

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF YORK) C/A No. 2015-CP-46-2155

ROXANNE FALLS, individually and as Personal)
 Representative of the Estate of Charlotte Gaye)
 Smith,)

Plaintiff,)

vs.)

CBS Corporation, a Delaware corporation, f/k/a)
 Viacom Inc., successor by merger to CBS)
 Corporation, a Pennsylvania Corporation, f/k/a)
 Westinghouse Electric Corporation;)

CNA Holdings, Inc., f/k/a Hoechst Celanese)
 Corporation;)

Celanese Corporation f/k/a Hoechst Celanese)
 Corporation (sued individually and as)
 successor in-interest-to Fiber Industries, Inc.);)

Cleaver-Brooks, Inc.;)

Covil Corporation;)

Daniel International Corporation;)

Fluor Daniel, Inc., f/k/a Daniel Construction)
 Company, Inc.;)

Fluor Daniel Services Corporation;)

Foster Wheeler Energy Corporation;)

General Electric Company;)

MP Supply, Inc. f/k/a Mill-Power Supply Co. and)
 Mill-Power Supply Company;)

Resolute FP US, Inc.;)

Union Carbide Corporation;)

United States Fidelity and Guaranty Company;)

Uniroyal, Inc., f/k/a United States Rubber)
 Company, Inc.; and)

United Conveyor Corporation,)

Defendants.)

Asbestos Injury Lawsuit
 Jury Demand on all Issues
 Survival Action and Wrongful
 Death Action

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 DAVID HAMILTON
 C.C.C.P. & GS
 YORK COUNTY, SC

SECOND AMENDED SUMMONS

TO: UNION CARBIDE CORPORATION, by and through its South Carolina registered agent.

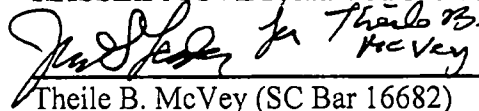
YOU ARE HEREBY SUMMONED and required to answer the Second Amended Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Second Amended Complaint,

judgement by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted, this the 15th day of NOVEMBER, 2017.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

November 15, 2017

Columbia, South Carolina

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SECOND AMENDED COMPLAINT

PLAINTIFF, Gary Dean Smith, individually and as Personal Representative of the Estate of Charlotte Gaye Smith (deceased) sues the above-named Defendants for compensatory and punitive damages and alleges:

1. This action is brought pursuant to the Wrongful Death Act, S.C. Gen. Stat. 15-51-10 *et seq.*, for the wrongful death of the decedent, Charlotte Gaye Smith, on behalf of all persons

entitled to recover damages.

2. The decedent died on November 25, 2015, in York County, South Carolina. The cause of death was Metastatic Mesothelioma. The decedent had been diagnosed with Mesothelioma on or about May 7, 2015.

BACKGROUND FACTS

1. Plaintiff is a citizen and resident of the State of South Carolina.

2. Defendants are domestic and foreign corporations who are amenable to jurisdiction in the Courts of South Carolina by virtue of their respective contacts with the State of South Carolina and/or their respective conduct of substantial or systematic business in South Carolina which subjects them to the jurisdiction of the South Carolina Courts pursuant to the South Carolina Long-Arm Statute. The risk involved pertaining to asbestos dangers was not an open and obvious risk or a risk that was a matter of common knowledge.

3. Each Defendant listed in the caption (or its applicable predecessors in interest) mined, manufactured, processed, imported, converted, compounded, used, installed and/or retailed substantial amounts of asbestos and asbestos-containing materials which were sold, distributed and/or used in South Carolina; and/or are otherwise liable in connection with asbestos and asbestos-containing products as alleged herein below.

4. The Decedent Charlotte Gaye Smith was a citizen and resident of York County, South Carolina. That Plaintiff Gary Dean Smith, is a citizen and resident of York County, South Carolina and is lawfully married as husband to his wife Decedent Charlotte Gaye Smith.

5. Decedent Charlotte Gaye Smith was born on March 20, 1949 and was diagnosed with Malignant Mesothelioma on or about May 7, 2015.

6. Decedent was married to her first husband, Lewis Clifford Childers, from 1967 to 1991. From 1968 to 1975, Mr. Childers was employed by Daniel Construction Company and working at Bowater Paper Mill in Catawba, SC, at Fiber Industries in Darlington, SC, at Fiber Industries in Greenville, SC, at Fiber Industries in Salisbury, NC, and at Hoechst Celanese in Spartanburg, SC. From 1975 to 1979, Mr. Childers was employed by Presnell Insulation, Inc., and working at Bowater Paper Mill in Catawba, SC, at Cannon Mills in Kannapolis, NC, at Cone Mills in Kannapolis, NC, and at Cone Mills in Concord, NC. From 1979 to 1981, Mr. Childers was employed by Cooks Insulation Co., Inc., and working at Milliken in Pendleton, SC, and at Milliken Cypress Plant in Blacksburg, SC. From 1981 to 2002, Mr. Childers was employed by Duke Energy Corporation, and working at various Duke Plants in North and South Carolina, including Allen Steam Station, Belews Creek, Catawba Nuclear, Cliffside Steam Plant, Dan River Steam Plant, Lee Steam, McGuire Nuclear, Oconee Nuclear, and Riverbend as an insulator and maintenance technician. He also worked around the boiler room, turbine room, and pump room where he was exposed to Defendants' asbestos-containing products or equipment. During the course of his employment and while he was married to Plaintiff, Lewis Clifford Childers was exposed to asbestos dust and fibers and asbestos-containing materials manufactured, installed, serviced, produced, or repaired by the Defendants named in paragraphs in the complaint.

7. Decedent, Charlotte Gaye Smith, was exposed to asbestos dust and fibers from products, services, and goods manufactured, distributed, or sold by Defendants for use at Decedent's first husband's jobsites which she came in contact with off premises by contact with her first husband, Lewis Clifford Childers' work clothes, personal possessions and vehicle. As to Travelers and its predecessors it owed a duty to Decedent and her first husband to warn, protect, enforce safety and hygiene rules and policies or otherwise use its superior knowledge to provide a safe environment. As a result, Decedent Charlotte Gaye Smith developed the asbestos cancer known as Mesothelioma.

8. Defendants owned, operated, or supplied asbestos containing materials or services to worksites in South Carolina, at which Decedent's former husband, Lewis Clifford Childers, worked, or entered for purposes of work, and in which Mr. Childers was exposed to asbestos dust from asbestos containing materials.

9. Defendants knew, or should have known, at all times relevant hereto that exposure to asbestos dust and fibers were a known risk factor in the development of potentially fatal lung disease including malignant mesothelioma.

10. Decedent Charlotte Gaye Smith was exposed to asbestos through asbestos dust and fibers taken home on her former husband's work clothes, from asbestos dust in his vehicles and asbestos dust on his body including his hair and from the dust being distributed and re-entrained.

11. Decedent Charlotte Gaye Smith was diagnosed in May 2015 with malignant mesothelioma, a fatal disease caused solely by exposure to asbestos fibers and dust. This exposure occurred as a result of her former husband's exposure to asbestos dust and fibers that remained on his clothes, in his vehicle, on his work equipment, and on his body.

12. Venue is proper in York County, South Carolina, in that the acts or omissions giving rise to this cause of action occurred in the State of South Carolina. The Plaintiff is a York County, South Carolina citizens and residents. Defendants conduct substantial business and have facilities within the State of South Carolina.

13. At all times mentioned herein, Defendants acted through their duly authorized agents, servants, and employees who were at all times relevant herein acting within the scope and course of their employment. At the time of its manufacture the manufacturers acted unreasonably in designing or formulating the relevant products, and this conduct was a proximate cause of the harm for which damages are sought.

14. Mesothelioma is a progressive, insidious disease and Decedent's asbestos dust and fiber exposure in South Carolina to the Defendants products or on the Defendant's premises and for which Defendants are otherwise liable contributed to the Plaintiff's contraction of her disease caused by breathing asbestos dust and fibers from asbestos-containing products or asbestos containing materials at Defendant's premises..

15. Plaintiff has obtained and submitted with the originally filed Complaint as Exhibit A to it, a report by a physician who is appropriately board-certified, in compliance with S.C. Code §§ 44-135-50(A)(1), 44-135-70 and 44-135-80. A redacted exhibit was attached and counsel may request an unredacted report.

FIRST CAUSE OF ACTION
Negligent Failure to Warn and Defective Product Design

16. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

17. Defendants (or their predecessors in interest or parties with whom they acted in concert), and each of them, are or at times relevant hereto, were miners, manufacturers, processors, importers, converters, compounders and/or retailers of asbestos and asbestos-containing materials or otherwise profited from asbestos related services.

18. Defendants, acting through their agents, servants, and/or employees have caused certain asbestos and asbestos-containing materials to be placed in the stream of interstate commerce with the result that said asbestos and asbestos-containing materials came into use and released fiber by or in the vicinity of the Decedent's former husband Lewis Clifford Childers. Defendants negligently produced, sold, supplied or otherwise put into the stream of commerce asbestos and asbestos-containing products and/or machinery requiring the use of asbestos and/or asbestos-containing products.

19. During the course and scope of his employment at the named facilities or with the named manufacturers and their products, Decedent's former husband, Lewis Clifford Childers, was exposed to Defendants' asbestos dust and fibers and asbestos-containing materials.

20. Defendants owned, operated, or supplied worksites in South Carolina, at which Decedent's former husband worked, or entered for purposes of work, and from which he and subsequently Decedent was exposed to asbestos containing materials including asbestos dust and asbestos fibers. Defendant knew, or should have known, at all times relevant hereto that exposure to asbestos fiber and dust was a known risk factor in the development of potentially fatal lung disease including malignant mesothelioma.

21. Defendants knew, or should have known, that Decedent Charlotte Gaye Smith, or others similarly situated, would come in contact with the asbestos containing products for which Defendants may be liable. As a designer, developer, manufacturer, distributor, supplier, installer and/or seller of the above-described asbestos and asbestos-containing products, Defendants each owed a duty to foreseeable users, handlers and bystanders to such use of said products to use ordinary care in designing, manufacturing, marketing, supplying and selling said products in such a manner as to render them safe for their intended and foreseeable uses.

22. Defendants knew, or should have known, that Decedent Charlotte Gaye Smith, or others similarly situated, would be in danger of developing fatal asbestos diseases such as the asbestos cancer known as mesothelioma as a result of such exposure.

23. Decedent, Charlotte Gaye Smith, is the former wife of Lewis Clifford Childers and was at all material times his spouse. Therefore, it was foreseeable to Defendants that spouses, such as Decedent, would have been at a substantial risk of harm from exposure to asbestos dust and fibers carried home on her former husband's clothing after working with or around asbestos-containing products on Defendant's premises, or Defendant's asbestos containing products or Defendant's asbestos related services.

24. The dangers of breathing asbestos dust and fibers were first published in the medical literature in the 1890s. By the late 1950s, there were hundreds of medical articles highlighting the dangers of being around asbestos dust. Defendants knew or should have known that the asbestos fibers contained in the relevant products had a toxic, poisonous, and highly deleterious effect upon the health of persons inhaling, ingesting or otherwise absorbing them.

25. Defendants have known or should have known since the early 1900s of scientific literature that clearly indicated that workers could carry home on their work clothes industrial dust and fiber, such as asbestos, thereby exposing their family members to the hazards of asbestos. By the 1960s, studies were being published on the occurrence of asbestos disease, including mesothelioma, in family members of workers exposed to asbestos.

26. The illness and disability of the Decedent is the direct and proximate result of the negligence, recklessness and willfulness of the Defendants, jointly and severally, in that they produced, sold and otherwise put into the stream of interstate commerce, asbestos and asbestos-containing materials which the Defendants, and each of them, knew were deleterious, poisonous and highly harmful to Decedent's body, lungs, respiratory system, skin and health.

27. Defendants owed a duty of care toward the Decedent. Defendants breached that duty by their negligent acts and omission.

28. Defendants knew, or, in the exercise of ordinary care, should have known, that the asbestos and asbestos-containing materials were deleterious, poisonous and highly harmful to Plaintiff's body, lungs, respiratory system, skin and health. At the time the products left the control of the manufacturers, the manufacturers unreasonably failed to adopt a safer, practical, feasible, and otherwise reasonable alternative design or formulation that could then have been reasonably adopted and that would have prevented or substantially reduced the risk of harm without substantially impairing the usefulness, practicality, or desirability of the products. Defendants acted negligently, recklessly and willfully in that the Defendants:

(a) Failed to advise Decedent of the dangerous characteristics of their asbestos and asbestos-containing products;

(b) Failed or omitted to provide the Decedent's former husband with the knowledge as to what would be reasonably safe and sufficient wearing apparel and proper protective equipment and appliance, if, in truth, they were in any way able to mitigate the dust to protect his family from being poisoned and disabled by exposure to such deleterious and harmful asbestos-containing materials;

(c) Failed and omitted to place any warnings or sufficient warnings on their containers or premises of said asbestos and asbestos materials to warn the handlers thereof of the dangers to their health in coming in contact with said asbestos and asbestos materials and the necessity to be dust free prior to leaving the property;

(d) Failed and omitted to take reasonable precautions or to exercise reasonable care to publish, adopt and enforce a safety plan and a safe method of handling and installing said asbestos and asbestos materials and the removal of the fibers from ones clothes and personal effects to avoid contaminating the home;

(e) Inadequately warned, if, in fact, they warned at all, persons such as Decedent or her former husband of the dangers to their health in coming in contact with and breathing said asbestos and asbestos-containing materials and their transporting the asbestos dust and fibers home, even after they knew of the dangers and cancer-causing effects, and up until the present time;

(f) Did not recommend methods to improve the work environment including leaving all work clothes at work;

(g) Did not use, implement or develop alternative products that were available; and

(h) Continued to use a known cancer-causing product, to wit: asbestos without taking reasonably adequate measures to eliminate house hold exposure.

(i) Including asbestos in relevant products, and using asbestos even though it was foreseeable that persons such as Decedent would inhale, ingest or otherwise absorb asbestos;

(j) Including asbestos in relevant products, and using asbestos when the Defendants knew or should have known that asbestos would have a toxic, poisonous and highly deleterious effect upon the health of persons inhaling, ingesting or otherwise absorbing them such as Decedent;

(k) Including asbestos in products and using asbestos when adequate substitutes for asbestos were available;

(l) Failing to adequately warn persons working with and around the products of the dangers of inhaling, ingesting or otherwise absorbing the asbestos fibers;

(m) Failing to provide any or adequate instructions concerning the safe methods of working with and around the products, including specific instructions on how to avoid inhaling, ingesting or otherwise absorbing the asbestos fibers and how to properly and safely remove the asbestos dust from their clothes, possessions, and vehicles to avoid second hand exposure to their family and loved ones.

(n) Failing to conduct tests on the asbestos-containing products manufactured, sold, delivered or installed by the Defendants in order to determine the hazards to which persons such as Decedent might be exposed while working with or around them;

(o) Designing, manufacturing and selling equipment, machinery, technologies and systems that included asbestos-containing components and required and/or specified the use of asbestos-containing replacement components;

(p) Failing to comply with governmental regulations designed to reduce exposure to asbestos; and

(q) Being otherwise negligent and liable for defective failure to warn and defective design.

29. At all times relevant, it was feasible for Defendants to have warned workers, their spouses, and families, tested their asbestos products, designed safer asbestos products and/or substituted asbestos-free products.

30. In the alternative, subsequent to the time the Defendants caused the asbestos products to be sold and distributed, the Defendants knew, or in the exercise of ordinary care, should have known, that asbestos is deleterious, carcinogenic, and harmful to persons using buildings, equipment, or on jobsites, but nevertheless, the Defendants negligently and recklessly failed and refused to warn and advise the Decedent of the dangerous characteristics thereof, and the dangers to the health and welfare of persons coming in contact with and breathing products. Despite possessed with information uniquely available to them relating to the dangerous effects to the person and to their family of continued asbestos exposure, the Defendants did not provide that information to the Decedent or her former husband.

31. The Defendants had a post-sale duty to warn, which duty was breached and, as a result, Plaintiff suffered injury and damages as hereinafter described. In addition or in the alternative, after the products left the control of the manufacturers and sellers, the manufacturers and sellers became aware of or in the exercise of ordinary care should have known that the product posed a substantial risk of harm to a reasonably foreseeable user or consumer and failed to take reasonable steps to give adequate warning or instruction or to take other reasonable action under the circumstances.

32. Decedent has suffered continuing and lingering injury to herself due to the Defendants' asbestos fibers brought home by her former husband which she then inhaled while doing the laundry, sweeping up the dust and riding in the car previously inhaled. Said fibers, once inhaled, caused repeated and continuing injury to Decedent.

33. As a direct and proximate result of one or more of the foregoing acts and/or omissions on the part of the Defendants, Decedent sustained exposure to and inhaled, ingested or otherwise absorbed asbestos fibers causing mesothelioma.

SECOND CAUSE OF ACTION
(Implied Warranty of Merchantability)

34. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

35. The Defendants, and each of them, impliedly warranted that their relevant products, equipment and asbestos materials were of good and merchantable quality and fit for their intended use.

36. The implied warranty made by the Defendants, and each of them, that the asbestos and asbestos-containing materials were of good and merchantable quality and for the particular intended use was breached and that certain harmful, poisonous and deleterious matter was given off into the atmosphere wherein the Plaintiff's former husband carried out his duties working with asbestos and asbestos-containing materials.

37. As a direct and proximate result of the breach of the implied warranty of good and merchantable quality, Decedent developed mesothelioma and/or other industrial dust diseases caused by breathing the asbestos dust and fibers from Defendants' asbestos-containing products brought home by her former husband.

THIRD CAUSE OF ACTION
(Strict Liability)

38. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

39. During the pertinent times, Decedent was injured by her exposure to asbestos fibers associated with the products and equipment manufactured and sold by the Defendants.

40. Defendants' relevant products and equipment was at the time of the harmful asbestos exposure in materially the same condition or in a deteriorated condition it was reasonably foreseeable to become when it left the hands of the Defendants.

41. Decedent's injury herein occurred because the products and the equipment of the Defendants were in a defective condition unreasonably dangerous to the user.

42. At the time the Defendants, and each of them sold and/or delivered the aforesaid asbestos and asbestos-containing products and at the time said products were used by or around Decedent's former husband or by others in his vicinity in the manner and environment intended, they were in a defective condition and were unreasonably dangerous and unfit for their intended use in that they were deleterious, poisonous and highly harmful to Decedent. The above was the proximate cause of the severe damages sustained by the Decedent as herein set forth.

FOURTH CAUSE OF ACTION
(Punitive Damages)

43. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

44. During the pertinent times, Defendants had actual knowledge of the dangers to individuals similarly situated to the Decedent of asbestos exposure, nevertheless, Defendants deliberately, intentionally and purposefully withheld such information, thus denying Decedent of the knowledge with which to take necessary safety precautions such as bagging her former husband's clothes or requiring him to leave them at work periodic x-rays and medical examinations and avoiding further dust exposure, the specifics of Defendants' intentional acts upon information and belief being as follows:

- (a) Failing to warn users of the need for monitoring due to asbestos exposure;
- (b) Never issuing recall-type letters or notices to users;
- (c) Rejecting advice of corporate officials and others to warn of the hazards of their products; such rejection being motivated by the possibility of adverse effects on profits;
- (d) Delaying the use of asbestos warnings and diluting the content of such warnings for asbestos-related products;
- (f) Failed to advise Plaintiff of medical findings known to Defendants concerning the dangers of asbestos exposure; and
- (g) Suppressed the dissemination of information to Decedent concerning the hazards of asbestos exposure.

45. The foregoing deliberate, intentional and purposeful acts of the Defendants were the direct and proximate cause of Decedent's injuries and damages hereinafter described, and the Plaintiff is therefore, entitled to compensation and punitive damages.

FIFTH CAUSE OF ACTION
(Direct Negligence Action against USF&G)

46. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

47. The Decedent's former husband worked at various job sites at which asbestos-containing products were provided and used by companies insured by USF&G including Daniel International Corporation f/k/a Daniel Construction Company, and Fluor Enterprises Inc. f/k/a Fluor Daniel, Inc. (collectively "Daniel"). These contracting companies purchased liability and workers compensation insurance from USF&G from approximately 1952 until at least 1987. The Decedent's former spouse was employed in North Carolina and South Carolina by Daniel Construction Company from 1968 to 1975 working at Bowater Paper Mill in Catawba, SC, at Fiber Industries in Darlington, SC, at Fiber Industries in Greenville, SC, at Fiber Industries in Salisbury, NC, and at Hoechst Celanese in Spartanburg, SC.

48. The Decedent's former husband's direct employer from 1968 until 1975 was Daniel. He was an insulator. His job required that he work along with and in the direct vicinity of Daniel employees and contractors when they installed and removed asbestos insulation, gaskets, packing, and other asbestos containing products and materials. At no time was he advised or warned by Daniel or USF&G of the hazards of the asbestos substances to which he was injuriously being exposed.

49. During the pertinent times, USF&G knew or should have known of the health hazards associated with take home and bystander exposure to asbestos. Because it provided insurance coverage to Daniel and, as part of that coverage, provided safety services to Daniel, USF&G owed a duty to Daniel employees, their families, and their co-workers, such as the Decedent's former husband, who were present at Daniel job sites and worked in the direct vicinity of asbestos-containing products.

50. During the pertinent times, USF&G employed safety agents including agents assigned to the accounts that serviced the plants at which the Decedent was injuriously exposed to asbestos.

51. USF&G instituted a school of insurance in Baltimore in 1935 for the training of its insurance agents. These regional agents were trained by medical doctors and others who had great expertise in safety hazards, medicine, and occupational diseases including asbestos hazards.

52. USF&G became aware of the hazards of asbestos dust and fibers including the knowledge that those exposed to asbestos were at an increased risk for the development of asbestos disease and lung cancer at least as early as the 1930s. In addition to providing liability, worker' compensation and other accident and general insurance, USF&G also wrote health insurance that included coverage for diseases.

53. South Carolina, one of the states in which the Decedent's former husband worked and was exposed to asbestos, passed legislation prior to Mr. Childers first day on the job mandating that asbestos was a compensable occupational disease. USF&G provided workers compensation coverage to employers whose employees injuriously exposed Decedent to asbestos. Beginning in the 1950's, and for years thereafter, USF&G was a named defendant for asbestos-related claims filed by employees of its insured.

54. By early 1950, USF&G had over 9,000 agents that served at least 42 branch offices; more than 1,200 of those agents had been with the company for a quarter of a century. These agents provided safety-related services to Daniel yet failed to implement and request adequate safety and industrial hygiene standards. These agents assumed the duty of addressing any deficiencies they observed at the workplace and were extensively involved in workplace safety at the Daniel job sites.

55. In an attempt to sell more insurance, USF&G touted to its insureds the special education it gave its agents and that in the field of safety engineering and reduction of compensation claims, its agents would play an important role. Eventually, USF&G began to charge an additional premium to its insureds including Daniel for the safety program that it

developed and sold to those companies. It developed a medical department that was used by injured employees of the companies it insured for workers' compensation coverage.

56. The theme used by the company for the Company's advertising was "Consult your insurance agent or broker as you would your doctor or lawyer." Accordingly, those companies that purchased liability coverage from USF&G and especially those companies that paid additional premiums reasonably relied upon USF&G to provide them the information and assistance necessary to provide a safe working environment to protect employees, invitees and others present on the site premises from occupational hazards.

57. USF&G held itself out as "the insurance company of safety." In fact, publications describing USF&G in 1946 recognized:

"Never before in the history of insurance have employers and employees derived so much benefit and faithful service from the casualty companies as since compensation has been in existence. They have been scientifically instructed in how to provide sanitary and workable conditions in factories, how to protect and guard machinery, elevators and other dangerous conditions. This has had a tendency to create a much better feeling between the employer and the employee. Accidents cannot be wholly eliminated but when they do occur the best medical and surgical service is provided through the casualty company, and an employee suing an employer for injury sustained is almost unknown. It is true that compensation insurance costs more than was previously paid for liability, but the employer receives so much more for his money."

58. USF&G became an active member of the National Safety Council ("NSC") on or before 1949, and was kept abreast by it of occupational hazards. The NSC was set up in 1912 as management's response to the industrial safety issue with its associated problems of disability compensation. "National Safety News," the main periodical of the NSC from 1919 forward ran a number of articles dealing with asbestos-related diseases. It held annual congresses, and these published transactions of these meetings were automatically mailed to the industrial members. USF&G was a member of and entered into a contract with the NSC to provide it information regarding occupational hazards including asbestos. This information was then sent to the trained safety insurance agents. The agents' employees were trained in the hazards of asbestos for the purpose of allowing them to use this information to protect the employees of their insured and others who were working in the vicinity thereto from hazardous working conditions such as Decedent.

59. The USF&G representative that provided the safety services to some of the job sites where the Decedent's former husband was exposed to asbestos most likely received training in Baltimore, and was aware as early as 1949 about the hazards of asbestos exposure.

60. At the time that USF&G insured Daniel and subsequently Fluor Daniel, Daniel was one of the largest construction companies in the Southeast. By the mid-1970s, Daniel was the nation's second largest publicly-owned general contracting firm. At that time it had over 39,000 employees involved in 43 divisions and subsidiaries one of the largest contractors in the

country, particularly in the Southeast. USF&G considered Daniel to be one of its largest customers.

61. Upon information and belief, in December 1955, Daniel and USF&G had a meeting to discuss USF&G providing coverage for all of Daniel's insurance needs. As a result of this meeting and subsequent agreements, in 1956 USF&G became Daniel's main insurance provider and the policies included comprehensive general liability workers' compensation as well as umbrella and excessive coverages. Daniel paid an extra premium for the health and safety program that it purchased from USF&G. In return for the additional premiums, USF&G agreed to be the safety arm of Daniel. USF&G, at all times during Decedent's former husband's employment, assumed the responsibility for providing a safe working environment for any individual who worked at facilities in which Daniel employees were present and working with asbestos yet it did nothing to mitigate or eliminate exposure to asbestos fibers.

62. Daniel did not have a safety department, an industrial hygienist or a medical department before the early 1970s and even thereafter continued to rely upon USF&G to protect against industrial hazards including asbestos.

63. As a result of this contractual relationship, loss control representatives of USF&G scheduled and conducted monthly safety surveys of designated projects, made internal safety audit reports, issued special safety guidelines and made specific loss control recommendations, and provided other safety services. Often these recommendations were handled at that time on site at the direction of the USF&G representative.

64. The Decedent was being injuriously exposed to asbestos as a result of her former husband inadvertently bringing the deadly dust and fibers home on his clothes, his body, his shoes, and his personal possessions from plants including, but not limited to, Bowater Paper Mill in Catawba, SC, at Fiber Industries in Darlington, SC, at Fiber Industries in Greenville, SC, at Fiber Industries in Salisbury, NC, and at Hoechst Celanese in Spartanburg, SC, during the various years that USF&G had contracted with Daniel to provide safety. Daniel's contract with facilities provided that Daniel would use asbestos-containing products for insulation and other purposes. Plaintiff's exposures from her former husband's activities resulted from inadequate training, supervision, and other negligent acts of Daniel employees and contractors, whose actions were substantially attributable to the failure of USF&G to properly educate, supervise, warn, and train Daniel employees and others in safe work practices when handling asbestos materials.

65. While Daniel did eventually hire an individual, Arnold Runion, whose job included addressing safety issues, this individual had little safety training and/or experience. As a consequence, Daniel and Mr. Runion continued to rely upon USF&G to provide its safety training, advice, inspections, and generally, to manage and to correct unsafe practices.

66. The pertinent policies negotiated between Daniel and USF&G during the coverage periods were usually for one year. USF&G issued policies to Daniel, its subsidiaries and additional insureds from 1956 until 1987. Upon information and belief, the relevant

contracts between USF&G and Daniel during the relevant time period of the Plaintiff's exposure to asbestos are as follows:

Policy Number	Policy Period
R1CC 06401	10/1/66-67
R1CC 330080	10/1/70-71
R1CC 783861	10/1/73-74
R1CC 865801	10/1/75-76
R1CC 865802	10/1/76-11/1/77
R1CC 957960	10/1/76-77
R1CC 957909	10/1/77-78
R1CC A 94121	11/1/77-78
R1CC B 82907	11/1/78-79
R1CC D 96801	11/1/80-81
R1CC 012660021	11/1/81-82
R1CC D 69639	10/7/81-82
R1CC 017346131	11/1/82-83
R1CC 12216325	10/1/82-83
R1CC 012212673	10/1/82-11/1/83
R1CC 034558018	11/3/83-84
R1CC 048086148	11/1/84-85
R1CC 069694780	11/1/85-86
R1CC 086710558	11/1/86-87
CEP 117101	11/1/79-80
CEP 134701	11/1/80-81
CEP 01402501	11/1/81-82
CEP 019906931	11/1/82-83
R1CC 783861	10/1/73-74
R1CC 865801	10/1/75-76
R1CC 957960	10/1/76-11/1/77
R1CC 865802	10/1/76-77
R1CC 957909	10/1/77-78
R1CC A 94121	11/1/77-78
R1CC B 82901	11/1/78-79
R1CC D 96801	11/1/80-81
R1CC D 69639	10/1/81-82
R1CC 12660021	11/1/81-82
R1CC 017346131	11/1/82-83
R1CC 012212673	10/1/82-11/1/83
R1CC 034558018	11/1/83-84
R1CC 048086148	11/1/84-85
R1CC 069694780	11/1/85-86
R1CC 086710558	11/1/86-87
CEP 17101	11/1/79-80
CEP 134701	11/1/80-81
CEP 014020501	11/1/81-82

67. The safety program of USF&G for prevention of liability claims against Daniel was called the USF&G Program and USF&G developed certain forms for designated Daniel projects.

68. USF&G accepted as part of its responsibility that its role was to prevent accidents and reduce compensation claims. USF&G maintained safety files that included the types of claims, accidents, and safety performance for each of the Daniel job sites; ultimately Daniel safety performance awards as early as 1963 were determined by the information maintained and coordinated by USF&G.

69. The safety awards that were given were determined primarily by employees in USF&G's Birmingham office, including the superintendent of the IEA or Industrial Engineering and Audit Department; this information was prepared by the local safety agents of USF&G as a result of the loss control, safety and inspections of the various sites.

70. The program required that USF&G perform many surveys of job sites. These surveys included an opening conference report, a survey of designated areas by someone from USF&G with authority to correct any unsafe acts; a handwritten safety survey report, specific loss control recommendations, and discussions with Daniel workers and supervisors along with a conclusion conference.

71. USF&G's loss control coordinator worked closely with Daniel with regard to the facilities at which the Plaintiff's former husband worked and where he was exposed to asbestos dust and fibers that he carried home to his family and his wife resulting in her exposure and disease. Not once did USF&G suggest a remedy or correction action.

72. The work-related injuries and diseases for Daniel employees were filed with USF&G on USF&G-prepared forms and Daniel provided specific information regarding injuries and claims directly to the Charlotte USF&G office. Accordingly, USF&G knew and/or should have known that Daniel employees and others exposed to asbestos at locations that it insured were leaving work covered in the toxic asbestos dust and fibers resulting in take home and bystander exposure.

73. During the years that the Decedent's former husband worked on the Daniel projects, USF&G safety representatives were aware that asbestos was not being properly handled; however USF&G loss control coordinators at plants where the Decedent's former husband worked failed to take the appropriate measures to compel its insured's to comply with the state and federal standards.

74. Daniel was so reliant on USF&G that it required that USF&G's safety officer who was directing Daniel's safety to be housed at Daniel's headquarters in Greenville, South Carolina. Upon, information and belief, the USF&G office in Birmingham Alabama, was also housed in a Daniel building.

75. USF&G's active involvement in handling, defending, and monitoring the asbestos-related claims made against Daniel included preparing, providing and summarizing for Daniel asbestos claims made by others, including some of those who worked at facilities where Plaintiff's former husband worked and was being exposed and covered in asbestos without adequate protection during the pertinent times.

76. USF&G recognized that with respect to workers such as Decedent's former husband who were working in facilities as contractors where asbestos was present and/or being used that it was quite impossible for a contractor not to have some asbestos exposure.

77. Daniel specifically relied upon USF&G to provide Daniel information about asbestos and the asbestos potential liability of Daniel for exposures to employees, premises invitees, and others.

78. At all times pertinent hereto, USF&G had the ability and the authority to control and to correct the unsafe working environments and knew and/or should have known and corrected the injurious exposures of Decedent to asbestos.

79. Daniel acted negligently at the plants that Decedent's former husband worked, while performing its duties and obligations to provide general and/or specific plant maintenance; their employees, agents and/or servants, handled and/or distributed asbestos-containing material in such a way as to expose the Plaintiff to airborne asbestos dust and fibers.

80. Specifically, and, as part of their contractual obligations, employees, agents and/or servants of the Defendants Daniel and Fluor transported, installed, disturbed, removed and otherwise handled asbestos, and asbestos-containing materials, in and throughout the plants at which the Decedent's former husband worked causing him, to take home excessive amounts of asbestos dust and fibers which Decedent was exposed to while doing laundry, sweeping the floor, hugging his spouse, and riding in the car.

81. USF&G knew, or should have known, that exposure to take home asbestos fibers or asbestos-containing materials is deleterious, carcinogenic, and otherwise harmful to persons exposed to asbestos fibers.

82. USF&G had actual knowledge of the hazardous nature of the asbestos dust and fibers before the commencement of the work performed at the South Carolina plants.

83. As a direct and/or proximate result of USF&G's and all Defendants' acts and omissions, the Decedent suffered irreparable injury and harm.

84. The injuries sustained by the Decedent were a reasonably foreseeable result of the negligent acts of the Defendants, their responsible agents, servants and/or employees.

85. The actions and/or omissions of the Defendants herein were reckless, willful, wanton and/or amounted to gross negligence.

86. Throughout the years that Decedent's former husband worked at Daniel job sites at which Daniel was performing asbestos works, USF&G failed to provide the safety services necessary to provide Decedent's former husband a safe working environment and to prevent his exposure to the asbestos that ultimately resulted in his asbestos-related disease.

87. As a result of the above alleged facts, during the pertinent times, USF&G placed itself in a position where its conduct could reasonably have been expected to affect the interest of affected workers such as Decedent's former husband, such that the law imposed upon Defendants an obligation to act in such a way that the Decedent would not be injured. Specifically:

(a) Defendant USF&G's conduct was intended to and did affect Plaintiff and other similarly situated individuals;

(b) The harm that occurred was reasonably foreseeable;

(c) Defendant's intimate involvement with Daniel's activities reflected a close connection between the Defendant's conduct and the asbestos exposures that occurred and subsequently injured the Decedent;

(d) Defendant undertook for consideration to render services to Daniel which Defendant should have recognized and did recognize as necessary for the protection of third parties, and is subject to liability resulting from its failure to exercise reasonable care in the process; and

(e) Defendant's failure to exercise reasonable care resulted in exposing Plaintiff to excessive amounts of asbestos dust and fibers; Defendant undertook to perform duties of care owed by Daniel to the Plaintiff's former husband; and Plaintiff was harmed due to Decedent's former husband, or Daniel's reliance on the Defendant USF&G's proper performance of its duties.

(f) Defendant owed Decedent and Daniel a duty of reasonable care commissioned with the risk and breached said duty.

88. As a result of the above alleged facts, during the pertinent times, Plaintiff alleges that the Defendant USF&G:

(a) Wantonly and/or negligently provided engineering, consulting, testing or inspection services to Decedent's former husband employer with respect to asbestos in the workplace, and said wantonness and/or negligence was a proximate cause of Decedent's injuries described herein;

(b) Wantonly and/or negligently failed to warn Decedent's former husband and Decedent as a member of the immediate family and its own insured of the dangers associated with asbestos dust and asbestos fibers in the workplace;

(c) Failed to provide reasonably adequate warning of the potential harm that it knew or should have known would result from the exposure to asbestos-containing dust and, alternatively failed to provide reasonably adequate instructions for the safe use of the products and/or materials;

(d) Failed to take reasonable care to provide users and others exposed to asbestos, such as Decedent's former husband, with reasonably proper respirators to protect them from the hazards of asbestos exposure;

(e) Continued to insure its customers, knowing that they were allowing individuals such as Decedent to be unknowingly exposed to asbestos-containing products while recognizing that such exposures were likely to cause disease and cancer, including the very cancer that Decedent developed; and

(f) Continued its negligent, willful and wanton conduct throughout the pertinent times such that as a direct and proximate result of USF&G's failure to provide a safe working environment and to educate Decedent and Daniel co-workers and contractors, the Decedent developed an asbestos-related disease and is damaged.

FOR AN SEVENTH CAUSE OF ACTION
(Wrongful Death Action, S.C. Code Ann. § 15-51-10 (2008))

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

89. All of the paragraphs above are incorporated by reference.

90. Plaintiffs bring this cause of action for CHARLOTTE SMITH's wrongful death pursuant to S.C. Code Ann. § 15-51-10 (2008), for the benefit of and on behalf of, the heirs of Charlotte Smith, as defined by S.C. Code § 15-51-20 (2008).

91. As a direct and proximate result of the negligence, recklessness, carelessness and intentional actions of Defendants as described above, Charlotte Smith died and heirs 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 Plaintiffs pray 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 (1986))

For an Eighth Distinct Cause of Action, known statutorily as a Survival Action, Plaintiff Complains of Defendants, and Alleges as Follows:

92. All of the paragraphs above are incorporated by reference.

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

94. 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 her untimely death, and Plaintiff prays for judgment against Defendants in such amount of actual and punitive damages as the trier of fact may determine.

PRAYER FOR DAMAGES

WHEREFORE, Plaintiffs pray judgment, joint and several, against Defendants and/or their successor or alternate entities in an amount to be proved at trial, as follows:

1. For Plaintiffs' 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, 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 herself and her beneficiaries

5. For punitive damages according to proof;
6. For plaintiffs' 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
8. 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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