

SEPARATE DEFENSES

1. The Complaint fails to state a claim upon which relief may be granted.

2. Plaintiffs' action does not properly arise under 18 U.S.C. § 1964 (federal "RICO") and, as such, the action fails to meet the requirements of 28 U.S.C. § 1331 (federal question). Therefore, it is improper for this court to adjudicate the alleged supplemental State claims under 28 U.S.C. § 1967 for New Jersey RICO, theft, conversion, unjust enrichment and conspiracy as jurisdiction is lacking; and, as jurisdiction is lacking, venue is improper in this judicial district under 18 U.S.C. § 1965 (a) and 28 U.S.C. § 1391 (b).

3. Answering defendant, Wolski, breached no duties allegedly owed.

(a) Wolski's Consulting/Retirement Agreement ("Consulting Agreement" with Circuit Foil USA/LUX, Inc. of July 17, 1996, provision 3, entitled Inventions, Patents, Copyrights, ETC., limits Wolski's obligation to disclose and assign over to Circuit any patentable inventions "conceived, developed, made, invented, or suggested either by Mr. Wolski or in collaboration with others" **during the term of Wolski's employment.**

(b) By the terms of Consulting Agreement, **Wolski's employment with Circuit was to come to an end on his 65th birthday, which was May 05, 2001 (d/o/b: 05/05/1936).**

i. As Plaintiffs' allegations leveled against Wolski relate to alleged post-May 05, 2001 events, plaintiffs' allegations do not set forth a claim upon which relief may be granted.

ii. Similarly, **provision 4 of the Consulting Agreement**, entitled Confidentiality, upon which plaintiffs' purport to rely, and which seeks to bar Mr. Wolski from disclosing, publishing or using for himself or for the benefit of any third party, **any information** pertaining to Circuit Foil or its affiliates is, **as a matter of law, an overbroad, unreasonable, and, therefore, unenforceable confidentiality provision of unlimited duration.**¹

(c) However, to the extent that **provision 4** of the Consulting Agreement may be argued by plaintiffs to be reasonable and enforceable, it is averred that **any information** allegedly shared by Wolski with any third party was that of **general knowledge found within the public domain**, as evidenced

¹ See Richards Mfg. Co. v. Thomas & Betts Corp., 2005 U.S. Dist. LEXIS 22479.

by the intentional creation, printing, and public dissemination, at the directive of plaintiffs' majority shareholders, Charles B. Yates and Craig Yates, of the manual Electrodeposited Copper Foil for Printed Circuits ("manual").

i. The manual delineated the technical "know-how" of copper foil fabrication as used by Yates Foil U.S.A., Inc.

ii. **All technical information relating to copper foil fabrication thereby being within the public domain renders plaintiffs' allegations a legal nullity and unenforceable.**²

Answering defendant, Wolski, performed each and every duty allegedly owed.

4. Plaintiffs have failed to properly mitigate any damages allegedly sustained.

5. Plaintiffs' alleged claim for recovery sought is exceeded and thereby offset by defendant's rightful claim for recovery sought.

6. Plaintiffs' claims are barred or subject to reduction pursuant to the application of the New Jersey Comparative Negligence Act, N.J.S.A. 2A:15-15.1, et seq.

² See Hudson Foam Latex Prods., Inc. v. Aiken, 82 N.J. Super. 508, 516 (App. Div. 1964); Ingersoll-Rand Co. v. Ciavotta, 110 N.J. 609, 635-636 (1988); Whitmer Bros., Inc. v. Doyle, 58 N.J. 25, 32-33 (1971); Solari Indus., Inc. v. Malady, 55 N.J. 571, 576 (1970); and Richards Mfg. Co. v. Thomas & Betts Corp., 2005 U.S. Dist. LEXIS 22479.

7. Plaintiffs' claims are barred by the application of contributory negligence.

8. Plaintiffs, in concert with Craig Yates, defrauded defendant, Wolski, and are barred from any recovery sought.

9. Plaintiffs, in concert with Craig Yates, as may be revealed and supported during the course of discovery, were involved in alleged deceptive, fraudulent and illegal activities, and are barred from any recovery sought.

10. Plaintiffs are barred from prosecuting the within matter based upon the legal principle of "estoppel" and/or "equitable estoppel".

11. Plaintiffs are barred from prosecuting the within matter based upon the legal principle of "failure of consideration".

12. Plaintiff is barred from prosecuting the within matter based upon the principles of fair dealing, good faith, and the doctrine of "Unclean Hands".

13. Plaintiff is barred from prosecuting the within matter based upon the repose of the application of the Statute of Limitations.

14. Defendant reserves the right to amend said defenses as may be discerned during the course of discovery and/or at the time of trial.

Dated: 09/27/07

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COUNTERCLAIM
(Against Yates Foil U.S.A., Inc. and Foil Technology Development Corp.)

The Defendant/Counterclaimant, Adam Wolski, residing at c/o Ursule Yates, 2225 Delancey Place, Philadelphia, PA 19103, by way of Counterclaim says:

THE PARTIES

1. At all relevant times, Defendant/Counterclaimant, Adam Wolski, was a chemical engineer, who, *inter alia*, had been employed by and/or provided consulting services to diverse businesses, including, but not limited to those companies that manufactured copper foil.

2. At all relevant times, Plaintiff/Defendant on the Counterclaim, Yates Foil, U.S.A., Inc. ("Yates Foil"), a New Jersey corporation, which based upon information and belief is located at 9270 A Commerce Highway in the Township of Pennsauken, County of Camden and State of New Jersey has manufactured copper foil.

3. At all relevant times, Plaintiff/Defendant on the Counterclaim, Foil Technology Development Corp. ("FTDC"), a New Jersey corporation, which based upon information and belief is located at 9270 A Commerce Highway in the Township of Pennsauken, County of Camden and State of New Jersey was formed

to sell copper foil manufacturing technology and in which company Wolski was a 12.5% (1/8th) shareholder.

JURISDICTION AND VENUE

4. To the extent that jurisdiction is proper under Plaintiffs' case-in-chief, this action arises under 28 U.S.C. § 1967 (supplemental jurisdiction of state claims).

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b).

FACTS (A - M INCLUSIVE)

A. HISTORICAL BACKGROUND³

6. In the **1930s** Charles **E. Yates** (1901-1969) developed the equipment and process to produce wide sheets of thin copper in unlimited lengths by electrodeposition.

7. In **April, 1932** a patent related to electrolytic copper foil process was granted to **Anaconda Copper Mining Company, USA** ("Anaconda"), with whom Charles E. Yates was then employed.

8. The inventors of the patented technology were William Shakespeare, Charles E. Yates and A.L. O'Brien.

³ Caveat: The following historical background is based upon information and belief, as well as reliance, in part, upon the July 31, 1981 appraisal report of The American Appraisal Company and the contents of the manual "Electrodeposited Copper Foil for Printed Circuits" that had been compiled by Foil Technology Development Corporation. Said caveat shall apply to each averment in the historical background without being repeated at length.

9. Anaconda's patent distinguished it, for more than 20 years, as the only successful producer of **electrolytic copper foil** on a continuous basis, with its electrodeposited copper foil plant located in Perth Amboy, New Jersey.

10. However, after the Anaconda patents expired, Charles E. Yates ("Yates") left Anaconda, who along with Dr. Edward Adler ("Adler"), started **Circuit Foil Corporation** in or about **April, 1955** (while the actual incorporation may have occurred in 1959).

11. **By 1959, Circuit Foil Corporation** was operating out of its principal place of business in **Bordentown, New Jersey**.

12. As copper foil was used on printed circuit boards in the evolving electronic industry, it was the intended purpose of the Circuit Foil Corporation to manufacture electrodeposited copper foil, which foil was to be applied in the manufacture of printed circuits in electrical devices.

13. In or about 1959, Charles E. Yates had discovered that **arsenic** considerably improved copper crystals, the discovery of which was kept secret within the industry until approximately 1963.

14. The dramatically improved treatment method addressed the circuit makers' industry problem with pinholes, dents,

nodules and surface scratches with the growing of copper oxide crystals from an anodic copper foil in a hot alkaline bath.

15. The patented treatment process was known as the **"Treatment A"** process of the Copper Foil Corporation.

16. The Treatment A process was based on forming microscopic crystals of copper metal from a cathodic foil in a weak, cold copper bearing acidic bath, with much of the industry applying a misnomer to the process and referring to the treated foil as "brown oxide treatment".

17. The secret process to grow on the surface of copper foil microscopic micro-projections of complex shape which make copper foil adhere better to the circuit boards than the then popular oxidized surface enabled the new company to take the leadership of the industry.

18. The industry's major copper foil manufacturers, at the time, were **Anaconda, Circuit Foil Corporation, and Gould, Inc.** (a company that had acquired the then Clevite Corporation).

19. Circuit Foil Corporation, through initial private investors, eventually went public on the American Stock Exchange and later on the New York Stock Exchange.

20. Through the early 1960's, there was only minimal competition in the manufacture of copper foil from **Gould, Inc.**

(with a plant in Ohio) and from **Mitsui**, a Japanese mining company, with plants in Japan and the United States.

21. In or about 1960, **Circuit Foil S.A.** was incorporated as a Luxembourg-based company, a wholly owned subsidiary of Circuit Foil Corporation, and with Circuit Foil Corporation as a major shareholder.

22. In or about 1971, Circuit Foil S.A. changed its name to Yates Industries S.A. (Luxembourg).

23. Charles B. Yates (President) and Craig W. Yates (Chairman) were dominant shareholders of the Circuit Foil Corporation, with its principal headquarters located in Bordentown, NJ.

24. Charles B. Yates became the Administrator Delegee (Managing Director) of Circuit Foil S.A. in Wiltz, Luxembourg from **1961 through 1967**.

25. Charles B. Yates was responsible for the day-to-day management of the copper foil manufacturing operation at Wiltz, Luxembourg, as well as the sales and manufacturing program for the company's products throughout Europe.

26. In those early days of copper foil manufacturing, the copper foil manufacturing process was subject to closely guarded proprietary procedures protected by trade secrets and patent laws as copper foil was considered a "strategic" material.

27. Notably, while there was other copper foil manufacturing companies in Japan, China and later in Russia, these companies initially produced copper foil by using archaic processes that yielded copper foil in minimal quantities and of inferior quality.

B. ADAM WOLSKI

28. On or about **May 01, 1966**, Adam M. Wolski (d/o/b: **05/05/36**) ("Wolski"), was hired by Charles B. Yates, then director of Circuit Foil S.A., as a salaried research chemist for Circuit Foil S.A., which facility was located in Wiltz, Luxembourg.

29. Wolski's chemical engineering services were secured by Circuit Foil S.A. so as to have Wolski work in Circuit Foil, S.A.'s copper foil plant as a research and development engineer.

30. In or about **May, 1967**, Charles B. Yates was elected President of Circuit Foil Corporation (hereinafter referred to as "Company"), the parent Company of Circuit Foil S.A., with headquarters located in Bordentown, New Jersey.

31. As confirmed in an Affidavit of Charles B. Yates of November 14, 1994, Wolski had been asked by Charles B. Yates to relocate to the United States to become an employee of the parent company, Circuit Foil Corporation, in Bordentown, New Jersey.

32. The relocation was conditioned upon certain negotiated employment fringe benefits, including, but not limited to, Wolski's enrollment in Circuit Foil Corporation's pension plan for management employees as part of the "Caisse de Pension des Employees Privees" (statutory pension fund program of the government of Luxembourg applying to salaried employees of private sector employers in the country).

33. As reiterated in a letter of August 15, 2001 from Wolski to Craig W. Yates, and as affirmed by way of letter from Michel Hacart of October 2, 2001, the guaranteed benefits offered by the Luxembourg plant to retired employees included lifetime healthcare insurance coverage.

34. Based upon the representations regarding employment, upon which Wolski justifiably relied, Wolski accepted the offer, moved to the United States, in or about October, 1967, with his then wife, and undertook employment by Circuit Foil Corporation in Bordentown, New Jersey.

35. Therefore, by the **fall of 1967**, Wolski had come to the U.S. to assume his employment duties for technical development in Bordentown, NJ, as Circuit Foil Corporation was producing and exporting copper foil to the newly emerging electronic market in Japan.

36. Wolski became responsible for technical development in all copper foil subsidiaries of the Company, both in the US and overseas.

37. Wolski took part in the projects of transferring the manufacturing processes and know-how to the management and technical staffs of the subsidiary plants.

38. By way of example, Wolski took an active technical part in establishing copper foil production in Circuit Foil Japan (in Imachi, Japan), which was a joint venture between Circuit Foil Corporation and Furukawa Electric.

39. Wolski became the inventor, or co-inventor, of the processes and products patented worldwide.

40. In the later 1960s and 1970s, the emphasis turned to **better surface treatments**, with Charles E. Yates' son, Charles B. Yates, and Adam Wolski being the principal inventors.

41. In or about **1970, Circuit Foil, S.A. changed its name to Yates Industries, S.A.**

42. In or about **1974, Circuit Foil Corporation changed its name to Yates Industries, Inc.**

43. With the passage of time, Circuit Foil Corporation had come to build and operate plants in Bordentown, NJ, Grand Duchy of Luxembourg, Japan (50-50 joint venture with Furukawa, a

Japanese electrical company), Silloth in the north of England, and eventually in Cork, Ireland.

C. HISTORICAL PROLIFERATION OF COPPER FOIL TECHNOLOGY AND KNOW-HOW WITHIN THE INDUSTRY

44. Based upon information and belief, in the 1970's, the General Manager of the Silloth, England plant, John Thorpe left the company under strained circumstances and established a competitive company called Electrofoils Ltd in Newcastle, England ("Electrofoils").

45. Mr. Thorpe took with him the Silloth, England's chief of technology.

46. The Yates' copper foil organization thereupon lost the competitive advantage of using arsenic to improve surface crystals, as John Thorpe purportedly **incorporated Yates' trade secrets in its Electrofoils' operation.**

47. Circuit Foil unsuccessfully sued John Thorpe and Electrofoils in the English courts for the theft of trade secrets.

48. Based upon information and belief, the Judge ruled that the information pertinent to the manufacture of copper foils lays in the public domain.⁴

⁴ Plaintiffs aver in the Complaint ¶¶2 and 23, "On April 9, 1998, the Yates brothers, Wolski, Dr. Chimsi ("Todd") Cheng ("Cheng") and **two others** incorporated Foil Technology Development Corp ("FTDC"). Plaintiffs fail to disclose that one of the "two

49. Although reference is made on page 33 of the July 31, 1981 appraisal report of The American Appraisal Company, to the effect, employees of and visitors to the Yates' copper foil operations allegedly became required to sign **Secrecy Agreements**, which serves as the basis of plaintiffs' alleged claims against co-defendants, Gaskill and Shah, to protect technological trade secrets, **throughout the years of Wolski's employment at Yates' copper foil operations, Wolski, to the best of his recollection, was not requested nor did he sign plaintiff's Secrecy and Invention Agreement.** See *Complaint ¶¶18 and 19.*

50. In or about **July 31, 1980**, Yates Industries, Inc. (USA) and Yates Industries, S.A. (Luxembourg) completed its sale of its outstanding stock to **Square D Company**, an Illinois corporation, which was a large electrical products company located in Palatine, Illinois that intended to expand into the electronics market and which traded on the New York Stock Exchange.

others" was the self-same **John Thorpe**, who had been previously accused and sued in England in the 1970s by Circuit Foil **for having disclosed the company's trade secrets.** The "other" of the unnamed "two others" was **Roy O'Brien** ("O'Brien"), the stepson of Charles E. Yates and half-brother to Charles B. Yates and Craig Yates. Based upon information and belief, O'Brien had been previously fired from Circuit Foil, and had formed a **competitive company, M&T Technologies in New Jersey, and purportedly used proprietary Circuit Foil technology.**

51. Upon the consummation of the purchase, Yates Industries, Inc. became a wholly owned subsidiary of Square D Company ("Square D").

52. At the time of the aforementioned acquisition, **the closest competitor to Yates Industries, Inc. was Gould, Inc.**

53. Together Yates Industries, Inc. and Gould, Inc. accounted for approximately 90% of the United States and European production of electrolytic copper foil.

54. As referenced in the July 31, 1981 appraisal report of The American Appraisal Company, pages 4 and 11, other copper foil producers, at the time, were **Oakmitsui** (a joint venture of Mitsui who bought up the old Anaconda technology and Oak Laminating Company) with foil plants in New York State and the Far East and with laminating plants, **Furukawa Circuit Foil** (which had 40% of the Japanese market), **and Fukuda** (which was the largest producer in Japan).

55. The inventions of Charles B. Yates and Wolski had a discernible impact in contributing to Square D Company's purchase price for the outstanding stock of Yates Industries, Inc., including expenses, as appraised as of July 31, 1980, of approximately \$96,000,000.

56. The identified intangible assets of Yates Industries, Inc., such as patents and secret technology and processes,

constituted approximately fifteen (15%) percent or \$14,542,000.00 of the appraised value.

57. The intangible assets were recognized by Charles B. Yates as being the result, in part, of Wolski's extraordinary and creative professional efforts, whose efforts financially benefited the Company and its shareholders.

58. The recognition of Wolski's efforts would be addressed and be financially rewarded by the equivalent of deferred compensation, as subsequently memorialized in writing and as hereinafter set forth in greater detail.

59. As set forth in an Affidavit of Charles B. Yates of November 14, 1994 and referenced in the July 31, 1981 appraisal report of The American Appraisal Company, Charles B. Yates relocated to Illinois and became Square D Company's executive Vice President.

60. During his brief tenure at Square D Company, Charles B. Yates nominated **Derek Roberts** as President of Yates Industries, a division of Square D Company.

61. **Derek Roberts had been a past General Manager of the Silloth Plant in England, having succeeded John Thorpe.**

62. Derek Roberts continued to serve in the capacity as President of Yates Industries for approximately seventeen (17) years.

63. However, approximately one year after the stock purchase sale (1981/82), both Charles B. Yates and Craig W. Yates, left Square D Company, as both brothers returned to private life.

64. Charles B. Yates undertook studies at M.I.T. and Vermont law school, while Craig W. Yates established himself, *inter alia*, as an investor and banker.

65. Based upon information and belief, the Yates family sold their shares in Yates Industries.

66. As both brothers, Charles B. Yates and Craig W. Yates, came to be absorbed in other professional undertakings, they removed themselves from any day-to-day involvement in the copper foil market and were detached from the hands-on technological advancements that were occurring within the copper foil industry.

67. The years passed and the copper foil industry underwent significant changes and developments.

68. In or about January 31, 1990, Square D Company entered into a Stock Purchase Agreement with ARBED, S.A. (of Luxembourg) and The Furukawa Electric Co., Ltd. (of Japan) for the purchase by **AFEC, Inc.**, a Delaware holding corporation comprised of a joint venture between **ARBED, S.A. of Luxembourg** (a major European steel

producer) **and The Furukawa Electric Co., Ltd. of Japan** of Yates Industries, Inc.

69. The stock purchase by AFEC, Inc. closed on or about **April 30, 1990.**

70. The acquiring owners changed the name of the company from **Yates Industries, Inc. to Circuit Foil USA, Inc.**

71. The daily management of Circuit Foil USA, Inc.'s Bordentown, NJ plant was assumed by the Luxembourg-Japanese contingent of engineers, managers and accountants.

72. Kurt Acx and Michel Mathieu (both employees of Circuit Foil Luxembourg) took over the responsibilities of Plant Manager and Production Manager; while G. Helminger, followed by G. Radoux and later Alexander Codran (all employees of ARBED, S.A.) acted as Circuit Foil U.S.A., Inc.'s directors.

73. Ms. Laurette M. Maquet, who had earned her Bachelor in Chemistry from the University of Liege in Belgium, and who has been with the Circuit Foil since 1974, became Wolski's superior in the research department.

D. DISSEMINATION OF COPPER FOIL TECHNOLOGY
IN THE INTERNATIONAL PUBLIC DOMAIN

74. Although ARBED and Furukawa had modernized and refurbished the Bordentown, New Jersey plant (Circuit Foil U.S.A., Inc.) at a great expense and effort, the plant came to

lose money, as **the copper foil market had become subject to financial volatility.**

75. Discouraged, the respective parent companies decided, if possible, to sell the plant and looked to "unload" this stateside copper foil business.

76. Eventually, in or about 1996, Arbed, S.A. and Furukawa Electric actually paid the Yates brothers (Charles B. Yates and Craig W. Yates) \$3,000,000 to assume ownership of Circuit Foil USA, Inc., with Charles B. Yates and Craig W. Yates, each being a 50% owner.

77. As related to Wolski by Charles B. Yates, and as otherwise based upon information and belief, an important provision of the Sale/Purchase Agreement between ARBED-Furukawa and the Yates Brothers was the agreement that the Buyers could use Sellers' (ARBED-Furukawa) technology, know-how, trade secrets, etc. for the purpose of manufacturing and selling of copper foil, but Circuit Foil U.S.A., Inc. (soon to be renamed Yates Foil U.S.A., Inc.) was restricted in disclosing and/or selling any technology, know-how, and/or trade secrets to third parties.

78. Other international marketing factors were in motion, as **ARBED and Furukawa** decided to close down the plants in Cork,

England and soon thereafter in Silloth, England due to their lack of profitability.

79. The unemployed persons from these plants, skilled in the manufacture of copper foil, sought alternative means of support.

80. Concurrently, Asia was becoming a stronghold of the evolving copper foil industry.

81. Alliances were formed to address the evolving copper foil marketplace.

E. TECHNOLOGY AND MANUFACTURING ALLIANCES

82. With the mobility of personnel between and among companies, technology was exchanged.

83. With the shift among company personnel, the expiration of patents, and differences in production techniques, technological "know-how" within the copper foil industry came to be part and parcel of the international public domain.

84. For instance, **Derek Roberts**, past President of Yates Industries, a division of Square D Company and a past General Manager of the Silloth Plant in England, having succeeded John Thorpe, came to establish his own consulting company, **ETL**, which company **sold technological know-how to foreign companies** interested in the development of the copper foil manufacturing process.

a. Mr. Roberts engaged the professional services of some of those terminated employees of the Cork, England and Silloth, England locations.

b. **Co-Tech** was established with a technology package from ETL (the company operated by Derek Roberts).

c. With funding from Taiwanese and Chinese based venture capitalist firms, Mr. Roberts helped set up four (4) copper foil manufacturing plants.

d. As evidenced by a letter of December 6, 2000 from Todd Cheng, President of Foil Technology Development Corporation to Lee Chang Yung Technology (LCYT), Mr. Roberts supplied copper foil technology to **LCYT, Nan-Ya Plastics (in Taiwan), Chinpo (in Shanghai) and ILJIN (in Korea)**.

85. The **machinery** for the manufacture of copper foil was built and shipped to the companies by the engineering company, **TP Aspinall and Sons, Ltd.**, located in Cumbria, England.

86. **Paul Aspinall**, the owner of **Aspinall and Sons, Ltd**, had been Mr. Derek Roberts' supplier of equipment when Mr. Roberts was the General Manager of Circuit Foil's plant in Silloth, England.

87. Mr. Aspinall had gained experience in the construction of machinery intended for the manufacture of copper foil, while

supplying the Silloth, England plant according to drawings and specifications given to him by Silloth engineers.⁵

88. Mr. Aspinall came to be Mr. Roberts' major partner and assistant in supplying the requisite "technology package" to the companies.

**F. STRATEGY TO FILE FOR US PATENTS,
ASSIGNED TO YATES FOIL USA, INC.,
SO AS TO ASSERT A COLORABLE RIGHT TO LICENSE OR SELL
UNITARY MACHINE TECHNOLOGY**

89. Soon after gaining possession of the Bordentown plant, Charles B. Yates requested of Wolski that he prepare for Charles B. Yates' personal review the files of all technical advances in copper foil technology since his absence from the foil manufacturing community in or about 1981/1982.

90. Subsequent to the review, Charles B. Yates, in consort with Craig Yates, directed the company's focus away from the manufacturing of copper foil and to focus upon a strategy to advance the sale of copper foil technology, as well as to lure potential purchasers to vie for the purchase of the company's equipment and/or the Bordentown, New Jersey plant.

⁵ Today, Paul Aspinall is President of the defunct Yates Foil U.S.A., Inc. and based upon information and belief works for Craig W. Yates.

91. Charles B. Yates, in consort with Craig Yates, actively focused on those aspects of copper foil technology that were potentially most attractive to potential buyers.

92. The technology that immediately stood out for potential exploitation by Charles B. Yates and Craig Yates was the copper foil manufacturing process using the unitary machine.

93. **However, there existed a major hurdle that impeded the sale of technology related to the unitary machine.**

94. **The presenting problem was that** the manufacturing process was a patented process that had been assigned to Circuit Foil USA, Inc., when owned by ARBED-Furukawa.⁶

95. The concept for the development of the unitary machine had evolved under the technical auspices of Circuit Foil USA, Inc., under the title of "New Technology" disclosed on or about March 5, 1991 to Circuit Foil USA, Inc., when owned by ARBED-Furukawa.

96. US Patent 5,215,646, "Low Profile Copper Foil and Process and Apparatus for Making Bondable Metal Foil", assignee Circuit Foil USA, June 1, 1993, was filed when Circuit Foil USA, Inc. was a subsidiary of Arbed/Furukawa.

⁶ See US Patent 5,215,646 [Low Profile Copper Foil And Process And Apparatus For Making Bondable Metal Foils] date of Patent - June 1, 1993; and US Patent 5,447,619 [Copper Foil For The Manufacture Of Printed Circuit Boards And Methods Of Producing The Same] date of Patent - September 5, 1995.

97. The patent describes the most important, revolutionary change in copper foil production techniques since 1955 when electrodeposited foil was first produced.

98. This patent was the primary and dominant patent that presented the virtues and the technology of foil manufacture in one machine.⁷

99. The ARBED invention, referred to as the One-Step Process or Unitary Machine galvanized the industry as it was suddenly possible to use only one machine to do everything and, therefore reduce capital investment.⁸

100. Profit margins increased because there was so much less waste, particularly in the production of very thin foils, which commanded the highest prices.

101. This patented process was the jewel of the ARBED foil crown, and was much envied and sought by other copper foil makers.

⁷ The traditional process entailed the use of drum machines responsible for fabrication of the base foil. Then the base foil had to be transferred to "treater" machines for the treatment and stainproof of the final product. The traditional process required a great investment in plant equipment. The separation of activities caused tremendous waste of foil. Typically only about 60% of the foil produced on the drums was shipped to the customer.

⁸ See Circuit Foil USA, Inc. description "Electrodeposited Copper Foil for Printed Circuits - New, One-Step Manufacturing Process and One-Step, Fully Integrated Foil Machine (4 pages).

102. As related to Wolski by Charles B. Yates, and as otherwise based upon information and belief, an important provision of the Sale/Purchase Agreement between ARBED-Furukawa and the Yates Brothers had been the agreement that the Buyers could use Sellers' (ARBED-Furukawa) technology, know-how, trade secrets, etc. for the purpose of manufacturing and selling of copper foil, but Circuit Foil U.S.A., Inc. (soon to be renamed Yates Foil U.S.A., Inc.) was restricted in disclosing and/or selling any technology, know-how, and/or trade secrets to third parties.

103. Therefore, based upon information and belief, **a multi-tiered strategy of deception was developed by Charles B. Yates and Craig Yates** in order to circumvent any restrictions imposed by the agreement with ARBED-Furukawa.

104. The first-tier devised by Charles B. Yates and Craig Yates to circumvent the inherent legal impediments to the risks of patent infringement that might be asserted by ARBED-Furukawa entailed the filing for "new" US patents.

105. Wolski was instructed to apply for as many US patents as possible, with the aim of filing specific claims that would give the appearance of being sufficiently different from the prior art so as to pass the scrutiny of the examiner and thus enable Yates Foil USA, Inc. to lay an independent claim to the

unitary machine technology and to sell same to interested Asian companies.

106. The purported "new" patents would, therefore, provide Yates Foil USA, Inc. with the ability to advance the argument, if challenged by ARBED-Furukawa, that Yates Foil USA, Inc. had the colorable and legal right to license or sell unitary machine technology.

107. Thus, US Patent 6,270,648 B1 ("Process And Apparatus For The Manufacture Of High Peel-Strength Copper Foil Useful In The Manufacture Of Printed Circuit Boards, And Laminates Made With Such Foil" of August 7, 2001, assigned to Yates Foil USA, Inc.) was obtained by trolling the technical files of previous owners of the company, including ARBED/Furukawa's US Patent 5,215,646 ("Low Profile Copper Foil And Process And Apparatus For Making Bondable Metal Foils").

108. US Patent 6,270,648 B1 was borne without technical work on either production or laboratory scale.

109. Similarly, in contradistinction to Plaintiffs' allegations⁹, part and parcel of the concocted ruse of Charles B. Yates, in consort with Craig Yates, jointly and severally, and on behalf of Yates Foil USA, Inc., US Patent 6,291,080 B1 ("Thin Copper Foil, And Process And Apparatus For the Manufacture

⁹ See for example Plaintiffs' Complaint page 10, ¶29.

Thereof" of September 18, 2001, assigned to Yates Foil USA, Inc.), WO9916935 ("Simplified Process And Apparatus For Production Of Copper Foil" of 1999-04-08, applicant Circuit Foil USA, Inc.), and WO0132963 ("Stainproof Capable Of Protecting Copper Foil" of 2001-05-10, applicant Yates Foil USA, Inc) were filings based on the prior art of previous patent owners and/or expired patents.¹⁰

G. SECOND-TIER STRATEGY: THE FORMATION OF FOIL TECHNOLOGY DEVELOPMENT CORPORATION ("FTDC") AND THE DISSEMINATION OF TECHNOLOGY THROUGH ITS MANUAL

110. A second-tier strategy to circumvent Yates Foil U.S.A., Inc.'s alleged restrictive contractual obligations to ARBED-Furukawa related to the sale of technological know-how was devised by Charles B. Yates and Craig Yates.

111. The second-tier consisted of forming Foil Technology Development Corporation ("FTDC"), a company separate from Yates Foil U.S.A., Inc. that was to sell technology, trade secrets, know-how and specialized machinery, without purportedly violating Yates Foil U.S.A., Inc.'s agreement with ARBED-Furukawa.

¹⁰ See for example US Patent 5,863,410 ("Process For The Manufacture Of High Quality Very Low Profile Copper Foil And Copper Foil Produced Thereby") of November 10, 1998, assigned to Circuit Foil Japan Co., Ltd., Tokyo. US Patent 5,863,410 was filed on June 23, 1997 and assigned to Circuit Foil USA, Inc., prior to the company name being changed to Yates Foil USA, Inc.

112. The calculated scheme, crafted by Charles B. Yates and Craig Yates, included, but was not limited to, the formation of Foil Technology Development Corporation ("FTDC"), which company was to "sell/license copper foil technology developed in New Jersey by the Plaintiffs or their agents, servants and/or employees" and to otherwise attract purchasers of its Bordentown, New Jersey plant. See Complaint ¶23.

113. It was the intent that the Yates brothers could legally argue that since FTDC was a separate and distinct entity from Yates Foil U.S.A., Inc., FTDC could sell copper foil technology and not be in violation of any restriction imposed on Yates Foil U.S.A., Inc. by ARBED-Furukawa.

114. Charles and Craig Yates were the 50% owners in FTDC, whereas Roy O'Brien, John Thorpe, Todd Cheng and Adam Wolski were the remaining 50% shareholders, equally.

115. Notably, the individuals selected to become shareholders in FTDC were specifically chosen in order to create an aura of copper foil expertise.

116. These individuals could give the appearance to foreign companies that shareholders of FTDC were competent to create new technological and manufacturing innovations in the area of copper foil fabrication rather than use and rely upon the know-how acquired from ARBED-Furukawa by Yates Foil U.S.A., Inc.

117. Charles B. Yates and Craig Yates through the transparent veil of "misdirection" were prepared to argue that ARBED-Furukawa was not entitled to restrict the sale/licensing of copper foil technology as the information to be transferred was in the public domain and/or created by FTDC.

118. As FTDC sold copper foil manufacturing know-how and technology to foreign companies, Charles B. Yates and Craig W. Yates were poised to refute ARBED-Furukawa's putative claim of any breach by Yates Foil U.S.A., Inc. by adopting a response of "plausible deniability" arguing that FTDC was a separate legal entity from Yates Foil U.S.A., Inc., comprised of different shareholders.

119. Therefore, **FTDC**, at the direction of Charles B. Yates and Craig Yates, calculatingly placed information relating to the technological know-how associated with copper foil fabrication into the public domain and otherwise directed the public to the sources wherein technological information could be found.

120. The dissemination of technological know-how into the public domain was **intended to undermine the competitive advantage of ARBED-Furukawa in the market place** with its patents, processing information and technological "know-how", and to provide Asian companies with the desire to compete and to

instill within these Asia companies an incentive to purchase additional technology from FTDC.

121. The means of the dissemination of technical information into the public domain was through the creation, issuance and dissemination of a manual, commissioned by Charles B. Yates and Craig Yates, entitled "Electrodeposited Copper Foil for Printed Circuits".

122. The devised strategy was the result of culling through the technical library of Yates Foil U.S.A., Inc., housed in Bordentown, New Jersey, of its predecessors' confidential memoranda, research and development reports, technological solutions and innovations, patents and other relevant scientific literature.

123. "Electrodeposited Copper Foil for Printed Circuits" sought to present in the body of the manual useful knowledge as to the manufacture of copper foil and to **disseminate this valuable information into the public domain.**

124. The Preface to the manual, page vii, declares, "This book, therefore, sets out to chart both the history of the industry and to describe the technology typically used throughout worldwide manufacturing operations which today produces around 300,000,000 lbs. annually".

125. As a caveat, the manual further declares on page xxvi, "The 'know-how' in this manual comprises a collection of information on copper foil fabrication available in the 'public domain'".

a. The manual, on page 2-22 served as an advertisement, sending the message to potential customers that Yates Foil U.S.A., Inc./FTDC possessed the "know-how" and experienced personnel to produce the treatment applied to the shiny (drum) side of the copper foil, and was willing to sell this segment of proprietary technology, while concealing any reference to ARBED-Furukawa to whom the technology was patented.¹¹

b. The manual, on pages 2-15 - 2-19, incorporated the report dated 9/17/9.

¹¹ Further eviscerating ARBED-Furukawa's asset, US Patent 5,447,619, the manual, on page 6-9 boldly adopts the language on page 9, lines 20-30 of the Patent, quite verbatim, which reads, "If the bonding treatment composed of copper **only is** subjected to lamination with epoxy resin systems, it tends to react with amino groups of the resin, at **the** high laminating temperatures. **This**, in turn, may create moisture at the foil-resin interface, causing the harmful effect of 'measling', and possibly delamination. **The** barrier layer [**which is**] plated over **the** all-copper **bonding** treatment prevents these harmful effects". [**Bold letters reference differences in the patent language and the manual; and bracketed words are in the manual and not in the patent**]. Similarly, the manual, on pages 7-4 and 7-5 adopts the language on pages 11 and 12 of the patent.

i. The report, "How to Produce Copper Foil Whose Matte Side Forms With Polymeric Resins an Interface which Resists Attack and Resulting Ingress By Processing Chemicals Used In Fabrication of PCB's", described in precise detail how to avoid the phenomenon of "red ring" and "undercutting", two extremely serious problems for copper foil-makers, either of which would make foil unusable for the manufactures of printed circuit boards (PCBs).

ii. It is to be noted that copper foil is sold almost exclusively to manufacture printed circuit boards.

c. Chapter 3 of the manual, pages 3-1 - 3-19, offered the equivalent of a "crash course" in the use of modern additives and the principles of mass transfer, which together are the fundament of the unitary machine concept and practice to any person or entity interested in using this proprietary information.

d. Pages 11 - 14 of US Patent 5,215,646, "Low Profile Copper Foil and Process and Apparatus For Making Bondable Metal Foils", filed May 6, 1992, Patent date June 1, 1993, assigned to Circuit Foil USA, Inc., are replicated in the manual on pages 3-2 - 3-5 and 3-9.

e. Similarly, figure 5 from the patent was closely copied on page 3-11 of the manual.

f. One of the most important additives, hydroxyethyl cellulose (HEC), described in the manual on page 3-16, 3-18, was essential to HTE (high temperature elongation) foil.¹²

g. "Polyethylene Imine (PEI) as an Addition Agent in Electrodeposition of Copper Foil", as referenced in the Confidential Memo of 05/17/93, described the use of PEI as an addition agent was disclosed in the manual on pages 3-16 - 3-19.

h. The manual, on page 3-12, was based upon the 10/28/1994 confidential memorandum of Circuit Foil entitled "R&D Report New Base Foil and Flexible Foil," which described the revolutionary use of MPS (mercapto propane sulfonic acid) as an additive that enhanced high ductility in the foil and promoted an extremely desirable low profile to the foil.

i. The text of the confidential report, without attribution, was included in the body of the manual, as each reads, in pertinent part, "Normal electrodeposition accentuates roughness by putting more deposit on the peaks than in valleys of a plated surface ... To produce a smooth and shiny surface, more metal must be deposited in the valleys than on the peaks - which is the opposite of the normal effect".

¹² Based upon information and belief, before Charles B. Yates', in consort with Craig Yates, disclosure of the technical information, HTE foil had been the best moneymaker through to the 90's for the Circuit Foil Group.

j. Similarly, **the manual, on page 3-14**, continued to address the **use of additives in the fabrication of copper foil**.

i. The aforementioned revolutionary use of MPS was described in **US Patent 5,863,410** ("Process For The Manufacture Of High Quality Very Low Profile Copper Foil And Copper Foil Produced Thereby") of November 10, 1998, assigned to Circuit Foil Japan Co., Ltd., Tokyo, which based upon information and belief, **was a very important asset of Circuit Foil Japan Co., Ltd., Tokyo.**¹³

k. The manual, on page 3-18, also directed its readers to "[m]ore information on addition agents ... in the publication titled '**Electrodeposition, The Material Science of Coating Substrates**'".

l. The manual, on pages 5-1 - 5-9, represents the proprietary information disclosed from an ARBED/Furukawa document titled "**Low Profile Copper Foil**", as low profile copper was exclusively used in the fabrication of multi-layer boards (MLB's), which was the most advanced form of PCB's.

m. As a further caveat, the manual, on page 6-12, addressed the topic of **bonding treatment** and stated, "**Patents covering these inventions are now expired, and thus belonging**

¹³ By intentionally placing the technical teachings of the patent into the public domain, Charles B. Yates, in consort with Craig Yates, sought to effectively eviscerate Circuit Foil Japan Co., Ltd's competitive technical advantage.

to public domain constituting an easily accessible source of technical information **available to anyone**" and directed the reader to the 1974 "U.S. Patent 3,857,681 (Yates, et. al.) titled 'Copper Foil Treatment and Products Produced Therefrom'".

n. Furthermore, the manual, on pages 7-7 - 7-9, contained the essence of the content of the Memorandum, "Stainproof Methods for TW Treatment" that was sent "To All Plants" on 10/19/89.

i. The memorandum addressed what to do with creating improved corrosion resistance due to chromate coatings.

ii. To PCB manufacturers, the coatings offered improved permanence and survival ability of adherents under various conditions encountered during PCB manufacturing steps as well as during their service life.

126. The Preface, page xviii, Electrodeposited Copper Foil for Printed Circuits, in an attempt to lure potential purchasers to acquire the Bordentown, New Jersey facility and to employ its professional personnel, contained the following admonition, "In spite of the availability of modern computer aided process control systems, running a copper foil plant requires a significant element of experience and "know-how" to operate efficiently".

127. In sum and substance, the manual created and disseminated by FTDC, at the direction of Charles B. Yates, in consort with Craig W. Yates, was an orchestrated attempt intended to circumvent the restriction imposed upon Yates Foil U.S.A., Inc. from disclosing and/or selling any technology, know-how, and/or trade secrets to third parties otherwise belonging to ARBED-Furukawa or others and to concurrently lure a potential buyer to purchase the Bordentown, New Jersey facility.

H. STRATEGIC PARTNERSHIP: ROBERTS, ASPINALL, YATES AND FTDC

128. In addition, Charles B. Yates and Craig Yates arranged a strategic partnership by, between and among **Derek Roberts, Paul Aspinall, Yates Foil U.S.A., Inc. and FTDC.**

129. Derek Roberts would share with Yates Foil U.S.A., Inc./FTDC the names of his excellent Asian contacts, which companies would be contacted to assess their interest in the purchase of copper foil technology and manufacturing know-how from Yates Foil U.S.A., Inc./FTDC.¹⁴

130. Based upon information and belief, Aspinalls' company history, on its website, notes that in 1990, the company is awarded a major contract for the supply of copper foil

¹⁴ Some of the companies with whom information was shared by FTDC, at the direction of Charles B. Yates and Craig Yates, included **Co-Tech, United Copper Foils, China Enterprise Investment, Kyshtym Electrolytic Plant, Jiri Konicek, Lee Chang Yung ("LCY") Technology, Nikko Group, and ILJIN.**

production equipment to a Taiwanese client; in 1991 the company is awarded a second major contract for the supply of copper foil production equipment to a Chinese client; and between 1992 and 1995, the company is awarded a third and fourth major contract (Phase I and 2) for the supply of copper foil production equipment to a South Korean client [Iljin].

131. Concurrently, Paul Aspinall, a partner, along with Craig Yates, of TP Aspinall & Sons, Ltd¹⁵, of Aspinall Way, Middleton Business Park, Middleton Road, Morecambe LA3 3PW, would be contracted to build copper foil equipment orders from these foreign companies and, therefore, plaintiff, Yates Foil USA, Inc., through its principal shareholder, Craig Yates, disseminates the technology and "know-how" which it asserts has been purloined by defendants.

I. OBJECTIVE:
ENTICE ILJIN TO PURCHASE THE BORDENTOWN, NJ PLANT

132. Against this background of alliances and strategies, it was the intent of Charles B. Yates, in consort with Craig W. Yates, to abandon the actual manufacturing and selling of copper foil out of the Bordentown, New Jersey plant and to sell off Yates Foil U.S.A., Inc.'s equipment.

¹⁵ Based upon information and belief, Charles B. Yates and Craig Yates held an ownership interest in TP Aspinall & Sons, Ltd.

133. Charles B. Yates' expressed intent was to lure ILJIN or other potential companies to purchase plaintiff's manufacturing plant in Bordentown, New Jersey, as its technology was concurrently being sold.

134. Charles B. Yates had expressed that his evolving business objectives had been influenced by an earlier visit to the ILJIN plant in South Korea in or about February, 1998.

135. Upon his return from South Korea, Charles B. Yates reported to Wolski that he was extremely impressed with the ILJIN plant.

136. He commented that base foil fabrications was carried with the current of over 80,000 Amperes, as compared with Yates Foil 25,000 Amps, due to the fact that **ILJIN used forced, turbulent flow of the electrolyte as opposed to Yates' use of "convection" agitation of the copper electrolyte in the anode drum gap,** which resulted in the laminar flow of the electrolyte.¹⁶

137. The ILJIN treater ran approximately 4 times faster than Yates' treater and that ILJIN's barrier layer was brass (gold color), which was superior in performance to Yates's grey colored zinc barrier layer.

¹⁶ See pages 4-7 - 4-11 of the manual published by FTDC entitled "Electrodeposited Copper Foil for Printed Circuits".

138. Charles B. Yates' impression of the ILJIN plant was that it was at least 3 times more efficient to Yates Foils' plant in terms of output of copper foil produced in unit of time and that the plant was correspondingly vastly more profitable.

139. Charles B. Yates explained that a lot of ILJIN's questions of him during his visit were meant to assess Yates Foils' competence rather than to acquire Yates Foils' know-how, as **ILJIN's know-how was superior to that of Yates's Foil.**¹⁷

140. Therefore, Charles B. Yates was prone to tout that the Bordentown, New Jersey plant was an "in-place operation".

141. In furtherance of the developed strategy, Charles B. Yates, in consort with Craig W. Yates, instructed the Bordentown, New Jersey personnel to send ILJIN technical information contained in a patent application under the title "**Stainproof Capable of Protecting Copper Foil Against Oxidation at Elevated Temperatures**", as Charles B. Yates sought to entice ILJIN to the negotiating table.

¹⁷ Plaintiffs allege that Mr. Wolski conspired with ILJIN to provide trade secrets, confidential information, confidential technical information, patent information, and other property and intellectual property owned by Yates and/or FTDC. The patents cited in paragraph 32 of Plaintiffs' Second Amended Complaint appear to pertain to "**unitary machine**", which, based upon information and belief, was a manufacturing process not used by ILJIN. **Therefore, plaintiffs' averments represent uneducated, baseless and frivolous allegations leveled against defendants.**

142. Evidencing this nurturing relationship, Charles B. Yates, as President of Circuit Foil U.S.A., Inc., penned a company facsimile transmission to ILJIN Copper Foil Co. Ltd. of March 12, 1998 using seductive phrases such as "our mutual collaboration" and directing that "[o]n technical matters we have asked our Mr. Adam Wolski to serve as the focal point to coordinate the continuing exchange of process and operations information with Dr. Kim" (of ILJIN).

143. However, to lure other potential purchasers, Charles B. Yates concurrently directed the Bordentown, New Jersey personnel to also send the same technical information contained in the aforementioned patent application to LCYT, Co-Tech and United Copper Foils.¹⁸

144. Several of the employees of Yates Foil U.S.A., Inc. were specifically directed by Charles B. Yates to "give ILJIN any information they want".

¹⁸ Contrary to the contents of the Complaint ¶33, the only "systematic conveyance to the ILJIN Defendants" of any information, which the plaintiffs allege was the conveyance of trade secrets, confidential technical information, confidential information, patent information, other property, other intellectual property owned, possessed and/or belonging to Plaintiff, was information directed to be shared to ILJIN by Charles B. Yates, in consort with Craig Yates.

J. ON-GOING SALE OF TECHNOLOGY KNOW-HOW
AND EQUIPMENT

145. As noted above, Charles B. Yates, in consort with Craig W. Yates, had decided to sell copper foil manufacturing know-how, technology and machinery to foreign corporations who wanted to enter the field of copper foil fabrication.

146. Co-Tech of Taipei, Taiwan was such a willing purchaser.

147. Observing no overt oversight or challenge by ARBED-Furukawa to the international activities of Yates Foil U.S.A., Inc., Charles B. Yates, in consort with Craig W. Yates, became more emboldened to have Yates Foil U.S.A., Inc. sell its technological know-how abroad to interested companies.

148. As evidenced by correspondence from Charles Yates of May 1, 2000, the foreign sale of Yates Foil U.S.A., Inc.'s technology know-how and equipment, Charles B. Yates, President of Yates Foil USA, Inc. had sent a facsimile transmission of May 1, 2000 to Mr. Grant Jiang, Chairman of Co-Tech Copper Foil Corporation, in Taipei, Taiwan, as follows:

For the **Joint R&D Project Leader of Yates** we hereby authorize you to insert the name of **George Gaskill** (you know him as Ric, but that is only his nickname, George is his legal name).

For the **Deputy Project Leader for Yates**, please insert the name of **Adam Wolski**.

I apologize for having omitted to include these names in the **execution copy we returned to you recently.**

149. The exchange of technical "know-how" to Co-Tech by Yates Foil U.S.A., Inc. was so complete that Charles B. Yates was able to request of Mr. Grant Jiang, Chairman of Co-Tech Copper Foil Corporation, in Taipei, Taiwan during a temporary manufacturing stoppage in the Bordentown, NJ plant for Co-Tech to produce copper foil for Yates Foil U.S.A., Inc.

150. Charles B. Yates, therefore, sent a facsimile transmission of May 1, 2000 to Mr. Grant Jiang, Chairman of Co-Tech Copper Foil Corporation, in Taipei, Taiwan, stating, in pertinent part, as follows:

As the consequences of a legal dispute concerning the lease of our manufacturing premises, we may be required to terminate foil manufacturing operations at our Bordentown plant at some point during the next few months.

We have several important foil customers who depend entirely on us for their supply who would be severely injured if we become unable to ship to them. **We hope that Co-Tech Copper Foil Corporation might to be able to allocate a part of your new foil capacity toward these accounts**, so that we would not leave them without a satisfactory supplier.

Three of these accounts are laminators working with polyimid substrates for high temperature laminates. By name they are **Rogers Corporation, Taconic, and Neltech.** Together they account for roughly 23 metric tons per month of TWX and TAX foils, (all HTE, of course).

The remaining two accounts which use our foil exclusively are R.E. Service Corp. and High Tech, both of which sell and cap foil sheets to PCB houses. They use large amounts of ½ ounce foil, along with substantial quantities of 1

ounce foil, all HTE grade, but otherwise "normal" treatment (TW) and stainproofs (NT). The combined foil usage of these two accounts usually run at around 54 metric tons per month.

....

I have asked Ric Gaskill to take charge of working out the details of this program with you if you are able to help us, as he is immediately familiar with the special needs of these customers, as well as your plant's manufacturing capabilities.

151. In fact, based upon information and belief, Co-Tech started selling foil in the United States to Yates Foil U.S.A., Inc.'s premier client, **Rogers Company of Arizona**, which had expressed a preference for the quality of Co-Tech's foil to that which had been produced by Yates Foil U.S.A., Inc.

152. Grant (grant@co-tech.com) of **Co-Tech** e-mailed to Ric Gaskill on May 5, 2000 regarding the **Joint R&D Project** and the need for technical support and patent exclusivity for seven (7) years, as follows:

Dear Ric: Nice to receive your mail. According to your reply, I am figuring out how to organize an R&D team in USA and Taiwan to make sure we can have your joining in Co-Tech. As you know, we signed a **4 million US dollars project for this technology. The assumption is Yates is continuing to provide all the support and patent exclusively for Co-Tech for 7 years.** If Yates dismissed. Maybe we have to propose a new way to handle this case. My suggestion is to ask Mr. Yates to organize a Lab in USA and Co-Tech organize the site in Taiwan for at least 3 years length. **Yates have to hire Ric, Todd, Adam, Stuard or any other member you recommend for this project.** They can travel between US and Yunlin for this 3 years or longer. What is your opinion? I need your advise before talk with Mr. Yates. Tks.

**K. RECOGNITION OF THE BENEFITS BESTOWED BY ADAM WOLSKI
UPON YATES FOIL U.S.A., INC. AND THE YATES BROTHERS,
WITH OFFER OF REMUNERATION TO ADAM WOLSKI**

153. On or about **July 27, 1999**, Yates Foil U.S.A., Inc. entered into a contractual license agreement with **Co-Tech** of Taiwan for the sale of the **Unitary Machine** known as drum treater ("Integrated Drum Production Unit") and technology for \$4,000,000 USD, allocated \$2,400,000 license fee and \$1,600,000 joint Research & Development expenses.

154. **Charles B. Yates**, on behalf of Yates Foil U.S.A., Inc., had agreed to compensate Wolski for his unique contribution to the technological development in the copper foil industry with the payment of **\$500,000**, which sum because of Wolski's exigent circumstances was compromised to \$400,000, **if paid quickly by Wolski by Yates Foil U.S.A., Inc.**

155. With Yates Foil U.S.A. Inc.'s decision to sell the know-how, trade secrets and technology to foreign corporations and in consideration of the financial boon to the company occasioned by Wolski's technical contributions in the manufacturing of copper foil, **it was agreed, on or about September 25, 2000** (as referenced in a prior letter agreement of June 07, 2000), between Yates Foil U.S.A., Inc. and Wolski, that

Wolski would be compensated by Yates Foil U.S.A, Inc. with the payment of \$400,000.¹⁹

156. The compensation was for Wolski's "outstanding and unique technical contribution toward advancements in copper foil technology" as well assistance in future services and sales [the equivalent of "deferred compensation"].

157. The payment of the \$400,000 was to be coordinated with and timed to Yates Foil U.S.A., Inc.'s sales of know-how, technology and equipment focused primarily on the Russian company, Kyshtym, which was represented in its deals with western companies by a German company, Lamitec, and/or by the sale of know-how, technology and equipment to a Taiwanese company, Co-Tech.

158. By May, 2000, Yates Foil U.S.A., Inc., through a German based company, Lamitec metals & chemicals GmbH, had arranged to sell machinery and equipment from its Bordentown facility to a Russian company, Kyshtym.

¹⁹ Originally, this sum was to have been \$500,000 USD, but if the payment was to be made timely to Wolski, he would compromise said sum to \$400,000. **As the promised payment was not forthcoming, Wolski's counterclaim includes the demand for payment of the original \$500,000, plus, *inter alia*, the loss of money since the breach.**

159. A May 7, 2000 Annex described the purchases and pricing between Lamitec (on behalf of Kyshtym) and Yates Foil U.S.A., Inc.

160. Based upon invoices from Yates Foil U.S.A., Inc. Invoice Nos. 713001 - 717003, 10061 and 22301 - 22317, **the initial purchase orders from May 15, 2000 through April 06, 2001 totaled \$5,068.413.00, consisting, inter alia, of the following:**

Drums, Technology, Anodes, Stainless steel tank with insulating lining, Aluminum bus bar assembly, set of anode chairs, foil take off, edge trimmer, tension winder, edge trimmer rewinder, foil wash box, rinse filter with cartridges, drive edge rewinder, control panels, edge belts with spares, drum drive motorized reduction gear unit, ss tank plastic floor covers, electrolyte distribution manifold & support stands, anode chair plastics, ss tank insulation footpads, ss cathode boxes, rubber lined bobbin rollers, oscillator polisher apparatus drive of oscillator polisher, drum drive motor support brackets, control panel support bracket top, current ring collector system support brackets, bus bar support brackets, first id box, electrical equipment spares, and drum machine rectifiers with spare parts.

161. A Memo of **May 16, 2000** delineates the division of responsibility to facilitate the Russian Project: Yates Foil USA (Keith Bodendorf), Foil Technology Development Corp (FTDC, Dr. Todd Cheng), Kontex International (Dr. Jiri Konicek), Lamitec (Jaroslav Stenek, Ed Hinner, Libor Horak) and Aspinall's UK (Paul Aspinall).

162. By way of letter of May 18, 2000, Charles B. Yates of Yates Foil USA, Inc. proposed to Lamitec metals and chemicals

GmbH, Carl Zeiss Strasse 7, 82931 Neu-Ulm, Germany Attn: Waldemar Reuswich, Director, the schedule of shipment for the contracted equipment sold for \$8,015,888.

163. A payment of **\$387,624.00** was routed through **Farmers and Mechanics Bank, Account No. 51 90 00 02 22.**

L. DISSEMINATION OF TECHNICAL INFORMATION TO ASIAN MARKET

164. As aforementioned, as Asian contacts materialized, the exchange of technology and know-how ensued.

165. The personnel at the Bordentown, New Jersey plant were directed by Charles B. Yates to share any and all information requested of them to the Asian companies with whom relationships had developed.

166. The worldwide exchange of technology in the manufacturing and processing of copper foil became prolific.

167. Against this contextual background, FTDC sold an alleged exclusive technological package to LCYT, a Taiwanese company.

168. However, LCYT soon came to learn that Co-Tech was concurrently advertising its use of Yates technology, which technological information was provided, at the direction of Charles B. Yates, in consort with Craig W. Yates, to Co-Tech in purported violation of the exclusive agreement between FTDC and LCYT.

169. By letter of December 6, 2000, Todd Cheng, President of Foil Technology Development Corporation confirmed to Lee Chang Yung Technology (LCYT) that, in fact, the technology that was sold to LCYT was also known to **Co-Tech, Nan-Ya Plastics (in Taiwan), Chinp (in Shanghai), and ILJIN (in Korea).**

170. *In fact, Todd Cheng, President of FTDC acknowledged the level of shared technology in the copper foil marketplace and came to admit to Mr. Bowei Lee of LCYT on December 6, 2000 "that most foil operations in the world have some relation to Yates technology".*

171. *On October 6, 2000, Charles B. Yates tragically died in a plane crash, leaving Craig W. Yates at the helm of Yates Foil U.S.A., Inc. and FTDC.*

172. By October 10, 2000, a review of a Summary of Charles B. Yates' Pending Projects (which included the Asian market), as compiled by Dr. Cheng, President of FTDC, consisted, in pertinent part, of the following:

TAIWAN

- LCYT (FTDC)
Contact: Mr. Bowei Lee
Status: The contract was signed on 6/22/97. Plant was built in Kaohsiung, Taiwan. Plant startup was in 4/2000.
- COTECH (YATES FOIL, USA)
Contact: Mr. Grant Jiang
Status: License Agreement was signed on 7/27/1999. The license is for an **"Integrated Drum Production**

Unit". ... The ground breaking is set in Dec 2000.

CHINA

- UNITED COPPER FOILS
Contact: Mr. C K. Yeung
Status: We have not seen the agreement. **Charles** orally told me that he has 20% share of the company. **He supplies know-how to Mr. Yeung. We have given him the additive formula and NT formula. HEC and solugel have been shipped to him.**

- BEIJING YATES COPPER FOIL
Contact: Mr. Zhuang Pan
Status: Preliminary agreement was agreed in 9/2000 during Charles' visit to Beijing. There are some technical issues needed to be resolved. The company will be **owned equally by Yates, Capital Steel and China Enterprise Investment Co.** The plant will be divided into two parts: (1) Yates equipment which includes 4 used drums, 2 new drums, **treater drawings**, **slitter drawings** and **new 1" Ti top sheet drum technology.** (2) United Copper Foils equipment made by Prof. Y.T. Wang of Beijing Yuanchuang Copper Foils Equipment Ltd.

- BENXI COPPER FOIL COMPANY, LIAONING, CHINA
Contact: Mr. Thao Li Qun
Status: Preliminary agreement was signed on 7/14/2000. It was revised during Charles' visit in 9/2000. They insisted on the joint venture, which Charles did not agree. This project needs further negotiations.

RUSSIA

- KYSHTYM ELECTROLYTIC COPPER PLANT, CHELJABINSK
Contact: Lamitec Metals & Chemicals GmbH, Ulm, Germany (Mr. Jiri Konicek and Mr. Waldemar Reuswich)
Status: Contract was signed on 5/7/2000. We will supply 14 used drums, 12 ED cells, **2 new treaters**, 4 rectifiers (15KA/48V), ... **The total payment should be \$9.47 million.** We have been paid \$300,000 so far. We paid Paul Aspinall \$150,000,

and Konicek \$81,000. **The total due up to 10/2000 is \$3 million.**

KOREA

• LG CABLE

Contact: Mr. Kyung N. Woo

Status: Todd Cheng made one visit to Korea in 8/2000. A meeting between Dr. Han/Mr. Woo and Charles was held at Bordentown in 9/2000. A follow-up visit to the LG plant will be needed to come to an agreement. LG Cable ordered **two new drums** 2700 mm x 1380 mm. Each costs \$234,415 plus \$3,500 freight. Each Ladish top sheet costs \$95,000 which is not included in this price. **They have ordered 24 more drums in six months in order to keep this price.** Pragma Corp. is the agent for the drums. **We have to choose either Pragma or Euroca as our agent to sell technology/equipment to LG Cable.**

172. In fact, the duplicity of the established deceptive dealing by Yates Foil U.S.A., Inc./FTDC was set forth in a letter of December 7, 2000 from Bowei Lee, President of Lee Chang Yung Technology Corp. (LCYT) wherein he wrote to **Dr. Todd Cheng, President of Foil Technology Development Corporation (cc: Mr. Craig Yates)** expressing concern as to the **dissemination of technology and the relationship between Yates/FTD and its competitor Co-Tech** and the amount of information that may be reaching Co-Tech.

173. The aforementioned letter contains a reference to an **admission** by Dr. Cheng of FTDC to Bowei Lee's wife, "you admitted over the phone that **there was a technical license of a unitary machine from Yates to Co-Tech ...**"

174. The aforementioned letter attaches a reference to **ARTICLE 14** of an agreement between FTD and LCYT, which reads,

As the technology shall involve the operation of LCY First Plant involving proprietary information of LCY, FTD, directly or indirectly, shall not provide, license or transfer Technical Information to any third party in Taiwan. **FTD shall take all actions to ensure that its shareholders and directors shall not provide, license or transfer Technical Information to any third party in Taiwan.** This restriction shall continue in force for as long as FTD shall be under contract to LCY for provision of services and/or technical exchange under this agreement, or any continuing technical exchange program under Article 3.1 (c) of this agreement.

175. *Based upon information and belief, despite the terms of the aforementioned agreement, Charles B. Yates and Craig Yates, seeking to assert its dominance as the possessors of superior technical knowledge and the "go to" company within the copper foil industry, transferred actual technological "know-how" materials not only to LCYT, but also to Co-Tech and ILJIN, thereby effectively flooding the Asian copper foil industry with technical "know-how".*

176. *By way of example, but not intended to be exhaustive of the technological "know-how" transfer, Co-Tech, LCYT and ILJIN, at the direction of Charles B. Yates and Craig Yates, was provided with technical copper foil manufacturing information and data based upon prior research and development by predecessors of Yates Foil U.S.A., Inc.*