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DECLARATION OF HERBERT J. ("JACK") MEANY

I, Herbert J ("Jack") Meany, do hereby declare as follows:

1. I am a former employee, officer and director of Norris Industries, successor to Norris-Thermador Corporation which was later renamed NI Industries ("NI") in Los Angeles, California. I have personal knowledge of the matters discussed in this declaration, except for those matters stated on my information and belief, and, as to those matters, I believe them to be true.

2. Currently retired, I was an engineer by profession, with experience in the manufacture of metal products. From 1945 to 1956, I worked for the Thermador division of NI from 1952- 1956 at Thermador's headquarters on 5119 District Blvd in Vernon, California. In April 1956, I was transferred from Thermador to work for other NI operations and returned to Thermador in Vernon in 1961 to become Vice President/General Manager of the Thermador division of NI. I remained at NI (principally at Vernon) in various capacities, including President, Chairman and Chief Executive Officer until 1988 when I retired.

3. During the period from 1952 to April 1956, I had supervisory responsibility for Thermador's operations on South Raymond Avenue in Alhambra, CA (the "Alhambra Facility") as Chief Engineer for Thermador. During the period of my absence from Thermador from April 1956 until my return in 1961, I worked for other NI operations in California and in other states, but maintained a general familiarity with NI's significant operations and developments in the State of California until my return to Thermador in Vernon in 1961.

4. To the best of my information and belief, Norris Stamping (predecessor to NI) went public in an initial public offering in or about 1951, and purchased Thermador in or about 1952. To the best of my information and belief, Thermador purchased

DECLARATION OF HERBERT J. ("JACK") MEANY

LLP

1 Rotom in 1946. At the time of such acquisition, Rotom was a supplier to Thermador.
2 Rotom assembled and manufactured fan motors for plug-in electric heaters at the
3 Alhambra Facility. Specifically, to the best of my information and belief such
4 operations (from 1946-1958) consisted primarily of the assembly of materials, including
5 flat sheet punch-outs for magnetic purposes, brackets and bearings, and dry
6 manufacturing operations, including soldering, wire forming and coil winding work. To
7 the best of my information and belief, there was no cleaning, painting or solvent usage
8 at the Alhambra Facility during this period. After the motors were assembled at the
9 Alhambra Facility, they were shipped to Thermador's Vernon facility where they were
10 incorporated into fans for electric heaters and included in the manufacture of electric
11 heaters sold under the Thermador name.

12 5. To the best of my information and belief, Rotom/Thermador ceased
13 assembling fan motors in or about 1958 when such operations were transferred to
14 Thermador's Vernon, facility. To the best of my information and belief, at about the
15 time such operations ceased at the Alhambra Facility, NI's magnetic power supplies
16 operations on Camfield Avenue in Los Angeles, CA were transferred to the Alhambra
17 Facility and such magnetic supplies operations were sold by NI at such time to
18 employees of NI at the Alhambra Facility (including Robert Singleton) who commenced
19 operations of the acquiring company under the name, Spatron. To the best of my
20 information and belief, I maintained direct and indirect contact with and provided
21 assistance to Spatron and their operations at the Alhambra Facility during the late
22 1950's and early 1960's.

23 6. To the best of my information and belief, the operations at the Alhambra
24 Facility by Spatron from approximately 1958 consisted of the manufacture and
25 assembly of magnetic power supplies (e.g., transformers and electronic components)
26 sold to the electronics industry. To the best of my information and belief, these
27 operations included a small spray coating booth to paint gray the end covers on metal
28

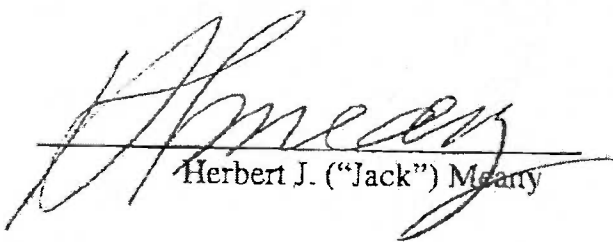
1 cases which were bolted onto the components and minor degreasing operations in which
 2 any film of oil was removed from the end covers prior to finishing. To the best of my
 3 information and belief, the area of the end covers that would have been painted and
 4 cleaned would have ranged from approximately 1.5 to 10 square inches, and each of the
 5 degreasing and spray painting operations would have represented a very small part of
 6 the overall operations at the Alhambra, Facility (i.e., less than one percent (1.0%)).

7 7. To the best of my information and belief, Spatron applied for a testing lab
 8 in the 1960's to conduct electrical testing on its magnetic products.

9 8. To the best of my information and belief, the following individuals may
 10 have knowledge of the operations, waste streams and waste disposal practices at the
 11 Alhambra Facility:

- 12 Robert Singleton - former General Manager of the electronics division of Thermador at
 the Alhambra Facility and part owner of Spatron
- 13 Ralph Harding - former employee of NI and Spatron at the Alhambra Facility
- 14 Clyde Harding - Vice President of Manufacturing - Thermador in Vernon, California
- 15 Donald Secres - maintenance supervisor for NI and Spatron at the Alhambra Facility.

16 I declare under penalty of perjury under the laws of the United States of America that
 17 the foregoing is true and correct, and that this Declaration was executed in Long Beach,
 18 California on January 8, 2010.

19
 20
 21 
 22 Herbert J. ("Jack") Meany

LLP

EXHIBIT E

4
Name ch to: MORRIS INDUSTRIES, INC.
Cap str ch from \$1,250,000 to \$5,000,000

161798

183192
FILED
In the office of the Secretary of State
of the State of California

JUL 9 1966

FRANK M. MORDAK, Secretary of State

by *[Signature]*
Deputy

CERTIFICATE OF AMENDMENT
OF ARTICLES OF INCORPORATION
OF MORRIS-THERMADOR CORPORATION

The undersigned, Kenneth T. Norris, Jr., and John C. Reppert, do hereby certify that they now are and at all times herein mentioned have been the President and Secretary respectively of Morris-Thermador Corporation, a California corporation, and further they do hereby certify as follows:

1. That at a Special Meeting of the Board of Directors held on the 17th day of June, 1966, at 11:00 o'clock a.m., at 5215 South Boyle Avenue, in the City of Los Angeles, State of California, the said Board duly adopted the following sets of resolutions:

WHEREAS, it is deemed by the Board of Directors of this corporation to be in the best interests of this corporation and its shareholders that its Articles of Incorporation be amended in order to change its name as hereinafter provided:

NOW, THEREFORE, BE IT RESOLVED, that Article FIRST of the Articles of Incorporation of this corporation be amended to read as follows:

"FIRST: The name of this corporation is:

MORRIS INDUSTRIES, INC."

RESOLVED FURTHER, that the Board of Directors of this corporation hereby adopts and approves said amendment of its Articles of Incorporation; and

RESOLVED FURTHER, that the President or a Vice-President and the Secretary or an Assistant Secretary of this corporation be and they hereby are authorized and directed to procure the adoption and approval of the foregoing amendment by the vote or written consent of shareholders of this corporation holding at least a majority of the voting power, and thereafter to sign and verify by their oaths and to file a certificate in the form and manner required by Section 3672 of the Califor-

nia Corporations Code, and in general to do any and all things necessary to effect said amendment in accordance with said Section 3672.

* * * * *

WHEREAS, it is deemed by the Board of Directors of this corporation to be in the best interests of this corporation and its shareholders that its Articles of Incorporation be amended in order to increase its number of authorized common shares as hereinafter provided:

NOW, THEREFORE, BE IT RESOLVED, that Article FOURTH of the Articles of Incorporation of this corporation be amended to read as follows:

"FOURTH: That this corporation is authorized to issue only one class of shares of stock, to be designated common shares; the total number of said shares which this corporation shall have authority to issue is ten million (10,000,000); the aggregate par value of all said shares shall be five million dollars (\$5,000,000); and the par value of each of said shares shall be fifty cents (\$0.50)."

RESOLVED FURTHER, that the President or a Vice-President and the Secretary or an Assistant Secretary of this corporation be and they hereby are authorized and directed to procure the adoption and approval of the foregoing amendment by the vote or written consent of shareholders of this corporation holding at least a majority of the voting power, and thereafter to sign and verify by their oaths and to file a certificate in the form and manner required by Section 3672 of the California Corporations Code, and in general to do any and all things necessary to effect said amendment in accordance with said Section 3672.

2. That at a Special Meeting of the shareholders of the corporation held on the 29th day of July, 1966, at 10:00 o'clock a.m., at 5215 South Boyle Avenue, in the City of Los Angeles, State of California, the following resolutions were duly adopted:

RESOLVED, that Article FIRST of the Articles of Incorporation of this corporation be amended to read as follows:

"FIRST: The name of this corporation is:

NORKIS INDUSTRIES, INC."

* * * * *

RESOLVED, that Article FOURTH of the Articles of Incorporation of this corporation be amended to read as follows:

"FOURTH: That this corporation is authorized to issue only one class of shares of stock, to be designated common shares; the total number of said shares which this corporation shall have authority to issue is ten million (10,000,000); the aggregate par value of all said shares shall be five million dollars (\$5,000,000); and the par value of each of said shares shall be fifty cents (\$0.50)."

3. That the number of shares voting in favor of the resolution changing the name of the corporation was 1,135,482 shares and the number of shares voting in favor of the resolution increasing the authorized capital of the corporation was 1,204,449 shares.

4. That the number of shares entitled to vote on or consent to the amendments is 1,120,000 shares.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Amendment this 21st day of July, 1966.

Tenneth T. Morris
President
J. K. Kippert
Secretary

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.

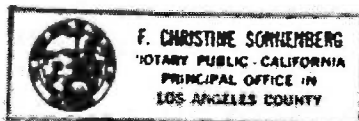
KENNETH T. NORRIS, JR. and JOHN C. REPERT,
being by me duly sworn, depose and say:

That they are respectively the President and
Secretary of Morris-Thermador Corporation, a California
corporation, that they have read the foregoing Certificate
of Amendment of Articles of Incorporation of said Corpo-
ration, and that the matters set forth in the Certificate
are true and correct of their own knowledge.

K. T. Norris, Jr.
John C. Reper

Subscribed and sworn to before me
this 29th day of July, 1966.

F. Christine Sonnenberg
Notary Public
In and for said County and State



F. CHRISTINE SONNENBERG
My Commission Expires May 19, 1968

EXHIBIT F



Price Pfister, Inc. v. Trimas Corp.

Price Pfister, Inc. v. Trimas Corp.

Filed 2/3/09 Price Pfister, Inc. v. Trimas Corp. CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion is not certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

PRICE PFISTER, INC.,

G039081

Plaintiff and Appellant,

(Super. Ct. No. 05CC02302)

v.

OPINION

TRIMAS CORPORATION,

Defendant and Appellant.

Appeals from a judgment of the Superior Court of Orange County, Andrew P. Banks, Jr. reversed in part, and remanded with directions. Motion for sanctions. Denied.

Brydon Hugo & Parker, Edward R. Hugo, James C. Parker and Robert W. Farrell for Plaintiff

Klein & Wilson and Mark B. Wilson for Defendant and Appellant.

* * *

INTRODUCTION

In 1983, plaintiff Price Pfister, Inc. (Price Pfister), entered into an agreement with NI Inc. Price Pfister acquired the assets of NI Industries, Inc.'s Price Pfister Division which designed and sold plumbing products. The agreement contained an indemnity provision requiring, inter alia, NI Inc., to indemnify Price Pfister for judgments, settlements, court costs and reasonable attorney's fees in any occurrence whereby a Product manufactured by NI was the proximate cause of death or personal injury or property damage.

Price Pfister sued defendant TriMas Corporation (NI Industries, Inc.'s successor in interest) for breach of contract, express and implied indemnity, unjust enrichment, and declaratory relief. Price Pfister's indemnity obligation under the agreement was triggered after Price Pfister was sued in 11 personal injury liability cases, but TriMas refused to acknowledge its indemnity obligations and reimburse Price Pfister. Following a bench trial, the trial court denied the breach of contract, express and implied indemnity and unjust enrichment claims, concluding [t]here is no evidence that it was established in any of the cases that the Product manufactured by NI was the proximate cause of death, personal injury and/or property damage. The court entered judgment, which included a declaration of the parties' rights and duties under the indemnity provision.

Our principal holdings are (1) the trial court correctly interpreted the indemnity provision to apply only to products manufactured by NI Industries, Inc., not to products manufactured by its predecessor; (2) the trial court correctly interpreted the indemnity provision to apply only to actual occurrences of harm caused by NI Industries, Inc.'s manufactured products, not to claims of such harm; (3) pursuant to section 2778, subdivision 4, as recently interpreted by the California Supreme Court in *Shield Mfg. Inc.* (2008) 44 Cal.4th 541 (*Crawford*), TriMas owes Price Pfister a separate duty to determine whether a product manufactured by NI Industries, Inc., proximately caused death, injury and property damage; and (5) the indemnity provision requires a determination of proximate cause before the indemnity is triggered even in the context of a preverdict or prejudgment settlement. Accordingly, we affirm the judgment in part, and remand to the trial court for the reasons discussed in detail *post*.

BACKGROUND

I.

Corporate History of the Price Pfister Business

The parties stipulated to the following facts regarding the corporate history of the Price Pfister Business. We explain this corporate history in detail because of its impact on the meaning of the indemnity provisions at issue.

In 1910, Emil Price and William Pfister founded the Price Pfister Company; the company was incorporated in California in 1946 as Price-Pfister Brass Mfg. Co. Price-Pfister Brass Mfg. Co. was acquired by Norris Industries, Inc. and became a wholly owned subsidiary of Norris Industries, Inc., a California corporation. [1] Price-Pfister Brass Mfg. Co. merged into its parent corporation, Norris Industries, Inc., which then operated the Price Pfister business as an unincorporated division of Norris Industries, Inc.

On December 8, 1981, Norind Holdings, Inc., acquired Norris Industries, Inc.; Norris Industries, Inc. was a wholly owned subsidiary of Norind Holding, Inc.'s wholly owned subsidiary. [2] On December 29, 1981, Norind Holdings, Inc. changed its corporate name to Norris-NI Industries, Inc.

On October 4, 1982, NI Industries, Inc., was incorporated in Delaware and was operated as a wholly owned subsidiary of Norris-NI Industries, Inc. On December 31, 1982, Norris-NI Industries, Inc. transferred all assets and liabilities of its [other] wholly owned subsidiary, Norris Industries, Inc., a California corporation, including, but not limited to, the assets and liabilities of the Price Pfister Division of Norris Industries, Inc.

On January 31, 1983, Norris-NI Industries, Inc., merged its wholly-owned subsidiary, NI Industries, Inc., with itself and changed its corporate name to NI Industries, Inc. In May 1983, Price Pfister was incorporated in Delaware as Price Pfister, NI Industries, Inc., and later changed its corporate name to Price Pfister, Inc.

II.

NI Industries, Inc., and Price Pfister Enter Stock Subscription Agreement and Operating Indemnity Provision.

On June 24, 1983, NI Industries, Inc., and Price Pfister entered into an agreement, entitled "Stock Subscription Agreement and Operating Agreement (the Agreement)", through which Price Pfister agreed to purchase all of NI Industries, Inc., all of its outstanding shares of common stock in exchange for all tangible personal property, except for cash, of the Price Pfister Division of NI (Division) owned by NI Industries, Inc. in the business of designing, manufacturing and selling plumbing valves, faucets, showerheads and spare parts thereof, marketed under the names Price Pfister or Bedford Brass.

The Agreement contained an indemnity provision. Section 6(h) of the Agreement states: *Claims.* NI shall indemnify and save harmless [Price Pfister] from all judgments, settlements, court costs and reasonable attorneys fees arising out of any occurrence whereby a Product manufactured by NI was the proximate cause of death, personal injury and/or property damage. [Price Pfister] shall indemnify and save harmless NI from all judgments, settlements, court costs and reasonable attorneys fees arising out of any occurrence whereby a Product manufactured by [Price Pfister] was the proximate cause of death, personal injury and/or property damage. NI and [Price Pfister] shall each notify the other forthwith of any claim it seeks or may seek to be indemnified and held harmless by the other.

The Agreement also contained an integration provision stating: This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof, and this Agreement supersedes all other written or oral, expressed or implied understandings relating to the subject matter hereof and may be amended only by a writing signed on behalf of each of the parties hereto.

III.

Price Pfister Sues TriMas Based on Indemnity Provision of the Agreement.

In 2005, Price Pfister filed a complaint against TriMas (as successor in interest to NI Industries, Inc.)

Metaldyne Corporation (TriMass immediate predecessor in interest) for express indemnity, implied indemnity/equitable indemnity, unjust enrichment, and declaratory relief. The complaint, beginning in October 2000, Price Pfister has been sued in 11 product liability cases in California from Price Pfister products, which allegedly incorporated asbestos-containing gaskets, valves. The complaint stated, [b]ased on exposure periods, product histories, and sales volume[,], likely manufactured prior to June 24, 1983. The complaint further alleged TriMas and Metaldyne to . . . Price Pfister for defense and indemnity costs for any product liability claims brought by the products manufactured under the Price Pfister trade name prior to June 24, 1983.

In February 2006, Price Pfister filed a motion for summary judgment on the ground that there was no material fact as to TriMass and Metaldynes liability under the indemnity provision of the Agreement. Price Pfister filed a motion for summary judgment or, in the alternative, summary adjudication challenging TriMass's claim for implied indemnity/equitable indemnity on the ground that the Agreement prohibited Price Pfister from pursuing that claim.

In June 2006, the trial court denied Price Pfister's motion for summary judgment stating that there was no partial summary judgment on liability only, as [Price Pfister] requested. In November 2006, the court granted TriMass motion in part, stating it granted TriMass motion as to the third cause of action for implied indemnity/equitable indemnity and fourth cause of action for unjust enrichment because the indemnity provision in the parties contract prohibits Price Pfister from pursuing these claims. The court denied TriMass motion as to the other causes of action because there was insufficient evidence to determine how all the underlying asbestos cases have been resolved.

Later in November 2006, Price Pfister filed the first amended complaint against TriMas for (1) breach of contract, (2) implied indemnity/equitable indemnity, (3) unjust enrichment, (4) declaratory relief. The first amended complaint sought declaratory relief in the form of (1) as a result of the Agreements indemnification provision in section 6(h), TriMas, as successor in interest to Inc., must indemnify and save harmless Price Pfister for all product liability claims involving products manufactured prior to June 24, 1983; and (2) TriMas is successor in interest to Metaldyne that are legally responsible for all claims, lawsuits, demands, etc., arising out of Price Pfister products manufactured prior to June 24, 1983.

IV.

Judgment Is Entered in Favor of TriMas on Breach of Contract, Indemnity, and Unjust Enrichment. The Judgment Contained a Declaration of the Parties Indemnity Rights and Obligations Under the Agreement. Price Pfister and TriMas Appeal.

Following a bench trial, the court rendered a tentative decision which became the court's decision. The judgment (which incorporated verbatim the statement of decision) stated:

[Price Pfister] claims in its express indemnity cause of action that it is entitled to be indemnified in the amount of any sums that it may become obliged to pay as a result of product liability from Price Pfister products manufactured prior to June 24, 1983, and, likewise, it is entitled to recover defense costs it has incurred and continues to incur defending these claims. . . . [Price Pfister] places the burden of proof on this cause of action.

The indemnity claim (indeed all of [Price Pfister]'s claims) arises from the language of Section 6(h) of the Agreement) [] . . . []

Simply put, [Price Pfister] over-reads the indemnity language. The language entitles [Price Pfister] to be indemnified, in certain circumstances, for judgments (the evidence shows no judgments in the underlying asbestos cases) and settlements, court costs and reasonable attorney fees (including recoverable expenditures) when those recoverable expenditures arise out of any occurrence where the product manufactured by NI was the proximate cause of death, personal injury and/or property damage.

The evidence established that all eleven of the underlying cases resolved either with a judgment in favor of [Price Pfister] herein or a dismissal (in some cases with prejudice and in others without prejudice with a mutual waiver of costs). There is no evidence that it was established in any of the cases that the Product manufactured by NI was the proximate cause of death, personal injury and/or property damage.

Indeed the evidence is just the opposite. [Price Pfister] herein won the underlying action because it argued that a defendant obtaining a dismissal for a waiver of costs has lost the litigation and the right to argue from a finding of proximate cause of injury resulting from a defendant's product.

The evidence before the Court does not support a finding that [Price Pfister] is entitled to recover the attorneys fees or court costs incurred in successfully defending the underlying elements of the claims.

[Price Pfister]'s arguments to extend the provisions of 6(h) of Exhibit 10 to include indemnification for and court costs incurred in defending *all claims* of product liability arising from product liability claims manufactured prior to June 24, 1983, is undercut by the language of Section 6(h) of the Agreement. The Agreement speaks of claim or suit with respect to notification obligations. If the parties had intended to include expenditures incurred in defending any claim as argued by [Price Pfister], they would have used the language in the preceding indemnification sentences. The parties to the Agreement understood the terms (i.e. settlements, judgments, claims, suits) they chose to use, and they used the

narrowly in the indemnity language of the first and second sentences of 6(h).

Further evidence of their decision to draft a narrow indemnity provision is found in Sect Agreement with the decision to only allow for indemnity to [Price Pfister] by NI when a by NI proximately caused damage while calling for [Price Pfister] to honor all valid war Product manufactured by the Division while owned by NI *or any predecessor in interest* added). The Court will not ignore this clear evidence that the original parties to The Agr to writeand would have writtenan indemnity provision as broadly as [Price Pfister] wish those parties had so desired and agreed to. The language used in The Agreement support parties to The Agreement did not intend to require NI to indemnify [Price Pfister] for pr NIs predecessors-in-interest.

The Court finds in favor of [TriMas] on the First Cause of Action.

The Court finds for the Defendant Trimas Corporation on the breach of contract cause o [Pfister] has failed to meet its burden of proof on this claim, for the same reasons as expr

Judgment should also be entered for [TriMas] on the claims for implied indemnity (Thir unjust enrichment (Fourth Cause of Action). [Price Pfister] has again failed to meet its b Furthermore, because there is an express indemnity provision covering the claims assert indemnity/equitable indemnity cannot prevail, and the contractual provisions control. *Re [v]. Pylon, Inc. . . .* (1975) 13 Cal3d 622, 628; *Maryland Casualty Co. [v]. Bailey and So Cal.App.4th 856, 873*. Likewise, the claim for unjust enrichment must fail.[4]

The judgment also contained a declaration of the respective rights and duties under the [respect to Section 6(h), as follows: Trimas, as successor in interest to NI, for the purpose provision only (i.e. 6(h) of The Agreement), must indemnify [Price Pfister] herein for al [Price Pfister] herein) settlements (as more fully discussed below) court costs (recovery of Civil Procedure Section 1033, 1033.5, 1034 and their successor sections if there be an attorney fees which arise out of any occurrence whereby a Product manufactured by NI Inc., a Delaware Corporation which was incorporated on October 4, 1982, and does not Company, person or other business entity which owned or controlled all or any portion of company/business or any of its predecessors) and where such Product has been determined proximate cause of death, personal injury and/or property damage. [] To recover under the Agreement, [Price Pfister] herein will have to have suffered and paid an adverse verdict finding of causation (i.e. proximate cause) against it. It can also recover if after such a verdict settles with the successful plaintiff. [] The more interesting issue is whether [Price Pfister] when it settles before a verdict or judgment is rendered. [] The Court further declares that recover in such circumstances when it is able to establish (in a subsequent proceeding w

is not reached with Trimas) that its decision to settle was made because it had reasonably more probably than not an injured claimant or plaintiff would establish that a Product m (defined above) was the proximate cause of death, personal injury and/or property damage. The Agreement did not modify or limit the term settlements in the Agreement, and no evidence was presented at trial to convince the Court that it should preclude indemnification in situations involving pre-judgment settlements. [] The Court further declares that neither [Price Pfister] nor its any of NIs or its predecessors existing liabilities with respect to product liability claims : into The Agreement. [] The Court finds it is not necessary or proper to further exercise its declaratory relief under the circumstances present before it in this matter and, therefore, no relief is granted on the claimed issue or controversy.[5]

Price Pfister and TriMas have each appealed from the judgment. TriMas filed a motion for summary judgment on the reasons discussed *post*, we deny. Price Pfister filed a cross-motion for sanctions, but show no basis for it.

DISCUSSION

I.

General Principles of Contract Interpretation and Standard of Review

Indemnity agreements in the noninsurance context are construed under the same rules as interpretation of other contracts. (*Crawford, supra*, 44 Cal.4th 541, 551-552.) We therefore review general principles of contract interpretation. The basic goal of contract interpretation is to give effect to the parties mutual intent at the time of contracting. [Citations.] When a contract is redrafted, the parties intention is determined from the writing alone, if possible. (*Founding Members of Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 955.) If a contract indicates a special meaning, the contracts words are to be understood in their ordinary and natural meaning. [Citations.] (*Crawford, supra*, 44 Cal.4th at p. 552.) Effect is to be given to the parties mutual intent as ascertained from the contracts language if it is clear and explicit [citation], (*Ibid.*)

Extrinsic evidence is admissible to prove a meaning to which the contract is reasonably susceptible. If the trial court decides, after receiving the extrinsic evidence, the language of the contract is reasonably susceptible to the interpretation urged, the evidence is admitted to aid in interpreting the contract. Thus, [t]he test of admissibility of extrinsic evidence to explain the meaning of a written contract is whether it appears to the court to be plain and unambiguous on its face, but whether the evidence is relevant to prove a meaning to which the language of the instrument is reasonably susceptible.

threshold issue of whether to admit the extrinsic evidence that is, whether the contract is the interpretation urged is a question of law subject to de novo review. [Citations.] [] The placed on the contract might call for different standards of review. When no extrinsic evidence when the competent extrinsic evidence is not in conflict, the appellate court independent [Citations.] When the competent extrinsic evidence is in conflict, and thus requires resolution issues, any reasonable construction will be upheld if it is supported by substantial evidence of the Newport Beach Country Club v. Newport Beach Country Club, Inc., supra, 109 Cal. App. 4th 955-956.)

California recognizes the objective theory of contracts [citation], under which [i]t is the evidenced by the words of the contract, rather than the subjective intent of one of the parties interpretation [citation]. The parties undisclosed intent or understanding is irrelevant to contract [Citations.] (*Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.*, supra, 109 Cal.App.4th at p. 956.)

II.

Crawford, supra, 44 Cal.4th 541 and Civil Code Section 2778

In *Crawford*, supra, 44 Cal.4th 541, 547, the California Supreme Court recently addressed contractual duties to defend and indemnify in the noninsurance context. In that case, the explained parties to a contract may define therein their duties toward one another in the event of a claim against one or both arising out of their relationship. Terms of this kind may require the other, under specified circumstances, for moneys paid or expenses incurred by the claimant. [Citation.] They may also assign one party, pursuant to the contract's language, to defend the other's legal defense when a third party claim is made against the latter. [Citation.] [] As a matter of course, the nature of such arrangements, but subject to public policy and established rules of contract law, the parties have great freedom to allocate such responsibilities as they see fit. [Citations.] When parties knowingly bargain for the protection at issue, the protection should be afforded. [Citation.] The court agreed that the promisor's indemnity and/or defense obligations will apply only if the promisor is negligent, or conversely, even if the promisor was not negligent. (*Id.* at p. 551, fn. omitted.)

The Supreme Court further stated: Though indemnity agreements resemble liability insurance, interpreting the two classes of contracts do differ significantly. Ambiguities in a policy are construed against the insurer, who generally drafted the policy, and who has received the premium and agreed protection. [Citations.] In noninsurance contexts, however, it is the indemnitee who has the superior bargaining power, and who may use this power unfairly to shift to another party the financial consequences of its own legal fault. [Citations.] [] This public policy concern affects the manner in which noninsurance indemnity agreements are construed. For exam-

if one seeks, in a noninsurance agreement, to be indemnified for his or her own active negligence of the indemnitors faultprotections beyond those afforded by the doctrines of implied or indemnitylanguage on the point must be particularly clear and explicit, and will be construed against the indemnitee. [Citations.] (*Crawford, supra*, 44 Cal.4th at p. 552.)[6]

The Supreme Court also addressed the application of Civil Code section 2778[7] in indemnity agreements: Finally, Civil Code section 2778, unchanged since 1872, sets forth general interpretation of indemnity contracts, unless a contrary intention appears. If not forbidden by statute, *the obligations set forth in section 2778 thus are deemed included in every indemnity agreement the parties indicate otherwise.* Several subdivisions of this statute touch specifically on indemnity obligations with respect to the indemnitees defense against third party claims. [7] In this regard, section 2778 provides that a promise of *indemnity* against claims, demands, or liability embraces the cost of such claims, demands, or liability insofar as such costs are incurred reasonably and in good faith. *Second, the section specifies that the indemnitor is bound, on request of the [indemnitee], to pay the costs of proceedings brought against the [indemnitee] in respect to the matters embraced by the indemnity.* The indemnitee may choose to conduct the defense. [Citation.] Third, the statute declares that if the indemnitee declines the indemnitees tender of defense, a recovery against the [indemnitee] suffered by the indemnitor is conclusive in his favor against the [indemnitor]. [Citation.] On the other hand, section 2778 provides that if the indemnitor got no reasonable notice of the action, or was not allowed to control the indemnity proceedings, recovery by the third party against the indemnitee is only presumptive evidence against the indemnitor. [Citation.] (*Crawford, supra*, 44 Cal.4th at p. 553, italics added.)

III.

Price Pfisters Issues on Appeal

Price Pfister contends the trial court erred by interpreting the indemnity provision to (1) apply only to products actually manufactured by NI Industries, Inc., not to products manufactured by NI Industries, Inc. for the benefit of Price Pfister; (2) apply only after a determination that a product manufactured by NI Industries, Inc. caused death, personal injury, or property damage; (3) not permit Price Pfister to recover costs of defending claims in violation of Civil Code section 2778, subdivision 4; and (4) refer to products manufactured by NI Industries, Inc., that was incorporated October 1982. We review each of Price Pfisters arguments.

A.

The Trial Court Correctly Interpreted the Agreements Section 6(h)s Reference to Products Manufactured by NI Industries, Inc., Itself, Not by NI Industries, Inc.s Predecessor

Price Pfister challenges the portion of the judgment reflecting the trial courts interpretation of the Agreement to limit NI Industries, Inc.'s indemnity obligation so as not [to] include any person or other business entity which owned or controlled all or any portion of the Price Pfister company/business or any of its predecessors. Price Pfister argues the more reasonable interpretation of the Agreement is to include not only products literally manufactured by NI Industries, Inc. but also those products for which the corporate entity NI Industries, Inc., was the legally responsible party (i.e., all Price Pfister Products manufactured prior to the Agreement.)

But the Agreement clearly and expressly limits NI Industries, Inc.'s contractually created indemnity obligation to products manufactured by NI Industries, Inc., which have proximately caused death, personal injury, or property damage. As discussed *ante*, the California Supreme Court in *Crawford, supra*, 44 Cal.4th 1009, 1024, holding that when entering indemnity agreements, parties have great freedom to allocate such responsibility as they see fit, that they may agree that the promisor's indemnity and/or defense obligations will apply to negligent, or, conversely, even if the promisor was not negligent. (*Id.* at p. 551.)

As pointed out by the trial court, its conclusion that the parties intended section 6(h)'s reference to "Products" to not include products manufactured by NI Industries, Inc.'s predecessors in interest finds support in section 6(i) of the Agreement, which, in addressing the subject of warranties, expressly includes NI Industries, Inc.'s predecessors in interest. Section 6(h) did not do so. Section 6(i) of the Agreement states that after the issuance of the Shares, the Company shall honor all valid claims that any Product manufactured or sold by NI or any predecessor in interest to NI, breaches any express or implied warranty of any such Product. [Price Pfister] shall have the authority to pay and/or settle any such claim and save harmless NI from any such warranty claims. (Italics added.)

We agree with the trial court's analysis contained in the portion of the judgment stating: "[the] parties' decision to draft a narrow indemnity provision is found in Section 6(i) of The Agreement. The parties' decision to only allow for indemnity to [Price Pfister] by NI when a Product manufactured or sold by NI caused damage while calling for [Price Pfister] to honor all valid warranty claims against Products manufactured by the Division while owned by NI or any predecessor in interest to NI. . . . The Court will not ignore this clear evidence that the original parties to The Agreement understood that they would have written an indemnity provision as broadly as [Price Pfister] wishes that this could have been had so desired and agreed to. The language used in The Agreement supports the conclusion that the parties to The Agreement did not intend to require NI to indemnify [Price Pfister] for products manufactured by NI or its predecessors-in-interest.

Price Pfister argues the term NI in section 6(h) necessarily included NI Industries, Inc.'s predecessors in interest in light of the definition of product as set forth in section 2(a) of the Agreement. Thus, Price Pfister continues, section 6(h) should have been interpreted to impose a duty on NI Industries, Inc.

Pfister in connection with all Price Pfister products manufactured prior to June 24, 1983 *Consideration for the Shares*, states in relevant part: The consideration for the Shares is: intangible personal property, except for cash, of the Price Pfister Division of NI (Division in connection with its business of designing, manufacturing and selling plumbing valves, fixtures, waste and overflows, and spare parts thereof, marketed under the names Price Pfister or current models of which are shown in *Price Pfister Full-Time Quick Reference Catalog* with its principal facility located at 13500 Paxton Street, Pacoima, California

Price Pfister next argues, [i]n defining the term Products, the drafter plainly did not limit products manufactured during the limited timeframe that TriMas predecessor was called. Instead, the opposite is true. The definition states that the current models of the products Agreement and the indemnity provision were contained in Price Pfister[s] Full-Time Quick Reference Catalog No. QR782 [Quick Reference, July 1982]. [] Accordingly, the definition of Products is r products covered in the single catalog referenced in the Agreement. Even the products in manufactured prior to the limited date range the lower court applied. Rather, this language that the parties intended to cover prior models as well as current models. Reference to the specified catalog was merely intended to serve as an illustration of those products in the To interpret the definition of Product in any way other than all Price Pfister products June 24, 1983 (for which NI unquestionably was the party responsible) would render this and frustrate the intentions of the parties at the time of contracting. (Italics omitted.)

Even if it were shown that the term product as defined in section 2(a) of the Agreement manufactured by NI, Industries, Inc.s predecessors in interest, section 6(h) nevertheless NI, Inc.s indemnity obligation to a subset of those productsnamely, to those products actually manufactured by NI Industries, Inc. Whether NI Industries, Inc., might be legally responsible to a third party manufactured by one of its predecessors in interest is irrelevant to the interpretation of the NI, Inc.s separate contractual agreement to *indemnify* Price Pfister in the event the latter was

Price Pfister also argues undisputed extrinsic evidence of the parties conduct supported section 6(h)s reference to a Product manufactured by NI contemplated products not only NI Industries, Inc., but all Price Pfister products for which NI Industries, Inc., had the manufacture the time the parties entered the Agreement. Price Pfister cites *Universal Sales Corp. v. Cal. (1942)* 20 Cal.2d 751, 761-762, in support of the proposition: [W]hen a contract is ambiguous given to it by the acts and conduct of the parties with knowledge of its terms, before any as to its meaning, is entitled to great weight, and will, when reasonable, be adopted and [Citation.] The reason underlying the rule is that it is the duty of the court to give effect to the parties where it is not wholly at variance with the correct legal interpretation of the term practical construction placed by the parties upon the instrument is the best evidence of the *Employers Reinsurance Co. v. Superior Court* (2008) 161 Cal.App.4th 906, 921 [same].

Price Pfister argues NI Industries, Inc.'s general counsel, R. James Shaffer, testified that a marking system be put in place to identify pre- and post-June 24, 1983 products for the parties' indemnity rights. Price Pfister argues, [a]dding these + signs to products manufactured after the date of the Agreement, June 24, 1983, created a bright line[:] if the product was made before that date, personal injury or property damage would be the responsibility of NI (now TriMas) and after that date, then Price Pfister would be responsible [] Significantly, no bright line existed for products manufactured by NI prior to June 24, 1983.

Shaffer's testimony showed that the parties agreed to mark post-Agreement Price Pfister products with a + sign to indicate down which entity manufactured the product. Products already manufactured at the time of the Agreement (by NI Industries, Inc., or by any predecessor in interest of NI Industries, Inc.) could not bear the + sign. Shaffer's testimony does not show that the parties intended NI Industries, Inc., would indemnify Price Pfister in connection with any Price Pfister products manufactured before June 24, 1983 regardless of whether they bore such products. Furthermore, Shaffer testified that section 6(h) means what it says that NI Industries, Inc. agreed to indemnify Price Pfister for products it manufactured during the six-month period after the Agreement for products.

Price Pfister also argues, [a]ccording to the testimony of Milton Meler [one of Price Pfister's attorneys], a claim involving a Price Pfister product arose post-acquisition, Price Pfister would tender the cost of such products not marked with a + sign to NI for defense or resolution and would likewise retain the cost of such claims that involved products marked with a + sign. But Meler did not testify that NI Industries, Inc. acknowledged that it was required to indemnify Price Pfister for death, personal injury or property damage caused by a product manufactured by NI Industries, Inc.'s predecessors in interest. On the contrary, Meler testified that he did not negotiate the terms of the Agreement, and did not know what NI Industries, Inc. intended in any of the claims that Price Pfister sent it.

Price Pfister further argues, Norris accepted the tender of a lawsuit (referred to by the parties as the *Ortiz* case) which named Price Pfister and Norris as defendants and alleged that a plumbing product manufactured by an unknown manufacturer caused personal injury. Price Pfister contends, [t]hese events reflect Price Pfister's interpretation of the indemnity provision and demonstrate clearly, the parties' intent at the time of contracting. But Price Pfister tendered the *Ortiz* case to a Norris entity, not to NI Industries, Inc. (h) of the Agreement. Norris's acceptance of Price Pfister's tender of this lawsuit does not reflect a proper interpretation of section 6(h) of the Agreement.

Furthermore, to the extent Price Pfister suggests NI Industries, Inc., in any way waived its duty to indemnify Price Pfister under section 6(h) by subsequent conduct, section 7 of the Agreement states that the [f]ailure of either party to enforce any provision of this Agreement shall not constitute a waiver of any other provision of the Agreement.

that provision and that party may thereafter enforce each and every provision of this Agreement.

B.

The Trial Court Properly Interpreted Section 6(h) to Require TriMas to Indemnify Price Pfister for Merely Claimed, Occurrences of Death, Personal Injury and/or Property Damage Proximately Caused by Products Manufactured by NI Industries, Inc.

Price Pfister also challenged the trial courts conclusion that TriMas was not required to indemnify under section 6(h) of the Agreement absent a determination that a product manufactured by TriMas actually caused death, personal injury and/or property damage. Price Pfister contends TriMas should indemnify Price Pfister for *claimed* occurrences of death, personal injury and/or property damage caused by NI Industries, Inc., manufactured product.

As discussed *ante*, the judgment contains a declaration of the parties respective rights and obligations under section 6(h) of the Agreement, which includes the following: To recover under this portion of the Agreement, Price Pfister herein will have to have suffered and paid an adverse verdict or judgment with a proximate cause) against it. It can also recover if after such a verdict and/or judgment it is a successful plaintiff. [] The more interesting issue is whether [Price Pfister] can obtain indemnification before a verdict or judgment is rendered. [] The Court further declares that [Price Pfister] can recover in certain circumstances when it is able to establish (in a subsequent proceeding with TriMas if agreed to by Price Pfister and TriMas) that its decision to settle was made because it had reasonably become convinced that a Product manufactured by TriMas was the proximate cause of death, personal injury and/or property damage.^{[[8]]} [] The parties did not modify or limit the term settlements in the Agreement, and no evidence was produced to convince the Court that it should preclude indemnification in situations involving pre-verdict settlements.

The plain language of section 6(h) provides that NI Industries, Inc.'s duty to indemnify will be triggered by settlements, court costs and reasonable attorneys fees arising out of any occurrence when a product manufactured by NI was the proximate cause of death, personal injury and/or property damage. As discussed *ante*, the California Supreme Court has recognized the right of parties to allocate their respective responsibilities as they see fit and to agree that the promisor's indemnity and/or defense obligation is triggered only if the promisor was negligent. (*Crawford, supra*, 44 Cal.4th at p. 551.) Nothing in the extrinsic evidence shows that NI Industries, Inc.'s duty to indemnify Price Pfister extends to settlements. Instead, the clear language of section 6(h) shows the parties agreed that NI Industries, Inc.'s duty to indemnify Price Pfister would not be triggered unless and until it was determined a product manufactured by NI Industries, Inc. was the proximate cause of death, personal injury and/or property damage.

Inc., proximately caused death, personal injury and/or property damage.

Price Pfister argues, [t]he notice requirement within the indemnity provision and the extent of the parties' conduct also does not support a requirement of a finding of proximate cause. The indemnity provision, 6(h) provides: NI and [Price Pfister] shall each notify the other forthwith of any claim or loss or may seek to be indemnified and held harmless by the other. Price Pfister contends, [a]bsent a finding of proximate cause, certainly no claim would likely ever have sufficient information or a finding of proximate cause. Yet notice of those claims and lawsuits is required forthwith.

The last sentence of section 6(h) supports the trial court's interpretation of the portion of the TriMas indemnity obligation. The parties used the word claim when it came to imposing liability on each other, but refrained from using that word in describing the scope of their respective obligations.[9]

Price Pfister argued to the trial court and contends on appeal that this interpretation of the indemnity provision violates Civil Code section 2778, subdivision 4. But section 2778, subdivision 4 does not require a finding of proximate cause; instead, it requires a finding of proximate cause and an independent duty of an indemnitor to defend an indemnitee that arises by operation of law. The indemnitor's duty is contractually modified or eliminated by the parties. Section 2778, subdivision 4 provides that the indemnitor, if indemnifying is bound, on request of the person indemnified, to defend actions or proceedings brought against the latter in respect to the matters embraced by the indemnity, but the person indemnified may defend such defenses, if he chooses to do so.

The California Supreme Court recently explained, in *Crawford, supra*, 44 Cal.4th 541, 547, that the duty to defend referred to in Civil Code section 2778, subdivision 4 is a separate duty from the duty to indemnify. . . . is thus different from a duty expressed simply as an obligation to indemnify. . . . the fact, for defense costs the other has incurred in defending itself. Section 2778, the standard construction of all indemnity agreements, makes the distinction clear. On the one hand, section 2778 specifies that a basic contractual *indemnity* against particular claims, demands, or liabilities. [Citation.] On the other hand, section 2778 specifies the indemnitor's duty actually to defend, upon the indemnitee's request, proceedings brought against the latter in respect to the matters embraced by the indemnity, though the person indemnified has the right to defend such defenses . . . if he chooses to do so. [Citation.] Finally, section 2778 sets forth how the indemnitor will be affected if the indemnitor fails to accept an indemnitee's tender of defense or, alternatively, if the indemnitor is denied an opportunity to assume and control the defense.

Consequently, the trial court properly interpreted section 6(h) to require TriMas to indemnify NI Industries, Inc. for judgments, settlements, attorney fees, and costs, incurred when a NI Industries, Inc., may proximately cause death, personal injury and/or property damage.

C.

Civil Code Section 2778, Subdivision 4 Imposes on TriMas a Duty to Defend That Was i Eliminated nor Modified by the Parties.

Turning now to the statutory duty to defend an indemnitee, in *Crawford, supra*, 44 Cal.4 California Supreme Court held that contracting parties are free to eliminate or modify th is otherwise automatically imposed by operation of Civil Code section 2778, subdivision Supreme Court, in *Crawford, supra*, 44 Cal.4th at page 555, held, the case law has long the parties agreement expressly provides otherwise, a contractual indemnitor has the obl tender by the indemnitee, to accept and assume the indemnitees active defense against cl the indemnity provision. Where the indemnitor has breached this obligation, an indemni forced, against its wishes, to defend itself is entitled to reimbursement of the costs of doi

Here, the Agreement, including section 6(h), is silent as to NI Industries, Inc.s (hence Tr Price Pfister regarding claims encompassed by section 6(h)s indemnity provision. Altho not specifically speak to the separate duty to defend, it also denies Price Pfister the cost lawsuits based on the scope of the indemnity provision itself.

We remand the matter to the trial court to determine whether, in any of the 11 cases filed the duty to defend had been triggered, and whether Price Pfister is entitled to recover an costs pursuant to Price Pfisters claims for express indemnity and breach of contract. As t declaratory relief, the trial court shall also modify the judgment to acknowledge the exis Price Pfister against claims of an occurrence whereby a product actually manufactured b proximately caused death, personal injury and/or property damage.

D.

The Trial Court Erred by Interpreting the Term NI Industries, Inc. as the Entity That We October 1982.

The judgment states that the term NI in section 6(h) of the Agreement means NI Industri Corporation which was incorporated on October 4, 1982, and does not include any predc or other business entity which owned or controlled all or any portion of the Price Pfister any of its predecessors. The Agreement, dated June 24, 1983, states it is between NI Ind corporation (which the Agreement short-form references as NI) and Price Pfister, NI In

corporation. Other than providing addresses for each entity, the Agreement does not defi

The parties submitted to the trial court a stipulation, entitled Re: Corporate History of th
The parties stipulation shows the entity that was incorporated on October 4, 1982 as NI
into its parent company, Norris-NI Industries, Inc., in January 1983. The parties stipulat
that Norris-NI Industries, Inc., which had been incorporated in July 1981, acquired in D
assets and liabilities of its wholly owned subsidiary, Norris Industries, Inc., which includ
liabilities of the Price Pfister division of Norris Industries, Inc. After Norris-NI Industri
wholly owned subsidiary, NI Industries, Inc., into itself in January 1983, it changed its c
former subsidiarys nameNI Industries, Inc. The evidence shows that entity entered into t
NI referenced in section 6(h). On remand, therefore, the judgment shall be modified to d
was incorporated on October 4, 1982.

IV.

TriMass Issue on Cross-appeal

TriMas challenges on cross-appeal the portion of the judgment declaring the parties righ
section 6(h) of the Agreement in the event of the settlement of a dispute prior to a jury v
portion of the judgment states: The more interesting issue is whether [Price Pfister] can
settles before a verdict or judgment is rendered. [] The Court further declares that [Price
such circumstances *when it is able to establish* (in a subsequent proceeding with Trimas
reached with Trimas) that its decision to settle was made because it had *reasonably becc
probably than not* an injured claimant or plaintiff *would* establish that a Product manufa
above) was the proximate cause of death, personal injury and/or property damage. [] The
Agreement did not modify or limit the term settlements in the Agreement, and no evider
trial to convince the Court that it should preclude indemnification in situations involving
prejudgment settlements. (Italics added.)

TriMas argues: The Agreement does not provide Price Pfister a right to indemnity when
convinced that it is likely an injured party would be able to prove an NI product proxima
Instead, the Agreement provides that before NI/TriMass indemnity obligation is triggere
show that an NI product *actually* caused injury. We agree.

In *Heppler v. J.M. Peters Co.* (1999) 73 Cal.App.4th 1265, 1278, the appellate court stat
are to be strictly construed against the indemnitee, and had the parties intended to includ

that would apply regardless of the subcontractors negligence, they would have had to use contractual language to that effect. In *Ralph M. Parsons Co. v. Combustion Equipment & Services, Inc.*, 172 Cal.App.3d 211, 227, the appellate court stated, [i]f an indemnitor is to be made responsible for the acts of an indemnitee or others over whose conduct it has no control, the language imposed should do so expressly and unequivocally so that the contracting party is advised in detail of the risk to which it is exposed.

Here, section 6(h) clearly states that NI Industries, Inc.'s duty to indemnify is triggered when a product has caused death, personal injury and/or property damage regardless of whether the insured believes it was more likely than not such proximate cause would have been proved.

In *Lamb v. Belt Casualty Co.* (1935) 3 Cal.App.2d 624, 631, the California Supreme Court held that without a trial and no judgment establishing the liability of the insured, but a settlement of the claim, the question whether the liability of the insured was one which the contract of insurance covered is also the question as to the fact of liability and the extent thereof, and these questions are to be determined in the action brought by the insured to recover the amount so paid in settlement. In *Associates v. Superior Court* (1992) 10 Cal.App.4th 1484, 1497, the appellate court relied on *Casualty Co.*, in concluding that when an indemnitee settles without trial, the indemnitor is covered by the contract, that liability existed, and the extent thereof.

Therefore, on remand, the trial court shall modify the judgment to reflect the requirement that a proximate cause before TriMas duty to indemnify is triggered in the context of a preverdict settlement.

V.

TriMas Motion for Sanctions

During the pendency of this appeal, TriMas filed a motion for sanctions in this court arguing that the appeal is frivolous. TriMas also contends Price Pfister's appellate briefs violate California Rules of Court and misrepresented the holding of *Crawford, supra*, 44 Cal.4th 1013.

Section 907 of the Code of Civil Procedure permits recovery of costs when an appeal is frivolous and rule 8.276(a)(1) of the California Rules of Court permits the imposition of costs for [t]aking a frivolous appeal or appealing solely to cause delay. We cannot conclude that the appeal was frivolous. Furthermore, to the extent Price Pfister failed to comply with the Rules of Court regarding appellate briefs, we do not find any such failures, individually or cumulative, to rise to the level of a sanction.

conduct. TriMass motion is therefore denied.

DISPOSITION

We affirm the portion of the judgment in which the trial court interpreted the indemnity section 6(h) of the Agreement to apply only to (1) products manufactured by NI Industries, Inc. or its predecessors in interest and (2) actual occurrences of personal injury and/or property damage proximately caused by a NI Industries, Inc., manufactured product.

On remand, the trial court shall modify the judgment to delete the phrase which was inserted in 1982 in reference to NI Industries, Inc.

We reverse the portion of the judgment denying Price Pfister defense costs with direction to determine whether, in any of the 11 cases filed against Price Pfister, the duty to defend exists and whether Price Pfister is entitled to recover attorney fees and/or costs pursuant to Price Pfister's indemnity and breach of contract. We further direct the trial court on remand to modify its judgment declaring the parties rights and duties under the indemnity provision to acknowledge the duty to defend Price Pfister against claims of an occurrence whereby a product manufactured by Price Pfister, Inc., proximately caused death, personal injury and/or property damage.

We also reverse the portion of the judgment declaring that, in the context of a preverdict settlement, the indemnity provision is triggered if Price Pfister establishes that its decision to settle because it had reasonably become convinced that more probably than not an injured claimant's injury was proximate cause. On remand, the trial court shall modify the judgment to state that the indemnity provision requires a determination of proximate cause before the duty to indemnify is triggered, in a preverdict or prejudgment settlement.

As each party prevailed in part, in the interests of justice, no party shall recover costs on

FYBEL, J.

WE CONCUR:

OLEARY, ACTING P. J.

MOORE, J.

Publication Courtesy of [California free legal resources](#).

Analysis and review provided by [Spring Valley Property line Lawyers](#).

[San Diego Case Information provided by www.fearnotlaw.com](#)

[1] Norris Industries, Inc., was originally incorporated in 1940 as Norris Stamping and changed its corporate name to Norris-Thermador Corporation in 1951, and again changed in 1966 to Norris Industries, Inc.

[2] Norind Holdings, Inc., was incorporated in Delaware in July 1981 as Norind Corporation acquiring Norris Industries, Inc. In August 1981, Norind Corporation changed its corporate name to Norind Holdings, Inc.

[3] In May 2006, Price Pfister voluntarily dismissed Metaldyne as a defendant.

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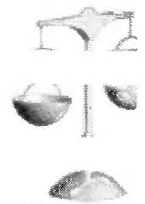


EXHIBIT G

CERTIFICATE

The undersigned, R. James Shaffer, certifies that he is the duly elected and acting Secretary of Norris-NI Industries, Inc., incorporated in the State of Delaware, and that the attached Exhibit "A" is a full, true and correct copy of a Plan of Partial Liquidation and Redemption authorized by the board of directors of said corporation on the 16th day of December, 1981, which Plan is at the date hereof in full force and effect.

WITNESS my hand and seal of said corporation the 21st day of January, 198 3.

A handwritten signature in cursive script, appearing to read "R. James Shaffer", written over a horizontal line.

SEAL

EXHIBIT
TM 031125

PLAN OF PARTIAL LIQUIDATION AND REDEMPTION

The following shall constitute the Plan of Partial Liquidation and Redemption (the "Plan") of Norris Industries, Inc., a California corporation ("Norris"), within the meaning of 26 U.S.C. 331 and 26 U.S.C. 346, subject to the approval of the Plan by Norris and Norris-NI Industries, Inc., formerly known as Norind Holdings, Inc., a Delaware corporation ("Norris-NI"), the sole shareholder of Norris.

The following actions shall be completed on or before the close of business in Long Beach, California on December 31, 1982:

1. All of the businesses and assets, except for those described in Section 2 below, of Norris shall be distributed to Norris-NI in redemption of that portion of the outstanding common stock of Norris that the value of the net assets distributed pursuant to this Plan bears to the value of all the net assets immediately prior to the distribution.
2. The following businesses and assets of Norris shall be retained by Norris:
 - (a) all assets and liabilities appertaining to that business known as the Artistic Brass Division of Norris,
 - (b) all assets and liabilities appertaining to the fuel tank business located at the O.L. Anderson plant,

EXHIBIT A

TM 031126

- (c) all shares of stock of and Norris' right, title and interest in all subsidiaries of Norris, except for the shares of stock and Norris' right, title and interest in any "name holding company" appertaining to the businesses and assets described in (a) next above,
- (d) all shares of stock of Lynwood Pattern Service, Inc.,
- (e) all interests in all partnerships and/or joint ventures appertaining to oil and/or gas exploration and/or production,
- (f) indebtedness in the original principal amount of \$45,052,794.70 of Norris-NI to Norris plus any interest earned thereon, and
- (g) all interests in those leases dated May 4, 1948 and February 22, 1974, as amended, by and between the City of Newark, New Jersey and Norris Industries, Inc. for real property in Newark, New Jersey.

3. The distribution of the business and assets of Norris' Vernon Division shall be made only after the proper governmental authorities of the United States of America recognize Norris-NI as the successor in interest to all government contracts where Norris-NI's third party interest arises out of the transfer by Norris to Norris-NI of the assets and

business of the Vernon Division. In the event that the president of Norris determines in his reasonable judgment that the proper governmental authorities of the United States of America will, within a reasonable time, fail to act or refuse to approve Norris-NI as the successor in interest to all government contracts as above stated, then the Vernon Division shall at the election of the president of Norris, as evidenced by his letter to the respective boards of directors of Norris and Norris-NI be deemed to be included in the list of assets and businesses described in section 2 above, which shall pursuant to this Plan be retained by Norris.

4. The distribution of the above-stated businesses and assets by Norris shall include all obligations appertaining thereto, except for any obligations to terminated or retired participants, as of the date of distributions pursuant to the Plan, under Norris' Incentive Compensation Plan as revised. Norris shall provide any necessary assignments, deeds, or other documents as may be required to distribute Norris' interests to Norris-NI and Norris-NI shall assume and agree to pay when due and to perform all current and future obligations, direct, contingent, or otherwise, of Norris in respect to the above-stated businesses and assets distributed by Norris to Norris-NI, including but not limited to any Federal income taxes and any

income, franchise or other applicable taxes payable to any state or subdivision thereof arising out of any action(s) taken pursuant to this Plan. If a Federal consolidated income tax return is filed by Norris-NI and Norris for the year in which the partial liquidation occurs, the Federal income tax attributable to the distribution(s) in partial liquidation shall be determined under consolidated return regulations.

5. Norris-NI from time to time shall forthwith upon receipt of written notice from Norris execute a security agreement(s) and/or a financing statement(s), and any amendments thereto, respecting tangible personal property, exclusive of stock in trade or inventory, for the purpose of securing Norris-NI's performance of its obligations for taxes arising as a result of distributions under the Plan and assumed by Norris-NI as set forth in this section 4 above.
6. The appropriate officers of Norris shall cancel the shares of Norris that are redeemed for the businesses and assets of Norris distributed to Norris-NI under this Plan. All such shares so redeemed shall become unissued shares of Norris.
7. The partial distribution and redemption as described in the Plan may be made in one or more increments commencing on or after January 1, 1982 as may be determined by the president or the treasurer of Norris.

EXHIBIT H

183192

A261790

CERTIFICATE OF AMENDMENT
OF
ARTICLES OF INCORPORATION

FILED
by the office of the Secretary of State
of the State of California

APR 26 1983

MARION FONG EU, Secretary of State

James Shaffer
Deputy

H. J. MEANY AND R. JAMES SHAFFER certify that:

1. They are the president and the secretary, respectively, of Norris Industries, Inc., a California corporation.
2. Article FIRST of the articles of incorporation of this corporation is amended to read as follows:

"The name of this corporation is NI West, Inc."
3. The foregoing amendment of articles of incorporation has been duly approved by the board of directors.
4. The foregoing amendment of articles of incorporation has been duly approved by the required vote of shareholders in accordance with Section 902 of the Corporation Code. The total number of outstanding shares of the corporation is 100. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was more than 50%.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Date: April 19, 1983

H. J. Meany
H. J. Meany, President

R. James Shaffer
R. James Shaffer, Secretary

EXHIBIT I

HISTORICAL TIMELINE

- 1924 – Alex Manoogian migrates to Detroit where he takes a job in a screw machine shop.
- 1929 – Alex Manoogian organizes Masco Screw Products Company in Detroit, Michigan, machining parts for the automotive industry.
- 1930 – Masco's first contract from the auto industry comes from the Hudson Motor Car Company and totals \$7,000.
- 1935 – Annual sales exceed \$100,000 for the first time.
- 1936 – Masco becomes a public company and is listed on the Detroit Stock Exchange.
- 1942 – Masco's annual sales exceed \$1 million.
- 1948 – Expanding its manufacturing efforts, Masco purchases a plant on Ford Road in Dearborn, Michigan.
- 1952 – Masco acquires rights to a single-handle washerless faucet and Alex Manoogian begins redesigning the product.
- 1954 – Masco begins production and marketing of the Delta single-handle faucet.
- 1958 – Delta Faucet annual sales exceed \$1 million. Richard Manoogian joins the Company.
- 1961 – Masco Screw Products Company changes its name to Masco Corporation.
- 1967 – Masco Corporation moves to new corporate headquarters in Taylor, Michigan.
- 1968 – Richard Manoogian becomes President and Chief Operating Officer.
- 1969 – Masco Corporation is listed on the New York Stock Exchange.
- 1975 – Masco joins the Fortune 500 list of the largest U.S. corporations.
- 1983 – Masco's annual sales exceed \$1 billion.
- 1984 – Masco Industries is created as a separate operating unit. Sales of the combined companies exceed \$1 billion.
- 1985 – Masco enters the cabinet manufacturing business.
- 1988 – TriMas Corporation is created from a group of Masco Industries and Masco Corporation specialty products companies.
- 1991 – TriMas Corporation is listed on the New York Stock Exchange.
- 1993 – Masco Industries becomes MascoTech, Inc. and is listed on the New York Stock Exchange.

1995 – Masco enters the services business.

1996 – Ray Kennedy becomes President and Chief Operating Officer. Alex Manoogian passes away on July 10 at age 95. Masco divests its furniture industry.

1998 – TriMas Corporation merges with MascoTech to form one company offering a wide array of diversified products. Masco announced a 2-for-1 stock split, the ninth time the Company has split its shares since 1960 and the 40th consecutive year its dividends have increased.

1999 – Masco enters the architectural coatings business. Annual sales exceed \$5 billion.

2001 – Masco enters the windows business. Masco's operating profit exceeds \$1 billion.

2003 – Ray Kennedy, Masco's President and Chief Operating Officer, passes away on February 4 at age 60. Masco increases its quarterly dividend for the 45th consecutive year. Masco's annual sales exceed \$10 billion. On April 8, Alan Barry was appointed Masco's President and Chief Operating Officer.

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EXHIBIT J

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF
THE SECURITIES EXCHANGE ACT OF 1934

FOR THE FISCAL YEAR ENDED DECEMBER 31, 1993 COMMISSION FILE NUMBER 1-5794

MASCO CORPORATION

(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE
(STATE OF INCORPORATION
NO.)

38-1794485
(I.R.S. EMPLOYER IDENTIFICATION

21001 VAN BORN ROAD, TAYLOR, MICHIGAN
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)

48180
(ZIP CODE)

REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE: 313-274-7400

SECURITIES REGISTERED PURSUANT TO SECTION 12(B) OF THE ACT:

TITLE OF EACH CLASS	NAME OF EACH EXCHANGE ON WHICH REGISTERED
COMMON STOCK, \$1.00 PAR VALUE INC.	NEW YORK STOCK EXCHANGE,
5 1/4% CONVERTIBLE SUBORDINATED DEBENTURES DUE 2012 INC.	NEW YORK STOCK EXCHANGE,

SECURITIES REGISTERED PURSUANT TO SECTION 12(G) OF THE ACT:

NONE

INDICATE BY CHECK MARK WHETHER THE REGISTRANT (1) HAS FILED ALL REPORTS REQUIRED TO BE FILED BY SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934 DURING THE PRECEDING 12 MONTHS, AND (2) HAS BEEN SUBJECT TO SUCH FILING REQUIREMENTS FOR THE PAST 90 DAYS. YES NO INDICATE BY CHECK MARK IF DISCLOSURE OF DELINQUENT FILERS PURSUANT TO ITEM 405 OF REGULATION S-K IS NOT CONTAINED HEREIN, AND WILL NOT BE CONTAINED, TO THE BEST OF REGISTRANT'S KNOWLEDGE, IN DEFINITIVE PROXY OR INFORMATION STATEMENTS INCORPORATED BY REFERENCE IN PART III OF THIS FORM 10-K OR ANY AMENDMENT TO THIS FORM 10-K.

THE AGGREGATE MARKET VALUE OF THE REGISTRANT'S COMMON STOCK HELD BY NON-AFFILIATES OF THE REGISTRANT ON MARCH 15, 1994 (BASED ON THE CLOSING SALE PRICE OF \$34 1/2 OF THE REGISTRANT'S COMMON STOCK, AS REPORTED ON THE NEW YORK STOCK EXCHANGE COMPOSITE TAPE ON SUCH DATE) WAS APPROXIMATELY \$5,200,000,000.

NUMBER OF SHARES OUTSTANDING OF THE REGISTRANT'S COMMON STOCK AT MARCH 15, 1994:

156,550,774 SHARES OF COMMON STOCK, PAR VALUE \$1.00 PER SHARE

PORTIONS OF THE REGISTRANT'S DEFINITIVE PROXY STATEMENT TO BE FILED FOR ITS 1994 ANNUAL MEETING OF STOCKHOLDERS ARE INCORPORATED BY REFERENCE INTO PART III OF THIS REPORT.

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PART I

ITEM 1. BUSINESS.

Masco manufactures building, home improvement and home furnishings products for the home and family. Masco believes that it is the largest domestic manufacturer of faucets, plumbing supplies, kitchen and bath cabinets and furniture, and that it is a leading domestic producer of a number of other building, home improvement and home furnishings products. Masco was incorporated under the laws of Michigan in 1929 and in 1968 was reincorporated under the laws of Delaware.

Except as the context otherwise indicates, the terms "Masco" and the "Company" refer to Masco Corporation and its consolidated subsidiaries.

INDUSTRY SEGMENTS

The following table sets forth for the three years ended December 31, 1993, the contribution of the Company's industry segments to net sales and operating profit:

	(IN THOUSANDS)		
	NET SALES		
	1993	1992	1991
Building and Home Improvement Products.....	\$2,188,000	\$1,991,000	\$1,711,000
Home Furnishings Products.....	1,698,000	1,534,000	1,430,000
	\$3,886,000	\$3,525,000	\$3,141,000
	OPERATING PROFIT (1)		
	1993	1992	1991
Building and Home Improvement Products.....	\$ 412,000	\$ 368,000	\$ 273,000
Home Furnishings Products.....	69,000	60,000	38,000
	\$ 481,000	\$ 428,000	\$ 311,000

(1) Amounts are before general corporate expense.

Additional financial information concerning the Company's operations by industry segment as of and for each of the three years ended December 31, 1993, is set forth in Item 8 of this Report in the Note to the Company's Consolidated Financial Statements captioned "Segment Information."

BUILDING AND HOME IMPROVEMENT PRODUCTS

The Company is among the country's largest manufacturers of brand-name consumer products designed for the building and improvement of the home, including faucets, kitchen and bath cabinets, kitchen appliances, bath and shower enclosure units, spas, shower and plumbing specialties, door locks and other builders' hardware, air treatment products, venting and ventilating equipment and water pumps. These products are sold for the home improvement market to consumers who purchase materials for "do-it-yourself" installation or installation by contractors or professional tradespeople as well as for the new home construction market.

The Company manufactures a variety of single and double handle faucets. DELTA(R) and PEERLESS(R) single and double handle faucets are used on kitchen, lavatory and other sinks and in bath and shower installations. DELTA faucets are sold through manufacturers' representatives

to distributors who sell the faucets to plumbers, building contractors, remodelers, retailers and others. PEERLESS faucets are sold primarily through manufacturers' representatives directly to retail outlets such as mass merchandisers, home centers and hardware stores and are also sold under private label. The Company's EPIC(R), ARTISTIC BRASS(R) and SHERLE WAGNER(TM) faucets and accessories

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produced for the decorator markets and are sold through wholesalers, distributor showrooms and other outlets. In addition to its domestic manufacturing, the Company manufactures faucets in Denmark, Italy and Canada.

Sales of faucets approximated \$608 million in 1993, \$528 million in 1992 and \$457 million in 1991. The percentage of operating profit on faucets is somewhat higher than that on products within the Building and Home Improvement Products Segment as a whole. The Company believes that the simplicity, quality and reliability of its faucet mechanisms, its marketing and merchandising activities, and the development of a broad line of products have accounted for the continued strength of its faucet sales.

The Company manufactures stock, semi-custom and custom kitchen and bath cabinetry in a variety of styles and in various price ranges. The Company sells under a number of trademarks, including MERILLAT(R), KRAFTMAID(R), STARMARK(R) and FIELDSTONE(R), with sales in both the home improvement and new home construction markets. Sales of kitchen and bath cabinets were approximately \$570 million in 1993, \$515 million in 1992 and \$425 million in 1991.

The Company's brass and copper plumbing system components and other plumbing specialties are sold to plumbing, heating and hardware wholesalers and to home centers, hardware stores, building supply outlets and other mass merchandisers. These products are marketed for the wholesale trade under the BRASS-CRAFT(R) trademark and for the "do-it-yourself " market under the PLUMB SHOP(R) and HOME PLUMBER(R) trademarks and are also sold under private label.

In February, 1994 the Company acquired two leading manufacturers of bath accessories and other products. Zenith Products Corporation manufactures bath medicine cabinets, shower curtain rods and rings and other bath storage products for the home. Zenith's medicine cabinets are sold primarily to "do-it-yourself " retailers, while its other products are marketed to discount retailers and other mass merchandise stores. Melard Manufacturing Corporation manufactures bath hardware, accessories, plumbing specialty products, and other products. Melard's products are primarily sold for the "do-it-yourself " and residential remodeling markets, through mass merchandise stores, hardware stores, home centers and other retail outlets.

Other specialty kitchen and bath consumer products include THERMADOR(R) cooktops, ovens, ranges and related cooking equipment, which are marketed through appliance distributors and dealers. The Company's acrylic and gelcoat bath and shower units and whirlpools are sold under the AQUA GLASS(R) trademark primarily to wholesale plumbing distributors for use in the home improvement and new home construction markets. Luxury bath and shower enclosures are manufactured and sold by the Company under the HUPPE(R) trademark. The Company's spas are sold under the HOT SPRING SPA(R) and other trademarks directly to retailers for sale to residential customers.

Premium quality brass rim and mortise locks, knobs and trim and other builders' hardware are manufactured and sold under the BALDWIN(R) trademark for the home improvement and new home construction markets. WEISER(R) door locks and related hardware are sold through contractor supply outlets, hardware distributors and home center retailers. SAFLOK(TM) electronic locks and WINFIELD(TM) mechanical locks are sold primarily to the hospitality market.

HOME FURNISHINGS PRODUCTS

The Company has become the leading domestic manufacturer of brand-name consumer products for the furnishing of the home, including furniture, upholstery and other fabrics, mirrors, lamps and other decorative accessories.

The Company manufactures a broad array of home furnishings products and utilizes a variety of distribution channels to market its products. A complete line of traditional, transitional and contemporary wood and upholstered furniture is sold under the HENREDON(R) trademark through Henredon galleries located in furniture stores, designer showrooms, furniture outlets and department stores. DREXEL(R) and HERITAGE(R) wood and upholstered furniture and home furnishings accessories are

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marketed through Drexel Heritage galleries located in furniture stores, through showcase stores which primarily feature Drexel Heritage furniture and also through independent furniture outlets. The Lexington Furniture Industries group produces youth-correlated furniture, moderately-priced bedroom and dining room groups, occasional and upholstered furniture and woven wicker and rattan products, which are sold through national and regional chains and independent furniture dealers, department stores and interior designers. Universal Furniture Limited manufactures dining room, bedroom, occasional wood and upholstered furniture, which is sold primarily through furniture retailers and department stores under UNIVERSAL(R), BENCHCRAFT(R) and other trademarks. The Company believes that Universal is the largest supplier in the United States of wood dining room furniture, much of which is shipped in unassembled form from the Far East to assembly and distribution centers in the United States. The Company's LINEAGE(R) line of wood and upholstered furniture and home furnishings accessories are sold through exclusive Lineage Pavilions located in retail furniture stores which also feature furniture accessories manufactured by other Company operations. The Company also manufactures and sells designer upholstered products and upholstered furniture under private label to furniture stores and other retailers. In addition, certain of the Company's furniture is sold to contract accounts primarily for use in the hospitality market and in commercial and government buildings. Sales of the Company's furniture products approximated \$1.34 billion in 1993, \$1.19 billion in 1992 and \$1.13 billion in 1991.

The Company's textile group includes Robert Allen Fabrics, Inc., Ametex Fabrics, Inc., Sunbury Textile Mills, Inc. and Ramm, Son & Crocker Limited. Robert Allen markets fabrics, which are used primarily for residential furnishings, through independent sales representatives to designers and retailers. Company-operated and independent showrooms have also been established to sell fabrics and display and sell many of the Company's other home furnishings products. Ametex designs and converts moderately-priced fabrics for use in commercial and residential furnishings, which are sold through independent sales representatives to furniture and other furnishings manufacturers, fabric jobbers and the hospitality market. Sunbury manufactures high-quality Jacquard woven fabrics which are sold through sales representatives primarily to furniture manufacturers and decorative jobbers for furniture and other decorative applications. Ramm, Son & Crocker is a United Kingdom supplier of high-quality printed fabrics to the furniture and decorative fabric markets.

GENERAL INFORMATION CONCERNING INDUSTRY SEGMENTS

No material portion of the Company's business is seasonal or has special working capital requirements although the Company maintains a higher investment in inventories for certain of its businesses than the average manufacturing company. See "Management's Discussion and Analysis of Financial Condition and Results of Operations -- Receivables and Inventories," included in Item 7 of this Report. The Company does not consider backlog orders to be a material factor in its industry segments, and no material portion of its business is dependent upon any one customer or subject to renegotiation of profits or termination of contracts at the election of the federal government. Compliance with federal, state and local regulations relating to the discharge of materials into the environment, or otherwise relating to the protection of the environment, is not expected to result in material capital expenditures by the Company or to have a material effect on the Company's earnings or competitive position. In general, raw materials required by the Company are obtainable from various sources and in the quantities desired.

INTERNATIONAL OPERATIONS

The Company, through its subsidiaries, has manufacturing plants in Belgium, Canada, the People's Republic of China, Denmark, France, Germany, Hong Kong, Italy, Malaysia, Mexico, the Philippines, Singapore, Sweden, Taiwan and the United Kingdom. Products manufactured by the Company outside of the United States include faucets and accessory products, bath and shower enclosures, furniture, decorative accessories, door locks and related hardware, ventilating fans and equipment and submersible water pumps.

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The Company's foreign operations are subject to political, monetary, economic and other risks attendant generally to international businesses. These risks generally vary from country to country.

Financial information concerning the Company's foreign and domestic operations, including the amounts of net sales, operating profit and assets employed which are attributable to the Company's operations in the United States and in foreign countries, as of and for the three years ended December 31, 1993, is set forth in Item 8 of this Report in the Note to the Company's Consolidated Financial Statements captioned "Segment Information." From 1991 through 1993, the Company's annual net export sales from the United States to other countries, as a percentage of consolidated annual net sales, approximated three percent.

EQUITY INVESTMENTS

In 1984, Masco transferred its industrial businesses to a newly-formed subsidiary, MascoTech, Inc. (formerly Masco Industries, Inc.), which became a separate public company in July, 1984 when Masco distributed to its stockholders shares of MascoTech common stock as a special dividend. Masco currently owns approximately 42 percent of the outstanding common stock of MascoTech.

MascoTech is a diversified manufacturer of original equipment and aftermarket parts for the transportation industry and also manufactures commercial, institutional and residential building products for the construction industry as well as other diversified products principally for the defense industry. In 1993, MascoTech had sales from continuing operations of \$1.58 billion.

MascoTech manufactures a broad range of semi-finished components, sub-assemblies and assemblies for the transportation industry. Transportation-related products represented 76 percent of MascoTech's 1993 sales from continuing operations and primarily consist of original equipment products for the automotive and truck industries. Over half of MascoTech's products are used for engine and drivetrain applications (such as semi-finished transmission shafts, drive gears, engine connecting rods, wheel spindles and front wheel drive and exhaust system components) and for chassis and suspension functions (including electromechanical solenoids and relays and suspension components). Products manufactured for exterior body trim applications include automotive trim, luggage racks and accessories, and metal stampings. Aftermarket products include fuel and emission systems components, windshield wiper blades, constant-velocity joints, brake hardware repair kits, and luggage racks and accessories. In addition to its manufacturing activities, MascoTech provides engineering services primarily for the automotive and heavy-duty truck industries, and is engaged in specialty vehicle development and conversion programs. Products are manufactured using various metalworking technologies, including cold, warm and hot forming, powdered metal forming and stamping. During 1993, sales to various divisions and subsidiaries of Ford Motor Company, General Motors Corporation and Chrysler Corporation accounted for approximately 20 percent, 14 percent and 12 percent, respectively, of MascoTech's net sales from continuing operations.

Specialty products manufactured by MascoTech include a variety of architectural products for commercial, institutional and residential markets. Products include steel doors and frames; stainable and low maintenance steel doors; wood windows and aluminum-clad wood windows; leaded, etched and beveled glass for decorative windows and entryways; residential entry systems; garage doors; sectional and rolling doors; security grilles; and modular metal partitions. MascoTech's sales of architectural products in 1993 were \$289 million. MascoTech's other specialty products consist primarily of defense products, including large diameter cold formed cartridge cases, projectiles and casings for rocket motors and missiles for the United States government and its suppliers. MascoTech also markets waste-water treatment services to other industrial companies principally in southern California. MascoTech's sales in 1993 of these other specialty products were \$99 million.

MascoTech has undertaken the planned disposition of its energy-related business segment, which consisted of seven business units, as part of its long-term strategic plan to de-leverage its balance sheet and increase the focus on its core operating capabilities. As a result, MascoTech's financial statements have been reclassified to present such businesses as discontinued operations. These businesses

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manufactured specialized tools, equipment and other products for energy-related industries. Two of the businesses were sold in late 1993, including one business to TriMas Corporation, and MascoTech expects to divest the remaining businesses in 1994. MascoTech financial information contained in this Report has been reclassified for these discontinued operations.

MascoTech currently owns approximately 43 percent of the outstanding common stock of TriMas Corporation, and the Company currently owns approximately 5 percent of the outstanding common stock of TriMas. TriMas is a diversified proprietary products company with leadership positions in commercial, industrial and consumer niche markets including industrial container closures, pressurized gas cylinders, towing systems products, specialty fasteners, specialty products for fiberglass insulation, specialty tapes, specialty industrial gaskets and precision cutting tools.

PATENTS AND TRADEMARKS

The Company holds a number of United States and foreign patents covering various design features and valve constructions used in certain of its faucets, and also holds a number of other patents and patent applications, licenses, trademarks and trade names. As a manufacturer of brand-name consumer products, the Company views its trademarks as important, but does not believe that there is any reasonable likelihood of a loss of such rights which would have a material adverse effect on the Company's industry segments or its present business as a whole.

COMPETITION

The major domestic and foreign markets for the Company's products in its industry segments are highly competitive. Competition is based primarily on performance, quality, style, service and price, with the relative importance of such factors varying among products. A number of companies of varying size compete with one or more of the Company's product lines.

EMPLOYEES

At December 31, 1993, the Company employed approximately 45,000 people. Satisfactory relations have generally prevailed between the Company and its employees.

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ITEM 2. PROPERTIES.

The following list includes the Company's principal manufacturing facilities by location and the industry segments utilizing such facilities:

Arizona.....	Tucson (1)
California.....	Carlsbad (1), City of Industry (2), Compton (2)(2), Corona (1), Costa Mesa (1), Los Angeles (1)(1), Pico Rivera (1), Pomona (1), Rosemead (2), South Gate (1), Vista (1) and Whittier (2)
Georgia.....	Atlanta (2)
Illinois.....	Alsip (2) and Chicago (2)
Indiana.....	Cumberland (1), Greensburg (1) and Kendallville (1)
Iowa.....	Northwood (1)
Kentucky.....	Henderson (1 and 2) and Morgantown (1)
Massachusetts.....	Framingham (2)
Michigan.....	Adrian (1), Hillsdale (1), Holland (2), Lapeer (1), Madison Heights (1) and Riverview (1)
Minnesota.....	Lakeville (1)
Mississippi.....	Blue Mountain (2), New Albany (2), Olive Branch (1) and Ripley (2)(2)(2)
Nevada.....	Las Vegas (1)
New Jersey.....	Passaic (1)
North Carolina.....	Black Mountain (2), Drexel (2), Goldsboro (2), Hickory (2)(2), High Point (2)(2)(2), Hildebran (2)(2), Lexington (2)(2)(2)(2)(2), Linwood (2), Longview (2), Marion (2)(2), Mocksville (2), Morganton (2)(2)(2)(2)(2), Mt. Airy (2), Shelby (2), Spruce Pine (2), Thomasville (1) and Whittier (2)
Ohio.....	Jackson (1), Loudonville (1) and Middlefield (1)(1)
Oklahoma.....	Chickasha (1)
Oregon.....	Klamath Falls (1)
Pennsylvania.....	Aston (1), Hazelton (1), Reading (1 and 2) and Sunbury (2)
South Carolina.....	Kingstree (2)
South Dakota.....	Rapid City (1) and Sioux Falls (1)
Tennessee.....	Adamsville (1)(1), LaFollette (1) and Morristown (2)(2)
Texas.....	Lancaster (1)
Virginia.....	Atkins (1)(1), Culpeper (1), Lynchburg (1), Mt. Jackson (1) and Portsmouth (2)
Belgium.....	Brussels (1)
Canada.....	Burnaby (1), British Columbia; Brantford (2), Cambridge (1), London (1), Mississauga (2) and St. Thomas (1), Ontario; Montreal (1), Quebec
China (P.R.C.).....	Guangzhou (2) and Tianjin (2)(2)(2)
Denmark.....	Odense (1)
France.....	Seyres (1)
Germany.....	Bad Zwischenahn (1), Iserlohn (1), Steinhagen (1) Tangermunde (2) and Waldenburg (1)
Hong Kong.....	(2)(2)

Italy.....	Zingonia (1)
Malaysia.....	Johor (2) and Kedah (2)(2)
Mexico.....	Mexicali (1)
Philippines.....	Cebu (2)(2)
Singapore.....	Kranji (2)(2)
Sweden.....	Goteborg (2)
Taiwan.....	Kaohsiung (2), Tao Yuan (2) and Tung Kang (2)
United Kingdom.....	Silsden (2) and Warminster (2), England; Aberdare (2) and Merthyr Tydfil (2), Wales

Note: Multiple footnotes within the same parenthesis indicate the facility is engaged in activities relating to both segments. Multiple footnotes to the same municipality denote separate facilities in that location. Industry segments in the preceding table are identified as follows: (1) Building and Home Improvement Products Segment, and (2) Home Furnishings Products Segment.

The home furnishings products manufacturing facilities are located primarily in North Carolina, with principal facilities ranging in size from 700,000 to 1,074,000 square feet. The two principal faucet manufacturing plants are located in Greensburg, Indiana and Chickasha, Oklahoma. The faucet manufacturing plants and the majority of the Company's other facilities range from approximately 20,000 to 700,000 square feet. The Company owns most of its manufacturing facilities and none of the properties is subject to significant encumbrances. The Company also maintains approximately 1.5 million square feet of designer and trade showroom space at various locations throughout the United States where it coordinates the display and sale of its home furnishings products and owns 725,000 square feet of showroom space in High Point, North Carolina utilized for furniture industry trade shows. The Company's corporate headquarters are located in Taylor, Michigan and are owned by the Company. An additional building near its corporate headquarters is used by the Company's corporate research and development department.

The Company's buildings, machinery and equipment have been generally well maintained, are in good operating condition, and are adequate for current production requirements.

The following list identifies the location of the principal manufacturing facilities of MascoTech and the industry segments utilizing such facilities:

Arizona.....	Chandler (2)
California.....	Santa Fe Springs (4), Vernon (3) and Yuba City (1)
Florida.....	Auburndale (2), Deerfield Beach (1) and Orlando (2)
Georgia.....	Adel (1), Lawrenceville (1) and Valdosta (1)
Indiana.....	Kendallville (1)
Iowa.....	Dubuque (2)
Kentucky.....	Nicholasville (1)
Michigan.....	Auburn Hills (1)(1), Brighton (1), Burton (1), Coopersville (1), Detroit (1)(1)(1), Farmington Hills (1), Fraser (1), Green Oak Township (1 and 3), Hamburg (1 and 3), Holland (1), Livonia (1), Mesick (1), Mt. Clemens (1), Oxford (1)(1)(1), Port Huron (1), Redford (1), Roseville (1), Royal Oak (1), Shelby Township (1), St. Clair (1), St. Clair Shores (1), Sterling Heights (1), Traverse City (1)(1)(1)(1)(1), Troy (1)(1), Warren (1)(1), West Branch (2) and Ypsilanti (1)

Mississippi.....Nesbit (2)

New York.....Brooklyn (2) and Maspeth (2)

Ohio.....Blue Ash (2), Bluffton (1), Canal Fulton (1),
Columbus
(2), Lima (1), Minerva (1), Perrysburg (2), Port
Clinton (1) and Upper Sandusky (1)

Oklahoma.....Tulsa (4)

Pennsylvania.....Ridgway (1)

Texas.....Bryan (4), Dallas (4), Greenville (4) and Houston
(4) (4) (4)

Virginia.....Duffield (1)

Germany.....Riedstadt (2) and Zell am Harmersbach(1 and 3)

Italy.....Poggio Rusco (1)

United Kingdom.....Wednesfield, England (1)

Note: Multiple footnotes within the same parenthesis indicate the facility is engaged in significant activities relating to more than one segment. Multiple footnotes to the same municipality denote separate facilities in that location. Industry segments in the preceding table are identified as follows: (1) transportation-related products; (2) specialty products -- architectural; (3) specialty products -- other; and (4) discontinued operations.

MascoTech's largest manufacturing facility is located in Vernon, California and is a multi-plant facility of approximately 920,000 square feet. MascoTech owns the largest plant, comprising approximately 540,000 square feet, and operates the remaining portions of this facility under leases, the earliest of which expires at the end of 1994. Except for the foregoing facility and an additional manufacturing facility covering approximately 605,000 square feet, MascoTech's manufacturing facilities range in size from approximately 25,000 to 325,000 square feet, are owned by MascoTech or leased and are not subject to significant encumbrances. MascoTech's executive offices are located in Taylor, Michigan, and are provided by the Company to MascoTech under a corporate services agreement.

MascoTech's buildings, machinery and equipment have been generally well maintained, are in good operating condition, and are adequate for current production requirements.

ITEM 3. LEGAL PROCEEDINGS.

Between 1982 and 1989, subsidiaries of the Company sold plastic plumbing fittings used to connect plastic pipes for water supply systems in residential construction. A small percentage of these fittings have experienced leaks which the Company believes are caused by deficiencies in the resin supplied to its subsidiaries by E.I. du Pont de Nemours and Company. The Company's policy has been to repair any leaks which have been reported and, as a result, the Company has not experienced litigation of any consequence arising from this situation. Based on the terms of a recent settlement of litigation previously instituted by the Company against du Pont, the Company does not believe that these matters will result in any future material adverse effect on the Company's financial position.

Civil suits were filed in December 1992 in a California state court by the California Attorney General, the Natural Resources Defense Counsel and the Environmental Law Foundation against a subsidiary of the Company and approximately 15 other manufacturers or distributors of faucets sold in that state. The suits principally allege that brass faucets unlawfully leach lead into tap water and that the defendants have failed to provide clear and reasonable warnings in violation of California law. The plaintiffs have requested, among other things, that the defendants be enjoined from selling products in California that leach lead into tap water, be ordered to offer restitution to California purchasers of defendants' products, and pay unspecified compensatory and punitive damages. Based upon the Company's present knowledge and subject to future legal and factual developments, the Company

does not believe that these suits will result in any material adverse effect on the Company's financial position.

The Company is subject to other claims and litigation in the ordinary course of business, but does not believe that any such claim or litigation will have a material adverse effect on its consolidated financial position.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS.

Not applicable.

SUPPLEMENTARY ITEM. EXECUTIVE OFFICERS OF REGISTRANT (PURSUANT TO INSTRUCTION 3 TO ITEM 401(B) OF REGULATIONS S-K).

NAME	POSITION	AGE	OFFICER SINCE
Alex Manoogian.....	Chairman Emeritus	92	1929
Richard A. Manoogian.....	Chairman of the Board and Chief Executive Officer	57	1962
Wayne B. Lyon.....	President and Chief Operating Officer	61	1972
Gerald Bright.....	Vice President and Assistant Secretary	71	1970
David A. Doran.....	Vice President -- Taxes	52	1984
Eugene A. Gargaro, Jr.....	Vice President and Secretary	51	1993
Ronald L. Jones.....	President -- Home Furnishings Products	51	1989
Raymond F. Kennedy.....	President -- Building Products	51	1989
John R. Leekley.....	Vice President and General Counsel	50	1979
Richard G. Mosteller.....	Senior Vice President -- Finance	61	1962
John C. Nicholls, Jr.....	Treasurer	60	1967
Robert B. Rosowski.....	Vice President -- Controller	53	1973
Samuel Valenti, III.....	Vice President -- Investments	48	1971
David G. Wesenberg.....	Vice President -- Human Resources	63	1980

Executive officers who are elected by the Board of Directors serve for a term of one year or less. Each executive officer has been employed in a managerial capacity with the Company for over five years except for Mr. Gargaro. Richard A. Manoogian, the Chairman of the Board and Chief Executive Officer of the Company, is the son of its Chairman Emeritus, Alex Manoogian.

Mr. Gargaro joined the Company as its Vice President and Secretary on October 1, 1993. Prior to joining the Company, Mr. Gargaro was a partner at the Detroit law firm of Dykema Gossett PLLC. Mr. Gargaro has served as a director and Secretary of MascoTech, Inc., since 1984 and a director and Secretary of TriMas Corporation since 1989.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS.

The New York Stock Exchange is the principal market on which the Company's Common Stock is traded. The following table indicates the high and low sales prices of the Company's Common Stock as reported on the New York Stock Exchange Composite Tape and the cash dividends declared per share for the periods indicated:

DIVIDENDS	QUARTER	MARKET PRICE		DECLARED
		HIGH	LOW	

1992				
First.....		\$28 7/8	\$22 7/8	\$.15
Second.....		29 7/8	24 1/8	.15
Third.....		27 5/8	24 3/8	.16
Fourth.....		30	22	.16

Total.....				\$.62

1993				
First.....		\$35 1/4	\$ 29	\$.16
Second.....		34 3/4	28 5/8	.16
Third.....		32 1/4	25 1/2	.17
Fourth.....		38 7/8	28 3/4	.17

Total.....				\$.66

On March 15, 1994, there were approximately 8,200 holders of record of the Company's Common Stock.

The Company expects that its practice of paying quarterly dividends on its Common Stock will continue, although future dividends will continue to depend upon the Company's earnings, capital requirements, financial condition and other factors.

ITEM 6. SELECTED FINANCIAL DATA.

The following table sets forth summary consolidated financial information of the Company, for the years and dates indicated:

	1993	1992	(IN THOUSANDS EXCEPT PER SHARE AMOUNTS)		
	-----	-----	1991	1990	1989
	-----	-----	-----	-----	-----
Net sales.....	\$3,886,000	\$3,525,000	\$3,141,000	\$3,209,000	\$3,150,500
Net income.....	\$ 221,100	\$ 183,100	\$ 44,900	\$ 138,800	\$ 220,900
Per share of common stock:					
Net income.....	\$1.45	\$1.21	\$.30	\$.91	\$1.42
Dividends declared.....	\$.66	\$.62	\$.58	\$.55	\$.51
Dividends paid.....	\$.65	\$.61	\$.57	\$.54	\$.50
As at December 31:					
Total assets.....	\$4,021,060	\$3,986,560	\$3,785,810	\$3,760,740	\$3,640,780
Long-term debt.....	\$1,418,290	\$1,487,090	\$1,369,290	\$1,334,300	\$1,153,190

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ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.

CORPORATE DEVELOPMENT

While no major acquisitions occurred in 1993, acquisitions have historically contributed significantly to Masco's long-term growth, even though generally the initial impact on earnings is minimal after deducting acquisition-related costs such as interest and added depreciation and amortization. The important earnings benefit to Masco arises from subsequent growth of acquired companies, since incremental sales are not handicapped by these expenses.

PROFIT MARGINS

After-tax profit margins as a percent of net sales were 5.7 percent, 5.2 percent and 1.4 percent in 1993, 1992 and 1991, respectively. After-tax profit return on shareholders' equity was 11.7 percent, 10.2 percent and 2.5 percent in 1993, 1992 and 1991, respectively.

The increased profit margins for 1993, compared with the previous two years, were primarily the result of increased product sales resulting from improved market shares and the modest economic recovery, as well as increased income related to the Company's equity investments in MascoTech, Inc.

LIQUIDITY AND CAPITAL RESOURCES

At year-end 1993, current assets were approximately 3.4 times current liabilities.

Over the years, the Company has funded its growth through a combination of cash provided by operations and long-term bank and other borrowings.

During 1993, cash was provided by \$261 million from operating activities, \$88 million from the sale of affiliate investments to MascoTech, \$100 million from the redemption of the MascoTech 10% exchangeable preferred stock and \$23 million from other net cash inflows; cash decreased by \$167 million for the purchase of property and equipment, \$131 million for a net decrease in debt and \$99 million for cash dividends paid. The aggregate of the preceding items represents a net cash inflow of \$75 million in 1993. Cash provided by operating activities totalled \$261 million, \$204 million and \$244 million in 1993, 1992 and 1991, respectively; the Company has generally reinvested a majority of these funds in its operations.

During 1993, the Company issued \$400 million of fixed rate debt securities, with the proceeds being used to eliminate floating-rate borrowings under its bank revolving-credit agreement.

The Company's anticipated internal cash flow is expected to provide sufficient liquidity to fund its near-term working capital and other investment needs. The Company believes that its longer-term working capital and other general corporate requirements will be satisfied through its internal cash flow and to the extent necessary in the financial markets.

RECEIVABLES AND INVENTORIES

During 1993, the Company's receivables increased by \$43 million. This increase is primarily the result of increased sales in the fourth quarter of 1993 compared with the same period in 1992.

During 1993, the Company's inventories increased by \$39 million. As compared with the average manufacturing company, the Company maintains a higher investment in inventories, which relates to the Company's business strategies of providing better customer service, establishing efficient production scheduling and benefitting from larger, more cost-effective purchasing.

CAPITAL EXPENDITURES

Capital expenditures totalled \$167 million in 1993, compared with \$118 million in 1992. These amounts primarily pertain to expenditures for additional facilities related to increased demand as well as for new Masco products.

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The Company continues to invest in automating its manufacturing operations and increasing its productivity, in order to be a more efficient producer and improve customer service and response time.

Depreciation expense and amortization expense were \$82.1 million and \$33.9 million, respectively, in 1993, compared with \$79.4 million and \$35.1 million, respectively, in 1992. This continued high level is primarily the result of acquisitions and the Company's capital expenditures programs. The major portion of amortization expense from the excess of cost over net assets acquired, relates to companies acquired in 1986 and 1987. These companies have been successful for many years in established markets not subject to rapid technological changes. At each balance sheet date management assesses whether there has been an impairment in the carrying value of excess of cost over net assets of acquired companies by primarily comparing current and projected sales, operating income and annual cash flows with the related annual amortization expense.

EQUITY AND OTHER INVESTMENTS IN AFFILIATES

Equity earnings from affiliates were \$18.7 million in 1993 compared with equity earnings of \$17.3 million in 1992 and equity loss of \$12.6 million in 1991.

In March 1993, the Company and MascoTech, Inc., partially restructured their affiliate relationships through transactions that reduced the Company's common equity interest in MascoTech from 47 percent to approximately 35 percent and resulted in MascoTech's acquisition of the Company's investments in Emco Limited. The Company received \$87.5 million in cash, \$100 million of 10% exchangeable preferred stock and seven-year warrants to purchase 10 million common shares of MascoTech at \$13 per share. MascoTech received 10 million of its common shares, \$77.5 million of its 12% exchangeable preferred stock, the Company's investments in Emco Limited and a modified option expiring in 1997 to require the Company to purchase up to \$200 million aggregate amount of debt securities of MascoTech.

In November 1993, MascoTech redeemed for cash its \$100 million of 10% exchangeable preferred stock issued in March 1993. As a result of this redemption, the Company realized a \$28.3 million pre-tax gain.

In December 1993, following MascoTech's call for redemption, the Company converted the 6% debentures due 2011 into MascoTech common stock, thereby increasing the Company's common equity interest in MascoTech from approximately 35 percent to 42 percent.

CASH DIVIDENDS

During 1993, the Company increased its dividend rate seven percent to \$.17 per share quarterly. This marks the 35th consecutive year in which dividends have been increased. Dividend payments over the last five years have increased at an eight percent average annual rate. Although the Company is aware of the greater interest in yield by many investors and has maintained an increased dividend payout in recent years, the Company continues to believe that its shareholders' long-term interests are best served by investing a significant portion of its earnings in the future growth of the Company.

RECENTLY ISSUED FINANCIAL ACCOUNTING STANDARDS

Statement of Financial Accounting Standards No. 112, Employers' Accounting for Postemployment Benefits, became effective in January 1994. This Standard specifies that the estimated cost of benefits provided by an employer to former or inactive employees after employment but before retirement be accounted for on an accrual basis. This Standard will not have a material impact on the Company's financial statements.

Statement of Financial Accounting Standards No. 114, Accounting by Creditors for Impairment of a Loan, becomes effective in January 1995. This Standard addresses the accounting for impairment of a loan by specifying how allowances for credit losses should be determined. This Standard will not have a material impact on the Company's financial statements.

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Statement of Financial Accounting Standards No. 115, Accounting for Certain Investments in Debt and Equity Securities, became effective in January 1994. This Standard defines the accounting and reporting for all investments in debt securities and for investments in equity securities that have readily determinable fair values. This Standard will not have a material impact on the Company's financial statements.

GENERAL FINANCIAL ANALYSIS

1993 VERSUS 1992

Net sales in 1993 increased 10 percent to \$3,886 million. The sales increase was primarily due to increased shipments of kitchen, bath and home furnishings products. Cost of sales as a percentage of sales was 67.5 percent in both 1993 and 1992. Selling, general and administrative expenses as a percentage of sales decreased modestly to 22.1 percent in 1993 from 22.3 percent in 1992. Operating profit increased 13 percent in 1993 from 1992.

The Company's Building and Home Improvement Products sales in 1993 increased 10 percent to \$2,188 million while operating profit increased 12 percent to \$412 million.

Sales in 1993 of the Company's Home Furnishings Products increased 11 percent to \$1,698 million and operating profit increased 15 percent to \$69 million.

Included in other income and expense for 1993 are equity earnings from MascoTech, Inc. of \$23.2 million, prior to an approximate \$10 million after-tax fourth quarter charge which reflects the Company's equity share of MascoTech's loss provision for the disposition of its energy-related businesses and extraordinary loss on the early extinguishment of debt, as compared with \$12.6 million of equity earnings in 1992. MascoTech reported income from continuing operations of \$70.9 million and \$39 million in 1993 and 1992, respectively, and net income, after preferred stock dividends, of \$32.7 million for 1993 and \$29.1 million for 1992. The results of MascoTech were favorably impacted by internal cost reductions and from increased demand in its transportation industries, which more than offset its 1993 fourth quarter special charges of \$26 million after-tax.

Included in the fourth quarter of 1993 is a \$28.3 million pre-tax gain (approximately \$18 million after-tax) on the redemption of MascoTech's 10% exchangeable preferred stock. This gain was principally offset by the Company's approximate \$10 million after-tax equity share of MascoTech's above-mentioned fourth quarter special charges, as well as by charges related to certain restructurings of Company operations which should result in future cost savings.

The Company reported increases in net income and earnings per share of 21 percent and 20 percent, respectively, in 1993 as compared with 1992.

1992 VERSUS 1991

Net sales in 1992 increased 12 percent to \$3,525 million. Cost of sales as a percentage of sales decreased to 67.5 percent in 1992 from 70.2 percent in 1991. Selling, general and administrative expenses as a percentage of sales increased to 22.3 percent in 1992 from 21.8 percent in 1991. The sales increase was primarily due to increased shipments of kitchen, bath and home furnishings products. The decrease in cost of sales as a percentage of sales resulted primarily from profit improvement programs implemented in prior years having a favorable impact on current earnings. The increase in selling, general and administrative expenses as a percentage of sales was primarily due to increased promotional and advertising costs. Operating profit increased 44 percent.

The Company's Building and Home Improvement Products sales in 1992 increased 16 percent while operating profit increased 35 percent.

Sales and operating profit in 1992 of the Company's Home Furnishings Products increased 7 percent and 58 percent, respectively.

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Included in other income and expense for 1992 are equity earnings from MascoTech, Inc. of \$12.6 million as compared with \$9.2 million of equity loss in 1991. MascoTech reported net income, after preferred stock dividends, of \$29.1 million for 1992, as compared with net loss, after preferred stock dividends, of \$18.6 million in 1991. The results of MascoTech were favorably impacted by internal cost reduction and restructuring initiatives and from modest improvement in the economy. Also, lower interest rates contributed to reduced interest expense for 1992.

Included in other income and expense for 1991 is approximately \$32 million pre-tax of non-operating charges attributable to write-downs of the Company's carrying value of investments in certain affiliated companies and other long-term investments.

The Company reported increases in net income and earnings per share of 308 percent and 303 percent, respectively, in 1992 as compared with 1991.

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ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.

REPORT OF INDEPENDENT ACCOUNTANTS

To the Board of Directors
and Shareholders of Masco Corporation:

We have audited the accompanying consolidated balance sheet of Masco Corporation and subsidiaries as of December 31, 1993 and 1992, and the related consolidated statements of income and cash flows for each of the three years in the period ended December 31, 1993, and the financial statement schedules as listed in Item 14(a)(2)(i) of this Form 10-K. These financial statements and financial statement schedules are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedules based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Masco Corporation and subsidiaries as of December 31, 1993 and 1992, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 31, 1993 in conformity with generally accepted accounting principles. In addition, in our opinion, the financial statement schedules referred to above, when considered in relation to the basic financial statements taken as a whole, present fairly, in all material respects, the information required to be included therein.

COOPERS & LYBRAND

Detroit, Michigan
February 24, 1994

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MASCO CORPORATION
CONSOLIDATED BALANCE SHEET
DECEMBER 31, 1993 AND 1992

	1993	1992
ASSETS		
Current Assets:		
Cash and cash investments.....	\$ 119,980,000	\$ 45,350,000
Marketable securities.....	4,890,000	8,970,000
Receivables.....	610,120,000	547,840,000
Inventories.....	824,130,000	781,700,000
Prepaid expenses.....	84,700,000	81,680,000
Total current assets.....	1,643,820,000	1,465,540,000
Equity investments in MascoTech, Inc.....	294,700,000	246,940,000
Other investment in MascoTech, Inc.....	--	130,000,000
Equity investments in other affiliates.....	54,630,000	85,740,000
Property and equipment.....	1,095,170,000	1,030,530,000
Excess of cost over acquired net assets.....	605,170,000	627,300,000
Other assets.....	327,570,000	400,510,000
Total assets.....	\$4,021,060,000	\$3,986,560,000
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current Liabilities:		
Notes payable.....	\$ 33,160,000	\$ 94,810,000
Accounts payable.....	161,220,000	133,210,000
Accrued liabilities.....	296,060,000	263,490,000
Total current liabilities.....	490,440,000	491,510,000
Long-term debt.....	1,418,290,000	1,487,090,000
Deferred income taxes and other.....	113,900,000	121,080,000
Total liabilities.....	2,022,630,000	2,099,680,000
Shareholders' Equity:		
Common shares authorized: 400,000,000; issued: 1993 -- 152,850,000; 1992 -- 152,470,000.....	152,850,000	152,470,000
Preferred shares authorized: 1,000,000.....	--	--
Paid-in capital.....	69,880,000	61,370,000
Retained earnings.....	1,805,170,000	1,685,010,000
Cumulative translation adjustments.....	(29,470,000)	(11,970,000)
Total shareholders' equity.....	1,998,430,000	1,886,880,000
Total liabilities and shareholders' equity.....	\$4,021,060,000	\$3,986,560,000

See notes to consolidated financial statements.

MASCO CORPORATION

CONSOLIDATED STATEMENT OF INCOME

FOR THE YEARS ENDED DECEMBER 31, 1993, 1992 AND 1991

	1993	1992	1991
Net sales.....	\$3,886,000,000	\$3,525,000,000	\$3,141,000,000
Cost of sales.....	2,621,630,000	2,381,040,000	2,206,460,000
Gross profit.....	1,264,370,000	1,143,960,000	934,540,000
Selling, general and administrative expenses...	860,540,000	785,420,000	686,210,000
Operating profit.....	403,830,000	358,540,000	248,330,000
Other income (expense), net:			
Re: MascoTech, Inc.:			
Equity earnings (loss).....	13,160,000	12,570,000	(9,170,000)
Interest and dividend income.....	16,220,000	17,100,000	17,100,000
Gain from redemption of preferred stock...	28,300,000	--	--
Equity earnings (loss), other affiliates....	5,580,000	4,720,000	(3,470,000)
Other, net.....	1,330,000	12,510,000	(28,610,000)
Interest expense.....	(105,820,000)	(100,640,000)	(126,580,000)
	(41,230,000)	(53,740,000)	(150,730,000)
Income before income taxes.....	362,600,000	304,800,000	97,600,000
Income taxes.....	141,500,000	121,700,000	52,700,000
Net income.....	\$ 221,100,000	\$ 183,100,000	\$ 44,900,000
Earnings per share.....	\$1.45	\$1.21	\$.30

See notes to consolidated financial statements.

MASCO CORPORATION

CONSOLIDATED STATEMENT OF CASH FLOWS

FOR THE YEARS ENDED DECEMBER 31, 1993, 1992 AND 1991

	1993	1992	1991
CASH FLOWS FROM (FOR):			
Operating Activities:			
Net income.....	\$ 221,100,000	\$ 183,100,000	\$ 44,900,000
Depreciation and amortization.....	115,990,000	114,450,000	102,690,000
Equity (earnings) loss, net.....	(13,800,000)	(13,190,000)	38,090,000
Write-downs of long-term investments.....	--	--	31,800,000
Deferred income taxes and other.....	(8,500,000)	11,620,000	(3,550,000)
Gain from redemption of MascoTech preferred stock, net of tax.....	(17,550,000)	--	--
Total from earnings.....	297,240,000	295,980,000	213,930,000
(Increase) in receivables.....	(42,520,000)	(52,450,000)	(13,180,000)
(Increase) decrease in inventories.....	(38,840,000)	(35,100,000)	17,560,000
Increase (decrease) in accounts payable and accrued liabilities, net.....	45,050,000	(4,800,000)	25,310,000
Net cash from operating activities.....	260,930,000	203,630,000	243,620,000
Investing Activities:			
Capital expenditures.....	(166,540,000)	(117,690,000)	(112,990,000)
Currency translation adjustments.....	(17,500,000)	(27,090,000)	(15,820,000)
Sale of affiliate investments to MascoTech....	87,500,000	--	--
Proceeds from redemption of MascoTech preferred stock.....	100,000,000	--	--
Acquisition of Masco Capital Corp.....	--	--	(49,450,000)
Other, net.....	40,700,000	(63,380,000)	(2,850,000)
Net cash from (for) investing activities.....	44,160,000	(208,160,000)	(181,110,000)
Financing Activities:			
Issuance of notes.....	400,000,000	400,000,000	--
Retirement of notes.....	(200,000,000)	(300,000,000)	--
Issuance of Company common stock.....	--	--	63,600,000
Increase in other debt.....	290,770,000	460,470,000	449,690,000
Payment of other debt.....	(622,230,000)	(480,000,000)	(479,660,000)
Cash dividends paid.....	(99,000,000)	(92,690,000)	(85,150,000)
Net cash (for) financing activities.....	(230,460,000)	(12,220,000)	(51,520,000)
Cash and Cash Investments:			
Increase (decrease) for the year.....	74,630,000	(16,750,000)	10,990,000
At January 1.....	45,350,000	62,100,000	51,110,000
At December 31.....	\$ 119,980,000	\$ 45,350,000	\$ 62,100,000

See notes to consolidated financial statements.

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MASCO CORPORATION

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

ACCOUNTING POLICIES:

Principles of Consolidation. The consolidated financial statements include the accounts of Masco Corporation and all majority-owned subsidiaries. All significant intercompany transactions have been eliminated.

Average Shares Outstanding. The average number of common shares outstanding in 1993, 1992 and 1991 approximated 152.7 million, 151.7 million and 149.9 million, respectively.

Cash and Cash Investments. The Company considers all highly liquid investments with a maturity of three months or less to be cash and cash investments.

Receivables. Accounts and notes receivable are presented net of allowances for doubtful accounts of \$19.1 million at December 31, 1993 and \$16.3 million at December 31, 1992.

Property and Equipment. Property and equipment, including significant betterments to existing facilities, are recorded at cost. Upon retirement or disposal, the cost and accumulated depreciation are removed from the accounts and any gain or loss is included in income. Maintenance and repair costs are charged to expense as incurred.

Depreciation and Amortization. Depreciation is computed principally using the straight-line method over the estimated useful lives of the assets. Annual depreciation rates are as follows: buildings and land improvements, 2 to 10 percent, and machinery and equipment, 5 to 33 percent. Depreciation was \$82.1 million, \$79.4 million and \$70.2 million in 1993, 1992 and 1991, respectively.

The excess of cost over net assets of acquired companies is being amortized using the straight-line method over periods not exceeding 40 years; at December 31, 1993 and 1992, such accumulated amortization totalled \$127.2 million and \$107.3 million, respectively. At each balance sheet date management assesses whether there has been an impairment in the carrying value of excess of cost over net assets of acquired companies primarily by comparing current and projected sales, operating income and annual cash flows with the related annual amortization expense. Purchase costs of patents are being amortized using the straight-line method over their remaining lives. Amortization of intangible assets was \$33.9 million, \$35.1 million and \$32.5 million in 1993, 1992 and 1991, respectively.

Fair Value of Financial Instruments. The carrying value of financial instruments reported in the balance sheet for current assets and current liabilities approximates fair value. The fair value of financial instruments that are carried as long-term investments (other than those accounted for by the equity method) was based principally on quoted market prices for those or similar investments or by discounting future cash flows using a discount rate that approximates the risk of the investments. The fair value of the Company's long-term debt instruments was based principally on quoted market prices for the same or similar issues or the current rates offered to the Company for debt with similar terms and remaining maturities. The aggregate market value of the Company's long-term investments and long-term debt at December 31, 1993 was approximately \$230 million and \$1,471 million, as compared with the Company's carrying value of \$200 million and \$1,418 million, respectively. The aggregate market value of the Company's long-term investments and long-term debt at December 31, 1992 was approximately \$530 million and \$1,508 million, as compared with the Company's carrying value of \$537 million and \$1,487 million, respectively.

Recently Issued Professional Accounting Standards. Statement of Financial Accounting Standards (SFAS) No. 112, Employers' Accounting for Postemployment Benefits, SFAS No. 114, Accounting by Creditors for Impairment of a Loan and SFAS No. 115, Accounting for Certain Investments in Debt and Equity Securities, which become effective in 1994 and 1995, will not have a material impact on the Company's financial statements.

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EXHIBIT K

AGREEMENT

AGREEMENT dated as of March 7, 1985 between Masco Corporation, a Delaware corporation ("Masco") and Masco Industries, Inc., a Delaware corporation ("Industries").

WITNESSETH:

WHEREAS, Masco and Industries are parties to the following agreements (collectively, the "Acquisition Agreements"), each dated as of January 13, 1985: (i) an Agreement and Plan of Merger (the "Merger Agreement"), among Masco, Industries and NI Industries, Inc., a Delaware corporation ("NI"), (ii) several Stock Purchase Agreements (the "Stock Purchase Agreements"), among Masco, Industries and certain stockholders of NI, and (iii) a Company Stock Option Agreement (the "Company Stock Option Agreement"), among Masco, Industries and NI; and

WHEREAS, the Acquisition Agreements provide for Masco and Industries to acquire all of the outstanding shares of NI through a company jointly owned by Masco and Industries; and

WHEREAS, Masco and Industries formed Nimas Corporation, a Delaware corporation ("Nimas") and its wholly-owned subsidiary, Nimas Subsidiary, Inc., a Delaware corporation ("Merger Sub") for the purpose of effectuating such acquisition and Nimas has acquired more than 90% of NI's shares through a tender offer; and

WHEREAS, Masco and Industries desire to confirm certain agreements and understandings concerning NI's building products operations following the acquisition of the remaining NI shares by Nimas through the merger of Merger Sub into NI, and to confirm the respective rights of Masco and Industries to acquire all of the issued and outstanding common stock of Nimas under certain circumstances.

NCW, THEREFORE, in consideration of the mutual agreements set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.00. Definitions. Capitalized terms used in this Agreement and not otherwise defined herein have the respective meanings set forth in the Merger Agreement.

ARTICLE II

COOPERATION

SECTION 2.00. Cooperation. Subject to the terms and conditions of this Agreement, Masco and Industries shall cooperate with one another and shall take such action as may be reasonably necessary to consummate the Merger contemplated by the Merger Agreement. Such cooperation shall

include mutual consultation with respect to all determinations to be made and the exercise of rights under the Acquisition Agreements.

ARTICLE III

ACQUISITION OF NI

SECTION 3.01. Capitalization. Masco and Industries have heretofore each purchased one share of Nimas common stock, \$1 par value per share, for a purchase price of \$1,000 per share. In addition, Masco and Industries have each made a capital contribution to Nimas in the amount of \$50,000,000, such capital contribution having been made in cash in the case of Industries and partly in cash (\$28,264,000) and partly with the contribution of 988,000 shares of NI common stock in the case of Masco (such shares being valued at the Offer price of \$22.00 per share).

SECTION 3.02. Bank Financing Nimas and Merger Sub have heretofore entered into interim financing arrangements with certain banks to provide an aggregate of \$365,000,000 for the Offer and the Merger, consisting of \$100,000,000 to Nimas (which has been guaranteed by Masco) and \$265,000,000 to Merger Sub. Masco and Industries agree that each will use all reasonable efforts to arrange for the replacement of such interim financing by permanent financing, including, to the extent necessary, the guarantee by Masco of up to \$100,000,000 of such financing.

SECTION 3.03. Masco Advances. Masco has heretofore advanced funds to Nimas and from time to time prior to June 30, 1985 Masco shall advance to Nimas additional funds, up to an aggregate of \$80,000,000 for all such advances, to enable Nimas to purchase NI stock pursuant to the Offer and pay interest charges and other expenses incident to the transaction contemplated by the Offer. Such advances, which bear interest at the rate of 12 1/2% per annum, are to be evidenced by a promissory note (the "Nimas Note") in the form included in Exhibit 3.03 hereto.

SECTION 3.04. Additional Investment. Except as expressly set forth in this Agreement, neither Masco nor Industries, nor any of their respective subsidiaries or affiliates, shall have any obligation to make any loan, extend any credit (including any guarantee) or make any investment in connection with the Acquisition Agreements or the transactions contemplated by this Agreement.

SECTION 3.05. Dividends. Subject to the terms of any financing arrangements to which Nimas or NI may be parties and NI's and Nimas' financial requirements for continuing operations, Masco and Industries hereby confirm their desire that NI and Nimas from time to time pay dividends to their respective stockholders.

ARTICLE IV

PURCHASE AND SALE OF STOCK OF NI WEST SUBSIDIARIES

SECTION 4.00. Purchase and Sale. As soon as practicable following the consummation of the Merger, NI West, Inc., a California corporation which is a wholly owned subsidiary of NI ("NI West"), shall sell to Masco and Masco shall purchase from NI West, all of the issued and outstanding shares of capital stock of those subsidiaries of NI West (collectively, the "NI West Subsidiaries") shown on Exhibit 4.00 hereto as being sold to Masco. The purchase price for the shares of the NI West Subsidiaries shall be as set forth on Exhibit 4.00, and shall be payable in cash at the closing.

ARTICLE V

TRANSFER OF BUILDING PRODUCTS ASSETS

SECTION 5.01. Organization of Masco Building Products Corp. Prior to the Merger, Masco shall organize a new Delaware corporation under the name "Masco Building Products Corp." ("MBPC"). As soon as practicable following the consummation of the Merger, Masco, MBPC, Nimas, NI, NI West and Sponge-Cushion, Inc. (a Delaware corporation which is a wholly owned subsidiary of NI West and is hereinafter referred to as "Sponge-Cushion") shall make, or shall cause to be made, the following simultaneous transfers and exchanges in accordance with Section 351 of the Internal Revenue Code of 1954, as amended:

Common Stock

(i) Masco shall transfer to MBPC \$8,500,000 cash in exchange for all of the outstanding common stock of MBPC;

BRP Assets

(ii) NI shall transfer to MBPC the BRP Assets (hereinafter defined);

(iii) MBPC shall assume all of the liabilities of NI associated with the BRP Assets (as specified in Section 5.04 hereof);

(iv) MBPC shall issue to NI its pro rata portion (as determined under Section 5.02 hereof) of the 85,000 shares of MBPC non-voting preferred stock, par value \$100 per share (the "MBPC Preferred Stock") to be issued by MBPC hereunder, which shall have the principal terms set forth in Exhibit 5.01(iv) attached hereto and such other rights and preferences as may be mutually agreeable to Masco and Industries;

(v) MBPC shall issue to NI its pro rata portion of the aggregate principal amount of notes (the "MBPC Notes") to be issued by MBPC hereunder (such pro rata portion and aggregate principal amount to be determined under Section 5.02 hereof);

Artistic Brass Assets

(vi) NI West shall transfer to MBPC the Artistic Brass Assets (hereinafter defined);

(vii) MBPC shall assume all of the liabilities of NI West associated with the Artistic Brass Assets (as specified in Section 5.04 hereof);

(viii) MBPC shall issue to NI West its pro rata portion of the 85,000 shares of MBPC Preferred Stock;

(ix) MBPC shall issue to NI West its pro rata portion of the aggregate principal amount of MBPC Notes;

Sponge-Cushion Assets

(x) Sponge-Cushion shall transfer to MBPC all of its assets, other than cash, cash investments and accounts receivable;

(xi) MBPC shall assume all of the liabilities of Sponge-Cushion as specified in Section 5.04 hereof;

(xii) MBPC shall issue to Sponge-Cushion its pro rata portion of the 85,000 shares of MBPC Preferred Stock; and

(xiii) MBPC shall issue to Sponge-Cushion its pro rata portion of the aggregate principal amount of MBPC Notes.

SECTION 5.02. MBPC Notes; Pro Rata Portion.

(a) The aggregate principal amount of MBPC Notes to be issued hereunder shall be equal to the difference between (i) the aggregate tax bases as of the date of closing of the transactions contemplated by this Article V of NI, NI West and Sponge-Cushion for the BRP Assets, the Artistic Brass Assets and the assets transferred by Sponge-Cushion, and (ii) the sum of the \$8,500,000 par value of the MBPC Preferred Stock plus the aggregate amount of the liabilities assumed (as would be shown on the respective balance sheets of NI, NI West and Sponge-Cushion as of the date of closing

pursuant to the foregoing provisions). For purposes of the foregoing calculation only, the liabilities assumed by MBPC shall be included only to the extent that such liabilities represent deductible expenses or tax basis assets to NI, NI West and Sponge-Cushion as of the closing date.

(b) The MBPC Notes shall have the principal terms set forth in Exhibit 5.02 hereto and such other terms as may be mutually agreeable to Masco and Industries. It is the intention of the parties that such terms will result in the MBPC Notes having a fair market value at the closing date equal to face value so that there would be no taxable gain or loss to NI, NI West or Sponge-Cushion upon the retirement of the MBPC Notes.

(c) The respective pro rata portions of MBPC Preferred Stock and MBPC Notes to be issued to NI, NI West and Sponge-Cushion shall be determined by the respective ratios of the tax bases (less related liabilities assumed as set forth in Section 5.04(i)) of the BRP Assets, the Artistic Brass Assets and the assets transferred by Sponge-Cushion to the aggregate tax bases (less related liabilities assumed as set forth in Section 5.04(i)) for all such assets.

SECTION 5.03. BRP Assets; Artistic Brass Assets.

(a) For purposes of this Agreement, the BRP Assets shall mean all of the assets identified with the businesses referred to as building and remodeling products operations in NI's 1983 annual report to stockholders, including, without limitation, inventories of raw materials, work in process and finished goods; furniture, fixtures and equipment; vehicles; real estate; books and records; other

tangible property; patents, trademarks and trade names; rights under leases, contracts and other documents; prepaid expenses; permits, licenses and other governmental authorizations; goodwill; and other intangibles. Notwithstanding the foregoing, the BRP Assets shall not include the capital stock of any NI Subsidiary, including NI West, any assets owned by NI West or any of its subsidiaries, or any corporate office assets of NI. Liabilities associated with the BRP Assets shall not include any liabilities of NI West.

(b) For purposes of this Agreement, the Artistic Brass Assets shall mean all of the assets of NI West associated with its Artistic Brass Division and any other assets of NI West's building products operations, including, without limitation, inventories of raw materials, work in process and finished goods; furniture, fixtures and equipment; ~~vehicles; real estate; books and records; other tangible~~ property; patents, trademarks and trade names; rights under leases, contracts and other documents; prepaid expenses; permits, licenses and other governmental authorizations; goodwill; and other intangibles. Notwithstanding the foregoing, the Artistic Brass Assets shall not include the stock of any NI West Subsidiary.

(c) The BRP Assets and the Artistic Brass Assets shall exclude cash, cash investments, accounts receivable and the promissory note(s) issued in connection with the sale of the former Price Pfister Division.

SECTION 5.04. Liabilities Assumed. The liabilities assumed by MBPC pursuant to Section 5.01 shall consist of:

(i) subject to the provisions of clause (iv) below, all liabilities associated with the assets transferred by NI, NI West and Sponge-Cushion which would be shown on their respective balance sheets as of the closing date (whether or not representing deductible expenses or basis adjustments);

(ii) all obligations and liabilities arising under contracts and commitments associated with the businesses conducted with the transferred assets;

(iii) all claims and litigation (whether or not existing or asserted as of the closing date) to the extent specifically relating to or arising out of the businesses theretofore conducted with the transferred assets (including, without limitation, product warranty and product liability claims, if any); and

(iv) income tax liabilities relating to or arising out of the businesses theretofore conducted with the transferred assets, but only to the extent that such income tax liabilities result from the taxation of amounts which generate additional tax basis to MBPC or exceed income tax reserves retained by the transferors if no additional tax basis arises for MBPC.

SECTION 5.05. Balance Sheet; Tax Basis. In order to determine the aggregate amount of MBPC Notes to be issued and the pro rata portions thereof and of the MBPC Preferred Stock, as soon as practicable following the transfers and

exchanges contemplated by Section 5.01 above (but not more than 60 days thereafter), NI, NI West and Sponge-Cushion shall prepare unaudited balance sheets, as of the date of the transfers and exchanges, reflecting the assets transferred to and liabilities assumed by MBPC (but only to the extent such liabilities represent deductible expenses or tax basis assets to the transferor). The balance sheets may be estimated to the extent necessary if the closing occurs on a date other than at the end of a month. NI, NI West and Sponge-Cushion shall also prepare as soon as practicable following the transfers and exchanges (but not more than 60 days thereafter) schedules setting forth the tax bases for the transferred assets as of such date. The amounts so set forth shall be final and binding unless Masco and Industries shall agree otherwise. As soon as practicable after all such deliveries, MBPC shall deliver to the transferors certificates evidencing their respective pro rata portions of the MBPC Preferred Stock and MBPC Notes, which shall be issued effective as of the closing date.

SECTION 5.06. Closing. At the closing of the transactions contemplated by Section 5.01, NI, NI West and Sponge-Cushion shall deliver to MBPC such respective bills of sale, assignments, deeds, certificates of title, and other documents of conveyance with respect to the transferred assets, in recordable form, as MBPC may reasonably request, and MBPC shall deliver its respective written assumption agreements to NI, NI West and Sponge-Cushion with

respect to the liabilities to be assumed by MBPC. All transfer taxes, recording costs and other expenses relating to the transfer of the transferred assets shall be borne by MBPC.

SECTION 5.07. Line of Credit. Concurrently with the closing of the transfers and exchanges contemplated by Section 5.01, Masco and MBPC shall enter into a subordinated credit agreement pursuant to which Masco shall extend to MBPC a \$120,000,000 irrevocable line of credit, for the sole benefit of MBPC, which shall remain in place as long as MBPC has outstanding notes, bonds or debentures or indebtedness for borrowed money. The line of credit shall be substantially in the form set forth in Exhibit 5.07 hereto.

SECTION 5.08. Further Assurances. After the closing NI, NI West, Sponge-Cushion and MBPC will make, execute, ~~acknowledge and deliver such other instruments and documents,~~ and take all such other actions, as may be reasonably required or requested in order to effectuate the transactions contemplated by Sections 4.00 and 5.01 hereof and to evidence the title of MBPC to the transferred assets.

SECTION 5.09. Corporate Services.

(a) After the closing, NI shall provide to Masco and MBPC corporate support staff and administrative services of those personnel which NI maintains internally for its own officers, operating executives and business operations and which NI has heretofore provided to the businesses to be

acquired by Masco and MBPC, such as accounting, legal, treasury, tax, data processing, research and development and human resources. For a reasonable transition period the services provided by NI shall also include the services of certain of NI's senior operating executives who have heretofore had responsibility for certain of the businesses being transferred to Masco and MBPC. In addition, NI shall provide to such businesses office space in NI's facilities to the extent heretofore provided.

(b) Masco and MBPC will pay NI a fee for the services and office space provided hereunder, irrespective of the actual use thereof, equal to one percent of the annual net sales of the businesses transferred to Masco and MBPC (pro rated for any partial year). Such fee shall be payable monthly or at such other time as may be mutually agreeable, ~~Masco and MBPC shall be responsible for the payment of fees~~ and expenses for services rendered by third parties retained by NI on behalf of the transferred businesses.

(c) The foregoing arrangements may be terminated by Masco or NI on thirty days' written notice, provided that such termination shall not relieve Masco and MBPC of their obligation to pay their accrued obligations through the effective date of the termination.

SECTION 5.10. Accounts Receivable. NI, NI West and Sponge-Cushion hereby appoint MBPC as agent to collect all accounts receivable retained by them to the extent such

accounts receivable arose out of or relate to the businesses conducted with the assets transferred hereunder, and MBPC hereby accepts such appointment. MBPC is hereby authorized to endorse in the name of NI, NI West or Sponge-Cushion, as the case may be, any checks or other negotiable instruments payable to NI, NI West or Sponge-Cushion which shall be received on account of any such accounts receivable. MBPC shall endeavor to effect collection of such accounts receivable on a basis consistent with the past practice of NI, NI West and Sponge-Cushion, but without the prior approval of NI, NI West or Sponge-Cushion will not compromise any such accounts receivable or settle with the account debtors for less than the full amount thereof. Payments from customers which are not identified to specific invoices shall be applied first to the receivables retained by NI, NI West and Sponge-Cushion. All collections made with respect to the retained receivables shall be held in trust by MBPC for the benefit of NI, NI West and Sponge-Cushion, and shall be held in one or more segregated accounts to the extent practicable. MBPC shall from time to time transfer such collections to NI, NI West and Sponge-Cushion at their request. Any excess payment made by MBPC shall be promptly returned to MBPC.

SECTION 5.11. Additional Agreements.

(a) Neither NI, NI West nor Sponge-Cushion shall have any liability arising from the inability to assign any contract or commitment included among the transferred

assets. The transferors shall cooperate in attempting to effect the substitution of MBPC with respect to the rights and obligations of NI, NI West and Sponge-Cushion. To the extent that such substitution is not made, the transferors will endeavor to grant to MBPC a subcontract of such contract, but without expense or liability to the transferors, on terms and conditions such that the effect will be, so far as is reasonably possible, the same as though such substitution had been made.

(b) After the closing, Masco, Nimas and their respective subsidiaries may have in their possession or under their control, books, records, contracts, instruments, data and other information (collectively "Information") which may be reasonably necessary in connection with the conduct of another's business. Accordingly, Masco, Nimas and their respective subsidiaries shall provide, upon request, at all reasonable times, reasonable access to (including access to persons or firms possessing Information), and duplication rights with respect to, any and all such Information as another may reasonably request and require in the conduct of its business. In addition, they shall make available their respective officers, Directors, employees and agents as witnesses to the extent that such persons may reasonably be required in connection with any legal, administrative or other proceedings or inquiries in which they may from time to time be involved. The Information shall include without limitation information sought for audit, accounting, claims,

litigation and tax purposes. The party providing Information or making available witnesses shall be entitled to receive from the other party payment for its reasonable out-of-pocket expenses incurred in connection therewith (but not the labor cost thereof), but shall not be entitled to receive any other payment with respect thereto.

ARTICLE VI

OPTION

SECTION 6.01. Grant of Option. Masco hereby grants to Industries an irrevocable, non-transferable option (the "Industries Option") to purchase the shares of Nimas now or hereafter owned by Masco, subject to the terms and conditions hereinafter set forth. The Industries Option may be exercised at any time after the consummation of the transactions contemplated by Sections 4.00 and 5.01 until the later of the fifth anniversary of the Effective Date of the Merger or 90 days after the termination of the Corporate Opportunities Agreement between Masco and Industries, dated as of May 1, 1984. The Industries Option may be exercised whether or not Industries has received notice of a proposed sale under Section 7.02.

SECTION 6.02. Conditions Precedent. Masco's obligation to sell its Nimas shares upon exercise of the Industries Option shall be subject to the conditions that (i) Industries shall indemnify Masco for any loss, liability, damage or expense theretofore incurred by Masco on account

of any guarantee of any indebtedness of Nimas or any subsidiary thereof, (ii) Masco shall receive an unconditional release of any guarantee of any indebtedness or other obligations of Nimas and its subsidiaries, or Industries shall have made some other arrangement with respect thereto which is reasonably satisfactory to Masco, (iii) all outstanding indebtedness of Nimas and its subsidiaries to Masco and its subsidiaries shall be repaid or Industries shall guarantee all such indebtedness or shall have made some other arrangement with respect thereto which is reasonably satisfactory to Masco, and (iv) there shall not exist an event of default, or an event or condition which with the giving of notice or the passage of time would become an event of default, under any Masco Industries, Inc. 16% Subordinated Debentures, due June 15, 2004, which are then held by Masco.

SECTION 6.03. Purchase Price. The purchase price for the shares to be acquired upon exercise of the Industries Option shall be the carrying value of Masco's stock ownership in Nimas, prior to the recording of any taxes on equity earnings, as of the date of closing of the sale of such shares. If the closing occurs on a date other than at the end of a month the purchase price may be an estimated amount. The carrying value of Masco's stock ownership in Nimas shall be determined in accordance with present generally accepted accounting principles.

SECTION 6.04. Option Exercise. The Industries Option shall be exercised, in whole, by giving written notice of exercise prior to the expiration thereof. As promptly as practicable thereafter (but not more than 15 days) Masco shall sell and Industries shall purchase the subject shares. Masco shall deliver one or more certificates evidencing the shares, duly endorsed (or accompanied by an assignment separate from certificate duly endorsed) in favor of Industries, and Industries shall deliver immediately available funds for the purchase price (or, if necessary, for an estimated purchase price with the amount paid by Industries thereafter adjusted to reflect Masco's carrying value on the closing date based upon financial statements of a later date).

SECTION 6.05. Title to Shares. So long as its shares of Nimas are subject to the Industries Option, Masco shall maintain unencumbered marketable title to its shares of Nimas, free and clear of all liens, encumbrances and claims (other than the Industries Option) and upon exercise of the Industries Option, Masco agrees that there will be no restrictions upon the vesting in Industries of title to such shares, free and clear of liens, encumbrances or claims of any kind whatsoever.

ARTICLE VII

RIGHT OF FIRST REFUSAL

SECTION 7.01. Restrictions on Transfer. Neither Masco nor Industries shall sell, assign, encumber or otherwise

transfer or disposition of shares of Nimas (whether now owned or hereafter acquired), whether such transfer or disposition is voluntary or involuntary and whether or not for value, except (i) by Masco pursuant to the Industries Option, (ii) by Masco or Industries after either acquires all of the outstanding shares of Nimas, (iii) by Masco or Industries to a direct or indirect wholly owned subsidiary so long as the transferee continues to be wholly owned, (iv) as otherwise permitted by this Article VII, (v) following a transfer pursuant to this Article VII, or (iv) after December 31, 2004.

SECTION 7.02. First Refusal. Masco and Industries may sell their respective shares of Nimas pursuant to a bona fide written offer, subject to the right of first refusal hereinafter set forth and subject, in the case of a transfer by Masco, to the Industries Option. If Masco or Industries (the "transferor") receives such a bona fide written offer, the transferor shall give written notice thereof to the other stockholder, together with a copy of the offer. The other stockholder shall have the right to purchase the transferor's shares on the same terms as those set forth in the offer (or, if the offer involves consideration other than cash, on substantially equivalent terms), provided that the other stockholder shall give the transferor written notice of exercise of the right to purchase not less than thirty days after receipt of the notice from the transferor. If the other stockholder shall fail to timely exercise its right to purchase, the transferor may thereafter sell its shares pursuant to and on the terms set forth

in the written offer, provided the transaction is consummated within 120 days after the expiration of the other stockholder's exercise period. If the shares are so sold, they shall thereafter be free of the restrictions contained in this Article VII. If the shares are not so sold, they shall continue to be subject to such restrictions.

ARTICLE VIII

MISCELLANEOUS

SECTION 8.01. Notices. All notices, requests and other communications to any party hereto shall be in writing and shall be given to such party at its address set forth on the signature page hereof or such other address as such party shall hereafter specify for such purpose by notice to the other party hereto. Each such notice, request or other communication shall be effective (i) if given by mail, 72 hours after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid, or (ii) if given by any other means, when delivered to such address.

SECTION 8.02. Expenses. Whether or not any of the transactions contemplated hereby is consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses.

SECTION 8.03. Interpretation. The headings contained in this Agreement are for reference purposes only and shall be ignored in a construction or interpretation of this Agreement.

SECTION 8.04. Amendment. This Agreement (i) constitutes the entire agreement and supersedes all prior agreements and understandings both written and oral between the parties hereto with respect to the subject matter hereof, and (ii) is not intended to confer upon any other person or entity any rights or remedies hereunder. This Agreement may be amended or modified in whole or in part by an agreement in writing by the parties hereto and any provision hereof may be waived if such waiver is in writing.

SECTION 8.05. Successors and Assigns. Subject to the provisions of Article VII, neither party shall assign its rights hereunder without the consent of the other party. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors of the parties hereto.

SECTION 8.06. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

SECTION 8.07. Representations and Warranties. Each party hereto represents and warrants to the other as follows:

(a) Such party is a duly incorporated and validly existing corporation in good standing under the laws of the State of Delaware;

(b) Such party has the requisite power and authority to execute, deliver and perform its obligations under this Agreement;

(c) The execution, delivery and performance of this Agreement by such party of this Agreement do not and will not (i) conflict with or result in the breach of any of the provisions of its certificate of incorporation or its bylaws, (ii) contravene any applicable law, rule or regulation of any State or of the United States, or any order, writ, judgment, injunction, decree, determination or award currently in effect which affects or binds such party or any of its material properties, or (iii) conflict with or result in a material breach of or default under any material agreement to which it is a party or by which it or any of its material properties is bound.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

MASCO INDUSTRIES, INC.

MASCO CORPORATION

By



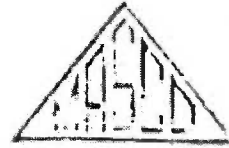
By



Masco Corporation

21001 VAN BORN ROAD

Taylor, Michigan 48180



February 20, 1985

Nimas Corporation
21001 Van Born Road
Taylor, Michigan 48180

Dear Sirs:

This letter will confirm our agreement to lend to you, from time to time prior to June 30, 1985 (or such earlier date on which the Merger referred to in the below-described Offer to Purchase has become effective), up to an aggregate of \$80,000,000 for the purpose of enabling you to use such funds (i) to purchase shares of NI Industries, Inc. as contemplated by your outstanding Offer to Purchase dated January 16, 1985, and (ii) to cover interest charges and other expenses incident to the transaction contemplated by the Offer to Purchase. All such loans shall bear interest at the rate 12 1/2% per annum, based on actual days elapsed, and shall be payable thirty days after our demand. Interest thereon shall be payable on the last day of each calendar month and at maturity. Upon our request you will execute and deliver one or more promissory notes in substantially the form annexed as Exhibit A evidencing such loans.

This letter also confirms your agreement with us that our rights to subrogation set forth in Section 10.05 of the Credit and Guaranty Agreement dated as of the date hereof among you, us, the banks listed therein and Morgan Guaranty Trust Company of New York, as agent (the "Credit Agreement") extend to all amounts which are paid by us under Article X of the Credit Agreement and shall not in any respect be affected by any settlement, compromise, waiver, release or other act or omission by you or any other signatories to the Credit Agreement.

If you are in agreement with the foregoing, please sign the enclosed copy of this letter as indicated below, whereupon it will evidence our binding agreement.

Very truly yours,

MASCO CORPORATION

Agreed to:

NIMAS CORPORATION

By 
Vice President

By 
Vice President

PROMISSORY NOTE

For value received, NIMAS CORPORATION, a Delaware corporation ("Nimas"), promises to pay to the order of MASCO CORPORATION, a Delaware corporation ("Masco"), at its office at 21001 Van Born Road, Taylor, Michigan, thirty days after demand, the principal amount of _____ Dollars (\$ _____) in lawful money of the United States of America, and to pay interest, based on actual days elapsed, on the unpaid balance hereof in like money at such office at the rate of 12 1/2% per annum, such interest to be payable on the last day of each calendar month and at maturity, based on actual days elapsed.

The principal hereof may be prepaid, in whole or in part, at any time or from time to time, without premium or penalty but with accrued interest on the portion of the principal being prepaid.

This Promissory Note is to be governed by and construed in accordance with the laws of the State of New York.

NIMAS CORPORATION

By _____
Vice President

EXHIBIT 4.00

NI SUBSIDIARIES

To remain with NI:

Norris Industries, Inc.	California	2
Five Five Five Five McFadden, Inc.	California	5
One Golden Shore, Inc.	California	5
Flow-Touch Corporation	New York	4
Hyer Hardware Mfg. Co.	California	2,4
Mirrex Corporation	Michigan	2
Touch Flow Co.	California	4
NI West, Inc.	California	9
NI Export, Inc.	U.S. Virgin Islands	10

The following name holding corporations, which have no assets and no shares issued, will be transferred to MBPC:

Artistic Brass, Inc.	California	1,2
Falcon Lock Co.	California	1,2
Norris-Thermador Corporation	California	1,2
Waste King Corporation	California	1,2
Waste King Universal Premier Sales & Mfg. Co., Inc.	California	1,2
Weiser Company	California	1,2
Thermador Electrical Manufacturing Corporation	California	1,2

KEY

- 1 - Building Products
- 2 - Name Holding
- 3 - DISCs (being merged into NI West)
- 4 - Will be dissolved or charter allowed to lapse
- 5 - No present use
- 6 - Ownership of airplane
- 7 - Must have five shareholders
- 8 - Owns non-operating cylinder plant which is part of compressed gas cylinders division
- 9 - Operating
- 10 - Foreign sales corporation

NI WEST SUBSIDIARIES

To remain with NI West:

NI International, Inc.	California	3
NORINCO Transportation Company	Michigan	6,9
Spectra McIntosh International Corp.	Delaware	3
Sponge-Cushion, Inc.	Delaware	1,9

To be sold to Masco:

			<u>Purchase Price</u>
Falcon Lock Co. Ltd.	British Columbia	1,9	*
Gibraltar Lock Co. Ltd.	British Columbia	1,2	*
N.V. Weiser Europe, S.A. Weiser, Inc.	Belgium British Columbia	1,9	\$ 300,000
Weiser Lock Co. Ltd.	British Columbia	1,8,9	\$18,000,000
Weiser Lock Pty. Limited	Australia	1,9	\$ 400,000
Weiser (U.K.) Limited	England	1,9	\$ 1,200,000
NI Communications Incorporated	California	1,9	\$ *
Industrias Norris, S.A.	Mexico	1,7,9	\$ 100,000

*An aggregate purchase price of \$1,000 for these subsidiaries.

KEY

- 1 - Building Products
- 2 - Name Holding
- 3 - DISCs (being merged into NI West)
- 4 - Will be dissolved or charter allowed to lapse
- 5 - No present use
- 6 - Ownership of airplane
- 7 - Must have five shareholders
- 8 - Owns non-operating cylinder plant which is part
of compressed gas cylinders division
- 9 - Operating
- 10 - Foreign sales corporation

Masco Building Products Corp. Preferred Stock Terms

General:

Amount: 85,000 shares at \$100 per share

Issue Date: Date of transfer of BRP Assets, Artistic Brass Assets and Sponge-Cushion Assets

Maturity: 12 years

Liquidating Value: \$100 per share

Annual Dividend: \$12.00 per share, cumulative, payable quarterly, when, as and if declared.

Redemption:

Optional: Redeemable at the option of the Company after three years from date of issue, in whole or in part, at the following redemption prices per share, in each case together with accrued dividends:

<u>If redeemed during the twelve months ending [Date],</u>	<u>Redemption Price per Share</u>
1989	\$108.40
1990	107.20
1991	106.00
1992	104.80
1993	103.60
1994	102.40
1995	101.20
1996 and thereafter	100.00

Mandatory: The Company will redeem 20,000 shares during each of the twelve month periods ending [Date], 1993, 1994, 1995 and 1996, and will redeem the remaining 5,000 of the Preferred Shares by [Date], 1997. The redemption price shall be \$100 per share, plus accrued dividends. The Company may increase its scheduled redemption payment in any year by 100% of its scheduled redemption payment for that year, and may credit against scheduled redemption payments Preferred Shares acquired otherwise than through scheduled redemption payments.

Dividend Rights:

Holder will be entitled to receive, when, as and if declared by the Company's Board of Directors out of funds legally available therefor, cumulative dividends on the Preferred Shares. No dividends will be paid to holders of the Company's Common Shares until (1) all accrued and unpaid dividends have been paid for the current and all prior dividend periods and (2) past due mandatory sinking fund payments on the Preferred Shares have been made.

Voting Rights:

- (1) If the equivalent of six quarterly dividends payable on the Preferred Shares are in arrears, the holders of the Preferred Shares, will have the right to elect two directors to the Company's Board. The terms of such directors continue until all accrued dividends have been paid.
- (2) A two-thirds affirmative vote of the holders of the Preferred Shares is required (a) to authorize or increase the number of shares of any stock ranking prior to the Preferred Shares, either as to payment of dividends or distribution of assets; (b) to change adversely the preferences or limitations, special rights or powers of the Preferred Shares; or (c) to purchase or redeem less than all the Preferred Shares if all accrued dividends thereon have not been paid.
- (3) A majority vote of holders of the Preferred Shares is required to permit an increase in the total number of Preferred Shares authorized, to change the par value thereof or to authorize or to increase the number of shares ranking on a parity with the Preferred Shares.

Liquidation Rights:

In the event of the liquidation, dissolution, or winding up of the Company, the holders of the Preferred Shares shall be entitled to receive a liquidating distribution, together with unpaid and accrued dividends, before any distribution or payment may be made to holders of securities ranking junior to the Preferred Shares. If the liquidation is involuntary, the liquidating distribution will be \$100 per share, and if the liquidation is voluntary, the liquidating distribution will be the then applicable optional redemption price.

EXHIBIT 5.02

Terms of Masco Building Products Corp. Notes

General:

Principal Amount: To be determined

Issue Date: Date of transfer of BRP Assets,
Artistic Brass Assets and Sponge-
Cushion Assets

Coupon: 12 1/2%

Price: 100%

Maturity: 10 years from date of issue

Interest Payable: Semi-annually

Redemption:

Optional: The Notes are redeemable at the
option of the Company, after three
years from date of issue, in whole
or in part, at the redemption price
of 100% of the principal amount
thereof together with accrued interest.

Mandatory: None

Covenants:

Limitation on
Liens: As per current Masco senior debt shelf
registration statement.

Limitation on
Sale and
Lease-Back: As per current Masco senior debt shelf
registration statement.

Consolidation,
Merger or
Sale of Assets: As per current Masco senior debt shelf
registration statement.

Limitation on
Additional
Debt: No indebtedness for borrowed money unless
subordinated to the Notes.

Masco Corporation

21001 VAN BORN ROAD

Taylor, Michigan 48180



March 11, 1985

Masco Building Products Corp.
21001 Van Born Road
Taylor, Michigan 48180

Dear Sirs:

This will confirm the terms of our irrevocable \$120 million credit line (the "Credit Line") which, effective today, we are making available to you:

1. You may borrow, prepay and reborrow funds from us under the Credit Line, at any time upon two days prior notice to us, provided at no time shall the aggregate principal amount outstanding hereunder at any time exceed \$120,000,000.

2. All borrowing under the Credit Line shall bear interest at the rate of 12 1/2% per annum (based on actual days elapsed), and shall be payable on the last day of each calendar quarter. The principal of the Credit Line shall not, however, be reduced by any due but unpaid interest owing on the loans thereunder.

3. Notwithstanding the provisions of paragraphs 1 and 2, payment of all principal of and interest on loans under the Credit Line shall be subordinated to the prior payment of all of your other obligations which are then due.

4. The Credit Line shall remain in effect notwithstanding your inability or failure for any reason to pay interest on the loans under the Credit Line, and regardless of any wilful or other default by you in your obligations to us or others or the status of your financial condition from time to time, and the Credit Line shall terminate, and we shall have a right to require the repayment of amounts due thereunder, only when you no longer have outstanding any notes, bonds or debentures or indebtedness for borrowed money.

Masco Corporation

Masco Building Products Corp.
March 11, 1985
Page Two

Please confirm your agreement to the foregoing by signing the enclosed copy of this letter as indicated below whereupon it will become a binding, non-assignable agreement solely for the benefit of you and us and in no case enforceable by any third party.

Very truly yours,

MASCO CORPORATION

By _____
President

Accepted:

MASCO BUILDING PRODUCTS CORP.

By _____
President

EXHIBIT L

NI INDUSTRIES

1983 ANNUAL REPORT

