

FILED  
SUPERIOR COURT  
OF GUAM

2019 FEB -7 AM 10:58

CLERK OF COURT

By: 

1 THOMAS McKEE TARPLEY

Law Firm

2 A Professional Corporation

GCIC Building

3 414 West Soledad Avenue, Suite 904

Hagatna, Guam 96910

4 Telephone: (671) 472-1539

Facsimile: (671) 472-4526

Email: [ttarpley@attorneyguam.com](mailto:ttarpley@attorneyguam.com)

5 Todd B. Denenberg (*Pro Hac Vice*)

Paul A. Casetta (*Pro Hac Vice*)

6 Geoffrey D. Farnham (*Pro Hac Vice*)

Denenberg Tuffley, PLLC

7 28411 Northwestern Hwy, Suite 600

Southfield, MI 48034

8 Co-Counsel for Plaintiffs

9 *Attorneys for Plaintiff Guam Power Authority,*

*DB INSURANCE CO., LTD., fka Dongbu Insurance Company, and*

*CHUBB INSURANCE SINGAPORE LIMITED, f/k/a ACE Insurance*

*Limited, as subrogees of Guam Power Authority*

10 19ZP050

11 SUPERIOR COURT OF GUAM

12 GUAM POWER AUTHORITY, )  
DB INSURANCE CO., LTD., f/k/a Dongbu )  
13 Insurance Company, and CHUBB )  
INSURANCE SINGAPORE LIMITED, f/k/a )  
14 ACE Insurance Limited, as subrogees of Guam )  
Power Authority, )

15 Plaintiffs, )

16 vs. )

17 KOREA EAST- WEST POWER CO., LTD., )  
18 PM CONTROL SYSTEMS PTE LTD., )  
JOHN DOE COMPANIES 1 - 20, and JOHN )  
19 DOE INSURANCE COMPANIES 1-20, )

20 Defendants. )

CIVIL CASE NO. CV0825-18

**FIRST AMENDED COMPLAINT AND**  
**JURY DEMAND**

Plaintiffs, GUAM POWER AUTHORITY (“GPA”), DB INSURANCE CO., LTD, f/k/a Dongbu Insurance Company (“DBIC”), and CHUBB INSURANCE SINGAPORE LIMITED, f/k/a ACE Insurance Limited (“Chubb”), allege the following for their First Amended Complaint against Defendants, KOREA EAST- WEST POWER CO., LTD. (“KEWP”), PM CONTROL SYSTEMS PTE LTD. (“PM Controls”), JOHN DOE COMPANIES 1-20, and JOHN DOE INSURANCE COMPANIES 1-20:

## PARTIES

1. GPA is a Public Corporation and Enterprise Fund of the Government of Guam operating pursuant to the Guam Power Authority Act of 1968 (*See*, Guam Code 12, Chapter 8) with its principal place of business located at the Gloria B. Nelson Public Service Building 688 Route 15, Suite 100, Mangilao, Guam 96913-6203. At all times relevant to the facts giving rise to this litigation, GPA owned and operated an electrical generation plant (the "Power Plant") located at 205 Cabras Hwy., Piti, Guam. The Power Plant housed, in part, two power generation units called Cabras 3 and Cabras 4.

2. DBIC is an insurance company headquartered in Seoul, South Korea. At all times relevant to the facts giving rise to this litigation, DBIC was legally authorized and registered to provide insurance in Guam. On the date of the explosion giving rise to this litigation, DBIC provided property insurance coverage, said coverage also including business interruption and extra expense coverage, to GPA via DBIC Policy Number 621339-621339 (KMF 5603-A06) (the "DBIC Policy"). The DBIC Policy covered the Power Plant.

3. Chubb is an insurance company headquartered in Singapore. At all times relevant to the facts giving rise to this litigation, Chubb was legally authorized and registered to provide insurance in Guam. On the date of the explosion giving rise to this litigation, Chubb provided

1 premises pollution liability coverage to GPA via Chubb Policy Number 94901847PP (the "Chubb  
2 Policy"). The Chubb Policy covered operations at the Power Plant.

3 4. Upon information and belief, KEWP is a foreign entity organized, licensed,  
4 registered and qualified to do business in Guam with its principal address at 395, Jongga-ro,  
5 Jung-gu, Ulsan, Korea, 44543. At all times relevant to the facts giving rise to this litigation,  
6 KEWP provided services to GPA at the Power Plant.

7 5. Upon information and belief, PM Controls is a foreign entity organized, licensed,  
8 registered and qualified to do business in Guam with its principal place of business located at 8  
9 Joo Koon Crescent, Singapore 629011. At all times relevant to the facts giving rise to this  
10 litigation, PM Controls provided services to GPA at the Power Plant.

11 6. John Doe Companies 1 through 20 are currently unidentified contractors,  
12 consultants, engineers, and/or inspection companies involved in the design, engineering,  
13 maintenance, repair, and/or inspection of the Cabras 4 diesel generator (the "Generator") at the  
14 Power Plant. More specifically, John Does are:

15 a. companies involved in the design, engineering, maintenance, repair, and/or  
16 inspection with respect to the Capital Improvement Project commonly referred  
17 to as the "Power Plant's #4 Cabras diesel generator's control system overhaul"  
18 (the "2012 Control System Overhaul");

19 b. companies involved in the design, engineering, maintenance, repair, and/or  
20 inspection with respect to the Capital Improvement Project commonly referred  
21 to as the "Generator's mechanical overhaul" (the "2015 Mechanical  
22 Overhaul");  
23

1 c. companies involved in design, engineering, maintenance, repair, and/or  
2 inspection related tasks involving Cabras 4's control system subsequent to the  
3 2012 Control Systems Overhaul;

4 d. companies involved in design, engineering, maintenance, repair, and/or  
5 inspection related tasks involving Cabras 4's fuel system subsequent to the  
6 2015 Mechanical Overhaul;

7 e. companies hired by GPA to inspect and/or test Cabras 4's emergency  
8 shutdown system.

9 f. companies hired by KEWP, PM Controls or another entity to inspect and/or  
10 test Cabras 4's emergency shutdown system.

11 7. John Doe Insurance Companies 1-20 include any and all insurance companies  
12 providing liability or other coverage to KEWP, PM Controls, and any one of the John Doe  
13 Companies 1-20.

14 **JURISDICTION**

15 8. Jurisdiction in this action is vested with this Court pursuant to the Organic Act of  
16 Guam and the Frank G. Lujan Court Reorganization act of 1992. This Honorable Court has  
17 jurisdiction over this matter as all events giving rise to this litigation occurred at the Power Plant  
18 in Guam. KEWP, PM Controls, John Doe Companies 1-20, John Doe Insurance Companies 1-20  
19 (collectively, "Defendants") were all qualified, licensed, and authorized to conduct business in  
20 Guam. Furthermore, as more fully described herein, Defendants provided services to GPA at the  
21 Power Plant in Guam. Thus, Defendants had the necessary contacts with Guam for this  
22 Honorable Court to exercise jurisdiction over each of them separately.



**FACTUAL ALLEGATIONS**

9. GPA owns the Power Plant that is the subject of this action.

10. The Power Plant consists of two 39.3 watt, slow speed diesel generators, better known as Cabras 3 and Cabras 4.

11. In or around 2010, the GPA's governing body, the Consolidated Commission on Utilities, sought retention of an entity that could improve the Power Plant's efficiency and maintenance.

12. On or around April 1, 2010, GPA and KEWP entered into the Performance Management Contract (the "Contract") (attached hereto as **Exhibit A**).

13. The Contract governed *inter alia*, KEWP's responsibility for the Power Plant's operations, maintenance, management services, outage planning and scheduling, budgeting, procurement, training and other related services as outlined in **Exhibit A**.

14. The Contract also required KEWP to manage all Plant Performance Improvement and Capital Improvement Projects, as defined in the Contract.

15. In 2012, KEWP initiated and oversaw a re-design of the control system for Cabras 4 (the "2012 Control System Overhaul"), in furtherance of its obligations under the Contract.

16. Upon information and belief, KEWP contracted with PM Controls to perform work associated with the 2012 Control System Overhaul.

17. PM Controls provided certain engineering services, materials, labor, and installation services relative to the control system associated with Cabras 4 for the 2012 Control System Overhaul.

18. Upon information and belief, KEWP contracted with certain John Doe Companies to provide certain services, materials, and labor relative to the control system associated with

1 Cabras 4 for the 2012 Control System Overhaul.

2 19. In early 2015, before the events giving rise to this action, KEWP initiated and  
3 oversaw a mechanical overhaul of the Cabras 4 diesel generator (the "2015 Mechanical  
4 Overhaul").

5 20. Upon information and belief, KEWP contracted with PMCS to perform work  
6 associated with the 2015 Mechanical Overhaul, limited to the Cabras 4 diesel generator.

7 21. Upon information and belief, KEWP contracted with certain John Doe Companies  
8 to perform work associated with the 2015 Mechanical Overhaul, limited to the Cabras 4 diesel  
9 generator.

10 22. Beginning on or around August 30, 2015, the Cabras 4 diesel generator (the  
11 "Cabras 4 Generator") experienced control failures.

12 23. The five GPA-employed operators at the Power Plant attempted to control the  
13 Cabras 4 Generator's electrical output without success.

14 24. Despite operators attempting to reduce fuel input, the Cabras 4 Generator  
15 continued to increase energy production.

16 25. After operators determined the Cabras 4 Generator was not responding to their  
17 efforts to lower energy production by decreasing fuel input, the GPA operators called the KEWP  
18 Operations Manager who was required by the Contract to be on-call at the time did not answer  
19 or otherwise respond to the call. The KEWP Operations Manager could not be reached.  
20 Consequently, the GPA operators implemented measures to stop the Cabras 4 Generator as they  
21 had previously, at KEWP's direction.

22 26. The measures failed to control the Cabras 4 Generator's operation, resulting in the  
23 operators implementing emergency procedures to stop the Cabras 4 Generator.

1           27.    On or around August 31, 2015, at approximately 2:30 am, the uncontrolled  
2 "runaway" situation ultimately resulted in an explosion and subsequent fire (the "Incident").

3           28.    The explosion caused extensive damage throughout the Power Plant, including  
4 damage to the Power Plant building, Cabras 3, and other property beyond the Cabras 4 control  
5 system and the Cabras 4 Generator. The property damage also resulted in loss of income, extra  
6 expenses, and pollution damage.

7           29.    The five GPA operators were inside the Cabras 4 control room overlooking the  
8 Cabras 4 generator at the time of the explosion. Consequently, the explosion presented a risk of  
9 personal injury and death. Fortunately, the GPA operators escaped the explosion of Cabras 4,  
10 which destroyed the entirety of the Power Plant and resulted in post-explosion fire, without  
11 physical injury.

12          30.    An investigation determined the engine explosion, fire, and resulting damage  
13 occurred as the result of work performed by KEWP, PM Controls, and Jon Doe Companies 1-20  
14 including the 2012 Control System Overhaul, work performed in conjunction with the 2015  
15 Mechanical Overhaul, and KEWP's failure to properly perform and/or manage the Generator's  
16 operation, maintenance, and repair caused the Incident.

17          31.    Subsequent to the Incident, GPA made first-party insurance claims to DBIC and  
18 Chubb under their respective policies of insurance. DBIC and Chubb afforded coverage to GPA  
19 under their respective policies and paid for that portion of the losses covered by their policies in  
20 excess of GPA's deductible obligations under said policies. As such, DBIC and Chubb are  
21 subrogated to the rights of GPA to the extent of their respective payments. GPA maintains out-of-  
22 pocket losses, which includes its deductible obligations under the DBIC Policy and the Chubb  
23 Policy. Plaintiffs are pursuing GPA's out-of-pocket losses, as well as the amounts paid by DBIC

1 and Chubb to remediate the damage resulting from the explosion of Cabras 4.

2 **COUNT I – BREACH OF CONTRACT**  
3 **AGAINST DEFENDANT KEWP**

4 32. Plaintiffs hereby incorporate by reference paragraphs 1 through 31 of their  
5 complaint, as if fully stated herein.

6 33. On or around April 1, 2010, KEWP and GPA entered into the Contract.

7 34. The Contract included an Initial Term of five (5) years.

8 35. Prior to the Incident, KEWP and GPA extended the Term of the Contract up to,  
9 and including, December 31, 2015.

10 36. At no time did the Contract lapse or expire.

11 37. The purpose of the Contract was for KEWP to manage, operate and maintain the  
12 Power Plant.

13 38. By awarding the Contract, GPA's goal was to improve the efficiency, reliability,  
14 operations, maintenance, and training for the Power Plant.

15 39. KEWP expressly and/or impliedly contracted with GPA to *inter alia*, perform and  
16 manage all maintenance and capital improvement responsibilities for the Cabras 4 Generator.

17 40. KEWP breached its contractual obligations when it failed to maintain, improve  
18 and repair the Cabras 4 Generator's mechanical and electronic fuel control mechanisms, which  
19 included both the and/or emergency shutdown systems. The breaches on the part of KEWP gave  
20 rise to conditions that permitted a "runaway" of the Cabras 4 Generator to occur. KEWP may  
21 have breached the Contract in other ways that will become known through the discovery process.

22 41. The Incident, in part, resulted from KEWP's failure to properly maintain and/or  
23 repair the Cabras 4 Generator pursuant to the Contract, more specifically in a manner that would

1 prevent fuel from entering the Cabras 4 Generator despite all fuel input control functions being  
2 activated and signaled to 0% fuel input. Any contractual breaches on the part of KEWP that may  
3 become known during the discovery process may also have contributed to the Incident.

4 42. KEWP's actions, which breached the Contract, were so egregious that they  
5 evidence KEWP's reckless disregard for the safe and continued operation of Cabras 4, and such a  
6 gross want of care on the part of KEWP relative to its contractual obligations that they were  
7 grossly negligent. KEWP's actions, which breached the Contract, created an unreasonable risk of  
8 harm, which manifested itself in the catastrophic explosion of the Cabras 4 Generator and  
9 resulting damage on August 31, 2015. KEWP's grossly negligent actions obviate the applicability  
10 of any limitations of liability that KEWP may argue decrease its exposure for the damage  
11 suffered by Plaintiffs because a party may not contractually shield itself from liability for grossly  
12 negligent conduct.

13 43. Section 27 of the Contract outlines GPA and KEWP's agreement regarding  
14 dispute resolution. It states:

15 27.2 Informal Resolution – The parties hereto agree that in the event that there is  
16 any dispute or difference between them arising of this Contract or in the  
17 interpretation of any of the provisions hereof, they shall endeavor to meet together  
18 in an effort to resolve such dispute by discussion between them but failing  
19 resolution, the Chief Executives of GPA and Korea East-West Power Co. Ltd.  
20 shall meet to resolve such dispute difference and the joint decision of such Chief  
21 Executives shall be binding upon the parties hereto and in the event that a  
22 settlement of any such dispute or difference is not reached pursuant to this sub-  
23 clause, then the provisions of Section 27.3 shall apply.

20 44. On April 12, 2018, GPA formally requested a meeting to resolve outstanding  
21 claims between it and KEWP arising out of the Incident pursuant to Section 27 of the Contract.

22 45. After an exchange of communications, KEWP declined to meet with GPA  
23 representatives.

46. As such, KEWP breached its contractual obligations under Section 27 of the Contract.

47. KEWP's breach of its contractual obligations directly and proximately caused and contributed to the Incident, and the resulting damage to GPA property, which included damage beyond Cabras 4, as well as business income loss, extra expenses, and pollution damages.

48. As such, Plaintiffs are entitled to recover from KEWP the amounts Plaintiffs paid to remedy the damages resulting from the Incident which at present exceeds \$125,000,000.00.

WHEREFORE, Plaintiffs respectfully request this Court enter a judgment in their favor against KEWP for an amount to be proved at trial together with costs, interest, attorney fees, and such other relief as this Court deems proper and just.

**COUNT II – GROSS NEGLIGENCE**  
**AGAINST KEWP**

49. Plaintiffs hereby incorporate by reference paragraphs 1 through 48 of their complaint, as if fully stated herein.

50. KEWP owed GPA a duty to use reasonable care in the operations, maintenance, management services, outage planning and scheduling, budgeting, procurement, training and other related services provided in the Contract.

51. KEWP also owed GPA a duty to inspect, discover any defects in, maintain, service and repair the Generator in compliance with industry standards.

52. KEWP breached these duties by (including, but not limited to):

- a. failing to ensure that all periodic inspections of the Cabras 4 Generator were performed and/or performed properly;
- b. failing to properly document any and all periodic inspections it performed (if



1 any) of Cabras 4;

2 c. failing to properly document any and all repairs of the Cabras 4 Generator and  
3 the associated mechanical and digital control systems;

4 d. failing to properly document any and all fuel input calibrations of the Cabras 4  
5 Generator;

6 e. failing to properly perform and oversee the 2012 Control System Overhaul of  
7 Cabras 4;

8 f. failing to properly perform and oversee the 2015 Mechanical Overhaul of the  
9 Cabras 4 Generator;

10 g. failing to warn GPA that the Cabras 4 Generator was damaged, ready to fail  
11 and in need of immediate replacement;

12 h. failing to hire, train and supervise personnel with regard to proper maintenance  
13 and operation of the Cabras 4 Generator;

14 i. failing to detect any problems or issues with the Cabras 4 Generator;

15 j. failing to report to GPA that the Cabras 4 Generator was not fit for service or  
16 safe operation;

17 k. failing to utilize due care with regard to the service, repair, inspection,  
18 maintenance and operation of the Cabras 4 Generator; and

19 l. any other acts of gross negligence that may become known through the  
20 discovery process.

21 53. KEWP's actions were so egregious that they evidence KEWP's reckless disregard  
22 for the safe and continued operation of Cabras 4, and such a gross want of care on the part of  
23 KEWP that they were grossly negligent. KEWP's actions created an unreasonable risk of harm,



1 which manifested itself in the catastrophic explosion of the Cabras 4 Generator and resulting  
2 damage on August 31, 2015.

3 54. Furthermore, KEWP's grossly negligent actions obviate the applicability of any  
4 limitations of liability that KEWP may argue decrease its exposure for the damage suffered by  
5 Plaintiffs because a party may not contractually shield itself from liability for grossly negligent  
6 conduct.

7 55. KEWP's grossly negligence actions directly and proximately caused and  
8 contributed to the Incident, and the resulting damage to GPA property, which included damage  
9 beyond Cabras 4, as well as business income loss, extra expenses, and pollution damages.

10 56. As such, Plaintiffs are entitled to recover from KEWP the amounts Plaintiffs paid  
11 to remedy the damages resulting from the Incident which at present exceeds \$125,000,000.00.

12 WHEREFORE, Plaintiffs respectfully request this Court enter a judgment in their favor  
13 against KEWP for an amount to be proved at trial together with costs, interest, attorney fees, and  
14 such other relief as this Court deems proper and just.

15  
16 **COUNT III - NEGLIGENCE**  
17 **AGAINST JOHN DOE COMPANIES 1-20 BY ALL PLAINTIFFS; AGAINST PM**  
18 **CONTROLS BY PLAINTIFFS GUAM POWER AUTHORITY AND**  
19 **DB INSURANCE CO., LTD. ONLY**

20 57. Plaintiffs hereby incorporate by reference paragraphs 1 through 56 of their  
21 complaint, as if fully stated herein.

22 58. As it relates to the 2012 Control System Overhaul, PM Controls owed GPA a duty  
23 to overhaul, design, maintain, and program the Cabras 4 Generator's control system in  
24 accordance with industry standards.

25 59. As it relates to the 2015 Mechanical Overhaul, PM Controls owed GPA a duty to

1 ensure the Cabras 4 Generator was overhauled, maintained, programmed and operating in  
2 accordance with industry standards.

3 60. PM Controls breached these duties by (including, but not limited to):

- 4 a. failing to automate the shutdown sequence;
- 5 b. failing to include a sequential shutdown scheme;
- 6 c. failing to properly document any and all control system design changes and/or
- 7 repairs;
- 8 d. consolidating shutdown solenoids to a single fuse;
- 9 e. failing to properly perform the 2012 Control System Overhaul;
- 10 f. failing to properly perform the 2015 Mechanical Overhaul;
- 11 g. designing relays and shutdown solenoids to "shutdown" when energized as
- 12 opposed to "run" when energized;
- 13 h. improperly designing the fuel shutoff valve allowing the system to remain in
- 14 "Manual" operation, which disabled a part of the control system;
- 15 i. designing improper logic for testing the over speed protection system, making
- 16 it impossible to test the control system protections independently from one
- 17 another;
- 18 j. improperly consolidating the over speed protection system and governor
- 19 system;
- 20 k. failing to fully overhaul the governor, as that term is used in the industry,
- 21 including properly calibrating and/or replacing control arm linkages;
- 22 l. failing to replace worn linkage bearings;
- 23 m. failing to overhaul the Generator's puncture valves;

- n. failing to hire, train and supervise personnel with regard to the Generator's proper overhaul, testing, and subsequent maintenance;
- o. failing to detect any problems or issues with the Generator's control system;
- p. failing to report to GPA that the Generator and/or its control system was not fit for service or safe operation;
- q. failing to utilize due care with regard to the Generator's control system's service, repair, inspection, maintenance and operation; and
- r. any other acts of negligence that may become known through the discovery process.

61. As it relates to the 2012 Control System Overhaul, John Doe Companies 1-20 owed GPA a duty to overhaul the Generator's control system in accordance with industry standards.

62. As it relates to the 2015 Mechanical Overhaul, John Doe Companies 1-20 owed GPA a duty to ensure the Generator's control system was maintained, programmed and operating in accordance with industry standards.

63. John Doe Companies 1-20 breached these duties by (including, but not limited to):
- a. failing to ensure that all periodic Generator (or associated component) inspections were performed and/or performed properly;
  - b. failing to properly document any and all periodic inspections it performed (if any);
  - c. failing to properly document any and all Generator repairs;
  - d. failing to properly document any and all Generator fuel input calibrations;
  - e. failing to properly perform the 2012 Control System Overhaul;

- 1 f. failing to properly perform the 2015 Mechanical Overhaul;
- 2 g. failing to warn GPA that the Generator was damaged, ready to fail and in need
- 3 of immediate replacement;
- 4 h. failing to hire, train and supervise personnel with regard to the Generator's
- 5 proper maintenance and operation;
- 6 i. failing to detect any problems or issues with the Generator;
- 7 j. failing to report to GPA that the Generator was not fit for service or safe
- 8 operation;
- 9 k. failing to utilize due care with regard to the Generator's service, repair,
- 10 inspection, maintenance and operation;
- 11 l. failing to automate the shutdown sequence;
- 12 m. failing to include a sequential shutdown scheme;
- 13 n. failing to properly document any and all control system design changes and/or
- 14 repairs;
- 15 o. consolidating shutdown solenoids to a single fuse;
- 16 p. designing relays and shutdown solenoids to "shutdown" when energized as
- 17 opposed to "run" when energized;
- 18 q. improperly designing the fuel shutoff valve allowing the system to remain in
- 19 "Manual" operation, which disabled a part of the control system;
- 20 r. designing improper logic for testing the over speed protection system, making
- 21 it impossible to test the control system protections independently from one
- 22 another;
- 23

- s. improperly consolidating the over speed protection system and governor system;
- t. failing to fully overhaul the governor, as that term is used in the industry, including properly calibrating and/or replacing control arm linkages;
- u. failing to replace worn linkage bearings;
- v. failing to overhaul the Generator's puncture valves;
- w. failing to hire, train and supervise personnel with regard to the Generator's proper overhaul, testing, and subsequent maintenance;
- x. failing to detect any problems or issues with the Generator's control system;
- y. failing to report to GPA that the Cabras 4 Generator and/or its control system was not fit for service or safe operation;
- z. failing to utilize due care with regard to the Cabras 4 Generator's control system's service, repair, inspection, maintenance and operation; and
- aa. any other acts of negligence that may become known through the discovery process.

64. As a direct and proximate result of the negligence of PM Controls and Jon Doe Companies 1-20, the August 31, 2015, Incident occurred, causing the resulting damage to GPA property, which included damage beyond Cabras 4, as well as business income loss, extra expenses, and pollution damages.

65. As such, Plaintiffs are entitled to recover from John Doe Companies 1-20 the amounts Plaintiffs paid to remedy the damages resulting from the Incident which at present exceeds \$125,000,000.00.

66. As such, Plaintiffs Guam Power Authority and DB Insurance Co., LTD. are entitled to recover from PM Controls the amounts they paid to remedy the damages resulting from the Incident which at present exceeds \$125,000,000.00.

WHEREFORE, Plaintiffs respectfully request this Court enter a judgment in their favor against PM Controls and John Doe Companies 1-20 as pled herein for an amount to be proved at trial together with costs, interest, attorney fees, and such other relief as this Court deems proper and just.

### **COUNT IV – GROSS NEGLIGENCE**

**AGAINST JOHN DOE COMPANIES 1-20 BY ALL PLAINTIFFS; AGAINST PM  
CONTROLS BY PLAINTIFFS GUAM POWER AUTHORITY AND  
DB INSURANCE CO., LTD. ONLY**

67. Plaintiff hereby incorporates by reference paragraphs 1 through 66 of their complaint, as if fully stated herein.

68. As it relates to the 2012 Control System Overhaul, PM Controls owed GPA a duty to overhaul, design, maintain, and program the Cabras 4 Generator's control system in accordance with industry standards.

69. As it relates to the 2015 Mechanical Overhaul, PM Controls owed GPA a duty to ensure the Cabras 4 Generator was overhauled, maintained, programmed and operating in accordance with industry standards.

70. PM Controls breached these duties by (including, but not limited to):

- a. failing to automate the shutdown sequence;
- b. failing to include a sequential shutdown scheme;
- c. failing to properly document any and all control system design changes and/or repairs;

- d. consolidating shutdown solenoids to a single fuse;
- e. failing to properly perform the 2012 Control System Overhaul;
- f. failing to properly perform the 2015 Mechanical Overhaul;
- g. designing relays and shutdown solenoids to "shutdown" when energized as opposed to "run" when energized;
- h. improperly designing the fuel shutoff valve allowing the system to remain in "Manual" operation, which disabled a part of the control system;
- i. designing improper logic for testing the over speed protection system, making it impossible to test the control system protections independently from one another;
- j. improperly consolidating the over speed protection system and governor system;
- k. failing to fully overhaul the governor, as that term is used in the industry, including properly calibrating and/or replacing control arm linkages;
- l. failing to replace worn linkage bearings;
- m. failing to overhaul the Generator's puncture valves;
- n. failing to hire, train and supervise personnel with regard to the Generator's proper overhaul, testing, and subsequent maintenance;
- o. failing to detect any problems or issues with the Generator's control system;
- p. failing to report to GPA that the Generator and/or its control system was not fit for service or safe operation;
- q. failing to utilize due care with regard to the Generator's control system's service, repair, inspection, maintenance and operation; and



1           r. any other acts of negligence that may become known through the discovery  
2           process.

3           71. As it relates to the 2012 Control System Overhaul, John Doe Companies 1-20  
4 owed GPA a duty to overhaul the Generator's control system in accordance with industry  
5 standards.

6           72. As it relates to the 2015 Mechanical Overhaul, John Doe Companies 1-20 owed  
7 GPA a duty to ensure the Generator's control system was maintained, programmed and operating  
8 in accordance with industry standards.

9           73. John Doe Companies 1-20 breached these duties by (including, but not limited to):

- 10           a. failing to ensure that all periodic Generator (or associated component)  
11           inspections were performed and/or performed properly;  
12           b. failing to properly document any and all periodic inspections it performed (if  
13           any);  
14           c. failing to properly document any and all Generator repairs;  
15           d. failing to properly document any and all Generator fuel input calibrations;  
16           e. failing to properly perform the 2012 Control System Overhaul;  
17           f. failing to properly perform the 2015 Mechanical Overhaul;  
18           g. failing to warn GPA that the Generator was damaged, ready to fail and in need  
19           of immediate replacement;  
20           h. failing to hire, train and supervise personnel with regard to the Generator's  
21           proper maintenance and operation;  
22           i. failing to detect any problems or issues with the Generator;  
23

- 1           j. failing to report to GPA that the Generator was not fit for service or safe
- 2           operation;
- 3           k. failing to utilize due care with regard to the Generator's service, repair,
- 4           inspection, maintenance and operation;
- 5           l. failing to automate the shutdown sequence;
- 6           m. failing to include a sequential shutdown scheme;
- 7           n. failing to properly document any and all control system design changes and/or
- 8           repairs;
- 9           o. consolidating shutdown solenoids to a single fuse;
- 10          p. designing relays and shutdown solenoids to "shutdown" when energized as
- 11          opposed to "run" when energized;
- 12          q. improperly designing the fuel shutoff valve allowing the system to remain in
- 13          "Manual" operation, which disabled a part of the control system;
- 14          r. designing improper logic for testing the over speed protection system, making
- 15          it impossible to test the control system protections independently from one
- 16          another;
- 17          s. improperly consolidating the over speed protection system and governor
- 18          system;
- 19          t. failing to fully overhaul the governor, as that term is used in the industry,
- 20          including properly calibrating and/or replacing control arm linkages;
- 21          u. failing to replace worn linkage bearings;
- 22          v. failing to overhaul the Generator's puncture valves;
- 23

- 1 w. failing to hire, train and supervise personnel with regard to the Generator's  
2 proper overhaul, testing, and subsequent maintenance;
- 3 x. failing to detect any problems or issues with the Generator's control system;
- 4 y. failing to report to GPA that the Cabras 4 Generator and/or its control system  
5 was not fit for service or safe operation;
- 6 z. failing to utilize due care with regard to the Cabras 4 Generator's control  
7 system's service, repair, inspection, maintenance and operation; and
- 8 aa. any other acts of negligence that may become known through the discovery  
9 process.

10 74. The actions of PM Controls and John Doe Companies 1-20 were so egregious that  
11 they evidence a reckless disregard for the safe and continued operation of Cabras 4, and such a  
12 gross want of care on the part of PM Controls and John Doe Companies 1-20 that they were  
13 grossly negligent. The actions of PM Controls and John Doe Companies 1-20 created an  
14 unreasonable risk of harm, which manifested itself in the catastrophic explosion of the Cabras 4  
15 Generator and resulting damage on August 31, 2015.

16 75. As a direct and proximate result of the gross negligence of PM Controls and John  
17 Doe Companies 1-20, the August 31, 2015, Incident occurred, causing the resulting damage to  
18 GPA property, which included damage beyond Cabras 4, as well as business income loss, extra  
19 expenses, and pollution damages.

20 76. As such, Plaintiffs are entitled to recover from John Doe Companies 1-20 the  
21 amounts Plaintiffs paid to remedy the damages resulting from the Incident which at present  
22 exceeds \$125,000,000.00. .  
23

77. As such, Plaintiffs Guam Power Authority and DB Insurance Co., LTD. are entitled to recover from PM Controls the amounts they paid to remedy the damages resulting from the Incident which at present exceeds \$125,000,000.00.

WHEREFORE, Plaintiffs respectfully request this Court enter a judgment in their favor against PM Controls and John Doe Companies 1-20 as pled herein for an amount to be proved at trial together with costs, interest, attorney fees, and such other relief as this Court deems proper and just.

**COUNT V – BREACH OF EXPRESS WARRANTY**

## AGAINST KEWP

78. Plaintiffs hereby incorporates by reference paragraphs 1 through 77 of their complaint, as if fully stated herein.

79. The Contract between GPA and KEWP expressly states:

## SECTION 19 – WARRANTY

Contractor's obligation to furnish the Goods and Special Services and to perform other services in connection therewith in accordance with the Agreement is absolute, and Contractor warrants and guarantees to GPA that all Goods will be in accordance with the Contract Documents and will be new, fit for the purpose for which they are intended, and free from any defects, including faulty design, materials, or workmanship.

Contractor shall provide to GPA with all warranties and guarantees in writing. GPA and Korea East-West Power Co. Ltd. shall negotiate the manner in which claims against these warranties are addressed including any remedies for non-responsiveness. This may include retention of contract amounts, performance bonds, etc.

Contractor shall be responsible for remedying all defects, without limitation, in design, materials, workmanship, operating characteristics, or performance of the Goods within twelve (12) months from the date on which GPA has placed the Goods in continuous service or within twenty-four (24) months from the date of final payment, whichever date shall first occur, or within such longer

1 period of time as may be prescribed by law or by the terms of any applicable  
2 special guarantee or by any specific provisions of the Contract Documents.

3 Any part(s) supplied in replacement of the defective part(s) of the Goods or  
4 any Goods repaired pursuant to the provisions of this Paragraph shall be  
5 supplied or repaired on the same terms and conditions as provided for herein  
6 for the supply of the Goods and in particular a new warranty period shall  
7 apply. Such new warranty period shall expire on the date twelve (12) months  
8 from the date of such replacement or repair or on the expiration date of the  
9 warranty for the original Goods that were replaced or repaired, whichever is  
10 later.

11 In the event Korea East-West Power Co. Ltd. furnishes special services for  
12 installation and startup, such services shall be rendered in a competent and  
13 diligent manner and in accordance with the Contract Documents, accepted  
14 industry practice and any applicable professional standards.

15 80. As described in ¶¶ 39, 40, 51, 59, 62, 68, 71 and any other paragraphs set forth  
16 herein, the insufficient goods and/or services, as provided by KEWP, PMCS and/or John Doe  
17 Companies 1-20 caused and contributed to the Incident. As such, they breached the above-  
18 described express warranty KEWP owed GPA under the Contract.

19 81. KEWP's breach of the above-described express warranty resulted in damage to  
20 GPA property, which included damage beyond Cabras 4, as well as business income loss, extra  
21 expenses, and pollution damages.

22 82. As such, Plaintiffs are entitled to recover from KEWP the amounts Plaintiffs paid  
23 to remedy the damages resulting from the Incident which at present exceeds \$125,000,000.00.

WHEREFORE, Plaintiffs respectfully request this Court enter a judgment in their favor  
against KEWP for an amount to be proved at trial together with costs, interest, attorney fees, and  
such other relief as this Court deems proper and just.

**COUNT VI – STRICT PRODUCT LIABILITY**  
**AGAINST JOHN DOE COMPANIES 1-20 BY ALL PLAINTIFFS; AGAINST PM**  
**CONTROLS BY PLAINTIFFS GUAM POWER AUTHORITY AND**  
**DB INSURANCE CO., LTD. ONLY**

83. Plaintiffs hereby incorporate by reference paragraphs 1 through 82 of their complaint, as if fully stated herein.

84. Upon information and belief, KEWP contracted with PM Controls and John Doe Companies 1-20 to perform work in conjunction with the 2012 Control System Overhaul and the 2015 Mechanical Overhaul.

85. As part of the work performed, PM Controls and John Doe Companies 1-20 designed, manufactured, procured, installed, and/or tested various components of the Cabras 4 Generator's overhauled control and mechanical systems.

86. The components of control and mechanical systems by PM Controls and John Doe Companies 1-20 were inherently defective as designed, manufactured and installed.

87. PM Controls and John Doe Companies 1-20's products, in whole or in part, directly and proximately caused or contributed to the Incident, and the resulting damage to GPA property, which included damage beyond Cabras 4, as well as business income loss, extra expenses, and pollution damages.

88. As such, Plaintiffs are entitled to recover from John Doe Companies 1-20 the amounts Plaintiffs paid to remedy the damages resulting from the Incident which at present exceeds \$125,000,000.00.

89. As such, Plaintiffs Guam Power Authority and DB Insurance Co., LTD. are entitled to recover from PM Controls the amounts they paid to remedy the damages resulting from the Incident which at present exceeds \$125,000,000.00.

1 WHEREFORE, Plaintiffs respectfully request this Court enter a judgment in their favor  
2 against PM Controls and John Doe Companies 1-20 as pled herein for an amount to be proved at  
3 trial together with costs, interest, attorney fees, and such other relief as this Court deems proper  
4 and just.

5 **COUNT VII – NEGLIGENCE - PRODUCT LIABILITY**  
6 **AGAINST JOHN DOE COMPANIES 1-20 BY ALL PLAINTIFFS; AGAINST PM**  
7 **CONTROLS BY PLAINTIFFS GUAM POWER AUTHORITY AND**  
8 **DB INSURANCE CO., LTD. ONLY**

9 90. Plaintiffs hereby incorporate by reference paragraphs 1 through 89 of their  
10 complaint, as if fully stated herein.

11 91. Upon information and belief, KEWP contracted with PM Controls and John Doe  
12 Companies 1-20 to perform work in conjunction with the 2012 Control System Overhaul and the  
13 2015 Mechanical Overhaul.

14 92. As part of the work performed, PM Controls and John Doe Companies 1-20  
15 designed, manufactured, procured, installed, and/or tested various components in the Cabras 4  
16 Generator's overhauled control and mechanical systems.

17 93. The various components of control and mechanical systems provided by PMCS  
18 and/or John Doe Companies 1-20 were negligently and defectively designed, manufactured,  
19 installed, and tested as more fully described in ¶¶ 39, 40, 51, 59, 62, 68, 71, and any other  
20 paragraphs set forth herein. As such, the various components of the control and mechanical  
21 systems for Cabras 4 were unfit for their intended and expected use.

22 94. PM Controls and John Doe Companies 1-20's products, in whole or in part,  
23 directly and proximately caused or contributed to the Incident, and the resulting damage to GPA  
property, which included damage beyond Cabras 4, as well as business income loss, extra



1 expenses, and pollution damages.

2 95. As such, Plaintiffs are entitled to recover from John Doe Companies 1-20 the  
3 amounts Plaintiffs paid to remedy the damages resulting from the Incident which at present  
4 exceeds \$125,000,000.00.

5 96. As such, Plaintiffs Guam Power Authority and DB Insurance Co., LTD. are  
6 entitled to recover from PM Controls the amounts they paid to remedy the damages resulting  
7 from the Incident which at present exceeds \$125,000,000.00

8 WHEREFORE, Plaintiffs respectfully request this Court enter a judgment in their favor  
9 against PM Controls and John Doe Companies 1-20 as pled herein for an amount to be proved at  
10 trial together with costs, interest, attorney fees, and such other relief as this Court deems proper  
11 and just.

12 **COUNT VIII – DIRECT ACTION FOR RECOVERY**  
13 **AGAINST JOHN DOE INSURANCE COMPANIES 1-20**

14 97. Plaintiffs hereby incorporate by reference paragraphs 1 through 96 of their  
15 complaint, as if fully stated herein.

16 98. Upon information and belief, John Doe Insurance Companies 1-20 are any and all  
17 insurance companies providing liability or other coverage to KEWP, PM Controls, and any one  
18 of the John Doe Companies 1-20.

19 99. To the extent John Doe Insurance Companies 1-20 afford coverage to KEWP, PM  
20 Controls, and any one of the John Doe Companies 1-20, Plaintiffs are entitled to sue directly John  
21 Doe Insurance Companies 1-20 for the damages caused by their insureds which at present  
22 exceeds \$125,000,000.00.


1 WHEREFORE, Plaintiffs respectfully request this Court enter a judgment in their favor  
2 against John Doe Insurance Companies 1-20 for an amount to be proved at trial together with  
3 costs, interest, attorney fees, and such other relief as this Court deems proper and just.

4 **JURY DEMAND**

5 Plaintiffs demand a trial by jury of six (6) persons in this matter and the fee is hereby  
6 tendered to the court.

7 Respectfully Submitted,

8 Dated: February 7, 2019

9   
10 **THOMAS McKEE TARPLEY, JR.**  
11 *Attorney for Plaintiffs*  
12 *GUAM POWER AUTHORITY,*  
13 *DB INSURANCE CO., LTD., f/k/a Dongbu*  
14 *Insurance Company, and CHUBB INSURANCE*  
15 *SINGAPORE LIMITED, f/k/a ACE Insurance*  
16 *Limited*