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**Louis L. Ainsworth**  
Senior Vice President  
General Counsel and Secretary

October 19, 2004



Via email ([karen.carriker@spx.com](mailto:karen.carriker@spx.com))

Karen Carriker  
Claims and Litigation Manager  
SPX Corporation  
13515 Ballantyne Corporate Place  
Charlotte, NC 28277

Re: Mildred Armstead, et al v. General Signal Pump Group, et al  
State Court, Judicial District of Cobb County, Georgia

Dear Karen:

Enclosed please find the Order on Defendants' Motion to Sever in the above-referenced asbestos matter, Mildred Armstead, et al v. General Signal Pump Group, et al, which was sent to General Signal and received at the offices of Aurora Pump via First Class mail postmarked October 15, 2004, and received by us today, October 19, 2004. If you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script that reads "Louis L. Ainsworth".

Louis L. Ainsworth  
General Counsel

LLA/drb  
Enclosure

IN THE STATE COURT OF COBB COUNTY  
STATE OF GEORGIA

COBB COUNTY, GA  
FILED IN OFFICE

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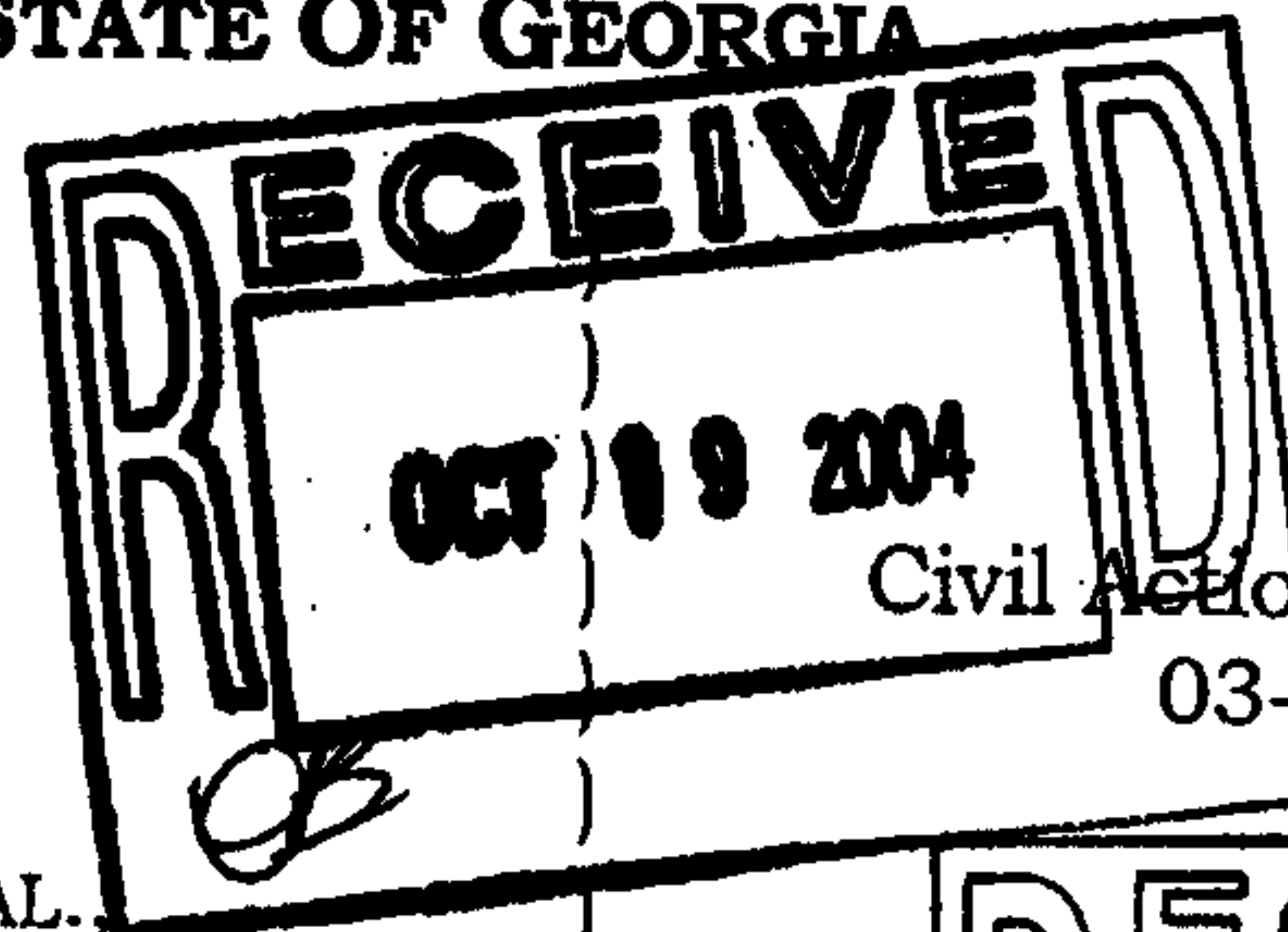
MILDRED ARMSTEAD, ET AL.,

PLAINTIFF,

v.

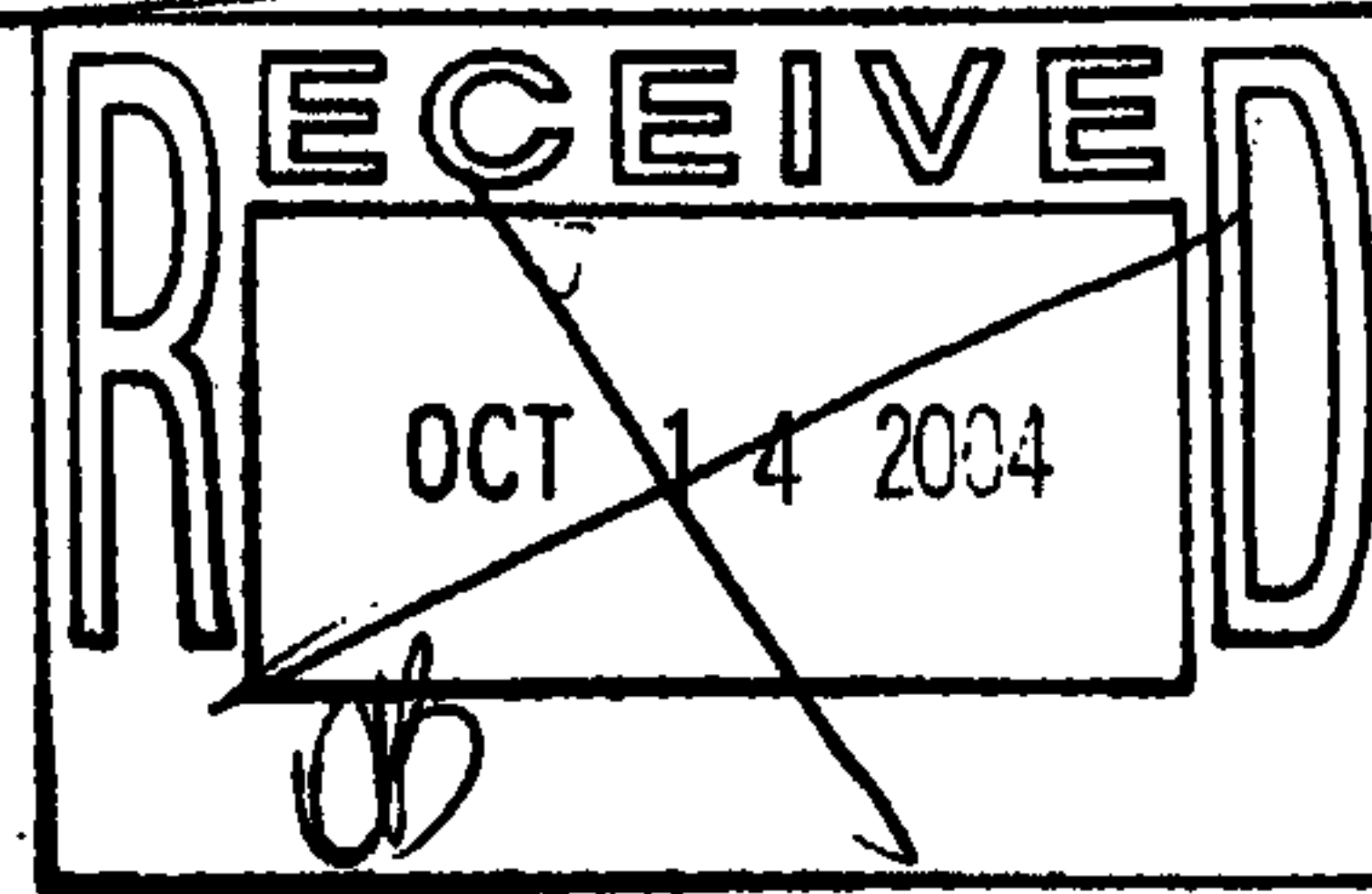
GEORGIA PACIFIC CORPORATION, ET AL.,

DEFENDANT.



*Diane Graham*  
STATE COURT CLERK

Civil Action File Number:  
03-A-11943-5



ORDER

This case comes before the Court on Defendants' Motion to Sever Improperly Joined Plaintiffs. The parties presented oral arguments to the Court on May 10, 2004. After reviewing the entire file and the relevant case law, the Court ordered Plaintiffs to file a restated amended Complaint which set forth only those claims sufficient to support joinder under O.C.G.A. §9-11-20(a) on or before August 20th, 2004. In its Order the Court further stated, "[T]he Court is unwilling to allow joinder of plaintiffs among whom there is a lack of commonality. See O.C.G.A. §9-11-20. The joinder of plaintiffs is limited to those "arising out of the same transaction, occurrence or series of transactions or occurrences" in which common questions of law or fact will rise. Id." *See Court's Order of May 20, 2004.*

The Court granted Plaintiffs a brief extension of time in which to filed the Ordered Amended Restated Complaint and on August 24, 2004 Plaintiffs filed the Amended Restated Complaint. Plaintiffs' Amended Restated Complaint is substantially identical to the initial Complaint filed. In addition, the Plaintiffs failed to show any commonality between the Plaintiffs, merely restating the brief allegations in the initial Complaint which had been ruled as insufficient to maintain joinder. Furthermore, the Plaintiffs filed a supplemental response to Defendant's Motion to Sever stating that the State Court of Fulton County had declined to sever the claims in a similar situation.

This Court finds the Plaintiffs in the above-styled case are not properly joined. Plaintiffs have presented the Court with no evidence to the contrary despite being given the opportunity to do so. **ACCORDINGLY, THE COURT HEREBY ORDERS THE CLAIMS OF EACH PLAINTIFF LISTED IN THE ABOVE STYLED CASE BE SEVERED AS THEY ARE FOUND TO BE**

**UNRELATED.**

The Court is mindful that other Courts have permitted similar asbestos cases to remain joined. While such a procedure may have some advantages procedurally, this Court finds that it unduly burdens that Clerk's office and, more importantly, it ignores the clear language and purpose of O.C.G.A. §9-11-20. Permissive joinder is allowed only when there is a joint assertion of a cause of action or a claim arising from the same transaction. The statutory requirements for permissive joinder are not subject to distortion for a certain type of lawsuit. "[S]tatutory provisions concerning joinder (pursuant to 9-11-20) are substantive laws that govern the rights of the parties. To permit their violation renders the statute nothing more than a guideline." *Uniroyal Goodrich Tire Co. v. Ford*, 218 Ga. App. 248, 461 S.E.2d 877 (1995) (*Ruffin concurrence*). Although Plaintiffs, and even some Defendants, may in these "asbestos" cases point to judicial economy as a basis for ignoring joinder requirements, "if joinder is not authorized by the plain language of the statute, no amount of judicial economy<sup>1</sup> can justify it." *Howard Motor Co. v. Swint*, 214 Ga. App. 682, 448 S.E.2d 713 (1994). See also *Brinks, Inc. v. Robinson*, 215 Ga. App. 865, 452 S.E.2d 788 (1994) and *Cincinnati Insurance Co. v. Reubitz*, 205 Ga. App. 174, 421 S.E.2d 767 (1992).

Having found permissive joinder inapplicable, the Court does not dismiss the joined claims (O.C.G.A. §9-11-21), but severs them as unrelated actions to be established in the Court with separate civil action numbers and files with the Clerk of the State Court. **EACH PLAINTIFF WHICH WISHES TO CONTINUE TO ASSERT A CLAIM, NOW SEVERED, MUST WITHIN THIRTY (30) DAYS OF THE DATE OF THIS ORDER FILE A RESTATED COMPLAINT NAMING THE DEFENDANTS ALLEGED TO HAVE INJURED THE PLAINTIFF.** Each such Restated Complaint in this Court shall be subject to any filing fees as well as the random assignment procedures of the office of The Clerk of the State Court of Cobb County. All the rules of proper jurisdiction and venue will apply to each individual refiled case.

For all such Restated Complaints timely filed, the filing date shall relate back to December 29, 2003, being the filing date of the original Complaint now severed. If a Plaintiff herein does not file a Restated Complaint within thirty (30) days then any subsequent suit filed thereafter by such Plaintiff shall not be an action having been

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<sup>1</sup> Questions of "economy" might include the payment of one filing fee and causing the Clerk's office to manage the joint filing of, and notices to, over 150 Plaintiffs and over 200 Defendants.


severed from this case, but shall be a new filing. By stipulation of the parties to any severed action, any discovery in this action may be made a part of the filing in the severed suit.

As process has already been served with the initial Complaint, now severed, Plaintiff need not personally serve any Defendant previously served but may notify such Defendant of the filing of the Restated Complaint pursuant to O.C.G.A. §9-4-5. Any Defendant who has already filed an Answer in this suit shall file its Answer to any Restated Complaint within thirty (30) days of the filing of a Restated Complaint in which it is named as a Defendant.

**ANY SEVERED CLAIM IN WHICH A RESTATED COMPLAINT IS NOT FILED WITHIN THE THIRTY (30) DAYS SHALL STAND DISMISSED WITHOUT PREJUDICE.**

**PLAINTIFF MILDRED ARMSTEAD, INDIVIDUALLY, AS THE SURVIVING SPOUSE AND AS THE REPRESENTATIVE OF THE ESTATE OF ROBERT ARMSTEAD, DECEASED, IS HEREBY ORDERED TO REFILE HER AMENDED COMPLAINT WITH ONLY THE DEFENDANTS WHO ARE PROPER TO HER CASE. SAID AMENDED COMPLAINT SHALL BE REFILED WITHIN THIRTY (30) DAYS OF THE DATE OF THIS ORDER.**

SO ORDERED, this 13 day of October, 2004.

  
DAVID P. DARDEN, JUDGE  
STATE COURT OF COBB COUNTY

CERTIFICATE

I hereby certify that I have this day mailed (through the Cobb County Mail System) a copy of the foregoing Order to the following, to wit:

SAUNDERS ALDRIDGE  
200 EAST SAINT JULIAN ST  
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SAVANNAH, GA 31412

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SUITE 300  
ATLANTA GA 30326

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SUITE 1061  
ATLANTA, GA 30303

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BLDG 300, SUITE B  
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THE PROSCENIUM, SUITE 1900  
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ATLANTA, GA 30303

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181 14<sup>TH</sup> STREET NE  
ATLANTA, GA 30309

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ATLANTA, GA 30308-3243

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Cleveland, OH 44114

General Signal Pump Group  
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North Aurora, IL 60542



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Mansfield, OH 44901

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Atlanta, GA 30361

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Portsmouth, NH 03801

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Atlanta, TX 75551-1030

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Los Angeles, CA 90024

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Suite 101  
Flowood MS 39232-9099

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CT Corporation System  
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Atlanta, GA 30361

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Marysville, OH 43041

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1201 Peachtree Street NE  
Atlanta, GA 30361

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Portsmouth, NH 03801

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Edison, NJ 0881804020

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1201 Peachtree Street NE  
Atlanta, GA 30361

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C.T. Corporation System  
1201 Peachtree Street NE  
Atlanta, GA 30361

USX Corp et al  
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Pittsburgh, PA 15219-0100

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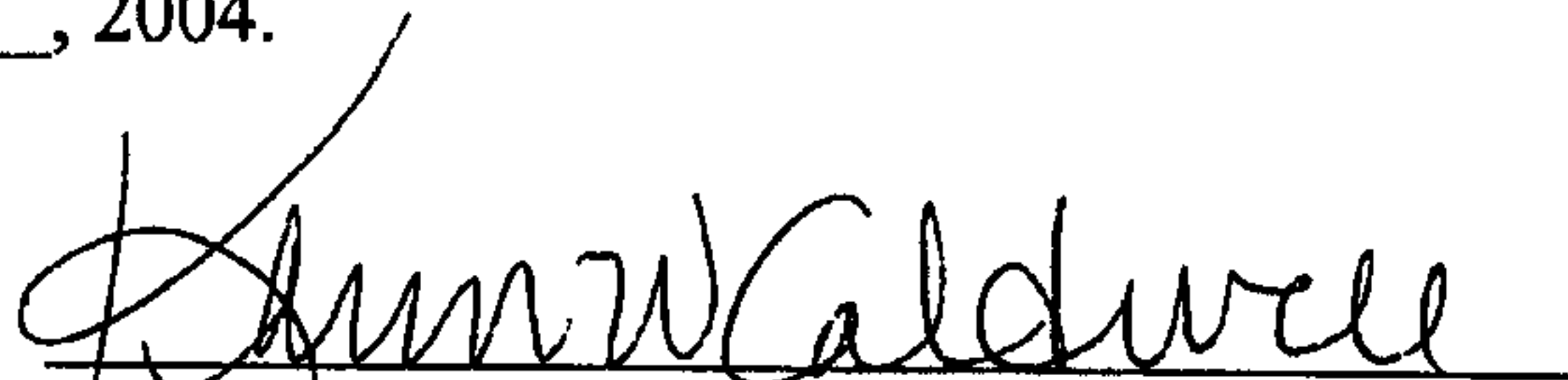
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Wilmington, DE 19801

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C.T. Corporation System  
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Atlanta, GA 30361

White Consolidated Industries Inc  
11770 Brea Road  
Cleveland, OH 44111

This 13 day of Oct, 2004.



Karen W. Caldwell  
Judicial Administrative Specialist  
To Judge David P. Darden  
State Court of Cobb County

David P. Barden, Judge  
State Court of Cobb County  
12 East Park Square  
Chambers 4-A  
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