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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

GUNTERT & ZIMMERMAN CONST. DIV.,
INC., a California Corporation,

Plaintiff,

vs.

GOMACO CORP., an Iowa Corporation,

Defendant.

CASE NO. 5:20-cv-04007-CJW-KEM

**DISCLOSURE OF PRELIMINARY
CLAIM CONSTRUCTIONS AND
EXTRINSIC EVIDENCE**

1 TO DEFENDANT GOMACO CORP. AND ITS ATTORNEYS OF RECORD:

2 Guntert & Zimmerman Const. Div., , Inc. (“G&Z”) sets forth below its preliminary claim
3 constructions to Gomaco Corp. (“Gomaco”) for U.S. Patent No. 9,708,020, (“the ‘020 Patent”), U.S.
4 Patent No. 9,908,571 (“the ‘571 Patent”), U.S. Patent No. 10,029,749 (“the ‘749 Patent”), U.S. Patent
5 No. 10,053,167 (“the ‘167 Patent”) and U.S. Patent No. 10,196,101 (“the ‘101 Patent”) (collectively
6 the “G&Z Patents”). G&Z provides these constructions for discussion purposes only. As such, G&Z
7 reserves its right to add, remove or modify any of its proposed claim terms or constructions based on
8 any constructions proposed by Gomaco and/or the parties’ meet and confer sessions(s).

9 G&Z has provided a construction for “feedback loop” which is the only term that the Court
10 should construe. For any claim term that Gomaco identified other than “feedback loop,” G&Z
11 proposes that the term should be given its plain and ordinary meaning. The plain and ordinary
12 meaning should apply to each of these terms because they are readily understandable to one of skill in
13 the art in light of the G&Z Patents and the respective intrinsic record in which the terms appear. As
14 such, G&Z intends to rely upon the G&Z Patents and the intrinsic record in which the term appears to
15 support its position that the plain and ordinary meaning should apply. To the extent Gomaco offers a
16 construction for a term that is not in accordance with its plain and ordinary meaning, G&Z reserves the
17 right to offer a construction of the plain and ordinary meaning for the term. To the extent that Gomaco
18 contends that a term should be governed by 35 U.S.C. § 112(6), G&Z disagrees.

19 With regard to the disclosure of extrinsic evidence, G&Z intends to rely upon Carl Nelson,
20 Ph.D. in support of its claim construction positions and the deposition testimony of Dr. Singhose which
21 was taken on August 21, 2020. G&Z expects Dr. Nelson to provide an opinion regarding the scope of
22 the asserted patents and the relevant technology. G&Z also expects Dr. Nelson to opine regarding the
23 proper construction and/or plain and ordinary meaning of the terms identified below and any terms
24 Gomaco may identify in its disclosure. G&Z additionally expects Dr. Nelson to opine regarding the
25 understanding of one of skill in the art at the time of the filing of the asserted patents. G&Z reserves
26 its right to rely on any intrinsic or extrinsic evidence cited by Gomaco or needed to rebut Gomaco’s
27 proposed constructions.

Preliminary Constructions

- “feedback loop” should be construed as “a loop formed with the onboard computer/processor and the transducers.” This term appears in:
 - o Claim 6 of the ’020 patent
 - o Claims 7 and 12 of the ’571 patent
 - o Claims 8–10 and 20 of the ’167 patent
 - o Claims 7 and 18-19 of the ’101 patent
- “hinge bracket” should be given its plain and ordinary meaning. This term appears in:
 - o Claims 2–3 and 12 of the ’020 patent
 - o Claims 2–3 and 10–11 of the ’571 patent
 - o Claims 2–6 and 18 of the ’749 patent
 - o Claims 2–4 and 7 of the ’167 patent
- “laterally telescoping leg” should be given its plain and ordinary meaning. This term appears in:
 - o Claim 8 of the ’571 patent
- “swing leg” should be given its plain and ordinary meaning. This term appears in:
 - o Claims 1–3, 6–7, and 9–12 of the ’020 patent
 - o Claims 1–3, 7–13, and 15 of the ’571 patent
 - o Claims 1–6, 10, 13, and 15–20 of the ’749 patent
 - o Claims 1–12 and 17–20 of the ’167 patent
 - o Claims 1, 10–11, 14, and 18 of the ’101 patent
- “trailing module” should be given its plain and ordinary meaning. This term appears in:
 - o Claims 8-11 of the ’020 patent

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Dated: September 15, 2020

Respectfully submitted,

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GOMACO CORP., an Iowa Corporation,

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C.A. No. 5:20-cv-04007-CJW-KEM

GOMACO'S PRELIMINARY CLAIM
CONSTRUCTIONS

Pursuant to the Court's Scheduling Order & Discovery Plan (Dkt. 34), Defendant Gomaco Corp. ("Gomaco") provides its Preliminary Claim Constructions to Plaintiff Guntert & Zimmerman Const. Div., Inc. ("G&Z").

At this early stage of the case, Gomaco does not fully understand G&Z's infringement positions. Discovery is ongoing. Depositions have not yet commenced, and document production and interrogatories remain incomplete. Gomaco reserves the right and may seek leave to seek construction of any and all terms set forth in the asserted patents if needed after the discovery of new information or contentions from G&Z. Gomaco's identification of claim terms at this time also does not limit in any way its right to submit invalidity contentions under 35 U.S.C. § 112.

I. U.S. Patent No. 9,708,020

Term	Claim(s)	Gomaco's Proposed Construction	Intrinsic and Extrinsic Evidence
"swing leg"	1–3, 6–7, and 9–12	"leg that is pivotal"	<u>'020 Specification¹</u> Abstract - ". . . pivotal movements of the swing leg" 2:15–23 - "The swing legs are pivotally mounted to front and aft ends of the bolsters on vertically oriented hinge pins so that pivotal movement of the swing legs moves their end portions, which mount the jacking column and the crawlers, sideways relative to the paving direction of the paving machine and in a generally horizontal plane" 4:33–41 - "In such an event, the swing legs with jacking columns and crawlers are pivoted relative to the tractor frame until the crawlers extend in the lateral direction (which is perpendicular to the normal paving direction) of the paving machine, which minimizes the width of the paving machine so the gauge between the crawler tracks in the transport position is narrow enough to walk the machine onto a trailer and for its transportation over normal roads to a new site." 5:6–11: "In such an event, the swing legs are pivoted relative to the frame until the crawlers extend in the lateral direction (which is perpendicular to the normal paving direction) of the paving machine, which

¹ Citations to the specification of the '020 patent are provided as exemplary intrinsic evidence. Gomaco incorporates-by-reference the citations of the same descriptions in the specifications of the other Asserted Patents.

Term	Claim(s)	Gomaco's Proposed Construction	Intrinsic and Extrinsic Evidence
			minimizes the width of the paving machine for transportation to a new site.” 5:56–59 - “According to a first aspect of the present invention, each bolster swing leg is pivotally mounted on a hinge bracket that is secured to the front (or aft) ends of the side bolsters of the paving machine.” 7:48–51 - “FIG. 1 is a front elevational, perspective view of a complete paving machine having pivotable swing legs with a jacking column and a crawler, each constructed in accordance with the present invention;” 7:52–54 - “FIG. 2 is a partial, simplified plan view of portions of a paving machine illustrating the pivotal swing leg of the present invention;” 9:3–8 - “The swing leg is typically formed as a box beam 22 and has another end 21 (shown in FIG. 7) that is pivotal about a vertically oriented pivot shaft 24 which extends through a bearing bushing 26 that is supported in its vertical orientation on a hinge bracket 28 with spaced-apart support webs 30.” 9:19–25 - “. . . so that the swing legs are free to pivot relative to bolsters 12 in a horizontal plane (as indicated in FIG. 2) about an upright axis defined by the pivot shaft.” 10:23–26 - “Each time the bolster swing legs 20 are pivoted inwardly or outwardly relative to tractor frame

Term	Claim(s)	Gomaco's Proposed Construction	Intrinsic and Extrinsic Evidence
			4 of the paving machine, the relative angular inclination between the bolster swing legs and the tractor frame changes.” 10:28–32 - “This change in crawler track orientation has to be compensated for so that, following the pivotal movement of the swing leg” Figs. 1, 2, 7, 8A-E. <u>'020 Prosecution History</u> GOMACO00000183–84 (G&Z arguing that a “swing leg” is “pivotable in relation to a tractor frame”). <u>Extrinsic Evidence</u> Guntert Dep. Tr. at 61:2–3 - (“Q. Is a swing leg pivotable?” “A. A swing leg is pivotable.”). Bryden Dep. Tr. at 18:2–20:2 - (. . . “Q. It’s designed to pivot?” “A. The design is that it pivots.” “Q. “Is it designed to pivot?” “A. Yes.”). GOMACO00017875–76, 79 - The Penguin Complete English Dictionary (2006) at 1422: • “swing” (verb intrans) - “to turn on, or as if on, a hinge or pivot; to move in a gentle curve” Gomaco may also present expert testimony regarding how a person of ordinary skill in the art at the time of

Term	Claim(s)	Gomaco's Proposed Construction	Intrinsic and Extrinsic Evidence
			the claimed invention would have understood this limitation in light of the specification and prosecution history.
"hinge bracket"	2-3 and 12	"bracket fastenable to a surface"	<u>'020 Specification</u> Abstract - "A hinge bracket is interposed between each swing leg and a surface of the bolsters to enable pivotal movements of the swing leg. A length-adjustable holder engages the pivot pin on the hinge bracket and pivotally engages the swing leg." 5:56-6:7 - "According to a first aspect of the present invention, each bolster swing leg is pivotally mounted on a hinge bracket that is secured to the front (or aft) ends of the side bolsters of the paving machine. This bracket also supports the turnbuckle or, preferably, a hydraulic actuator which eliminates the need to tie the swing leg into the tractor frame for holding the swing leg, and the crawler track secured to it, in a fixed position during paving. One end of the turnbuckle or actuator is tied into the swing leg conventionally, while the other end is mounted to the hinge bracket. . . . the attachment point for the turnbuckle or hydraulic actuator automatically follows the positional change of the swing leg because the attachment point is mounted on the hinge bracket, that is, in a fixed position relative to the bolster and the swing leg." 7:31-35: "A hinge bracket is interposed between each swing leg and an associated surface of the bolsters and

Term	Claim(s)	Gomaco's Proposed Construction	Intrinsic and Extrinsic Evidence
			includes a fixed, upright pivot shaft that pivotally engages the swing leg for pivotal movements in a substantially horizontal plane.” 7:55–56 - “FIG. 3 is a perspective, front elevational view of a hinge bracket for securing the swing leg to the paving machine;” 9:3–8 - “The swing leg is typically formed as a box beam 22 and has another end 21 (shown in FIG. 7) that is pivotal about a vertically oriented pivot shaft 24 which extends through a bearing bushing 26 that is supported in its vertical orientation on a hinge bracket 28 with spaced-apart support webs 30.” 9:9–16 - “The hinge bracket has appropriately positioned fastening holes 32 for securing it to respective end surfaces 34 of side bolsters 12 with conventional bolt and nut fasteners 23 as shown, for example, in FIG. 7. . . .” 9:26–41 - “The closed end of the cylinder of a hydraulic actuator 38 is pivotally pinned to two spaced-apart support plates which are secured, e.g. welded, to the inside of the hinge bracket 28 and a mid-portion of bearing bushing 26, as is best seen in FIG. 3. The support plates include aligned bores 42 that are laterally spaced some distance away from the bearing bushing 26. The closed end of the hydraulic cylinder is pivotally movably secured to the support plates with a pin that extends through the bores. The piston 44 of the

Term	Claim(s)	Gomaco's Proposed Construction	Intrinsic and Extrinsic Evidence
			hydraulic actuator is pivotally pinned to a pair of spaced-apart brackets 46 which are located between the ends of the swing leg and typically relatively closer to its free end 19. When the hydraulic actuator is pinned to the hinge bracket 28 and the brackets on bolster swing leg 20, it is angularly inclined relative to the paving direction 18, as best seen in FIGS. 1 and 2.” 9:48–67 - “When assembled installed between hinge bracket 28 and swing leg 20, hydraulic actuator 38 can be energized to pivot bolster swing leg 20 in a horizontal plane as schematically illustrated in FIG. 2. Since hinge bracket 28 is secured to end face 34 of bolster 12, the angular inclination of the actuator relative to the bolster swing leg does not change when the length of the tractor frame 4 (in the lateral direction perpendicular to the normal paving direction 18) is changed. There is therefore no need to reposition the hinge bracket that secures one end of the hydraulic actuator to the machine frame, as was necessary in the past. The extendable length of the hydraulic actuator and its attachment points to hinge bracket 28 and swing leg 20 are chosen so that the angular inclination of the hydraulic actuator relative to the bolster swing leg is maintained over a reasonably large arc (as schematically illustrated in FIG. 2) that is sufficient to permit repositioning of the swing leg during normal use encountering normal operating conditions of the paving machine without having to disconnect the actuator from the swing leg and/or the hinge bracket.”

Term	Claim(s)	Gomaco's Proposed Construction	Intrinsic and Extrinsic Evidence
			10:1–10 - “However, when the swing legs are to be rotated 90° from the paving direction 18 towards a position that is laterally outward of bolsters 12, principally for readying the paving machine so that it can be transported by truck and trailer to a new location, hydraulic actuator 38 is disengaged from at least one of the swing leg or the hinge bracket 28, for example by pulling pin 41 that connects the end of piston 44 to brackets 46 on the swing leg, to prevent interference between the hydraulic actuator and support plates 40 and/or bearing bushing 26 of the hinge bracket.” Figs. 1–3, 7. <u>'020 Prosecution History</u> GOMACO00000185 - “Independently and alternatively, with regard to dependent claim 3, Applicants submit that Colvard does not disclose, teach, or suggest the structure of a hinge bracket interposed between the swing leg and an associated bolster. Moreover, Colvard does not disclose a hydraulic actuator mounted on the hinge bracket, configured to move a swing leg relative to the center module.”

Term	Claim(s)	Gomaco's Proposed Construction	Intrinsic and Extrinsic Evidence
			<u>Extrinsic Evidence</u> Gomaco may also present expert testimony regarding how a person of ordinary skill in the art at the time of the claimed invention would have understood this limitation in light of the specification and prosecution history.
"feedback loop"	6	"a circuit, device, or system in which a portion of the output is returned to the input"	<u>'020 Specification</u> Abstract - "A feedback loop cooperates with transducers keeping the crawler tracks position." 12:14-40 - "Onboard computer or processor 82 and the associated transducers 70, 78 form a feedback loop in which the computer receives the angular position signal from swing leg transducer 78. When the angular position of the swing leg changes, the output signal from transducer 78 changes correspondingly. As a result of this orientational change of the swing leg, the angular orientation of the crawler tracks becomes angularly inclined relative to paving direction 18. Computer 82 calculates by how much the angle of the crawler track has to be changed relative to the jacking column (which has also been angularly offset relative to the transport direction by the swivel motion of the swing leg) to reset the crawler track suspended from yoke 62 to the angular orientation of the desired paving direction. The onboard computer then signals by how much worm gear drive 60 must rotationally adjust the

Term	Claim(s)	Gomaco's Proposed Construction	Intrinsic and Extrinsic Evidence
			orientation of yoke 62 and crawler tracks 16 to again align the crawler tracks with the paving direction. This process is repeated each time the angular position of the swing leg is changed, or when for other reasons the angular orientation of the crawler tracks becomes misaligned from the desired paving direction of the machine. Thus, the above-described feedback loop automatically adjusts the angular orientation of the crawler tracks so that the tracks remain oriented in the travel direction without any need to stop operation of the machine or manually adjust the orientation of the tracks and/or the swing legs.” <u>Extrinsic Evidence</u> GOMACO00017881–83 - Wiley Electrical & Electronics Engineering Dictionary (2004) at 278: • “feedback” - “The return of a fraction of the output of a circuit, device, piece of equipment, or system, to the input of the same circuit, device, piece of equipment, or system” • “feedback loop” - “A circuit or loop which provides feedback” GOMACO00017875–77 - The Penguin Complete English Dictionary (2006) at 507:

Term	Claim(s)	Gomaco's Proposed Construction	Intrinsic and Extrinsic Evidence
			“feedback” (noun) - “the return to the input of a part of the output of a machine, system, or process” Gomaco may also present expert testimony regarding how a person of ordinary skill in the art at the time of the claimed invention would have understood this limitation in light of the specification and prosecution history. This includes testimony on why no structure exists in the specification for performing the claimed function.
“trailing module”	8–11	“dowel bar inserter (DBI) attachable to the rear of the paving machine”	<u>'020 Specification</u> 8:4–7 - “FIG. 6A shows in plan view a paving machine with a DBI Module incorporating special bolt-in short bolster extensions with built-in mounts for DBI longitudinal support beams;” 8:8–11 - “FIG. 6B is an illustration similar to FIG. 6A with the paving machine and the DBI shown in various relative positions as they are being readied for transportation while in their respective transport orientations;” 13:48–58 - “The paving machine can be used, for example, with a dowel bar inserter 116 for intermittently inserting dowel bars (not shown) into the freshly laid down concrete strip immediately behind the paving kit. Such a dowel bar inserter, its construction and attachment to the paving machine are described,

Term	Claim(s)	Gomaco's Proposed Construction	Intrinsic and Extrinsic Evidence
			for example, in commonly owned, copending U.S. patent application Ser. No. 12/556,486, filed Sep. 9, 2009, for a Paver Having Dowel Bar Inserter With Automated Dowel Bar Feeder, the disclosure of which is incorporated herein by reference as if it were fully set forth herein.” 14:23–36 - “A variation to the DBI mounting arrangement shown in FIG. 6 with a bolt-in hinge is the mounting arrangement shown in FIGS. 6A and 6B. Instead of a bolt-in hinge 102, a special bolt-in short bolster extension 104 with built-in mount 106 for the DBI longitudinal support beam 43 is supplied. Instead of the longitudinal support beams 43 attaching to the rear of the tractor frame by means of a mounting bracket described above, the longitudinal support beams mount to the bolster extension 104. When the bolster extension is provided with a special bolt-in short bolster extension 104 with built-in mount 106 for the DBI longitudinal support beam, a practical and fast loading/transport solution is possible for both the paver and the DBI, providing a medium-size crane is readily available.” 15:20–26 - “The construction and operation of telescoping cross beam 110 and the kits, such as a dowel bar inserter kit suspended therefrom, are described in copending, commonly owned U.S. patent application Ser. No. 12/703,101, filed Feb. 9, 2010, for a Slipform Paving Machine With Adjustable Length

Term	Claim(s)	Gomaco's Proposed Construction	Intrinsic and Extrinsic Evidence
			Tractor Frame, the disclosure of which is incorporated herein by reference.” Figs. 6A–B. <u>'727 Prosecution History</u> GOMACO00017614 - “Conversely, Casters discloses a dowel apparatus having a rearward extension (to a smoothing unit), but does not disclose not a structure where the dowel apparatus connects to a rearward extension from a separate paver module or kit (i.e. which would be a forward extension from the Casters dowel apparatus to a different module). Rather, the dowel apparatus of Crasters shows forward track components without any coupling apparatus that might connect to a rearward extension of another structure. In other words, a person of ordinary skill in the art would not seek to apply the teachings of Crasters to achieve the presently-claimed invention at least because Crasters is designed to have a unitary construction where its dowel apparatus cannot disconnect from its paver structure, and thus is not “configured to couple” in any form with an additional module at its rear.” <u>Extrinsic Evidence</u> Gomaco may also present expert testimony regarding how a person of ordinary skill in the art at the time of the claimed invention would have understood this

Term	Claim(s)	Gomaco's Proposed Construction	Intrinsic and Extrinsic Evidence
			limitation in light of the specification and prosecution history.

II. U.S. Patent No. 9,908,571

Term	Claim(s)	Gomaco's Proposed Construction	Intrinsic and Extrinsic Evidence
"swing leg"	1–3, 7–13, and 15	<i>See</i> proposed construction in table for '020 patent above.	<i>See</i> intrinsic and extrinsic evidence cited in table for '020 patent above.
"hinge bracket"	2–3 and 10–11	<i>See</i> proposed construction in table for '020 patent above.	<i>See</i> intrinsic and extrinsic evidence cited in table for '020 patent above.
"feedback loop"	7 and 12	<i>See</i> proposed construction in table for '020 patent above.	<i>See</i> intrinsic and extrinsic evidence cited in table for '020 patent above.
"laterally telescoping leg"	8	"leg that is perpendicularly extendable from and retractable into the forward bolster"	<u>'571 Specification</u> 17:33–39 - "FIG. 9 is a plan view illustration of a three-leg paving machine 900 having one forward swing leg 20 extending from tractor frame 4. Three-leg paving machine 900 further includes an aft leg 902 and a forward (laterally) telescoping leg 904 also extending from tractor frame 4. Each of the swing leg 20, aft leg 902, and forward telescoping leg 904 further include crawler tracks 16."

Term	Claim(s)	Gomaco's Proposed Construction	Intrinsic and Extrinsic Evidence
			17:64–18:7 - “FIG. 9 shows both forward swing leg 20 and forward telescoping leg 904 in a transport position (in solid line) relatively close in toward the tractor frame 4, and in an operational working position (in dashed line) relatively distant from the tractor frame. Forward swing leg 20 and forward telescoping leg 904 can be driven between transport and operational positions by power unit 8. As shown, forward telescoping leg 904 can be configured to extend and retract relative to the tractor frame 4 in a direction perpendicular to the direction of paving; in other words, perpendicular to the forward and aft ends of the tractor frame 4.” Fig. 9. <u>Extrinsic Evidence</u> GOMACO00017872–74 - Means Illustrated Construction Dictionary (3d ed. 2000) at 651: • “telescope” - “To insert or slide one piece inside another.” GOMACO00017875–76, 78, 80 - The Penguin Complete English Dictionary (2006) at 790, 1448: • “lateral” (adj)/ “laterally” (adv.) - “situated on, directed towards, or coming from the side”

Term	Claim(s)	Gomaco's Proposed Construction	Intrinsic and Extrinsic Evidence
			• “telescope” (verb intrans) - “to slide one part within another like the cylindrical sections of a hand telescope” • “telescopic” (adj)/ “telescopically” (adv.) - “having parts that telescope” GOMACO00017867–71- Academic Press Dictionary of Science and Technology (1992) at 1209, 2179: • “lateral” [science] - “of, relating to, situated on, or directed toward a side.” • “telescopic” [engineering] - “describing a device in which the parts fit together in the manner of a jointed telescope, so that it can be extended or shortened.” Gomaco may also present expert testimony regarding how a person of ordinary skill in the art at the time of the claimed invention would have understood this limitation in light of the specification and prosecution history.

III. U.S. Patent No. 10,029,749

Term	Claim(s)	Gomaco's Proposed Construction	Intrinsic and Extrinsic Evidence
"swing leg"	1–6, 10, 13, 15–20	<i>See</i> proposed construction in table for '020 patent above.	<i>See</i> intrinsic and extrinsic evidence cited in table for '020 patent above.
"hinge bracket"	2–6 and 18	<i>See</i> proposed construction in table for '020 patent above.	<i>See</i> intrinsic and extrinsic evidence cited in table for '020 patent above.

IV. U.S. Patent No. 10,053,167

Term	Claim(s)	Gomaco's Proposed Construction	Intrinsic and Extrinsic Evidence
"swing leg"	1–12 and 17–20	<i>See</i> proposed construction in table for '020 patent above.	<i>See</i> intrinsic and extrinsic evidence cited in table for '020 patent above.
"hinge bracket"	2–4 and 7	<i>See</i> proposed construction in table for '020 patent above.	<i>See</i> intrinsic and extrinsic evidence cited in table for '020 patent above.
"feedback loop"	8–10 and 20	<i>See</i> proposed construction in table for '020 patent above.	<i>See</i> intrinsic and extrinsic evidence cited in table for '020 patent above.

V. U.S. Patent No. 10,196,101

Term	Claim(s)	Gomaco's Proposed Construction	Intrinsic and Extrinsic Evidence
"swing leg"	1, 10–11, 14, and 18	<i>See</i> proposed construction in table for '020 patent above.	<i>See</i> intrinsic and extrinsic evidence cited in table for '020 patent above.
"feedback loop"	7, 18 and 19	<i>See</i> proposed construction in table for '020 patent above.	<i>See</i> intrinsic and extrinsic evidence cited in table for '020 patent above.

Dated: September 15, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2020, a true and accurate copy of the foregoing Gomaco's Preliminary Claim Constructions was served via e-mail on counsel of record for G&Z.

/s/ Luke J. McCammon

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