor SRS Product Line

- a) The Servcor Sustainable Roof System (SRS) will be the exclusive product used for renewable warranties (10 + 10 and 15 + 15). See attachment "C" for details.
- b) All materials will carry the SRS label.

10) Territory:

Servcor expects to sell products in the US, Canada, US territories, Mexico, Caribbean

11) Proposed Change from existing agreement

- a) The Servcor SRS product line should be sold and distributed through Bay when the product is sold to customers through Bay contractors. When a premium is charged for products, Bay will receive 25% of the premium over "retail." Retail is defined as \$25 per gallon for silicone and \$1.68 per pound for foam.
- b) When SRS is sold through other channels (i.e. value added resellers, independent reps, specialty procurement programs etc.) Servcor will act as the distributor.

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12) Bay Reps

Servcor will utilize Bay Reps and/or contractor reps for local account representation whenever possible. Bay Reps will provide the same service to Servcor as they would customarily perform in their normal duties. This includes items such as:

- Giving presentations to Servcor customers within their territory.
- Looking at roofs for customers.
- Helping select the proper contractors to bid projects.
- Providing contractors pricing and other support needed to bid the projects.
- Holding pre-bid conferences and other customary customer project support.

13) Servcor Sales Responsibilities

- a) Servcor will primarily focus on opportunities that will generate immediate sales. This will be accounts that have not gone through their current year's budget or reroof cycle.
- b) We intend to target geographic markets where Bay has a strong contractor base. This will include national accounts, specifiers and individual building owners when appropriate.
- c) It should be understood that limited success with specifiers will occur in geographic markets that do not have three local contractors to bid a specifiers work.
- d) For a limited time, Servcor will provide all technical services to specifiers. However, this is not customary for independent representatives to have to supply.
- e) Servcor is not required to service customers/contractors for which they are not receiving commissions..
- f) Servcor is responsible for its own expenses. However, if we are requested to travel or work with a Bay customer/contractor, Bay will be responsible for expenses. Other goodwill work (such as meeting with FM Global etc.), trade shows, speeches etc. will be at Bay expense and at our discretion.
- g) Servcor has a number of their own sales and marketing initiatives. See attachment "A" for details.

Memorandum of Understanding

14) Other Servcor Services

- a) Servcor will provide some marketing services to Bay as well as provide its own marketing initiatives. In general, we expect to participate in the "strategic" process and do not intend to charge a fee for these services. Examples of these services are:
- crafting our marketing message
 - marketing brainstorming
 - aiding in the marketing and advertising budget process
 - researching and recommending business development initiatives
 - provide cost analysis and forecasting for recommended initiatives
 - participate in policies that affect sales, marketing and the sales force
- b) Servcor will provide some services on a fee basis when mutually agreed upon by both parties.
- c) Servcor materials, programs, concepts, software and the like are considered intellectual property and are not available as a "work for hire." However, some of these are available on a license basis to be negotiated. See schedule "A" and "B" for a current listing.
- d) Computer training and support will be charged at industry standard rates.

15) Bay Responsibilities

It is expected that Bay will at least provide a competitive "overall sales and marketing effort" commensurate with "conventional" roofing manufacturers of similar size. A sampling of this effort is:

- Professional collateral materials
- Architectural Support Materials
- Presentation Binders
- Presentation Folders
- Video Presentations
- Code approvals and industry standard ratings (FM, UL, Miami Dade etc.)
- An advertising and marketing program directed at building owners and specifiers
- Technical support for the design, installation and proper use of its products. This is unrelated to R & D work and "chemical support".
- Intranet system
- Internet site and initiatives

Memorandum of Understanding

16) Bay Inside Support

Bay will supply Servcor with a competent "inside" marketing support person to help service these national efforts and provide administrative support for our various marketing initiatives. This person would be on a non-exclusive basis but their efforts to support these new initiatives would be their priority.

17) Hold Harmless

Bay will provide a hold harmless commitment and other legal protections to Servcor commensurate with standard industry practices for independent representatives within the roofing industry.

18) Hurricane Temporary Warranty

The Bay Systems 6-month temporary roof warranty will be offered exclusively through Servcor and their Proactive Hurricane Preparedness Program.

19) Lead Generation Programs

Some type of lead generating program must be implemented to support this effort; the biggest expense being a direct telemarketing program. We propose that these functions be outsourced to Servcor and expenses shared as following:

a) Bay Expenses (telemarketing):

- o Salary of telemarketing employees
- o Hard cost such as computers, software, internet expenses, phone line
- o Costs of phone lists
- o Mail out of materials
- o Printing and duplication of materials
- o Online directory service (such as Hoovers, Corporate Affiliates, One Source)

b) Servcor Expenses:

- o Development of script and concepts
- o Software development
- o Building rent
- o Phone equipment hardware
- o Duplication and presentation equipment
- o Training of employees
- o Management of employees

Memorandum of Understanding

c) Bay Telemarketing Expense Breakdown

As the program grows, each rep will have one inside sales/phone solicitor. With this growth in mind, it's best to start off with the person that will also manage these additional employees.

- i) Program Manager: \$35,000 - \$50,000 annually depending on experience. Our preference is to hire away from a competitor a person already experienced in roofing solicitation.
- ii) Computer Hardware: \$1,500
- iii) Software: \$950
- iv) Internet/Phone IP
- v) 800 Phone line for customers
- vi) Webinar software license
- vii) Postage, labels, printing and other miscellaneous
- viii) Phone directory lists: \$4,000 - \$6,000
- ix) Directory list (such as Hoovers)
- x) Total Program: \$55,000 - \$75,000

d) Other Expenditures

- i) There are various other lead generating initiatives that should be included in this short term plan that will be discussed and detailed later.
- e) First year total expenditures: \$125,000 - \$150,000
- f) The investment outlined above should at least result in a break even or slightly profitable return for both parties. This investment will have carry forward impact and will show more increased revenue and profits in years 2 and beyond.

Another benefit during the first year is the additional construction revenue generated for Bay customer contractors. Minimum projected sales are \$2.5 - \$3 million in additional construction volume for BaySystems contractors. This will have major goodwill impact on these customers.

Memorandum of Understanding

Acceptance by Representative and Company as evidenced by signatures of the following authorized representatives:

Servcor International (Representative)

BaySystems North America, LLC (Company)

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

Memorandum of Understanding

Phase 2: Growing the Business Exponentially

Background Information

The purpose of adding this section to our proposal is to review and clarify the optional approaches that we have discussed for our involvement and partnership. In our initial meeting with BaySystems in early December 2006, we made a presentation centered on the theme of 97-3. In this presentation we explained the history of the foam roofing industry and the future opportunity that exists for exponential growth. We believed then and believe now that this industry should have a 15% market share of the total commercial roofing market in the US, which could result in a \$1B materials market over the next 5 to 10 years. This growth will not happen unless there is a substantial change in the current mindset of the manufacturers and contractors involved. Also, a substantial investment in the sales, marketing and technical efforts will be required going forward as well as significant work to develop a national qualified applicator base.

Unlike conventional roof systems which enjoy industry wide acceptance and a very educated consumer base, we have neither. First, we must up sell out of a negative image position. Once we have accomplished this very difficult feat we have a tremendous educational and training burden because the industry (contractors, specifiers and facility owners) know nothing about our system. If we are not careful, we could quickly outsell our ability to support (i.e. properly service) our growth. Therefore, our sales, marketing, technical, training and infrastructure efforts must grow concurrently.

In short, the critical areas that require action:

- Change SPF from a "specialty" roof system into a "conventional" roof system.
- Overcome a negative industry image through extensive education
- Train, grow and expand our contractor applicator base
- Provide top tier technical support (roof design) for the application of our products
- Obtain industry required product code approvals and testing
- Hire and train a professional sales force
- Provide persuasive, cohesive sales tools to our sales force
- Introduce innovative marketing concepts and strategies to gain market share
- Create automation tools, develop standardized processes and develop infrastructure that can support fast growth.
- Devise and properly execute a plan to transition the GE 30-year roofing brand into the Bayer brand.

Memorandum of Understanding

Servcor Recommendations

Servcor made a general proposal to have BaySystems outsource the Sales, Marketing and Technical functions to us. For three years Servcor has worked on a strategic plan to grow the SPF market. This plan addresses the aforementioned industry shortcomings and how they can be overcome. Further, we already have many of the processes, automation, marketing materials and innovative marketing concepts in place and ready to go (see attachments "A" & "B").

We presented this proposal because we have the master plan, industry connections and management experience required to take this business to the next level. We have developed the strategic plans necessary for a cohesive marketing and sales effort. If we carry out the implementation and management of these functions, we are confident we will achieve the exponential sales growth desired. This is a new day, and new strategies, talents and implementation methods are needed to achieve these results.

Servcor presented this proposal to BaySystems because we presume that exponential growth was the intended purpose behind the Polythane acquisition. We share these same goals. With our long term relationship and proven success with Polythane/GE it seems a natural fit.

As we stated in our meetings, we need all the experienced personnel and talent that BaySystems has to offer. Our proposal does not mean getting rid of any of the existing personnel, but rather putting the right hats on the right people and adding to the resources available.

To accomplish such a goal, there is clearly an investment that BaySystems would have to make. First there are deficient issues and items that BaySystems must address just to "catch-up" and position your company for growth and legitimacy in the marketplace. Then there are the typical investments in resources and human collateral that are needed to carry out the many sales and marketing initiatives that are needed to accomplish this exponential sales growth. The good news is that the investments should have a quick return-on-investment, and the amount of capital required is conservative for the market share growth you will experience. Our typical investment scenarios show at least a break-even within 12 to 18 months and a respectable profit in the third year after the investment is made. This type of R.O.I. projection is at least equal to or better than most of the business investment options that we see.

Our goal would be to position Bayer as a leading brand name within the roofing industry as a whole and the dominate brand name within the SPF subcategory. Further, positioning Bayer as a leading construction brand name would have significant pull-through sales impact for other Bayer products and systems within the various construction segments (e.g. wall foam, doors, adhesives, board stock urethanes, etc.)

Memorandum of Understanding

Collectively there are a lot of reasons to move on this opportunity now. The longer you wait, the more opportunity you give the competition to position themselves as the dominate brand and future market leaders. We know, through our industry sources, that both DOW and BASF are planning their own initiatives. With the potential of a billion roofing market opening up, this is a once in a lifetime opportunity. However, we need to get out in front first, forcing our competitors to play catch up with us, not visa versa.

Phase 1 of our Agreement

Phase 1 of our agreement is intended to:

- Provide a binding agreement between the parties so that Servcor can get to work immediately.
- Provide a foundation of trust and an indication of each parties intentions moving forward.
- Provide framework for Phase 2 of our agreement.

Expected Outcome after 2/5/07 Meeting

The first phase of our agreement as outlined in the above Memorandum of Understanding is expected to accomplish the following:

- Establishes Servcor as the National Account and Specifier Representatives
- Servcor will be provided all leads that are generated from advertising and marketing initiatives that are targeted to these audiences.
- These Servcor functions are to be officially communicated throughout the organization and market place with the intention that all customers of this type are referred to us for follow up.
- Establishes and grants some unique and exclusive features for several Servcor marketing programs.
- Servcor will receive credit for all sales generated by specifiers.
- Servcor will provide its own technical support services.
- Lowers the Servcor price point for foam and silicone. After adding commissions, Servcor can sell foam competitively. However, the GE silicone product will still be priced higher than its Dow Silicone competitor.
- Establishes that Servcor will provide consulting services to BaySystems for sales and marketing. This includes strategy, budgeting, planning and forecasting. Servcor will not charge a fee for this work.
- Establishes that Servcor will do some consulting work for BaySystems on a fee basis.
- Establishes that Servcor will license some of its materials and intellectual property to BaySystems on a no fee basis.
- Agreement does not specify any particular sales volume commitment by Servcor or obligate BaySystems to any investment or cost obligations. It is more or less a standard independent rep agreement expanded to allow the parties to "share" some of their respective resources.

Memorandum of Understanding

Additional Recommendations

The MOU also recommends the following which will be subject to discussion during the meeting:

- An investment by BaySystems into a National Account/Specifiers lead generation program at a cost of \$125,000 - \$150,000 for year 1. Servcor has committed to have the program "carry itself" and at least break even the first year with profits following in year two and beyond (bear in mind the 12 – 18 month cycle of this industry.)
- Another benefit during the first year is the additional construction revenue generated for Bay customer contractors. Minimum projected sales are \$2.5 – \$3 million in additional construction volume for BaySystems contractors. This will have major goodwill impact on these customers.
- Servcor becomes the clearing house for all leads for follow up and processing. Servcor will work directly with the prospect and interface with the local Bay Reps to service these customers. We will set up a process for reporting and measuring results. We will set up Servcor software at BaySystems to automate this process and allow us to share information electronically.

Business Development

Specifically missing from our 2007 efforts is any type of Business Development initiative. Currently, Ridge fills this critical "big picture" position. To secure large corporate accounts (verses individual projects), a Business Development ("BD") program must exist. Business Development relies less on the immediate budget cycle and instead focuses on the 12 – 18 month industry budget cycle. This approach provides exponential growth realized towards the end of the cycle. However, some immediate sales are also realized from these efforts.

With the loss of Ridge we lose our Business Development. We probably won't feel the impact too much the first year (2007/2008) but will certainly feel it in the 2008/2009 cycle. If too much lag time occurs between the loss of Ridge and our own BD program we will incur a 12 – 18 month "loss time" window. Also, with Ridge being the top sales person (mainly from BD efforts) some loss of sales will occur but is hard to estimate. However, it can be assumed that losing our top sales person and our BD guy that some negative impact on sales volume will occur.

The Next Step

The importance of a well crafted, consistent message throughout the organization cannot be over stated. Because SPF is in a "negative" position in the market place anything short of a cohesive, precise message will severely handicap this entire effort. Planning and discipline throughout the sales and marketing group is critical to success.

Memorandum of Understanding

As soon as possible we need to have a closed door, off site marketing meeting. This session will be to craft our message, fine tune the 2007 battle plan and implement basic infrastructure processes. Servcor already has many of these materials and will provide a detailed agenda and action item lists to all participants prior to the meeting. All participants will be expected to be thoroughly familiar with the materials and have all of their action items completed before the meeting. Servcor will need two weeks to prepare the agenda and action lists. This process must occur before work can begin on videos, collateral materials etc.

A significant portion of this meeting will focus on documenting and maximizing the knowledge of our biggest marketing resource: Ridge. Part of that process will be to collect the following:

- We have developed a two page contractor profile form (see attachment "E") to educate us on our current applicator base. Currently detailed knowledge of these customer/contractors is spread out throughout the organization.
- This same process will be followed for building owner customers.
- This same process will be followed for past, inactive building owner customers.
- This same process will be followed for all industry good will efforts.

A battle plan will be developed based on the collected information. At the bare minimum major building owner customers should be met with and personally introduced to ensure a continued relationship.

Phase 2 of our Agreement

Phase 1 of our agreement lays the foundation required for our companies to begin a joint effort towards our ultimate goal: exponential growth. Phase 1 will provide incremental growth commensurate with the limited commitment of the parties while allowing us to formulate a more strategic alliance.

As we presented in our December meeting, we have a master plan for exponential growth. Our plan addresses all four areas required for major growth:

- Sales
- Marketing strategies
- How to substantially expand our applicator base
- How to overcome our technical deficits

Memorandum of Understanding

Unfortunately, these tasks must occur concurrently which significantly increases our challenge. We are prepared to assist in all of these functions, preferably on a completely outsourced basis. The only way that Servcor could make a commitment and investment in this type of overall project would be to have a long-term outsource partnership agreement with Bayer, and to eventually be able to get credit for all sales. This could be structured in a number of different ways. However, there are other structures that might work, particularly by cutting back on our investment. We will explore these options over the coming months.

As evidenced by our commitments contained herein, we are willing to invest our resources towards this venture as we work together to find a mutually agreeable structure. We are realistic and are willing to walk before we run in this endeavor. A large amount of good faith negotiations must take place between us during this initial stage.

Regardless of our end structure, Servcor is mainly interested in a proposition that entails compensation for implementation. Most of our concepts, strategies and programs are considered intellectual property and are not available as a "work for hire." We are also less interested in providing services for hire except where they further our ultimate goal of exponential growth.

Closing

At this point, it is important for us to understand Bayer's overall expectations and goals. This will dictate our strategy proposal for phase 2. For instance, if the time and sales pressures are not on BaySystems to produce exponential growth in the next two years, we are willing to work into this more expanded role over that timeframe.

It is however, imperative to remember that we are working with a 12 to 18 month sales and budgeting cycle with our clients, and that sales and marketing efforts expended this year will not come to fruition until 2008 and 2009. Please allow for this lag time in your planning, budgeting and evaluation of this overall opportunity.

We are available at any time to discuss this opportunity in more detail with you. Please let us know as soon as possible what your thinking is about this proposal and what time frames you might be considering for implementation.

Thank You for your time and interest in our firm.

We look forward to working closely with you all in making BaySystems a great success story in the commercial roofing industry.



BaySystems North America

September 24, 2007

Servcor International
150 E. Bloomingdale Ave. - #114
Brandon, FL 33511-3183

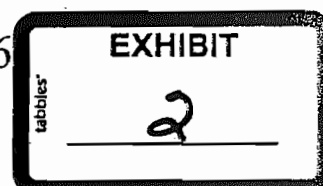
Dear Mr. Bob Lyons,

Regarding your recent inquiry regarding documentation on the BaySystems Total System Warranty, below will provide some clarity on how our warranty program works.

BaySystems currently has the following structure for warranty services:

1. Servcor International is the manager of the BaySystems Full System Maintenance Warranty ("Maintenance Warranty".)
2. Servcor is responsible for accessing each roof and determining the requirements for the roof to qualify for our Maintenance Warranty. Some of these functions and requirements include:
 - a. Increasing specification requirements over what is required in our published specifications.
 - b. Requiring additional quality control services, inspections, engineering and testing of the roof system during installation.
 - c. Determining the required work and associated cost with the implementation of the 15-year maintenance warranty including:
 - i. Annual inspections, reporting and specification generation.
 - ii. Procurement, oversight and quality control services for the maintenance work.
 - iii. Annual roof maintenance work.
 - iv. Documentation and inspections to ensure warranty compliance.
 - d. Determine all BSNA required fees for implementation and underwriting.
 - e. The fees and cost will vary depending upon the job and level of service involved in the maintenance warranty. Since the level of service and the details of the warranty are determined by Servcor as the manager of the maintenance warranty they are responsible for determining the full charges associated with the maintenance warranty.
 - f. Servcor and BSNA are responsible to ensure contractor compliance with all of the maintenance warranty requirements.
 - g. Have available for all contractors the project requirements and associated costs for the maintenance portion of the project.

P. O. Box 1509, Spring, TX 77383 - 800-221-3626



3. In addition to Servcor requirements, BSNA requires:
 - a. Contractors bidding on the project obtain fees and requirements of the maintenance warranty from Servcor prior to the bidding process.
 - b. All BSNA qualified contractors are eligible for the maintenance warranty when they meet all requirements as determined by Servcor.
 - c. Contractor applying product must be BSNA qualified applicator.
 - d. Details of the maintenance warranty are available from Servcor including all fees.
 - e. All fees associated with maintenance warranty must be paid prior to issuance of warranty

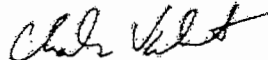
4. Other information
 - a. Standard warranties are available to all approved contractors and do not require the BaySystems Maintenance Warranty.
 - b. BSNA does not have knowledge of the details of the individual warranty requirements prior to the bid. BSNA remains in control of their responsibility because the maintenance warranty is not issued until BSNA accepts the fees and the responsibility associated with each individual maintenance warranty.
 - c. Penta Engineering is an independent engineering firm that provides final inspections to ensure quality compliance for the issuance of BaySystems warranties.
 - d. Penta Engineering certifies contractors (for quality purposes) to become BaySystems Authorized Applicators.

I can assure you that the intention of our program is that all BSNA qualified contractors have an equal opportunity to provide our maintenance warranty and all our contractors are treated fairly and equally.

I hope that the above clarifies and answers your questions regarding our warranty program. If anyone has specific questions about contractor compliance, specifications or other questions regarding the maintenance warranty, they can contact, Servcor International at 813-843-9578.

If I can answer any questions, please feel free to contact me at 412 805 9922. If the airport attorney has any questions, they can be directed to David Hoff at 412 777 2795.

Thank you for your interest in our products and services.



Charles Valentine
General Manager
BaySystems North America

CV:sm

From: Renee Zierden [renee.zierden@bayerbms.com]
Sent: Thursday, January 07, 2010 7:22 AM
To: John Looney
Cc: Joe Stockdale
Subject: Re: Broward County TPM Bid
Attachments: BaySystems Maintenance Warranty.pdf, Broward School Board ltr re TPM projects - maint program avail 12-18-09.pdf

Dear Mr. Looney:

Thank you for your message below.
No, we do not offer a maintenance warranty as discussed below.
I believe Joe has provided you the information on our current warranty programs.
We implemented this warranty portfolio in 2009 and these are all of the current warranties offered to our QP group.

Best regards,
Renee Zierden

Renee M. Zierden
BaySystems Spray Insulation & Roofing Materials
Polyurethanes
Bayer Material Science
P: 800-221-3626
F: 281-288-6450
renee.zierden@bayerbms.com

"John Looney" <Jlooney@tarheelcorp.com>

01/06/2010 03:39 PM

To <renee.zierden@bayerbms.com>
cc "Joe Stockdale" <joe.stockdale@bayerbms.com>
Subject Broward County TPM Bid

Dear Ms. Zierden,

We provided a proposal last year to the Broward County School Board for SPF roofing utilizing Bayer products that includes the full system maintenance warranty (see attached). This proposal is for 4 schools and total approx \$7,000,000.

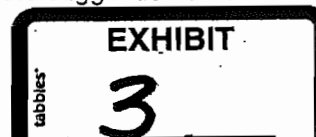
As outlined in the attached letter, the school board has requested confirmation that we can comply with their requirements for the full system maintenance warranty.

Per Joe Stockdale's request, I have attached the Bay warranty that was provided to the school board.

Please find below a string of emails regarding our requests for this confirmation. I have been requesting this for some time and still have not received a yes or no answer to this request.

As indicated below, Bayer was involved in the development of this proposal and agreed to provide the full system maintenance warranty as specified.

I understand that Charles Valentine is no longer with the company but the suggestion that there are no records available



is hard to believe. Further, the assertion that no one at Bayer knows what I am talking about is ridiculous.

This is a very large contract and is very important to us. We are close to being removed from consideration on this project due to our inability to respond to Broward's request. Time is running out and I need a straight answer on this.

Please advise immediately where we stand.

Regards,
John Looney
TarHeel Corporation
727-821-2261 ext 239 800-435-6545

From: John Looney
Sent: Wednesday, January 06, 2010 11:45 AM
To: 'Joe Stockdale'
Cc: 'bob.creighton@bayerbms.com'; 'john.linnell@bayerbms.com'
Subject: RE: Broward County TPM Bid

Joe,

Attached is a copy of the Bay maintenance warranty that we submitted to the Broward School Board with Charles Valentines approval.

We have worked on the Broward School Project for several years now, including doing roof surveys, an energy audit with Richard Rue (paid for by Bayer), Power Point presentations etc. We participated in the arduous TPM selection process for Broward and were selected as a finalist. This process culminated with a live presentation before the school board and selection committee. Since a major part of the overall presentation and package included the manufacturer's participation, most of our interaction was thru Servcor, who represented Bayer in the process and live presentation. However, we did have discussions with Charles Valentine on the overall program and processes, including discussions on the specifics of the maintenance warranty.

I repeat all this because I don't think it is possible for Bay to be unaware of it all.

Joe, I don't doubt your word that Charles didn't share any information with you. And I am not really surprised that he didn't, since he was the President of the company and appeared to be handling this personally and you were not involved. So it doesn't seem like there would have been a reason to have discussed this with you personally.

However, it is beyond reasonable belief that no one at Bayer is aware of these things. I noticed that you didn't say that though.....

Have you spoken to Rene, Charles' replacement? Surely Charles had to have files, a computer, etc. Additionally, I am sure that the Bayer legal department would have a copy of the maintenance warranty, because at one time Charles mentioned that the warranty was being reviewed by the legal staff. The legal department should have all this since Charles seemed to run everything by them for approval.

Finally, this is the same maintenance agreement that has been the source of much controversy at the Miami Airport.

Joe, I need a straight response here from someone at Bayer. If you can't provide that please have someone who can provide it do so.

I have requested this information some time ago and there is no earthly reason why I couldn't have received a definitive response from Bayer by now.

You guys are running the clock out on me here.....this is a huge project for us..... please let me know something asap.

Regards,
John Looney
TarHeel Corporation
727-821-2261 ext 239 800-435-6545

From: Joe Stockdale [mailto:joe.stockdale@bayerbms.com]
Sent: Monday, January 04, 2010 11:39 AM
To: John Looney
Cc: bob.creighton@bayerbms.com; John Looney; John Looney; john.linnell@bayerbms.com
Subject: RE: Broward County TPM Bid

Much apologies for delay in responding to you and much apologies for not being familiar with the Maintenance Warranty.

I do not dispute that Charles Valentine had met with you and discussed a "maintenance warranty". I can only hope you believe me when I say "he never shared any of the info with me", and further we have a new management staff and I do not believe they are aware of the details either. We are all working under the guidelines of the "warranty documents" as supplied at our 2008 and 2009 contractors meetings.

Could you please send us the details of this document and we will determine if it is something we can work with. I understand your critical time line and we will have you an answer as soon as earthly possible once we receive the details. I can understand how you might think my responses are "insincere" but in retrospect does it surprise you that Charles Valentine would NOT have included me in his discussions with you?

Again, much apologies for any inconveniences and I look forward to a resolution to this situation. Please email or call me with the details at your earliest opportunity.

Joe Stockdale
Baysystems Spray Insulation & Roofing Materials
Polyurethanes
Bayer Material Science
800-221-3626 713-305-0916 Blackberry/cell
"John Looney" <Jlooney@tarheelcorp.com>

12/29/2009 02:54 PM

To "Joe Stockdale" <joe.stockdale@bayerbms.com>, <Jlooney@tarheelroofing.com>
cc <bob.creighton@bayerbms.com>, "John Looney" <Jlooney@tarheelcorp.com>, <john.linnell@bayerbms.com>
Subject RE: Broward County TPM Bid

Joe,

Are you serious?

We did a major presentation late last year to the Broward school board that Bay was intimately knowledgable with. Charles Valentine had personal knowledge of this project scope and warranty criteria.

This full system maintenance warranty provides for maintenance for the term of the warranty and is the same warranty that was bid on the Miami Airport and other projects that Bay has full knowledge of....

We made commitments with these bids that provided for the maintenance and Bay was fully aware of this criteria....

Joe, Bay has a clear understanding of the warranty that we are talking about and I don't appreciate these insincere responses that I have received.....I have a critical timeline on a major project of a very large dollar amount and I don't need to be playing word games....

Please let me know where we stand on this asap...

Sent from my Windows Mobile® phone.

-----Original Message-----

From: Joe Stockdale <joe.stockdale@bayerbms.com>
Sent: Tuesday, December 29, 2009 10:29 AM
To: Jlooney@tarheelroofing.com <Jlooney@tarheelroofing.com>
Cc: bob.creighton@bayerbms.com <bob.creighton@bayerbms.com>; John Looney <Jlooney@tarheelcorp.com>; john.linnell@bayerbms.com <john.linnell@bayerbms.com>
Subject: RE: Broward County TPM Bid

Hi John

The only attachment is the letter from the "School Board of Broward County" saying you were a finalist on the bid? We do not know what the "Manufacturers Full System Maintenance Warranty" is ??

Joe Stockdale
Baysystems Spray Insulation & Roofing Materials
Polyurethanes
Bayer Material Science
800-221-3626 713-305-0916 Blackberry/cell

Joe Stockdale/MMFJS/US/BMS/BAYER
12/29/2009 11:47 AM

To
"John Looney" <Jlooney@tarheelcorp.com>
cc
bob.creighton@bayerbms.com, john.linnell@bayerbms.com
Subject
RE: Broward County TPM Bid

No, I could not open on blackberry but have the roofing guru's (Creighton & Linnell) working on it and expect an answer to you soon.

Joe Stockdale
Baysystems Spray Insulation & Roofing Materials
Polyurethanes
Bayer Material Science

800-221-3626

713-305-0916 Blackberry/cell

"John Looney" <Jlooney@tarheelcorp.com>
12/28/2009 07:55 PM

To
"Joe Stockdale" <joe.stockdale@bayerbms.com>, "John Looney"
<Jlooney@tarheelcorp.com>
cc

Subject
RE: Broward County TPM Bid

Joe,
I see you were on your blackberry, were you able to open the attachment to see what they are requesting? Is this warranty available to the qp group?

thanks

Sent from my Windows Mobile® phone.

-----Original Message-----

From: Joe Stockdale <joe.stockdale@bayerbms.com>
Sent: Monday, December 28, 2009 1:58 PM
To: John Looney <Jlooney@tarheelcorp.com>
Subject: Re: Broward County TPM Bid

Hi John:

I am going to take a guess and tell you any warranty in our portfolio which has been presented to the QP Group is open to Tarheel Roofing. Any special warranty which has not been offered to the other contractors is NOT available.

Much thanks for the opportunity to work with you on this project, and please call with any questions. I am meeting with Johnny Davidson on January 7th at your Ft. Lauderdale job and would love to stay over and take you to dinner if you are available?
Please call with any questions,

Joe Stockdale
Baysystems Spray Insulation & Roofing Materials
Polyurethanes
Bayer Material Science
800-221-3626 713-305-0916 Blackberry/cell

"John Looney" <Jlooney@tarheelcorp.com>
12/28/2009 03:11 PM

To
"Joe Stockdale" <joe.stockdale@bayerbms.com>, "David Looney"
<dlooney@geroof.com>
cc

Subject
Broward County TPM Bid

Joe/David,

Attached is a request from Broward schools regarding the Total Project Management contract and maintenance warranty. Because of the holidays, they have extended the time frame referenced but want us to respond ASAP.

Please advise if we will be able to provide the Bay full system maintenance warranty ?.

Regards,
John Looney
TarHeel Corporation
2600 22nd St. North
St. Petersburg, FL. 33713
727-821-2261 ext 239 800-435-6545
jlooney@tarheelcorp.com
Please visit us at www.tarheelcorp.com

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For alternate languages please go to <http://bayerdisclaimer.bayerweb.com>



BaySystems NorthAmerica

ADDENDUM TO BAYSYSTEMS ROOFING SYSTEM LIMITED WARRANTY

FULL SYSTEM MAINTENANCE WARRANTY

Warranty No. _____

Completion Date: _____

Warranty Period _____

Project _____

Address _____

Applicator: _____ Address _____

Building Description _____ Square Footage _____

Sample

This warranty addendum covers all annual roof maintenance required by the BaySystems Limited Roof Warranty listed under "EXCLUSIONS AND LIMITATIONS" item 4 and as required in the warranty attachment "Owner Care & Maintenance for Your BaySystems Roof System" and also covers the project specific maintenance required of your particular roof.

BaySystems will, at its own cost, provide the following annual services:

- Provide the owner with a bi-annual roof inspection (spring/fall) and an annual written report performed by an independent third party consultant or BSNA representative.
- Develop a scope of work for the required maintenance and write a repair specification.
- Solicit bids from a BSNA approved contractor/service center to perform the required work.
- BSNA, at its own expense, will procure the required annual maintenance work.
- BSNA will oversee that all work is performed properly.
- BSNA will provide written report and documentation that all work required by the warranty has been performed.
- BSNA will provide the owner with design support services for alterations to this roof for the life of the warranty.

Specific Exclusions

- Any required repairs caused by third party abuse, neglect or damage.
- Damage to the roof surface from materials deposited on the roof (such as leaking equipment), mechanical equipment that improperly drains onto the roof or water draining onto the roof surface (such as from a downspout or scupper from a higher roof elevation.)
- Removal and/or dumping of debris caused by a third party (normal roof cleaning included.).
- Any work or cost associated with regulated materials such as asbestos.
- Any additional costs incurred due to (1) governmental or owner imposed restrictions or requirements (local, state or federal) not in place at the time of issuance of warranty, (2) work required due to building codes not in place at the time of issuance of warranty, (3) equipment disconnection & reconnection costs if required to perform proper repairs (4) sub-contractor costs (if required) such as equipment rental or other work not normally performed by a roofing contractor if required to perform proper repairs, (5) changes to labor laws, union regulations, environmental requirements or other unforeseen requirements not in place at the time of issuance of warranty.
- All of the provisions within the Limited Warranty, excluding the Maintenance Requirements under EXCLUSIONS AND LIMITATIONS item 4 which are covered by this addendum, remain in full effect. The owner is required to perform all repairs of excluded items, at their own expense, within 3 months of notification of said items.

By _____ Title _____ Date _____
OWNER

By _____ Title _____ Date _____
BAY SYSTEMS NORTH AMERICA, LLC



THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
1700 SOUTHWEST 14TH COURT • FORT LAUDERDALE, FLORIDA 33312 • TEL 754-321-1517 • FAX 754-321-1681

FACILITIES & CONSTRUCTION MANAGEMENT
Michael C. Garretson, Deputy Superintendent
michael.garretson@browardschools.com

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ANN MURRAY
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KEVIN P. TYNAN, ESQ.

December 18, 2009

Sent VIA Fax

John Looney
Tarheel Roofing
1121 NW 51st Court
Ft. Lauderdale, FL 33309-3137
Phone: 727-823-3455
Fax: 727-821-7461

RE; RFQ-2008-38-FC-0-2008
Project No. P000889, Hallandale High, \$3,066,466
Project No. P001143, Bair Middle, \$1,583,417
Project No. P001149, Rickards Middle, \$1,394,283
Project No. P001153, Riverglades Elementary, \$921,327

Dear Mr. Looney:

After assessing all proposals received for the referenced projects, your firm was ranked as a finalist for consideration of award. Please confirm within three business days from the date of this correspondence that you can comply with our requirements for a Manufacturer's Full System Maintenance Warranty, as outlined by your proposal, and are prepared to furnish it upon request.

Sincerely,

Michael C. Garretson
Deputy Superintendent

MCG/sat