

FLUOR DANIEL SERVICES)
 CORPORATION;)
)
 FLUOR ENTERPRISES, INC.;)
)
 GENERAL ELECTRIC COMPANY;)
)
 GENUINE PARTS COMPANY, d/b/a)
 RAYLOC, a/k/a NAPA)
)
 GEORGIA-PACIFIC CONSUMER)
 PRODUCTS LP.;)
)
 HONEYWELL INTERNATIONAL,)
 INC., f/k/a ALLIED-PRODUCTS)
 LIABILITY SIGNAL, INC., sued as)
 successor-in-interest to BENDIX)
 CORPORATION;)
)
 SCANA CORPORATION, d/b/a SOUTH)
 CAROLINA ELECTRIC & GAS;)
)
 RILEY POWER, INC. f/k/a RILEY)
 STOKER CORPORATION and D.B.)
 RILEY, INC.;)
)
 AND)
)
 WASTE MANAGEMENT OF SOUTH)
 CAROLINA, INC., successor by)
 merger to USA WASTE OF SOUTH)
 CAROLINA, INC., successor by merger)
 to CHAMBERS MEDICAL)
 TECHNOLOGIES, INC.;)

Defendants.

FIRST AMENDED SUMMONS

TO: DEFENDANTS:

YOU ARE HEREBY SUMMONED and are required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the office of Plaintiff's counsel, Dean Omar Branham, LLP located at 302 N. Market Street., Suite 300,

Dallas, Texas 75202, within thirty (30) days after the service thereof, exclusive of the day of such service.

Respectfully submitted,

DEAN OMAR BRANHAM, LLP

By: */s/ Jonathan M. Holder*

Jonathan M. Holder- (SC Bar No. 77935)

Jessica M. Dean- (TX Bar No. 24040777)

To be admitted *pro hac vice*

Charles W. Branham, III, (TX Bar No. 24012323)

Admitted *pro hac vice*

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ATTORNEYS FOR PLAINTIFF

February 1, 2018
Dallas, Texas

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Defendants.

GENERAL ALLEGATIONS

Plaintiff, JAMES COLEMAN SIZEMORE, as Personal representative of the Estate of JAMES CALVIN SIZEMORE (hereinafter "Decedent"), comes before this court and complains and alleges as follows:

1. Decedent James Calvin Sizemore was diagnosed with the asbestos cancer known as mesothelioma, from which he died June 10, 2017.

2. From approximately 1962 to 2009, Decedent James C. Sizemore was employed as pipefitter, welder, and boilermaker in various construction capacities at multiple facilities in South Carolina and elsewhere. During this time, Decedent James C. Sizemore was exposed to injurious levels of asbestos from the following sources:

- a. Direct and bystander asbestos exposure from approximately 1962 to 2009 while working at various premises throughout South Carolina including, but not limited to, Daniel Building, Greenville, SC; Hoeschst Celanese, Spartanburg SC; Hoechst Celanese, Greer, SC; Hoechst Celanese, Greenville, SC; DuPont Camden Plant, Lugoff, SC; Duke Energy Oconee Nuclear plant, Seneca, SC; Duke Energy W.S. Lee Steam Plant, Pelzer, SC; Bowater Paper Mill, Catawba, SC; Hoechst Celanese, Rock Hill, SC; South Carolina Electric & Gas Canady Plant, Walterboro, SC; Williams Power Station, Goose Creek, SC; Southland Exchange Joint Venture/Chambers Medical Technologies, Inc., Hampton, SC.
- b. Direct and bystander asbestos exposure during the period from 1962 to approximately 2009, while working at various premises locations including, but not limited to, Duke Energy Buck Steam Station Salisbury, NC; Hoechst Celanese, Salisbury, NC; Duke Energy Cliffside Steam Plant, Cliffside, NC; DuPont, Brevard, NC; Buckeye Paper Mill, Perry, FL; Hoechst Celanese, Wilmington, NC; Duke

Energy, Mount Holly, NC; Maritea Power, Miami, FL; Florida Power & Light, Cocoa Beach, FL; Florida Power & Light, Fort Lauderdale, FL; James River Paper Mill, Pennington, AL; Exxon Gas, Pennington, AL; Viking Distillers, Albany, GA; International Paper Mill, Southport, NC; International Paper Mill, Panama City, FL; International Paper Mill, Canton, NC; Waiiau Power Plant, Honolulu, HI; Inland Orange Paper Mill, Orange, TX; Hunters Point Power Plant, San Francisco, CA; Willabrator Plant, Pompano Beach, FL; Fort Howard Paper Mill, Green Bay, WI; Mill Creek Generating Station, Louisville, KY; Moss Landing Power Plant, Moss Landing, CA; FPL Port Everglades Power Plant, Fort Lauderdale, FL; FPL Cape Canaveral Generating Station, Cocoa Beach, FL; Avondale Shipyard, New Orleans, LA; Halter Marine Shipyard, New Orleans, LA; American Marine Shipyard, New Orleans, LA; Domino Sugar, New Orleans, LA; Amoco Alliance Refinery, Belle Chase, LA; while he worked on various construction, repair and replacement projects at these premises; and

- c. Direct and bystander exposure to asbestos brake and mechanical work during his occupation as an automobile mechanic throughout the 1960s and 1970s, as well as automotive work on his personal and family vehicles during the same period;

3. During the course of Decedent's employment at the location(s) mentioned above, during non-occupational work projects and in other ways, Decedent James C.

Sizemore was exposed to and inhaled, ingested, or otherwise absorbed asbestos fibers emanating from certain products he was working around.

4. Decedent James C. Sizemore’s cumulative exposure to asbestos as a result of acts and omissions of Defendants and their defective products, individually and together, was a substantial factor in causing Decedent’s mesothelioma and other related injuries and therefore under South Carolina law, is the legal cause of Decedent’s injuries and damages.

5. Each of the named Defendants is liable for damages stemming from its own tortious conduct or the tortious conduct of an “alternate entity” as hereinafter defined. Defendants are liable for the acts of their “alternate entity” and each of them, in that there has been a corporate name change, Defendant is the successor by merger, by successor in interest, or by other acquisition resulting in a virtual destruction of Plaintiff’s remedy against each such “alternate entity”; Defendants, each of them, have acquired the assets, product line, or a portion thereof, of each such “alternate entity”; such “alternate entities” have acquired the assets, product line, or a portion thereof of each such Defendant; Defendants, and each of them, caused the destruction of Decedent’s remedy against each such “alternate entity”; each such Defendant has the ability to assume the risk-spreading role of each such “alternate entity;” and that each such defendant enjoys the goodwill originally attached to each “alternate entity.”

DEFENDANT

ALTERNATE ENTITY

| | |
|---------------------|--|
| RESOLUTE FP US INC. | f/k/a BOWATER INCORPORATED, aka BOWATER SOUTHERN PAPER, aka BOWATER CAROLINA, aka BOWATER CATAWBA |
| BOWATER PAPER MILL | RESOLUTE FP US INC., f/k/a BOWATER INCORPORATED, aka BOWATER SOUTHERN PAPER, aka |

| | |
|---|---|
| | BOWATER CAROLINA, aka BOWATER CATAWBA |
| CBS CORPORATION | VIACOM, INC., WESTINGHOUSE ELECTRIC CORPORATION |
| CLEAVER-BROOKS, INC. | f/k/a AQUA-CHEM, INC., d/b/a CLEAVER-BROOKS DIVISION |
| DANIEL INTERNATIONAL CORPORATION | f/k/a DANIEL CONSTRUCTION COMPANY, INC. |
| FLUOR CONSTRUCTORS INTERNATIONAL | f/k/a FLUOR CORPORATION |
| GENUINE PARTS COMPANY | d/b/a RAYLOC, a/k/a NAPA |
| HONEYWELL INTERNATIONAL, INC. | f/k/a ALLIED-PRODUCTS LIABILITY SIGNAL, INC., sued as successor-in- interest to BENDIX CORPORATION |
| SCANA CORPORATION | d/b/a SOUTH CAROLINA ELECTRIC & GAS |
| RILEY POWER, INC. | f/k/a RILEY STOKER CORPORATION and D.B. RILEY, INC. |
| WASTE MANAGEMENT OF SOUTH CAROLINA, INC. | successor by merger to USA WASTE OF SOUTH CAROLINA, INC., successor by merger to CHAMBERS MEDICAL TECHNOLOGIES, INC. |

6. Decedent is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants or their "alternate entities" were or are corporations, partnerships, unincorporated associations, sole proprietorships and/or other business entities organized and existing under and by virtue of the laws of the State of South Carolina, or the laws of some other state or foreign jurisdiction, and that said Defendants were and/or are authorized to do business in the State of South Carolina, and that said Defendants have regularly conducted business in the State of South Carolina.

7. Decedent is informed and believes, and thereon alleges, that progressive asbestos cancer, mesothelioma and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma and that said disease results from exposure to asbestos and asbestos-containing products over a period of time.

8. As a direct and proximate result of the conduct as alleged within, Decedent James C. Sizemore suffered permanent injuries, including, but not limited to,

mesothelioma and other lung damage, as well as the mental and emotional distress attendant thereto, from the effect of exposure to asbestos fibers, all to his damage in the sum of the amount as the trier of fact determines is proper.

9. As a direct and proximate result of the conduct as hereinafter alleged, Decedent James C. Sizemore incurred liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Decedent at this time. Decedent requests leave to supplement this Court and all parties accordingly when the true and exact cost of Decedent's medical treatment is ascertained.

10. As a further direct and proximate result of the conduct as hereinafter alleged, Decedent incurred loss of profits and commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Decedent. Decedent prays leave to supplement this Court and all parties accordingly to conform to proof at the time of trial.

FOR A FIRST CAUSE OF ACTION
(Product Liability: Negligence)

Plaintiff Complains of Defendants for a Cause of Action for Negligence Alleging as Follows:

11. Plaintiff incorporates herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

12. At all times herein mentioned, each of the named Defendants was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as "alternate entities," engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting

for installation, repairing, marketing, warranting, re-branding, manufacturing for others, packaging and advertising a certain product, namely asbestos, and other products containing asbestos.

13. At all times herein mentioned, Defendants and/or their "alternate entities" singularly and jointly, negligently and carelessly researched, manufactured, fabricated, designed, modified, tested or failed to test, abated or failed to abate, inadequately warned or failed to warn of the health hazards, failed to provide adequate use instructions for eliminating the health risks inherent in the use of the products, labeled, assembled, distributed, leased, bought, offered for sale, supplied, sold, inspected, serviced, installed, contracted for installation, repaired, marketed, warranted, rebranded, manufactured for others, packaged and advertised, a certain product, namely asbestos, and other products containing asbestos, in that said products caused personal injuries to Decedent and others similarly situated, (hereinafter collectively called "exposed persons"), while being used for their intended purpose and in a manner that was reasonably foreseeable.

14. The asbestos and asbestos-containing products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-containing/utilizing product. Said alternatives would have prevented Defendants' asbestos and asbestos-containing products from causing Decedent's mesothelioma, due to an inability of any asbestos-alternative to penetrate the pleural lining of Decedent James C. Sizemore's lungs, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their "alternate entities." Said alternatives were of comparable utility to the asbestos or asbestos-containing products of Defendants and/or their "alternate entities." The gravity of the potential harm resulting from the use of Defendants' asbestos or asbestos-containing products, and the likelihood such harm would occur to users of its products, far outweighed any additional cost or marginal loss

of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use by Decedent. Defendants and/or their "alternate entities" had a duty to exercise due care in the pursuance of the activities mentioned above and Defendants, each of them, breached said duty of due care.

15. Defendants and/or their "alternate entities" knew or should have known, and intended that the aforementioned asbestos and asbestos-containing products would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for insulation, construction, plastering, fireproofing, soundproofing, automotive, aircraft and/or other applications, including, but not limited to grinding, sawing, chipping, hammering, scraping, sanding, breaking, removal, "rip-out," and other manipulation, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling by exposed persons, including Decedent, would use or be in proximity to and exposed to said asbestos fibers.

16. At all times relevant, Defendants and/or their "alternate entities" were aware of their asbestos and asbestos-containing products' defect but failed to adequately warn Decedent, Decedent's family members or others in their vicinity, as well as failed to adequately warn others of the known hazards associated with their products and/or failed to recall or retrofit their products. A reasonable manufacturer, distributor, or seller of Defendants' products would have, under the same or similar circumstances, adequately warned of the hazards associated with their products.

17. Decedent and others in his vicinity used, handled or were otherwise exposed to asbestos and asbestos-containing products referred to herein in a manner that was

reasonably foreseeable. Decedent James C. Sizemore's exposure to asbestos and asbestos-containing products occurred at various locations as set forth in this Complaint.

18. Decedent James C. Sizemore's suffers from mesothelioma, a cancer related to exposure to asbestos fibers from asbestos-containing products. Decedent was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury or disease.

19. Defendants' conduct and defective products as described in this cause of action were a direct cause of Decedent's injuries, and all damages thereby sustained by Decedent. Decedent therefore seeks all compensatory damages in order to make him whole, according to proof.

20. Furthermore, the conduct of Defendants and/or their "alternate entities" in continuing to market and sell products which they knew were dangerous to Decedent and the public without adequate warnings or proper use instructions was done in a conscious disregard and indifference to the safety and health of Decedent and others similarly situated.

21. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, failing to recall or retrofit, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos and asbestos-containing products, Defendants and/or their "alternate entities" did so with conscious disregard for the safety of "exposed persons" who came in contact with asbestos and asbestos-containing products, in that Defendants and/or their "alternate entities" had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos or asbestos-containing products, including, but not limited to, asbestosis, mesothelioma, lung cancer, and other lung damages. This knowledge was obtained, in

part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their “alternate entities.”

22. Defendants and their “alternate entities” were aware that members of the general public and other “exposed persons,” who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos or asbestos-containing products could cause injury, and Defendants and their “alternate entities,” each of them, knew that members of the general public and other “exposed persons,” who came in contact with asbestos and asbestos-containing products, would assume, and in fact did assume, that exposure to asbestos and asbestos-containing products was safe, when in fact said exposure was extremely hazardous to health and human life.

23. The above-referenced conduct of Defendants and their “alternate entities,” was motivated by the financial interest of Defendants, their “alternate entities,” and each of them, in the continuing, uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, assembly, distribution, lease, purchase, offer for sale, supply, sale, inspection, installation, contracting for installation, repair, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos and asbestos-containing products. Defendants, their “alternate entities,” and each of them consciously disregarded the safety of “exposed persons” in pursuit of profit. Defendants were consciously willing and intended to permit asbestos and asbestos-containing products to cause injury to “exposed persons” without warning them of the potential hazards and further induced persons to work with and be exposed thereto, including Decedent.

24. Decedent and other exposed persons did not know of the substantial danger of using Defendants’ asbestos and asbestos containing-products. The dangers inherent in the use of these products were not readily recognizable by Decedent or other exposed

persons. Defendants and/or their "alternate entities" further failed to adequately warn of the risks to which Decedent and others similarly situated were exposed.

25. Defendants and/or their "alternate entities" are liable for the fraudulent, oppressive, and malicious acts of their "alternate entities," and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and had full knowledge of, or should have known of, the acts of each of their "alternate entities" as set forth herein.

26. The herein-described conduct of Defendants and their "alternate entities," was and is willful, malicious, fraudulent, outrageous and in conscious disregard and indifference to the safety and health of persons foreseeably exposed. Plaintiff, for the sake of example and by way of punishing said Defendants, seeks punitive damages according to proof.

FOR A SECOND CAUSE OF ACTION

(Product Liability: Strict Liability- S.C. Code Ann. sec. 15-73-10, et seq.)

As a Second and Distinct Cause of Action for Strict Liability, Decedent Complains of Defendants and Allege as Follows:

27. Plaintiff incorporates herein by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

28. Decedent James C. Sizemore suffers from mesothelioma, a cancer related to exposure to asbestos fibers from asbestos-containing products. Decedent was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of injury and/or disease.

29. Defendants' conduct and defective products as described above were a direct cause of Decedent's injuries, and the injuries and damages thereby sustained by Decedent.

30. Furthermore, the Defendants' conduct and that of their "alternate entities" in continuing to market and sell products which they knew were dangerous to Decedent and the public without adequate warnings or proper use instructions, was done in a conscious disregard and indifference to the safety and health of Decedent and others similarly situated.

31. Defendants and/or their "alternate entities" knew or should have known, and intended that the aforementioned asbestos and products containing asbestos would be transported by truck, rail, ship and other common carriers, that in the shipping process the products would break, crumble or be otherwise damaged; and/or that such products would be used for insulation, construction, plastering, fireproofing, soundproofing, automotive, aircraft and/or other applications, including, but not limited to grinding, sawing, chipping, hammering, scraping, sanding, breaking, removal, "rip-out," and other manipulation, resulting in the release of airborne asbestos fibers, and that through such foreseeable use and/or handling, "exposed persons," including Decedent, would use or be in proximity to and exposed to said asbestos fibers.

32. Decedent and others in their vicinity used, handled or were otherwise exposed to asbestos and asbestos-containing products referred to herein in a manner that was reasonably foreseeable. Decedent's exposure to asbestos and asbestos-containing products occurred at various locations as set forth in this Complaint.

33. Defendants and/or their "alternate entities" knew and intended that the above-referenced asbestos and asbestos-containing products would be used by the purchaser or user without inspection for defects therein or in any of their component parts and without knowledge of the hazards involved in such use.

34. The asbestos and asbestos-containing products were defective and unsafe for their intended purpose in that there was an alternative for asbestos that could have been used as the product or as a component instead of asbestos within a normally asbestos-

containing/utilizing product. Said alternatives would have prevented Defendants' asbestos and asbestos-containing products from causing Decedent's mesothelioma, due to an inability of any asbestos-alternative to penetrate the pleural lining of Decedent James C. Sizemore's lung, even if inhaled. Said alternatives came at a comparable cost to each of the Defendants and/or their "alternate entities." Said alternatives were of comparable utility to the asbestos or asbestos-containing products of Defendants and/or their "alternate entities." The gravity of the potential harm resulting from the use of Defendants' asbestos or asbestos-containing products, and the likelihood such harm would occur, far outweighed any additional cost or marginal loss of functionality in creating and/or utilizing an alternative design, providing adequate warning of such potential harm, and/or providing adequate use instructions for eliminating the health risks inherent in the use of their products, thereby rendering the same defective, unsafe and dangerous for use.

35. The defect existed in the said products at the time they left the possession of defendants, their "alternate entities," and each of them. Said products were intended to reach the ultimate consumer in the same condition as it left defendants. Said products did, in fact, cause personal injuries, including mesothelioma, asbestosis, other lung damage, and cancer to "exposed persons," including Decedent herein, while being used in a reasonably foreseeable manner, thereby rendering the same defective, unsafe and dangerous for use.

36. Decedent and other exposed persons did not know of the substantial danger of using Defendants' asbestos and asbestos-containing products. The dangers inherent in the use of these products were not readily recognizable by Decedent or other exposed persons. Said Defendants and/or their "alternate entities" further failed to adequately warn of the risks to which Decedent and others similarly situated were exposed.

37. Defendants' defective products as described above were a direct cause of Decedent's injuries, and the damages thereby sustained.

38. In researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, rebranding, manufacturing for others, packaging and advertising asbestos and asbestos-containing products, Defendants, their "alternate entities," and each of them, did so with conscious disregard for the safety of Decedent and other exposed persons who came in contact with the asbestos and asbestos-containing products, in that Defendants and/or their "alternate entities" had prior knowledge that there was a substantial risk of injury or death resulting from exposure to asbestos or asbestos-containing products, including, but not limited to, mesothelioma, asbestosis, other lung damages and cancers. This knowledge was obtained, in part, from scientific studies performed by, at the request of, or with the assistance of Defendants and/or their "alternate entities."

39. Defendants and/or their "alternate entities" were aware that members of the general public and other exposed persons, who would come in contact with their asbestos and asbestos-containing products, had no knowledge or information indicating that asbestos or asbestos-containing products could cause injury. Defendants and/or their "alternate entities" further knew that members of the general public and other exposed persons, who came in contact with asbestos and asbestos-containing products would assume, and in fact did assume, that exposure to asbestos and asbestos-containing products was safe, when in fact exposure was extremely hazardous to health and human life.

40. The above-referenced conduct of Defendants and/or their "alternate entities" motivated by the financial interest of Defendants, their "alternate entities," and each of

them, in the continuing and uninterrupted research, design, modification, manufacture, fabrication, labeling, instructing, assembly, distribution, lease, purchase, offer for sale, supply, sale, inspection, installation, contracting for installation, repair, marketing, warranting, rebranding, manufacturing for others, packaging and advertising of asbestos and asbestos-containing products. Defendants and/or their "alternate entities" consciously disregarded the safety of "exposed persons" in their pursuit of profit and in fact consciously intended to cause injury to Decedent and other exposed persons and induced persons to work with, be exposed to, and thereby injured by asbestos and asbestos-containing products.

41. Defendants are liable for the fraudulent, oppressive, and malicious acts of their "alternate entities," and each Defendant's officers, directors and managing agents participated in, authorized, expressly and impliedly ratified, and knew, or should have known of, the acts of each of their "alternate entities" as set forth herein.

42. The conduct of said defendants, their "alternate entities," and each of them as set forth in this Complaint, was and is willful, malicious, fraudulent, outrageous and in conscious disregard and indifference to the safety and health of exposed persons. Plaintiff, for the sake of example and by way of punishing said Defendants, seeks punitive damages according to proof.

43. At all times herein mentioned, each of the named Defendants was an entity and/or the successor, successor in business, successor in product line or a portion thereof, assign, predecessor, predecessor in business, predecessor in product line or a portion thereof, parent, subsidiary, or division of an entity, hereinafter referred to collectively as "alternate entities," engaged in the business of researching, studying, manufacturing, fabricating, designing, modifying, labeling, instructing, assembling, distributing, leasing, buying, offering for sale, supplying, selling, inspecting, servicing, installing, contracting for installation, repairing, marketing, warranting, re-branding, manufacturing for others,

packaging and advertising a certain product, namely asbestos, and other products containing asbestos.

FOR A THIRD CAUSE OF ACTION
(Vicarious Liability of Defendants Based upon Respondeat Superior)

As a Third Distinct Cause of Action Against Defendants, Decedent Bring this Third Cause of Action for Vicarious Liability of Defendants Based upon Respondeat Superior and Allege as Follows:

44. Plaintiff incorporates by reference, as though fully set forth herein, each and every paragraph of the General Allegations above.

45. Prior to and during all relevant times Defendants employed workers (hereinafter "employees") in areas where defendants owned, maintained, controlled, managed and/or conducted business activities where Decedent worked and/or spent time as alleged above.

46. At all times herein mentioned, Defendants' employees frequently encountered asbestos-containing products, materials, and debris during the course and scope of their employment, and during their regular work activities negligently disturbed asbestos-containing materials to which Decedent was exposed.

47. Employees handling and disturbing asbestos-containing products in Decedent's vicinity were the agents and employees of defendants and at all times relevant were subject to the control of Defendants with respect to their acts, labor, and work involving (a) the removal, transport, installation, cleaning, handling, and maintenance of asbestos-containing products, materials, and debris, and (b) the implementation of safety policies and procedures. Defendants controlled both the means and manner of performance of the work of their employees as described herein.

48. Employees handling and disturbing asbestos-containing products in Decedent's, Decedent's family members and others' vicinity received monetary

compensation from Defendants in exchange for the work performed and these employees performed the work in the transaction and furtherance of Defendants' businesses.

49. Harmful asbestos fibers were released during Defendants' employees' use, handling, breaking, or other manipulation of asbestos-containing products and materials.

50. Once released, the asbestos fibers contaminated the clothes, shoes, skin, hair, and body parts of those exposed, including Decedent, who also inhaled those fibers, and on the surfaces of work areas, where further activity caused the fibers to once again be released into the air and inhaled by Decedent.

51. The asbestos and asbestos-containing materials were unsafe in that handling and disturbing products containing asbestos causes the release of asbestos fibers into the air onto surrounding surfaces, and onto persons in the area. The inhalation of asbestos fibers can cause serious disease and death.

52. Defendants' employees' use, handling and manipulation of asbestos-containing materials, as required by their employment and occurring during the course and scope of their employment, did in fact, cause personal injuries, including mesothelioma and other lung damage, to exposed persons including Decedent.

53. Defendants' employees were negligent in their use, handling and manipulation of said products in that they failed to isolate their work with asbestos and/or to suppress asbestos fibers from being released into the air and surrounding areas. They also failed to take appropriate steps to learn how to prevent exposure to asbestos, failed to warn and/or adequately warn Decedent that he was being exposed to asbestos, failed to adequately warn Decedent of the harm associated with his exposure to asbestos, and provide him with protection to prevent his inhalation of asbestos.

54. Defendants' employees knew or should have known that failure to take such steps would result in exposure to bystanders including Decedent.

55. Defendants' employees owed Decedent a duty to exercise due care and diligence in their activities while he was lawfully on the premises so as not to cause him harm.

56. Defendants' employees breached this duty of care as described above.

57. At all times mentioned, Decedent was unaware of the dangerous condition and unreasonable risk of personal injury created by Defendants' employees' use of and work with asbestos-containing products and materials.

58. As a direct result of the Defendants' employees conduct, Decedent's exposure to asbestos and asbestos-containing materials, each individually and together, caused severe and permanent injury to Decedent and the damages and injuries as complained of herein by Decedent.

59. The risks herein alleged and the resultant damages suffered by the Decedent were typical of or broadly incidental to Defendants' business enterprises. As a practical matter, the losses caused by the torts of Defendants' employees as alleged were sure to occur in the conduct of Defendants' business enterprises. Nonetheless, Defendants engaged in, and sought to profit by, their business enterprises without exercising due care as described in this Complaint, which, on the basis of past experience, involved harm to others as shown through the torts of employees.

60. Based on the foregoing, Defendants as the employers of said employees are vicariously liable under the doctrine of *respondeat superior* for all negligent acts and omissions committed by their employees in the course and scope of their work that caused harm to Decedent.

FOR A FOURTH CAUSE OF ACTION
(Premises Liability: Negligence as to Premise Owner/Contractor)

As a Fourth Distinct Cause of Action for General Negligence, Decedent Complains of Defendants, and Allege as Follows:

61. Plaintiff incorporates herein by reference, as though fully set forth, each and every paragraph of the General Allegations above.

62. Prior to and during all relevant times, Defendants employed workers in areas where Defendants owned, maintained, controlled, managed and/or conducted business activities where Decedent worked and/or spent time.

63. At all times herein mentioned, Defendants selected, supplied, and distributed asbestos-containing materials to their employees for use during their regular work activities, and said employees disturbed those asbestos-containing materials.

64. Defendants were negligent in selecting, supplying, distributing and disturbing the asbestos-containing products in that said products were unsafe. Said products were unsafe because they released asbestos fibers and dust into air when used which would be inhaled by Decedent and settled onto Decedent's clothes, shoes, hands, face, hair, skin, and other body parts thus creating a situation whereby workers and by-standers including Decedent would be exposed to dangerous asbestos dust beyond the present.

65. The asbestos and asbestos-containing materials described herein were unsafe in that handling and disturbing products containing asbestos causes the release of asbestos fibers into the air, and the inhalation of asbestos fibers causes serious disease and death. Here, the handling of the above-described asbestos-containing materials by Defendants' employees, as required by their employment and occurring during the course and scope of their employment, did, in fact, cause personal injuries, including mesothelioma and other lung damage, to exposed persons, including Decedent.

66. At all times herein mentioned, Defendants knew or should have known that its employees and bystanders thereto, including Decedent, frequently encountered

asbestos-containing products and materials during the course and scope of their work activities.

67. At all times herein mentioned, Defendants knew or should have known that the asbestos-containing materials encountered by its employees and bystanders thereto including Decedent, were unsafe in that harmful asbestos fibers were released during the use, handling, breaking, or other manipulation of asbestos-containing products and materials, and that once released, asbestos fibers can be inhaled, and can alight on the clothes, shoes, skin, hair, and body parts of those exposed, where further activity causes the fibers to once again be released into the air where they can be inhaled, all of which causes serious disease and/or death.

68. At all times herein mentioned, Defendants, in the exercise of reasonable diligence, should have known that absent adequate training and supervision, their employees and bystanders thereto including Decedent were neither qualified nor able to identify asbestos-containing products nor to identify the hazardous nature of their work activities involving asbestos-containing products.

69. At all times herein mentioned, Decedent was unaware of the dangerous condition and unreasonable risk of personal injury created by the presence and use of asbestos-containing products and materials.

70. At all time herein mentioned, Defendants, in the exercise of reasonable diligence, should have known that workers and bystanders thereto, would bring dangerous dust home from the workplace and contaminate their family cars and homes, continuously exposing and potentially causing injury to others off the premises.

71. At all times herein mentioned, Defendants had a duty to use due care in the selection, supply, distribution and disturbance of asbestos-containing products and materials to its employees, to adequately instruct, train, and supervise their employees and to implement adequate safety policies and procedures to protect workers and persons

encountering those workers, including Decedent, from suffering injury or death as a result of the asbestos hazards encountered and created by the work of Defendants' employees.

72. Defendants' duties as alleged herein exist and existed independently of Defendants' duties to maintain their premises in reasonably safe condition, free from concealed hazards.

73. Defendants negligently selected, supplied, and distributed the asbestos-containing materials and failed to adequately train or supervise their employees to identify asbestos-containing products and materials; to ensure the safe handling of asbestos-containing products and materials encountered during the course of their work activities; and to guard against inhalation of asbestos fibers and against the inhalation of asbestos fibers by those who would come into close contact with them after they had used, disturbed, or handled, said asbestos-containing products and materials during the course and scope of their employment by defendants.

74. Defendants failed to warn its employees and bystanders thereto, including Decedent, of the known hazards associated with asbestos and the asbestos-containing materials they were using and/or disturbing.

75. As a direct and proximate result of the conduct of Defendants in selecting, supplying, distributing and disturbing asbestos-containing materials and failing to adequately train and supervise their employees and failing to adopt and implement adequate safety policies and procedures as alleged herein, Decedent became exposed to and inhaled asbestos fibers, which was a substantial factor in causing Decedent to develop asbestos-related mesothelioma, and to suffer all damages attendant thereto.

FOR A FIFTH CAUSE OF ACTION
(Product Liability: Breach of Implied Warranties- S.C. Code Ann. 36-2-314)

As a Fifth Distinct Cause of Action for Breach of Implied Warranties, Decedent Complains of Defendants and Allege as Follows:

76. Plaintiff repeats the general allegations, as well as allegations of, as though fully set forth, each and every paragraph of the General Allegations above, where relevant.

77. Each of the Defendants impliedly warranted that their asbestos materials or asbestos-containing products were of good and merchantable quality and fit for their intended use.

78. The implied warranty made by the Defendants that the asbestos and asbestos-containing products were of good and merchantable quality and fit for the particular intended use, was breached. As a result of that breach, asbestos was given off into the atmosphere where Decedent James C. Sizemore carried out his duties and was inhaled by Decedent.

79. As a direct and proximate result of the breach of the implied warranty of good and merchantable quality and fitness for the particular intended use, Decedent James C. Sizemore was exposed to Defendants' asbestos and/or asbestos-containing products and consequently developed mesothelioma, causing Decedent and Plaintiff to suffer all damages attendant thereto.

FOR A SIXTH CAUSE OF ACTION
(Fraudulent Misrepresentation)

For a Sixth Distinct Cause of Action for Fraudulent Misrepresentation, Decedent Complains of Defendants, and Allege as Follows:

80. Plaintiff repeats and re-alleges the portions of the above paragraphs where relevant.

81. That during, before and after Decedent James C. Sizemore's exposure to asbestos products manufactured by Defendants, the Defendants falsely represented facts, including the dangers of asbestos exposure to Decedent in the particulars alleged in the

paragraphs above, while Defendants each had actual knowledge of said dangers of asbestos exposure to persons such as Decedent James C. Sizemore. At the same time of these misrepresentations, Defendants each knew of the falsity of their representations and/or made the representations in reckless disregard of their truth or falsity.

82. The foregoing representations were material conditions precedent to Decedent James C. Sizemore's continued exposure to asbestos-containing products. Defendants each intended that Decedent act upon the representations by continuing his work around, and thereby exposure to, the asbestos products. Decedent was ignorant of the falsity of Defendants' representations and rightfully relied upon the representations.

83. As a direct and proximate result of Decedent James C. Sizemore's reliance upon Defendants' false representations, Decedent, and consequently Plaintiff, suffered injury and damages as described herein.

FOR AN SEVENTH CAUSE OF ACTION
(Wrongful Death Action, S.C. Code Ann. § 15-51-10 et seq.)

For a Seventh Distinct Cause of Action for Wrongful Death, Decedents Complain of Defendants, and Allege as Follows:

84. All of the paragraphs above are incorporated by reference, where relevant.

85. Plaintiff brings this cause of action for JAMES CALVIN SIZEMORE's wrongful death pursuant to S.C. Code Ann. § 15-51-10, for the benefit of the children of James Calvin Sizemore, as defined by S.C. Code § 15-51-20.

86. As a direct and proximate result of the negligence, recklessness, carelessness and intentional actions of Defendants as described above, James Calvin Sizemore died June 10, 2017 and his children have and will endure pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow, loss of love, loss of society with the Decedent, loss of guidance from the decedent, loss of his companionship and deprivation of the use and comfort of the Decedent's experience, knowledge and judgment in managing the affairs of himself and his beneficiaries,

and they have been otherwise seriously damaged. Moreover, reasonable funeral expenses were incurred and Plaintiff prays for judgment against Defendants in such amount of actual and punitive damages as the trier of fact may determine.

FOR AN EIGHTH CAUSE OF ACTION
(Survival Action, S.C. Code Ann. § 15-5-90)

For an Eighth Distinct Cause of Action, known statutorily as a Survival Action, Decedents Complain of Defendants, and Allege as Follows:

87. All paragraphs above are incorporated by reference, where relevant.

88. Plaintiff brings this cause of action for Decedent's medical, surgical and hospital bills, as well as for Decedent's conscious pain and suffering prior to his untimely death, as well as for the mental distress of Decedent due to knowledge of his impending death from his incurable disease.

89. As a direct and proximate result of the negligence, recklessness, carelessness and intentional actions of Defendants as described, Decedent endured conscious pain, suffering, mental anguish and distress until his untimely death, and Plaintiff prays for judgment against Defendants in such amount of actual and punitive damages as the trier of fact may determine is just.

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WHEREFORE, Plaintiff prays judgment, joint and several, against Defendants in an amount to be proved at trial, as follows:

1. For Decedents' actual damages according to proof, including Decedent's pain & suffering, Decedent's mental distress as well as Decedent's medical, surgical and hospital bills;
2. For loss of earnings according to proof;
3. For loss of care, comfort and society of the Decedent;
4. For pecuniary loss of the beneficiaries/heirs including but not limited to funeral and burial costs, for mental shock and suffering of the beneficiaries/heirs, for wounded feelings of the beneficiaries/heirs, for grief and sorrow of the beneficiaries/heirs, loss of his companionship and deprivation of the use and comfort of the Decedent's experience, knowledge and judgment in managing the affairs of himself and his beneficiaries
5. For punitive damages according to proof;
6. For Plaintiff's cost of suit herein;
7. For damages for fraudulent misrepresentation according to proof;
8. For damages for breach of implied warranty according to proof; and
9. For such other and further relief as the Court may deem just and proper, including costs and prejudgment interest as provided by South Carolina law.

Respectfully submitted,

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By: /s/ Jonathan M. Holder

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