THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Jean Hoefer Toal, Circuit Court Judge

RECEIVED
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SC Court of Appeals

Case No. 2018-000385

Timothy W. Howe, Individually and as Personal Representative of the Estate of Wayne Erwin Howe, Deceased and Jeanette Howe . . . . . Respondents,

v.

Air & Liquid Systems Corp., Individually and as successor-in-interest to Buffalo Pumps, Inc.; Airco, Inc.; Airgas USA, LLC f/k/a National Welding Supply, Inc.; Albany International Corp; Asten-Johnson, Inc.; Aurora Pump Company; A.W. Chesterton Company; Beloit Corporation; Black Clawson Converting Machinery, LLC; Individually and as a subsidiary of Davis-Standard LLC; CBS Corporation, A Delaware corporation f/k/a Viacom, Inc., Successor by merger to CBS Corporation, Pennsylvania Corporation, f/k/a Westinghouse Electric Corporation; CGR Products, Inc., f/k/a Carolina Gasket and Rubber company; CAN Holdings, Inc. f/k/a Hoechst Celanese Corporation (sued individually and as successor in interest to Fiber industries, Inc.); Cleaver-Brooks, Inc.; Covil Corporation' Crane Co.; Crown Cork & Seal Company, Inc.; Daniel International Corporation; Davis-Standard Corporation, LLC; Dezurik, Inc d/b/a Dezurik-APCO Williamette Eagle, Inc.; Fisher-Klosterman, Inc., as successor-in-interest to Buell Engineering Co.; Flowserve Corporation, Individually and as successor-in-interest to Durco Pumps; Fluor Daniel Services Corporation; Foster Wheeler Energy Corporation; General Electric Company; The Gorman-Rupp Company; Goulds Pumps, Incorporated; Ingersoll-Rand Company; Linde, LLC f/k/a The Boc Group, Inc., f/k/a Airco, Inc.; Marsulex Environmental Technologies Corporation, individually and as successor-in-interest to Buell Engineering Co.; Metropolitan Life Insurance Company, A wholly-owned subsidiary of Metlife, Inc.; Peerless Pump Company; Presnell Insulation, Inc.; Riley Power, Inc., Individually and as successor-in-interest to Babcock Borsig Power, Inc. and Riley Stoker Corporation, Individually and as successor-in-interest to D.B. Riley; SCAPA Waycross, Inc.; Sepco Corporation; SPX Cooling Technologies, Inc, f/k/a Marley Cooling Technologies, Inc. f/k/a The Marley Cooling Tower Co.,; Sterling Fluid Systems (USA) LLC; Trane U.S., Inc. f/k/a American Standard, Inc. f/k/a American & Standard Manufacturing Company; Union Carbide Corporation; Uniroyal, Inc. f/k/a United States Rubber Company, Inc.; United Conveyor Corporation; Velan Valve Corp; Viking Pump, Inc.; Warren Pumps LLC; Yuba Heat Transfer Corporation; Zurn Industries, ...Defendants

Of Which Covil Corporation is the Appellant.

AND

Roxanne Falls, Individually and as Personal Representative of the Estate of Charlotte Gaye Smith, ... Respondents

v.

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; CAN Holdings, Inc. f/k/a Hoechst Celanese Corporation, sued individually and as a 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 Guaranty Company; Uniroyal, Inc. f/k/a United States Rubber Company, Inc. and United Conveyor Corporation.. . . . . Defendants

Of which Covil Corporation is the Appellant.

AND

James Coleman Sizemore, as Personal Representative of the Estate of James Calvin Sizemore, Descendant, Respondent.

v.

Bowater Paper Mill; E.I. Du Pont De Nemours and Company; Foster Wheeler Energy Corporation; Daniel International Corporation f/k/a Daniel Construction Company, Inc.; Resolute FP US Inc f/k/a Bowater Incorporated; 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; Cleaver-Brooks, Inc. f/k/a Aqua-Chem, Inc. d/b/a Cleaver-Brooks Division; Covil Corporation; Fluor Constructors International f/k/a Fluor Corporation; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; General Electric 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., as successor by merger to USA Waste of South Carolina, Inc., successor by merger to Chambers Medical Technologies, Inc.,. . . .Defendants

Of which Covil Corporation is the Appellant.

RECORD ON APPEAL – VOLUME 1 OF 3

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	
	)	
IN RE:	)	MASTER
	)	DISCOVERY/SCHEDULING ORDER
	)	
ASBESTOS LITIGATION	)	
COORDINATED DOCKET	)	
	)	
	)	

Counsel for the plaintiffs and for the defendants in this litigation, referred to as "asbestos litigation," have agreed that a standard discovery procedure should be utilized in all pending and future asbestos related personal injury cases assigned by the South Carolina Supreme Court to Judge D. Garrison Hill, as Administrative Judge for asbestos litigation in the Circuit Courts for the State of South Carolina. It further appearing to the Court that these procedures have been used successfully in prior years by both South Carolina state courts and federal courts, and that certain parties have suggested that this Court adopt this procedure and execute this Order making this agreed upon discovery practice applicable to all pending and future Circuit Court asbestos cases.

NOW, THEREFORE, IT IS ORDERED that the discovery practices and procedures to be utilized by the parties to this litigation shall consist of the following:

I. Coordinated Docket and Administrative Procedures.

(a) Judge Hill will manage all personal injury asbestos cases filed in the Circuit Courts for South Carolina as a Coordinated Docket. This coordinated docket will be managed as a single asbestos docket, although each case will be handled by the parties and the Court on an individual basis.

(b) In filing asbestos personal injury complaints, plaintiff's counsel shall

indicate on the face of the complaint (i) the occupation of the plaintiff/decedent, and (ii) the specific disease allegedly contracted.

(c) Pleadings filed in the Circuit Courts for South Carolina which apply to the entire asbestos docket, as discussed supra, shall contain the notation:

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

Those pleadings that are anticipated to apply to the Coordinated Docket are subject to the mandatory Master Discovery as set forth infra, Master Scheduling Orders, Standing Orders for the Release of Pathology, and Orders the Court may promulgate to the entire asbestos bar. In the Court's discretion, pleadings improperly filed in the Coordinated Docket may be returned to the filer for re-filing in specific case(s) as may be appropriate.

(d) The Court shall convene, at least quarterly, a status conference, which all counsel in this litigation are invited to attend, to address issues relating to the entire asbestos docket, including scheduling and case management.

II. Interrogatories and Requests for Production.

(a) Standard – The Standard Interrogatories and Requests for Production to be used by the plaintiffs and defendants in these cases shall be those attached to this Order as Exhibits 1,2,3, and 4. These four (4) sets of Interrogatories are hereby deemed served by both parties in any pending or future asbestos related personal injury cases on the asbestos litigation coordinated docket.

With respect to Exhibits 1 ("Plaintiff's First Set of Interrogatories") and 2 ("Defendant's Master Set of Interrogatories and Requests for Production of Documents"), all parties who have not yet responded to these Interrogatories shall do within sixty (60) days.

With respect to Exhibit 3 ("Defendant's Standard Interrogatories to Plaintiffs"), the plaintiff shall respond within sixty (60) days from the date of the filing of the case.

With respect to Exhibit 4 ("Plaintiff's Standard Interrogatories and Requests for Production of Documents"), the defendants shall be deemed to have been served with these interrogatories. The defendants shall respond to Exhibit 4 within thirty (30) days of receipt of a written response to Exhibit 3 (Defendants' Standard Interrogatories to Plaintiffs). If there are conflicts between these due dates and those specified in a scheduling order applicable to an individual case, the scheduling order in that case shall control.

(b) Additional Interrogatories:

(1) Plaintiff's attorneys may serve (a) no more than five (5) additional Interrogatories, including sub-parts, in an individual plaintiff's case, dealing with matters specifically related to that case, and (b) no more than five (5) additional general interrogatories, including sub-parts, directed to all or some of the defendants regarding additional general liability matters which arise in the course of the litigation and shall be designated by defendant involved; e.g., "Number 1 Set of Supplemental Interrogatories to Johns Manville" in order that each defendant can determine which set of Interrogatories is being addressed.

(2) Defendants may serve no more than ten (10) additional Interrogatories, including sub-parts, in an individual case dealing with specifics involved in that case; all defendants who have made an appearance in the case

shall coordinate in drafting these ten (10) additional Interrogatories. All parties retain the right to request leave of court to serve additional Interrogatories for good cause shown.

(3) With regard to any set of Interrogatories, the parties shall type both the questions and the answers in responding to the same.

(4) Any ruling that this Court shall make in connection with any Interrogatories outlined herein shall be governed by the laws of South Carolina, including the South Carolina Rules of Civil Procedure.

III. Depositions.

(a) Depositions of critically ill plaintiffs – Prior to plaintiffs' attorneys taking a deposition of a critically ill plaintiff, they must provide to defendants (1) a medical statement indicating that the plaintiff is physically capable of giving a deposition, (2) the functional equivalent of the information regarding jobsites and exposures as requested in the Standard Interrogatories attached as Exhibit 3 hereto, at least five (5) days prior to the deposition, (3) a time for a defendants' discovery deposition for the plaintiff at least 24 hours in advance of plaintiffs' deposition.

(b) The deadline above, in section III (a) of this Order, may be varied by consent of all counsel affected, without leave of Court.

IV. General Discovery.

(a) Plaintiff – Within sixty (60) days of filing of a suit, counsel for the plaintiff shall provide to the defendants (1) a medical authorization from the plaintiff enabling

defendants to gather medical records and documentation about the plaintiff, (2) a Social Security authorization in order to secure a Social Security printout on the plaintiff, (3) a military medical and employment record authorization, if applicable, (4) a Veteran's Administration authorization for medical records, if applicable, and (5) those medical data, records, or reports, which are in the plaintiff's attorney's possession at that time.

(b) Defendants – Defendant shall provide to counsel for plaintiff, as they are received, copies of all medicals, military records, Social Security information, claims information, and VA information gathered pursuant to utilization of authorizations provided. Likewise, the plaintiffs shall provide the defendants all medical records, names of physicians, Social Security information, and VA information as that information is received by plaintiffs' attorneys.

(c) Court – The Court shall issue, at the time of the filing in this State of a Complaint for asbestos personal injury, a standard Order compelling the release of pathology materials. A copy of that standard Order is attached hereto as Exhibit 5. It is the responsibility of counsel to advise the court of the filing and to request issuance of the Order.

V. Standard Scheduling Order – As soon as a case is set for trial, the Standard Scheduling Order, attached hereto as Exhibit 6, shall be issued by the Court, and all due dates, including discovery, motions practice, mandatory mediation, and pre-trial matters, shall be controlled by that issued Order.

VI. Mandatory Mediation – All asbestos cases set for trial in the Circuit Courts of this State shall be subject to mandatory mediation, by a mediator appointed by the Court.

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VII. Sanctions.

The parties acknowledge that this Court has the power to impose such sanctions pursuant to its inherent power and the South Carolina Rules of Civil Procedure and common law as it deems appropriate in the event of any failure of any party to comply with the provisions of this Order.

IT IS SO ORDERED at Greenville, South Carolina this 30th day of September, 2010.

D. Garrison Hill
Circuit Judge
S.C. Asbestos Master Docket

EXHIBIT "1"

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
IN RE:)
)
ASBESTOS LITIGATION)
COORDINATED DOCKET)
)

PLAINTIFF'S FIRST SET OF INTERROGATORIES

TO: ALL DEFENDANTS

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 33 of the South Carolina Rules of Civil Procedure you are hereby directed to file answers to the following Interrogatories within thirty (30) days of service hereof unless further extension is granted by the Court. These Interrogatories shall be deemed continuing in the sense of Rule 26 of the South Carolinal Rules of Civil Procedure so as to require supplemental answers a reasonable time prior to trial if additional information with respect to these Interrogatories is obtained by you or your counsel.

INSTRUCTIONS AND/OR DEFINITIONS

1. Whenever it is requested that a person or persons be identified, the full name and current address of the person should be stated and the relationship with the answering defendant. In any instance where the defendant is unable to identify all persons requested to be identified, the Interrogatories should be answered to the fullest extent possible by the defendant.

2. When used in these Interrogatories, the term "defendant" or any synonym thereof, whether singular or plural, is intended to and shall embrace and include counsel for the defendant, all agents, servants, employees, representatives and others who are in possession of or may have obtained information for or on behalf of the defendant, and shall include all

subsidiaries, predecessors and/or affiliates presently or in the past which would have information requested by the Interrogatory.

3. Reference to the term "you" or "your" means the defendant or any agent, representative, employee, servant, affiliate, subsidiary or predecessor.

4. Use of the term "document" is to include any form of writing or communication whether it be by paper, film, microfilm, microfiche, computer print-out, reports, records, lists, memoranda, correspondence, telegrams, schedules, photographs, drawings, charts and other form of information preservation. Any request concerning a document is to be considered a continuing request as defendant becomes aware of such document.

5. Reference to the term "identify" or "identity" when used in reference to an individual person, company or other entity, means to state the full name, present address, in the case of a person his or her business affiliation. When these terms are used in reference to a document, it includes a description of the document, including the nature and content thereof, the date thereof, the name and address of the author and recipients thereof and the present location of the person or entity having custody thereof.

6. Please note that these interrogatories when referring to the word "product" are intended to include all asbestos or asbestos-containing products mined, milled, manufactured or distributed by you which were intended for thermal insulation use or were cloth or spray products containing asbestos.

7. State the full name, present business address, present residence and capacity or title of the individual signing these interrogatories answered provided the name of the person supplying the information to answer that interrogatory or identify the document referred to in answering that interrogatory.

8. Please note that in these interrogatories the word "co-defendant" means any of the following companies:

Johns-Manville Sales Corporation
Owens-Illinois, Inc.
Owens-Corning Fiberglass Corporation
The Celotex Corporation
Raybestos-Manhattan, inc.
National Gypsum Company
Unarco Industries, Inc.
Fibreboard Corporation
Armstrong World Industries, Inc.
Nicolet, Inc.
Forty-Eight Insulation, Inc.
Eagle-Picher Industries, Inc.
Covil Corporation
Keene Corporation
GAF Corporation
Rock Wool Manufacturing Co., Inc.
North Brothers, Inc.
Carey Canada, Inc.
Combustion Engineering, Inc.
Pittsburgh Corning Corporation
AC&S, Inc.
Amatex Corporation, Inc.
Amchem, Inc.
Vimasco Corporation
Johns-Manville Amiante Canada, Inc.
C. E. Thurston & Sons, Inc.

SECTION A

1. Identify the registered name of the answering defendant as well as all prior names or predecessor entities by which the defendant has existed.

(a) For each give the current address and the state of incorporation and whether or not it is an active corporation.

2. Set forth the full and correct name, the principal place of business and the state and date of incorporation of the answering defendant.

3. Identify all divisions, subsidiaries or affiliated companies of the answering defendant.

4. For each entity or division listed in response to #3, state whether it ever has or presently engages in any phase or mining, manufacturing, sale, supply, distribution, or design of asbestos or asbestos-containing products.

5. With respect to each division, subsidiary or company listed in #4, identify the nature and extent of its function during the period of time it was in existence.

6. Has this answering defendant been sued under its correct name? If no, please state the correct legal name of the defendant and provide the information requested in Interrogatory #1 above concerning the defendant as correctly named.

7. Please state whether or not you have ever held a certificate of authority to do business in this state and the address for your registered agent for service in this state.

PRODUCT IDENTIFICATION

8. Have you ever mined asbestos?

9. If the answer to the previous interrogatory is "yes", please state the dates in which you were involved in mining of asbestos, and the locations of your mines.

10. Have you ever sold raw asbestos fiber to any of the co-defendants? If so, in what years and in what quantities did you make such sales.

11. As to any product containing asbestos in any form or quantity, has this defendant ever:

(a) designed such a product;

(b) manufactured such a product;

(c) processed such a product;

(d) sold such a product;

(e) distributed such a product;

(f) relabeled such a product manufactured or designed by another;

(g) held a patent for such a product.

12. If the answer to the previous interrogatory or any subpart thereof was in the affirmative, please state the following information about each product:

(a) the manufacturer of the product;

(b) the designer of the product;

(c) the supplier of the raw asbestos fiber used in the product;

(d) the dates of its manufacture or sale by the answering defendant;

(e) the percentage of asbestos content of the product;

(f) the type of asbestos used in the manufacture of the product;

13. In what year did the answering defendant first begin selling or distributing asbestos-containing products? Please be specific for each asbestos-containing product manufactured, sold or distributed by you.

14. In what year did the answering defendant last sell, distribute or manufacture an asbestos-containing product? Please be specific for each asbestos-containing product.

15. For each asbestos-containing product manufactured and/or distributed by you, state:

(a) the brand name of the product and the inclusive years of its manufacture and/or distribution;

(b) the asbestos content by weight of each product for each year;

(c) the type of asbestos fiber used in each product;

(d) the application for which such product was advertised or sold;

(e) the temperature ranges for the products used;

(f) whether the product was a cement, a pipe covering, a cloth or other type of thermal insulation product;

16. Describe each product as to its color and physical characteristics and appearances.

17. As to each product, state how such product was packaged or supplied.

18. Does the answering defendant claim that any patent would cover any product listed in response to the interrogatories above? If so, give the number of the patent, the date same was issued and the number of each patent application that is pending.

19. For such asbestos-containing product manufactured or designed by you, please state the specific batching requirements for that product.

20. State the time period each particular batching requirement was followed and any changes that were made.

21. For each asbestos-containing product that you manufactured, please set forth the supplier of the raw asbestos fiber used for that product.

22. As to each product mentioned above, identify the following:

(a) any pertinent trademark that was applicable to the product during any time of its sale;

(b) the label on the packaging of that particular product for each year of its manufacture;

(c) all sales brochures, specification sheets, performance data or other promotional material, as well as any and all installation materials, data or brochures which would have accompanied or been distributed in

connection with the installation, application or use of each of the products listed above.

(d) The advertised use of the product (as to this interrogatory, you may provide a copy of the document in lieu of describing the same.)

23. For each document listed or described above, please indicate the name or the names of the individuals having custody of said documents or copies thereof, and where they are located.

24. Please describe in detail the method for disbursement and sale of each asbestos-containing product manufactured, designed or distributed by the answering defendant.

25. Have any of the products listed in the answer to Interrogatories Nos. 12, 13 and 16 above been altered in chemical composition or asbestos type or content since their first being marketed?

26. If so, please state:

(a) the trade name of each such product;

(b) the date such product was altered;

(c) the nature of that alteration;

(d) the reason for the alteration;

(e) what person has knowledge concerning the alterations.

27. Identify all sales literature including brochures, advertisements, pamphlets or other material describing each asbestos-containing product manufactured by you beginning in 1925 and coming forward to date.

28. Prior to 1960, did you conduct any tests concerning the health consequences of the use of your asbestos-containing product?

29. Prior to 1960, did you conduct any tests concerning the health consequences related to the manufacture of your asbestos-containing product?

30. Do any written memoranda, specifications, recommendations or other written materials of any kind or character related to the testing of said products exist?

31. If so, please state:

(a) identify each such written material or document;

(b) who presently has possession of each such document and where is it located?

32. Have you conducted any tests concerning the health consequences of the use of your product between 1960 and 1975 or the date that the asbestos content was removed from the product, whichever in the later.

33. If so, please state:

(a) what tests were done;

(b) who was responsible for conducting the tests;

(c) what the results of the tests were;

(d) identify any documents concerning the tests.

34. When did the asbestos-containing products manufactured by you first contain any warning or caution concerning the health consequences of the use of the product or the breathing of asbestos dust?

35. For each such product, please state:

(a) the wording of each warning or caution;

(b) the description of each such printed warning or caution;

(c) the method used to distribute the warning to persons who were likely to use the products;

(d) the date each such warning was issued;

(e) the name, address and job classification of each person who presently has possession of the above-described warning or caution;

(f) identify the warning or caution by date and content;

(g) state whether any industrial psychologist or human factors engineers were consulted prior to utilizing such warnings, or cautions;

(h) identify any special instructions provided with each product regarding its use or safety procedures to be employed by persons handling such product.

36. For any warning ever provided on an asbestos-containing product manufactured or distributed by you, please state:

(a) when the warning first appeared;

(b) what was the precise wording of the warning when it first appeared;

(c) was the warning ever altered, amended or changed in any manner and, if so, how and when;

(d) where was the warning located on the product or packaging;

37. When did you first become aware that warnings were placed on products distributed by other defendants?

38. State the manner in which each of your products was shipped and the type of container it was shipped in to the retailers.

39. When, if ever, did you specifically inform the purchaser or user of your products that contained asbestos that the use of that product or exposure to asbestos dust could cause cancer, asbestosis or other serious diseases? Please identify the document containing this information by date and location.

40. Identify any and all labeling or relabeling agreements in existence since 1925 between you and any other person including co-defendants.

41. Did you sell any of your products containing asbestos fibers or any raw fiber to any of the companies named as co-defendants in this suit?

42. If so, please state:

(a) the name, address and job classification of each individual who currently has possession of such knowledge, either by documents or records;

(b) please list the names of each co-defendant to whom your products have been sold;

(c) please state the dates of each such sale and the amount and kind of materials sold;

43. State whether your company manufactured asbestos-containing insulation products for a co-defendant and placed the co-defendant's labels, logos or insignia on said products and list each such co-defendant.

44. Has this defendant ever acquired another corporation, company or business which manufactured, sold, processed, distributed or contracted to apply insulation products containing asbestos.

45. If the answer to the above interrogatory is yes, please state the following concerning such other entity:

(a) the full and correct name;

(b) the principal place of business;

(c) the state of incorporation;

(d) the date of its acquisition by you;

(e) the products that the other entity manufactured, distributed, sold or used.

46. Did you ever stamp or imprint the name of your company, its initials or any identifying logo on any of your asbestos-containing products? If so, please describe the identifying logo or initials and the dates of its inclusion on the product and the product on which it was included.

47. As of the date of your answers to these interrogatories, is your company still manufacturing, selling or distributing any asbestos-containing products? If so, give the brand names of each such product.

48. For each product identified as being manufactured, sold or distributed by you in interrogatories No. 12, 13, or 16, state whether:

(a) you have actual containers or photographs of containers in which said products were sold or distributed;

(b) who is the custodian or keeper of said containers or photographs including their address and telephone number.

49. From what source or sources did you obtain raw asbestos fiber beginning in 1940 and going to date, on a yearly basis?

50. State whether or not any warnings, cautions, caveats, or directions accompanied the raw asbestos fiber referred to in the previous interrogatory and identify the nature and extent of said warnings, cautions, caveats or directions accompanying said fiber.

51. State what date said warnings, cautions, caveats or directions first appeared on the mined asbestos fiber.

52. If you have discontinued manufacturing and/or selling asbestos products, please state the reason or reasons.

NOTICE

53. When was the first time that you received notice that any person was claiming an injury as the result of using asbestos-containing products manufactured and/or sold by your company?

54. For each such injury that you received notice of or a claim for prior to 1970, please list:

(a) the name and address of each claimant;

(b) the date of the notice of each claim;

(c) a description of the claim (i.e. workmen's compensation or a third party liability action);

(d) the type of injury allegedly sustained;

(e) the name and address of each attorney who represents individuals making such claims;

(f) the style and the court number of each claim;

(g) the resolution of each claim that has been disposed of;

(h) the custodian of the records that relate to the claim (in lieu of answering the above question, you may attach copies of any and all claims).

55. Do you contend that insulation products containing asbestos can be manufactured or treated so as to eliminate all potential health hazards to workers installing the same? If so, please explain in detail what your contentions are and the basis for each contention.

56. Did you receive any reports or communications from your workmen's compensation insurance carrier or products liability insurance carrier with regard to the hazards incident to the use of asbestos-containing insulation products? If so, please state who has possession of the contents of such reports, the location of such reports and the substance of the contents of such reports, listing for each such report the respective insurance company, its address, the agents signing such correspondence and the date of such notice or report.

57. Have any of the co-defendants named in this litigation ever furnished you with any information as to the state of the medical knowledge regarding the connection between asbestos dust exposure and the contracting of pulmonary diseases including asbestosis and cancer?

58. If the answer to the proceeding interrogatory is in the affirmative, please identify:

(a) what information you were furnished;

(b) who furnished that information;

(c) when that information was furnished.

59. Have you at any time since 1930 interchanged results of research tests, medical studies or experiments regarding the state of the medical knowledge regarding the connection between asbestos exposure and the contracting of pulmonary diseases including lung cancer and asbestosis with any other person, including any co-defendants in this action?

60. If the answer to the proceeding interrogatory is in the affirmative, please state:

(a) when this interchange took place;

(b) who participated in these interchanges;

(c) summarize the content of these interchanges or studies.

61. Please state if you or anyone on your behalf ever conducted, sponsored or contributed financially to any studies or research to determine if the inhalation of asbestos fibers may be harmful.

62. If the answer to the above question is in the affirmative, please state:

(a) by whom the research was conducted, giving complete names and addresses;

(b) the dates that each such research project or text was conducted;

(c) the complete results of each test or study;

(d) identify all documents that refer, reflect or related to the test or study;

(e) supply copies of the reports of the research department pertaining to the use of the use by the corporation of asbestos in their manufacture of insulation products.

63. Please state the names and addresses of your chief medical officers employed by defendant in that capacity. If you did not have a medical officer, please indicate what persons or persons performed that function.

64. Please state the names and addresses of all physicians who were employed, retained or otherwise engaged by you at any of your facilities from the years 1930 until the present.

65. Please state the names and addresses of all persons employed by you from 1930 until the present time who functioned as industrial hygienists. As used in this interrogatory, an

industrial hygienist is one who performs engineering or health studies to identify and evaluate potential health hazards and suggests methods of dealing with the same.

66. For each industrial hygienist listed above, please state:

(a) the facility or office to which that individual was assigned;

(b) the complete and precise duties and responsibilities.

67. Did anyone ever make any recommendations and/or suggests to you pertaining to the risks and hazards associated with the manufacturing or use of insulation products containing asbestos?

68. If the answer to the above question is yes, please state:

(a) where such recommendations or suggestions were made;

(b) who made such recommendations or suggestions;

(c) to whom were these recommendations or suggestions made;

(d) the substance of the recommendations or suggestions;

(e) what actions did you take as the result of those recommendations and suggestions?

69. Do you agree that there is a causal connection between the asbestos dust exposure and

(a) asbestosis?

(b) lung cancer?

(c) mesothelioma?

(d) other cancers?

70. If your answer to the previous Interrogatory is yes as to any or all subparts, please identify the following as to each disease process listed above:

(a) when and how you first learned of such connection:

(b) if the knowledge was obtained by the attendance of any conference, lecture, convention, symposium, or meeting, identify such event and provide the name of the person attending or the documents obtained from that meeting;

(c) if knowledge was obtained from a medical or scientific study or any other published works, identify the same;

(d) if the knowledge was otherwise obtained, identify the manner of receipt of the document or communication.

71. With regard to any knowledge obtained subsequent to that identified in the previous Interrogatory, please identify:

(a) all documents or other communications, oral or written concerning the causal connection between exposure to asbestos dust or asbestos products and the disease processes identified in question No. 60 above;

(b) identify the person communicating the information.

72. When and by what manner were you first aware of the hazards of asbestos or asbestos-containing products to the users of those products?

73. Identify any medical examination programs offered or sponsored by your or your insurance carrier for employees handling or otherwise exposed to asbestos and asbestos products. With respect to each such program, please state:

(a) the manner of communicating with employees about such program;

(b) whether examination was mandatory or optional;

(c) what percentage of workers permitted to undergo such examination actually participated;

(d) what percentage of workers were found to have asbestosis or mesothelioma or bronchogenic carcinoma;

(e) with respect to (d). what percentage of such workers were paid disability, workmen's compensation benefits or for whose benefit medical expenses were paid to undergone treatment for such conditions.

74. Identify all trade organizations, associations or other entities including but not limited to ATI, IHF, NAIMA, AIA, NICA, TIMA, QAMA, PICA QAPA, to which you belonged or in which you have participated since 1925 and the years of your participation.

75. Identify all persons attending on your behalf any meetings held by any trade organization listed in the Interrogatory stated above.

76. Identify the names or nature of all asbestos notes, report studies or other writings submitted by you or received by you at meeting identified in the Interrogatory stated above.

77. Identify all documents you received from or submitted to the trade organizations, associations or other entities identified in Interrogatory relating to the relationship between asbestos exposure and disease.

78. Did you direct to be performed, sponsor, finance or receive the results of any studies or tests performed by the Saranac Lake Laboratory or the Trudeau Foundation relating to asbestos exposure and its effect on human life? If so, identify:

(a) all documents summarizing findings or results of those studies or tests which you have in your possession or control;

(b) all communications, oral or written, between answering defendant and Saranac personnel, including but not limited to Gerrit W. H. Schepers, M.D.;

(c) all documents relating to Saranac studies received or submitted by you, either directly, through associated or predecessor companies, through other companies, or through any trade associations, organizations or entities;

(d) all recommendations or findings of such studies in relating to:

(1) adequacy or inadequacy of the threshhold limit values;

(2) the substitution of materials other than asbestos to be used in insulation process;

(e) where the documents and/or communications identified in this Interrogatory are presently maintained.

79. Identify all persons who have testified on your behalf and all documents presented to or utilized in preparation of testimony before the Occupational Safety and Health Administration, the National Institute of Occupational Safety and Health, any U.S. Congressional committee or subcommittee or governmental hearing or investigative proceeding on the subjects of biological effects on human life from exposure to asbestos and the setting, modification, feasibility and acceptance of allegedly safe or proper levels of such exposure to asbestos and asbestos products.

80. For all testimony set forth above, please identify:

(a) the dates and descriptions of the proceedings;

(b) the relationship between the person who testified or responded and you;

(c) all studies, test results or other scientific or medical documents relied upon by said person as a basis for any recommendations made or testimony given;

(d) whether at any time prior to or following such testimony you possessed knowledge of documents suggesting that existing or proposed threshhold limit values were not safe or proper or that lower threshhold limit values were necessary in order to prevent disease; as to this response, please identify the origin of the knowledge and all documents relating thereto;

(e) whether at any time prior to or following such testimony you were aware that the proper method for determination of safe levels of asbestos dust was to test concentrations of fibers in the air rather than the total number of particles. If your answer is in the affirmative, identify the origin of said knowledge and all documents relating thereto.

81. What do you understand "threshhold limit value" to mean?

82. What do you understand "dose response relationship" to mean?

83. What is being measured when you take the measurement of threshhold limit value as you define it?

84. Did you advertise any of your asbestos-containing products for use on ships or navy vessels?

85. If the response to Interrogatory No. 84 was yes, please state

(a) the name of the product;

(b) in what years you advertised the product;

(c) the intended purpose of the product.

86. Did you design any asbestos-containing products for use on ships or navy vessels? If so. please state

(a) the name of the products;

(b) the year of their design;

(c) the manufacturer;

(d) the intended use.

87. Did you sell any asbestos-containing materials to the:

(a) United States government?

(b) General Services Agency?

(c) United States Navy?

(d) any naval shipyard?

(e) any shipyard?

88. Do you ever conduct any dust studies in any of your asbestos product manufacturing facilities? If so, please state:

(a) the data of each such study;

(b) the person conducting the study;

(c) the result or conclusion;

(d) who presently has possession of the report or study

D. Garrison Hill
Circuit Judge
S.C. Asbestos Master Docket

Greenville, S. C.

September 30, 2010.

ROA 0027

EXHIBIT "2"

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
IN RE:)
)
ASBESTOS LITIGATION)
COORDINATED DOCKET)
)

DEFENDANTS' MASTER SET OF INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS

Defendants hereby request that you answer separately and fully, in writing under oath, each of the following interrogatories in accordance with Rule 33 of the South Carolina Rules of Civil Procedure. These interrogatories are continuing in character and require you to file supplementary answers in accordance with Rule 26(e) of the South Carolina Rules if you obtain further or different information after your initial answers and before trial, including in such supplemental answers the date upon and the manner in which such further or different information came to your attention.

1. Identify all documents of which plaintiffs have knowledge that relate to the allegations that plaintiffs are entitled receive punitive or exemplary damages.

2. Identify all persons that plaintiffs believe have knowledge of facts or opinions that relate to the allegations that plaintiffs are entitled to receive punitive or exemplary damages.

3. If plaintiffs contend that there is prior testimony relates to the claim for punitive or exemplary damages, please state the following:

(a) Date and place of the prior testimony and identity of cause in which it was taken;

(b) Identify the person making the prior testimony;

(c) Describe the form in which the prior testimony exists, (i.e., written, typed, recorded, etc.);

(d) Identify the custodian of the prior testimony; and

(e) Identify the person who obtained the prior testimony.

4. Identify all documents of which plaintiffs have knowledge, including but not limited to medical articles, medical journals, case reports, textbooks, abstracts, or synopses, which plaintiffs, believe relate to their position on the "state-of-the-art" defense.

5. Identify all persons whom plaintiffs expect to call as witnesses at trial, including a summary of the testimony that each witness is expected to give.

6. Identify all documents which plaintiffs expect to offer as evidence at trial.

7. Identify all persons whom plaintiffs expect to call as expert witnesses at trial, and as to each such person, provide a summary of the testimony each witness is expected to give.

8. Identify all persons whom plaintiffs have retained or employed in anticipation of litigation or for trial preparation purpose whom the plaintiffs do not expect to call as expert witnesses at trial.

9. State all facts and opinions on which plaintiffs rely in alleging that plaintiffs are entitled to punitive or exemplary damages, include in your response a detailed description of all activities of each named defendant which plaintiff allege justify the imposition of punitive damages

10. Identify all documents of which plaintiffs have knowledge including but not limited to sales literature, promotion material technical or education literature, or intra-corporate memoranda, which were produced, distributed or maintained by any defendant which plaintiffs believe relate to any matter at issue in this litigation.

11. Identify and describe with particularity each written express warranty or guaranty, if any, which plaintiffs believe they received in connection with the use of any products sold or distributed by defendant.

12. Identify and describe with particularity each oral or express warranty or guaranty, if any, which plaintiffs believe they received in connection with the use of any products sold or distributed by defendant.

13. Identify and describe with particularity every implied warranty or guaranty, if any, which plaintiffs believe they received in connection with the use of any products sold or distributed by defendant.

14. Identify all documents which relate to plaintiffs allegations that any defendant has breached any warranties given in connection with the sale or distribution of any asbestos products used by any plaintiff.

15. State all facts and opinions on which plaintiffs rely in alleging that defendants breached any warranties which may have been given in connection with the sale or distribution of any asbestos products used by any plaintiff.

16. State all facts and opinions on which plaintiffs rely in alleging that defendants acted negligently with respect to the plaintiffs.

17. Identify all documents of which plaintiffs have knowledge which relate to plaintiffs claim that defendants acted negligently with respect to the plaintiffs.

18. State all facts or opinions upon which plaintiffs rely in alleging that defendants are strictly liable in tort for injuries that may have been suffered by plaintiffs.

19. Identify all documents of which plaintiffs have knowledge which relate to plaintiffs claim that defendants are strictly liable in tort for injuries which may have been suffered by plaintiffs.

20. State all facts and opinions upon which plaintiffs rely in claiming that products sold by defendants and used by plaintiffs were "unreasonably dangerous."

21. Identify all documents of which plaintiffs have knowledge which relate to plaintiffs claim that products sold by defendants and used by plaintiffs were "unreasonably dangerous."

22. If plaintiffs contend that there is prior testimony that relates to plaintiffs' claim that defendants' products used by plaintiffs were "unreasonably dangerous," please state the following:

(a) Date, location, jurisdiction and title of cause of said prior testimony;

(b) identify the person making the prior testimony;

(c) Describe the form in which the prior testimony exists, (i.e., written, typed, recorded, etc.);

(d) Identify the custodian of the prior testimony; and

(e) Identify the person who obtained the prior testimony.

23. Identify all written statements or transcriptions of oral statements of any defendant to this action, or agent, employee, representative, former agent, former employee, or former representative of any defendant that plaintiffs contend are relevant to the subject matter of these lawsuits.

24. Identify all photographs, charts, drawings, diagrams, or other graphic representations or documents made by or on behalf of plaintiffs which relate to the illnesses,

relevant working conditions, or other circumstances complained of in these actions or related to the subject matter of these actions.

25. Identify all written statements which plaintiffs have made that relate to the facts of these lawsuits and the damages claimed, including but not limited to statements made to any police or law officer, insurance company representative, investigator, state or federal agents, representative or employee of any kind.

26. Identify all investigations or other reports that have been prepared, compiled, submitted, conducted, or made by plaintiffs or anyone acting in their behalf which relate to the subject matter action.

REQUESTS FOR PR0DUCTION OF DOCUMENTS

Defendants hereby request, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, that plaintiffs produce for inspection and copying the following writings or documents within you possession, custody or control:

1. All documents identified in response to the foregoing interrogatories.

2. All documents referred to in preparing the answers to the foregoing interrogatories.

3. Each plaintiffs' Federal and State income tax returns for the past three (3) years.

4. All damage studies, damage reports or damage analyses, or any and all other documents containing any mention of facts or opinions which relate to plaintiffs' claims for damages suffered as a result of acts of any of the defendants.

5. All correspondence between any defendants and any other person which plaintiffs contend relate to any matter at issue in this litigation.

6. All documents which relate to or identify insulation projects or jobs upon which each plaintiff worked.

7. All documents which relate to or identify asbestos-containing materials with which each plaintiff may have worked.

8. All packaging materials which plaintiffs allege were used in packaging asbestos containing materials.

9. All medical, doctor or hospital reports, summaries, test results, or other records of any type which relate to each plaintiffs medical history and/or current medical condition.

10. All x-rays which have ever been taken of each plaintiff's chest.

11. Each plaintiff's Social Security Administration printout and work record.

D. Garrison Hill
Circuit Judge
S.C. Asbestos Master Docket

Greenville, S. C.

September 30, 2010.

EXHIBIT "3"

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
IN RE:)
)
ASBESTOS LITIGATION)
COORDINATED DOCKET)
)

DEFENDANTS' STANDARD INTERROGATORIES TO PLAINTIFFS

1. State your full name, address and telephone number, date of birth, educational background and Social Security number.

2. State the complete address of all places you have resided in the past twenty years giving the inclusive dates of residence for each place named.

3. If you are now or have ever been a member of a trade labor union, provide the following information:

(a) the name of the union or unions to which you belonged;

(b) the inclusive dates of your membership in each;

(c) the numbers and complete address of the local unions to which you have belonged; and

(d) all officers or other positions which you have held in each union, identifying the office, position, and union in which held and inclusive dates the position or office was held.

4. Identify all jobs and projects on which you worked or around asbestos or materials containing asbestos and state separately as to each job or project the following:

(a) the name and location of each job (stating the job site, city, county and state);

(b) the name and address of each employer for whom you worked;

(c) the beginning and ending dates of each job or project;

(d) the name and manufacturer of each and every product containing asbestos with which you worked or to which you were exposed on each particular job or project and a general description of each such product;

(e) the identity of your immediate superior or job superintendent on each such job or project;

(f) the Identity of all persons with whom you worked on each such job or project;

(g) the length of time that you worked on each such job or project;

(h) whether or not you wore a respirator or mask on each such job or project; and

(i) your specific duties on each job.

5. Identify all jobs you have had during your lifetime that are not listed in No. 4 above. As to each, state:

(a) the general nature of the work you performed (i.e., coal miner, textile worker, etc.)

(b) the name and location of each job (stating the job site, city; county and state);

(c) the name and address of each employer for whom you worked;

(d) the beginning and ending dates of each job or project.

(a) the name and address of each hospital, clinic or other medical facility at which you were treated or admitted;

(b) the dates on which said treatment or treatments were rendered including the dates of entry into and discharge from said hospitals, clinics or other medical facility;

(c) an itemization of the charges rendered by each hospital, clinic or other medical facility; and

(d) the expenses of examination or treatment by any doctors who have examined or treated you.

11. Identity each physician or other practitioner of the healing arts not previously identified herein who has examined or treated you for any reason, and for each such individual so identified provide the following information:

(a) the reason for such examination or treatment;

(b) the date of each examination or treatment; and

(c) the diagnosis resulting from each such examination or treatment.

12. Identify each hospital, clinic or other medical facility not previously identified herein at which you had been examined or received medical treatment, and for each such facility identified provide the following information:

(a) the reason for such examination or treatment;

(b) the date of each such examination or treatment;

(c) if you were an in—patient, the dates of admission to and discharge from such hospital, clinic or medical facility; and

(d) the diagnosis resulting from each such examination or treatment.

13. If you are currently receiving medical services or treatment of any nature whatsoever, state:

(a) the name or names of the person or persons attending you;

(b) the approximate frequency of said treatment or services; and

(c) the date you last received said treatment or services.

14. If you have ever had x-rays taken of your chest, provide the following information for each set of x-rays taken:

(a) the name and addresses of the office or hospital where the x-rays were taken;

(b) the reason why such x-rays were taken;

(c) the date of dates on which the x-rays were taken;

(d) the information reported to you as being the x-ray diagnosis; and

(e) the identity of the person or persons who took the x-ray and the person or persons who made the diagnosis.

15. If you have made any Workers' Compensation claim as a result of any injuries or diseases, provide the following information:

(a) the date you first reported to your employer the incident of your injury or disease;

(b) the date and name of the agency with which you filed a claim for workers' Compensation benefits;

(c) the date upon which you first received any Workers' Compensation benefits, either for disability or medical treatment;

(d) the name and address of the employer against whom you made said claim; and

(e) the nature of the injury or disease for which a claim was made.

16. If you have filed any claim with the Social Security administration as a result of any injuries or disease, provide the following information:

(a) the date you filed said claim;

(b) the nature of such claim;

(c) the date upon which you first received any benefits, either for disability or for medical treatment; and

(d) the amount of benefits you are receiving and the frequency with which you receive these benefits.

17. If you have ever been involved in any other legal action, including criminal charges against you, provide the following information:

(a) whether you were a plaintiff or defendant;

(b) the nature of the claim made by or against you, including the nature of any criminal charge made against you;

(c) the date and place each such action was filed, giving the name of the Court, the name of the other party or parties involved, the number of such action or actions and the names of the attorneys representing each party; and

(d) the result of each such action, whether there was an appeal and the result of the appeal, and whether such case was reported, and the name, volume number and page citation of the report.

18. Do you or your counsel have written reports from any physician or practitioner of the healing arts respecting any injuries or diseases that you have identified in your response to these interrogatories? If so, please attach a copy of said report or reports to your answers to these interrogatories.

19. As to any job or jobs on which you allege you were injuriously exposed to asbestos—containing materials, was there any company other than your employer installing or handling asbestos—containing materials at the same job site? If so, please identify each job, its location, the approximate dates on which you worked on that job and the other company alleged to be installing or handling asbestos-containing materials at that site.

20. Do you now, or have you ever, chewed, smoked, consumed, or otherwise used tobacco or tobacco products? If so, please state:

(a) the type or types of products (i.e., cigarettes, cigars, etc.);

(b) the brand name of each product listed above;

(c) the inclusive dates of use of each product listed above: and

(d) the frequency of use or amount of use (i.e., one pack a day, etc.).

D. Garrison Hill
Circuit Judge
S.C. Asbestos Master Docket

Greenville, S. C.

September 30, 2010.

EXHIBIT "4"

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
IN RE:)
)
ASBESTOS LITIGATION)
COORDINATED DOCKET)
)

PLAINTIFF'S STANDARD INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: ALL DEFENDANTS IN EACH OF THE ABOVE-NAMED CASES:

PLEASE TAKE NOTICE that pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, the defendant is hereby directed to file answers to the following Interrogatories within thirty (30) days after service. These Interrogatories shall be deemed continuing in the sense of Rule 26(e) of the South Carolina Rules of Civil Procedure so as to require supplemental answers a reasonable time prior to trial if additional information with respect to these Interrogatories is obtained by the defendant or its counsel.

1. Did you sell and/or distribute products containing asbestos to the employers and job sites of plaintiff as listed in the Answer to Defendant Interrogatory No. 4 attached during the time listed or one year prior thereto? Please note that this Interrogatory includes thermal insulation asbestos products or cloth or spray products containing asbestos.

2. Did you sell and/or distribute products containing asbestos to job sites at which plaintiff was employed as described in Exhibit A for the time periods that plaintiff was at each job site?

3. If the answer to Interrogatory #1 or #2 is in the affirmative, please state:

(a) The names of the products sold;

(b) To whom the product was sold and shipped;

(c) As to each of the above-mentioned products, please include the quantities of each shipped to each company during the applicable time period; the site to which each product was shipped; and the date of shipment;

(d) As to each of the products mentioned above, will you provide without a Motion to Produce copies of:

(1) Any pertinent trademark, copy of such trademark, and the trademark registration number;

(2) The label, or copy of the label, used in the packaging of the particular product;

(3) A photograph of the product itself; -

(4) Sales brochures, specification sheets, performance data, or other promotional material as well as any and all installation materials, date or brochures which would have accompanied or been distributed in connection with the installation, application or use of each of the above-mentioned products;

(5) Copies of any invoices, sales receipts or other documents which show sales referred to in Interrogatories #1 and #2 above.

(e) If you cannot provide all of the above documents, please indicate the name or names of the individuals having custody of said documents or copies thereof.

4. Have you consulted with any expert whom you expect to call as an expert witness at the trial of this case? If so, please give:

(a) The name and address of each such person so consulted;

(b) When the person was consulted and what did the person do as a result;

(c) The subject matter on which the expert is expected to testify;

(d) State the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds of each opinion of the expert.

5. State the names and addresses of all witnesses the defendant intends to call to testify and give a brief statement of the substance of the testimony of each such witness.

6. With regard to the preceding Interrogatory, state whether or not a written or recorded statement or deposition or testimony has been given by such witness and indicate who has possession of such statement, deposition or testimony.

7. Set forth a list of photographs, plats, sketches, or other documents relating to the individual plaintiff in this case in the possession of the party or its attorneys that will potentially be used as an exhibit at the trial of this case by you.

8. Did you provide instructions and/or warnings concerning the potential health hazards of asbestos exposure to plaintiff's employers during the time period during which plaintiff was employed by each of his employers as listed in Answer to Defendant Interrogatory No. 4?

If so, please state:

(a) Whether the employer was expected or requested to transfer the instructions and/or warnings to its employees such as plaintiff;

(b) The date(s) you provided instructions and/or warnings to plaintiff's employer;

(c) Who prepared the instructions and/or warnings;

(d) To whom the instructions and/or warnings were addressed;

(e) The manner in which the instructions and/or warnings were transmitted to plaintiff's employers (i.e., orally, printed, pamphlets, printed on carton, etc.);

(f) The precise wording used in the instructions and/or warnings or in lieu thereof attach an authenticated copy of the instructions and/or warnings.

9. Did you provide instructions and/or warnings concerning the potential health hazards of asbestos exposure to plaintiff and/or his co—workers at each of the job sites listed in Answer to Defendant Interrogatory No. 4?

If so, please state:

(a) The date(s) you provided instructions and/or warnings to plaintiff and/or co—workers;

(b) Who prepared the instructions and/or warnings;

(c) To whom the instructions and/or warnings were addressed;

(d) The manner in which the instructions and/or warnings were transmitted to plaintiff and/or his co-workers (i.e., orally, printed pamphlets, printed on carton, etc.);

(e) The precise wording used in the instructions and/or warnings or in lieu thereof attached an authenticated copy of the instructions and/or warnings.

10. Did you provide instructions and/or warnings concerning the potential health hazards of asbestos exposure to any persons at plaintiff's job sites during the time period during which plaintiff was employed at each job site as listed in Answer to Defendant Interrogatory No. 4?

If so, please state:

(a) Whether the employer was expected or requested to transfer the instructions or warnings to persons at plaintiff's job sites;

(b) The date(s) you provided instructions and/or warnings to persons at plaintiff's job sites;

(c) Who prepared the instructions and/or warnings;

(d) To whom the instructions and/or warnings were addressed;

(e) The manner in which the instructions and/or warnings were transmitted to persons at plaintiff's job sites (i.e., orally, printed pamphlets, printed on carton, etc.);

(f) The precise wording used in the instructions and/or warnings or in lieu thereof attach an authenticated copy of the instructions and/or warnings.

11. Did you provide respirators to plaintiff, plaintiff's employers or persons at plaintiff's job sites during the time period plaintiff was employed at each as listed in Answer to Defendant Interrogatory No. 4?

If so, please state:

(a) The dates respirators were provided:

(b) To whom the respirators were provided;

(c) The type of respirators provided;

(d) The instructions and/or warnings provided with the respirators, if any.

12. Did you receive any comments or complaints concerning asbestos dust and/or asbestos health hazards from any persons who were co—employees or employed at plaintiff's job sites during the time period plaintiff was employed as described in Answer to Defendant Interrogatory No. 4?

If so, please state:

(a) The name and address of the person commenting or complaining;

(b) The precise wording of the comment and/or complaint;

(c) The date the comment and/or complaint was received by you;

(d) What action, if any, was taken in response to the comment and/or complaint?

D. Garrison Hill
Circuit Judge
S.C. Asbestos Master Docket

Greenville, S. C.

September 30, 2010.

EXHIBIT "5"

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CIVIL ACTION NO.
	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	ORDER FOR RELEASE OF
	)	PATHOLOGY MATERIALS
	)	
	)	
Defendants.	)	
	)	
	)	

ORDER

This matter comes before the Court pursuant to the parties standing request for the Release of Pathology Materials in asbestos cases in South Carolina. In the above-captioned case, this Court finds that the request is proper and should be granted.

IT IS THEREFORE ORDERED that any physician, laboratory, hospital, clinic or other person or entity, who is currently in possession of pathology material, whether tissue, pathology slides, or any other form of pathology material, shall release them to the parties in this matter.

Further, this Court respectfully requests that the courts of any other state within whose borders such pathology materials may be located, honor this Order and domesticate it as if originally issued in that jurisdiction

IT IS SO ORDERED.

D. GARRISON HILL
CIRCUIT COURT JUDGE
13TH JUDICIAL CIRCUIT

_____, 20__
Greenville, South Carolina

Melanie Morrison

From: Brown, Pauline [pbrown@hsblawfirm.com]
Sent: Thursday, October 14, 2010 11:04 AM
To: Dean, Jessica; Bevon, Brian; Davis, Jeannette; Christian Hartley; jec@chellisandframpton.com; Kelli Eargle; Ashley Cuttino; Carrie Waters; Theile McVey; Kennaday, Tom M.; Will Early; bfairey@embarqmail.com; Courtney.Shytle@bowmanandbrooke.com; dloyd@kassellaw.com; Guadalupe Gutierrez; jpitts@hartleylawllc.com; Joel.Smith@bowmanandbrooke.com; John E. Cuttino; jkassel@kassellaw.com; Johnson, Ben; Kate@thhpc.com; kmunson@wcsr.com; Kyla Cole; lromanstine@wyche.com; melissa.jumpp@bowmanandbrooke.com; Turner, Melissa L.; ermoore@murphygrantland.com; rbarker@wyche.com; RHawk@ycrlaw.com; Shawn.Deery@bowmanandbrooke.com; tom@thhpc.com; tstrother@hartleylawllc.com; thilka@hartleylawllc.com; ttessier@wyche.com; jherrick@motleyrice.com; fritz@j-dlaw.com; Bill Graham; Beth Ousley; Mike Pross; paul@j-dlaw.com; Dave Butler; kwilson@rpwb.com; Gibbs Henderson; A. Timothy Jones; Alexandra B. Cunningham; Amy Geddes; amelvin@leathbouchlaw.com; Andrew Phillips; Angela Spivey; anthony.hayes@nelsonmullins.com; blovett@huntermaclean.com; Beau Inabinet; Ben Traywick; bdurant@sowellgray.com; Bill Coates ; Bobby Stepp; Breon C.M. Walker; Brittany Boykin; C. Griffin; cfeeney; Chris T. Nettles; Conner, David; dwhite@gwblawfirm.com; David Cox; David Root; David Traylor; Deborah Lukhard; Dell Chappell; dhighfield; Doxey, Joanna R.; drew.rhodes@ogletreedeakins.com; eshofner@hplegal.com; Elisabeth Cheatham; saldr@huntermaclean.com; Franklin L. Greene; Frick, Scott; fzacher@gwblawfirm.com; Glen Sturtevant; Gustavo A. Suarez; mbowers@wilkesbowers.com; Hatcher Kincheloe; Jack Slosson; JElliott@pritchard-elliott.com; jcuttino@turnerpadget.com; jmtechman@ewhlaw.com; Jim Rogers; jmyrick@buistmoore.com; Joanne Halvorson; Joe Thoensen; Johanna Fowler; John T. Lay Jr.; josephinehicks@parkerpoe.com; jroquemore@turnerpadget.com; Kelly Near; Kirk Warner; kjones@wcsr.com; kmunson@wcsr.com; kps@nmrs.com; Laura Evans; Laura Knight; Lee Knight Caffery; Lucie Cohen; Mark.Wall@elmorewall.com; mark.phillips@nelsonmullins.com; mbogle@wcsr.com; McDonald, Mott; Melanie Morrison; mhutchins@kasowitz.com; michael.hogue@nelsonmullins.com; Mike Cole; Nadine Fisher; Natalie Butrym; Ouzts, Steven W.; Pam Smith; Rachel Huenefeld; rebecca.baker@nelsonmullins.com; rmelton@turnerpadget.com; Richard Daniel Addison; Richard Morton; bobbyjr.hood@hoodlaw.com; robert.meriwether@nelsonmullins.com; rcox@proffittcox.com; Rondell Warren; Sally Brennan; Stambaugh, Montana; Stephanie Flynn; Steve Pugh ; susan.collings@nelsonmullins.com; Susan Gladden; T. Rosemond; tbouch@leathbouchlaw.com; tdougall@dougallfirm.com; Timothy Peck; tschwartz@hplegal.com; Todd, Monty P.; James Tripp Gandy; Trish Koester; Vick, Ted; W. (Chip) Collins; wdavis@brblegal.com; wharris@hplegal.com
Cc: ghillj@sccourts.org; Hill, D. Garrison Law Clerk (Robert Mebane); bhagood@ltatlaw.com; DAJones@greenvillecounty.org; lking@greenvillecounty.org
Subject: SC Asbestos Scheduling Order/Master Discovery: Part 1A

At the request of Judge Hill, we were requested to send to all SC asbestos counsel copies of Judge Hill's orders dated September 30, 2010:

Asbestos Trial Docket General Scheduling Order
Master Discovery/Scheduling Order, which includes these exhibits:

Ex. 1 Plaintiff's First Set of Interrogatories
Ex. 1 Defendant's Master Set of Interrogatories and Request for Production of Documents
Ex. 3 Defendant's Standard Interrogatories to Plaintiffs
Ex. 4 Plaintiff's Standard Interrogatories and Request for Production of Documents
Ex. 5 Order for Release of Pathology Materials

Although there is a reference to Ex. 6 in the Master Discovery/Scheduling Order, that Standard Scheduling Order was not attached to the copy we were provided by the Court. I have requested it from Judge Hill's clerk.

I received so many firewall error messages, I am sending this inventory of what was sent so you can verify you have received everything. If there are any pieces missing in what you have received, please let me know. Thank you.

Pauline M. Brown, CLAS
Paralegal
Haynsworth Sinkler Boyd, P.A.
Direct Phone: 864/240-3278
Fax: 864/240-3300
E-Mail: pbrown@hsblawfirm.com

CONFIDENTIALITY NOTICE: *This e-mail and any files transmitted with it are confidential and may contain information which is legally privileged or otherwise exempt from disclosure. They are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this message in error, please immediately notify the sender and delete this message immediately from your computer. Any other use, retention, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited.*

IRS CIRCULAR 230 NOTICE: *Internal Revenue Service regulations generally provide that, for the purpose of avoiding federal tax penalties, a taxpayer may rely only on formal written advice meeting specific requirements. Any tax advice in this message, or in any attachment to this message, does not meet those requirements. Accordingly, any such tax advice was not intended or written to be used, and it cannot be used, for the purpose of avoiding federal tax penalties that may be imposed on you or for the purpose of promoting, marketing or recommending to another party any tax-related matters.*

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF YORK	**FOR THE SIXTEENTH JUDICIAL CIRCUIT**
Timothy W. Howe, Individually and as Personal Representative of the Estate of Wayne Erwin Howe, deceased, and Jeanette Howe, **Plaintiffs,** **v.** **Air & Liquid Systems, *et al.*,** **Defendants.**	**Civil Action No.: 2015-CP-46-03456**

FILED-RECEIVED
2018 JAN 19 AM 9:04
DAVID HAMILTON
C.C.C.P.&G.S.
YORK COUNTY, SC

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF YORK	**FOR THE SIXTEENTH JUDICIAL CIRCUIT**
Roxanne Falls, Individually and as Personal Representative of the Estate of Charlotte Gaye Smith, **Plaintiffs,** **v.** **CBS Corporation, *et al.*,** **Defendants.**	**Civil Action No.: 2015-CP-46-02155**

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF HAMPTON	**FOR THE FOURTEENTH JUDICIAL CIRCUIT**
James Calvin Sizemore, **Plaintiff,** **v.** **Bowater Paper Mill, *et al.*** **Defendants.**	**C/A No.: 2016-CP-25-440** **In Re: Asbestos Personal Injury Litigation Coordinated Docket – Living Mesothelioma**

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF ANDERSON	)	**FOR THE TENTH JUDICIAL CIRCUIT**
Dorothy Swap, Individually and as Personal Representative of the Estate of Arthur L. Swap, deceased,	)	**C/A No.: 2017-CP-04-01156**
	)	**In Re: Asbestos Personal Injury Litigation Coordinated Docket – Living Mesothelioma**
v.	)	
The Tile Council of North America,	)	
Defendant.	)	

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF ANDERSON	)	**FOR THE TENTH JUDICIAL CIRCUIT**
Rita Joyce Glenn, Individually and as Personal Representative of the Estate of Thomas Harold Glenn, deceased,	)	**C/A No.: 2015-CP-04-01607**
Plaintiffs,	)	
v.	)	
3M Company, f/k/a Minnesota Mining and Manufacturing Co., *at al.*	)	
Defendants.	)	

#2

SCHEDULING ORDER

Motion Deadlines for the March 12, 2018 Asbestos Term of Court:

1. Motions to Compel/Motions for Protective Order:

   a. Discovery disputes shall be heard by me at the Richland County Courthouse, Courtroom 3B, 1701 Main Street, Columbia, South Carolina on January 24, 2018 at 9:00 AM.

2. Discovery/Depositions:

a. Depositions of Defendants' 30(b)(6) Representatives for whom a properly served Notice of Deposition has been issued must be completed by February 9, 2018. Appropriate responses to all properly issued Deposition Subpoenas *Duces Tecum* must be provided by February 2, 2018.

3. Motions for Summary Judgment:

Motions for Summary Judgment deadlines are as follows:

#3

a. Filed and served by February 9, 2018;
b. Responses filed and served by February 21, 2018;
c. Replies filed and served by February 26, 2018;
d. Hearing scheduled for March 2, 2018.

4. Mediation will be held the week of March 5, 2018, and must be completed by March 9, 2018.

5. Motions *in Limine*:

a. Filed and served by February 9, 2018;
b. Responses filed and served by March 2, 2018;
c. No replies will be considered.
d. Hearing scheduled for March 9, 2018.

AND IT IS SO ORDERED, this 11th day of January 2018.

Jean Hoefer Toal, Chief Justice of the South Carolina Supreme Court, Retired, Acting as Circuit Court Judge

Columbia, South Carolina.

KASSEL McVEY

JOHN D. KASSEL
ATTORNEY AT LAW
JKASSEL@KASSELLAW.COM

THEILE B. MCVEY
ATTORNEY AT LAW
TMCVEY@KASSELLAW.COM

January 12, 2018

The Honorable David Hamilton
York County Clerk of Court
P.O. Box 649
York, South Carolina 29745

Re: *Howe v. Air & Liquid Systems Corp., et al.*
C/A No.: 2015-CP-46-3456
Roxann Falls, Individually and as PR for the Estate of Charlotte Gaye Smith v. CBS Corporation, et al.
C/A No.: 2015-CP-46-2155

Dear Mr. Hamilton:

Enclosed herewith please find the two (2) copies of an Order signed by Chief Justice Toal in connection with the above-referenced matter. I have also enclosed a copy of Justice Toal's e-mail to me asking me to file this document with the respective counties. Therefore, I kindly request that you file the Order in each of the above-referenced cases and return clocked copy to me in the envelope provided for your convenience. All counsel of records has been served.

Thank you for your kind consideration and assistance. If you have any questions or concerns, please do not hesitate to call.

Yours very truly,

Elizabeth C. Moultrie
Paralegal to John D. Kassel
and Theile B. McVey

ECM: bmh

Enclosures

Elizabeth Moultrie

From: Toal, Jean <JToal@sccourts.org>
Sent: Friday, January 12, 2018 2:54 PM
To: Elizabeth Moultrie
Subject: Asbestos Scheduling Order
Attachments: Asbestos Sched.order .pdf

Elizabeth –

Please disseminate this to all and file. Thanks!

CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF YORK	)	**FOR THE SIXTEENTH JUDICIAL CIRCUIT**
Timothy W. Howe, Individually and as Personal Representative of the Estate of Wayne Erwin Howe, deceased, and Jeanette Howe,	)	**Civil Action No.: 2015-CP-46-03456**
Plaintiffs,	)	
v.	)	
Air & Liquid Systems, *et al.*,	)	
Defendants.	)	

FILED-RECEIVED
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DAVID HAMILTON
C.C.C.P.&G.S.
YORK COUNTY, SC

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF YORK	)	**FOR THE SIXTEENTH JUDICIAL CIRCUIT**
Roxanne Falls, Individually and as Personal Representative of the Estate of Charlotte Gaye Smith,	)	**Civil Action No.: 2015-CP-46-02155**
Plaintiffs,	)	
v.	)	
CBS Corporation, *et al.*,	)	
Defendants.	)	

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF HAMPTON	)	**FOR THE FOURTEENTH JUDICIAL CIRCUIT**
James Calvin Sizemore,	)	**C/A No.: 2016-CP-25-440**
Plaintiff,	)	**In Re: Asbestos Personal Injury Litigation Coordinated Docket – Living Mesothelioma**
v.	)	
Bowater Paper Mill, *et al.*	)	
Defendants.	)	

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF ANDERSON	)	**FOR THE TENTH JUDICIAL CIRCUIT**
Dorothy Swap, Individually and as Personal Representative of the Estate of Arthur L. Swap, deceased,	)	**C/A No.: 2017-CP-04-01156**
	)	**In Re: Asbestos Personal Injury Litigation Coordinated Docket – Living Mesothelioma**
v.	)	
The Tile Council of North America,	)	
Defendant.	)	

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF ANDERSON	)	**FOR THE TENTH JUDICIAL CIRCUIT**
Rita Joyce Glenn, Individually and as Personal Representative of the Estate of Thomas Harold Glenn, deceased,	)	**C/A No.: 2015-CP-04-01607**
Plaintiffs,	)	
v.	)	
3M Company, f/k/a Minnesota Mining and Manufacturing Co., *at al.*	)	
Defendants.	)	

#2

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a. Depositions of Defendants' 30(b)(6) Representatives for whom a properly served Notice of Deposition has been issued must be completed by February 9, 2018. Appropriate responses to all properly issued Deposition Subpoenas *Duces Tecum* must be provided by February 2, 2018.

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AND IT IS SO ORDERED, this 11th day of January 2018.

Jean Hoefer Toal, Chief Justice of the South Carolina Supreme Court, Retired, Acting as Circuit Court Judge

Columbia, South Carolina.

KASSEL McVEY

JOHN D. KASSEL
ATTORNEY AT LAW
JKASSEL@KASSELLAW.COM

THEILE B. MCVEY
ATTORNEY AT LAW
TMCVEY@KASSELLAW.COM

January 12, 2018

The Honorable David Hamilton
York County Clerk of Court
P.O. Box 649
York, South Carolina 29745

Re: *Howe v. Air & Liquid Systems Corp., et al.*
C/A No.: 2015-CP-46-3456
Roxann Falls, Individually and as PR for the Estate of Charlotte Gaye Smith v. CBS Corporation, et al.
C/A No.: 2015-CP-46-2155

Dear Mr. Hamilton:

Enclosed herewith please find the two (2) copies of an Order signed by Chief Justice Toal in connection with the above-referenced matter. I have also enclosed a copy of Justice Toal's e-mail to me asking me to file this document with the respective counties. Therefore, I kindly request that you file the Order in each of the above-referenced cases and return clocked copy to me in the envelope provided for your convenience. All counsel of records has been served.

Thank you for your kind consideration and assistance. If you have any questions or concerns, please do not hesitate to call.

Yours very truly,

Elizabeth C. Moultrie
Paralegal to John D. Kassel
and Theile B. McVey

ECM: bmh

Enclosures

Elizabeth Moultrie

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Sent: Friday, January 12, 2018 2:54 PM
To: Elizabeth Moultrie
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Attachments: Asbestos Sched.order .pdf

Elizabeth –

Please disseminate this to all and file. Thanks!

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ELECTRONICALLY FILED - 2018 Jan 17 12:46 PM - HAMPTON - COMMON PLEAS - CASE#2016CP2500440

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	FOR THE SIXTEENTH JUDICIAL CIRCUIT
Timothy W. Howe, Individually and as Personal Representative of the Estate of Wayne Erwin Howe, deceased, and Jeanette Howe,	)	Civil Action No.: 2015-CP-46-03456
Plaintiffs,	)	
v.	)	
Air & Liquid Systems, *et al.*,	)	
Defendants.	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	FOR THE SIXTEENTH JUDICIAL CIRCUIT
Roxanne Falls, Individually and as Personal Representative of the Estate of Charlotte Gaye Smith,	)	Civil Action No.: 2015-CP-46-02155
Plaintiffs,	)	
v.	)	
CBS Corporation, *et al.*,	)	
Defendants.	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
James Calvin Sizemore,	)	C/A No.: 2016-CP-25-440
Plaintiff,	)	In Re: Asbestos Personal Injury Litigation Coordinated Docket – Living Mesothelioma
v.	)	
Bowater Paper Mill, *et al.*	)	
Defendants.	)	

ELECTRONICALLY FILED - 2018 Jan 17 12:46 PM - HAMPTON - COMMON PLEAS - CASE#2016CP2500440

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF ANDERSON	**FOR THE TENTH JUDICIAL CIRCUIT**
Dorothy Swap, Individually and as Personal Representative of the Estate of Arthur L. Swap, deceased,	**C/A No.: 2017-CP-04-01156**
v.	**In Re: Asbestos Personal Injury Litigation Coordinated Docket – Living Mesothelioma**
The Tile Council of North America,	
Defendant.	

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF ANDERSON	**FOR THE TENTH JUDICIAL CIRCUIT**
Rita Joyce Glenn, Individually and as Personal Representative of the Estate of Thomas Harold Glenn, deceased,	**C/A No.: 2015-CP-04-01607**
Plaintiffs,	
v.	
3M Company, f/k/a Minnesota Mining and Manufacturing Co., *at al.*	
Defendants.	

#2

SCHEDULING ORDER

Motion Deadlines for the March 12, 2018 Asbestos Term of Court:

1. Motions to Compel/Motions for Protective Order:

   a. Discovery disputes shall be heard by me at the Richland County Courthouse, Courtroom 3B, 1701 Main Street, Columbia, South Carolina on January 24, 2018 at 9:00 AM.

2. Discovery/Depositions:

ELECTRONICALLY FILED - 2018 Jan 17 12:46 PM - HAMPTON - COMMON PLEAS - CASE#2016CP2500440

a. Depositions of Defendants' 30(b)(6) Representatives for whom a properly served Notice of Deposition has been issued must be completed by February 9, 2018. Appropriate responses to all properly issued Deposition Subpoenas *Duces Tecum* must be provided by February 2, 2018.

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b. Responses filed and served by March 2, 2018;
c. No replies will be considered.
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AND IT IS SO ORDERED, this 11th day of January 2018.

Jean Hoefer Toal, Chief Justice of the South Carolina Supreme Court, Retired, Acting as Circuit Court Judge

Columbia, South Carolina.

ELECTRONICALLY FILED - 2018 Mar 02 10:47 AM - YORK - COMMON PLEAS - CASE#2015CP4602155
ELECTRONICALLY FILED - 2018 Feb 28 4:53 PM - YORK - COMMON PLEAS - CASE#2015CP4602155

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF YORK	)	**FOR THE SIXTEENTH JUDICIAL CIRCUIT**
Roxanne Falls, Individually and as Personal Representative of the Estate of Charlotte Gaye Smith,	)	**Civil Action No.: 2015-CP-46-02155**
Plaintiffs,	)	**ORDER REGARDING COVIL CORPORATION DISCOVERY MOTIONS**
v.	)	
CBS Corporation, *et al.*,	)	
Defendants.	)	

A hearing was held in Columbia, South Carolina on January 24, 2018. The Court ordered the Defendant to produce documents requested in Plaintiff's 30(b)(6) deposition notice by Monday, January 29, 2018. The Court further ordered to produce a witness on or before February 9, 2018 to discuss the noticed topics based on what was known or reasonably available to the company.

The deposition of Jim Covil demonstrates that the company made no effort to ascertain what was available to the company regarding multiple locations identified in Plaintiff's notice. Additionally, a reasonable effort to ascertain insurance coverage and limits for the company was not made despite a properly noticed deposition request.

"The rights of discovery provided by the Rules give the trial lawyer the means to be prepared for trial." *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987). "Where these rights are not accorded, prejudice must be presumed and, unless the party who has failed to submit to discovery can show a lack of prejudice," sanctions must be imposed. *Id.* While Without adequate sanctions, discovery procedures would be ineffectual. *Id.* As a result,

over leniency must be avoided. *Id.* "If a party fails to obey an order or provide or permit discovery, the trial court may impose sanctions such as striking pleadings, dismissing the action, or rendering a default judgment." *Griffin Grading & Clearing, Inc. v. Tire Serv. Equipment Mfg. Co., Inc.*, 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999).

"In determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice." *Id.* at 199, 511 S.E.2d at 719. In *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997), the South Carolina Court of Appeals stated "[t]he entire thrust of the discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party." *Id.* "Discovery sanctions are imposed to penalize those whose conduct may be deemed to warrant such a sanction, and to deter those who might be tempted to such conduct in the absence of such a deterrent." *Creighton v. Coligny Plaza Ltd. P'ship*, 334 S.C. 96, 123, 512 S.E.2d 510, 524 (Ct. App. 1998).

Defendant has failed to produce a witnesses to discuss what is known to the company regarding the location and nature of its work as an insulation supplier and contractor. This information was sought in the corporate representative deposition notice as well as in this Court's Standing Order Discovery. Defendant repeatedly failed to produce relevant and requested information. Thereafter, Defendant failed to comply with this Court's order on January 24, 2018. Trial is set for March 12, 2018. The failure to produce records prevents the parties from preparing for trial. Plaintiff alleges injuries as a result of exposure from insulation. Defendant is an insulation contractor who failed to comply with this Court's order to ascertain what is known or reasonably available to the company about the location of its work. As such, the court will strike Defendant's pleadings.

ELECTRONICALLY FILED - 2018 Mar 02 10:47 AM - YORK - COMMON PLEAS - CASE#2015CP4602155
ELECTRONICALLY FILED - 2018 Feb 28 4:53 PM - YORK - COMMON PLEAS - CASE#2015CP4602155

In addition, the Court orders Covil to produce a witness regarding Topic 21 who has researched the issue of what insurance coverage exists for the company. This request, requires Covil to obtain information from your insurers regarding the nature and limit of the policies at issue. This deposition is to occur on or before March 2, 2018.

AND IT IS SO ORDERED.



Jean Hoefer Toal, Chief Justice of the South Carolina Supreme Court, Retired, Acting as Circuit Court Judge

February 23, 2018

Columbia, South Carolina.

ELECTRONICALLY FILED - 2018 Mar 02 10:47 AM - YORK - COMMON PLEAS - CASE#2015CP4602155
ELECTRONICALLY FILED - 2018 Feb 28 4:53 PM - YORK - COMMON PLEAS - CASE#2015CP4602155

ELECTRONICALLY FILED - 2018 Mar 01 9:31 AM - YORK - COMMON PLEAS - CASE#2015CP4603456

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF YORK	)	**FOR THE SIXTEENTH JUDICIAL CIRCUIT**
Timothy W. Howe, Individually and as Personal Representative of the Estate of Wayne Erwin Howe, deceased, and Jeanette Howe,	)	**Civil Action No.: 2015-CP-46-03456**
Plaintiffs,	)	**ORDER REGARDING COVIL CORPORATION DISCOVERY MOTIONS**
v.	)	
Air & Liquid Systems, *et al.*,	)	
Defendants.	)	

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ELECTRONICALLY FILED - 2018 Mar 01 9:31 AM - YORK - COMMON PLEAS - CASE#2015CP4603456

While Without adequate sanctions, discovery procedures would be ineffectual. *Id.* As a result, over leniency must be avoided. *Id.* "If a party fails to obey an order or provide or permit discovery, the trial court may impose sanctions such as striking pleadings, dismissing the action, or rendering a default judgment." *Griffin Grading & Clearing, Inc. v. Tire Serv. Equipment Mfg. Co., Inc.*, 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999).

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Defendant has failed to produce a witnesses to discuss what is known to the company regarding the location and nature of its work as an insulation supplier and contractor. This information was sought in the corporate representative deposition notice as well as in this Court's Standing Order Discovery. Defendant repeatedly failed to produce relevant and requested information. Thereafter, Defendant failed to comply with this Court's order on January 24, 2018. Trial is set for March 12, 2018. The failure to produce records prevents the parties from preparing for trial. Plaintiff alleges injuries as a result of exposure from insulation. Defendant is an insulation contractor who failed to comply with this Court's order to ascertain

what is known or reasonably available to the company about the location of its work. As such, the court will strike Defendant's pleadings.

In addition, the Court orders Covil to produce a witness regarding Topic 21 who has researched the issue of what insurance coverage exists for the company. This request, requires Covil to obtain information from your insurers regarding the nature and limit of the policies at issue. This deposition is to occur on or before March 2, 2018.

AND IT IS SO ORDERED.

Jean Hoefer Toal, Chief Justice of the South Carolina Supreme Court, Retired, Acting as Circuit Court Judge

February 23, 2018

Columbia, South Carolina.

ELECTRONICALLY FILED - 2018 Mar 01 9:31 AM - YORK - COMMON PLEAS - CASE#2015CP4603456

ELECTRONICALLY FILED - 2018 Feb 28 12:19 PM - HAMPTON - COMMON PLEAS - CASE#2016CP2500440

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF HAMPTON	)	**FOR THE FOURTEENTH JUDICIAL CIRCUIT**
James Calvin Sizemore,	)	
	)	**C/A No.: 2016-CP-25-440**
Plaintiff,	)	
	)	
v.	)	**ORDER REGARDING COVIL CORPORATION DISCOVERY MOTIONS**
	)	
Bowater Paper Mill, *et al.*	)	
	)	
Defendants.	)	

A hearing was held in Columbia, South Carolina on January 24, 2018. The Court ordered the Defendant to produce documents requested in Plaintiff's 30(b)(6) deposition notice by Monday, January 29, 2018. The Court further ordered to produce a witness on or before February 9, 2018 to discuss the noticed topics based on what was known or reasonably available to the company.

The deposition of Jim Covil demonstrates that the company made no effort to ascertain what was available to the company regarding multiple locations identified in Plaintiff's notice. Additionally, a reasonable effort to ascertain insurance coverage and limits for the company was not made despite a properly noticed deposition request.

"The rights of discovery provided by the Rules give the trial lawyer the means to be prepared for trial." *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987). "Where these rights are not accorded, prejudice must be presumed and, unless the party who has failed to submit to discovery can show a lack of prejudice," sanctions must be imposed. *Id.* While Without adequate sanctions, discovery procedures would be ineffectual. *Id.* As a result,

ELECTRONICALLY FILED - 2018 Feb 28 12:19 PM - HAMPTON - COMMON PLEAS - CASE#2016CP2500440

over leniency must be avoided. *Id.* "If a party fails to obey an order or provide or permit discovery, the trial court may impose sanctions such as striking pleadings, dismissing the action, or rendering a default judgment." *Griffin Grading & Clearing, Inc. v. Tire Serv. Equipment Mfg. Co., Inc.*, 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999).

"In determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice." *Id.* at 199, 511 S.E.2d at 719. In *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997), the South Carolina Court of Appeals stated "[t]he entire thrust of the discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party." *Id.* "Discovery sanctions are imposed to penalize those whose conduct may be deemed to warrant such a sanction, and to deter those who might be tempted to such conduct in the absence of such a deterrent." *Creighton v. Coligny Plaza Ltd. P'ship*, 334 S.C. 96, 123, 512 S.E.2d 510, 524 (Ct. App. 1998).

Defendant has failed to produce a witnesses to discuss what is known to the company regarding the location and nature of its work as an insulation supplier and contractor. This information was sought in the corporate representative deposition notice as well as in this Court's Standing Order Discovery. Defendant repeatedly failed to produce relevant and requested information. Thereafter, Defendant failed to comply with this Court's order on January 24, 2018. Trial is set for March 12, 2018. The failure to produce records prevents the parties from preparing for trial. Plaintiff alleges injuries as a result of exposure from insulation. Defendant is an insulation contractor who failed to comply with this Court's order to ascertain what is known or reasonably available to the company about the location of its work. As such, the court will strike Defendant's pleadings.

In addition, the Court orders Covil to produce a witness regarding Topic 21 who has researched the issue of what insurance coverage exists for the company. This request, requires Covil to obtain information from your insurers regarding the nature and limit of the policies at issue. This deposition is to occur on or before March 2, 2018.

AND IT IS SO ORDERED.

Jean Hoefer Toal, Chief Justice of the South Carolina Supreme Court, Retired, Acting as Circuit Court Judge

February 23, 2018

Columbia, South Carolina.

ELECTRONICALLY FILED - 2018 Feb 28 12:19 PM - HAMPTON - COMMON PLEAS - CASE#2016CP2500440

ELECTRONICALLY FILED - 2018 Feb 28 12:19 PM - HAMPTON - COMMON PLEAS - CASE#2016CP2500440

Hampton Common Pleas

Case Caption: James Calvin Sizemore VS Bowater Paper Mill , defendant, et al

Case Number: 2016CP2500440

Type: Order/Discovery and Disclosure of Evidence

IT IS SO ORDERED.

s/ Jean H. Toal #2758

TATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
Charlotte Gaye Smith an individual and Gary Dean Smith, her spouse,)
Plaintiff(s))
)
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, et al,)
Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP-46-2155

Submitted By: Mona L. Wallace, Esq.
Address: Wallace & Graham, PA
525 N. Main Street, Salisbury, NC 28144

SC Bar #: 15844
Telephone #: 704-633-5244
Fax #: 704-633-9434
Other:
E-mail: mwallace@wallacegraham.com

FILED-RECEIVED
2015 JUL 20 PM 1:15
DAVID M. MILLION
C.C.C.P. & G.S.
YORK COUNTY, SC

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply)*

***If Action is Judgment/Settlement do not complete*

- [x] **JURY TRIAL** demanded in complaint. [ ] **NON-JURY TRIAL** demanded in complaint.
- [ ] This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- [x] This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- [ ] This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION *(Check One Box Below)*

Contracts
- [ ] Constructions (100)
- [ ] Debt Collection (110)
- [ ] Employment (120)
- [ ] General (130)
- [ ] Breach of Contract (140)
- [ ] Other (199)

Torts - Professional Malpractice
- [ ] Dental Malpractice (200)
- [ ] Legal Malpractice (210)
- [ ] Medical Malpractice (220)

Previous Notice of Intent Case # 20____-NI-_____-_____
- [ ] Notice/ File Med Mal (230)
- [ ] Other (299)

Torts – Personal Injury
- [ ] Assault/Slander/Libel (300)
- [ ] Conversion (310)
- [ ] Motor Vehicle Accident (320)
- [ ] Premises Liability (330)
- [ ] Products Liability (340)
- [x] Personal Injury (350)
- [ ] Wrongful Death (360)
- [ ] Other (399)

Real Property
- [ ] Claim & Delivery (400)
- [ ] Condemnation (410)
- [ ] Foreclosure (420)
- [ ] Mechanic's Lien (430)
- [ ] Partition (440)
- [ ] Possession (450)
- [ ] Building Code Violation (460)
- [ ] Other (499)

Inmate Petitions
- [ ] PCR (500)
- [ ] Mandamus (520)
- [ ] Habeas Corpus (530)
- [ ] Other (599)

Administrative Law/Relief
- [ ] Reinstate Drv. License (800)
- [ ] Judicial Review (810)
- [ ] Relief (820)
- [ ] Permanent Injunction (830)
- [ ] Forfeiture-Petition (840)
- [ ] Forfeiture—Consent Order (850)
- [ ] Other (899)

Judgments/Settlements
- [ ] Death Settlement (700)
- [ ] Foreign Judgment (710)
- [ ] Magistrate's Judgment (720)
- [ ] Minor Settlement (730)
- [ ] Transcript Judgment (740)
- [ ] Lis Pendens (750)
- [ ] Transfer of Structured Settlement Payment Rights Application (760)
- [ ] Confession of Judgment (770)
- [ ] Petition for Workers Compensation Settlement Approval (780)
- [ ] Other (799)

Appeals
- [ ] Arbitration (900)
- [ ] Magistrate-Civil (910)
- [ ] Magistrate-Criminal (920)
- [ ] Municipal (930)
- [ ] Probate Court (940)
- [ ] SCDOT (950)
- [ ] Worker's Comp (960)
- [ ] Zoning Board (970)
- [ ] Public Service Comm. (990)
- [ ] Employment Security Comm (991)
- [ ] Other (999)

Special/Complex /Other
- [ ] Environmental (600)
- [ ] Automobile Arb. (610)
- [ ] Medical (620)
- [ ] Other (699)
- [ ] Pharmaceuticals (630)
- [ ] Unfair Trade Practices (640)
- [ ] Out-of State Depositions (650)
- [ ] Motion to Quash Subpoena in an Out-of-County Action (660)
- [ ] Sexual Predator (510)

Submitting Party Signature: Mona Lisa Wallace **Date:**

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	C/A No.
		2015CP4602155
Charlotte Gaye Smith an individual and Gary Dean Smith, her spouse,	)	
Plaintiffs,	)	
V.	)	
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.;	)	Asbestos Lawsuit
Covil Corporation;	)	Jury Demand on all Issues
Daniels International Corporation;	)	
Fluor Daniels, Inc., f/k/a Daniels Construction Company, Inc.;	)	
Fluor Daniels Services Corporation;	)	
Foster Wheeler Energy Corporation;	)	
General Electric Company;	)	
Metropolitan Life Insurance Company, a wholly-owned subsidiary of MetLife Inc.;	)	
Presnell Insulation, Inc.;	)	
Resolute FP US, INC.;	)	
Riley Power, Inc., Individually and as Successor-in-Interest to Babcok Borsig Power, Inc., and Riley Stoker Corporation, Individually and as Successor-in-Interest to D.B. Riley;	)	
Travelers Indemnity Company as successor-in-interest to USF&G f/k/a United States Fidelity and Guaranty Company;	)	
Trane U.S., Inc., f/k/a American Standard, Inc., f/k/a American Radiator & Standard Manufacturing Company;	)	

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2015 JUL 20 PM 1:15
DAVID A. HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

Uniroyal, Inc., f/k/a United States Rubber
Company, Inc.;
AND
United Conveyor Corporation,

Defendants.

COMPLAINT

NOW COMES the Plaintiffs, CHARLOTTE GAYE SMITH and GARY DEAN SMITH, citizens and residents of the State of South Carolina, through their counsel and sues the Defendants and alleges as follows:

BACKGROUND FACTS

1. Plaintiffs are citizens and residents of the State of South Carolina.

2. The Defendant, **CBS Corporation A Delaware Corporation f/k/a Viacome, Inc., Successor By Merger To CBS Corporation, A Pennsylvania Corporation, f/k/a Westinghouse Electric Corporation,** is a corporation incorporated under the laws of the State of Delaware, having its principal place of business in the State of Pennsylvania, and can be served with process at Registered Agent, CT Corporation System, 75 Beattie Place, Two Insignia Financial Plaza, Greenville, SC 29601.

3. The Defendant, **CNA Holdings, Inc., f/k/a Hoechst Celanese Corporation**, is a corporation incorporated under the laws of the State of Delaware, having its principal place of business in the State of Texas, and can be served with process at Registered Agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC 29223.

4. The Defendant, **Celanese Corporation f/k/a Hoechst Celanese Corporation (sued individually and as successor in-interest-to Fiber Industries, Inc.)**, is a corporation incorporated under the laws of the State of Delaware, having its principal place of business in the State of Texas, and can be served with process at Registered Agent, The Corporation Trust Company, 1209 Orange Street, Wilmington, DE 19801.

5. The Defendant, **Cleaver Brooks, Inc., Individually And As Successor-In-Interest To Aquachem**, is a corporation incorporated under the laws of the State of Delaware, having its principal place of business located in the State of Georgia, and can be served with process at Registered Agent, Corporation Service Company, 1703 Laurel Street, Columbia, SC 29201.

6. The Defendant, **Covil Corporation,** is a corporation incorporated under the laws of the State of South Carolina, having its principal place of business located in the State of South Carolina, and can be served with process at Covil Corporation c/o Jim Covil, 5 Woodfern Circle, Greenville, SC 29615 or at Registered Agent Greenville

Process Service, Greengate Office Park, 25 Woods Lake Rd, Ste 216, Greenville, SC 29607.

7. The Defendant **Daniels International Corporation** is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in South Carolina, and can be served with process at its office at 100 Fluor Daniels Drive, Greenville SC 29607, or through its South Carolina registered agent, John R. Reynolds, 100 Fluor Daniels Drive, Greenville SC 29607.

8. The Defendant **Fluor Enterprises, Inc., f/k/a Fluor Daniels, Inc., f/k/a Daniels Construction Company, Inc.** is a corporation organized and existing under the laws of the State of California, and can be served with process at its office at 3 Polaris Way, Aliso Viejo, CA 92698, or through its South Carolina registered agent, Corporation Service Company, 1703 Laurel Street, Columbia SC 29201.

9. The Defendant **Fluor Daniels Services Corporation** is a corporation organized and existing under the laws of the State of Delaware and can be served with process at its office at 100 Fluor Daniels Drive, Greenville SC 29607, or through its South Carolina registered agent, Corporation Service Company, 1703 Laurel Street, Columbia SC 29201.

10. The Defendant, **Foster Wheeler Energy Corporation**, is a corporation incorporated under the laws of the State of Delaware, having its principal place of business located in New Jersey, and can be served with process Registered Agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC, 29223.

11. The Defendant, **General Electric Company**, is a corporation incorporated under the laws of the State of New York, having its principal place of business located in the State of Connecticut, and can be served with process Registered Agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC, 29223.

12. The Defendant **Metropolitan Life Insurance Company** is a corporation organized and existing under the laws of the State of New York with its principal place of business in New York, and can be served with process at its office at 200 Park Ave., New York, NY 10166, or at its office at One Madison Avenue, New York NY 10010.

13. The Defendant, **Presnell Insulation, Inc.**, is a corporation incorporated under the laws of the State of North Carolina, having its principal place of business located in North Carolina, and can be served with process at Registered Agent, Jackson T. Presnell 3717 Flowerfield Rd., Charlotte, NC 28210.

14. The Defendant, **Resolute FP US, Inc. f/k/a Bowater**, is a corporation incorporated under the laws of the State of Delaware, having its principal place of business located in Montreal, Quebec, and can be served with process at Registered Agent, Corporation Service Company, 1703 Laurel Street, Columbia, SC 29201.

15. The Defendant, **Riley Power, Inc., Individually and as Successor-in-Interest to Babcok Borsig Power, Inc., and Riley Stoker Corporation, Individually**

and as Successor-in-Interest to D.B. Riley; is a corporation incorporated under the laws of the State of Massachusetts, having its principal place of business located in the State of Massachusetts, and can be served with process Registered Agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC, 29223.

16. The Defendant, **Trane U.S. Inc., f/k/a American Standard, Inc., f/k/a American Radiator & Standard Manufacturing Company**, is a corporation incorporated under the laws of the State of Delaware, having its principal place of business located in Wisconsin, and can be served with process at Registered Agent, CT Corporation System, Registered Agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC, 29223.

17. The Defendant **Uniroyal, Inc., f/k/a United States Rubber Company, Inc.** is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business in Connecticut, and can be served with process at its office at c/o Uniroyal Holding, Inc., 70 Great Hill Road, Naugatuck CT 06770, or at P.O. Box 19001, Greenville, SC 29602-9001.

18. The Defendant, **United Conveyor Corporation**, is a corporation incorporated under the laws of the State of Illinois, having its principal place of business located in Illinois, and can be served with process United Conveyor Corporation Corporate Headquarters: 2100 Norman Drive W., Waukegan, IL 60085 or at Registered Agent, Prentice Hall Corporation, 2019 Park Street, Columbia, SC 29201.

19. The Defendant, **Travelers Indemnity Company as successor-in-interest to USF&G f/k/a United States Fidelity and Guaranty Company**, is a corporation incorporated under the laws of the State of North Carolina, having its principal place of business located in North Carolina, and can be served with process at Registered Agent, D. Wayne McClure, 220 Stoneridge Dr., Columbia, SC 29210.

20. Defendants are 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.

21. 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.

22. The Plaintiff Charlotte Gaye Smith is 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 Plaintiff Charlotte Gaye Smith.

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

24. Plaintiff was married to her first husband, Lewis Clifford Childers, from 1967 to 1991. From 1968 to 1975, Mr. Childers was employed by Daniels 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.

25. Plaintiff, Charlotte Gaye Smith, was exposed to asbestos dust and fibers from products, services, and goods manufactured, distributed, or sold by Defendants for use at Plaintiff'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 Plaintiffs 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, Plaintiff Charlotte Gaye Smith developed the asbestos cancer known as Mesothelioma.

26. Defendants owned, operated, or supplied asbestos containing materials or services to worksites in South Carolina, at which Plaintiff'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.

27. 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.

28. Plaintiff 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.

29. Plaintiff 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.

30. 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 Plaintiffs are York County, South Carolina citizens and residents. Defendants conduct substantial business and have facilities within the State of South Carolina.

31. 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.

32. Mesothelioma is a progressive, insidious disease and Plaintiff'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..

33. Plaintiff has obtained and submits herewith as **Exhibit A** hereto, 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 is attached and counsel may request an unredacted report.

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

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

35. 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.

36. 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 Plaintiffs 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.

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

38. Defendants owned, operated, or supplied worksites in South Carolina, at which Plaintiff's former husband worked, or entered for purposes of work, and from which he and subsequently Plaintiff were 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.

39. Defendants knew, or should have known, that Plaintiff Charlotte Gaye Smith, or others similarly situated, would come in contact with the asbestos containing products for which Defendant 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.

40. Defendants knew, or should have known, that Plaintiff 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.

41. Plaintiff, 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 Plaintiff, 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.

42. 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.

43. 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.

44. The illness and disability of the Plaintiff are 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 Plaintiff's body, lungs, respiratory system, skin and health.

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

46. 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 Plaintiff of the dangerous characteristics of their asbestos and asbestos-containing products;

(b) Failed or omitted to provide the Plaintiff'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 Plaintiff 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 Plaintiff 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 Plaintiff;

(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 Plaintiff 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.

47. 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.

48. 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 Plaintiff 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 Plaintiff or her former husband.

49. 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.

50. Plaintiff 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 Plaintiff.

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

SECOND CAUSE OF ACTION
(Implied Warranty of Merchantability)

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

53. 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.

54. 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.

55. As a direct and proximate result of the breach of the implied warranty of good and merchantable quality, Plaintiff 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)

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

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

58. 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.

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

60. 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 Plaintiff'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 Plaintiff. The above was the proximate cause of the severe damages sustained by the Plaintiff as herein set forth.

FOURTH CAUSE OF ACTION
(Punitive Damages)

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

62. During the pertinent times, Defendants had actual knowledge of the dangers to individuals similarly situated to the Plaintiff of asbestos exposure, nevertheless, Defendants deliberately, intentionally and purposefully withheld such information, thus denying Plaintiff 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 Plaintiff concerning the hazards of asbestos exposure.

63. The foregoing deliberate, intentional and purposeful acts of the Defendants were the direct and proximate cause of Plaintiff'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)

64. The Defendant, Travelers Indemnity Company as successor in interest to USF&G f/k/a United States Fidelity and Guaranty Company (herein after referred to as "USF&G") is, upon information and belief, a corporation organized and existing under the laws of Minnesota and has, at all times relevant to this action, been authorized to conduct business and has in fact conducted business in North Carolina and South Carolina.

65. The Plaintiff's former husband worked at various job sites at which asbestos-containing products were provided and used by companies insured by USF&G including Daniels International Corporation f/k/a Daniels Construction Company ("Daniels"), and Fluor Enterprises Inc. f/k/a Fluor Daniels, Inc ("Fluor")(herein after referred to as "Daniels"). These contracting companies purchased liability and workers compensation insurance from USF&G from approximately 1952 until at least 1987. The Plaintiff's former spouse was employed in North Carolina and South Carolina by Daniels 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.

66. The Plaintiff's former husband's direct employer from 1968 until 1975 was Daniels. He was an insulator. His job required that he work along with and in the direct vicinity of Daniels 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 Daniels or USF&G of the hazards of the asbestos substances to which he was injuriously being exposed.

67. 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 Daniels and, as part of that coverage, provided safety services to Daniels, USF&G owed a duty to Daniels employees, their families, and their co-workers, such as the Plaintiff's former husband, who were present at Daniels job sites and worked in the direct vicinity of asbestos-containing products.

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

69. 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.

70. 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.

71. South Carolina, one of the states in which the Plaintiff'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 Plaintiff 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.

72. 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 Daniels 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 Daniels job sites.

73. 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 Daniels 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.

74. 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.

75. 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."

76. 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 Plaintiff.

77. The USF&G representative that provided the safety services to some of the job sites where the Plaintiff'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.

78. At the time that USF&G insured Daniels and subsequently Fluor Daniels, Daniels was one of the largest construction companies in the Southeast. By the mid-1970s, Daniels 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 Daniels to be one of its largest customers.

79. Upon information and belief, in December 1955, Daniels and USF&G had a meeting to discuss USF&G providing coverage for all of Daniels' insurance needs. As a result of this meeting and subsequent agreements, in 1956 UFS&G became Daniels' main insurance provider and the policies included comprehensive general liability workers' compensation as well as umbrella and excessive coverages. Daniels 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 Daniels. USF&G, at all times during Plaintiff's former husband's employment, assumed the responsibility for providing a safe working environment for any individual who worked at facilities in which Daniels employees were present and working with asbestos yet it did nothing to mitigate or eliminate exposure to asbestos fibers.

80. Daniels 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.

81. 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.

82. The Plaintiff 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 Daniels to provide safety. Daniels' contract with facilities provided that Daniels 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 Daniels employees and contractors, whose actions were substantially attributable to the failure of USF&G to properly educate, supervise, warn, and train Daniels employees and others in safe work practices when handling asbestos materials.

83. While Daniels 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, Daniels 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.

84. The pertinent policies negotiated between Daniels and USF&G during the coverage periods were usually for one year. USF&G issued policies to Daniels, its subsidiaries and additional insureds from 1956 until 1987. Upon information and belief, the relevant contracts between USF&G and Daniels 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
CEP 014020501	11/1/81-82
CEP 19906931	11/1/82-83

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

86. 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 Daniels job sites; ultimately Daniels safety performance awards as early as 1963 were determined by the information maintained and coordinated by USF&G.

87. 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.

88. 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 Daniels workers and supervisors along with a conclusion conference.

89. USF&G's loss control coordinator worked closely with Daniels 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.

90. The work-related injuries and diseases for Daniels employees were filed with USF&G on USF&G-prepared forms and Daniels provided specific information regarding injuries and claims directly to the Charlotte USF&G office. Accordingly, USF&G knew and/or should have known that Daniels 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.

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

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

93. USF&G's active involvement in handling, defending, and monitoring the asbestos-related claims made against Daniels included preparing, providing and summarizing for Daniels 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.

94. USF&G recognized that with respect to workers such as Plaintiff'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.

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

96. 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 Plaintiff to asbestos.

97. Daniels acted negligently at the plants that Plaintiff'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.

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

99. 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.

100. 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.

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

102. The injuries sustained by the Plaintiff was a reasonably foreseeable result of the negligent acts of the Defendants, their responsible agents, servants and/or employees.

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

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

105. 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 Plaintiff's former husband, such that the law imposed upon Defendant an obligation to act in such a way that the Plaintiff 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 Daniels' activities reflected a close connection between the Defendant's conduct and the asbestos exposures that occurred and subsequently injured the Plaintiff;

(d) Defendant undertook for consideration to render services to Daniels 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 Daniels to the Plaintiff's former husband; and Plaintiff was harmed due to Plaintiff's former husband, or Daniels' reliance on the Defendant USF&G's proper performance of its duties.

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

106. 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 Plaintiff's former husband employer with respect to asbestos in the workplace, and said wantonness and/or negligence was a proximate cause of Plaintiff's injuries described herein;

(b) Wantonly and/or negligently failed to warn Plaintiff's former husband and Plaintiff 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 Plaintiff'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 Plaintiff 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 Plaintiff 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 Plaintiff and Daniels co-workers and contractors, the Plaintiff developed an asbestos-related disease and is damaged.

SIXTH CAUSE OF ACTION
(Conspiracy, Concert of Action – Defendant Metropolitan Life Insurance Company)

107. Plaintiff incorporates by reference the allegations contained in paragraphs 1-63 as though fully set forth herein.

108. Beginning in the late 1920's, conspirators including Defendant Metropolitan Life Insurance Company ("Met Life"), as well as Johns-Manville, Raybestos-Manhattan and others, undertook a duty to conduct research on asbestos-

related health problems and to inform the public about any health risks that could be associated therewith. In or about 1929, Met Life, through its agents and employees acting within the scope of their agency and employment, including but not limited to Dr. Anthony J. Lanza ("Lanza"), began an investigation of asbestos-related health hazards. In 1935, this study was altered by Lanza, with the full knowledge of Met Life, at the request of and in concert with the asbestos industry in order to wrongly influence the United States Public Health Service, the United States medical community and various state legislatures.

109. Thereafter, Defendant Met Life through the acts and omissions of its employees, most notably Lanza, undertook a series of activities with various members of the asbestos industry including but not limited to Johns-Manville, Raybestos-Manhattan/ Raymark Industries, Inc., United States Gypsum, American Brake Blok/Abex, and others to suppress and misrepresent the dangers of exposure to asbestos dust to employees of Met Life's insureds and the general public and the medical community.

110. The conspirators through their agent, Lanza of Met Life, made a concerted effort to discredit and to terminate the stund experiments of certain scientists who were developing data of profound importance for the area of public health in relation to the cancer hazard which existed for workers and bystanders in the asbestos industry.

111. As a direct and proximate result of Met Life's intentional publication of deceptive and misleading medical data and information, and other conspiratorial acts and omissions, Defendant caused asbestos to be used in the occupational settings from which Plaintiff's former husband breathed asbestos dust which resulted in Plaintiff's injuries. Defendant Met Life, through its agents and employees and officers, aided and abetted and gave substantial assistance to Johns-Manville and Raybestos-Manhattan in their tortious selling of asbestos products and voluntarily undertook a duty to warn the United States Public Health Service, the medical community, and others about the danger of asbestos and consciously and negligently misrepresented the dangers of asbestos to the United States Public Health Service, the medical community, and others, all to the ultimate harm of Plaintiff herein.

112. Defendant Met Life rendered substantial aid and assistance to the manufacturers of asbestos-containing products to which Plaintiff was exposed, and such assistance by Met Life aided and abetted the negligence and the marketing of unreasonably dangerous asbestos-containing products by such manufacturers which proximately caused Plaintiff's illness.

113. In both conducting tests and in publishing their alleged results, Met Life failed to exercise reasonable care to conduct or publish complete, adequate and accurate tests of the health effects of asbestos. Met Life also caused to be published intentionally false, misleading, inaccurate and deceptive information about the health effects of asbestos exposure.

114. Plaintiff's former husband unwittingly and justifiably relied upon the thoroughness of Met Life's tests and information dissemination, the results of which Met Life published in leading medical journals.

115. As a direct and proximate contributing result of Met Life's failures to conduct or accurately publish adequate tests or disseminate accurate and truthful information, after undertaking to do so; (i) the risk of harm to Plaintiff from asbestos exposure was increased, and (ii) Plaintiff suffered the injuries described herein.

116. In failing to test fully and adequately for the adverse health effects from exposure to asbestos; in delaying the publication of such results; and in falsely editing such results as were obtained; in suppressing relevant medical inquiry and knowledge about those hazards to promote the sale and distribution of asbestos as a harmless product; and in collaborating with the other Defendants materially to understate the hazards of asbestos exposure, all for its own profit and gain, Met Life acted recklessly, wantonly, and in calculated disregard for the welfare of the general public, including Plaintiff.

117. Additionally and alternatively, as a direct and proximate result of Met Life's actions and omissions, Plaintiff and her former husband were caused to remain ignorant of all the dangers of asbestos resulting in Plaintiff's former husband, his employers, his former wife, the Plaintiff, Charlotte Gaye Smith, and the general public to be unaware of the true and full dangers of asbestos, depriving Plaintiff of the opportunity to decide for herself whether she wanted to take the risk of being exposed to asbestos, denied Plaintiff the opportunity to take precautions against the dangers of asbestos and proximately caused Plaintiff's damages herein.

118. During the relevant time period the Plaintiff was exposed to and did inhale and/or ingest asbestos dust, fibers, and particles, which dust, fibers, and particles came from the asbestos or asbestos-containing products which were mined, milled, manufactured, fabricated, supplied, and/or sold by the Johns Manville and/or Raybestos/Raymark.

119. Defendant, Met Life, together with Manville, Raymark and other persons and entities, known and unknown at times relevant hereto, engages in a conspiracy or concert of action to inflict injury on the Plaintiff, and to withhold, alter, suppress and misrepresent information about the health effects of asbestos exposure. One or more of said conspirators did cause tortious injury to the Plaintiff or her former husband in the course of or as a consequence of the conspiracy of concert of action. At least the following enumerated acts were undertaken by the conspirators in the course of and in furtherance of the conspiracy or concert of action.

(a) In 1932, Met Life, through Lanza and others, assisted Manville with medical examinations of over 1,000 employees of Manville's factory in Manville, New Jersey. The report of this study shows that a large percentage of the employees suffered from asbestosis including employees not directly involved in the manufacturing process. This 1932 medical survey was not published in the medical literature and, therefore, was

unavailable to scientists studying the issue of asbestos-related disease. Further collaboration between Manville and Met Life continued the cover-up.

(b) Beginning in approximately 1934, Manville, through its agents, Vandiver Brown and Attorney J.C. Hobart, suggested to Lanza, Associate Director of Met Life, which was then insurer of Manville and Raymark, that Lanza publish a study on asbestosis in which Lanza would affirmatively misrepresent material facts about the health consequences of asbestos exposure. This was accomplished through intentional deletion of Lanza's description of asbestosis as 'fatal' and through other selective editing that affirmatively misrepresent asbestosis as a disease process less serious than it actually is and was known to be. As a result, Lanza's study was published in the medical literature in this misleading fashion in 1935. The conspirators were motivated, in part, to effectuate this fraudulent misrepresentation and fraudulent nondisclosure by the desire to influence proposed legislation to regulate asbestos exposure and to provide a defense in lawsuits involving Manville, Raymark, and Met Life as insurer. Furthermore, upon information and belief, it is alleged that Met Life, at all times relevant hereto, had substantial monetary investments in Manville and Raymark, among other asbestos product manufacturers and distributors.

(c) In 1936, the conspirators or some of them entered into an agreement with the Saranac Laboratories. Under this agreement, these conspirators acquired the power to decide what information Saranac could publish about asbestos disease and to control in what form such publications would occur. This agreement gave these conspirators power to affirmatively misrepresent the results of the work at Saranac, and also gave these conspirators power to material facts included in any study. On numerous occasions thereafter, the conspirators exercised their power to prevent Saranac scientists from disclosing material scientific data, resulting in numerous misstatements of fact being made at scientific meetings.

(d) By November 1948, or earlier, Manville, Met Life (acting through Lanza), Raymark, and others decided to exert their influence to materially alter and misrepresent material facts about the substance of research started by Dr. Leroy Gardner at the Saranac Laboratories beginning in 1936. Dr. Gardner's research involved carcinogenicity of asbestos in mice and also included an evaluation of the health effects of asbestos on humans with a critical review of the then-existing standards of dust exposure for asbestos and asbestos products.

(e) At a meeting on November 11, 1948, these conspirators and others intentionally and affirmatively determined that Dr. Gardner's work should be edited to specifically delete material facts about the cancer-causing propensities of asbestos and the health effects of asbestos on humans and they determined that only an edited version would be published. These conspirators thereby fraudulently misrepresented the risks of asbestos exposure to the public, in general, and to the class of persons exposed to asbestos, including the Plaintiff and her former husband.

(f) As a direct result of influence exerted by the above described conspirators, Dr. Arthur Vorwald published Dr. Gardner's edited work in the Journal of Industrial

Hygiene, AMA Archives of Industrial Hygiene and Occupational Health in 1951 in a form that stressed those portions of Dr. Gardner's work that the conspirators wished stressed, but which omitted references to human asbestosis and cancer, thereby fraudulently and affirmatively misrepresenting the extent of the risks. The conspirators affirmatively and deliberately disseminated this misleading Vorwald publication to universities, libraries, government officials, agencies and others.

(g) Such action constituted a material affirmative misrepresentation of the material facts involved in Dr. Gardner's work and resulted in creating an appearance that inhalation of asbestos was a less serious health concern than Dr. Gardner's unedited work indicated.

(h) For many decades, Met Life, individually, jointly and in conspiracy with Manville and Raymark, have been in possession of medical and scientific data, literature, and test reports which clearly indicated that the inhalation of asbestos dust and fibers resulting from the ordinary foreseeable use of said asbestos-containing products and/or machinery requiring or calling for the use of asbestos or asbestos-containing products were unreasonably dangerous, hazardous, deleterious to human health, carcinogenic, and potentially deadly.

(i) Despite the medical and scientific data, literature and test reports possessed by and available to Met Life, individually and in conspiracy with Manville and Raymark, Fraudulently, willfully and maliciously withheld, concealed and suppressed said medical and scientific data, literature and test reports regarding the risks of asbestosis, cancer, mesothelioma, and other illnesses and diseases from Plaintiff's former husband who using and being exposed to Manville or Raymark asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products; caused to be released, published and disseminated medical and scientific data, literature and test reports containing information and statements regarding the risks of asbestosis, cancer, mesothelioma and other illnesses and diseases, which Metropolitan, Manville and Raymark knew were either incorrect, incomplete, outdated and misleading; distorted the results of medical examinations conducted upon workers who were using asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products and being exposed to the inhalation of asbestos dust and fibers by falsely stating and/or concealing the nature and extent of the harm which workers suffered; and failed to adequately warn the Plaintiff's former husband of the dangers to which he was exposed when they knew of the dangers.

(j) By the false and fraudulent representations, omissions, failures, and concealments set forth above, Met Life, Manville and Raymark, individually, jointly, and in conspiracy with each other, intended to induce the Plaintiff's former husband to rely upon said false and fraudulent representations, omissions, failures, and concealments, to continue to expose themselves to the dangers inherent in the use of and exposure to their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products. Said misrepresentations were false, incomplete, and misleading and constitute negligent misrepresentations as defined by Sections 311 and 522 of the Restatement (Second) of Torts.

120. Plaintiff's former husband reasonably and in good faith relied upon the false and fraudulent representations, omissions, failures, and concealments made by Met Life, Manville, and Raymark regarding the nature of their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

121. As a direct and proximate result of the conspiracy and concert of action between Met Life, Manville and Raymark, the Plaintiff's former husband has been deprived of the opportunity of informed free choice and connection with the use of and exposure to Manville and Raymark's asbestos and asbestos-containing products, and therefore continued to work with and be exposed to the co-conspirator corporation's asbestos and asbestos-containing products and as a result brought home on his clothes, hair, shoes, and in his case asbestos dust or fibers contracted asbestos-related diseases and other conditions, and/or aggravated pre-existing conditions, as a result of which the Plaintiff has been damaged.

DAMAGES

122. As a result of the development of mesothelioma caused by breathing asbestos dust and fibers from defendants' asbestos-containing products and exposures due to defendants' negligent acts and omissions, listed herein and that will be further identified in this suit, Plaintiff has suffered and sustained very serious life threatening injuries, specifically mesothelioma, requiring extensive and painful medical treatment.

123. Plaintiff has further suffered great pain and mental anguish as a direct result of the aforesaid injuries. The illness and disability of Plaintiff was the direct and proximate result of the negligence, recklessness and willfulness of the Defendants, in that each produced, sold and otherwise put into the stream of interstate commerce, asbestos and asbestos-related materials which the Defendants knew were deleterious, poisonous and highly harmful.

124. Plaintiff believes that her injuries and illnesses are permanent in nature and that she will be forced to suffer same for the remainder of her life, that her enjoyment of life has been greatly impaired and, further, that her expected life span has been greatly shortened.

125. Plaintiff alleges that as a result of the aforesaid illnesses, she has been forced to incur large amounts of medical expenses by way of doctor and drug bills and verily believes that she will be forced to incur additional expenses in an effort to treat her illnesses as aforesaid, all to Plaintiff's damage, compensatory and punitive in amounts to be determined by the trier of fact.

126. As a direct and proximate result of the Defendants' conduct as alleged above, the Plaintiff has suffered a dramatic reduction of her life expectancy, incurred great mental and physical pain and suffering, sustained lost wages and lost earning capacity, incurred medical expenses, and her enjoyment of life has been greatly impaired, which damages are continuing in nature.

SEVENTH CAUSE OF ACTION
LOSS OF CONSORTIUM

127. The factual and jurisdictional allegations of Paragraphs 1 through 126 are realleged and incorporated herein as if restated verbatim.

128. Plaintiff Gary Dean Smith is the spouse of Charlotte Gaye Smith.

129. Due to the wrongful and tortuous acts of Defendant, Plaintiff Gary Dean Smith has suffered pecuniary loss due to the loss of services of his wife, Charlotte Gaye Smith.

130. Plaintiff Gary Dean Smith has suffered and will continue to suffer in the future, damages including loss of affection, society, comfort, support, consortium, companionship and the protection of his wife.

131. Defendant's wrongful conduct, alleged above, was a direct and proximate cause of the damages suffered by Plaintiff Gary Dean Smith.

WHEREFORE, Plaintiff Gary Dean Smith demands judgment against Defendant for compensatory damages for a fair and reasonable amount as determined by the jury and for such other and further relief, both at law and in equity, as the Court may deem just and proper.

PETITION FOR EXPEDITED TRIAL

132. Pursuant to S.C. Code § 44-135-80(B), Plaintiff hereby petitions the Court requesting that a trial date be set on an expedited basis. Plaintiff shows that there is good cause for such an expedited trial setting in that the Plaintiff while grievously ill, is living and wishes to have her claims promptly adjudicated. Further, Defendants will not be prejudiced by such an expedited trial setting.

PETITION FOR EXPEDITED DEPOSITION

133. Pursuant to S.C. R. Civ. P. 30(a)(1), Plaintiff hereby petitions the Court requesting that her deposition be conducted on an expedited basis.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs prays to ask that this Court:

A. Award the Plaintiffs actual and compensatory damages, in an amount to be determined at trial, for the wrongful, negligent, reckless and willful acts of the Defendants;

B. Award the Plaintiffs pre-judgment and post-judgment interest to the extent allowable by law;

C. Award the Plaintiffs punitive damages to the extent allowable by law;

D. Award the Plaintiffs' attorney fees and costs to the extent allowable by law; and

E. For such other and further relief as may be just and proper.

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

Respectfully submitted, this the 17 day of July 2015.

WALLACE AND GRAHAM, P.A.

By: Mona Lisa Wallace

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Attorneys for the Plaintiffs

DREXEL UNIVERSITY
School of
Public Health

Department of Environmental and Occupational Health

Arthur L. Frank, MD, PhD
Professor, Chair

June 18, 2015

William M. Graham, Esq.
Wallace and Graham, P.A.
Attorneys at Law
525 North Main St.
Salisbury, NC 28144

Re: [redacted]Smith
DOB: [redacted]

Dear Mr. Graham:

I am in receipt of medical records in the case of [redacted] and have been asked by you to review them and render my judgment regarding any evidence of an asbestos-related disease.

I am currently employed as Professor of Public Health at the Drexel University School of Public Health in Philadelphia. I received my medical degree from the Mount Sinai School of Medicine in 1972. During this time and thereafter, I worked with Dr. Irving Selikoff regarding health concerns associated with exposure to asbestos. From 1973 to 1975, I served two years at the Lung Cancer Branch at the National Cancer Institute at the National Institutes of Health in Bethesda, Maryland as a Commissioned Officer in the United State Public Health Service. I then returned to Mount Sinai and completed two residencies: one in internal medicine and the other in occupational medicine. I became board-certified in internal medicine in 1978 and in occupational medicine in 1979. I also have a Ph.D. degree in biomedical sciences. From 1977 to 1983, I served on the faculty at Mt. Sinai.

In 1983, I accepted the position of Chairman and Professor of Preventive Medicine and Environmental Health at the University of Kentucky, College of Medicine and remained in that position until 1994, when I became Vice President for Medical Education at the University of Texas Health Science Center at Tyler. In 2002, I became the Chairman and Professor for the Department of Environmental and Occupational Health at the Drexel School of Public Health in Philadelphia, Pennsylvania. I am also Professor of Medicine in the Division of Pulmonary Medicine at Drexel.

[redacted] Tel: [redacted] Fax: [redacted]

I have held a number of positions with the United States government. I was on the Board of Scientific Counselors and Chair of the Grant Review Panel for the National Institute for Occupational Safety and Health (NIOSH). I do consulting work for federal agencies including NIOSH, OSHA and the EPA on issues involving general occupational and environmental exposures. In addition, I was appointed to the Air Pollution Control Board in the City of Philadelphia.

In addition to the United States government, I have been a consultant to the governments of China, Thailand, India, Brazil, and Israel, among others, regarding asbestos-related issues. In the 1980s, I was elected to the Collegium Ramazzini, which is an international organization of health care professionals. Admission in this group is by election only and limited to 180 members. I have been part of this organization for more than 25 years and held a position on the executive board. Currently, my time is divided between research, teaching, and service. My department research activities focus on occupational toxins. I also teach introductory courses in environmental and occupational health, occupational cancers, and occupational toxicology.

The medical records of [redacted] and [redacted] were reviewed. The respective reports establish that [redacted], a 66 year old white female nonsmoker has a history of bystander asbestos exposure with documented asbestosis and now, in May 2015, Mesothelioma. [redacted], starting in December 2013, was seen by [redacted] for evaluation of pleural effusion and dyspnea. In December of 2013 she developed dyspnea and productive cough. She began evaluation and has had multiple CT and pulmonary function testing with [redacted] at Carolina Pulmonary Physicians. Her May 1, 2015 CT scan revealed the she had at the interior left lower lobe a 2.5 cm pleural-based mass. A May 7, 2015 CT guided left Pleural Biopsy confirmed that she has malignant mesothelioma. From the records sent she also has asbestosis.

It is my opinion and diagnosis, to a reasonable degree of medical certainty, that [redacted] based upon her first husband's work history as documented in the medical records, was exposed to respirable asbestos fibers and has an asbestos-related malignant mesothelioma. It is my further opinion, to a reasonable degree of medical certainty, that [redacted] exposure to asbestos was a proximate cause of the diagnosed mesothelioma, and that [redacted] illness is not more probably the result of other causes. This is clearly shown by [redacted] first husband's employment as an insulator during the relevant time periods. Specifically, the records indicate that he had a career as an insulator which, in the time period he worked, would place him around asbestos materials used to insulate pipes, boilers, turbines, valves, equipment and other asbestos products. The cumulative exposure he had to asbestos, from any and all products during his work history, containing any and all asbestos fiber types and then bringing it home on his clothes, which his wife shook and washed regularly, contributed to her developing mesothelioma.

The hazards of asbestos dust brought home on clothes and other work and personal items have been known for many years as is reflected by medical articles, studies and industry materials. Bystander and household exposures have also been recognized as a source of respirable asbestos fibers in the home for quite some time.

Should you have any questions about this matter please feel free to contact me.

Sincerely yours,

Arthur L. Frank

Arthur L Frank, M.D, Ph.D.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)

Charlotte Gaye Smith et al) C.A. No.: 2015-CP-46-2155

Plaintiffs,) **ANSWER OF DEFENDANT COVIL CORPORATION TO PLAINTIFF'S COMPLAINT**

v.)

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, et al)

Defendants.) (Jury Trial Demanded)

FILED-RECEIVED
2015 SEP 10 AM 11:52
DAVID HAMILTON
C.C.C.P. & G.S.
YORK, SC

The Defendant Covil Corporation (hereinafter "Covil"), answering the Plaintiffs' Complaint, alleges and says as follows:

FOR A FIRST DEFENSE

1. Defendant is without sufficient information to form a belief as to the truth of the allegations of paragraph 1 and, therefore, denies them.

2. Defendant denies the allegations contained in Paragraphs 2 through 5 to extent they pertain to it, and is without sufficient information to form a belief as to the allegations contained in Paragraphs 2 through 5 pertaining to co-defendants and therefore denies them.

3. Defendant admits so much of the allegations of Paragraph 6 as allege that it is a corporation incorporated under the laws of the State of South Carolina. The remaining allegations of paragraph 6 set forth legal conclusions which the Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies the remaining allegations of paragraph 6 of the Complaint.

4. Defendant denies the allegations contained in Paragraphs 7 through 33 to extent they pertain to it, and is without sufficient information to form a belief as to the allegations contained in Paragraphs 7 through 33 pertaining to co-defendants and therefore denies them.

5. Defendant denies the allegations contained in Paragraphs 34 through 131, including subparts, to extent they pertain to it, and is without sufficient information to form a belief as to the allegations contained in Paragraphs 34 through 131 pertaining to co-defendants and therefore denies them.

6. Defendant denies the allegations of the unnumbered paragraph, which begins with "WHEREFORE."

7. The allegations of Paragraphs 132 and 133 set forth one or more legal conclusions which the Defendant is required to neither admit nor deny. To the extent a response is deemed necessary, Defendant denies those allegations.

8. Defendant denies the allegations set forth in paragraphs A through E under the heading "PRAYER FOR RELIEF."

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

9. The Plaintiffs' Complaint fails to state a claim upon which relief may be granted and accordingly it should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

10. This Court lacks jurisdiction over Covil as a result of improper, and/or lack of, service of process; lack of subject matter jurisdiction; and/or lack of personal jurisdiction.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

11. Covil alleges that venue in this action is not proper and that this action should be transferred to the Greenville County Court of Common Pleas. Covil reserves its right to move for dismissal and/or transfer of the action based on improper and/or inconvenient venue and further reserves its right to seek application of the law of the appropriate venue on all issues.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

12. Covil alleges that the Plaintiffs' Complaint should be dismissed due to the Plaintiffs' lack of capacity.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

13. There is a lack of joinder of one or more parties who should or must be joined; without the joinder of these proper parties, complete relief cannot be accorded among those already made parties to this action.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

14. The claims set forth in the Complaint are barred by the applicable statutes of limitations and/or repose in this state or other states as may be applicable.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

15. The claims set forth in the Complaint are barred to the extent there is another action pending between the same parties for the same claim.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

16. Plaintiffs do not have capacity to bring this claim pursuant to Section 15-5-150 of the South Carolina Code of Laws, also referred to the South Carolina Door Closing Statute.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

17. Plaintiffs' Complaint should be dismissed for its failure to comply with the requirements of S.C. Code §44-135-10 et seq. also known as the Asbestos and Silica Claims Procedures Act of 2006 as the Plaintiffs have failed to make the prima facie showing required by the Act. In the alternative, the case should not be placed on any active trial docket and should not be the subject of any discovery until Plaintiffs comply with the provisions of the Act.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

18. Plaintiffs' claims are barred or reduced by the doctrines of res judicata, waiver, release, laches, and/or conditions precedent or subsequent.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

19. Plaintiffs' claims are barred or reduced by the applicable provisions of the Worker's Compensation Act, whether of this state or another.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

20. By virtue of the doctrine of judicial estoppel, the Plaintiffs are precluded from taking a position inconsistent with one taken with respect to the same facts in earlier litigation, if any, and are, therefore, precluded from alleging the material facts necessary to state a cause of action against this Defendant.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

21. Covil would show that even if Plaintiff suffered injuries and damages as set forth in the Complaint, which is admitted for the purposes of this defense only, then such injuries and damages were due to Plaintiff's own negligent, reckless, willful, wanton, and careless acts and conduct which combined and concurred with any willful, wanton, reckless, negligent or careless acts or conduct on the part of this defendant, which are specifically denied, and acted as a direct and proximate cause of the injuries and damages claimed to have been suffered by Plaintiff. Plaintiffs' claims are barred to the extent that Plaintiff's negligence is more than 50% of the negligence in this action. To the extent Plaintiff's contributory negligence and recklessness is less than 50% of the total negligence in this action, Plaintiffs' recovery should be reduced by the percentage of Plaintiff's negligence and recklessness.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

22. Covil alleges that if Plaintiffs would otherwise have proven the allegations of the Complaint against this defendant, then Plaintiff had actual knowledge of the alleged dangerous nature of the asbestos or asbestos-related products and voluntarily assumed the risks incident thereto in repeated unreasonable use and exposure to the asbestos or asbestos-related products and processes involved in the use of these insulation materials.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

23. Covil alleges that any asbestos-containing products which Plaintiff used and/or was exposed were misused, abused, not used in the manner in which they were intended to be used, and/or were used in a manner that was abnormal and not reasonably foreseeable and such

misuse proximately caused or contributed to Plaintiffs' alleged damages, injuries, and/or losses, if any.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

24. Covil would show that product or products claimed to contain asbestos were used contrary to any instructions and/or warnings accompanying those products.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

25. Covil would show that even if Plaintiff had suffered injuries as described, which is admitted for the purposes of this defense only, then such injuries were caused by the acts or omissions of third parties, including but not limited to the actions of unions, employers, manufacturers, distributors and others, and that these acts or omissions of third parties acted as a direct and proximate cause of Plaintiff's injuries in such a way as to constitute a superseding or intervening cause ending all liability on the part of this defendant.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

26. Covil alleges that if Plaintiff sustained the injuries and/or damages alleged, which is specifically denied, then such injuries and/or damages were proximately caused by the acts and/or omissions of Plaintiff's employers with respect to the maintenance of healthy and safe work sites and environments, which were under the exclusive control and possession of the employer(s).

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

27. Covil alleges that if Plaintiff sustained injuries as a result of exposure to asbestos or asbestos-containing products, which is denied, then such injuries were or may have been due

to exposures to products of manufacturers not named as Defendants in this action, including but not limited to product manufacturers which have taken advantage of the protections of the bankruptcy provisions of the United States Code.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

28. On information and belief, it is alleged that the employers of Plaintiff were negligent in the manner set out previously herein, and such negligence was at least a proximate cause of any injury done to Plaintiff by asbestos, if any, and such negligence of the employers joined and concurred with any alleged negligence of this defendant in producing any injuries and damages sustained by Plaintiff; further, as a result of said employers' negligence, this defendant is entitled to have the verdict, if any, reduced by the amount of any workers' compensation payments or like payments made to Plaintiff or on his behalf.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

29. Plaintiff was not exposed to any asbestos material through any act or omission of Covil or, if such exposure occurred, which is denied, such exposure was of such insufficient quantities, at such infrequent intervals, and for such short periods of time that any such exposure was de minimis and cannot be deemed a proximate cause of Plaintiffs' damages, if any, as a matter of law. Therefore, Covil denies that any alleged action or inaction on its part has damaged or injured the Plaintiff in any manner or at any time.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

30. At all times alleged in Plaintiffs' Complaint, the products alleged to have caused Plaintiff's injuries were designed, manufactured, sold, distributed, labeled and/or installed in

compliance with the then existing state of the art in the industry to which this defendant belonged.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

31. Covil had no duty to warn of and/or protect Plaintiffs from risks or dangers, if any, inherent in products that were distributed to the employers of Plaintiff, who were learned intermediaries or sophisticated users of such products, and upon whom this defendant reasonably relied to warn Plaintiff of the alleged dangerous characteristics inherent in any such products.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

32. The alleged injuries to Plaintiff occurred or were allegedly sustained prior to the enactment of § 15-73-10 of the South Carolina Code of Laws, Annotated, and Plaintiffs are, therefore, prohibited by law from asserting a cause of action based on strict liability.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

33. Covil would show that to the extent that the Complaint seeks to recover for injuries suffered in South Carolina, Plaintiffs' claims are barred by the provisions of S.C. Code Ann. §15-73-20.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

34. Covil alleges that Plaintiff was not a user or consumer of any products distributed and/or installed by this defendant within the meaning of § 15-73-10 of the South Carolina Code, Annotated, and therefore may not recover against this defendant in strict liability for either actual or punitive damages.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

35. Covil would show that Plaintiff was not in privity with it so that any claim for breach of warranty made against this defendant is barred.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

36. There are no allegations against this Defendant stated with sufficient particularity to constitute a cause of action for fraud, fraudulent concealment, concert of action, conspiracy, or the like meeting the requirement of Rule 9(b) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

37. Plaintiffs have failed, neglected and/or refused to mitigate their damages, if any, and therefore, Plaintiffs are barred from recovery of those damages which could have been avoided by the exercise of due diligence.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

38. On information and belief, Plaintiffs received payments from and granted releases to other parties, including but not limited to other parties to this action, other non-party manufacturers and/or employers of Plaintiff (for claims other than workers' compensation) against whom Plaintiffs have claimed liability in tort for the same injury for which Plaintiffs claim this defendant has liability. This defendant is entitled to set off the greater of the amount stipulated to in such release or the amount of consideration paid for such release from a verdict in this case, if any.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

39. Plaintiffs' Complaint fails to set forth a claim for punitive damages upon which relief may be granted.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

40. To the extent Plaintiffs' Complaint asserts a demand for punitive damages, this Defendant specifically incorporates by reference any and all standards of limitations regarding the determination and/or enforceability of punitive damage awards that arose in the decisions of *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1966); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003).

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

41. To the extent that Plaintiffs' Complaint seeks punitive damages, this Defendant affirmatively pleads the following in regard to punitive damages:

a. An award of punitive damages in this civil action would amount to a deprivation of property without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

b. An award of punitive damages in this civil action would violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

c. The criteria used for determining whether and in what amount punitive damages may be awarded are impermissible, vague, imprecise and inconsistent and, therefore, violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

d. An award of punitive damages in this civil action would amount to an excessive fine in violation of the due process provisions of the Eighth Amendment to the United States Constitution and the corresponding provisions of the applicable state Constitution; and

e. Plaintiffs' claim for punitive damages in barred by the "double jeopardy" clause of the Fifth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

42. This Defendant would show that, among other things, Plaintiffs' claim for punitive damages is barred, reduced, bifurcated, capped or otherwise impacted by the South Carolina Fairness in Civil Justice Act of 2011 and/or similar and/or related state statutes and limitations.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

43. Where applicable, and not inconsistent, Covil incorporates herein by reference the defenses asserted by other defendants.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

44. Covil reserves the right to amend this pleading to add or delete affirmative defenses as proof is developed during the course of discovery in this action.

WHEREFORE, Defendant Covil Corporation having fully answered Plaintiffs' Complaint, prays that the Court dismiss Plaintiffs' Complaint with prejudice, that Defendant Covil Corporation be awarded its costs and attorney's fees to the extent permitted by law, and for such other and further relief as the Court deems just and proper.

September 8, 2015

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Attorneys for Defendant
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Defendant Covil Corporation demands a trial by jury.

Daniel B. White (S.C. Bar #6070)
Stephanie G. Flynn (S.C. Bar #16653)
Kyle J. White (S.C. Bar #101426)

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)

Charlotte Gaye Smith an individual and Gary Dean Smith, her spouse,

Plaintiffs,

v.

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, et al,

Defendants.

CERTIFICATE OF SERVICE

C.A. NO.: 2015-CP-46-2155

FILED-RECEIVED
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DAVID HAMILTON
C.C.C.P. & G.S.
YORK, SC

The undersigned hereby certifies that that on September 8, 2015, she served a copy of Answer of Defendant Covil Corporation to Plaintiff's Complaint on all known counsel of record by placing a copy in the United States Mail, with due and proper postage affixed thereto and addressed as follows:

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[Signature on following page]

Jodi Kloiber
Paralegal to Daniel B. White

Greenville, SC

September 8, 2015

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

Gary Dean Smith, 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;
Metropolitan Life Insurance Company, a wholly-owned subsidiary of MetLife Inc.;
MP Supply, Inc. f/k/a Mill-Power Supply Co. and Mill-Power Supply Company;
Presnell Insulation, Inc.;
Resolute FP US, Inc.;
Riley Power, Inc., Individually and as Successor-in-Interest to Babcock Borsig Power, Inc., and Riley Stoker Corporation, Individually and as Successor-in-Interest to D.B. Riley;
United States Fidelity and Guaranty Company;
Trane U.S., Inc., f/k/a American Standard, Inc., f/k/a American Radiator & Standard Manufacturing Company;
Uniroyal, Inc., f/k/a United States Rubber Company, Inc.; and
United Conveyor Corporation,

Defendants.

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DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

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

FIRST 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. The Defendant, **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 ("Westinghouse")**, is a corporation incorporated under the laws of the State of Delaware, having its principal place of business in the State of Pennsylvania, and can be served with process at Registered Agent, CT Corporation System, 75 Beattie Place, Two Insignia Financial Plaza, Greenville, SC 29601.

3. The Defendant, **CNA Holdings, Inc., f/k/a Hoechst Celanese Corporation**, is a corporation incorporated under the laws of the State of Delaware, having its principal place of business in the State of Texas, and can be served with process at Registered Agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC 29223.

4. The Defendant, **Celanese Corporation f/k/a Hoechst Celanese Corporation (sued individually and as successor in-interest-to Fiber Industries, Inc.)**, is a corporation incorporated under the laws of the State of Delaware, having its principal place of business in the State of Texas, and can be served with process at Registered Agent, The Corporation Trust Company, 1209 Orange Street, Wilmington, DE 19801.

5. The Defendant, **Cleaver-Brooks, Inc., individually and as successor-in-interest to Aquachem**, is a corporation incorporated under the laws of the State of Delaware, having its principal place of business located in the State of Georgia, and can be served with process at Registered Agent, Corporation Service Company, 1703 Laurel Street, Columbia, SC 29201.

6. The Defendant, **Covil Corporation**, is a corporation incorporated under the laws of the State of South Carolina, having its principal place of business located in the State of South Carolina, and can be served with process at Covil Corporation c/o Jim Covil, 5 Woodfern Circle, Greenville, SC 29615 or at Registered Agent Greenville Process Service, Greengate Office Park, 25 Woods Lake Rd, Ste 216, Greenville, SC 29607.

7. The Defendant **Daniel International Corporation** is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in South Carolina, and can be served with process at its office at 100 Fluor Daniel Drive, Greenville SC 29607, or through its South Carolina registered agent, John R. Reynolds, 100 Fluor Daniel Drive, Greenville SC 29607.

8. The Defendant **Fluor Enterprises, Inc., f/k/a Fluor Daniel Inc., f/k/a Daniel Construction Company, Inc.** is a corporation organized and existing under the laws of the State of California, and can be served with process at its office at 3 Polaris Way, Aliso Viejo, CA 92698, or through its South Carolina registered agent, Corporation Service Company, 1703 Laurel Street, Columbia SC 29201.

9. The Defendant **Fluor Daniel Services Corporation** is a corporation organized and existing under the laws of the State of Delaware and can be served with process at its office at 100 Fluor Daniel Drive, Greenville SC 29607, or through its South Carolina registered agent, Corporation Service Company, 1703 Laurel Street, Columbia SC 29201.

10. The Defendant, **Foster Wheeler Energy Corporation**, is a corporation incorporated under the laws of the State of Delaware, having its principal place of business located in New Jersey, and can be served with process Registered Agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC, 29223.

11. The Defendant, **General Electric Company**, is a corporation incorporated under the laws of the State of New York, having its principal place of business located in the State of Connecticut, and can be served with process Registered Agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC, 29223.

12. The Defendant **Metropolitan Life Insurance Company** is a corporation organized and existing under the laws of the State of New York with its principal place of business in New York, and can be served with process at its office at 200 Park Ave., New York, NY 10166, or at its office at One Madison Avenue, New York NY 10010.

13. Defendant **MP Supply, Inc.** f/k/a Mill-Power Supply Co. and Mill-Power Supply Company, is or was a corporation incorporated under the laws of the State of North Carolina and with a principal place of business in North Carolina, which may be served with process at Registered Agent, CT Corporation System, 150 Fayetteville St., Box 1011, Raleigh, NC 27601, or at 400 South Tryon Street, Ste. 22m, Charlotte, NC 28201, or at 526 S. Church Street, Charlotte NC 28202.

14. The Defendant, **Presnell Insulation, Inc.**, is a corporation incorporated under the laws of the State of North Carolina, having its principal place of business located in North Carolina, and can be served with process at Registered Agent, Jackson T. Presnell, 4285 Hwy 24/27E, Midland, NC 28227 and can be served with process through Specialty Products & Insulation Co., d/b/a Presnell Insulation, Inc., c/o Corporation Service Company, Registered Agent, 327 Hillsborough Street, Raleigh, NC 27603-1725

15. The Defendant, **Resolute FP US, Inc. f/k/a Bowater**, is a corporation incorporated under the laws of the State of Delaware, having its principal place of business

located in Montreal, Quebec, and can be served with process at Registered Agent, Corporation Service Company, 1703 Laurel Street, Columbia, SC 29201.

16. The Defendant, **Riley Power, Inc., Individually and as Successor-in-Interest to Babcock Borsig Power, Inc., and Riley Stoker Corporation, Individually and as Successor-in-Interest to D.B. Riley;** is a corporation incorporated under the laws of the State of Massachusetts, having its principal place of business located in the State of Massachusetts, and can be served with process Registered Agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC, 29223.

17. The Defendant, **Trane U.S. Inc., f/k/a American Standard, Inc., f/k/a American Radiator & Standard Manufacturing Company**, is a corporation incorporated under the laws of the State of Delaware, having its principal place of business located in Wisconsin, and can be served with process at Registered Agent, CT Corporation System, Registered Agent, 2 Office Park Court, Suite 103, Columbia, SC, 29223.

18. The Defendant **Uniroyal, Inc., f/k/a United States Rubber Company, Inc.** is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business in Connecticut, and can be served with process at its office at c/o Uniroyal Holding, Inc., 70 Great Hill Road, Naugatuck CT 06770, or at P.O. Box 19001, Greenville, SC 29602-9001.

19. The Defendant, **United Conveyor Corporation**, is a corporation incorporated under the laws of the State of Illinois, having its principal place of business located in Illinois, and can be served with process United Conveyor Corporation Corporate Headquarters: 2100 Norman Drive W., Waukegan, IL 60085 or at Registered Agent, Prentice Hall Corporation, 2019 Park Street, Columbia, SC 29201.

20. The Defendant, **United States Fidelity and Guaranty Company** ("USF&G"), is a corporation organized and existing under the laws of the State of Connecticut and having its principal place of business in the State of Connecticut and can be served with process at CSC-Lawyers Incorporating Service Company, Registered Agent, 7 St. Paul Street, Suite 820, Baltimore, MD 21202.

21. Defendants are 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.

22. 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.

23. 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.

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

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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..

34. 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

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

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. 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.

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

47. 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.

48. 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.

49. 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.

50. 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.

51. 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.

52. 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)

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

54. 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.

55. 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.

56. 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)

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

58. 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.

59. 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.

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

61. 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)

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

63. 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.

64. 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)

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

66. 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.

67. 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.

68. 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.

69. 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.

70. 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.

71. 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.

72. 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.

73. 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.

74. 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.

75. 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.

76. 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."

77. 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.

78. 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.

79. 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.

80. Upon information and belief, in December 1955, Daniel and USF&G had a meeting to discuss USF&G providing coverage for all of Daniel' insurance needs. As a result of this meeting and subsequent agreements, in 1956 UFS&G became Daniel' 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.

81. 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.

82. 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.

83. 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' 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.

84. 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.

85. 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
CEP 014020501	11/1/81-82
CEP 19906931	11/1/82-83

86. 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.

87. 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.

88. 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.

89. 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.

90. 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.

91. 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.

92. 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.

93. 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.

94. 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.

95. 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.

96. 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.

97. 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.

98. 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.

99. 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.

100. 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.

101. 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.

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

103. 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.

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

105. 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.

106. 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.

107. 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.

SIXTH CAUSE OF ACTION
(Conspiracy, Concert of Action – Defendant Metropolitan Life Insurance Company)

108. Plaintiff incorporates by reference the allegations contained in paragraphs 1-106 as though fully set forth herein.

109. Beginning in the late 1920's, conspirators including Defendant Metropolitan Life Insurance Company ("Met Life"), as well as Johns-Manville, Raybestos-Manhattan and others, undertook a duty to conduct research on asbestos-related health problems and to inform the public about any health risks that could be associated therewith. In or about 1929, Met Life, through its agents and employees acting within the scope of their agency and employment, including but not limited to Dr. Anthony J. Lanza ("Lanza"), began an investigation of asbestos-related health hazards. In 1935, this study was altered by Lanza, with the full knowledge of Met Life, at the request of and in concert with the asbestos industry in order to wrongly influence the United States Public Health Service, the United States medical community and various state legislatures.

110. Thereafter, Defendant Met Life through the acts and omissions of its employees, most notably Lanza, undertook a series of activities with various members of the asbestos industry including but not limited to Johns-Manville, Raybestos-Manhattan/ Raymark Industries, Inc., United States Gypsum, American Brake Blok/Abex, and others to suppress and misrepresent the dangers of exposure to asbestos dust to employees of Met Life's insureds and the general public and the medical community.

111. The conspirators through their agent, Lanza of Met Life, made a concerted effort to discredit and to terminate the experiments of certain scientists who were developing data of profound importance for the area of public health in relation to the cancer hazard which existed for workers and bystanders in the asbestos industry.

112. As a direct and proximate result of Met Life's intentional publication of deceptive and misleading medical data and information, and other conspiratorial acts and omissions, Defendant caused asbestos to be used in the occupational settings from which Decedent's former husband breathed asbestos dust which resulted in Decedent's injuries. Defendant Met Life, through its agents and employees and officers, aided and abetted and gave substantial assistance to Johns-Manville and Raybestos-Manhattan in their tortious selling of asbestos products and voluntarily undertook a duty to warn the United States Public Health Service, the medical community, and others about the danger of asbestos and consciously and negligently misrepresented the dangers of asbestos to the United States Public Health Service, the medical community, and others, all to the ultimate harm of Decedent herein.

113. Defendant Met Life rendered substantial aid and assistance to the manufacturers of asbestos-containing products to which Decedent was exposed, and such assistance by Met Life aided and abetted the negligence and the marketing of unreasonably dangerous asbestos-containing products by such manufacturers which proximately caused Decedent's illness.

114. In both conducting tests and in publishing their alleged results, Met Life failed to exercise reasonable care to conduct or publish complete, adequate and accurate tests of the health effects of asbestos. Met Life also caused to be published intentionally false, misleading, inaccurate and deceptive information about the health effects of asbestos exposure.

115. Decedent's former husband unwittingly and justifiably relied upon the thoroughness of Met Life's tests and information dissemination, the results of which Met Life published in leading medical journals.

116. As a direct and proximate contributing result of Met Life's failures to conduct or accurately publish adequate tests or disseminate accurate and truthful information, after undertaking to do so; (i) the risk of harm to Decedent from asbestos exposure was increased, and (ii) Decedent suffered the injuries described herein.

117. In failing to test fully and adequately for the adverse health effects from exposure to asbestos; in delaying the publication of such results; and in falsely editing such results as were obtained; in suppressing relevant medical inquiry and knowledge about those hazards to promote the sale and distribution of asbestos as a harmless product; and in collaborating with the other Defendants materially to understate the hazards of asbestos exposure, all for its own profit and gain, Met Life acted recklessly, wantonly, and in calculated disregard for the welfare of the general public, including Decedent.

118. Additionally and alternatively, as a direct and proximate result of Met Life's actions and omissions, Decedent and her former husband were caused to remain ignorant of all the dangers of asbestos resulting in Decedent's former husband, his employers, his former wife, the Decedent, Charlotte Gaye Smith, and the general public to be unaware of the true and full dangers of asbestos, depriving Decedent of the opportunity to decide for herself whether she wanted to take the risk of being exposed to asbestos, denied Decedent the opportunity to take precautions against the dangers of asbestos and proximately caused Decedent's damages herein.

119. During the relevant time period the Decedent was exposed to and did inhale and/or ingest asbestos dust, fibers, and particles, which dust, fibers, and particles came from the asbestos or asbestos-containing products which were mined, milled, manufactured, fabricated, supplied, and/or sold by the Johns Manville and/or Raybestos/Raymark.

120. Defendant, Met Life, together with Manville, Raymark and other persons and entities, known and unknown at times relevant hereto, engages in a conspiracy or concert of action to inflict injury on the Decedent, and to withhold, alter, suppress and misrepresent information about the health effects of asbestos exposure. One or more of said conspirators did cause tortious injury to the Decedent or her former husband in the course of or as a consequence of the conspiracy of concert of action. At least the following enumerated acts were undertaken by the conspirators in the course of and in furtherance of the conspiracy or concert of action:

(a) In 1932, Met Life, through Lanza and others, assisted Manville with medical examinations of over 1,000 employees of Manville's factory in Manville, New Jersey. The report of this study shows that a large percentage of the employees suffered from asbestosis including employees not directly involved in the manufacturing process.

This 1932 medical survey was not published in the medical literature and, therefore, was unavailable to scientists studying the issue of asbestos-related disease. Further collaboration between Manville and Met Life continued the cover-up.

(b) Beginning in approximately 1934, Manville, through its agents, Vandiver Brown and Attorney J.C. Hobart, suggested to Lanza, Associate Director of Met Life, which was then insurer of Manville and Raymark, that Lanza publish a study on asbestosis in which Lanza would affirmatively misrepresent material facts about the health consequences of asbestos exposure. This was accomplished through intentional deletion of Lanza's description of asbestosis as 'fatal' and through other selective editing that affirmatively misrepresent asbestosis as a disease process less serious than it actually is and was known to be. As a result, Lanza's study was published in the medical literature in this misleading fashion in 1935. The conspirators were motivated, in part, to effectuate this fraudulent misrepresentation and fraudulent nondisclosure by the desire to influence proposed legislation to regulate asbestos exposure and to provide a defense in lawsuits involving Manville, Raymark, and Met Life as insurer. Furthermore, upon information and belief, it is alleged that Met Life, at all times relevant hereto, had substantial monetary investments in Manville and Raymark, among other asbestos product manufacturers and distributors.

(c) In 1936, the conspirators or some of them entered into an agreement with the Saranac Laboratories. Under this agreement, these conspirators acquired the power to decide what information Saranac could publish about asbestos disease and to control in what form such publications would occur. This agreement gave these conspirators power to affirmatively misrepresent the results of the work at Saranac, and also gave these conspirators power to material facts included in any study. On numerous occasions thereafter, the conspirators exercised their power to prevent Saranac scientists from disclosing material scientific data, resulting in numerous misstatements of fact being made at scientific meetings.

(d) By November 1948, or earlier, Manville, Met Life (acting through Lanza), Raymark, and others decided to exert their influence to materially alter and misrepresent material facts about the substance of research started by Dr. Leroy Gardner at the Saranac Laboratories beginning in 1936. Dr. Gardner's research involved carcinogenicity of asbestos in mice and also included an evaluation of the health effects of asbestos on humans with a critical review of the then-existing standards of dust exposure for asbestos and asbestos products.

(e) At a meeting on November 11, 1948, these conspirators and others intentionally and affirmatively determined that Dr. Gardner's work should be edited to specifically delete material facts about the cancer-causing propensities of asbestos and the health effects of asbestos on humans and they determined that only an edited version would be published. These conspirators thereby fraudulently misrepresented the risks of asbestos exposure to the public, in general, and to the class of persons exposed to asbestos, including the Decedent and her former husband.

(f) As a direct result of influence exerted by the above described conspirators, Dr. Arthur Vorwald published Dr. Gardner's edited work in the Journal of Industrial Hygiene, AMA Archives of Industrial Hygiene and Occupational Health in 1951 in a form that stressed those portions of Dr. Gardner's work that the conspirators wished stressed, but which omitted references to human asbestosis and cancer, thereby fraudulently and affirmatively misrepresenting the extent of the risks. The conspirators affirmatively and deliberately disseminated this misleading Vorwald publication to universities, libraries, government officials, agencies and others.

(g) Such action constituted a material affirmative misrepresentation of the material facts involved in Dr. Gardner's work and resulted in creating an appearance that inhalation of asbestos was a less serious health concern than Dr. Gardner's unedited work indicated.

(h) For many decades, Met Life, individually, jointly and in conspiracy with Manville and Raymark, have been in possession of medical and scientific data, literature, and test reports which clearly indicated that the inhalation of asbestos dust and fibers resulting from the ordinary foreseeable use of said asbestos-containing products and/or machinery requiring or calling for the use of asbestos or asbestos-containing products were unreasonably dangerous, hazardous, deleterious to human health, carcinogenic, and potentially deadly.

(i) Despite the medical and scientific data, literature and test reports possessed by and available to Met Life, individually and in conspiracy with Manville and Raymark, Fraudulently, willfully and maliciously withheld, concealed and suppressed said medical and scientific data, literature and test reports regarding the risks of asbestosis, cancer, mesothelioma, and other illnesses and diseases from Plaintiff's former husband who using and being exposed to Manville or Raymark asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products; caused to be released, published and disseminated medical and scientific data, literature and test reports containing information and statements regarding the risks of asbestosis, cancer, mesothelioma and other illnesses and diseases, which Metropolitan, Manville and Raymark knew were either incorrect, incomplete, outdated and misleading; distorted the results of medical examinations conducted upon workers who were using asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products and being exposed to the inhalation of asbestos dust and fibers by falsely stating and/or concealing the nature and extent of the harm which workers suffered; and failed to adequately warn the Decedent's former husband of the dangers to which he was exposed when they knew of the dangers.

(j) By the false and fraudulent representations, omissions, failures, and concealments set forth above, Met Life, Manville and Raymark, individually, jointly, and in conspiracy with each other, intended to induce the Decedent's former husband to rely upon said false and fraudulent representations, omissions, failures, and concealments, to continue to expose themselves to the dangers inherent in the use of and exposure to their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products. Said misrepresentations were false, incomplete, and

misleading and constitute negligent misrepresentations as defined by Sections 311 and 522 of the Restatement (Second) of Torts.

121. Decedent's former husband reasonably and in good faith relied upon the false and fraudulent representations, omissions, failures, and concealments made by Met Life, Manville, and Raymark regarding the nature of their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

122. As a direct and proximate result of the conspiracy and concert of action between Met Life, Manville and Raymark, the Decedent's former husband has been deprived of the opportunity of informed free choice and connection with the use of and exposure to Manville and Raymark's asbestos and asbestos-containing products, and therefore continued to work with and be exposed to the co-conspirator corporation's asbestos and asbestos-containing products and as a result brought home on his clothes, hair, shoes, and in his case asbestos dust or fibers contracted asbestos-related diseases and other conditions, and/or aggravated pre-existing conditions, as a result of which the Decedent has been damaged.

DAMAGES

123. As a result of the development of mesothelioma caused by breathing asbestos dust and fibers from Defendants' asbestos-containing products and exposures due to defendants' negligent acts and omissions, listed herein and that will be further identified in this suit, Decedent suffered and sustained very serious life threatening injuries, specifically mesothelioma, requiring extensive and painful medical treatment.

124. Decedent has further suffered great pain and mental anguish as a direct result of the aforesaid injuries. The illness and disability of Decedent was the direct and proximate result of the negligence, recklessness and willfulness of the Defendants, in that each produced, sold and otherwise put into the stream of interstate commerce, asbestos and asbestos-related materials which the Defendants knew were deleterious, poisonous and highly harmful.

125. Decedent's injuries and illnesses are permanent in nature and that she was forced to suffer same for the remainder of her life, that her enjoyment of life has been greatly impaired and, further, that her expected life span was greatly shortened.

126. Plaintiff alleges that as a result of the aforesaid illnesses, Decedent was forced to incur large amounts of medical expenses by way of doctor and drug bills and verily believes that she was forced to incur additional expenses in an effort to treat her illnesses as aforesaid, all to Decedent's damage, compensatory and punitive in amounts to be determined by the trier of fact.

127. As a direct and proximate result of the Defendants' conduct as alleged above, the Decedent suffered a dramatic reduction of her life expectancy, incurred great mental and physical pain and suffering, sustained lost wages and lost earning capacity, incurred medical expenses, and her enjoyment of life has been greatly impaired.

SEVENTH CAUSE OF ACTION
LOSS OF CONSORTIUM

128. The factual and jurisdictional allegations of Paragraphs 1 through 126 are realleged and incorporated herein as if restated verbatim.

129. Plaintiff Gary Dean Smith is the spouse of Charlotte Gaye Smith.

130. Due to the wrongful and tortuous acts of Defendants, Plaintiff Gary Dean Smith has suffered pecuniary loss due to the loss of services of his wife, Charlotte Gaye Smith.

131. Plaintiff Gary Dean Smith has suffered and will continue to suffer in the future, damages including loss of affection, society, comfort, support, consortium, companionship and the protection of his wife.

132. Defendants' wrongful conduct, alleged above, was a direct and proximate cause of the damages suffered by Plaintiff Gary Dean Smith.

WHEREFORE, Plaintiff Gary Dean Smith demands judgment against Defendants for compensatory damages for a fair and reasonable amount as determined by the jury and for such other and further relief, both at law and in equity, as the Court may deem just and proper.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays to ask that this Court:

1. Award the Plaintiff actual and compensatory damages, in an amount to be determined at trial, for the wrongful, negligent, reckless and willful acts of the Defendants;

2. Award the Plaintiff pre-judgment and post-judgment interest to the extent allowable by law;

3. Award the Plaintiff punitive damages to the extent allowable by law;

4. Award the Plaintiffs' attorney fees and costs to the extent allowable by law;

5. All economic and non-economic damages allowed pursuant to the Survival and Wrongful Death Act; and

6. For such other and further relief as may be just and proper.

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

Respectfully submitted, this the 9th day of March, 2016.

WALLACE AND GRAHAM, P.A.

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing PLAINTIFF'S AMENDED COMPLAINT was served via Email:

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This the 9th day of March, 2016.

WALLACE AND GRAHAM, P.A.

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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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2017 NOV 15 PM 2:46
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

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

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' insurance needs. As a result of this meeting and subsequent agreements, in 1956 UFS&G became Daniel' 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' 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

CEP 014020501	11/1/81-82
CEP 19906931	11/1/82-83

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,

KASSEL MCVEY, ATTORNEYS AT LAW

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November 15, 2017

Columbia, South Carolina

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YORK COUNTY, SC

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)	
ROXANNE FALLS, individually and as Personal Representative of the Estate of Charlotte Gaye Smith,)	C.A. No.: 2015-CP-46-2155
Plaintiff,)	**ANSWER OF DEFENDANT COVIL CORPORATION TO PLAINTIFF'S SECOND AMENDED COMPLAINT**
vs.)	
CBS Corporation, a Delaware corporation, f/k/a Viacom, Inc., successor by merger to CBS Corporation, Pennsylvania Corporation, f/k/a Westinghouse Electric Corporation, et al)	(Jury Trial Demanded)
Defendants.)	

Defendant Covil Corporation ("Covil"), answering the Second Amended Complaint ("Second Amended Complaint") of Plaintiff Roxanne Falls, individually and as Personal Representative of the Estate of Charlotte Gaye Smith, and any and all Cross-Claims asserted previously or in the future by any Co-Defendants or Third-Party Defendants, whether having appeared in the case at this time or not, alleges and states as follows:

FOR A FIRST DEFENSE

1. Covil admits so much of the allegations of the first paragraph 1 of the Second Amended Complaint as allege that the Plaintiff purports to bring this action pursuant to S.C. Gen. Stat. 15-51-10 *et seq.* for the wrongful death of the decedent, Charlotte Gaye Smith. However, Covil denies it is liable to the Plaintiff under any cause of action.

2. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations of paragraph 2 and the second paragraph 1of the Second Amended Complaint and, therefore, denies them.

3. Covil admits so much of the allegations of the second paragraph 2 of the Second Amended Complaint as allege that it was a domestic corporation. Covil denies the remaining allegations of the second paragraph 2 of the Second Amended Complaint to the extent they could be construed to relate to it. To the extent the allegations relate to other parties, Covil is without sufficient knowledge or information to form a belief as to the truthfulness of those allegations and, therefore, denies them.

4. Covil admits only so much of the allegations of paragraph 3 of the Second Amended Complaint as allege that it was an insulation contractor and wholesaler of insulation materials, which purchased, from time to time, insulation materials containing asbestos from numerous manufacturers and either sold them to contractors or applied them itself. Covil denies the remaining allegations of paragraph 3 of the Second Amended Complaint to the extent they could be construed to relate to it. To the extent the allegations of paragraph 3 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies them.

5. In response to the allegations of paragraph 4 of the Second Amended Complaint, Covil notes that the caption lists Roxanne Falls, rather than Gary Dean Smith, as the Plaintiff in this case. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations of paragraph 4 of the Second Amended Complaint and, therefore, denies them.

6. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations of paragraph 5 of the Second Amended Complaint and, therefore, denies them.

7. Covil denies the allegations of paragraphs 6, 7, 8, and 9 of the Second Amended Complaint to the extent they could be construed to relate to it. To the extent the allegations of paragraphs 6, 7, 8, and 9 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies them.

8. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations of paragraph 10 and 11 of the Second Amended Complaint and, therefore, denies them.

9. Paragraph 12 of the Second Amended Complaint contains legal conclusions to which no response is required. To the extent a response is required, Covil admits it conducted business and had facilities in South Carolina but denies the remaining allegations of paragraph 12 of the Second Amended Complaint to the extent they could be construed to relate to it. To the extent the allegations of paragraph 12 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies them.

10. Covil denies the allegations of paragraphs 13 and 14 of the Second Amended Complaint to the extent they could be construed to relate to it. To the extent the allegations of paragraphs 13 and 14 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies them.

11. In response to the allegations of paragraph 15 of the Second Amended Complaint, Covil admits only that a report was filed with the original Complaint. Paragraph 15 of the

Second Amended Complaint also contains legal conclusions to which no response is required. However, to the extent a response is required, the allegations are denied.

12. In response to the allegations of paragraph 16 of the Second Amended Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 15 of the Second Amended Complaint.

13. Covil admits only so much of the allegations of paragraph 17 of the Second Amended Complaint as allege that it was an insulation contractor and wholesaler of insulation materials, which purchased, from time to time, insulation materials containing asbestos from numerous manufacturers and either sold them to contractors or applied them itself. Covil denies the remaining allegations of paragraph 17 of the Second Amended Complaint to the extent they could be construed to relate to it. To the extent the allegations of paragraph 17 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies them.

14. Covil denies the allegations of paragraphs 18 through 33 of the Second Amended Complaint to the extent they could be construed to relate to it. To the extent the allegations of paragraphs 18 through 33 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies them.

15. In response to the allegations of paragraph 34 of the Second Amended Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 33 of the Second Amended Complaint.

16. Covil denies the allegations of paragraphs 35, 36, and 37 of the Second Amended Complaint to the extent they could be construed to relate to it. To the extent the allegations of

paragraphs 35, 36, and 37 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies them.

17. In response to the allegations of paragraph 38 of the Second Amended Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 37 of the Second Amended Complaint.

18. Covil denies the allegations of paragraphs 39, 40, 41, and 42 of the Second Amended Complaint to the extent they could be construed to relate to it. To the extent the allegations of paragraphs 39, 40, 41, and 42 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies them.

19. In response to the allegations of paragraph 43 of the Second Amended Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 42 of the Second Amended Complaint.

20. Covil denies the allegations of paragraphs 44 and 45 of the Second Amended Complaint to the extent they could be construed to relate to it. To the extent the allegations of paragraphs 44 and 45 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies them.

21. In response to the allegations of paragraph 46 of the Second Amended Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 45 of the Second Amended Complaint.

22. The allegations of paragraphs 47 through 88 of the Second Amended Complaint are directed against another party, and thus no response from Covil is required. To the extent a response is required, Covil denies the allegations of paragraphs 47 through 88 of the Second Amended Complaint to the extent they could be construed to relate to it.

23. In response to the allegations of paragraph 89 of the Second Amended Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 88 of the Second Amended Complaint.

24. Covil admits so much of the allegations of paragraph 90 of the Second Amended Complaint as allege that the Plaintiff purports to bring this wrongful death action pursuant to S.C. Code Ann. § 15-51-10 (2008) for the benefit of, and on behalf of, the heirs of Charlotte Smith. However, Covil denies it is liable to the Plaintiff under any cause of action.

25. Covil denies the allegations of paragraph 91 of the Second Amended Complaint to the extent they could be construed to relate to it. To the extent the allegations of paragraph 91 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies them.

26. In response to the allegations of paragraph 92 of the Second Amended Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 91 of the Second Amended Complaint.

27. Covil admits so much of the allegations of paragraph 93 of the Second Amended Complaint as allege that the Plaintiff purports to bring a survival action for the Decedent's medical bills, conscious pain and suffering, and mental distress. However, Covil denies it is liable to the Plaintiff under any cause of action.

28. Covil denies the allegations of paragraph 94 of the Second Amended Complaint to the extent they could be construed to relate to it. To the extent the allegations of paragraph 94 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies them.

29. As to the allegations contained in the Prayer for Relief, Covil denies it is liable to Plaintiff under any theory or cause of action for the damages and/or other relief requested therein.

30. Covil denies every allegation of the Second Amended Complaint not specifically admitted, explained, or modified hereinabove.

FOR A SECOND AFFIRMATIVE DEFENSE

31. Upon information and belief, the Court lacks jurisdiction over Covil as a result of improper, and/or lack of, service of process; lack of subject matter jurisdiction; and/or lack of personal jurisdiction.

FOR A THIRD AFFIRMATIVE DEFENSE

32. The Second Amended Complaint fails to state facts sufficient to constitute a cause of action against Covil, and, accordingly, it should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH AFFIRMATIVE DEFENSE

33. Covil is a dissolved corporation and therefore lacks the capacity to sue or be sued.

FOR A FIFTH AFFIRMATIVE DEFENSE

34. Upon information and belief, there is a lack of joinder of one or more parties who should or must be joined; without the joinder of these proper parties, complete relief cannot be accorded among those already made parties to this action.

FOR A SIXTH AFFIRMATIVE DEFENSE

35. Upon information and belief, the claims set forth in the Second Amended Complaint are barred by the applicable statutes of limitations and/or repose in this state or other states as may be applicable.

FOR A SEVENTH AFFIRMATIVE DEFENSE

36. Covil alleges that the Plaintiff's damages were the direct and proximate result of the negligent, reckless, willful, and wanton conduct of the Decedent, which combined and concurred with any negligence or recklessness on the part of Covil, which is specifically denied and admitted solely for the purpose of this defense and no other, and the alleged damages of the Plaintiff would not have occurred if the Decedent had not been guilty of such negligence, recklessness, willfulness, or wantonness. The Second Amended Complaint is barred to the extent that the Decedent's contributory negligence and recklessness is more than 50% of the total negligence in this case. To the extent that the Decedent's contributory negligence and recklessness is 50% or less of the total negligence in this case, which is denied and admitted solely for the purpose of this defense, the Plaintiff's recovery should be reduced by the percentage of her contributory negligence and recklessness.

FOR AN EIGHTH AFFIRMATIVE DEFENSE

37. The claims set forth in the Second Amended Complaint are barred to the extent there is another action pending between the same parties for the same claims.

FOR A NINTH AFFIRMATIVE DEFENSE

38. Upon information and belief, the Second Amended Complaint should be dismissed and/or is not subject to trial for its failure to comply with the requirements of Section 44-135-10 *et*

seq., of the South Carolina Code of Laws, also known as the "Asbestos and Silica Claims Procedure Act of 2006."

FOR A TENTH AFFIRMATIVE DEFENSE

39. Upon information and belief, Plaintiff's claims are barred or reduced by the doctrines of res judicata, waiver, release, laches, collateral estoppel, and/or conditions precedent or subsequent.

FOR AN ELEVENTH AFFIRMATIVE DEFENSE

40. Plaintiff's claims are barred or reduced by the applicable provisions of the Worker's Compensation Act, whether of this state or another.

FOR A TWELFTH AFFIRMATIVE DEFENSE

41. By virtue of the doctrine of judicial estoppel, the Plaintiff is precluded from taking a position inconsistent with one taken with respect to the same facts in earlier litigation, if any, and, upon information and belief, is, therefore, precluded from alleging the material facts necessary to state a cause of action against Covil.

FOR A THIRTEENTH AFFIRMATIVE DEFENSE

42. Upon information and belief, venue is improper in this action. Covil reserves its right to move for dismissal and/or transfer of the action based on improper and/or inconvenient venue and further reserves its right to seek application of the law of the appropriate venue on all issues.

FOR A FOURTEENTH AFFIRMATIVE DEFENSE

43. Covil would show that, among other things, Plaintiff's claim for punitive damages is barred, reduced, bifurcated, capped, or otherwise impacted by the South Carolina Fairness in Civil Justice Act of 2011 and/or similar and/or related state statutes and limitations.

FOR A FIFTEENTH AFFIRMATIVE DEFENSE

44. The alleged injuries to the Plaintiff are barred by Section 15-73-10 *et seq.*, of the South Carolina Code of Laws; therefore, the Plaintiff is prohibited by law from asserting a cause of action based on strict liability for either actual or punitive damages.

FOR A SIXTEENTH AFFIRMATIVE DEFENSE

45. Covil would show that any product allegedly distributed by, or for which Covil is alleged to have been liable, was altered or changed in some manner after it left the custody and possession of Covil.

FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

46. There has been no concert of action between Covil and any of the other named Defendants. The Defendants are not joint tortfeasors, and, therefore, Covil may not be held jointly and severally liable with the other named Defendants. Accordingly, Covil asserts it is entitled to the benefit of the provisions set forth in S.C. Code §15-38-15 in this action.

FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

47. To the extent that the Plaintiff has received payment in satisfaction of any of the alleged injuries and/or claims against Covil, the Second Amended Complaint in each and every count and cause of action alleged therein is barred or reduced by the defenses of payment and accord and satisfaction.

FOR A NINETEENTH AFFIRMATIVE DEFENSE

48. There are no allegations against Covil stated with sufficient particularity to constitute a cause of action for fraud, fraudulent concealment, concert of action, conspiracy, or the like meeting the requirement of Rule 9(b) of the South Carolina Rules of Civil Procedure.

FOR A TWENTIETH AFFIRMATIVE DEFENSE

49. Plaintiff's claims are barred to the extent any products for which Covil is or may be responsible were sold to a "learned intermediary" and/or "sophisticated user" or other similar purchaser and/or Defendant was a "bulk supplier."

FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE

50. Any oral warranties upon which Plaintiff alleges to have relied are inadmissible and unavailable because of the provisions of the applicable Statute of Frauds.

FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE

51. Covil alleges that, upon information and belief, the Decedent had actual knowledge of and voluntarily assumed the risk incident to her use and/or exposure to asbestos or the products and processes involving the use of asbestos or asbestos-containing materials which were known to her to be dangerous.

FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE

52. Covil alleges that, upon information and belief, the Decedent failed to properly use the product or products in question, abused the product or products, and/or subjected them to abnormal use at the time or times and places alleged in the Second Amended Complaint.

FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE

53. Covil alleges that if the Decedent was exposed to or used the product or products for which Covil is alleged to be responsible, upon information and belief, the same was used for a purpose not intended by Covil and contrary to any instructions or normal method of using the same.

FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE

54. Covil alleges that if the Plaintiff sustained any injuries or damages as set forth in the Second Amended Complaint, which is denied, the same were due to and caused by the negligence, recklessness, willfulness, and wantonness of others, and not Covil.

FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE

55. Covil would show that even if Plaintiff has suffered injuries as described by Plaintiff, and the same are admitted for the purposes of this defense only, then said injuries were caused by the acts or omissions of third parties, including but not limited to the actions of unions, employers, manufacturers, distributors, and others, and that these acts or omissions of third parties acted as a direct and proximate cause of the Plaintiff's injuries in such a way as to constitute a supervening or intervening cause ending all liability on the part of Covil.

FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE

56. If Plaintiff sustained the injuries and/or damages alleged, which is specifically denied, then, upon information and belief, such injuries and/or damages were proximately caused by the acts and/or omissions of the Decedent's former husband's employers with respect to the maintenance of healthy and safe work sites and environments, which were under the exclusive control and possession of the employer(s).

FOR A TWENTY-EIGHTH AFFIRMATIVE DEFENSE

57. Covil alleges that if the Plaintiff sustained injuries as a result of exposure to asbestos or asbestos-containing products, which is denied, then such injuries were or may have been due to exposures to products of manufacturers not named as Defendants in this action, including but not limited to product manufacturers which have taken advantage of the protections of the bankruptcy provisions of the United States Code.

FOR A TWENTY-NINTH AFFIRMATIVE DEFENSE

58. If the Decedent was exposed to any products for which Covil is alleged to have been responsible, said products at the time were manufactured in conformity with applicable federal and state regulations, standards, specifications and laws; consequently, recovery by the Plaintiff herein is barred.

FOR A THIRTIETH AFFIRMATIVE DEFENSE

59. If it should be proven that the Decedent's former husband, while working for or otherwise associated with the United States Government, worked with or around asbestos-containing products for which Covil is alleged to have been responsible, such materials, upon information and belief, were made in compliance with military specifications and contract requirements for a specific intended use by the United States Government.

FOR A THIRTY-FIRST AFFIRMATIVE DEFENSE

60. If any products for which Covil is alleged to have been responsible and which give rise to Plaintiff's claims herein were designed and manufactured pursuant to and in accordance with the standards of, or specifications mandated by, the United States Government and its agencies, the knowledge of the United States Government and its agencies of any possible health hazards from use of such products was equal or superior to that of Covil, and by reason thereof Covil is entitled to assume any immunity from liability which exists in favor of the United States Government or its agencies and/or to assert the government contractor defense.

FOR A THIRTY-SECOND AFFIRMATIVE DEFENSE

61. In the event it is determined that any product for which Covil is alleged to have been responsible was dangerous, which danger is specifically denied, Covil was unaware of such danger as it would apply in any conceivable use of, or exposure to, such products by the Decedent or the

Decedent's former husband; furthermore, the discovery of such danger was beyond the state of the art at the time such product or products were manufactured, distributed, sold, used, and/or warnings provided. Further, such products were manufactured, distributed, sold, and used in conformity with the state of the art and/or prevailing industry standards at the time.

FOR A THIRTY-THIRD AFFIRMATIVE DEFENSE

62. Upon information and belief, Plaintiff has received payments from and granted releases to other parties, including but not limited to other parties to this action and other non-parties against whom Plaintiff has claimed liability in tort for the same injury for which Plaintiff claims Covil has liability. Covil is entitled to set off of the greater of the amount stipulated to in such release or the amount of consideration paid for such a release.

FOR A THIRTY-FOURTH AFFIRMATIVE DEFENSE

63. Upon information and belief, Plaintiff has failed, neglected, and/or refused to mitigate Plaintiff's damages, if any, and therefore, Plaintiff is barred from recovery of those damages which could have been avoided by the exercise of due diligence.

FOR A THIRTY-FIFTH AFFIRMATIVE DEFENSE

64. The Second Amended Complaint fails to set forth a claim for punitive damages upon which relief may be granted.

FOR A THIRTY-SIXTH AFFIRMATIVE DEFENSE

65. The products for which Covil is alleged to have been responsible and/or which were sold and/or distributed by Covil were at all times reasonably fit and suitable for the purposes for which they were sold, and Covil denies that such products were in any way defective for the use for which they were sold.

FOR A THIRTY-SEVENTH AFFIRMATIVE DEFENSE

66. To the extent the Second Amended Complaint asserts a demand for punitive damages, Covil specifically incorporates by reference any and all standards of limitations regarding the determination and/or enforceability of punitive damage awards that arose in the decisions of *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1966); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A THIRTY-EIGHTH AFFIRMATIVE DEFENSE

67. To the extent the Second Amended Complaint seeks punitive damages, Covil affirmatively pleads the following in regard to punitive damages:

(a) An award of punitive damages in this civil action would amount to a deprivation of property without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

(b) An award of punitive damages in this civil action would violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

(c) The criteria used for determining whether and in what amount punitive damages may be awarded are impermissible, vague, imprecise, and inconsistent and, therefore, violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

(d) An award of punitive damages in this civil action would amount to an excessive fine in violation of the due process provisions of the Eighth Amendment to the United States Constitution and the corresponding provisions of the applicable state Constitution; and

(e) Plaintiff's claim for punitive damages is barred by the "double jeopardy" clause of the Fifth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment.

FOR A THIRTY-NINTH AFFIRMATIVE DEFENSE

68. Upon information and belief, Decedent's former husband was employed by a knowledgeable and sophisticated user/employer, and any duty Covil may have had to warn him or Decedent of any potential dangers incident to use of Covil's products, which duty is denied, was discharged by the employer's intervening duty to give them warning.

FOR A FORTIETH AFFIRMATIVE DEFENSE

69. Covil reserves the right to allege additional facts and circumstances in support of its defenses as these facts become available.

FOR A FORTY-FIRST AFFIRMATIVE DEFENSE

70. Covil incorporates by reference herein, as if fully set forth, all defenses, both affirmative and otherwise, raised, pleaded or asserted by all other answering Defendants.

ANSWER TO CROSS-CLAIMS

Covil, answering any and all Cross-Claims which may already have been asserted or which may be asserted in the future against Covil by any Co-Defendants and/or Third-Party Defendants, says:

1. In defense of any and all cross-claims, Covil incorporates herein as if restated fully all responses and defenses which it has asserted above or may assert in response to the allegations contained in the Second Amended Complaint.

2. The allegations against Covil in any and all cross-claims are denied.

3. Covil denies liability with respect to any and all cross-claims.

4. Covil denies that it has any indemnity or contribution liability to any other defendant or Third-Party Defendant.

RESERVATION OF CROSS-CLAIMS

All cross-claims for contribution and for indemnity by Covil against all Co-Defendants and Third-Party Defendants are hereby reserved and implied.

JURY DEMAND

Covil requests trial by jury on all issues so triable.

WHEREFORE, Covil prays the Court for the following relief:

1. That the Second Amended Complaint be dismissed with prejudice as to Covil;

2. That any and all Cross-Claims against Covil be dismissed with prejudice;

3. That the Plaintiff and other Defendants and/or Third-Party Defendants have and recover nothing from Covil;

4. That the costs of this action be taxed against the Plaintiff and/or other Defendants and/or Third-Party Defendants;

5. That there be a trial by jury on all issues of fact; and

6. For such other and further relief as the Court deems just and proper.

Respectfully submitted this, the 5th day of December, 2017.

(signature on following page)

Greenville, South Carolina

Allyson R. Twilley

Daniel B. White (S.C. Bar No. 6070)
Ronald G. Tate, Jr. (S.C. Bar. No. 5475)
Allyson R. Twilley (S.C. Bar No. 101884)
GALLIVAN, WHITE & BOYD, P.A.
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dwhite@gwblawfirm.com
rtate@gwblawfirm.com
atwilley@gwblawfirm.com

Tel: (864) 271-9580
Fax: (864) 271-7502

Attorneys for Defendant
Covil Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Answer of Defendant Covil Corporation to Plaintiff's Second Amended Complaint** was served on counsel for Plaintiffs via electronic mail and United States Postal Service, with sufficient postage affixed thereto and return address clearly marked, on the 5th day of December, 2017.

Carla Towers

COUNSEL SERVED:

John D. Kassel
Theile B. McVey
1330 Laurel Street
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Columbia, SC 29202

Jonathan Holder
Dean Omar Branham, LLP
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Dallas, TX 75202

William M. Graham
Mona Lisa Wallace
Wallace & Graham, P.A.
525 North Main Street
Salisbury, NC 28144

Attorneys for Plaintiff

ALL OTHER COUNSEL OF RECORD SERVED BY ELECTRONIC MAIL ONLY.

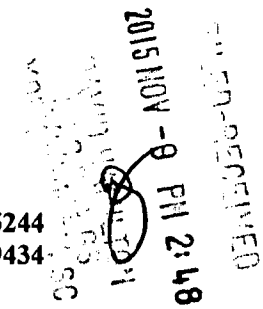
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DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
Wayne Ervin Howe, an individual and Jeanette Howe, his spouse,)
Plaintiff(s))
)
vs.)
)
Air & Liquid Systems Corp., individually and as successor-in-interest to Buffalo Pumps, Inc., et al,)
Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015 -CP-46 - 3456



Submitted By: Mona L. Wallace, Esq.
Address: 525 N. Main Street, Salisbury, NC, 28144

SC Bar #: 15844
Telephone #: 704-633-5244
Fax #: 704-633-9434
Other:
E-mail: mwallace@wallacegraham.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply)*

***If Action is Judgment/Settlement do not complete*

☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-NI-_____-_____

- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☒ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Sexual Predator (510)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

Submitting Party Signature: Mona Lisa Wallace **Date:**

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF YORK	)	**C/A No.** 2015CP46 3456
Wayne Ervin Howe, an individual and Jeanette Howe, his spouse,	)	
Plaintiffs,	)	
v.	)	
Air & Liquid Systems Corp., individually and as successor-in-interest to Buffalo Pumps, Inc.;	)	
Albany International Corp.;	)	
Asten-Johnson, Inc.;	)	
Aurora Pump Company;	)	
A.W. Chesterton Company;	)	
Borg Warner Morse TEC, Inc., as successor to Borg-Warner Corporation;	)	
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;	)	**Asbestos Lawsuit** **Jury Demand on all Issues**
CGR Products, Inc. f/k/a Carolina Gasket and Rubber Company;	)	
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;	)	
Crane Co.;	)	
Crown Cork & Seal Company, Inc.;	)	
Daniel International Corporation;	)	

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Fluor Enterprises, Inc., f/k/a Fluor Daniel, Inc., f/k/a Daniel Construction Company, Inc.;
Fluor Daniel Services Corporation;
Foster Wheeler Energy Corporation;
General Electric Company;
The Gorman-Rupp Company;
Goulds Pumps, Incorporated;
Ingersoll-Rand Company;
Metropolitan Life Insurance Company, a wholly-owned subsidiary of MetLife Inc.;
Peerless Pump Company;
Presnell Insulation, Inc.;
Riley Power, Inc., Individually and as Successor-in-Interest to Babcock Borsig Power, Inc., and Riley Stoker Corporation, Individually and as Successor-in-Interest to D.B. Riley;
SEPCO Corporation;
Sterling Fluid Systems (USA) LLC;
Trane U.S., Inc., f/k/a American Standard, Inc., f/k/a American Radiator & Standard Manufacturing Company;
Uniroyal, Inc., f/k/a United States Rubber Company, Inc.;
United Conveyor Corporation;
Velan Valve Corp.;
Viking Pump, Inc.;
Warren Pumps LLC; and
Zurn Industries,

Defendants.

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SUMMONS

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the 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 complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted, this the 6 day of November 2015.

WALLACE AND GRAHAM, P.A.

By: Mona Lisa Wallace

Mona Lisa Wallace, Esq.
SC Bar No. 15844
525 North Main Street
Salisbury, NC 28144
(704) 633-5244
E-mail: mwallace@wallacegraham.com

Attorneys for the Plaintiffs

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	C/A No. 2015CP46-3456

WAYNE ERVIN HOWE, AN INDIVIDUAL AND JEANETTE HOWE, HIS SPOUSE,	)	
PLAINTIFFS,	)	
V.	)	
AIR & LIQUID SYSTEMS CORP., INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO BUFFALO PUMPS, INC.;	)	
ALBANY INTERNATIONAL CORP.;	)	
ASTEN-JOHNSON, INC.;	)	
AURORA PUMP COMPANY;	)	ASBESTOS LAWSUIT
	)	JURY DEMAND ON ALL ISSUES
A.W. CHESTERTON COMPANY;	)	
BORG WARNER MORSE TEC, INC., AS SUCCESSOR TO BORG-WARNER CORPORATION;	)	
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;	)	

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CGR PRODUCTS, INC. F/K/A CAROLINA GASKET AND RUBBER COMPANY;

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;

CRANE CO.;

CROWN CORK & SEAL COMPANY, INC.;

DANIEL INTERNATIONAL CORPORATION;

FLUOR ENTERPRISES, INC., F/K/A FLUOR DANIEL, INC., F/K/A DANIEL CONSTRUCTION COMPANY, INC.;

FLUOR DANIEL SERVICES CORPORATION;

FOSTER WHEELER ENERGY CORPORATION;

GENERAL ELECTRIC COMPANY;

THE GORMAN-RUPP COMPANY;

GOULDS PUMPS, INCORPORATED;

INGERSOLL-RAND COMPANY;

METROPOLITAN LIFE INSURANCE COMPANY, A WHOLLY-OWNED SUBSIDIARY OF METLIFE INC.;

PEERLESS PUMP COMPANY;

PRESNELL INSULATION, INC.;

RILEY POWER, INC., INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO BABCOCK BORSIG POWER, INC., AND RILEY STOKER CORPORATION, INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO D.B. RILEY;

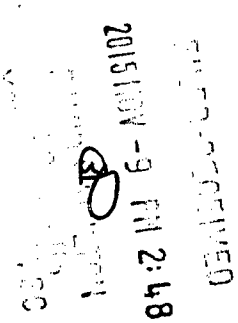
SEPCO CORPORATION;

STERLING FLUID SYSTEMS (USA) LLC;

TRANE U.S., INC., F/K/A AMERICAN STANDARD, INC., F/K/A AMERICAN RADIATOR & STANDARD MANUFACTURING COMPANY;

UNIROYAL, INC., F/K/A UNITED STATES RUBBER COMPANY, INC.;	)
UNITED CONVEYOR CORPORATION;	)
VELAN VALVE CORP.;	)
VIKING PUMP, INC.;	)
WARREN PUMPS LLC; AND	)
ZURN INDUSTRIES,	)
DEFENDANTS.	)

2015CP46-3456



COMPLAINT

NOW COME the Plaintiffs, WAYNE ERVIN HOWE and JEANETTE HOWE, citizens and residents of the State of South Carolina, through their counsel and sues the Defendants and alleges as follows. This is an action seeking relief due to Defendants' negligent, willful, wanton, and reckless conduct proximately causing the injury to the Plaintiff, Wayne Ervin Howe. Mr. Howe was diagnosed with the asbestos-related cancer, mesothelioma. As alleged below, during the pertinent times, Mr. Howe worked on a frequent, regular and proximate basis with and near others working with asbestos-containing products, materials and equipment for which the named Defendants are liable and responsible. The Plaintiff was exposed to respirable asbestos fibers which ultimately caused his disease of mesothelioma. Plaintiffs further allege:

BACKGROUND FACTS

A. PLAINTIFFS.

1. Plaintiffs are citizens and residents of the State of South Carolina.

2. The Plaintiff, Wayne Ervin Howe, is a citizen and resident of York County, South Carolina.

3. The Plaintiff, Jeanette Howe, is a citizen and resident of York County, South Carolina and is lawfully married as wife to her husband, Plaintiff Wayne Ervin Howe.

B. DEFENDANTS.

4. The Defendant, **Air & Liquid Systems Corp.,** individually and as successor-in-interest to Buffalo Pumps, Inc., is a corporation organized and existing under the laws of the State of Pennsylvania with a principal place of business in Pennsylvania, and can be served with process at its office at 874 Oliver Street, North Tanawanda NY 14120-3298 or through its registered agent located at CT Corporation, 116 Pine St, Suite 320, Harrisburg, PA 17101.

5. The Defendant, **Albany International Corp.,** is the successor in interest to Mount Vernon Group d/b/a Mount Vernon Dryer Fabrics and the successor in interest to Geschmay Corporation. Upon information and belief, Albany International Corp. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located in Rochester, New Hampshire, and can be served with process at its office at 975 Old Norcross Road, Suite A, Lawrenceville, Georgia 30045, or through its South Carolina registered agent, CT Corporation System, 2 Office Park Court, Columbia SC 29223, or at its office at 216 Airport Drive, Rochester, NH 03867.

6. The Defendant, **Asten-Johnson, Inc.,** is a corporation organized and existing under the laws of the State of Delaware with a principal place of business in Charleston, South Carolina and can be served with process at its office at 4399 Corporate Road, Charleston, SC 29405 or through its office located at 400 Asten Road, Clinton, SC 29325 or through its registered agent, CT Corporation System, 75 Beattie Place, Greenville, SC 29601.

7. The Defendant, **Aurora Pump Company**, is a corporation organized and existing under the laws of the State of Minnesota with a principal place of business in Illinois, and can be served with process at its office at c/o Pentair, 800 Airport Road, North Aurora, IL 60542 or through its office located at c/o Lynette Jones, 13515 Ballantyne Corp. Pl., Charlotte NC 28277.

8. The Defendant, **A.W. Chesterton Company**, is a corporation organized and existing under the laws of the State of Massachusetts with a principal place of business in Massachusetts, and can be served with process through its registered agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC 29223

9. The Defendant, **Borg Warner Morse TEC, Inc.,** successor to Borg-Warner Corporation, is a corporation organized and existing under the laws of the State of Delaware, and can be served with process at its office at 3850 Hamlin Road, Auburn Mills, MI 48326, or through its registered agent, CT Corporation System, 4701 Cox Road, Suite 285, Glen Allen, VA 23060.

10. The Defendant, **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, is a corporation incorporated under the laws of the State of Delaware, having its principal place of business in the State of Pennsylvania, and can be served with process c/o registered agent, CT Corporation System, 75 Beattie Place, Two Insignia Financial Plaza, Greenville, SC 29601, or through its registered agent office at c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington DE 19808.

11. The Defendant **CGR Products, Inc.** f/k/a Carolina Gasket and Rubber Company, Inc., is a corporation organized and existing under the laws of the State of North Carolina with a principal place of business in North Carolina, and can be served with process at its registered agent office at 100 North Greene Street, Suite 600, Greensboro, NC 27401 or through its office located at 4655 US Highway 29 North, Greensboro, NC 27405.

12. The Defendant, **CNA Holdings, Inc.**, f/k/a Hoechst Celanese Corporation, is a corporation incorporated under the laws of the State of Delaware, having its principal place of business in the State of Texas, and can be served with process at Registered Agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC 29223.

13. The Defendant, **Celanese Corporation** f/k/a Hoechst Celanese Corporation (sued individually and as successor in-interest-to Fiber Industries, Inc.), is a corporation incorporated under the laws of the State of Delaware,

having its principal place of business in the State of Texas, and can be served with process at Registered Agent, The Corporation Trust Company, 1209 Orange Street, Wilmington, DE 19801.

14. The Defendant, **Cleaver Brooks, Inc.**, individually and as successor-in-interest to Aquachem, is a corporation incorporated under the laws of the State of Delaware, having its principal place of business located in the State of Georgia, and can be served with process at Registered Agent, Corporation Service Company, 1703 Laurel Street, Columbia, SC 29201.

15. The Defendant, **Covil Corporation**, is a corporation incorporated under the laws of the State of South Carolina, having its principal place of business in the State of South Carolina, and can be served with process at Covil Corporation c/o Jim Covil, 5 Woodfern Circle, Greenville, SC 29615 or at Registered Agent, Greenville Process Service, Greengate Office Park, 25 Woods Lake Road, Suite 216, Greenville, SC 29607.

16. The Defendant, **Crane Co.** is a corporation organized and existing under the laws of the State of Delaware with a principal place of business in Connecticut and can be served with process through its registered agent office located at The Corporation Trust Company, 1209 Orange Street, Wilmington DE 19801, or its registered office of CT Corporation System, 111 Eighth Avenue, NY, NY 10011.

17. The Defendant, **Crown Cork & Seal Company, Inc.,** is a corporation organized and existing under the laws of the State of Pennsylvania with a principal place of business in Pennsylvania, and can be served with process at its office at 1 Crown Way, Philadelphia PA 19154.

18. The Defendant **Daniel International Corporation** is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in South Carolina, and can be served with process at its office at 100 Fluor Daniel Drive, Greenville SC 29607, or through its South Carolina registered agent, John R. Reynolds, 100 Fluor Daniel Drive, Greenville SC 29607.

19. The Defendant **Fluor Enterprises, Inc.**, f/k/a Fluor Daniel, Inc., f/k/a Daniel Construction Company, Inc. is a corporation organized and existing under the laws of the State of California, and can be served with process at its office at 3 Polaris Way, Aliso Viejo, CA 92698, or through its South Carolina registered agent, Corporation Service Company, 1703 Laurel Street, Columbia SC 29201.

20. The Defendant **Fluor Daniel Services Corporation** is a corporation organized and existing under the laws of the State of Delaware and can be served with process at its office at 100 Fluor Daniels Drive, Greenville SC 29607, or through its South Carolina registered agent, Corporation Service Company, 1703 Laurel Street, Columbia SC 29201.

21. The Defendant, **Foster Wheeler Energy Corporation**, is a corporation incorporated under the laws of the State of Delaware, having its principal place of business in New Jersey, and can be served with process through its Registered Agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia SC 29223, or at its office located at Perryville Corporate Park, Route 78, Clinton NJ 08809.

22. The Defendant, **General Electric Company**, is a corporation incorporated under the laws of the State of New York, having its principal place of business located in the State of Connecticut, and can be served with process Registered Agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia SC 29223.

23. The Defendant, **The Gorman-Rupp Company** a/k/a The Gorman-Rupp International Company, is a corporation incorporated under the laws of the State of Ohio, having its principal place of business located in Ohio, and can be served with process at through its Ohio Registered Agent, Corporation Services Company, 50 West Broad Street, Suite 1800, Columbus Ohio 43215, or through the corporate office address of 180 Hines Avenue, Bellville OH 44813, or its corporate address at 600 South Airport Road, Mansfield OH 44901.

24. The Defendant, **Goulds Pumps, Incorporated**, is a corporation organized and existing under the laws of the State of Delaware and can be served with process through its office located at 240 Fall Street, Seneca Falls, NY 131148, or through its registered agent, c/o CT Corporation System, 2 Office Park Court, Suite 103 Columbia, SC 29223.

25. The Defendant, **Ingersoll-Rand Company** is a New Jersey company with its principal place of business in Davidson, North Carolina and can be served with process through its South Carolina registered agent office located at CT Corporation System, 2 Office Park Court, Columbia SC 29223 or its corporate office at 800-E Beaty Street, Davidson, NC 28036.

26. The Defendant **Metropolitan Life Insurance Company**, a wholly-owned subsidiary of MetLife, Inc., is a corporation organized and existing under the laws of the State of New York with its principal place of business in New York, and can be served with process at its office at 200 Park

Ave., New York, NY 10166, or at its office at One Madison Avenue, New York NY 10010, or at c/o United Corporate Services, Inc., 160 Cassell Road #144, Harleysville, PA 19438-2009.

27. The Defendant, **Peerless Pump Company** aka Peerless Industries Inc., is a corporation organized and existing under the laws of the State of Indiana and can be served with process through its office located at c/o ALCO Products, 1515 Market Street, Philadelphia PA 19102, or at its office at 2005 Dr. Martin Luther King Jr. Street, Indianapolis, IN 46202, or at SFS (USA) Holding Inc. d/b/a Peerless Pump Company, c/o CT Corporation System, 150 Fayetteville St., Box 1011, Raleigh, NC 27601.

28. The Defendant, **Presnell Insulation, Inc.**, is a corporation incorporated under the laws of the State of North Carolina, having its principal place of business located in North Carolina, and can be served with process at Registered Agent, Jackson T. Presnell 3717 Flowerfield Rd., Charlotte, NC 28210.

29. The Defendant, **Riley Power, Inc.**, individually and as successor-in-interest to Babcock Borsig Power, Inc., and Riley Stoker Corporation, individually and as successor-in-interest to D.B. Riley, is a corporation incorporated under the laws of the State of Massachusetts, having its principal place of business located in the State of Massachusetts, and can be served with process c/o Registered Agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC, 29223.

30. The Defendant, **SEPCO Corporation,** is a corporation organized and existing under the laws of the State of California, and can be served with process through its registered agent located at CT Corporation System, 818 West Seventh Street, Suite 930, Los Angeles CA 90017.

31. The Defendant, **Sterling Fluid Systems (USA) LLC** is a Delaware company and can be served with process through its registered agent office located at c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

32. The Defendant, **Trane U.S. Inc.**, f/k/a American Standard, Inc., f/k/a American Radiator & Standard Manufacturing Company, is a corporation incorporated under the laws of the State of Delaware, having its principal place of business located in Wisconsin, and can be served with process at Registered Agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia SC 29223.

33. The Defendant **Uniroyal, Inc.**, f/k/a United States Rubber Company, Inc. is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business in Connecticut, and can be served with process at its office at c/o Uniroyal Holding, Inc., 70 Great Hill Road, Naugatuck CT 06770, or at P.O. Box 19001, Greenville, SC 29602-9001.

34. The Defendant, **United Conveyor Corporation**, is a corporation incorporated under the laws of the State of Illinois, having its principal place of business located in Illinois, and can be served with process at United Conveyor Corporation Corporate Headquarters, 2100 Norman Drive W., Waukegan, IL 60085 or at Registered Agent, Prentice Hall Corporation, 2019 Park Street, Columbia, SC 29201, or through its registered agent located at Illinois Corporation Service, 801 Adlai Stevenson Drive, Springfield, IL 62703-4261.

35. The Defendant, **Velan Valve Corp.**, is a corporation organized and existing under the laws of the State of Delaware and can be served with process at its office at 94 Avenue C, Williston VT 05495-9732 or through its South Carolina registered agent, Corporation Service Company, 1703 Laurel Street, Columbia SC 29201.

36. The Defendant, **Viking Pump, Inc.**, is a corporation organized and existing under the laws of the State of Delaware and can be served with process through its registered agent office located at The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

37. The Defendant, **Warren Pumps LLC** is a limited liability company organized and existing under the laws of the State of Delaware and can be served with process through its registered agent office located at The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801 or its registered agent at CT Corporation System, 155 Federal Street, Suite 700, Boston MA 02110.

38. The Defendant, **Zurn Industries,** is a corporation organized and existing under the laws of the State of Delaware and can be served with process through its registered agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC, 29223.

C. JURISDICTION AND VENUE.

39. Defendants are corporations who are amenable to jurisdiction in the Courts of South Carolina by virtue of their contacts with the State of South Carolina or systematic business in South Carolina which subjects them to jurisdiction pursuant to the South Carolina Long-Arm Statute.

40. Venue is proper in York County, South Carolina.

41. The Court has jurisdiction over the subject matter of this action.

D. FACTS REGARDING ASBESTOS EXPOSURE AND INJURY.

42. During the pertinent times, Defendant Metropolitan Life Insurance Company, owed a duty to Plaintiffs as a result of the facts alleged in the Fourth Cause of Action, below. The allegations below with regard to the remaining, asbestos product manufacturing, selling, distributing and utilizing Defendants refer to each other Defendant listed in the caption (or its applicable predecessors in interest).

43. During the pertinent times, Defendants mined, manufactured, processed, imported, converted, compounded, used, installed or retailed substantial amounts of asbestos and asbestos-containing materials which were sold, distributed or used in South Carolina; or are otherwise liable in connection with asbestos and asbestos-containing products as alleged below.

44. The risks involved with the products and materials at issue in this matter pertaining to asbestos dangers did not amount to an open and obvious risk or a risk that was a matter of common knowledge.

45. Plaintiff Wayne Ervin Howe was born on August 5, 1945.

46. Plaintiff during the pertinent times worked as a pipefitter, manual laborer, general construction worker, and steel worker.

47. Plaintiff during the pertinent times further engaged in work activities pertaining to pump and valve work, cutting siding, mechanic and welding work, building and maintaining precipitators, and millwright work.

48. Plaintiff during the pertinent times worked at various jobsites including, without limitation, one or more facilities of Hoechst Celanese aka

Fiber Industries, including in Rock Hill, South Carolina; and the Bowater facility in Rock Hill, South Carolina.

49. Plaintiff, for a long period of time, frequently, regularly and proximately worked with and was exposed to the asbestos and asbestos-related materials mined, manufactured, processed, imported, converted, compounded, or sold by the asbestos product manufacturing and selling Defendants, or with regard to which Defendants otherwise had responsibility, with some or most of the exposure being within the State of South Carolina.

50. Plaintiff, Wayne Ervin Howe, was exposed to asbestos dust and fibers from products, services, and goods manufactured, distributed, or sold by the asbestos product manufacturing and selling Defendants for use at Plaintiff's jobsites which he came in contact with on the premises of multiple companies.

51. As a result of the improper conduct of the Defendants, Plaintiff Wayne Ervin Howe developed the asbestos cancer known as Mesothelioma.

52. The asbestos product manufacturing and selling Defendants owned, operated, or supplied asbestos containing materials or services to worksites in South Carolina, at which Plaintiff Wayne Ervin Howe, worked, or entered for purposes of work, and in which Plaintiff was exposed to asbestos dust from asbestos containing materials.

53. 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.

54. Plaintiff Wayne Ervin Howe 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 his exposure to asbestos dust and fibers that he came in contact with on various jobsites in South Carolina.

55. 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.

56. Mesothelioma is a progressive, insidious disease and Plaintiff's asbestos dust and fiber exposure including in South Carolina to the Defendants' products or on the Defendants' premises and for which Defendants are otherwise liable contributed to the Plaintiff's contraction of his disease.

57. Plaintiff's diagnosed disease of mesothelioma was caused by breathing asbestos dust and fibers from asbestos-containing products or asbestos containing materials at Defendants' premises or with regard to which the Defendants manufactured or sold.

58. Plaintiffs have obtained and attached as **Exhibit A** hereto, 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.

59. As a result of the development of mesothelioma caused by breathing asbestos dust and fibers from Defendants' asbestos-containing products, and exposures due to Defendants' negligent acts and omissions, listed herein and that will be further identified in this suit, Plaintiff has suffered and sustained very serious life-threatening injuries, specifically mesothelioma, requiring extensive and painful medical treatment.

60. Plaintiff has suffered great pain and mental anguish as a direct result of the aforesaid injuries.

61. The illness and disability of Plaintiff was the direct and proximate result of the negligence, recklessness and willfulness of the Defendants, in that each produced, sold and otherwise put into the stream of interstate commerce, or otherwise were responsible for asbestos and asbestos-related materials which the Defendants knew or should have known were deleterious, poisonous and highly harmful.

62. Plaintiff's injuries and illnesses are permanent in nature and he will be forced to suffer same for the remainder of his life. Plaintiff's enjoyment of life has been greatly impaired and, further, that his expected life span has been greatly shortened.

63. Plaintiff alleges that as a result of the aforesaid illnesses, he has been forced to incur large amounts of medical expenses by way of doctor and drug bills and verily believes that he will be forced to incur additional expenses in an effort to treat his illnesses as aforesaid, all to Plaintiff's damage, compensatory and punitive in amounts to be determined by the trier of fact.

64. As a direct and proximate result of the Defendants' conduct as alleged above, the Plaintiff has suffered a dramatic reduction of his life expectancy, incurred great mental and physical pain and suffering, sustained lost wages and lost earning capacity, incurred medical expenses, and his enjoyment of life has been greatly impaired, which damages are continuing in nature.

E. CAUSES OF ACTION.

FIRST CAUSE OF ACTION

Negligent Failure to Warn and Defective Product Design

65. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs as though fully set forth herein, and further allege as shown below with regard to the Defendants.

66. 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. In the case of Defendant Metropolitan Life Insurance Company, it owed a duty to Plaintiffs and is liable as alleged in the fourth cause of Action below.

67. 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 Plaintiff Wayne Ervin Howe, or were otherwise negligent.

68. The asbestos manufacturing and selling Defendants negligently produced, sold, supplied or otherwise put into the stream of commerce asbestos and asbestos-containing products or machinery requiring the use of asbestos and/or asbestos-containing products.

69. During the course and scope of his employment at the named facilities or with the named manufacturers and their products, Plaintiff Wayne Ervin Howe was exposed to Defendants' asbestos dust and fibers and asbestos-containing materials or was otherwise injured due to asbestos exposure for which Defendants are responsible.

70. Defendants owned, operated, or manufactured materials used at and supplied worksites in South Carolina, at which Plaintiff worked, or entered for purposes of work, and from which he was subsequently exposed to asbestos containing materials including asbestos dust and asbestos fibers. Defendants 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.

71. Defendants knew, or should have known, that Plaintiff Wayne Ervin Howe, or others similarly situated, would come in contact with the asbestos containing products for which Defendant may be liable. As a designer, developer, manufacturer, distributor, supplier, installer 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.

72. Defendants knew, or should have known, that Plaintiff Wayne Ervin Howe, 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.

73. 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.

74. 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.

75. The illness and disability of the Plaintiff are 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 Plaintiff's body, lungs, respiratory system, skin and health.

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

77. 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.

78. Defendants acted negligently, recklessly and willfully in that the Defendants failed to advise Plaintiff of the dangerous characteristics of their asbestos and asbestos-containing products.

79. Defendants acted negligently, recklessly and willfully in that the Defendants failed or omitted to provide the Plaintiff 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 himself and his family from being poisoned and disabled by exposure to such deleterious and harmful asbestos-containing materials.

80. Defendants acted negligently, recklessly and willfully in that the Defendants 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.

81. Defendants acted negligently, recklessly and willfully in that the Defendants 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.

82. Defendants acted negligently, recklessly and willfully in that the Defendants inadequately warned, if, in fact, they warned at all, persons such as Plaintiff of the dangers to their health in coming in contact with and breathing said asbestos and asbestos-containing materials, even after they knew of the dangers and cancer-causing effects, and up until the present time.

83. Defendants acted negligently, recklessly and willfully in that the Defendants did not recommend methods to improve the work environment.

84. Defendants acted negligently, recklessly and willfully in that the Defendants did not use, implement or develop alternative products that were available.

85. Defendants acted negligently, recklessly and willfully in that the Defendants continued to use a known cancer-causing product, to wit: asbestos.

86. Defendants acted negligently, recklessly and willfully in that the Defendants included asbestos in relevant products, and used asbestos even though it was foreseeable that persons such as Plaintiff would inhale, ingest or otherwise absorb asbestos.

87. Defendants acted negligently, recklessly and willfully in that the Defendants included asbestos in relevant products, and used 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 Plaintiff.

88. Defendants acted negligently, recklessly and willfully in that the Defendants included asbestos in products and using asbestos when adequate substitutes for asbestos were available.

89. Defendants acted negligently, recklessly and willfully in that the Defendants failed to adequately warn persons working with and around the products of the dangers of inhaling, ingesting or otherwise absorbing the asbestos fibers.

90. Defendants acted negligently, recklessly and willfully in that the Defendants failed 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 further exposure.

91. Defendants acted negligently, recklessly and willfully in that the Defendants failed 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 Plaintiff might be exposed while working with or around them.

92. Defendants acted negligently, recklessly and willfully in that the Defendants despite knowledge of the unreasonable dangers, designed, 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.

93. Defendants acted negligently, recklessly and willfully in that the Defendants failed to comply with governmental regulations designed to reduce exposure to asbestos.

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

95. 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 Plaintiff 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 of continued asbestos exposure, the Defendants did not provide that information to the Plaintiff.

96. 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.

97. Plaintiff has suffered continuing and lingering injury to himself due to the Defendants' asbestos fibers which he inhaled while doing performing assignments on various jobsites. Said fibers, once inhaled, caused repeated and continuing injury to Plaintiff.

98. As a direct and proximate result of one or more of the foregoing acts and/or omissions on the part of the Defendants, Plaintiff sustained exposure to and inhaled, ingested or otherwise absorbed asbestos fibers causing mesothelioma, and has suffered injury and is entitled to damages in an amount to be proven at trial.

SECOND CAUSE OF ACTION

Implied Warranty of Merchantability

99. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs as though fully set forth herein, and further allege as shown below with regard to the Defendants.

100. 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.

101. 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 carried out his duties working with asbestos and asbestos-containing materials.

102. As a direct and proximate result of the breach of the implied warranty of good and merchantable quality, Plaintiff developed mesothelioma and/or other industrial dust diseases caused by breathing the asbestos dust and fibers from Defendants' asbestos-containing products.

THIRD CAUSE OF ACTION

Strict Liability

103. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs as though fully set forth herein, and further allege as shown below with regard to the Defendants.

104. During the pertinent times, Plaintiff was injured by his exposure to asbestos fibers associated with the products and equipment manufactured and sold by the Defendants.

105. 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.

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

107. 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 Plaintiff 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 Plaintiff. The above was the proximate cause of the severe damages sustained by the Plaintiff as herein set forth.

FOURTH CAUSE OF ACTION

Conspiracy, Concert of Action – Defendant

Metropolitan Life Insurance Company

108. Plaintiff incorporates by reference the allegations contained in the above paragraphs as though fully set forth herein, and further allege as shown below with regard to the Defendants.

109. Beginning in the late 1920's, conspirators including Defendant Metropolitan Life Insurance Company ("Met Life"), as well as Johns-Manville, Raybestos-Manhattan and others, undertook a duty to conduct research on asbestos-related health problems and to inform the public about any health risks that could be associated therewith. In or about 1929, Met Life, through its agents and employees acting within the scope of their agency and employment, including but not limited to Dr. Anthony J. Lanza ("Lanza"), began an investigation of asbestos-related health hazards. In 1935, this study was altered by Lanza, with the full knowledge of Met Life, at the request of and in concert with the asbestos industry in order to wrongly influence the United States Public Health Service, the United States medical community and various state legislatures.

110. Thereafter, Defendant Met Life through the acts and omissions of its employees, most notably Lanza, undertook a series of activities with various members of the asbestos industry including but not limited to Johns-Manville, Raybestos-Manhattan/ Raymark Industries, Inc., United States Gypsum, American Brake Blok/Abex, and others to suppress and misrepresent the

dangers of exposure to asbestos dust to employees of Met Life's insureds and the general public and the medical community.

111. The conspirators through their agent, Lanza of Met Life, made a concerted effort to discredit and to terminate the experiments of certain scientists who were developing data of profound importance for the area of public health in relation to the cancer hazard which existed for workers and bystanders in the asbestos industry.

112. As a direct and proximate result of Met Life's intentional publication of deceptive and misleading medical data and information, and other conspiratorial acts and omissions, Defendant caused asbestos to be used in the occupational settings from which Plaintiff breathed asbestos dust which resulted in Plaintiff's injuries. Defendant Met Life, through its agents and employees and officers, aided and abetted and gave substantial assistance to Johns-Manville and Raybestos-Manhattan in their tortious selling of asbestos products and voluntarily undertook a duty to warn the United States Public Health Service, the medical community, and others about the danger of asbestos and consciously and negligently misrepresented the dangers of asbestos to the United States Public Health Service, the medical community, and others, all to the ultimate harm of Plaintiff herein.

113. Defendant Met Life rendered substantial aid and assistance to the manufacturers of asbestos-containing products to which Plaintiff was exposed, and such assistance by Met Life aided and abetted the negligence and the marketing of unreasonably dangerous asbestos-containing products by such manufacturers which proximately caused Plaintiff's illness.

114. In both conducting tests and in publishing their alleged results, Met Life failed to exercise reasonable care to conduct or publish complete, adequate and accurate tests of the health effects of asbestos. Met Life also caused to be published intentionally false, misleading, inaccurate and deceptive information about the health effects of asbestos exposure.

115. Plaintiff unwittingly and justifiably relied upon the thoroughness of Met Life's tests and information dissemination, the results of which Met Life published in leading medical journals.

116. As a direct and proximate contributing result of Met Life's failures to conduct or accurately publish adequate tests or disseminate accurate and truthful information, after undertaking to do so; (i) the risk of harm to Plaintiff from asbestos exposure was increased, and (ii) Plaintiff suffered the injuries described herein.

117. In failing to test fully and adequately for the adverse health effects from exposure to asbestos; in delaying the publication of such results; and in falsely editing such results as were obtained; in suppressing relevant medical inquiry and knowledge about those hazards to promote the sale and distribution of asbestos as a harmless product; and in collaborating with the other co-conspirators materially to understate the hazards of asbestos exposure, all for its own profit and gain, Met Life acted recklessly, wantonly, and in calculated disregard for the welfare of the general public, including Plaintiff.

118. Additionally and alternatively, as a direct and proximate result of Met Life's actions and omissions, Plaintiff was caused to remain ignorant of all the dangers of asbestos resulting in Plaintiff's, his employers, and the general public to be unaware of the true and full dangers of asbestos, depriving Plaintiff of the opportunity to decide for himself whether he wanted to take the risk of being exposed to asbestos, denied Plaintiff the opportunity to take precautions against the dangers of asbestos and proximately caused Plaintiff's damages herein.

119. During the relevant time period the Plaintiff was exposed to and did inhale and/or ingest asbestos dust, fibers, and particles, which dust, fibers, and particles came from the asbestos or asbestos-containing products which were mined, milled, manufactured, fabricated, supplied, and/or sold by the Johns Manville and/or Raybestos/Raymark.

120. Defendant, Met Life, together with Manville, Raymark and other persons and entities, known and unknown at times relevant hereto, engages in a conspiracy or concert of action to inflict injury on the Plaintiff, and to withhold, alter, suppress and misrepresent information about the health effects of asbestos exposure. One or more of said conspirators did cause tortious injury to the Plaintiff in the course of or as a consequence of the conspiracy of concert of action. At least the following enumerated acts were undertaken by the conspirators in the course of and in furtherance of the conspiracy or concert of action:

121. In 1932, Met Life, through Lanza and others, assisted Manville with medical examinations of over 1,000 employees of Manville's factory in Manville, New Jersey. The report of this study shows that a large percentage of the employees suffered from asbestosis including employees not directly involved in the manufacturing process. This 1932 medical survey was not published in the medical literature and, therefore, was unavailable to scientists studying the issue of asbestos-related disease. Further collaboration between Manville and Met Life continued the cover-up.

122. Beginning in approximately 1934, Manville, through its agents, Vandiver Brown and Attorney J.C. Hobart, suggested to Lanza, Associate Director of Met Life, which was then insurer of Manville and Raymark, that Lanza publish a study on asbestosis in which Lanza would affirmatively misrepresent material facts about the health consequences of asbestos exposure. This was accomplished through intentional deletion of Lanza's description of asbestosis as 'fatal' and through other selective editing that affirmatively misrepresent asbestosis as a disease process less serious than it actually is and was known to be. As a result, Lanza's study was published in the medical literature in this misleading fashion in 1935.

123. The conspirators were motivated, in part, to effectuate this fraudulent misrepresentation and fraudulent nondisclosure by the desire to influence proposed legislation to regulate asbestos exposure and to provide a defense in lawsuits involving Manville, Raymark, and Met Life as insurer. Furthermore, upon information and belief, it is alleged that Met Life, at all times relevant hereto, had substantial monetary investments in Manville and Raymark, among other asbestos product manufacturers and distributors.

124. In 1936, the conspirators or some of them entered into an agreement with the Saranac Laboratories. Under this agreement, these conspirators acquired the power to decide what information Saranac could publish about asbestos disease and to control in what form such publications would occur. This agreement gave these conspirators power to affirmatively misrepresent the results of the work at Saranac, and also gave these conspirators power to material facts included in any study. On numerous occasions thereafter, the conspirators exercised their power to prevent Saranac scientists from disclosing material scientific data, resulting in numerous misstatements of fact being made at scientific meetings.

125. By November 1948, or earlier, Manville, Met Life (acting through Lanza), Raymark, and others decided to exert their influence to materially alter and misrepresent material facts about the substance of research started by Dr. Leroy Gardner at the Saranac Laboratories beginning in 1936. Dr. Gardner's research involved carcinogenicity of asbestos in mice and also included an evaluation of the health effects of asbestos on humans with a critical review of the then-existing standards of dust exposure for asbestos and asbestos products.

126. At a meeting on November 11, 1948, these conspirators and others intentionally and affirmatively determined that Dr. Gardner's work should be edited to specifically delete material facts about the cancer-causing propensities of asbestos and the health effects of asbestos on humans and they determined that only an edited version would be published. These conspirators

thereby fraudulently misrepresented the risks of asbestos exposure to the public, in general, and to the class of persons exposed to asbestos, including the Plaintiff.

127. As a direct result of influence exerted by the above described conspirators, Dr. Arthur Vorwald published Dr. Gardner's edited work in the Journal of Industrial Hygiene, AMA Archives of Industrial Hygiene and Occupational Health in 1951 in a form that stressed those portions of Dr. Gardner's work that the conspirators wished stressed, but which omitted references to human asbestosis and cancer, thereby fraudulently and affirmatively misrepresenting the extent of the risks. The conspirators affirmatively and deliberately disseminated this misleading Vorwald publication to universities, libraries, government officials, agencies and others.

128. Such action constituted a material affirmative misrepresentation of the material facts involved in Dr. Gardner's work and resulted in creating an appearance that inhalation of asbestos was a less serious health concern than Dr. Gardner's unedited work indicated.

129. For many decades, Met Life, individually, jointly and in conspiracy with Manville and Raymark, have been in possession of medical and scientific data, literature, and test reports which clearly indicated that the inhalation of asbestos dust and fibers resulting from the ordinary foreseeable use of said asbestos-containing products and/or machinery requiring or calling for the use of asbestos or asbestos-containing products were unreasonably dangerous, hazardous, deleterious to human health, carcinogenic, and potentially deadly.

130. Despite the medical and scientific data, literature and test reports possessed by and available to Met Life, individually and in conspiracy with Manville and Raymark, Fraudulently, willfully and maliciously withheld, concealed and suppressed said medical and scientific data, literature and test reports regarding the risks of asbestosis, cancer, mesothelioma, and other illnesses and diseases from Plaintiff who using and being exposed to Manville or Raymark asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products; caused to be released, published and disseminated medical and scientific data, literature and test reports containing information and statements regarding the risks of asbestosis, cancer, mesothelioma and other illnesses and diseases, which Metropolitan, Manville and Raymark knew were either incorrect, incomplete, outdated and misleading; distorted the results of medical examinations conducted upon workers who were using asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products and being exposed to the inhalation of asbestos dust and

fibers by falsely stating and/or concealing the nature and extent of the harm which workers suffered; and failed to adequately warn the Plaintiff of the dangers to which he was exposed when they knew of the dangers.

131. By the false and fraudulent representations, omissions, failures, and concealments set forth above, Met Life, Manville and Raymark, individually, jointly, and in conspiracy with each other, intended to induce the Plaintiff to rely upon said false and fraudulent representations, omissions, failures, and concealments, to continue to expose themselves to the dangers inherent in the use of and exposure to their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products. Said misrepresentations were false, incomplete, and misleading and constitute negligent misrepresentations as defined by Sections 311 and 522 of the Restatement (Second) of Torts.

132. Plaintiff reasonably and in good faith relied upon the false and fraudulent representations, omissions, failures, and concealments made by Met Life, Manville, and Raymark regarding the nature of their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

133. As a direct and proximate result of the conspiracy and concert of action between Met Life, Manville and Raymark, the Plaintiff has been deprived of the opportunity of informed free choice and connection with the use of and exposure to Manville and Raymark's asbestos and asbestos-containing products, and therefore continued to work with and be exposed to the co-conspirator corporation's asbestos and asbestos-containing products and as a result, came in contact with asbestos dust or fibers contracted asbestos-related diseases and other conditions, and/or aggravated pre-existing conditions, as a result of which the Plaintiff has been damaged.

FIFTH CAUSE OF ACTION

Punitive Damages

134. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs as though fully set forth herein, and further allege as shown below with regard to the Defendants.

135. During the pertinent times, Defendants had actual knowledge of the dangers to individuals similarly situated to the Plaintiff of asbestos exposure, nevertheless, Defendants deliberately, intentionally and purposefully

withheld such information, thus denying Plaintiff of the knowledge with which to take necessary safety precautions.

136. During the pertinent times, Defendants had actual knowledge of the dangers to individuals similarly situated to the Plaintiff of asbestos exposure, nevertheless, Defendants willfully engaged in failing to warn users of the need for monitoring due to asbestos exposure.

137. During the pertinent times, Defendants had actual knowledge of the dangers to individuals similarly situated to the Plaintiff of asbestos exposure, nevertheless, Defendants willfully failed to issue recall-type letters or notices to users.

138. During the pertinent times, Defendants had actual knowledge of the dangers to individuals similarly situated to the Plaintiff of asbestos exposure, nevertheless, Defendants willfully rejected the 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.

139. During the pertinent times, Defendants had actual knowledge of the dangers to individuals similarly situated to the Plaintiff of asbestos exposure, nevertheless, Defendants willfully delayed the use of asbestos warnings and diluted the content of such warnings for asbestos-related products.

140. During the pertinent times, Defendants had actual knowledge of the dangers to individuals similarly situated to the Plaintiff of asbestos exposure, nevertheless, Defendants willfully failed to advise Plaintiff and other foreseeable end users of medical findings known to Defendants concerning the dangers of asbestos exposure.

141. During the pertinent times, Defendants had actual knowledge of the dangers to individuals similarly situated to the Plaintiff of asbestos exposure, nevertheless, Defendants willfully suppressed the dissemination of information to Plaintiff and other foreseeable end users concerning the hazards of asbestos exposure.

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

SIXTH CAUSE OF ACTION

Loss of Consortium

143. The factual and jurisdictional allegations of the above Paragraphs are realleged and incorporated herein as if restated verbatim, and further allege as shown below with regard to the Defendants.

144. Plaintiff Jeanette Howe is the spouse of Wayne Ervin Howe.

145. Due to the wrongful and tortuous acts of Defendant, Plaintiff Jeanette Howe has suffered pecuniary loss due to the loss of services of her husband, Wayne Ervin Howe.

146. Plaintiff Jeanette Howe has suffered and will continue to suffer in the future, damages including loss of affection, society, comfort, support, consortium, companionship and the protection of her husband.

147. Defendant's wrongful conduct, alleged above, was a direct and proximate cause of the damages suffered by Plaintiff Jeanette Howe.

148. Plaintiff Jeanette Howe demands judgment against Defendant for compensatory damages for a fair and reasonable amount as determined by the jury and for such other and further relief, both at law and in equity, as the Court may deem just and proper.

PETITION FOR EXPEDITED TRIAL

149. Pursuant to S.C. Code § 44-135-80(B), Plaintiff hereby petitions the Court requesting that a trial date be set on an expedited basis. Plaintiff shows that there is good cause for such an expedited trial setting in that the Plaintiff while grievously ill, is living and wishes to have his claims promptly adjudicated. Further, Defendants will not be prejudiced by such an expedited trial setting.

PETITION FOR EXPEDITED DEPOSITION

150. Pursuant to S.C. R. Civ. P. 30(a)(1), Plaintiff hereby petitions the Court requesting that his deposition be conducted on an expedited basis.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs prays to ask that this Court:

A. Award the Plaintiffs actual and compensatory damages, in an amount to be determined at trial, for the wrongful, negligent, reckless and willful acts of the Defendants;

B. Award the Plaintiffs pre-judgment and post-judgment interest to the extent allowable by law;

C. Award the Plaintiffs punitive damages to the extent allowable by law;

D. Award the Plaintiffs' attorney fees and costs to the extent allowable by law; and

E. For such other and further relief as may be just and proper.

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

Respectfully submitted, this the 6th day of November 2015.

WALLACE AND GRAHAM, P.A.

By: Mona Lisa Wallace

Mona Lisa Wallace, Esq.
SC Bar No. 15844
525 North Main Street
Salisbury, NC 28144
(704) 633-5244
E-mail: mwallace@wallacegraham.com

Attorneys for the Plaintiffs

Exhibit A

DREXEL UNIVERSITY
School of
Public Health

Department of Environmental & Occupational Health

Arthur L. Frank, MD, PhD
Professor, Chair Emeritus

November 4, 2015

William M. Graham, Esq.
Wallace and Graham, P.A.
Attorneys At Law
525 North Main Street
Salisbury, NC 28144

Re: Wayne Ervin Howe
DOB: 8/5/45

Dear Mr. Graham:

I am in receipt of medical records in the case of Mr. Howe and have been asked by you to review them and render my judgment regarding any evidence of an asbestos-related disease.

I am currently employed as Professor of Public Health at the Drexel University School of Public Health in Philadelphia. I received my medical degree from the Mt. Sinai School of Medicine in 1972 and during this time and thereafter I worked with Dr. Irving Selikoff regarding health issues related to exposure to asbestos. From 1973 to 1975 I served at the Lung Cancer Branch at the National Cancer Institute of the National Institutes of Health in Bethesda, Maryland and was a Commissioned Officer in the United States Public Health Service. I then returned to Mt. Sinai and completed two residencies, one in internal medicine and the other in occupational medicine. I became board certified in internal medicine in 1978 and in occupational medicine in 1979. I also have a PhD degree in biomedical sciences from the City University of New York having studied the effects of asbestos on respiratory tissue. From 1977 to 1983 I served on the faculty at Mt. Sinai.

From 1983 until 1994 I was Chair of the Department of Preventative Medicine and Environmental Health at the University of Kentucky, College of Medicine where I was a professor, and I was also a professor of toxicology. In 1994 I became Vice President for Medical Education at the University of Texas Health Center at Tyler and was also a Professor of Occupational and Environmental Medicine. In 2002 I became the Chair of the Department of Environmental and Occupational Health at Drexel University's School of Public Health in Philadelphia. I also served as a Professor of Medicine in the Division of Pulmonary Medicine at Drexel.

Over the years I have held a number of positions with the United States Government including service on the Board of Health as a scientific counselor for NIOSH, the National Institute for Occupational Safety and Health. I have chaired the grant review panel for NIOSH. I have done consulting work for NIOSH, OSHA, and the EPA. I currently serve on the Air Pollution Control Board for the City of Philadelphia.

Nesbitt Hall, Sixth Floor, 3215 Market Street, Philadelphia, PA 19104 | Tel: 267.359.6048 | Fax: 267.359.6006
publichealth.drexel.edu | alf83@drexel.edu

I have also consulted with governments around the world including in China, Thailand, India, Brazil, Israel, and Egypt, among others regarding asbestos-related issues. In 1983 I was elected to the Collegium Ramazzini which is an international organization of physicians and scientists devoted to occupational and environmental health issues. Election to this group is limited to 180 active members. I have been active in the organization including service on the Executive Board. Currently, my time is divided between teaching, research, and service. I teach in our introductory course in environmental and occupational health, a course in occupational cancers, and give lectures in the area of occupational toxicology.

In reviewing the medical records of Mr. Howe I note that his treating doctors were aware of his prior exposures to asbestos. In March 2015 Mr. Howe presented with pain in his left chest and an X-ray revealed a large circumscribed mass along the left lateral chest wall. In May radiological testing made note of calcified pleural plaquing. When tissue was taken from his chest he was found to have a pleural-based malignancy that had spread. The surgical pathology report of May 2015 revealed that Mr. Howe developed a malignant pleural mesothelioma. This was then confirmed at Duke University by Dr. Sporn in September 2015.

Having reviewed the deposition of Mr. Howe I learned of the details of Mr. Howe's exposure to asbestos. For example, he worked for some 15 years as a pipefitter. He also did work as a millwright, with additional exposures to asbestos. He was also known to do mechanical work on vehicles which included brake work. Through his testimony I also learned that he worked with asbestos-containing gaskets, siding, and other materials.

Based upon my review of the materials sent me, it is my opinion and diagnosis, to a reasonable degree of medical certainty, that Mr. Howe developed two asbestos-related conditions. First I believe he developed asbestos-related pleural disease, called by some asbestosis, given the finding of calcified pleural plaques. Secondly, and more importantly, Mr. Howe developed a malignant pleural mesothelioma as a result of his exposures to asbestos. The cumulative exposures he had to asbestos, from any and all products, containing any and all fiber types, would have led to his developing these conditions. Furthermore, based upon my review of the materials sent me it is my opinion, to a reasonable degree of medical certainty, that Mr. Howe's exposure to asbestos was a proximate cause of the diagnosed mesothelioma, and that Mr. Howe's illness is not more probably the result of other causes.

The hazards of asbestos have been known for more than a century, and the need to protect individuals was written about some 80 years ago.

Should you have any questions about this matter please feel free to contact me.

Sincerely yours,

Arthur L. Frank

Arthur L. Frank, MD, PhD
Professor of Public Health

ALF/kmw

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	
WAYNE ERVIN HOWE, AN INDIVIDUAL AND JEANETTE HOWE, HIS SPOUSE,	)	**ANSWER OF DEFENDANT COVIL CORPORATION TO PLAINTIFFS' COMPLAINT**
Plaintiffs,	)	
v.	)	C.A. No. 2015-CP-46-3456
AIR & LIQUID SYSTEMS CORP., et al.,	)	
Defendants.	)	

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2016 FEB -8 PM 1:38
DAVID BRATTON
CC.C.P.&G.S.
YORK COUNTY, SC

The Defendant Covil Corporation (hereinafter "Covil"), answering the Plaintiffs' Complaint, alleges and says as follows:

FOR A FIRST DEFENSE

1. Covil is without sufficient information to form a belief as to the truthfulness of the allegations of paragraphs 1, 2 and 3 of Plaintiffs' Complaint and, therefore, denies them.

2. Covil is without sufficient information to form a belief as to the truthfulness of the allegations of paragraphs 4 through 14 of Plaintiffs' Complaint, which do not relate to it, and, therefore, denies them.

3. Covil admits so much of the allegations of paragraph 15 of Plaintiffs' Complaint as allege it was a South Carolina Corporation and formerly maintained its principle place of business in the State of South Carolina. Covil further admits so much of the allegations of paragraph 15 of Plaintiffs' Complaint as allege that service of process may be made, upon information and belief, on James P. Covil, Jr. Covil denies the remaining allegations of paragraph 15 of Plaintiffs' Complaint.

4. Covil is without sufficient information to form a belief as to the truthfulness of the allegations of paragraphs 16 through 38 of Plaintiffs' Complaint, which do not relate to it, and, therefore, denies them.

5. Paragraph 39 of Plaintiffs' Complaint contains legal conclusions concerning jurisdiction which Covil is neither required to admit nor deny. To the extent a response may be required, Covil admits so much of the allegations of paragraph 39 as allege it was a South Carolina corporation. To the extent the allegations of paragraph 39 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form as belief as to the truthfulness of those allegations and, therefore denies them. Covil denies the remaining allegations of paragraph 39 of Plaintiffs' Complaint.

6. Paragraph 40 of Plaintiffs' Complaint contains legal conclusions concerning venue which Covil is neither required to admit nor deny. To the extent a response may be required, Covil denies the allegations of paragraph 40 on Plaintiffs' Complaint and would allege and show that venue is proper in and should be changed to Greenville County, South Carolina.

7. Paragraph 41 of Plaintiffs' Complaint contains legal conclusions concerning jurisdiction which Covil is neither required to admit nor deny. To the extent a response may be required, Covil is without sufficient information to form as belief as to the truthfulness of those allegations and, therefore denies them.

8. Covil is not required to respond to the allegations of paragraph 42 of Plaintiffs' Complaint which are directed to another Defendant. Covil denies the remaining allegations of paragraph 42 of Plaintiffs' Complaint to the extent they relate to it.

9. Covil denies the allegations of paragraphs 43 and 44 of Plaintiffs' Complaint to the extent they pertain to it. To the extent the allegations of paragraphs 43 and 44 are directed

against or pertain to parties other than Covil, Covil is without sufficient information to form as belief as to the truthfulness of those allegations and, therefore denies them.

10. Covil admits, upon information and belief, the allegations of paragraphs 45, 46, 47 and 48 of Plaintiffs' Complaint.

11. Covil denies the allegations of paragraphs 49 through 57 of Plaintiffs' Complaint to the extent they pertain to it.

12. Paragraph 58 of Plaintiffs' Complaint contains legal conclusions which Covil is neither required to admit nor deny. To the extent a response may be required, Covil is without sufficient information to form a belief as to the truthfulness of the allegations of paragraph 58 of Plaintiffs' Complaint and, therefore, denies them.

13. Covil denies the allegations of paragraphs 59 through 64 of Plaintiffs' Complaint to the extent they pertain to it.

14. In response to the allegations of paragraph 65 of Plaintiffs' Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 64 of Plaintiffs' Complaint.

15. Covil denies so much of the allegations of paragraph 66 of the Plaintiffs' Complaint as allege that it is a miner, manufacturer, processor, importer, converter, or compounder of asbestos and asbestos containing insulation products. Covil alleges that it was an insulation contractor and wholesaler of insulation materials which purchased from time to time insulation materials containing asbestos from numerous manufacturers and either sold them to contractors or applied them itself. To the extent the allegations of paragraph 66 of the Plaintiffs' Complaint are directed against or pertain to parties other than Covil, Covil is without sufficient

information to form a belief as to the truth of those allegations and, therefore, denies them. Covil denies the remaining allegations of paragraph 66 of Plaintiffs' Complaint.

16. Covil denies the allegations of paragraphs 67 through 98 of Plaintiffs' Complaint to the extent they pertain to it.

17. In response to the allegations of paragraph 99 of Plaintiffs' Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 98 of Plaintiffs' Complaint.

18. Covil denies the allegations of paragraphs 100 through 102 of Plaintiffs' Complaint to the extent they pertain to it.

19. In response to the allegations of paragraph 103 of Plaintiffs' Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 102 of Plaintiffs' Complaint.

20. Covil denies the allegations of paragraphs 104 through 107 of Plaintiffs' Complaint to the extent they pertain to it.

21. In response to the allegations of paragraph 108 of Plaintiffs' Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 107 of Plaintiffs' Complaint.

22. Covil is without sufficient information to form a belief as to the truthfulness of the allegations of paragraphs 109 through 133 of Plaintiffs' Complaint, which do not pertain to it and, therefore, denies them.

23. In response to the allegations of paragraph 134 of Plaintiffs' Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 133 of Plaintiffs' Complaint.

24. Covil denies the allegations of paragraphs 135 through 142 of Plaintiffs' Complaint to the extent they pertain to it.

25. In response to the allegations of paragraph 143 of Plaintiffs' Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 142 of Plaintiffs' Complaint.

26. Covil admits, upon information and belief, the allegations of paragraph 144 of Plaintiffs' Complaint.

27. Covil denies the allegations of paragraphs 145 through 148 of Plaintiffs' Complaint to the extent they pertain to it.

28. Paragraphs 149 and 150 of Plaintiffs' Complaint contain legal conclusions and a petition by Plaintiffs to the Court, which Covil is neither required to admit nor deny. To the extent a response may be required, Covil is without sufficient information to form a belief as to the truthfulness of the allegations of paragraphs 149 and 150 of Plaintiffs' Complaint and, therefore, denies them.

29. In response to the allegations of paragraphs A through E under Plaintiffs' "Prayer for Relief," and to the extent a response may be required, Covil denies it is liable to Plaintiffs for any of the alleged damages and/or other relief sought therein.

30. Covil denies each and every allegation of the Plaintiffs' Complaint not specifically admitted, explained or modified.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

31. The Plaintiffs' Complaint fails to state a claim upon which relief may be granted and accordingly it should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

32. This Court lacks jurisdiction over Covil as a result of improper, and/or lack of, service of process, lack of subject matter jurisdiction, and/or lack of personal jurisdiction.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

33. Covil alleges that venue in this action is not proper and that this action should be transferred to the Greenville County Court of Common Pleas. Covil reserves its right to move for dismissal and/or transfer of the action based on improper and/or inconvenient venue and further reserves its right to seek application of the law of the appropriate venue on all issues.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

34. Covil alleges that the Plaintiffs' Complaint should be dismissed due to the Plaintiffs' lack of capacity.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

35. There is a lack of joinder of one or more parties who should or must be joined; without the joinder of these proper parties, complete relief cannot be accorded among those already made parties to this action.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

36. The claims set forth in the Complaint are barred by the applicable statutes of limitations and/or repose in this state or other states as may be applicable.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

37. The claims set forth in the Complaint are barred to the extent there is another action pending between the same parties for the same claim.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

38. Plaintiffs do not have capacity to bring this claim pursuant to Section 15-5-150 of the South Carolina Code of Laws, also referred to the South Carolina Door Closing Statute.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

39. Plaintiffs' Complaint should be dismissed for its failure to comply with the requirements of S.C. Code §44-135-10 *et seq.* also known as the Asbestos and Silica Claims Procedures Act of 2006 as the Plaintiffs have failed to make the *prima facie* showing required by the Act. In the alternative, the case should not be placed on any active trial docket and should not be the subject of any discovery until Plaintiffs comply with the provisions of the Act.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

40. Plaintiffs' claims are barred or reduced by the doctrines of res judicata, waiver, release, laches, and/or conditions precedent or subsequent.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

41. Plaintiffs' claims are barred or reduced by the applicable provisions of the Worker's Compensation Act, whether of this state or another.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

42. By virtue of the doctrine of judicial estoppel, the Plaintiffs are precluded from taking a position inconsistent with one taken with respect to the same facts in earlier litigation, if any, and are, therefore, precluded from alleging the material facts necessary to state a cause of action against this Defendant.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

43. Covil would show that even if Plaintiff Wayne Ervin Howe suffered injuries and damages as set forth in the Complaint, which is admitted for the purposes of this defense only, then such injuries and damages were due to his own negligent, reckless, willful, wanton, and careless acts and conduct which combined and concurred with any willful, wanton, reckless, negligent or careless acts or conduct on the part of this Defendant, which are specifically denied, and acted as a direct and proximate cause of the injuries and damages claimed to have been suffered by Plaintiff Wayne Ervin Howe. Plaintiffs' claims are barred to the extent that Plaintiff Wayne Ervin Howe's negligence is more than 50% of the negligence in this action. To the extent Plaintiff Wayne Ervin Howe's contributory negligence and recklessness is less than 50% of the total negligence in this action, Plaintiffs' recovery should be reduced by the percentage of Plaintiff Wayne Ervin Howe's negligence and recklessness.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

44. Covil alleges that if Plaintiffs would otherwise have proven the allegations of the Complaint against this defendant, then Plaintiff Wayne Ervin Howe had actual knowledge of the alleged dangerous nature of the asbestos or asbestos-related products and voluntarily assumed the

risks incident thereto in repeated unreasonable use and exposure to the asbestos or asbestos-related products and processes involved in the use of these insulation materials.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

45. Covil alleges that any asbestos-containing products which Plaintiff Wayne Ervin Howe used and/or was exposed were misused, abused, not used in the manner in which they were intended to be used, and/or were used in a manner that was abnormal and not reasonably foreseeable and such misuse proximately caused or contributed to Plaintiffs' alleged damages, injuries, and/or losses, if any.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

46. Covil would show that product or products claimed to contain asbestos were used contrary to any instructions and/or warnings accompanying those products.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

47. Covil would show that even if Plaintiff Wayne Ervin Howe had suffered injuries as described, which is admitted for the purposes of this defense only, then such injuries were caused by the acts or omissions of third parties, including but not limited to the actions of unions, employers, manufacturers, distributors and others, and that these acts or omissions of third parties acted as a direct and proximate cause of Plaintiff Wayne Ervin Howe's injuries in such a way as to constitute a superseding or intervening cause ending all liability on the part of this Defendant.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

48. Covil alleges that if Plaintiff Wayne Ervin Howe sustained the injuries and/or damages alleged, which is specifically denied, then such injuries and/or damages were proximately caused by the acts and/or omissions of Plaintiff Wayne Ervin Howe's employers with respect to the maintenance of healthy and safe work sites and environments, which were under the exclusive control and possession of the employer(s).

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

49. Covil alleges that if Plaintiff Wayne Ervin Howe sustained injuries as a result of exposure to asbestos or asbestos-containing products, which is denied, then such injuries were or may have been due to exposures to products of manufacturers not named as Defendants in this action, including but not limited to product manufacturers which have taken advantage of the protections of the bankruptcy provisions of the United States Code.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

50. On information and belief, it is alleged that the employers of Plaintiff Wayne Ervin Howe were negligent in the manner set out previously herein, and such negligence was at least a proximate cause of any injury done to Plaintiff Wayne Ervin Howe by asbestos, if any, and such negligence of the employers joined and concurred with any alleged negligence of this defendant in producing any injuries and damages sustained by Plaintiff Wayne Ervin Howe; further, as a result of said employers' negligence, this defendant is entitled to have the verdict, if any, reduced by the amount of any workers' compensation payments or like payments made to Plaintiff Wayne Ervin Howe or on his behalf.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

51. Plaintiff Wayne Ervin Howe was not exposed to any asbestos material through any act or omission of Covil or, if such exposure occurred, which is denied, such exposure was of such insufficient quantities, at such infrequent intervals, and for such short periods of time that any such exposure was *de minimis* and cannot be deemed a proximate cause of Plaintiffs' damages, if any, as a matter of law. Therefore, Covil denies that any alleged action or inaction on its part has damaged or injured the Plaintiff Wayne Ervin Howe in any manner or at any time.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

52. At all times alleged in Plaintiffs' Complaint, the products alleged to have caused Plaintiff Wayne Ervin Howe's injuries were designed, manufactured, sold, distributed, labeled and/or installed in compliance with the then existing state of the art in the industry to which this Defendant belonged.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

53. Covil had no duty to warn of and/or protect Plaintiffs from risks or dangers, if any, inherent in products that were distributed to the employers of Plaintiff Wayne Ervin Howe, who were learned intermediaries or sophisticated users of such products, and upon whom this defendant reasonably relied to warn Plaintiff Wayne Ervin Howe of the alleged dangerous characteristics inherent in any such products.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

54. The alleged injuries to Plaintiff Wayne Ervin Howe occurred or were allegedly sustained prior to the enactment of § 15-73-10 of the South Carolina Code of Laws, Annotated, and Plaintiffs are, therefore, prohibited by law from asserting a cause of action based on strict liability.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

55. Covil would show that to the extent that the Complaint seeks to recover for injuries suffered in South Carolina, Plaintiffs' claims are barred by the provisions of S.C. Code Ann. §15-73-20.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

56. Covil alleges that Plaintiff Wayne Ervin Howe was not a user or consumer of any products distributed and/or installed by this defendant within the meaning of § 15-73-10 of the South Carolina Code, Annotated, and therefore may not recover against this Defendant in strict liability for either actual or punitive damages.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

57. Covil would show that Plaintiff Wayne Ervin Howe was not in privity with it so that any claim for breach of warranty made against this defendant is barred.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

58. There are no allegations against this Defendant stated with sufficient particularity to constitute a cause of action for fraud, fraudulent concealment, concert of action, conspiracy, or the like meeting the requirement of Rule 9(b) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

59. Plaintiffs have failed, neglected and/or refused to mitigate their damages, if any, and therefore, Plaintiffs are barred from recovery of those damages which could have been avoided by the exercise of due diligence.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

60. On information and belief, Plaintiffs received payments from and granted releases to other parties, including but not limited to other parties to this action, other non-party manufacturers and/or employers of Plaintiff Wayne Ervin Howe (for claims other than workers' compensation) against whom Plaintiffs have claimed liability in tort for the same injury for which Plaintiffs claim this Defendant has liability. This Defendant is entitled to set off the greater of the amount stipulated to in such release or the amount of consideration paid for such release from a verdict in this case, if any.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

61. Plaintiffs' Complaint fails to set forth a claim for punitive damages upon which relief may be granted.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

62. To the extent Plaintiffs' Complaint asserts a demand for punitive damages, this Defendant specifically incorporates by reference any and all standards of limitations regarding the determination and/or enforceability of punitive damage awards that arose in the decisions of *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1966); *Cooper Industries, Inc. v. Leatherman Tool*

Group, Inc., 532 U.S. 424 (2001); and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003).

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

63. To the extent that Plaintiffs' Complaint seeks punitive damages, this Defendant affirmatively pleads the following in regard to punitive damages:

a. An award of punitive damages in this civil action would amount to a deprivation of property without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

b. An award of punitive damages in this civil action would violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

c. The criteria used for determining whether and in what amount punitive damages may be awarded are impermissible, vague, imprecise and inconsistent and, therefore, violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

d. An award of punitive damages in this civil action would amount to an excessive fine in violation of the due process provisions of the Eighth Amendment to the United States Constitution and the corresponding provisions of the applicable state Constitution; and

e. Plaintiffs' claim for punitive damages in barred by the "double jeopardy" clause of the Fifth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

64. This Defendant would show that, among other things, Plaintiffs' claim for punitive damages is barred, reduced, bifurcated, capped or otherwise impacted by the South Carolina Fairness in Civil Justice Act of 2011 and/or similar and/or related state statutes and limitations.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

65. Where applicable, and not inconsistent, Covil incorporates herein by reference the defenses asserted by other defendants.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

66. Covil reserves the right to amend this pleading to add or delete affirmative defenses as proof is developed during the course of discovery in this action.

WHEREFORE, Defendant Covil Corporation having fully answered Plaintiffs' Complaint, prays that the Court dismiss Plaintiffs' Complaint with prejudice, that Defendant Covil Corporation be awarded its costs and attorney's fees to the extent permitted by law, and for such other and further relief as the Court deems just and proper.

(*signatures appear on following page*)

February 4, 2016

Daniel B. White (S.C. Bar #6070)
Stephanie G. Flynn (S.C. Bar #16653)
GALLIVAN, WHITE & BOYD, P.A.
55 Beattie Place, Ste. 1200
P. O. Box 10589
Greenville, SC 29603
Phone: 864/271-9850
Fax: 864/271-7502
dwhite@gwblawfirm.com
sflynn@gwblawfirm.com

Attorneys for Defendant
Covil Corporation

Defendant Covil Corporation demands a trial by jury.

Daniel B. White (S.C. Bar #6070)
Stephanie G. Flynn (S.C. Bar #16653)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Answer of Defendant Covil Corporation to Plaintiffs' Complaint** was served on all known defense counsel of record via email, and served on the below listed counsel of record for Plaintiffs via email and the United States Postal Service, with sufficient postage affixed thereto and return address clearly marked, on the 4th day of February, 2016.

COUNSEL SERVED:

Mona Lisa Wallace, Esq.
Daniel R. Francis, Esq. (*pro hac vice*)
Wallace and Graham, P.A.
525 North Main Street
Salisbury, North Carolina 28144

Attorneys for Plaintiffs

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DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

Mary Sheehan

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

C/A No. 2015-CP-46-3456

TIMOTHY W. HOWE, Individually and as Personal Representative of the Estate of WAYNE ERWIN HOWE, Deceased, and **JEANETTE HOWE,**

Plaintiffs,

v.

AIR & LIQUID SYSTEMS CORP., INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO BUFFALO PUMPS, INC.;
AIRCO, INC.;
AIRGAS USA, LLC F/K/A NATIONAL WELDING SUPPLY, INC.
ALBANY INTERNATIONAL CORP.;
ASTEN-JOHNSON, INC.;
AURORA PUMP COMPANY;
A.W. CHESTERTON COMPANY;
BELOIT CORPORATION;
BLACK CLAWSON CONVERTING MACHINERY LLC, INDIVIDUALLY AND AS A SUBSIDIARY OF DAVIS-STANDARD LLC;
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;
CGR PRODUCTS, INC. F/K/A CAROLINA GASKET AND RUBBER COMPANY;
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;
CRANE CO.;
CROWN CORK & SEAL COMPANY, INC.;
DANIEL INTERNATIONAL CORPORATION;

Former Pipefitter, Manual Laborer, General Construction Worker, Steel Worker, Welder, Millwright, and Maintenance Worker

(York County, South Carolina) Mesothelioma

Asbestos Lawsuit
Wrongful Death and Survival Action
JURY DEMAND ON ALL ISSUES

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DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

DAVIS-STANDARD CORPORATION, LLC;)
DEZURIK, INC. D/B/A DEZURIK-APCO)
WILLIAMETTE EAGLE, INC.;)
FISHER-KLOSTERMAN, INC., AS)
SUCCESSOR-IN-INTEREST TO BUELL)
ENGINEERING CO.;)
FLOWSERVE CORPORATION)
INDIVIDUALLY AND AS SUCCESSOR-IN-)
INTEREST TO DURCO PUMPS;)
FLUOR ENTERPRISES, INC., F/K/A FLUOR)
DANIEL, INC.,)
FLUOR DANIEL SERVICES CORPORATION;)
FOSTER WHEELER ENERGY)
CORPORATION;)
GENERAL ELECTRIC COMPANY;)
THE GORMAN-RUPP COMPANY;)
GOULDS PUMPS, INCORPORATED;)
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F/K/A AIRCO, INC.;)
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TECHNOLOGIES CORPORATION,)
INDIVIDUALLY AND AS SUCCESSOR-IN-)
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MARSULEX ENVIRONMENTAL)
TECHNOLOGIES, LLC, AS SUCCESSOR-IN-)
INTEREST TO BUELL ENGINEERING CO.;)
METROPOLITAN LIFE INSURANCE)
COMPANY, A WHOLLY-OWNED SUBSIDIARY)
OF METLIFE INC.;)
PEERLESS PUMP COMPANY;)
PRESNELL INSULATION, INC.;)
RILEY POWER, INC., INDIVIDUALLY AND AS)
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BORSIG POWER, INC., AND RILEY STOKER)
CORPORATION, INDIVIDUALLY AND AS)
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SCAPA WAYCROSS, INC.;)
SEPCO CORPORATION;
SPX COOLING TECHNOLOGIES, INC., F/K/A
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STERLING FLUID SYSTEMS (USA) LLC;
TRANE U.S., INC., F/K/A AMERICAN
STANDARD, INC., F/K/A AMERICAN
RADIATOR & STANDARD

MANUFACTURING COMPANY;
UNION CARBIDE CORPORATION;
UNIROYAL, INC., F/K/A UNITED STATES RUBBER COMPANY, INC.;
UNITED CONVEYOR CORPORATION;
VELAN VALVE CORP.;
VIKING PUMP, INC.;
WARREN PUMPS LLC;
YUBA HEAT TRANSFER CORPORATION;
ZURN INDUSTRIES,

DEFENDANTS.

FIRST AMENDED SUMMONS

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the 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 complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

John D. Kassel (SC Bar No.: 3286)
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Theile B. McVey (SC Bar No.: 16682)
tmcvey@kassellaw.com
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803-256-4242
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Other email: emoultrie@kassellaw.com

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214-722-5990
214-722-5991
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ATTORNEYS FOR PLAINTIFFS

September 21, 2016

Spartanburg, South Carolina.

STATE OF SOUTH CAROLINA | **IN THE COURT OF COMMON PLEAS**

COUNTY OF YORK | **C/A No. 2015-CP-46-3456**

TIMOTHY W. HOWE, Individually and as Personal Representative of the Estate of WAYNE ERWIN HOWE, Deceased, and **JEANETTE HOWE,**

Plaintiffs,

v.

AIR & LIQUID SYSTEMS CORP., INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO BUFFALO PUMPS, INC.;
AIRCO, INC.;
AIRGAS USA, LLC F/K/A NATIONAL WELDING SUPPLY, INC.
ALBANY INTERNATIONAL CORP.;
ASTEN-JOHNSON, INC.;
AURORA PUMP COMPANY;
A.W. CHESTERTON COMPANY;
BELOIT CORPORATION;
BLACK CLAWSON CONVERTING MACHINERY LLC, INDIVIDUALLY AND AS A SUBSIDIARY OF DAVIS-STANDARD LLC;
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;
CGR PRODUCTS, INC. F/K/A CAROLINA GASKET AND RUBBER COMPANY;
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;
CRANE CO.;
CROWN CORK & SEAL COMPANY, INC.;
DANIEL INTERNATIONAL CORPORATION;

Former Pipefitter, Manual Laborer, General Construction Worker, Steel Worker, Welder, Millwright, and Maintenance Worker

(York County, South Carolina) Mesothelioma

Asbestos Lawsuit
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JURY DEMAND ON ALL ISSUES

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2016 SEP 23 PM 12:00
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YORK COUNTY, SC

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VELAN VALVE CORP.;
VIKING PUMP, INC.;
WARREN PUMPS LLC;
YUBA HEAT TRANSFER CORPORATION;
ZURN INDUSTRIES,

DEFENDANTS.

FIRST AMENDED COMPLAINT

NOW COME the Plaintiffs, Timothy W. Howe, Individually and as Personal Representative of the Estate of Wayne Ervin Howe, deceased, and Jeanette Howe, citizens and residents of the State of South Carolina, through their counsel and sues the Defendants and alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiffs are citizens and residents of the State of South Carolina.

2. The decedent died on March 7, 2016, in York County, Hospice and Community care, Rock Hill, SC 29732. The cause of death was Malignant Mesothelioma. The decedent had been diagnosed with Mesothelioma on or about May 19, 2015.

3. Decedent Wayne Ervin Howe, deceased, was a citizen and resident of the State of South Carolina. Timothy W. Howe, Personal Representative, is the son Wayne Ervin Howe and a citizen of South Carolina.

4. The Defendant, **Air & Liquid Systems Corp.,** individually and as successor-in-interest to Buffalo Pumps, Inc., is a corporation organized and existing under the laws of the State of Pennsylvania with a principal place of business in Pennsylvania, and can be served with process at its office at 874 Oliver Street, North Tanawanda NY 14120-3298 or through its registered agent located at CT Corporation, 116 Pine St, Suite 320, Harrisburg, PA 17101.

5. The Defendant, **Airco, Inc.**, is a corporation organized and existing under the laws of the State of Delaware with a principal place of business in New Jersey, and can be served with process at its office at 575 Mountain Avenue, Murray Hill, NJ 07974 or through its registered agent the North Carolina Secretary of State located at 2 South Salisbury Street, Raleigh, NC 27601.

6. The Defendant, **Airgas USA, LLC.** formerly known as National Welding Supply Inc., is a limited liability company organized and existing under the laws of the State of Delaware with a principal place of business in Pennsylvania, and can be served with process at

its office at 259 North Radnor-Chester Road, Radnor, PA 19087 or through its registered agent CT Corporation System located at 150 Fayetteville Street, Box 1011, Raleigh, NC 27601.

7. The Defendant, **Albany International Corp.,** is the successor in interest to Mount Vernon Group d/b/a Mount Vernon Dryer Fabrics and the successor in interest to Geschmay Corporation. Upon information and belief, Albany International Corp. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located in Rochester, New Hampshire, and can be served with process at its office at 975 Old Norcross Road, Suite A, Lawrenceville, Georgia 30045, or through its South Carolina registered agent, CT Corporation System, 2 Office Park Court, Columbia SC 29223, or at its office at 216 Airport Drive, Rochester, NH 03867.

8. The Defendant, **Asten-Johnson, Inc.,** is a corporation organized and existing under the laws of the State of Delaware with a principal place of business in Charleston, South Carolina and can be served with process at its office at 4399 Corporate Road, Charleston, SC 29405 or through its office located at 400 Asten Road, Clinton, SC 29325 or through its registered agent, CT Corporation System, 75 Beattie Place, Greenville, SC 29601.

9. The Defendant, **Aurora Pump Company**, is a corporation organized and existing under the laws of the State of Minnesota with a principal place of business in Illinois, and can be served with process at its office at c/o Pentair, 800 Airport Road, North Aurora, IL 60542 or through its office located at c/o Lynette Jones, 13515 Ballantyne Corp. Pl., Charlotte NC 28277.

10. The Defendant, **A.W. Chesterton Company**, is a corporation organized and existing under the laws of the State of Massachusetts with a principal place of business in Massachusetts, and can be served with process through its registered agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC 29223

11. The Defendant, **Beloit Corporation,** is a corporation organized and existing under the laws of the State of Delaware with a principal place of business in Springfield, and can be served with process through its registered agent, Lexis Documents Services, 801 Adlai Stevenson Drive, Springfield, 62703.

12. The Defendant, **Black Clawson Converting Machinery LLC,** is a corporation incorporated under the laws of the State of Delaware, having its principal place of business in the State of Pennsylvania, and can be served with process c/o registered agent, CT Corporation System, can be served through its registered agent office at c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington DE 19808.

13. The Defendant, **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, is a corporation incorporated under the laws of the State of Delaware, having its principal place of business in the State of Pennsylvania, and can be served with process c/o registered agent, CT Corporation System, 75 Beattie Place, Two Insignia Financial Plaza, Greenville, SC 29601, or through its registered agent office at c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington DE 19808.

14. The Defendant, **CGR Products, Inc.** f/k/a Carolina Gasket and Rubber Company, Inc., is a corporation organized and existing under the laws of the State of North Carolina with a principal place of business in North Carolina, and can be served with process at its registered agent office at 100 North Greene Street, Suite 600, Greensboro, NC 27401 or through its office located at 4655 US Highway 29 North, Greensboro, NC 27405.

15. The Defendant, **CNA Holdings, Inc.**, f/k/a Hoechst Celanese Corporation, is a corporation incorporated under the laws of the State of Delaware, having its principal place of business in the State of Texas, and can be served with process at Registered Agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC 29223.

16. The Defendant, **Celanese Corporation** f/k/a Hoechst Celanese Corporation (sued individually and as successor in-interest-to Fiber Industries, Inc.), is a corporation incorporated under the laws of the State of Delaware, having its principal place of business in the State of Texas, and can be served with process at Registered Agent, The Corporation Trust Company, 1209 Orange Street, Wilmington, DE 19801.

17. The Defendant, **Cleaver Brooks, Inc.**, individually and as successor-in-interest to Aquachem, is a corporation incorporated under the laws of the State of Delaware, having its principal place of business located in the State of Georgia, and can be served with process at Registered Agent, Corporation Service Company, 1703 Laurel Street, Columbia, SC 29201.

18. The Defendant, **Covil Corporation**, is a corporation incorporated under the laws of the State of South Carolina, having its principal place of business in the State of South Carolina, and can be served with process at Covil Corporation c/o Jim Covil, 5 Woodfern Circle, Greenville, SC 29615 or at Registered Agent, Greenville Process Service, Greengate Office Park, 25 Woods Lake Road, Suite 216, Greenville, SC 29607.

19. The Defendant, **Crane Co.** is a corporation organized and existing under the laws of the State of Delaware with a principal place of business in Connecticut and can be served with process through its registered agent office located at The Corporation Trust Company, 1209 Orange Street, Wilmington DE 19801, or its registered office of CT Corporation System, 111 Eighth Avenue, NY, NY 10011.

20. The Defendant, **Crown Cork & Seal Company, Inc.,** is a corporation organized and existing under the laws of the State of Pennsylvania with a principal place of business in Pennsylvania, and can be served with process at its office at 1 Crown Way, Philadelphia PA 19154.

21. The Defendant, **Daniel International Corporation,** is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in South Carolina, and can be served with process at its office at 100 Fluor Daniel Drive, Greenville SC 29607, or through its South Carolina registered agent, John R. Reynolds, 100 Fluor Daniel Drive, Greenville SC 29607.

22. The Defendant, **Davis-Standard Corporation, LLC,** is a corporation organized and existing under the laws of the State of Delaware with a principal place of business in

Delaware, and can be served with process through its registered agent office located at Corporation Service Company, 2711 Centervile Rd. Suite 400, Wilmington, DE 19808.

23. The Defendant, **Dezurik, Inc.,** was and is a company incorporated under the laws of the State of Delaware with its principal place of business in Sartell, MN, it can be served through its registered agent, Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

24. The Defendant, **Fisher-Klosterman, Inc.**, is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Kentucky, and may be served with process at its office at 10000 Shelbyville Road, Suite 101, Louisville, KY 40223, or through its registered agent, Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

25. The Defendant, **Flowserve Corporation,** is a corporation incorporated under the laws of the State of New York with its principle place of business in New York, and can be served with process at its Registered Agent CT Corporation System, C.T. Corporation System, 120 South Central Avenue Clayton, Missouri 63105.

26. The Defendant, **Fluor Enterprises, Inc.**, f/k/a Fluor Daniel, Inc., is a corporation organized and existing under the laws of the State of California, and can be served with process at its office at 3 Polaris Way, Aliso Viejo, CA 92698, or through its South Carolina registered agent, Corporation Service Company, 1703 Laurel Street, Columbia SC 29201.

27. The Defendant, **Fluor Daniel Services Corporation,** is a corporation organized and existing under the laws of the State of Delaware and can be served with process at its office at 100 Fluor Daniels Drive, Greenville SC 29607, or through its South Carolina registered agent, Corporation Service Company, 1703 Laurel Street, Columbia SC 29201.

28. The Defendant, **Foster Wheeler Energy Corporation**, is a corporation incorporated under the laws of the State of Delaware, having its principal place of business in New Jersey, and can be served with process through its Registered Agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia SC 29223, or at its office located at Perryville Corporate Park, Route 78, Clinton NJ 08809.

29. The Defendant, **General Electric Company**, is a corporation incorporated under the laws of the State of New York, having its principal place of business located in the State of Connecticut, and can be served with process Registered Agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia SC 29223.

30. The Defendant, **The Gorman-Rupp Company** a/k/a The Gorman-Rupp International Company, is a corporation incorporated under the laws of the State of Ohio, having its principal place of business located in Ohio, and can be served with process at through its Ohio Registered Agent, Corporation Services Company, 50 West Broad Street, Suite 1800, Columbus Ohio 43215, or through the corporate office address of 180 Hines Avenue, Bellville OH 44813, or its corporate address at 600 South Airport Road, Mansfield OH 44901.

31. The Defendant, **Goulds Pumps, Incorporated**, is a corporation organized and existing under the laws of the State of Delaware and can be served with process through its office located at 240 Fall Street, Seneca Falls, NY 131148, or through its registered agent, c/o CT Corporation System, 2 Office Park Court, Suite 103 Columbia, SC 29223.

32. The Defendant, **Ingersoll-Rand Company** is a New Jersey company with its principal place of business in Davidson, North Carolina and can be served with process through its South Carolina registered agent office located at CT Corporation System, 2 Office Park Court, Columbia SC 29223 or its corporate office at 800-E Beaty Street, Davidson, NC 28036.

33. The Defendant, **Linde, LLC,** is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in New Jersey, and can be served with process at its office at 575 Mountain Avenue, Murray Hill, NJ 07974 or through its registered agent Corporation Service Company at 327 Hillsborough Street, Raleigh, NC 27603.

34. The Defendant, **Marsulex Environmental Technologies Corporation**, is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Pennsylvania and can be served with process at its office at 200 North 7th Street, Lebanon, PA 17406 or through its registered agent Corporation Service Company at 2595 Interstate Drive, Suite 103, Harrisburg, PA 17110.

35. The Defendant, **Marsulex Environmental Technologies, LLC**, is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in Pennsylvania and can be served with process at its office at 200 North 7th Street, Lebanon, PA 17406 or through its registered agent Corporation Service Company at 2595 Interstate Drive, Suite 103, Harrisburg, PA 17110.

36. The Defendant, **Metropolitan Life Insurance Company**, a wholly-owned subsidiary of MetLife, Inc., is a corporation organized and existing under the laws of the State of New York with its principal place of business in New York, and can be served with process at its office at 200 Park Ave., New York, NY 10166, or at its office at One Madison Avenue, New York NY 10010, or at c/o United Corporate Services, Inc., 160 Cassell Road #144, Harleysville, PA 19438-2009.

37. The Defendant, **Peerless Pump Company** aka Peerless Industries Inc., is a corporation organized and existing under the laws of the State of Indiana and can be served with process through its office located at c/o ALCO Products, 1515 Market Street, Philadelphia PA 19102, or at its office at 2005 Dr. Martin Luther King Jr. Street, Indianapolis, IN 46202, or at SFS (USA) Holding Inc. d/b/a Peerless Pump Company, c/o CT Corporation System, 150 Fayetteville St., Box 1011, Raleigh, NC 27601.

38. The Defendant, **Presnell Insulation, Inc.**, is a corporation incorporated under the laws of the State of North Carolina, having its principal place of business located in North Carolina, and can be served with process at Registered Agent, Jackson T. Presnell 3717 Flowerfield Rd., Charlotte, NC 28210.

39. The Defendant, **Riley Power, Inc.**, individually and as successor-in-interest to Babcock Borsig Power, Inc., and Riley Stoker Corporation, individually and as successor-in-interest to D.B. Riley, is a corporation incorporated under the laws of the State of Massachusetts, having its principal place of business located in the State of Massachusetts, and can be served with process c/o Registered Agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC, 29223.

40. The Defendant, **Scapa Waycross, Inc.,** is a corporation organized and existing under the laws of the State of Philadelphia, and can be served with the process through its registered agent located at CT Corporation System, 1201 Peachtree Street NE, Fulton, Atlanta, GA, 30361, USA.

41. The Defendant, **SEPCO Corporation,** is a corporation organized and existing under the laws of the State of California, and can be served with process through its registered agent located at CT Corporation System, 818 West Seventh Street, Suite 930, Los Angeles CA 90017.

42. The Defendant, **SPX COOLING TECHNOLOGIES, INC.** f/k/a Marley Cooling Technologies, Inc., f/k/a The Marley Cooling Tower Company, is a company incorporated under the laws of the State of Delaware, having its principal place of business located in Wisconsin, and can be served with process at Registered Agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia SC 29223.

43. The Defendant, **Sterling Fluid Systems (USA) LLC** is a Delaware company and can be served with process through its registered agent office located at c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

44. The Defendant, **Trane U.S. Inc.**, f/k/a American Standard, Inc., f/k/a American Radiator & Standard Manufacturing Company, is a corporation incorporated under the laws of the State of Delaware, having its principal place of business located in Wisconsin, and can be served with process at Registered Agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia SC 29223.

45. The Defendant, **Union Carbide Corporation,** is a corporation incorporated under the laws of the State of Missouri and can be served with process at its Registered Agent CT Corporation System, 120 South Central Avenue, Clayton, Missouri 63105.

46. The Defendant, **Uniroyal, Inc.**, f/k/a United States Rubber Company, Inc. is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business in Connecticut, and can be served with process at its office at c/o Uniroyal Holding, Inc., 70 Great Hill Road, Naugatuck CT 06770, or at P.O. Box 19001, Greenville, SC 29602-9001.

47. The Defendant, **United Conveyor Corporation**, is a corporation incorporated under the laws of the State of Illinois, having its principal place of business located in Illinois, and can be served with process at United Conveyor Corporation Corporate Headquarters, 2100 Norman Drive W., Waukegan, IL 60085 or at Registered Agent, Prentice Hall Corporation, 2019

Park Street, Columbia, SC 29201, or through its registered agent located at Illinois Corporation Service, 801 Adlai Stevenson Drive, Springfield, IL 62703-4261.

48. The Defendant, **Velan Valve Corp.**, is a corporation organized and existing under the laws of the State of Delaware and can be served with process at its office at 94 Avenue C, Williston VT 05495-9732 or through its South Carolina registered agent, Corporation Service Company, 1703 Laurel Street, Columbia SC 29201.

49. The Defendant, **Viking Pump, Inc.**, is a corporation organized and existing under the laws of the State of Delaware and can be served with process through its registered agent office located at The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

50. The Defendant, **Warren Pumps LLC** is a limited liability company organized and existing under the laws of the State of Delaware and can be served with process through its registered agent office located at The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801 or its registered agent at CT Corporation System; 155 Federal Street, Suite 700, Boston MA 02110.

51. The Defendant, **Yuba Heat Transfer Corporation**, is a limited liability company organized and existing under the laws of the State of Delaware and can be served with process through its registered agent office located at The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

52. The Defendant, **Zurn Industries,** is a corporation organized and existing under the laws of the State of Delaware and can be served with process through its registered agent, CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC, 29223.

53. The acts and omissions of the Defendants named herein occurred at various worksites including those located in South Carolina.

54. Defendants are corporations who are amenable to jurisdiction in the Courts of South Carolina by virtue of their contacts with the State of South Carolina or systematic business in South Carolina which subjects them to jurisdiction pursuant to the South Carolina Long-Arm Statute.

55. Venue is proper in York County, South Carolina.

56. The Court has jurisdiction over the subject matter of this action.

BACKGROUND FACTS

57. The Decedent, Wayne Ervin Howe, was born August 5, 1945, and was diagnosed with malignant mesothelioma on May 19, 2015.

58. Decedent during the pertinent times worked as a pipefitter, manual laborer, general construction worker, and steel worker who for a long period of time, frequently, regularly and proximately worked with and was exposed to the asbestos and asbestos-related materials mined, manufactured, processed, imported, converted, compounded, or sold by the asbestos product manufacturing and selling Defendants, or with regard to which Defendants otherwise had responsibility, with some of the exposure being within the State of South Carolina.

59. Decedent during the pertinent times engaged in work activities pertaining to pumps, valves, precipitators, mechanic work, welding, replacing siding, and millwright work.

60. Decedent during the pertinent times engaged in work at various jobsites including, without limitation, one or more facilities of Hoechst Celanese also known as Fiber Industries including Rock Hill, South Carolina and Narrows, Virginia; American Enka in Enka, North Carolina; and the Bowater facility in Rock Hill, South Carolina.

61. Decedent during the pertinent times was regularly, frequently, and proximately exposed to asbestos dust and fibers from products, services, and goods manufactured, distributed, or sold by the asbestos product manufacturing and selling Defendants for use at Decedent's jobsites which he came in contact with on the premises of multiple companies.

62. As a result of the improper conduct of the Defendants, Decedent Wayne Ervin Howe developed the asbestos cancer known as Mesothelioma.

63. The asbestos product manufacturing and selling Defendants owned, operated, or supplied asbestos containing materials or services to Decedent's worksites including those throughout South Carolina, at which Decedent Wayne Ervin Howe, worked, or entered for purposes of work, and in which Decedent was exposed to asbestos dust from asbestos containing materials.

64. 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.

65. The risks involved with the products and materials at issue in this matter pertaining to asbestos dangers did not amount to an open and obvious risk or a risk that was a matter of common knowledge.

66. Decedent Wayne Ervin Howe 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 his exposure to asbestos dust and fibers that he came in contact with on various jobsites in South Carolina.

67. 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.

68. 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 Decedent's contraction of his disease.

69. Decedent's diagnosis of mesothelioma was caused by breathing asbestos dust and fibers from asbestos-containing products or asbestos containing materials at Defendant's premises or with regard to the products the Defendants manufactured and sold.

70. Decedent have obtained and attached as **Exhibit A** hereto, 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.

71. As a result of the development of mesothelioma caused by breathing asbestos dust and fibers from defendants' asbestos-containing products and exposures due to defendants' negligent acts and omissions, listed herein and that will be further identified in this suit, Decedent has suffered and sustained very serious life threatening injuries, specifically mesothelioma, requiring extensive and painful medical treatment.

72. Decedent has further suffered great pain and mental anguish as a direct result of the aforesaid injuries. The illness and disability of Decedent was the direct and proximate result of the negligence, recklessness and willfulness of the Defendants, in that each produced, sold and otherwise put into the stream of interstate commerce, asbestos and asbestos-related materials which the Defendants knew were deleterious, poisonous and highly harmful.

73. Decedent believes that his injuries and illnesses are permanent in nature and that he will be forced to suffer same for the remainder of his life, that his enjoyment of life has been greatly impaired and, further, that his expected life span has been greatly shortened.

74. Decedent alleges that as a result of the aforesaid illnesses, he has been forced to incur large amounts of medical expenses by way of doctor and drug bills and verily believes that he will be forced to incur additional expenses in an effort to treat his illnesses as aforesaid, all to Decedent's damage, compensatory and punitive in amounts to be determined by the trier of fact.

75. Decedent alleges that as a result of the aforesaid illnesses, he is no longer able to provide the same services, comfort, society, consortium, companionship and protection to his wife, Plaintiff Jeanette Howe which damages are continuing in nature.

76. As a direct and proximate result of the Defendants' conduct as alleged above, the Decedent has suffered a dramatic reduction of his life expectancy, incurred great mental and physical pain and suffering, sustained lost wages and lost earning capacity, incurred medical

expenses, and his enjoyment of life has been greatly impaired, which damages are continuing in nature.

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

77. Plaintiffs incorporate herein by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

78. 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. In the case of Defendant Metropolitan Life Insurance Company, it owed a duty to Decedents and is liable as alleged in the fourth cause of Action below.

79. 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 Wayne Ervin Howe, or were otherwise negligent. The asbestos manufacturing and selling Defendants negligently produced, sold, supplied or otherwise put into the stream of commerce asbestos and asbestos-containing products or machinery requiring the use of asbestos and/or asbestos-containing products.

80. During the course and scope of his employment at the named facilities or with the named manufacturers and their products, Decedent Wayne Ervin Howe was exposed to Defendants' asbestos dust and fibers and asbestos-containing materials or was otherwise injured due to asbestos exposure for which Defendants are responsible.

81. Defendants owned, operated, or manufactured materials used at and supplied worksites in South Carolina, at which Decedent worked, or entered for purposes of work, and from which he was subsequently exposed to asbestos containing materials including asbestos dust and asbestos fibers. Defendants 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.

82. Defendants knew, or should have known, that Decedent Wayne Ervin Howe, or others similarly situated, would come in contact with the asbestos containing products for which Defendant may be liable. As a designer, developer, manufacturer, distributor, supplier, installer 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.

83. Defendants knew, or should have known, that Decedent Wayne Ervin Howe, 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.

84. 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.

85. 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.

86. The illness, disability, and 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.

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

88. 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 Decedent'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 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 himself and 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;

(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;

(e) Inadequately warned, if, in fact, they warned at all, persons such as Decedent of the dangers to their health in coming in contact with and breathing said asbestos and asbestos-containing materials, 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;

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

(h) Continued to use a known cancer-causing product, to wit: asbestos;

(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 further exposure;

(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.

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

90. 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 of continued asbestos exposure, the Defendants did not provide that information to the Decedent.

91. The Defendants had a post-sale duty to warn, which duty was breached and, as a result, Decedent 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.

92. Decedent has suffered continuing and lingering injury to himself due to the Defendants' asbestos fibers, which he inhaled while doing performing assignments on various jobsites. Said fibers, once inhaled, caused repeated and continuing injury to Decedent.

93. 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, and has suffered injury and is entitled to damages in an amount to be proven at trial.

SECOND CAUSE OF ACTION
Implied Warranty of Merchantability

94. Plaintiffs incorporate herein by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

95. 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.

96. 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 Decedent carried out his duties working with asbestos and asbestos-containing materials.

97. 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.

THIRD CAUSE OF ACTION
Strict Liability

98. Plaintiffs incorporate herein by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

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

100. 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.

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

102. 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 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
Conspiracy, Concert of Action – Defendant Metropolitan Life Insurance Company

103. Plaintiffs incorporate herein by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

104. Beginning in the late 1920's, conspirators including Defendant Metropolitan Life Insurance Company ("Met Life"), as well as Johns-Manville, Raybestos-Manhattan and others, undertook a duty to conduct research on asbestos-related health problems and to inform the public about any health risks that could be associated therewith. In or about 1929, Met Life, through its agents and employees acting within the scope of their agency and employment, including but not limited to Dr. Anthony J. Lanza ("Lanza"), began an investigation of asbestos-related health hazards. In 1935, this study was altered by Lanza, with the full knowledge of Met Life, at the request of and in concert with the asbestos industry in order to wrongly influence the United States Public Health Service, the United States medical community and various state legislatures.

105. Thereafter, Defendant Met Life through the acts and omissions of its employees, most notably Lanza, undertook a series of activities with various members of the asbestos industry including but not limited to Johns-Manville, Raybestos-Manhattan/ Raymark Industries,

Inc., United States Gypsum, American Brake Blok/Abex, and others to suppress and misrepresent the dangers of exposure to asbestos dust to employees of Met Life's insureds and the general public and the medical community.

106. The conspirators through their agent, Lanza of Met Life, made a concerted effort to discredit and to terminate the experiments of certain scientists who were developing data of profound importance for the area of public health in relation to the cancer hazard which existed for workers and bystanders in the asbestos industry.

107. As a direct and proximate result of Met Life's intentional publication of deceptive and misleading medical data and information, and other conspiratorial acts and omissions, Defendant caused asbestos to be used in the occupational settings from which Decedent breathed asbestos dust which resulted in Decedent's injuries. Defendant Met Life, through its agents and employees and officers, aided and abetted and gave substantial assistance to Johns-Manville and Raybestos-Manhattan in their tortious selling of asbestos products and voluntarily undertook a duty to warn the United States Public Health Service, the medical community, and others about the danger of asbestos and consciously and negligently misrepresented the dangers of asbestos to the United States Public Health Service, the medical community, and others, all to the ultimate harm of Decedent herein.

108. Defendant Met Life rendered substantial aid and assistance to the manufacturers of asbestos-containing products to which Decedent was exposed, and such assistance by Met Life aided and abetted the negligence and the marketing of unreasonably dangerous asbestos-containing products by such manufacturers which proximately caused Decedent's illness.

109. In both conducting tests and in publishing their alleged results, Met Life failed to exercise reasonable care to conduct or publish complete, adequate and accurate tests of the health effects of asbestos. Met Life also caused to be published intentionally false, misleading, inaccurate and deceptive information about the health effects of asbestos exposure.

110. Decedent unwittingly and justifiably relied upon the thoroughness of Met Life's tests and information dissemination, the results of which Met Life published in leading medical journals.

111. As a direct and proximate contributing result of Met Life's failures to conduct or accurately publish adequate tests or disseminate accurate and truthful information, after undertaking to do so; (i) the risk of harm to Decedent from asbestos exposure was increased, and (ii) Decedent suffered the injuries described herein.

112. In failing to test fully and adequately for the adverse health effects from exposure to asbestos; in delaying the publication of such results; and in falsely editing such results as were obtained; in suppressing relevant medical inquiry and knowledge about those hazards to promote the sale and distribution of asbestos as a harmless product; and in collaborating with the other co-conspirators materially to understate the hazards of asbestos exposure, all for its own profit and

gain, Met Life acted recklessly, wantonly, and in calculated disregard for the welfare of the general public, including Decedent.

113. Additionally and alternatively, as a direct and proximate result of Met Life's actions and omissions, Decedent was caused to remain ignorant of all the dangers of asbestos resulting in Decedent's, his employers, and the general public to be unaware of the true and full dangers of asbestos, depriving Decedent of the opportunity to decide for himself whether he wanted to take the risk of being exposed to asbestos, denied Decedent the opportunity to take precautions against the dangers of asbestos and proximately caused Decedent's damages herein.

114. During the relevant time period the Decedent was exposed to and did inhale and/or ingest asbestos dust, fibers, and particles, which dust, fibers, and particles came from the asbestos or asbestos-containing products which were mined, milled, manufactured, fabricated, supplied, and/or sold by the Johns Manville and/or Raybestos/Raymark.

115. Defendant, Met Life, together with Manville, Raymark and other persons and entities, known and unknown at times relevant hereto, engages in a conspiracy or concert of action to inflict injury on the Decedent, and to withhold, alter, suppress and misrepresent information about the health effects of asbestos exposure. One or more of said conspirators did cause tortious injury to the Decedent in the course of or as a consequence of the conspiracy of concert of action. At least the following enumerated acts were undertaken by the conspirators in the course of and in furtherance of the conspiracy or concert of action:

(a) In 1932, Met Life, through Lanza and others, assisted Manville with medical examinations of over 1,000 employees of Manville's factory in Manville, New Jersey. The report of this study shows that a large percentage of the employees suffered from asbestosis including employees not directly involved in the manufacturing process. This 1932 medical survey was not published in the medical literature and, therefore, was unavailable to scientists studying the issue of asbestos-related disease. Further collaboration between Manville and Met Life continued the cover-up.

(b) Beginning in approximately 1934, Manville, through its agents, Vandiver Brown and Attorney J.C. Hobart, suggested to Lanza, Associate Director of Met Life, which was then insurer of Manville and Raymark, that Lanza publish a study on asbestosis in which Lanza would affirmatively misrepresent material facts about the health consequences of asbestos exposure. This was accomplished through intentional deletion of Lanza's description of asbestosis as 'fatal' and through other selective editing that affirmatively misrepresent asbestosis as a disease process less serious than it actually is and was known to be. As a result, Lanza's study was published in the medical literature in this misleading fashion in 1935. The conspirators were motivated, in part, to effectuate this fraudulent misrepresentation and fraudulent nondisclosure by the desire to influence proposed legislation to regulate asbestos exposure and to provide a defense in lawsuits involving Manville, Raymark, and Met Life as insurer. Furthermore, upon information and belief, it is alleged that Met Life, at all times relevant hereto, had substantial monetary investments in Manville and Raymark, among other asbestos product manufacturers and distributors.

(c) In 1936, the conspirators or some of them entered into an agreement with the Saranac Laboratories. Under this agreement, these conspirators acquired the power to decide what information Saranac could publish about asbestos disease and to control in what form such publications would occur. This agreement gave these conspirators power to affirmatively misrepresent the results of the work at Saranac, and also gave these conspirators power to material facts included in any study. On numerous occasions thereafter, the conspirators exercised their power to prevent Saranac scientists from disclosing material scientific data, resulting in numerous misstatements of fact being made at scientific meetings.

(d) By November 1948, or earlier, Manville, Met Life (acting through Lanza), Raymark, and others decided to exert their influence to materially alter and misrepresent material facts about the substance of research started by Dr. Leroy Gardner at the Saranac Laboratories beginning in 1936. Dr. Gardner's research involved carcinogenicity of asbestos in mice and also included an evaluation of the health effects of asbestos on humans with a critical review of the then-existing standards of dust exposure for asbestos and asbestos products.

(e) At a meeting on November 11, 1948, these conspirators and others intentionally and affirmatively determined that Dr. Gardner's work should be edited to specifically delete material facts about the cancer-causing propensities of asbestos and the health effects of asbestos on humans and they determined that only an edited version would be published. These conspirators thereby fraudulently misrepresented the risks of asbestos exposure to the public, in general, and to the class of persons exposed to asbestos, including the Decedent.

(f) As a direct result of influence exerted by the above described conspirators, Dr. Arthur Vorwald published Dr. Gardner's edited work in the Journal of Industrial Hygiene, AMA Archives of Industrial Hygiene and Occupational Health in 1951 in a form that stressed those portions of Dr. Gardner's work that the conspirators wished stressed, but which omitted references to human asbestosis and cancer, thereby fraudulently and affirmatively misrepresenting the extent of the risks. The conspirators affirmatively and deliberately disseminated this misleading Vorwald publication to universities, libraries, government officials, agencies and others.

(g) Such action constituted a material affirmative misrepresentation of the material facts involved in Dr. Gardner's work and resulted in creating an appearance that inhalation of asbestos was a less serious health concern than Dr. Gardner's unedited work indicated.

(h) For many decades, Met Life, individually, jointly and in conspiracy with Manville and Raymark, have been in possession of medical and scientific data, literature, and test reports which clearly indicated that the inhalation of asbestos dust and fibers resulting from the ordinary foreseeable use of said asbestos-containing products and/or machinery requiring or calling for the use of asbestos or asbestos-containing products were

unreasonably dangerous, hazardous, deleterious to human health, carcinogenic, and potentially deadly.

(i) Despite the medical and scientific data, literature and test reports possessed by and available to Met Life, individually and in conspiracy with Manville and Raymark, Fraudulently, willfully and maliciously withheld, concealed and suppressed said medical and scientific data, literature and test reports regarding the risks of asbestosis, cancer, mesothelioma, and other illnesses and diseases from Decedent who using and being exposed to Manville or Raymark asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products; caused to be released, published and disseminated medical and scientific data, literature and test reports containing information and statements regarding the risks of asbestosis, cancer, mesothelioma and other illnesses and diseases, which Metropolitan, Manville and Raymark knew were either incorrect, incomplete, outdated and misleading; distorted the results of medical examinations conducted upon workers who were using asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products and being exposed to the inhalation of asbestos dust and fibers by falsely stating and/or concealing the nature and extent of the harm which workers suffered; and failed to adequately warn the Decedent of the dangers to which he was exposed when they knew of the dangers.

(j) By the false and fraudulent representations, omissions, failures, and concealments set forth above, Met Life, Manville and Raymark, individually, jointly, and in conspiracy with each other, intended to induce the Decedent to rely upon said false and fraudulent representations, omissions, failures, and concealments, to continue to expose themselves to the dangers inherent in the use of and exposure to their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products. Said misrepresentations were false, incomplete, and misleading and constitute negligent misrepresentations as defined by Sections 311 and 522 of the Restatement (Second) of Torts.

116. Decedent reasonably and in good faith relied upon the false and fraudulent representations, omissions, failures, and concealments made by Met Life, Manville, and Raymark regarding the nature of their asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

117. As a direct and proximate result of the conspiracy and concert of action between Met Life, Manville and Raymark, the Decedent has been deprived of the opportunity of informed free choice and connection with the use of and exposure to Manville and Raymark's asbestos and asbestos-containing products, and therefore continued to work with and be exposed to the co-conspirator corporation's asbestos and asbestos-containing products and as a result, came in contact with asbestos dust or fibers contracted asbestos-related diseases and other conditions, and/or aggravated pre-existing conditions, as a result of which the Decedent was damaged.

FIFTH CAUSE OF ACTION
Punitive Damages

118. Plaintiffs incorporate herein by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

119. 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 Decedent 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.

120. The foregoing deliberate, intentional and purposeful acts of the Defendants were the direct and proximate cause of Decedent injuries, damages, and subsequent death hereinafter described, and the Decedent is therefore, entitled to compensation and punitive damages.

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

AS AND FOR A FURTHER SIXTH, SEPARATE, AND DISTINCT CAUSE OF ACTION FOR WRONGFUL DEATH, PLAINTIFF JEANETTE HOWE COMPLAINS OF DEFENDANTS, AND ALLEGES AS FOLLOWS:

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

122. Decedent brings this cause of action for WAYNE ERVIN HOWE'S wrongful death pursuant to S.C. Code Ann. § 15-51-10 (2008), for the benefit of herself Jeanette Howe, as Mr. Howe's widow, and on behalf of the children of Wayne Ervin Howe, as defined by S.C. Code § 15-51-20 (2008).

123. As a direct and proximate result of the negligence, recklessness, carelessness and intentional actions of Defendants as described above, Wayne Ervin Howe died and his wife and children have and will endure grief, sorrow, loss of his love, society and comfort, loss of his advice and guidance and they have been otherwise seriously damaged. Moreover, funeral and medical expenses were incurred and Decedent prays for judgment against Defendants in such amount of actual and punitive damages as the trier of fact may determine.

FOR A SEVENTH CAUSE OF ACTION
(Survival Action, S.C. Code Ann. § 15-5-90 (1986))

AS AND FOR A FURTHER SEVENTH, SEPARATE, AND DISTINCT CAUSE OF ACTION IN THE FORM OF A STATUTORY SURVIVAL ACTION, PLAINTIFF JEANETTE HOWE COMPLAINS OF DEFENDANTS, AND ALLEGES AS FOLLOWS:

124. All paragraphs above are incorporated by reference.

125. Plaintiff brings this cause of action for Decedent's pain and suffering prior to his untimely death, for costs and expenses incurred by the Estate and for the overall benefit of her Estate, pursuant to S.C. Code § 15-5-90, -100 (1986).

126. As a direct and proximate result of the negligence, recklessness, carelessness and intentional actions of Defendants as described, Decedent endured 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.

EIGHTH CAUSE OF ACTION
Loss of Consortium

127. Plaintiffs incorporate herein by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

128. Plaintiff Jeanette Howe is the spouse of Wayne Ervin Howe.

129. Due to the wrongful and tortuous acts of Defendant, Plaintiff Jeanette Howe has suffered pecuniary loss due to the loss of services of her husband, Wayne Ervin Howe.

130. Plaintiff Jeanette Howe has suffered and will continue to suffer in the future, damages including loss of affection, society, comfort, support, consortium, companionship and the protection of her husband.

131. Defendant's wrongful conduct, alleged above, was a direct and proximate cause of the damages suffered by Plaintiff Jeanette Howe.

WHEREFORE, Plaintiff Jeanette Howe demands judgment against Defendant for compensatory damages for a fair and reasonable amount as determined by the jury and for such other and further relief, both at law and in equity, as the Court may deem just and proper.

PETITION FOR EXPEDITED TRIAL

1. Pursuant to S.C. Code § 44-135-80(B), Plaintiff hereby petitions the Court requesting that a trial date be set on an expedited basis. Plaintiff shows that there is good cause for such an expedited trial setting in that the Plaintiff while grievously ill, is living and wishes to have his claims promptly adjudicated. Further, Defendants will not be prejudiced by such an expedited trial setting.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray to ask that this Court:

A. Award the Plaintiffs actual and compensatory damages, in an amount to be determined at trial, for the wrongful, negligent, reckless and willful acts of the Defendants;

B. Award the Plaintiffs pre-judgment and post-judgment interest to the extent allowable by law;

C. Award the Plaintiffs punitive damages to the extent allowable by law;

D. Award the Plaintiffs' attorney fees and costs to the extent allowable by law;

E. Allow a trial by jury of all claims so triable; and

F. For such other and further relief as may be just and proper.

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

Respectfully submitted,
KASSEL MCVEY, ATTORNEYS AT LAW

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ATTORNEYS FOR PLAINTIFFS

August 9, 2016

Spartanburg, South Carolina.

DREXEL UNIVERSITY
School of
Public Health
Department of Environmental & Occupational Health

Arthur L. Frank, MD, PhD
Professor, Chair Emeritus

November 4, 2015

William M. Graham, Esq.
Wallace and Graham, P.A.
Attorneys At Law
525 North Main Street
Salisbury, NC 28144

Re: Wayne Ervin Howe
DOB: 8/5/45

Dear Mr. Graham:

I am in receipt of medical records in the case of Mr. Howe and have been asked by you to review them and render my judgment regarding any evidence of an asbestos-related disease.

I am currently employed as Professor of Public Health at the Drexel University School of Public Health in Philadelphia. I received my medical degree from the Mt. Sinai School of Medicine in 1972 and during this time and thereafter I worked with Dr. Irving Selikoff regarding health issues related to exposure to asbestos. From 1973 to 1975 I served at the Lung Cancer Branch at the National Cancer Institute of the National Institutes of Health in Bethesda, Maryland and was a Commissioned Officer in the United States Public Health Service. I then returned to Mt. Sinai and completed two residencies, one in internal medicine and the other in occupational medicine. I became board certified in internal medicine in 1978 and in occupational medicine in 1979. I also have a PhD degree in biomedical sciences from the City University of New York having studied the effects of asbestos on respiratory tissue. From 1977 to 1983 I served on the faculty at Mt. Sinai.

From 1983 until 1994 I was Chair of the Department of Preventative Medicine and Environmental Health at the University of Kentucky, College of Medicine where I was a professor, and I was also a professor of toxicology. In 1994 I became Vice President for Medical Education at the University of Texas Health Center at Tyler and was also a Professor of Occupational and Environmental Medicine. In 2002 I became the Chair of the Department of Environmental and Occupational Health at Drexel University's School of Public Health in Philadelphia. I also served as a Professor of Medicine in the Division of Pulmonary Medicine at Drexel.

Over the years I have held a number of positions with the United States Government including service on the Board of Health as a scientific counselor for NIOSH, the National Institute for Occupational Safety and Health. I have chaired the grant review panel for NIOSH. I have done consulting work for NIOSH, OSHA, and the EPA. I currently serve on the Air Pollution Control Board for the City of Philadelphia.

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Exhibit A

I have also consulted with governments around the world including in China, Thailand, India, Brazil, Israel, and Egypt, among others regarding asbestos-related issues. In 1983 I was elected to the Collegium Ramazzini which is an international organization of physicians and scientists devoted to occupational and environmental health issues. Election to this group is limited to 180 active members. I have been active in the organization including service on the Executive Board. Currently, my time is divided between teaching, research, and service. I teach in our introductory course in environmental and occupational health, a course in occupational cancers, and give lectures in the area of occupational toxicology.

In reviewing the medical records of Mr. Howe I note that his treating doctors were aware of his prior exposures to asbestos. In March 2015 Mr. Howe presented with pain in his left chest and an X-ray revealed a large circumscribed mass along the left lateral chest wall. In May radiological testing made note of calcified pleural plaquing. When tissue was taken from his chest he was found to have a pleural-based malignancy that had spread. The surgical pathology report of May 2015 revealed that Mr. Howe developed a malignant pleural mesothelioma. This was then confirmed at Duke University by Dr. Sporn in September 2015.

Having reviewed the deposition of Mr. Howe I learned of the details of Mr. Howe's exposure to asbestos. For example, he worked for some 15 years as a pipefitter. He also did work as a millwright, with additional exposures to asbestos. He was also known to do mechanical work on vehicles which included brake work. Through his testimony I also learned that he worked with asbestos-containing gaskets, siding, and other materials.

Based upon my review of the materials sent me, it is my opinion and diagnosis, to a reasonable degree of medical certainty, that Mr. Howe developed two asbestos-related conditions. First I believe he developed asbestos-related pleural disease, called by some asbestosis, given the finding of calcified pleural plaques. Secondly, and more importantly, Mr. Howe developed a malignant pleural mesothelioma as a result of his exposures to asbestos. The cumulative exposures he had to asbestos, from any and all products, containing any and all fiber types, would have led to his developing these conditions. Furthermore, based upon my review of the materials sent me it is my opinion, to a reasonable degree of medical certainty, that Mr. Howe's exposure to asbestos was a proximate cause of the diagnosed mesothelioma, and that Mr. Howe's illness is not more probably the result of other causes.

The hazards of asbestos have been known for more than a century, and the need to protect individuals was written about some 80 years ago.

Should you have any questions about this matter please feel free to contact me.

Sincerely yours,

Arthur L. Frank

Arthur L. Frank, MD, PhD
Professor of Public Health

ALF/kmw

Exhibit A

STATE OF SOUTH CAROLINA COUNTY OF YORK	)	IN THE COURT OF COMMON PLEAS
TIMOTHY W. HOWE, Individually and as Personal Representative of the Estate of WAYNE ERVIN HOWE, Deceased, and JEANETTE HOWE,, Plaintiffs, v. AIR & LIQUID SYSTEMS CORP., et al., Defendants.	)	**ANSWER OF DEFENDANT COVIL CORPORATION TO PLAINTIFFS' FIRST AMENDED COMPLAINT** C.A. No. 2015-CP-46-3456

Defendant Covil Corporation (hereinafter "Covil"), answering the Plaintiffs' First Amended Complaint, alleges and says as follows:

FOR A FIRST DEFENSE

1. Covil is without sufficient information to form a belief as to the truthfulness of the allegations of paragraphs 1, 2 and 3 of Plaintiffs' First Amended Complaint and, therefore, denies them.

2. Covil is without sufficient information to form a belief as to the truthfulness of the allegations of paragraphs 4 through 17 of Plaintiffs' First Amended Complaint, which do not relate to it, and, therefore, denies them.

3. Covil admits so much of the allegations of paragraph 18 of Plaintiffs' First Amended Complaint as allege it was a South Carolina Corporation and formerly maintained its principle place of business in the State of South Carolina. Covil further admits so much of the allegations of paragraph 18 of Plaintiffs' First Amended Complaint as allege that service of

process may be made on James P. Covil, Jr. Covil denies the remaining allegations of paragraph 18 of Plaintiffs' First Amended Complaint.

4. Covil is without sufficient information to form a belief as to the truthfulness of the allegations of paragraphs 19 through 52 of Plaintiffs' First Amended Complaint, which do not relate to it, and, therefore, denies them.

5. Covil is without sufficient information to form as belief as to the truthfulness of the allegations of paragraph 53 of Plaintiffs' First Amended Complaint and, therefore denies them.

6. Covil admits so much of the allegations of paragraph 54 of Plaintiffs' First Amended Complaint as allege it was a South Carolina corporation. Covil denies the remaining allegations of paragraph 54 of Plaintiffs' First Amended Complaint to the extent they relate to it. To the extent the allegations of paragraph 54 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form as belief as to the truthfulness of those allegations and, therefore denies them.

7. Paragraph 55 of Plaintiffs' First Amended Complaint contains legal conclusions concerning venue which Covil is neither required to admit nor deny. To the extent a response may be required, Covil denies those allegations and would show that venue is proper in and should be changed to Greenville County, South Carolina.

8. Paragraph 56 of Plaintiffs' First Amended Complaint contains legal conclusions concerning jurisdiction which Covil is neither required to admit nor deny. To the extent a response may be required, Covil denies those allegations to the extent they are contrary to the common and//or statutory laws of the State of South Carolina.

RESPONDING TO BACKGROUND FACTS

9. Covil is without sufficient information to form a belief as to the allegations of paragraph 57 of Plaintiffs' First Amended Complaint and, therefore, denies them.

10. Covil denies the allegations of paragraph 58 of Plaintiffs' First Amended Complaint to the extent they relate to it. To the extent the allegations of paragraph 58 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form as belief as to the truthfulness of those allegations and, therefore denies them.

11. Covil is without sufficient information to form a belief as to the allegations of paragraphs 59 and 60 of Plaintiffs' First Amended Complaint and, therefore, denies them.

12. Covil denies the allegations of paragraphs 61, 62, 63, 64 and 65 of Plaintiffs' First Amended Complaint to the extent they relate to it. To the extent the allegations of paragraphs 61, 62, 63, 64 and 65 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form as belief as to the truthfulness of those allegations and, therefore denies them.

13. Covil is without sufficient information to form a belief as to the allegations of paragraph 66 of Plaintiffs' First Amended Complaint and, therefore, denies them.

14. Covil denies the allegations of paragraphs 67, 68 and 69 of Plaintiffs' First Amended Complaint to the extent they relate to it. To the extent the allegations of paragraphs 67, 68 and 69 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form as belief as to the truthfulness of those allegations and, therefore denies them.

15. Paragraph 70 of Plaintiffs' First Amended Complaint contains legal conclusions concerning compliance by Plaintiffs with statutory requirements pertaining to this litigation,

which Covil is neither required to admit nor deny. To the extent a response may be required, Covil denies those allegations to the extent they are contrary to the common and//or statutory laws of the State of South Carolina.

16. Covil denies the allegations of paragraphs 71 and 72 of Plaintiffs' First Amended Complaint to the extent they relate to it. To the extent the allegations of paragraphs 71 and 72 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form as belief as to the truthfulness of those allegations and, therefore denies them.

17. Covil denies it is liable for the injuries, illnesses, disabilities and/or damages alleged by Plaintiff in paragraphs 73, 74, 75 and 76 of Plaintiffs' First Amended Complaint. To the extent the allegations of paragraphs 73, 74, 75 and 76 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form as belief as to the truthfulness of those allegations and, therefore denies them.

IN RESPONSE TO PLAINTIFF'S FIRST CAUSE OF ACTION
Negligent Failure to Warn and Defective Product Design

18. In response to the allegations of paragraph 77 of Plaintiffs' First Amended Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 76 of Plaintiffs' First Amended Complaint.

19. Covil denies so much of the allegations of paragraph 78 of the Plaintiffs' First Amended Complaint as allege that it was a miner, manufacturer, processor, importer, converter, or compounder of asbestos and asbestos containing insulation products. Covil alleges that it was an insulation contractor and wholesaler of insulation materials which purchased from time to time insulation materials containing asbestos from numerous manufacturers and either sold them to contractors or applied them itself. To the extent the allegations of paragraph 78 of the Plaintiffs' First Amended Complaint are directed against or pertain to parties other than Covil,

Covil is without sufficient information to form a belief as to the truth of those allegations and, therefore, denies them. Covil denies the remaining allegations of paragraph 78 of Plaintiffs' First Amended Complaint.

20. Covil denies the allegations of paragraphs 79 through 93 of Plaintiffs' First Amended Complaint, including all subparts thereunder, to the extent they pertain to it. To the extent the allegations of paragraphs 79 through 93 of the Plaintiffs' First Amended Complaint are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

IN RESPONSE TO PLAINTIFF'S SECOND CAUSE OF ACTION
Implied Warranty of Merchantability

21. In response to the allegations of paragraph 94 of Plaintiffs' First Amended Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 93 of Plaintiffs' First Amended Complaint.

22. Covil denies the allegations of paragraphs 95 through 97 of Plaintiffs' First Amended Complaint to the extent they pertain to it. To the extent the allegations of paragraphs 95 through 97 of the Plaintiffs' First Amended Complaint are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

IN RESPONSE TO PLAINTIFF'S THIRD CAUSE OF ACTION
Strict Liability

23. In response to the allegations of paragraph 98 of Plaintiffs' First Amended Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 97 of Plaintiffs' First Amended Complaint.

24. Covil denies the allegations of paragraphs 99 through 102 of Plaintiffs' First Amended Complaint to the extent they pertain to it. To the extent the allegations of paragraphs 99 through 102 of the Plaintiffs' First Amended Complaint are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

IN RESPONSE TO PLAINTIFF'S FOURTH CAUSE OF ACTION
Conspiracy, Concert of Action – Defendant Metropolitan Life Insurance Company

25. In response to the allegations of paragraph 103 of Plaintiffs' First Amended Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 102 of Plaintiffs' First Amended Complaint.

26. Covil is without sufficient information to form a belief as to the truthfulness of the allegations of paragraphs 104 through 117 of Plaintiffs' First Amended Complaint, which do not pertain to it and, therefore, denies them.

IN RESPONSE TO PLAINTIFF'S FIFTH CAUSE OF ACTION
Punitive Damages

27. In response to the allegations of paragraph 118 of Plaintiffs' First Amended Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 117 of Plaintiffs' First Amended Complaint.

28. Covil denies the allegations of paragraphs 119 and 120 of Plaintiffs' First Amended Complaint to the extent they pertain to it. To the extent the allegations of paragraphs 119 and 120 of the Plaintiffs' First Amended Complaint are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

IN RESPONSE TO PLAINTIFF'S SIXTH CAUSE OF ACTION
Wrongful Death Action, S.C. Code Ann. § 15-51-10 (2008)

29. In response to the allegations of paragraph 121 of Plaintiffs' First Amended Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 120 of Plaintiffs' First Amended Complaint.

30. Covil admits so much of the allegations of paragraph 122 of Plaintiffs' First Amended Complaint as allege that Plaintiff purports to bring this action under the Wrongful Death Act, S.C. Code Ann. § 15-51-10 (2008), for the benefit of Jeanette Howe and the children of Wayne Ervin Howe, as defined by S.C. Code § 15-51-20 (2008), but Covil denies it is liable to Plaintiff under the Wrongful Death Act for the injuries and damages alleged, or on any other basis. To the extent the allegations of paragraph 122 of the Plaintiffs' First Amended Complaint are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

31. Covil denies the allegations of paragraph 123 of Plaintiffs' First Amended Complaint to the extent they pertain to it. To the extent the allegations of paragraph 123 of the Plaintiffs' First Amended Complaint are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

IN RESPONSE TO PLAINTIFF'S SEVENTH CAUSE OF ACTION
Survival Action, S.C. Code Ann. § 15-5-90 (1986)

32. In response to the allegations of paragraph 124 of Plaintiffs' First Amended Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 123 of Plaintiffs' First Amended Complaint.

33. Covil admits so much of the allegations of paragraph 125 of Plaintiffs' First Amended Complaint as allege that Plaintiff purports to bring this action under the Survival Act, S.C. Code Ann. § 15-5-90, -100 (1986), but Covil denies it is liable to Plaintiff under the Survival Act for the injuries and damages alleged, or on any other basis. To the extent the allegations of paragraph 125 of the Plaintiffs' First Amended Complaint are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

34. Covil denies the allegations of paragraph 126 of Plaintiffs' First Amended Complaint to the extent they pertain to it. To the extent the allegations of paragraph 126 of the Plaintiffs' First Amended Complaint are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

IN RESPONSE TO PLAINTIFF'S EIGHTH CAUSE OF ACTION
Loss of Consortium

35. In response to the allegations of paragraph 127 of Plaintiffs' First Amended Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 126 of Plaintiffs' First Amended Complaint

36. Covil admits, upon information and belief, the allegations of paragraph 128 of Plaintiffs' First Amended Complaint.

37. Covil denies the allegations of paragraph 129 of Plaintiffs' First Amended Complaint to the extent they pertain to it. To the extent the allegations of paragraph 129 of the Plaintiffs' First Amended Complaint are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

38. Covil is without sufficient information to form a belief as to the allegations of paragraph 130 of Plaintiffs' First Amended Complaint and, therefore, denies them.

39. Covil denies the allegations of paragraph 131 of Plaintiffs' First Amended Complaint to the extent they pertain to it. To the extent the allegations of paragraph 131 of the Plaintiffs' First Amended Complaint are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

IN RESPONSE TO PLAINTIFF'S PETITION FOR EXPEDITED TRIAL

40. The allegations of paragraph 1 under Plaintiffs' Petition for Expedited Trial do not require a response from this Defendant. To the extent a response may be required, Covil denies that Plaintiff is entitled to an expedited trial setting under the circumstances of this case and denies the remaining allegations of paragraph 1 of Plaintiffs' Petition for Expedited Trial.

41. Covil denies it is liable to the Plaintiff for the injuries and damages set forth in paragraphs A through F of Plaintiffs' Prayer for Relief in the First Amended Complaint.

42. Covil denies each and every allegation of the Plaintiffs' First Amended Complaint not specifically admitted, explained or modified.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

43. The Plaintiffs' First Amended Complaint fails to state a claim upon which relief may be granted and accordingly it should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

44. This Court lacks jurisdiction over Covil as a result of improper, and/or lack of, service of process, lack of subject matter jurisdiction, and/or lack of personal jurisdiction.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

45. Covil alleges that venue in this action is not proper and that this action should be transferred to the Greenville County Court of Common Pleas. Covil reserves its right to move for dismissal and/or transfer of the action based on improper and/or inconvenient venue and further reserves its right to seek application of the law of the appropriate venue on all issues.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

46. Covil alleges that the Plaintiffs' First Amended Complaint should be dismissed due to the Plaintiffs' lack of capacity.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

47. There is a lack of joinder of one or more parties who should or must be joined; without the joinder of these proper parties, complete relief cannot be accorded among those already made parties to this action.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

48. The claims set forth in the Complaint are barred by the applicable statutes of limitations and/or repose in this state or other states as may be applicable.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

49. The claims set forth in the Complaint are barred to the extent there is another action pending between the same parties for the same claim.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

50. Plaintiffs do not have capacity to bring this claim pursuant to Section 15-5-150 of the South Carolina Code of Laws, also referred to the South Carolina Door Closing Statute.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

51. Plaintiffs' claims are barred or reduced by the doctrines of res judicata, waiver, release, laches, and/or conditions precedent or subsequent.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

52. Plaintiffs' claims are barred or reduced by the applicable provisions of the Worker's Compensation Act, whether of this state or another.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

53. By virtue of the doctrine of judicial estoppel, the Plaintiffs are precluded from taking a position inconsistent with one taken with respect to the same facts in earlier litigation, if any, and are, therefore, precluded from alleging the material facts necessary to state a cause of action against this Defendant.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

54. Covil would show that even if the decedent, Wayne Ervin Howe, suffered injuries and damages as set forth in the Complaint, which is admitted for the purposes of this defense

only, then such injuries and damages were due to his own negligent, reckless, willful, wanton, and careless acts and conduct which combined and concurred with any willful, wanton, reckless, negligent or careless acts or conduct on the part of this Defendant, which are specifically denied, and acted as a direct and proximate cause of the injuries and damages claimed to have been suffered by the decedent, Wayne Ervin Howe. Plaintiffs' claims are barred to the extent that decedent Wayne Ervin Howe's negligence is more than 50% of the negligence in this action. To the extent decedent Wayne Ervin Howe's contributory negligence and recklessness is less than 50% of the total negligence in this action, Plaintiffs' recovery should be reduced by the percentage of his negligence and recklessness.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

55. Covil alleges that if Plaintiffs would otherwise have proven the allegations of the Complaint against this defendant, then the decedent, Wayne Ervin Howe, had actual knowledge of the alleged dangerous nature of the asbestos or asbestos-related products and voluntarily assumed the risks incident thereto in repeated unreasonable use and exposure to the asbestos or asbestos-related products and processes involved in the use of these insulation materials.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

56. Covil alleges that any asbestos-containing products which the decedent, Wayne Ervin Howe, used and/or was exposed were misused, abused, not used in the manner in which they were intended to be used, and/or were used in a manner that was abnormal and not reasonably foreseeable and such misuse proximately caused or contributed to Plaintiffs' alleged damages, injuries, and/or losses, if any.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

57. Covil would show that product or products claimed to contain asbestos were used contrary to any instructions and/or warnings accompanying those products.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

58. Covil would show that even if the decedent, Wayne Ervin Howe, had suffered injuries as described, which is admitted for the purposes of this defense only, then such injuries were caused by the acts or omissions of third parties, including but not limited to the actions of unions, employers, manufacturers, distributors and others, and that these acts or omissions of third parties acted as a direct and proximate cause of decedent Wayne Ervin Howe's injuries in such a way as to constitute a superseding or intervening cause ending all liability on the part of this Defendant.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

59. Covil alleges that if the decedent, Wayne Ervin Howe, sustained the injuries and/or damages alleged, which is specifically denied, then such injuries and/or damages were proximately caused by the acts and/or omissions of decedent Wayne Ervin Howe's employers with respect to the maintenance of healthy and safe work sites and environments, which were under the exclusive control and possession of the employer(s).

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

60. Covil alleges that if the decedent, Wayne Ervin Howe, sustained injuries as a result of exposure to asbestos or asbestos-containing products, which is denied, then such injuries were or may have been due to exposures to products of manufacturers not named as Defendants in this

action, including but not limited to product manufacturers which have taken advantage of the protections of the bankruptcy provisions of the United States Code.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

61. On information and belief, it is alleged that the employers of the decedent, Wayne Ervin Howe, were negligent in the manner set out previously herein, and such negligence was at least a proximate cause of any injury done to the decedent, Wayne Ervin Howe, by asbestos, if any, and such negligence of the employers joined and concurred with any alleged negligence of this defendant in producing any injuries and damages sustained by the decedent, Wayne Ervin Howe; further, as a result of said employers' negligence, this defendant is entitled to have the verdict, if any, reduced by the amount of any workers' compensation payments or like payments made to the decedent, Wayne Ervin Howe, or on his behalf.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

62. The decedent Wayne Ervin Howe was not exposed to any asbestos material through any act or omission of Covil or, if such exposure occurred, which is denied, such exposure was of such insufficient quantities, at such infrequent intervals, and for such short periods of time that any such exposure was *de minimis* and cannot be deemed a proximate cause of Plaintiffs' damages, if any, as a matter of law. Therefore, Covil denies that any alleged action or inaction on its part has damaged or injured the decedent, Wayne Ervin Howe, in any manner or at any time.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

63. At all times alleged in Plaintiffs' First Amended Complaint, the products alleged to have caused decedent Wayne Ervin Howe's injuries were designed, manufactured, sold, distributed,

labeled and/or installed in compliance with the then existing state of the art in the industry to which this Defendant belonged.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

64. Covil had no duty to warn of and/or protect decedent Wayne Ervin Howe from risks or dangers, if any, inherent in products that were distributed to the employers of decedent Wayne Ervin Howe, who were learned intermediaries or sophisticated users of such products, and upon whom this defendant reasonably relied to warn the decedent, Wayne Ervin Howe, of the alleged dangerous characteristics inherent in any such products.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

65. The alleged injuries to the decedent, Wayne Ervin Howe, occurred or were allegedly sustained prior to the enactment of § 15-73-10 of the South Carolina Code of Laws, Annotated, and Plaintiffs are, therefore, prohibited by law from asserting a cause of action based on strict liability.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

66. Covil would show that to the extent that the Complaint seeks to recover for injuries suffered in South Carolina, Plaintiffs' claims are barred by the provisions of S.C. Code Ann. §15-73-20.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

67. Covil alleges that the decedent, Wayne Ervin Howe, was not a user or consumer of any products distributed and/or installed by this defendant within the meaning of § 15-73-10 of the South Carolina Code, Annotated, and therefore may not recover against this Defendant in strict liability for either actual or punitive damages.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

68. Covil would show that the decedent, Wayne Ervin Howe, was not in privity with it so that any claim for breach of warranty made against this defendant is barred.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

69. There are no allegations against this Defendant stated with sufficient particularity to constitute a cause of action for fraud, fraudulent concealment, concert of action, conspiracy, or the like meeting the requirement of Rule 9(b) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

70. Plaintiffs have failed, neglected and/or refused to mitigate their damages, if any, and therefore, Plaintiffs are barred from recovery of those damages which could have been avoided by the exercise of due diligence.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

71. On information and belief, Plaintiffs received payments from and granted releases to other parties, including but not limited to other parties to this action, other non-party manufacturers and/or employers of the decedent, Wayne Ervin Howe, (for claims other than workers' compensation) against whom Plaintiffs have claimed liability in tort for the same injury for which Plaintiffs claim this Defendant has liability. This Defendant is entitled to set off the greater of the amount stipulated to in such release or the amount of consideration paid for such release from a verdict in this case, if any.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

72. Plaintiffs' First Amended Complaint fails to set forth a claim for punitive damages upon which relief may be granted.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

73. To the extent Plaintiffs' First Amended Complaint asserts a demand for punitive damages, this Defendant specifically incorporates by reference any and all standards of limitations regarding the determination and/or enforceability of punitive damage awards that arose in the decisions of *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1966); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003).

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

74. To the extent that Plaintiffs' First Amended Complaint seeks punitive damages, this Defendant affirmatively pleads the following in regard to punitive damages:

a. An award of punitive damages in this civil action would amount to a deprivation of property without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

b. An award of punitive damages in this civil action would violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

c. The criteria used for determining whether and in what amount punitive damages may be awarded are impermissible, vague, imprecise and inconsistent and,

therefore, violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

d. An award of punitive damages in this civil action would amount to an excessive fine in violation of the due process provisions of the Eighth Amendment to the United States Constitution and the corresponding provisions of the applicable state Constitution; and

e. Plaintiffs' claim for punitive damages in barred by the "double jeopardy" clause of the Fifth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

75. This Defendant would show that, among other things, Plaintiffs' claim for punitive damages is barred, reduced, bifurcated, capped or otherwise impacted by the South Carolina Fairness in Civil Justice Act of 2011 and/or similar and/or related state statutes and limitations.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

76. Where applicable, and not inconsistent, Covil incorporates herein by reference the defenses asserted by other defendants.

FURTHER ANSWERING AND FOR A FURTHER AND AFFIRMATIVE DEFENSE

77. Covil reserves the right to amend this pleading to add or delete affirmative defenses as proof is developed during the course of discovery in this action.

WHEREFORE, Defendant Covil Corporation having fully answered Plaintiffs' First Amended Complaint, prays that the Court dismiss Plaintiffs' First Amended Complaint with prejudice, that Defendant Covil Corporation be awarded its costs and attorney's fees to the extent permitted by law, and for such other and further relief as the Court deems just and proper.

October 6, 2016

Daniel B. White (S.C. Bar #6070)
Stephanie G. Flynn (S.C. Bar #16653)
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Attorneys for Defendant
Covil Corporation

Defendant Covil Corporation demands a trial by jury.

Daniel B. White (S.C. Bar #6070)
Stephanie G. Flynn (S.C. Bar #16653)

STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)

IN THE COURT OF COMMON PLEAS

JAMES CALVIN SIZEMORE)
Plaintiff(s))

vs.

BOWATER PAPER MILL, et al.,)
Defendant(s))

CIVIL ACTION COVERSHEET

2016-CP - 25- 440

Submitted By: Jonathan M. Holder
Address: 3900 Elm St.
Dallas, TX 75226

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Other:
E-mail: jholder@dobllp.com

FILED
2016 DEC -9 AM 8:43
CLERK OF COURT
HAMPTON COUNTY, SC

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply)*

**If Action is Judgment/Settlement do not complete*

☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION *(Check One Box Below)*

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199) _____

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-NI-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399) _____

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499) _____

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599) _____

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899) _____

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799) _____

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999) _____

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☒ Other (699) Asbestos Injury, (Judge Hill)
- ☐ Sexual Predator (510)
- ☐ Permanent Restraining Order (680)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

Submitting Party Signature: _____ **Date:** December 8, 2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF HAMPTON) C/A No.: 2016-CP-25-440

JAMES CALVIN SIZEMORE,
Plaintiff,

vs.

BOWATER PAPER MILL;

E.I. DU PONT DE NEMOURS AND COMPANY;

FOSTER WHEELER ENERGY CORPORATION;

DANIEL INTERNATIONAL, CORPORATION, f/k/a DANIEL CONSTRUCTION COMPANY, INC.;

RESOLUTE FP US INC. f/k/a BOWATER INCORPORATED;

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;

CLEAVER-BROOKS, INC. f/k/a AQUA-CHEM, INC., d/b/a CLEAVER-BROOKS DIVISION;

CONWAY CONSTRUCTION, INCORPORATED;

COVIL CORPORATION;

FLUOR CONSTRUCTORS INTERNATIONAL, f/k/a FLUOR CORPORATION;

FLUOR CONSTRUCTORS INTERNATIONAL, INC.;

FLUOR DANIEL SERVICES CORPORATION;

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

Living Mesothelioma

SUMMONS

(Jury Trial Demanded)

2016 DEC -9 AM 8:44
JACQUELYN D. HEYWARD
CLERK OF COURT
HAMPTON COUNTY, S.C.
BY

FLUOR ENTERPRISES, INC.;

GENERAL ELECTRIC COMPANY;

GENUINE PARTS COMPANY, d/b/a RAYLOC, a/k/a NAPA

GEORGIA-PACIFIC CONSUMER PRODUCTS LP.;

GEORGIA-PACIFIC LLC f/k/a GEORGIA-PACIFIC CORPORATION

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.

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 3900 Elm Street, Dallas, Texas 75226, within thirty (30) days after the service thereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

DEAN OMAR BRANHAM, LLP

By: _____

Jonathan M. Holder- (SC Bar No. 77935)
Jessica M. Dean- (TX Bar No. 24040777)
To be admitted *pro hac vice*
3900 Elm Street
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ATTORNEYS FOR PLAINTIFF

December 8, 2016
Dallas, Texas

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF HAMPTON) C/A No.: 2016-CP-25-440

JAMES CALVIN SIZEMORE,
Plaintiff,

v.

BOWATER PAPER MILL;

E.I. DU PONT DE NEMOURS AND COMPANY;

FOSTER WHEELER ENERGY CORPORATION;

DANIEL INTERNATIONAL, CORPORATION, f/k/a DANIEL CONSTRUCTION COMPANY, INC.;

RESOLUTE FP US INC. f/k/a BOWATER INCORPORATED;

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;

CLEAVER-BROOKS, INC. f/k/a AQUA-CHEM, INC., d/b/a CLEAVER-BROOKS DIVISION;

CONWAY CONSTRUCTION, INCORPORATED;

COVIL CORPORATION;

FLUOR CONSTRUCTORS INTERNATIONAL, f/k/a FLUOR CORPORATION;

FLUOR CONSTRUCTORS INTERNATIONAL, INC.;

FLUOR DANIEL SERVICES CORPORATION;

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

Living Mesothelioma

COMPLAINT

(Jury Trial Demanded)

2016 DEC -9 AM 8:44
FILED IN THE OFFICE
CLERK OF COURT
HAMPTON COUNTY, S.C.
BY

ORIGINAL

FLUOR ENTERPRISES, INC.;

GENERAL ELECTRIC COMPANY;

GENUINE PARTS COMPANY, d/b/a RAYLOC, a/k/a NAPA

GEORGIA-PACIFIC CONSUMER PRODUCTS LP.;

GEORGIA-PACIFIC LLC f/k/a GEORGIA-PACIFIC CORPORATION

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.

GENERAL ALLEGATIONS

Plaintiff JAMES C. SIZEMORE, (hereinafter "Plaintiff"), come before this court and complain and allege as follows:

1. Plaintiff James C. Sizemore has been diagnosed with mesothelioma.

2. From approximately 1962 to 2009, Plaintiff 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, Plaintiff 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 South Carolina locations 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 Plant, Seneca, SC; Carolina Power & Light Brunswick Plant, Southport, NC; 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; Waiau 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;

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; and

d. Direct and bystander exposure to asbestos joint compound, caulking and construction materials during home remodeling between 1975 and the early 1980s.

3. During the course of Plaintiff's employment at the location(s) mentioned above, during non-occupational work projects and in other ways, Plaintiff James C. Sizemore was exposed to and inhaled, ingested, or otherwise absorbed asbestos fibers emanating from certain products he was working around.

4. Plaintiff 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 Plaintiff's mesothelioma and other related injuries and therefore under South Carolina law, is the legal cause of Plaintiff'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 Plaintiff'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
BOWATER PAPER MILL	RESOLUTE FP US INC., f/k/a BOWATER INCORPORATED
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
GEORGIA-PACIFIC LLC	f/k/a GEORGIA-PACIFIC CORPORATION
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. Plaintiff is informed and believes, and thereon allege, 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 County of Spartanburg, State of South Carolina.

7. Plaintiff is informed and believes, and thereon allege, that progressive lung disease, 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, Plaintiff James C. Sizemore suffers 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, Plaintiff James C. Sizemore incurred and is continuing to incur liability for physicians, surgeons, nurses, hospital care, medicine, hospices, x-rays and other medical treatment, the true and exact amount thereof being unknown to Plaintiff at this time. Plaintiff requests leave to supplement this Court and all parties accordingly when the true and exact cost of Plaintiff's medical treatment is ascertained.

10. As a further direct and proximate result of the conduct as hereinafter alleged, Plaintiff James C. Sizemore has incurred, and will incur, 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 Plaintiff. Plaintiff 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 Plaintiff 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 Plaintiff's mesothelioma, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff 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 Plaintiff. 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 Plaintiff, 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 Plaintiff,

Plaintiff'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. Plaintiff, Plaintiff's family members 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. Plaintiff James C. Sizemore's exposure to asbestos and asbestos-containing products occurred at various locations as set forth in this Complaint.

18. Plaintiff James C. Sizemore's suffers from mesothelioma, a cancer related to exposure to asbestos and asbestos-containing products. Plaintiff 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 Plaintiff's injuries, and all damages thereby sustained by Plaintiff. Plaintiff 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 Plaintiff and the public without adequate warnings or proper use instructions was done in a conscious disregard and indifference to the safety and health of Plaintiff 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 Plaintiff.

24. Plaintiff 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 Plaintiff or other exposed persons. Defendants and/or their "alternate entities" further failed to adequately warn of the risks to which Plaintiff 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, Plaintiff 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. Plaintiff James C. Sizemore suffers from mesothelioma, a cancer related to exposure to asbestos and asbestos-containing products. Plaintiff 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 Plaintiff's injuries, and the injuries and damages thereby sustained by Plaintiff.

30. Furthermore, the Defendants' conduct and that of their "alternate entities" in continuing to market and sell products which they knew were dangerous to Plaintiff and the public without adequate warnings or proper use instructions, was done in a conscious disregard and indifference to the safety and health of Plaintiff 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 Plaintiff, would use or be in proximity to and exposed to said asbestos fibers.

32. Plaintiff, Plaintiff's family members, 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. Plaintiff'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 Plaintiff's mesothelioma, due to an inability of any asbestos-alternative to penetrate the pleural lining of Plaintiff 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 Plaintiff herein, while being used in a reasonably foreseeable manner, thereby rendering the same defective, unsafe and dangerous for use.

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

37. Defendants' defective products as described above were a direct cause of Plaintiff'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 Plaintiff 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

Plaintiff 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, Plaintiff 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 Plaintiff 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 Plaintiff was exposed.

47. Employees handling and disturbing asbestos-containing products in Plaintiff'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 Plaintiff's, Plaintiff'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 Plaintiff, 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 Plaintiff.

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 Plaintiff.

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 Plaintiff that he was being exposed to asbestos, failed to adequately warn Plaintiff 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 Plaintiff.

55. Defendants' employees owed Plaintiff 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, Plaintiff 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, Plaintiff's exposure to asbestos and asbestos-containing materials, each individually and together, caused severe and permanent injury to Plaintiff and the damages and injuries as complained of herein by Plaintiff.

59. The risks herein alleged and the resultant damages suffered by the Plaintiff 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 Plaintiff.

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

As a Fourth Distinct Cause of Action for General Negligence, Plaintiff 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 Plaintiff 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 Plaintiff and settled onto Plaintiff's clothes, shoes, hands, face, hair, skin, and other body parts thus creating a situation whereby workers and by-standers including Plaintiff 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 Plaintiff.

66. At all times herein mentioned, Defendants knew or should have known that its employees and bystanders thereto, including Plaintiff, 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 Plaintiff, 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 Plaintiff 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, Plaintiff 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 Plaintiff, 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 Plaintiff, 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, Plaintiff became exposed to and inhaled asbestos fibers, which was a substantial factor in causing Plaintiff 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, Plaintiff Complains of Defendants and Allege as Follows:

76. Plaintiff repeats the general allegations, as well as allegations of the First and Second, of Action 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 Plaintiff James C. Sizemore carried out his duties and was inhaled by Plaintiff.

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, Plaintiff James C. Sizemore was exposed to Defendants' asbestos and/or asbestos-containing products and consequently developed mesothelioma, causing 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, Plaintiff 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 Plaintiff James C. Sizemore's exposure to asbestos

products manufactured by Defendants, the Defendants falsely represented facts, including the dangers of asbestos exposure to Plaintiff in the particulars alleged in the paragraphs above, while Defendants each had actual knowledge of said dangers of asbestos exposure to persons such as Plaintiff 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 Plaintiff James C. Sizemore's continued exposure to asbestos-containing products. Defendants each intended that Plaintiff act upon the representations by continuing his work around, and thereby exposure to, the asbestos products. Plaintiff was ignorant of the falsity of Defendants' representations and rightfully relied upon the representations.

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

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

1. For Plaintiff's actual damages according to proof, including Plaintiff's pain & suffering, as well as medical bills;

2. For loss of earnings according to proof, if any;

3. For loss of care, comfort and society;

4. For punitive damages according to proof;

5. For Plaintiff's cost of suit herein;

6. For damages for fraudulent misrepresentation according to proof; and

7. 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,

DEAN OMAR BRANHAM, LLP

By: _____

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ATTORNEYS FOR PLAINTIFF

December 8, 2016
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December 8, 2016

VIA FEDERAL EXPRESS

The Honorable Mylinda D. Nettles
Hampton County Clerk of Court
PO Box 7
Hampton, SC 29924-0007

RE: James Calvin Sizemore v. Bowater Paper Mill, et al.
C.A. No: 2016 – CP – 25 – 440

Dear Madam Clerk:

Please find enclosed for filing an original and one copy of the Summons and Complaint in the case of *James Calvin Sizemore vs. Bowater Paper Mill, et al.*, along with a current South Carolina civil action coversheet and Plaintiff's filing fee check in the amount of $150.00. Please file the original and return the file-stamped copy in the self-addressed envelope provided for your convenience.

If you have any questions or concerns, please feel free to contact our office.

Thank you for your assistance in this matter.

Respectfully,

Jonathan M. Holder

JH/jh
Encl.

Common Pleas

Clerk : Mylinda Nettles
1 Courthouse Square Elm St
Hampton, SC 29924
Phone:(803) 914-2250 Fax:(803) 914-2258

Received From:	Holder, Jonathan Marshall 3900 Elm Street Dallas, TX 75226		Date: 12/ 9/2016 Receipt #: 17788 Clerk: c25mnettle
Paying for:	Sizemore, James Calvin		
Transaction Type:	Payment	Reference #:	1981
Payment Type:	Check $150.00	Comment:	
Total Paid:	$150.00	Non-Refundable	

Total Received:	$150.00
Change Due:	$0.00

You may check the status of your Hampton case at:
http://www.sccourts.org/caseSearch/

Case #	Caption	Previous Balance	Amount Paid	Balance Due	S/T
2016CP2500440	James Calvin Sizemore VS Bowater Paper Mill	**$150.00**	**$150.00**	**$0.00**	**699**
CVFFCN	Civil Filing Fee County 44%/100%	$44.00	$44.00	$0.00	
CVFFST	Civil Filing Fee State 56%	$56.00	$56.00	$0.00	
SCJDPV	SCJD Filing Fee Proviso $50 / $25	$50.00	$50.00	$0.00	
Total Cases:	**1**	**$150.00**	**$150.00**	**$0.00**	

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	Civil Action No. 2016-CP-25-440
	)	
JAMES CALVIN SIZEMORE,	)	
	)	
Plaintiff,	)	**ANSWER OF DEFENDANT COVIL CORPORATION TO PLAINTIFF'S COMPLAINT**
	)	
v.	)	
	)	
BOWATER PAPER MILL, *et al.*,	)	**(JURY TRIAL DEMANDED)**
	)	
Defendants.	)	
	)	
	)	

Defendant Covil Corporation (hereinafter "Covil"), would respectfully allege and show unto the Court as follows:

FOR A FIRST DEFENSE

1. Covil is without sufficient knowledge or information to form a belief as to the truthfulness of the allegations of paragraphs 1, 2, and 3 (including all subparts thereto) of Plaintiff's Complaint, and, therefore, denies them.

2. Covil denies the allegations of paragraphs 4 and 5 of Plaintiff's Complaint to the extent they relate to it. To the extent the allegations of paragraphs 4 and 5 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies them.

3. Covil admits so much of the allegations of paragraph 6 of Plaintiff's Complaint as allege it was a South Carolina corporation, authorized to do business in the State of South Carolina. Covil denies the remaining allegations of paragraph 6 of Plaintiff's Complaint to the extent they relate to it. To the extent the allegations of paragraph 6 are directed against or

pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies them.

4. Covil is not required to respond to the allegations of paragraph 7 of Plaintiff' Complaint, which are not directed to it. To the extent that a response may be deemed necessary, Covil denies that exposure, if any, to products associated in any way with Covil caused or contributed to any injuries, disease(s) and/or damage(s) alleged by Plaintiff in this case.

5. Covil denies the allegations of paragraphs 8, 9 and 10 of Plaintiff's Complaint to the extent they relate to it. To the extent the allegations of paragraphs 8, 9, and 10 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form as belief as to the truthfulness of those allegations and, therefore, denies them.

6. In response to the allegations of Paragraph 11 of the Complaint, Covil incorporates herein by reference its responses to Paragraphs 1 through 10 of the Complaint.

7. Covil denies the allegations of paragraphs 12, 13, 14, 15, and 16 of Plaintiff's Complaint to the extent they relate to it. To the extent the allegations of paragraphs 12, 13, 14, 15, and 16 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies them.

8. Covil is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraphs 17 and 18 of the Complaint, and therefore, denies them.

9. Covil denies the allegations of paragraphs 19, 20, 21, 22, 23, 24, 25, and 26 of Plaintiff's Complaint to the extent they relate to it. To the extent the allegations of paragraphs 19, 20, 21, 22, 23, 24, 25, and 26 are directed against or pertain to parties other than Covil, Covil

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is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies them.

10. In response to the allegations of paragraph 27 of Plaintiff's Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 26 of the Complaint.

11. Covil is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 28 of Plaintiff's Complaint, and therefore, denies them.

12. Covil denies the allegations of paragraphs 29, 30, and 31 of Plaintiff's Complaint to the extent they relate to it. To the extent the allegations of paragraphs 29, 30, and 31 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies them.

13. Covil is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 32 of the Complaint, and therefore, denies them.

14. Covil denies the allegations of paragraphs 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, and 43 of Plaintiff's Complaint to the extent they relate to it. To the extent the allegations of paragraphs 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, and 43 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies them.

15. In response to the allegations of paragraph 44 of the Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 43 of the Complaint.

16. Covil denies the allegations of paragraphs 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, and 60 of Plaintiff's Complaint to the extent they relate to it. To the extent the allegations of paragraphs 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, and 60 are

directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies them.

17. In response to the allegations of paragraph 61 of the Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 60 of the Complaint.

18. Covil denies the allegations of paragraphs 62, 63, 64, 65, 66, 67, and 68 of Plaintiff's Complaint to the extent they relate to it. To the extent the allegations of paragraphs 62, 63, 64, 65, 66, 67, and 68 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies them.

19. Covil is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 69 of the Complaint, and therefore, denies them.

20. Covil denies the allegations of paragraphs 70, 71, 72, 73, 74, and 75 of Plaintiff's Complaint to the extent they relate to it. To the extent the allegations of paragraphs 70, 71, 72, 73, 74, and 75 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies them.

21. In response to the allegations of paragraph 76 of the Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 75 of the Complaint.

22. Covil denies the allegations of paragraphs 77, 78, and 79 of Plaintiff's Complaint to the extent they relate to it. To the extent the allegations of paragraphs 77, 78, and 79 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies them.

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23. In response to the allegations of paragraph 80 of the Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 79 of the Complaint.

24. Covil denies the allegations of paragraphs 81, 82, and 83 of the Complaint to the extent relate to it. To the extent the allegations of paragraphs 81, 82, and 83 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truthfulness of those allegations and, therefore, denies them.

25. In response to paragraphs 1 through 7 contained in Plaintiff's prayer for damages, Covil denies it is liable to Plaintiff under any theory or cause of action for the damages and/or other relief requested therein.

26. Covil denies each and every allegation of the Complaint not specifically admitted, explained or modified hereinabove.

FOR A SECOND AFFIRMATIVE DEFENSE

27. The Court lacks jurisdiction over Covil as a result of improper, and/or lack of, service of process; lack of subject matter jurisdiction; and/or lack of personal jurisdiction.

FOR A THIRD AFFIRMATIVE DEFENSE

28. The Plaintiff's Complaint fails to state a claim upon which relief may be granted, and, accordingly, it should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH AFFIRMATIVE DEFENSE

29. Covil is a dissolved corporation and therefore lacks the capacity to sue or be sued.

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FOR A FIFTH AFFIRMATIVE DEFENSE

30. There is a lack of joinder of one or more parties who should or must be joined; without the joinder of these proper parties, complete relief cannot be accorded among those already made parties to this action.

FOR A SIXTH AFFIRMATIVE DEFENSE

31. The claims set forth in the Complaint are barred by the applicable statutes of limitations and/or repose in this state or other states as may be applicable.

FOR A SEVENTH AFFIRMATIVE DEFENSE

32. Covil alleges that the Plaintiff's damages were the direct and proximate result of the negligent, reckless, willful, and wanton conduct of the Plaintiff, which combined and concurred with any negligence or recklessness on the part of Covil, which is specifically denied and admitted solely for the purpose of this defense and no other, and the alleged damages of the Plaintiff would not have occurred if the Plaintiff had not been guilty of such negligence, recklessness, willfulness, or wantonness. The Complaint is barred to the extent that the Plaintiff's contributory negligence and recklessness is more than 50% of the total negligence in this case. To the extent that the Plaintiff's contributory negligence and recklessness is 50% or less of the total negligence in this case, which is denied and admitted solely for the purpose of this defense, the Plaintiff's recovery should be reduced by the percentage of its contributory negligence and recklessness.

FOR AN EIGHTH AFFIRMATIVE DEFENSE

33. The claims set forth in the Plaintiff's Complaint are barred to the extent there is another action pending between the same parties for the same claims.

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FOR AN NINTH AFFIRMATIVE DEFENSE

34. The Plaintiff's Complaint should be dismissed and/or is not subject to trial for its failure to comply with the requirements of Section 44-135-10 *et seq.*, of the South Carolina Code of Laws, also known as the "Asbestos and Silica Claims Procedure Act of 2006."

FOR A TENTH AFFIRMATIVE DEFENSE

35. Plaintiff's claims are barred or reduced by the doctrines of res judicata, waiver, release, laches, collateral estoppel, and/or conditions precedent or subsequent.

FOR AN ELEVENTH AFFIRMATIVE DEFENSE

36. Plaintiff's claims are barred or reduced by the applicable provisions of the Worker's Compensation Act, whether of this state or another.

FOR A TWELFTH AFFIRMATIVE DEFENSE

37. By virtue of the doctrine of judicial estoppel, the Plaintiff is precluded from taking a position inconsistent with one taken with respect to the same facts in earlier litigation, if any, and is, therefore, precluded from alleging the material facts necessary to state a cause of action against this Defendant.

FOR A THIRTEENTH AFFIRMATIVE DEFENSE

38. Venue is improper in this action. This Defendant reserves its right to move for dismissal and/or transfer of the action based on improper and/or inconvenient venue and further reserves its right to seek application of the law of the appropriate venue on all issues.

FOR A FOURTEENTH AFFIRMATIVEDEFENSE

39. This Defendant would show that, among other things, Plaintiff's claim for punitive damages is barred, reduced, bifurcated, capped, or otherwise impacted by the South Carolina Fairness in Civil Justice Act of 2011 and/or similar and/or related state statutes and limitations.

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FOR A FIFTEENTH AFFIRMATIVE DEFENSE

40. The alleged injuries to the Plaintiff are barred by Section 15-73-10 *et seq.*, of the South Carolina Code of Laws; therefore, the Plaintiff is prohibited by law from asserting a cause of action based on strict liability for either actual or punitive damages.

FOR A SIXTEENTH AFFIRMATIVE DEFENSE

41. Covil would show that any product allegedly distributed by, or for which Covil is alleged to have been liable, was altered or changed in some manner after it left the custody and possession of Covil.

FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

42. There has been no concert of action between this Defendant and any of the other named Defendants. The Defendants are not joint tortfeasors, and, therefore, this Defendant may not be held jointly and severally liable with the other named Defendants. Accordingly, Covil asserts it is entitled to the benefit of the provisions set forth in S.C. Code §15-38-15 in this action.

FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

43. To the extent that the Plaintiff has received payment in satisfaction of any of the alleged injuries and/or claims against this Defendant, the Plaintiff's Complaint in each and every count and cause of action alleged therein is barred or reduced by the defenses of payment and accord and satisfaction.

FOR A NINETEENTH AFFIRMATIVE DEFENSE

44. There are no allegations against this Defendant stated with sufficient particularity to constitute a cause of action for fraud, fraudulent concealment, concert of action, conspiracy, or the like meeting the requirement of Rule 9(b) of the South Carolina Rules of Civil Procedure.

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FOR A TWENTIETH AFFIRMATIVE DEFENSE

45. Upon information and belief, Plaintiff was employed by a knowledgeable and sophisticated user/employer, and any duty this Defendant may have had to warn Plaintiff of any potential dangers incident to use of this Defendant's products, which duty is denied, was discharged by the employer's intervening duty to give Plaintiff warning.

FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE

46. Plaintiff's claims are barred to the extent any products for which this Defendant is or may be responsible were sold to a "learned intermediary" and/or "sophisticated user" or other similar purchaser and/or Defendant was a "bulk supplier."

FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE

47. Any oral warranties upon which Plaintiff alleges to have relied are inadmissible and unavailable because of the provisions of the applicable Statute of Frauds.

FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE

48. This Defendant alleges that the Plaintiff had actual knowledge of and voluntarily assumed the risk incident to Plaintiff's use and exposure to asbestos or the products and processes involving the use of asbestos or asbestos-containing materials which were known to him to be dangerous.

FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE

49. This Defendant alleges that, upon information and belief, the Plaintiff failed to properly use the product or products in question, abused the product or products, and/or subjected them to abnormal use at the time or times and places alleged in the Complaint.

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FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE

50. This Defendant alleges that if the Plaintiff used the product or products for which this Defendant is alleged to be responsible, upon information and belief, the same was used for a purpose not intended by this Defendant and contrary to any instructions or normal method of using the same.

FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE

51. This Defendant alleges that if the Plaintiff sustained any injuries or damages as set forth in the Complaint, which is denied, the same were due to and caused by the negligence, recklessness, willfulness, and wantonness of others, and not this Defendant.

FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE

52. This Defendant would show that even if Plaintiff has suffered injuries as described by Plaintiff, and the same are admitted for the purposes of this defense only, then said injuries were caused by the acts or omissions of third parties, including but not limited to the actions of unions, employers, other manufacturers, distributors, and others, and that these acts or omissions of third parties acted as a direct and proximate cause of the Plaintiff's injuries in such a way as to constitute a supervening or intervening cause ending all liability on the part of this Defendant.

FOR A TWENTY-EIGHTH AFFIRMATIVE DEFENSE

53. If Plaintiff sustained the injuries and/or damages alleged, which is specifically denied, then, upon information and belief, such injuries and/or damages were proximately caused by the acts and/or omissions of the Plaintiff's employers with respect to the maintenance of healthy and safe work sites and environments, which were under the exclusive control and possession of the employer(s).

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FOR A TWENTY-NINTH AFFIRMATIVE DEFENSE

54. This Defendant alleges that if the Plaintiff sustained injuries as a result of exposure to asbestos or asbestos-containing products, which is denied, then such injuries were or may have been due to exposures to products of manufacturers not named as Defendants in this action, including but not limited to product manufacturers which have taken advantage of the protections of the bankruptcy provisions of the United States Code.

FOR A THIRTIETH AFFIRMATIVE DEFENSE

55. If the Plaintiff was exposed to any products for which this Defendant is alleged to have been responsible, said products at the time were manufactured in conformity with applicable federal and state regulations, standards, specifications and laws; consequently, recovery by the Plaintiff herein is barred.

FOR A THIRTY-FIRST AFFIRMATIVE DEFENSE

56. If it should be proven that the Plaintiff, while working for or otherwise associated with the United States Government, worked with or around asbestos-containing products for which this Defendant is alleged to have been responsible, such materials, upon information and belief, were made in compliance with military specifications and contract requirements for a specific intended use by the United States Government.

FOR A THIRTY-SECOND AFFIRMATIVE DEFENSE

57. If any products for which this Defendant is alleged to have been responsible and which give rise to Plaintiff's claims herein were designed and manufactured pursuant to and in accordance with the standards of, or specifications mandated by, the United States Government and its agencies, the knowledge of the United States Government and its agencies of any possible health hazards from use of such products was equal or superior to that of this Defendant, and by reason

thereof this Defendant is entitled to assume any immunity from liability which exists in favor of the United States Government or its agencies and/or to assert the government contractor defense.

FOR A THIRTY-THIRD AFFIRMATIVE DEFENSE

58. In the event it is determined that any product for which this Defendant is alleged to have been responsible was dangerous, which danger is specifically denied, this Defendant was unaware of such danger as it would apply in any conceivable use of such products by the Plaintiff; furthermore, the discovery of such danger was beyond the state of the art at the time such product or products were manufactured, distributed, sold, used, and/or warnings provided. Further, such products were manufactured, distributed, sold, and used in conformity with the state of the art and/or prevailing industry standards at the time.

FOR A THIRTY-FOURTH AFFIRMATIVE DEFENSE

59. Upon information and belief, Plaintiff has received payments from and granted releases to other parties, including but not limited to other parties to this action and other non-parties against whom Plaintiff has claimed liability in tort for the same injury for which Plaintiff claims this Defendant has liability. This Defendant is entitled to set off of the greater of the amount stipulated to in such release or the amount of consideration paid for such a release.

FOR A THIRTY-FIFTH AFFIRMATIVE DEFENSE

60. Upon information and belief, Plaintiff has failed, neglected, and/or refused to mitigate his damages, if any, and therefore, Plaintiff is barred from recovery of those damages which could have been avoided by the exercise of due diligence.

FOR A THIRTY-SIXTH AFFIRMATIVE DEFENSE

61. Plaintiff's Complaint fails to set forth a claim for punitive damages upon which relief may be granted.

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FOR A THIRTY-SEVENTH AFFIRMATIVE DEFENSE

62. The products for which this Defendant is alleged to have been responsible and/or which were sold and/or distributed by this Defendant were at all times reasonably fit and suitable for the purposes for which they were sold, and this Defendant denies that such products were in any way defective for the use for which they were sold.

FOR A THIRTY-EIGHTH AFFIRMATIVE DEFENSE

63. To the extent Plaintiff's Complaint asserts a demand for punitive damages, this Defendant specifically incorporates by reference any and all standards of limitations regarding the determination and/or enforceability of punitive damage awards that arose in the decisions of *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1966); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A THIRTY-NINTH AFFIRMATIVE DEFENSE

64. To the extent that Plaintiff's Complaint seeks punitive damages, this Defendant affirmatively pleads the following in regard to punitive damages:

(a) An award of punitive damages in this civil action would amount to a deprivation of property without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

(b) An award of punitive damages in this civil action would violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

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(c) The criteria used for determining whether and in what amount punitive damages may be awarded are impermissible, vague, imprecise, and inconsistent and, therefore, violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

(d) An award of punitive damages in this civil action would amount to an excessive fine in violation of the due process provisions of the Eighth Amendment to the United States Constitution and the corresponding provisions of the applicable state Constitution; and

(e) Plaintiff's claim for punitive damages is barred by the "double jeopardy" clause of the Fifth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment.

FOR A FORTIETH AFFIRMATIVE DEFENSE

65. This Defendant reserves the right to allege additional facts and circumstances in support of its defenses as these facts become available.

FOR A FORTY-FIRST AFFIRMATIVE DEFENSE

66. This Defendant incorporates by reference herein, as if fully set forth, all defenses, both affirmative and otherwise, raised, pleaded or asserted by all other answering Defendants.

ANSWER TO CROSS-CLAIMS

This Defendant, answering any and all Cross-Claims which may already have been asserted or which may be asserted in the future against this Defendant by any Co-Defendants and/or Third-Party Defendants, says:

1. In defense of any and all cross-claims, this Defendant incorporates herein as if restated fully all responses and defenses which it has asserted above or may assert in response to the allegations contained in the Plaintiff's Complaint.

2. The allegations against this Defendant in any and all cross-claims are denied.

3. This Defendant denies liability with respect to any and all cross-claims.

4. This Defendant denies that it has any indemnity or contribution liability to any other defendant or Third-Party Defendant.

RESERVATION OF CROSS-CLAIMS

All cross-claims for contribution and for indemnity by this Defendant against all Co-Defendants and Third-Party Defendants are hereby reserved and implied.

JURY DEMAND

This Defendant requests trial by jury on all issues so triable.

WHEREFORE, this Defendant prays the Court for the following relief:

1. That Plaintiff's Complaint be dismissed with prejudice as to this Defendant;

2. That any and all Cross-Claims against this Defendant be dismissed with prejudice;

3. That the Plaintiff and other Defendants and/or Third-Party Defendants have and recover nothing from this Defendant;

4. That the costs of this action be taxed against the Plaintiff and/or other Defendants and/or Third-Party Defendants;

5. That any judgment against this Defendant be reduced by any amount that any employer of the Plaintiff, their successors or assigns, would be entitled to receive there from by way of subrogation;

6. That there be a trial by jury on all issues of fact; and

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7. For such other and further relief as the Court deems just and proper.

Respectfully submitted this, the 17th day of February, 2017.

GALLIVAN, WHITE & BOYD, P.A.

s/ Ronald G. Tate, Jr.

Daniel B. White, Esq, (S.C. Bar No. 6070)
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Attorneys for Defendant Covil Corporation

Defendant demands a trial by jury.

s/ Ronald G. Tate, Jr.

Ronald G. Tate, Jr., Esq. (S.C. Bar. No. 5475)

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF HAMPTON	)	C/A No.: 2016-CP-25-0440

JAMES COLEMAN SIZEMORE, as Personal Representative of the Estate of JAMES CALVIN SIZEMORE, Decedent,	)	In Re: Asbestos Personal Injury Litigation Coordinated Docket
v.	)	Mesothelioma
BOWATER PAPER MILL;	)	**FIRST AMENDED SUMMONS**
E.I. DU PONT DE NEMOURS AND COMPANY;	)	(Jury Trial Demanded)
FOSTER WHEELER ENERGY CORPORATION;	)	
DANIEL INTERNATIONAL, CORPORATION, f/k/a DANIEL CONSTRUCTION COMPANY, INC.;	)	
RESOLUTE FP US INC. f/k/a BOWATER INCORPORATED;	)	
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;	)	
CLEAVER-BROOKS, INC. f/k/a AQUA-CHEM, INC., d/b/a CLEAVER-BROOKS DIVISION;	)	
COVIL CORPORATION;	)	
FLUOR CONSTRUCTORS INTERNATIONAL, f/k/a FLUOR CORPORATION;	)	
FLUOR CONSTRUCTORS INTERNATIONAL, INC.;	)	

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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*
302 N. Market Street, Ste. 300
Dallas, Texas 75202

John D. Kassel
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Columbia, South Carolina 29202

ATTORNEYS FOR PLAINTIFF

February 1, 2018
Dallas, Texas

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF HAMPTON) C/A No.: 2016-CP-25-0440

JAMES COLEMAN SIZEMORE, as Personal Representative of the Estate of JAMES CALVIN SIZEMORE,
Decedent,

v.

BOWATER PAPER MILL;

E.I. DU PONT DE NEMOURS AND COMPANY;

FOSTER WHEELER ENERGY CORPORATION;

DANIEL INTERNATIONAL, CORPORATION, f/k/a DANIEL CONSTRUCTION COMPANY, INC.;

RESOLUTE FP US INC. f/k/a BOWATER INCORPORATED;

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;

CLEAVER-BROOKS, INC. f/k/a AQUA-CHEM, INC., d/b/a CLEAVER-BROOKS DIVISION;

COVIL CORPORATION;

FLUOR CONSTRUCTORS INTERNATIONAL, f/k/a FLUOR CORPORATION;

FLUOR CONSTRUCTORS INTERNATIONAL, INC.;

In Re:
Asbestos Personal Injury Litigation
Coordinated Docket

Mesothelioma

FIRST AMENDED COMPLAINT

(Jury Trial Demanded)

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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.

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:

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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

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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; Waiau 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.

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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

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	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,

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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

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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

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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.

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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.

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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

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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,

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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.

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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.

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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

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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)

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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

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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,

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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:

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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,

DEAN OMAR BRANHAM, LLP

By: /s/ *Jonathan M. Holder*

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ATTORNEYS FOR PLAINTIFF

February 1, 2018
Dallas, Texas

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	Civil Action No. 2016-CP-25-440
	)	
JAMES COLEMAN SIZEMORE, as Personal Representative of the Estate of JAMES CALVIN SIZEMORE,	)	**ANSWER OF COVIL CORPORATION TO PLAINTIFF'S FIRST AMENDED COMPLAINT**
Decedent,	)	
v.	)	
BOWATER PAPER MILL, *et al.*,	)	
Defendants.	)	

Defendant Covil Corporation ("Covil"), answering the First Amended Complaint ("the First Amended Complaint") of Plaintiff James Coleman Sizemore, individually and as Personal Representative of the Estate of James Calvin Sizemore, and any and all Cross-Claims asserted previously or in the future by any Co-Defendants or Third-Party Defendants, whether having appeared in the case at this time or not, alleges and states as follows:

FOR A FIRST DEFENSE

1. Covil is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraphs 1, 2, and 3, including all subparts thereto, of the First Amended Complaint, and, therefore, denies them.

2. Covil denies the allegations of paragraphs 4 and 5 of the First Amended Complaint to the extent they relate to it. To the extent the allegations of paragraphs 4 and 5 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

3. Covil admits so much of the allegations of paragraph 6 of the First Amended Complaint as allege it was a South Carolina corporation authorized to do business in the State of South Carolina. Covil denies the remaining allegations of paragraph 6 of the First Amended Complaint to the extent they relate to it. To the extent the allegations of paragraph 6 are directed against or pertain to parties other

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than Covil, Covil is without sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

4. Covil is not required to respond to the allegations of paragraph 7 of the First Amended Complaint, which are not directed to it. To the extent that a response may be deemed necessary, Covil denies that exposure, if any, to products associated in any way with Covil caused or contributed to any injuries, disease(s) and/or damage(s) alleged by Plaintiff in this case.

5. Covil denies the allegations of paragraphs 8, 9 and 10 of the First Amended Complaint to the extent they relate to it. To the extent the allegations of paragraphs 8, 9, and 10 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

6. In response to the allegations of paragraph 11 of the First Amended Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 10 of the First Amended Complaint.

7. Covil denies the allegations of paragraphs 12, 13, 14, 15, and 16 of the First Amended Complaint to the extent they relate to it. To the extent the allegations of paragraphs 12, 13, 14, 15, and 16 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

8. Covil is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraphs 17 and 18 of the First Amended Complaint, and therefore, denies them.

9. Covil denies the allegations of paragraphs 19, 20, 21, 22, 23, 24, 25, and 26 of the First Amended Complaint to the extent they relate to it. To the extent the allegations of paragraphs 19, 20, 21, 22, 23, 24, 25, and 26 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

10. In response to the allegations of paragraph 27 of the First Amended Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 26 of the First Amended Complaint.

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11. Covil is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 28 of the First Amended Complaint and, therefore, denies them.

12. Covil denies the allegations of paragraphs 29 through 43 of the First Amended Complaint to the extent they relate to it. To the extent the allegations of paragraphs 29 through 43 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

13. In response to the allegations of paragraph 44 of the First Amended Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 43 of the First Amended Complaint.

14. Covil denies the allegations of paragraphs 45 through 60 of the First Amended Complaint to the extent they relate to it. To the extent the allegations of paragraphs 45 through 60 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

15. In response to the allegations of paragraph 61 of the First Amended Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 60 of the First Amended Complaint.

16. Covil denies the allegations of paragraphs 62, 63, 64, 65, 66, 67, and 68 of the First Amended Complaint to the extent they relate to it. To the extent the allegations of paragraphs 62, 63, 64, 65, 66, 67, and 68 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

17. Covil is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 69 of the First Amended Complaint, and therefore, denies them.

18. Covil denies the allegations of paragraphs 70, 71, 72, 73, 74, and 75 of the First Amended Complaint to the extent they relate to it. To the extent the allegations of paragraphs 70, 71, 72, 73, 74, and 75 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

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19. In response to the allegations of paragraph 76 of the First Amended Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 75 of the First Amended Complaint.

20. Covil denies the allegations of paragraphs 77, 78, and 79 of the First Amended Complaint to the extent they relate to it. To the extent the allegations of paragraphs 77, 78, and 79 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

21. In response to the allegations of paragraph 80 of the First Amended Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 79 of the First Amended Complaint.

22. Covil denies the allegations of paragraphs 81, 82, and 83 of the First Amended Complaint to the extent they relate to it. To the extent the allegations of paragraphs 81, 82, and 83 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

23. In response to the allegations of paragraph 84 of the First Amended Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 83 of the First Amended Complaint.

24. Covil admits so much of the allegations of the paragraph 85 of the First Amended Complaint as allege that the Plaintiff purports to bring this action pursuant to S.C. Code Ann. § 15-51-10 *et seq.* for the wrongful death of the Decedent. However, Covil denies it is liable to Plaintiff under any theory or cause of action for the damages and/or other relief requested therein.

25. Covil denies the allegations of paragraph 86 of the First Amended Complaint to the extent they relate to it. To the extent the allegations of paragraph 86 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

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26. In response to the allegations of paragraph 87 of the First Amended Complaint, Covil incorporates herein by reference its responses to paragraphs 1 through 86 of the First Amended Complaint.

27. In response to the allegations of paragraph 88 of the First Amended Complaint, Covil denies it is liable to Plaintiff under any theory or cause of action for the damages and/or other relief requested therein.

28. Covil denies the allegations of paragraph 89 of the First Amended Complaint to the extent they relate to it. Covil further denies it is liable to Plaintiff under any theory or cause of action for the damages and/or other relief requested therein. To the extent the allegations of paragraph 89 are directed against or pertain to parties other than Covil, Covil is without sufficient information to form a belief as to the truth of those allegations and, therefore, denies them.

29. In response to paragraphs 1 through 9 contained in Plaintiff's prayer for damages, Covil denies it is liable to Plaintiff under any theory or cause of action for the damages and/or other relief requested therein.

30. Covil denies each and every allegation of the First Amended Complaint not specifically admitted, explained or modified hereinabove.

FOR A SECOND AFFIRMATIVE DEFENSE

31. Upon information and belief, the Court lacks jurisdiction over Covil as a result of improper, and/or lack of, service of process; lack of subject matter jurisdiction; and/or lack of personal jurisdiction.

FOR A THIRD AFFIRMATIVE DEFENSE

32. The First Amended Complaint fails to state facts sufficient to constitute a cause of action, and, accordingly, it should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

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FOR A FOURTH AFFIRMATIVE DEFENSE

33. Covil is a dissolved corporation and therefore lacks the capacity to sue or be sued.

FOR A FIFTH AFFIRMATIVE DEFENSE

34. Upon information and belief, there is a lack of joinder of one or more parties who should or must be joined; without the joinder of these proper parties, complete relief cannot be accorded among those already made parties to this action.

FOR A SIXTH AFFIRMATIVE DEFENSE

35. Upon information and belief, the claims set forth in the First Amended Complaint are barred by the applicable statutes of limitations and/or repose in this state or other states as may be applicable.

FOR A SEVENTH AFFIRMATIVE DEFENSE

36. Covil alleges that the Plaintiff's damages were the direct and proximate result of the negligent, reckless, willful, and wanton conduct of the Plaintiff's decedent, which combined and concurred with any negligence or recklessness on the part of Covil, which is specifically denied and admitted solely for the purpose of this defense and no other, and the alleged damages of the Plaintiff would not have occurred if the Plaintiff's decedent had not been guilty of such negligence, recklessness, willfulness, or wantonness. The First Amended Complaint is barred to the extent that the Plaintiff's decedent's contributory negligence and recklessness is more than 50% of the total negligence in this case. To the extent that the Plaintiff's decedent's contributory negligence and recklessness is 50% or less of the total negligence in this case, which is denied and admitted solely for the purpose of this defense, the Plaintiff's recovery should be reduced by the percentage of his contributory negligence and recklessness.

FOR AN EIGHTH AFFIRMATIVE DEFENSE

37. The claims set forth in the First Amended Complaint are barred to the extent there is another action pending between the same parties for the same claims.

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FOR A NINTH AFFIRMATIVE DEFENSE

38. Upon information and belief, the First Amended Complaint should be dismissed and/or is not subject to trial for its failure to comply with the requirements of Section 44-135-10 *et seq.*, of the South Carolina Code of Laws, also known as the "Asbestos and Silica Claims Procedure Act of 2006."

FOR A TENTH AFFIRMATIVE DEFENSE

39. Upon information and belief, Plaintiff's claims are barred or reduced by the doctrines of res judicata, waiver, release, laches, collateral estoppel, and/or conditions precedent or subsequent.

FOR AN ELEVENTH AFFIRMATIVE DEFENSE

40. Upon information and belief, Plaintiff's claims are barred or reduced by the applicable provisions of the Worker's Compensation Act, whether of this state or another.

FOR A TWELFTH AFFIRMATIVE DEFENSE

41. By virtue of the doctrine of judicial estoppel, the Plaintiff is precluded from taking a position inconsistent with one taken with respect to the same facts in earlier litigation, if any, and, upon information and belief, is, therefore, precluded from alleging the material facts necessary to state a cause of action against Covil.

FOR A THIRTEENTH AFFIRMATIVE DEFENSE

42. Upon information and belief, venue is improper in this action. Covil reserves its right to move for dismissal and/or transfer of the action based on improper and/or inconvenient venue and further reserves its right to seek application of the law of the appropriate venue on all issues.

FOR A FOURTEENTH AFFIRMATIVE DEFENSE

43. Covil would show that, among other things, Plaintiff's claim for punitive damages is barred, reduced, bifurcated, capped, or otherwise impacted by the South Carolina Fairness in Civil Justice Act of 2011 and/or similar and/or related state statutes and limitations.

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FOR A FIFTEENTH AFFIRMATIVE DEFENSE

44. The alleged injuries to the Plaintiff are barred by Section 15-73-10 *et seq.,* of the South Carolina Code of Laws; therefore, the Plaintiff is prohibited by law from asserting a cause of action based on strict liability for either actual or punitive damages.

FOR A SIXTEENTH AFFIRMATIVE DEFENSE

45. Covil would show that any product allegedly distributed by, or for which Covil is alleged to have been liable, was altered or changed in some manner after it left the custody and possession of Covil.

FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

46. There has been no concert of action between Covil and any of the other named Defendants. The Defendants are not joint tortfeasors, and, therefore, Covil may not be held jointly and severally liable with the other named Defendants. Accordingly, Covil asserts it is entitled to the benefit of the provisions set forth in S.C. Code §15-38-15 in this action.

FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

47. To the extent that the Plaintiff has received payment in satisfaction of any of the alleged injuries and/or claims against Covil, the First Amended Complaint in each and every count and cause of action alleged therein is barred or reduced by the defenses of payment and accord and satisfaction.

FOR A NINETEENTH AFFIRMATIVE DEFENSE

48. There are no allegations against Covil stated with sufficient particularity to constitute a cause of action for fraud, fraudulent concealment, concert of action, conspiracy, or the like meeting the requirement of Rule 9(b) of the South Carolina Rules of Civil Procedure.

FOR A TWENTIETH AFFIRMATIVE DEFENSE

49. Upon information and belief, Plaintiff's decedent was employed by a knowledgeable and sophisticated user/employer, and any duty Covil may have had to warn Plaintiff's decedent of any potential dangers incident to use of Covil's products, which duty is denied, was discharged by the employer's intervening duty to give Plaintiff's decedent warning.

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FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE

50. Plaintiff's claims are barred to the extent any products for which Covil is or may be responsible were sold to a "learned intermediary" and/or "sophisticated user" or other similar purchaser and/or Defendant was a "bulk supplier."

FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE

51. Any oral warranties upon which Plaintiff alleges to have relied are inadmissible and unavailable because of the provisions of the applicable Statute of Frauds.

FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE

52. Covil alleges that, upon information and belief, the Plaintiff's decedent had actual knowledge of and voluntarily assumed the risk incident to his use and exposure to asbestos or the products and processes involving the use of asbestos or asbestos-containing materials which were known to him to be dangerous.

FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE

53. Covil alleges that, upon information and belief, the Plaintiff's decedent failed to properly use the product or products in question, abused the product or products, and/or subjected them to abnormal use at the time or times and places alleged in the First Amended Complaint.

FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE

54. Covil alleges that if the Plaintiff's decedent used the product or products for which Covil is alleged to be responsible, upon information and belief, the same was used for a purpose not intended by Covil and contrary to any instructions or normal method of using the same.

FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE

55. Covil alleges that if the Plaintiff sustained any injuries or damages as set forth in the First Amended Complaint, which is denied, the same were due to and caused by the negligence, recklessness, willfulness, and wantonness of others, and not Covil.

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FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE

56. Covil would show that even if Plaintiff has suffered injuries as described by Plaintiff, and the same are admitted for the purposes of this defense only, then said injuries were caused by the acts or omissions of third parties, including but not limited to the actions of unions, employers, manufacturers, distributors, and others, and that these acts or omissions of third parties acted as a direct and proximate cause of the Plaintiff's injuries in such a way as to constitute a supervening or intervening cause ending all liability on the part of Covil.

FOR A TWENTY-EIGHTH AFFIRMATIVE DEFENSE

57. If Plaintiff sustained the injuries and/or damages alleged, which is specifically denied, then, upon information and belief, such injuries and/or damages were proximately caused by the acts and/or omissions of the Plaintiff's decedent's employers with respect to the maintenance of healthy and safe work sites and environments, which were under the exclusive control and possession of the employer(s).

FOR A TWENTY-NINTH AFFIRMATIVE DEFENSE

58. Covil alleges that if the Plaintiff sustained injuries as a result of exposure to asbestos or asbestos-containing products, which is denied, then such injuries were or may have been due to exposures to products of manufacturers not named as Defendants in this action, including but not limited to product manufacturers which have taken advantage of the protections of the bankruptcy provisions of the United States Code.

FOR A THIRTIETH AFFIRMATIVE DEFENSE

59. If the Plaintiff's decedent was exposed to any products for which Covil is alleged to have been responsible, said products at the time were manufactured in conformity with applicable federal and state regulations, standards, specifications, and laws; consequently, recovery by the Plaintiff herein is barred.

FOR A THIRTY-FIRST AFFIRMATIVE DEFENSE

60. If it should be proven that the Plaintiff's decedent, while working for or otherwise associated with the United States Government, worked with or around asbestos-containing products for which Covil is alleged to have been responsible, such materials, upon information and belief, were made in compliance with

military specifications and contract requirements for a specific intended use by the United States Government.

FOR A THIRTY-SECOND AFFIRMATIVE DEFENSE

61. If any products for which Covil is alleged to have been responsible and which give rise to Plaintiff's claims herein were designed and manufactured pursuant to and in accordance with the standards of, or specifications mandated by, the United States Government and its agencies, the knowledge of the United States Government and its agencies of any possible health hazards from use of such products was equal or superior to that of Covil, and by reason thereof Covil is entitled to assume any immunity from liability which exists in favor of the United States Government or its agencies and/or to assert the government contractor defense.

FOR A THIRTY-THIRD AFFIRMATIVE DEFENSE

62. In the event it is determined that any product for which Covil is alleged to have been responsible was dangerous, which danger is specifically denied, Covil was unaware of such danger as it would apply in any conceivable use of such products by the Plaintiff's decedent; furthermore, the discovery of such danger was beyond the state of the art at the time such product or products were manufactured, distributed, sold, used, and/or warnings provided. Further, such products were manufactured, distributed, sold, and used in conformity with the state of the art and/or prevailing industry standards at the time.

FOR A THIRTY-FOURTH AFFIRMATIVE DEFENSE

63. Upon information and belief, Plaintiff has received payments from and granted releases to other parties, including but not limited to other parties to this action and other non-parties against whom Plaintiff has claimed liability in tort for the same injury for which Plaintiff claims Covil has liability. Covil is entitled to set off of the greater of the amount stipulated to in such release or the amount of consideration paid for such a release.

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FOR A THIRTY-FIFTH AFFIRMATIVE DEFENSE

64. Upon information and belief, Plaintiff has failed, neglected, and/or refused to mitigate his damages, if any, and therefore, Plaintiff is barred from recovery of those damages which could have been avoided by the exercise of due diligence.

FOR A THIRTY-SIXTH AFFIRMATIVE DEFENSE

65. The First Amended Complaint fails to set forth a claim for punitive damages upon which relief may be granted.

FOR A THIRTY-SEVENTH AFFIRMATIVE DEFENSE

66. The products for which Covil is alleged to have been responsible and/or which were sold and/or distributed by Covil were at all times reasonably fit and suitable for the purposes for which they were sold, and Covil denies that such products were in any way defective for the use for which they were sold.

FOR A THIRTY-EIGHTH AFFIRMATIVE DEFENSE

67. To the extent the First Amended Complaint asserts a demand for punitive damages, Covil specifically incorporates by reference any and all standards of limitations regarding the determination and/or enforceability of punitive damage awards that arose in the decisions of *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1966); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001); and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A THIRTY-NINTH AFFIRMATIVE DEFENSE

68. To the extent that the First Amended Complaint seeks punitive damages, Covil affirmatively pleads the following in regard to punitive damages:

(a) An award of punitive damages in this civil action would amount to a deprivation of property without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

(b) An award of punitive damages in this civil action would violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

(c) The criteria used for determining whether and in what amount punitive damages may be awarded are impermissible, vague, imprecise, and inconsistent and, therefore, violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the applicable state Constitution;

(d) An award of punitive damages in this civil action would amount to an excessive fine in violation of the due process provisions of the Eighth Amendment to the United States Constitution and the corresponding provisions of the applicable state Constitution; and

(e) Plaintiff's claim for punitive damages is barred by the "double jeopardy" clause of the Fifth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment.

FOR A FORTIETH AFFIRMATIVE DEFENSE

69. Covil reserves the right to allege additional facts and circumstances in support of its defenses as these facts become available.

FOR A FORTY-FIRST AFFIRMATIVE DEFENSE

70. Covil incorporates by reference herein, as if fully set forth, all defenses, both affirmative and otherwise, raised, pleaded, or asserted by all other answering Defendants.

ANSWER TO CROSS-CLAIMS

Covil, answering any and all Cross-Claims which may already have been asserted or which may be asserted in the future against Covil by any Co-Defendants and/or Third-Party Defendants, says:

1. In defense of any and all cross-claims, Covil incorporates herein as if restated fully all responses and defenses which it has asserted above or may assert in response to the allegations contained in the First Amended Complaint.

2. The allegations against Covil in any and all cross-claims are denied.

3. Covil denies liability with respect to any and all cross-claims.

4. Covil denies that it has any indemnity or contribution liability to any other defendant or Third-Party Defendant.

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RESERVATION OF CROSS-CLAIMS

All cross-claims for contribution and for indemnity by Covil against all Co-Defendants and Third-Party Defendants are hereby reserved and implied.

JURY DEMAND

Covil requests trial by jury on all issues so triable.

WHEREFORE, Covil prays the Court for the following relief:

1. That the First Amended Complaint be dismissed with prejudice as to Covil;
2. That any and all Cross-Claims against Covil be dismissed with prejudice;
3. That the Plaintiff and other Defendants and/or Third-Party Defendants have and recover nothing from Covil;
4. That the costs of this action be taxed against the Plaintiff and/or other Defendants and/or Third-Party Defendants;
5. That any judgment against Covil be reduced by any amount that any employer of the Plaintiff, their successors or assigns, would be entitled to receive therefrom by way of subrogation;
6. That there be a trial by jury on all issues of fact; and
7. For such other and further relief as the Court deems just and proper.

Respectfully submitted this, the 15th day of February, 2018.

GALLIVAN, WHITE & BOYD, P.A.

s/ Allyson R. Twilley
Daniel B. White, Esq, (S.C. Bar No. 6070)
Ronald G. Tate, Jr., Esq. (S.C. Bar. No. 5475)
Allyson R. Twilley, Esq. (S.C. Bar No. 101884)
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Tel: (864) 271-9580
Fax: (864) 271-7502

Attorneys for Defendant Covil Corporation

The defendant, Covil Corporation, demands a trial by jury.

s/ Allyson R. Twilley
Allyson R. Twilley, Esq. (S.C. Bar No. 101884)

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SEPXRTEENTH JUDICIAL CIRCUIT

FILED-RECEIVED
2018 FEB -6 AM 10: 52
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

) CASE NO.: 2015-CP-46-2155

ROXANNE FALLS, Individually and as Personal Representative of the Estate of Charlotte Gaye Smith,)
Plaintiff,)
vs.)
)
CBS CORPORATION, et al.)
Defendant.)

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
Theile B. McVey, , Bar No. _____	Ronald G. Tate, Jr., Bar No. 6475
Address:	Address:
1330 Laurel Street	P.O. Box 10589
Phone: 803-256-4242Fax _____	Phone: 864-271-9580 Fax_____
E-mail: _____Other: _____	E-mail: rtate@gwblawform.comOther: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Protective Order and Motion to Quash
Estimated Time Needed: 29 Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ _____
Signature of Attorney for ☐ Plaintiff /☑ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $_____
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
☐ Other: _____	Date: _____

CLERK'S VERIFICATION

Collected by: DMD Date Filed: 2/6/18
☒ MOTION FEE COLLECTED: $ 05
☐ CONTESTED – AMOUNT DUE: $ _____

STATE OF SOUTH CAROLINA FILED-RECEIVED COUNTY OF YORK 2016 FEB -6 AM 10: 52 DAVID HAMILTON C.C.P.&G.S. YORK COUNTY, SC	IN THE COURT OF COMMON PLEAS
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, Pennsylvania Corporation, f/k/a Westinghouse Electric Corporation, et al Defendants.	C.A. No.: 2015-CP-46-2155 **COVIL CORPORATION'S NOTICE OF MOTION AND MOTION FOR PROTECTIVE ORDER AND TO QUASH PLAINTIFF'S 30(B)(6) DEPOSITION NOTICE**

PLEASE TAKE NOTICE that Defendant Covil Corporation (hereinafter "Covil"), by and through its undersigned attorneys, pursuant to Rule 26 of the South Carolina Rules of Civil Procedure and any other applicable rule of law, hereby moves for the Court to enter a protective order that the Rule 30(b)(6) deposition of Covil as noticed by Plaintiff not be had and that the notice be stricken. This motion is based upon the following grounds:

1. The Notice seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence, as there has been no evidence of actionable exposure by decedent to products for which Covil was responsible;

2. The 30(b)(6) deposition of Covil would be cumulative, duplicative, and unduly burdensome, and the information sought is available from other sources;

3. The Notice is overly broad and the topics are not stated with reasonable particularity; and

4. Alternatively, should the deposition be allowed to go forward, it should be postponed until at least mid-February.

This motion is based upon Rule 26 of the South Carolina Rules of Civil Procedure, the pleadings filed in this case, depositions taken, other discovery materials produced in the case, upon the applicable common and statutory law, and upon the memorandum of law filed in support hereof.

Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, counsel for Covil presented these concerns to Plaintiff's counsel in good faith and asked that the deposition notice be withdrawn. Plaintiff's counsel has refused to withdraw the notice, necessitating the filing of this motion.

January 19, 2018

S/Ronald G. Tate, Jr.
Daniel B. White (S.C. Bar #6070)
Ronald G. Tate, Jr. (S.C. Bar #5475)
T. David Rheney (S.C. Bar #13148)
Allyson R. Twilley (S.C. Bar #101884)
GALLIVAN, WHITE & BOYD, P.A.
55 Beattie Place, Ste. 1200
P. O. Box 10589
Greenville, SC 29603
Phone: (864) 271-9850
Fax: (864) 271-7502

Attorneys for Defendant
Covil Corporation

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)

RECEIVED
2018 FEB -6 AM 10: 52
DAVID HAMILTON
C.C.P. & G.S.
York County, SC

ROXANNE FALLS, individually and as Personal Representative of the Estate of Charlotte Gaye Smith,) C.A. No.: 2015-CP-46-2155

Plaintiff,

vs.

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

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Covil Corporation's Notice of Motion and Motion for Protective Order and to Quash Plaintiff's 30(B)(6) Deposition Notice. Notice and Memorandum in Support of Motion for Protective Order and to Quash Plaintiff's 30(B)(6) Deposition was served on all known counsel of record via the United States Postal Service, with sufficient postage affixed thereto and return address clearly marked, on the 19th day of January, 2018 upon:

Theile B. McVey, Esq. Kassel McVey, Attorneys at Law 1330 Laurel Street Post Office Box 1476 Columbia, SC 29202	Jonathan Holder, Esq. Dean Omar Branham, LLP 3900 Elm Street Dallas, Texas 75226

Greenville, SC

Belkis R. Wright

STATE OF SOUTH CAROLINA COUNTY OF YORK TIMOTHY W. HOWE, Individually and as Personal Representative of the Estate of WAYNE ERWIN HOWE, Deceased, and JEANETTE HOWE, Plaintiff, vs. CBS CORPORATION, et al. Defendant.	)	IN THE COURT OF COMMON PLEAS SEPXRTEENTH JUDICIAL CIRCUIT CASE NO.: 2015-CP-46-3456 **MOTION AND ORDER INFORMATION** **FORM AND COVERSHEET**

Plaintiff's Attorney: Theile B. McVey, , Bar No. _____ Address: 1330 Laurel Street Phone: 803-256-4242Fax _____ E-mail: _____Other: _____	Defendant's Attorney: Ronald G. Tate, Jr., Bar No. 6475 Address: P.O. Box 10589 Phone: 864-271-9580 Fax_____ E-mail: rtate@gwblawform.comOther: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Protective Order and Motion to Quash
Estimated Time Needed: 29 Court Reporter Needed: ☒ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ _____
Signature of Attorney for ☐ Plaintiff /☒ Defendant Date submitted

FILED-RECEIVED
2018 FEB -6 AM 10: 59
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

SECTION III: Motion Fee

☐ PAID – AMOUNT: $_____
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by: BH Date Filed: 2/6
☑ MOTION FEE COLLECTED: $ 25

☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA COUNTY OF YORK TIMOTHY W. HOWE, Individually and as Personal Representative of the Estate of WAYNE ERWIN HOWE, Deceased, and JEANETTE HOWE, Plaintiff, vs. AIR & LIQUID SYSTEMS CORP., *et al.*, Defendants.	)	IN THE COURT OF COMMON PLEAS C.A. No.: 2015-CP-46-3456 **COVIL CORPORATION'S NOTICE OF MOTION AND MOTION FOR PROTECTIVE ORDER AND TO QUASH PLAINTIFFS' 30(B)(6) DEPOSITION NOTICE**

FILED-RECEIVED
2019FEB -6 AM 10:59
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

PLEASE TAKE NOTICE that Defendant Covil Corporation (hereinafter "Covil"), by and through its undersigned attorneys, pursuant to Rule 26 of the South Carolina Rules of Civil Procedure and any other applicable rule of law, hereby moves for the Court to enter a protective order that the Rule 30(b)(6) deposition of Covil as noticed by Plaintiff not be had and that the notice be stricken. This motion is based upon the following grounds:

1. The Notice seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence, as there has been no evidence of actionable exposure by decedent to products for which Covil was responsible;

2. The 30(b)(6) deposition of Covil would be cumulative, duplicative, and unduly burdensome, and the information sought is available from other sources;

3. The Notice is overly broad and the topics are not stated with reasonable particularity; and

4. Alternatively, should the deposition be allowed to go forward, it should be postponed until at least mid-February.

This motion is based upon Rule 26 of the South Carolina Rules of Civil Procedure, the pleadings filed in this case, depositions taken, other discovery materials produced in the case, upon the applicable common and statutory law, and upon the memorandum of law filed in support hereof.

Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, counsel for Covil presented these concerns to Plaintiff's counsel in good faith and asked that the deposition notice be withdrawn. Plaintiff's counsel has refused to withdraw the notice, necessitating the filing of this motion.

January 19, 2018

S/Ronald G. Tate, Jr.
Daniel B. White (S.C. Bar #6070)
Ronald G. Tate, Jr. (S.C. Bar #5475)
T. David Rheney (S.C. Bar #13148)
Allyson R. Twilley (S.C. Bar #101884)
GALLIVAN, WHITE & BOYD, P.A.
55 Beattie Place, Ste. 1200
P. O. Box 10589
Greenville, SC 29603
Phone: (864) 271-9850
Fax: (864) 271-7502

Attorneys for Defendant
Covil Corporation

STATE OF SOUTH CAROLINA COUNTY OF YORK TIMOTHY W. HOWE, Individually and as Personal Representative of the Estate of WAYNE ERWIN HOWE, Deceased, and JEANETTE HOWE, Plaintiff, vs. AIR & LIQUID SYSTEMS CORP., *et al.*, Defendants.	)	IN THE COURT OF COMMON PLEAS C.A. No.: 2015-CP-46-3456 **CERTIFICATE OF SERVICE**

FILED-RECEIVED
2018 FEB -6 AM 10:59
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

I hereby certify that a true and correct copy of the foregoing Covil Corporation's Notice of Motion and Motion for Protective Order and to Quash Plaintiff's 30(B)(6) Deposition Notice. Notice was served on all known counsel of record via the United States Postal Service, with sufficient postage affixed thereto and return address clearly marked, on the 19th day of January, 2018 upon:

Theile B. McVey, Esq. Kassel McVey, Attorneys at Law 1330 Laurel Street Post Office Box 1476 Columbia, SC 29202	Jonathan Holder, Esq. Dean Omar Branham, LLP 3900 Elm Street Dallas, Texas 75226

Greenville, SC

Belkis R. Wright

ELECTRONICALLY FILED - 2018 Jan 19 7:08 PM - HAMPTON - COMMON PLEAS - CASE#2016CP2500440

STATE OF SOUTH CAROLINA) COUNTY OF HAMPTON)	IN THE COURT OF COMMON PLEAS Civil Action No. 2016-CP-25-440
JAMES CALVIN SIZEMORE,) Plaintiff,) v.) BOWATER PAPER MILL, *et al.*,) Defendants.)	**COVIL CORPORATION'S NOTICE OF MOTION AND MOTION FOR PROTECTIVE ORDER AND TO QUASH PLAINTIFF'S 30(B)(6) DEPOSITION NOTICE**

PLEASE TAKE NOTICE that Defendant Covil Corporation (hereinafter "Covil"), by and through its undersigned attorneys, pursuant to Rule 26 of the South Carolina Rules of Civil Procedure and any other applicable rule of law, hereby moves for the Court to enter a protective order that the Rule 30(b)(6) deposition of Covil as noticed by Plaintiff not be had and that the notice be stricken. This motion is based upon the following grounds:

1. The Notice seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence, as there has been no evidence of actionable exposure by decedent to products for which Covil was responsible;

2. The 30(b)(6) deposition of Covil would be cumulative, duplicative, and unduly burdensome, and the information sought is available from other sources;

3. The Notice is overly broad and the topics are not stated with reasonable particularity; and

4. Alternatively, should the deposition be allowed to go forward, it should be postponed until at least mid-February.

This motion is based upon Rule 26 of the South Carolina Rules of Civil Procedure, the pleadings filed in this case, depositions taken, other discovery materials produced in the case, upon the applicable common and statutory law, and upon the memorandum of law filed in support hereof.

Pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, counsel for Covil presented these concerns to Plaintiff's counsel in good faith and asked that the deposition notice be withdrawn. Plaintiff's counsel has refused to withdraw the notice, necessitating the filing of this motion.

January 19, 2018

S/Ronald G. Tate, Jr.
Daniel B. White (S.C. Bar #6070)
Ronald G. Tate, Jr. (S.C. Bar #5475)
T. David Rheney (S.C. Bar #13148)
Allyson R. Twilley (S.C. Bar #101884)
GALLIVAN, WHITE & BOYD, P.A.
55 Beattie Place, Ste. 1200
P. O. Box 10589
Greenville, SC 29603
Phone: (864) 271-9850
Fax: (864) 271-7502

Attorneys for Defendant
Covil Corporation

ELECTRONICALLY FILED - 2018 Jan 19 7:08 PM - HAMPTON - COMMON PLEAS - CASE#2016CP2500440

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
FILED-RECEIVED
2018 JAN 23 AM 11:41) CASE NO.: 2015-CP-46-2155
Roxann Falls, as PR to the Estate of Charlotte Smith,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
DAVID A. HILTON
C.C.C.A. & G.S.
YORK COUNTY, SC
Plaintiff,)
vs.)
CBS CORPORATION, ET AL.)
Defendant.)

Plaintiff's Attorney:	Defendant's Attorney:
John D. Kassel; Theile B. McVey, Bar No. 3268; 16682 Address: P O Box 1476; Columbia SC 29202-1476 Phone: 803-256-4242Fax 803-256-1952 E-mail: tmcvey@kassellaw.comOther: emoultrie@kassellaw.com	_____, Bar No. _____ Address: _____ Phone: _____ Fax_____ E-mail: _____Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Compel Production of Documents
Estimated Time Needed: 15 Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Jack D. Leader for Theile B. McVey — Janaury 23, 2018
Signature of Attorney for ☒ Plaintiff / ☐ Defendant — Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by: DMO Date Filed: 1/23/18
☒ MOTION FEE COLLECTED: $ 25
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

FILED-RECEIVED
2018 JAN 23 AM 11:41
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	Sixteenth
COUNTY OF YORK)	FOR THE ~~SEVENTH~~ JUDICIAL CIRCUIT
ROXANNE FALLS, Individually and as Personal Representative of the Estate of **Charlotte Gaye Smith,** Deceased.)	**C/A NO. 2015-CP-46-02155**
Plaintiff,)	In re: Asbestos Personal Injury Litigation Coordinated Docket
v.)	
CBS CORPORATION, *et al.*)	
Defendants.)	

YOU WILL PLEASE TAKE NOTICE that Plaintiffs will move before the court for an order compelling Defendants to (1) produce a 30(b)(6) representative for deposition, (2) to produce fully responsive documents to requests for documents served pursuant to Rule 30(b)(5) of the South Carolina Rules of Civil Procedure attached to the notice of 30(b)(6) deposition. This motion is brought pursuant to Rule 33 and Rule 37 of the South Carolina Rules of Civil Procedure.

BACKGROUND

Plaintiffs sued Defendants for damages arising from the death of Charlotte Smith due to exposure to asbestos from the work clothing of her former husband Lewis Childers, who was exposed to asbestos-containing products during his work as an insulator and maintenance man from approximately 1968 to 1988. Plaintiffs have attempted for months to obtain dates for Defendants 30(b)(6) deposition and have offered to accommodate Defendants choice of date, location and time, but still certain Defendants have refused to respond with a date for deposition or documents responsive to the requests for documents. Plaintiffs now move to compel dates for 30(b)(6) deposition and documents responsive to the requests made pursuant to Rule 30(b)(5).

NOTICE OF 30(b)(6) DEPOSTION AND ATTENDANT DOCUMENT REQUESTS

Decedent Charlotte Smith's former husband was deposed for two days in December of 2015 in Rock Hill, South Carolina. Mr. Childers testified at his deposition to his work at Bowater paper mill in Catawba, SC beginning in 1968, along w/ stints at four (4) separate Celanese plants (Spartanburg, Greenville, Darlington and Salisbury), Cannon Mills in Kannapolis, NC, Cone Mills in Concord, NC, Milliken Cypress Plant in Blacksburg, SC and Milliken in Pendleton, SC, along with ten (10) separate Duke Power facilities. Mr. Childers was required to cut, saw and install asbestos insulation. During this timeframe, Charlotte Smith would launder her husband's dusty, dirty work clothing, unknowingly exposing herself to asbestos. In May 2015, Charlotte Smith was diagnosed with the asbestos cancer known as mesothelioma. On November 25, 2015 Charlotte Smith died from asbestos cancer known as mesothelioma.

Plaintiffs noticed depositions accompanied by a document request asking in part, for records and evidence Defendants have regarding their products at the worksite locations of Decedent Charlotte Smith's husband. Plaintiffs asked for by December 15 to give us a date. *See* **Ex.-1**. After not hearing from Defendants, Plaintiffs amended the notices to give Defendants further time to find dates for deposition, and corrected worksite location list in the notice. The following Defendants still have not provided an agreeable date or records responsive to the document request: Cleaver Brooks, Covil Corporation, Daniel International Corporation, Foster Wheeler, and Union Carbide Corporation.

While the amended notices set the depositions currently for February 4 and 5, 2018, these are unilaterally chosen dates by Plaintiffs. Not responding to Plaintiffs request not only results in unnecessary delay but leaves all the parties (Plaintiffs and co-defendants) unclear as to when the deposition is proceeding. No reason for this failure to respond has been given. As a result Plaintiffs request that the documents be compelled to be produced 30 days from the date of the first amended notice and that they deposition proceed on the date noticed or on an agreeable earlier date.

CONCLUSION AND PRAYER FOR RELIEF

Plaintiffs request the Court to issue an order 1) compelling production of documents in electronic form within 30 days of the first amended notices; 2) instructing Defendants to provide date(s) to complete

the deposition by 5:00 on Friday, January 26th to Plaintiffs' counsel for a deposition date on or before February 9th and 3) if the production of documents and date for a deposition is not provided by the given dates, Defendants forfeit the right to go forward with MSJ on February 26th because the requested discovery was not produced. Plaintiffs further request an award of costs and attorney's fees attendant to this motion as provided by Rule 37, SCRCP.

Respectfully submitted,

Theile B. McVey (SC Bar 16682) (SC Bar 3186)
tmcvey@kassellaw.com
John D. Kassel (SC Bar 03286)
jkassel@kassellaw.com
KASSEL MCVEY, ATTORNEYS AT LAW
1330 Laurel Street
Post Office Box 1476
Columbia, South Carolina 29202
803-256-4242
803-256-1952(Facsimile)
Other email: emoultrie@kassellaw.com

Jonathan M. Holder (SC Bar 77935)
jholder@dobllp.com
DEAN OMAR BRANHAM, LLP
302 N. Market St., Ste. 300
Dallas, Texas 75202
214-722-5990
214-722-5991 (Facsimile)

January 23, 2018
Columbia, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing motion was served electronically on all counsel of record, this 23rd day of January, 2018.

/s/ Jonathan M. Holder
Jonathan M. Holder
Attorney for Plaintiff

Jonathan Holder

Subject: Roxanne Falls, PR (Charlotte Smith) v. CBS Corp. - Plaintiff's 30(b)(6) Notices of Deposition

Date: Friday, December 8, 2017 at 6:42:07 PM Central Standard Time

From: Jonathan Holder

To: Jennifer M. Techman, Andrew S. Rogers, Rachel L. Huenefeld, Lynn Sisk, Patricia A. McGrath, louispherns@phswlaw.com, willearly@phswlaw.com, robinspitz@phswlaw.com, Brendacasey@phswlaw.com, spugh@richardsonplowden.com, jthoensen@richardsonplowden.com, cmcqueen@richardsonplowden.com, vstorey@richardsonplowden.com, dwhite@gwblawfirm.com, ctowers@gwblawfirm.com, jdungee@gwblawfirm.com, rtate@gwblawfirm.com, mmcdonald@hsblawfirm.com, sfrick@hsblawfirm.com, dconner@hsblawfirm.com, pmbrown@hsblawfirm.com, kdawson@hsblawfirm.com, mark.wall@walltempleton.com, Sheri.ackerman@walltempleton.com, souzts@turnerpadget.com, tkennaday@turnerpadget.com, ngladd@turnerpadget.com, lbrown@turnerpadget.com, jbrown@turnerpadget.com, Robert.meriwether@nelsonmullins.com, David.traylor@nelsonmullins.com, jase.glenn@nelsonmullins.com, susan.collings@nelsonmullins.com, Kelli.Eargle@nelsonmullins.com, Linda.Wilson@nelsonmullins.com, Carolyn.blackwell@nelsonmullins.com

CC: Jessica Dean, Theile McVey, Trey Branham, Elizabeth Moultrie, Teresa Gilliland

Attachments: Smith - Ps 30(b)(6) NOD - Cleaver Brooks, Inc.pdf, Smith - Ps 30(b)(6) NOD - Daniel, Fluor entities.pdf, Smith - Ps 30(b)(6) NOD - Foster Wheeler Energy Corp.pdf, Smith - Ps 30(b)(6) NOD - CBS.pdf, Smith - Ps 30(b)(6) NOD - General Electric Corp.pdf, Smith - Plaintiffs 30(b)(6) NOD - USF&G.pdf, Smith - Ps 30(b)(6) NOD - Union Carbide Corp.pdf, Smith - Ps 30(b)(6) NOD - Celanese.pdf, Smith - Ps 30(b)(6) NOD - Covil Corp.pdf, Smith - Plaintiffs 30(b)(6) NOD - Resolute FP (Bowater).pdf

Dear all -

In an effort to move forward with scheduling depositions in this matter, please find attached hereto Plaintiff's 30(b)(6) notices of deposition for Defendants in the Falls,PR (Charlotte Smith) case, currently pending in York County. The depositions are currently scheduled for January 8 – 9, 2018 at the law offices of each Defendants' respective counsel. If the time, date or location does not work for your client, please let us know by December 15, 2017 and we will amend the notice in order to accommodate all reasonable requests so that the depositions can be complete by February 15, 2017. Thank you for your professional courtesies and anticipated cooperation in scheduling these depositions.

Jonathan M. Holder

Dean | Omar | Branham
302 N. Market St., Ste. 300
Dallas, Texas 75202
214.722.5990
469.909.6212 (fax)
www.dobLLP.com

CONFIDENTIALITY NOTICE: This electronic message transmission contains information from Dean Omar Branham, LLP which may be confidential or protected by the attorney-client privilege and/or the work product doctrine. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the content of this information is prohibited. If you have received this communication in error, please notify us. If you would like to learn more about Dean Omar Branham, LLP please visit our website: http://www.dobllp.com

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
TIMOTHY W. HOWE, etc., et al.)
Plaintiff,)
vs.)
)
AIR & LIQUID SYSTEMS, et al.)
Defendant.)

IN THE COURT OF COMMON PLEAS
~~SEVENTH~~ sixteenth JUDICIAL CIRCUIT
CASE NO.: 2015-CP-46-3456

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

FILED-RECEIVED
2018 JAN 23 AM 11:39
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

Plaintiff's Attorney:	Defendant's Attorney:
John D. Kassel; Theile B. McVey, Bar No. 03286; 16682 Address: PO Box 1476; Columbia SC 29202 Phone: 803-256-4242Fax 803-256-1952 E-mail: tmcvey@kassellaw.comOther: emoultrie@kassellaw.com	_____, Bar No. _____ Address: _____ Phone: _____ Fax_____ E-mail: _____Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Compel Production of Documents and Things
Estimated Time Needed: 15 Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Richard Peeples for Theile B McVey — January 23, 2018
Signature of Attorney for ☒ Plaintiff /☐ Defendant — Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $_____
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by: BH Date Filed: 1/23
☑ MOTION FEE COLLECTED: $ 25
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA COUNTY OF YORK **TIMOTHY W. HOWE,** as Personal Representative of the Estate of **WAYNE ERVIN HOWE,** deceased, and **JEANETTE HOWE,** surviving spouse, Plaintiffs, v. **AIR & LIQUID SYSTEMS CORPORATION,** et al., Defendants.	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT **C/A NO. 15-CP-46-03456** **PLAINTIFFS' MOTION TO COMPEL DEFENDANT**

FILED-RECEIVED
2018 JAN 23 AM 11:39
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

YOU WILL PLEASE TAKE NOTICE that Plaintiffs will move before the court for an order compelling Defendants to (1) produce a 30(b)(6) representative for deposition, (2) to produce fully responsive documents to requests for documents served pursuant to Rule 30(b)(5) of the South Carolina Rules of Civil Procedure attached to the notice of 30(b)(6) deposition. This motion is brought pursuant to Rule 33 and Rule 37 of the South Carolina Rules of Civil Procedure.

BACKGROUND

Plaintiffs sued Defendants for damages arising from the death of Wayne Howe due to exposure to asbestos-containing products during his work as a helper, rigger, pipefitter and ultimately master craftsman at multiple industrial facilities between 1962-2008. Plaintiffs have attempted for months to obtain dates for Defendants 30(b)(6) deposition and have offered to accommodate Defendants choice of date, location and time, but still certain Defendants have refused to provide a date for deposition or documents responsive the document requests. Plaintiffs now move to compel dates for 30(b)(6) deposition.

NOTICE OF 30(b)(6) DEPOSTION AND ATTENDANT DOCUMENT REQUESTS

Decedent Wayne Howe was deposed for three days in January and February of 2016 by Defense counsel in Rock Hill, South Carolina. Mr. Howe testified at his deposition to his work at American Enka plant from 1962-1965, Crown Cork & Seal on the weekends from 1962-1965, Celanese in Rock Hill, SC from 1962-1977 intermittently, Celanese in Narrows, Va. from 1967-

1977 intermittently, and Bowater paper mill in Catawba, SC from 1978-2008. More specifically, Mr. Howe pinpointed the buildings and locations at each facility where he believes his work exposed him to asbestos and approximately how long he was in each location where he worked. *See generally* Depo. of Wayne Howe, Vol. 2 and Vol. 3, taken February 2-3, 2016. For example, Mr. Howe testified that for the first eight (8) years that he worked at the Bowater paper mill (approx. 1978-1986) he was employed by a contractor working on site, rather than a direct employee of Bowater. During this timeframe, Mr. Howe testified for at least one full year he worked in the Powerhouse at Bowater, and during that one-year period he worked on all the equipment in the Powerhouse. Depo. of Wayne Howe, Vol. 3 at 33-34. Defendants have known for almost two (2) years the details of Mr. Howe's work and the places where he believed his work exposed him to asbestos.[1]

Plaintiffs noticed 30(b)(6) depositions of Defendants, accompanied by a document request pursuant to Rule 30(b)(5) asking in part, for production of records and evidence each Defendant possesses reflecting their products at the above-mentioned worksites of Decedent Wayne Howe. The original notices gave at least 30 days for Defense counsel to reach out to their clients for an available date and location.

The original notices were served **November 13, 2017**, the second notices were served **December 13, 2017**, and the third notices were served **January 4 and 9, 2018.** ***See*** **Exhibits 1-3.** Plaintiffs were clear from the beginning that the **time, date and location** could be moved to a time, date and location that worked best for each Defendant but the below Defendants have not produced responsive docs or a deposition despite appropriate requests. ***See*** **Exhibits 4.** Despite repeated efforts Plaintiffs still do not have complete responses to these requests. Broadly, these companies fall into the three (3) following categories.

1. Defendants who have provided a deposition date for their company representative but have not provided responsive documents properly sought in the deposition

[1] On November 22, 2016 coworker Wayne Grant was deposed giving further detail about the work of Wayne Howe at multiple locations where Wayne Grant worked together with Decedent Wayne Howe. Additionally, December 5, 2017, an additional coworker Gilbert Small was deposed giving even further detail about the work of Mr. Howe, and identifying the manufacturers of the equipment Wayne Howe described working on in the Powerhouse, on the paper machines, at the TMP/pulp mill and in other areas at Bowater.

notice. These defendants include Aurora, Yuba, and SPX. For these defendants, the relief sought is limited to numbers 1, 3 and 4 below.

2. Defendants who have provided responsive documents to the deposition notice but who have not provided a deposition date for their company representative. These defendants include AstenJohnson, Daniel International Corp., and Union Carbide Corporation. For these defendants, the relief sought is limited to numbers 2, 3 and 4 below.

3. Defendants who have not provided a deposition date for their company representative on or before the date requested and have not provided responsive documents properly sought in the deposition notice. These defendants include Cleaver Brooks, Covil Corp., DuZurik, Flowserve Corp. (for Durco), Foster Wheeler, Ingersoll Rand, Marsulex, Sterling, and Gorman-Rupp. For these defendants, Plaintiff's relief sought extends to all four requests below.

Counsel for many of these defendants have indicated that their clients are not responsive and not providing the requested information. Others have committed to producing the witness or documents requested but have done so after the time requested. Plaintiffs have repeatedly extended the time to obtain these documents and/or prepare a witness beyond the time frame required in the rules but made clear that given the pending trial date and summary judgment hearing date no further extensions could be accommodated.

CONCLUSION AND PRAYER FOR RELIEF

Plaintiffs request the Court to issue an order stating the following:

1) Plaintiffs have issued a proper notice of deposition for a corporate representative, which incorporated a request for documents. Defendants are compelled to produce requested documents in electronic form within a week of this hearing, on January 31, 2018;

2) Plaintiffs have issued a proper notice of deposition for a corporate representative. Defendants are compelled to provide date(s) to complete the deposition by 5:00 p.m. on Friday, January 26th to Plaintiffs' counsel for a deposition date on or before February 16, 2018. The witness should be prepared to discuss the topics notice based on what is known or reasonably available to the Defendant;f

3) An adequate time for discovery must occur prior to having a motion for summary judgment heard. Due to the failure to produce requested documents or corporate witnesses, it is ordered that Defendants' have forfeited the right to go forward with summary judgment motions on February 26th; and

4) Plaintiffs are awarded reasonable costs and attorney's fees attendant for having to bring this motion as provided by Rule 37, SCRCP.

Respectfully submitted,

Theile B. McVey (SC Bar 16682) (SC Bar 3156)
tmcvey@kassellaw.com
John D. Kassel (SC Bar 03286)
jkassel@kassellaw.com
KASSEL MCVEY, ATTORNEYS AT LAW
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Other email: emoultrie@kassellaw.com

Jonathan M. Holder (SC Bar 77935)
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Jessica M. Dean (Admitted PHV)
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302 N. Market St., Ste. 300
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214-722-5990
214-722-5991 (Facsimile)

January 22, 2018

Rock Hill, South Carolina.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing motion was served electronically on all counsel of record, this 22nd day of January 2018.

/s/ Jonathan M. Holder
Jonathan M. Holder
Attorney for Plaintiffs

EX. 1

Jonathan Holder

Subject: Wayne Ervin Howe – 2015-CP-46-03456 - 30(b)(6) NODs for All Defendants

Date: Monday, November 13, 2017 at 6:05:47 AM Central Standard Time

From: Jonathan Holder

To: Dunn, Lynn, RLHuenefeld@ewhlaw.com, JMTechman@ewhlaw.com, ASRogers@ewhlaw.com, PLSisk@ewhlaw.com, PAMcGrath@ewhlaw.com, eshofner@hptylaw.com, CGriffin@hptylaw.com, JDoxey@hptylaw.com, kurt.rozelsky@smithmoorelaw.com, tim.peck@smithmoorelaw.com, Holly.grant@smithmoorelaw.com, mmcdonald@hsblawfirm.com, sfrick@hsblawfirm.com, dconner@hsblawfirm.com, kdawson@hsblawfirm.com, sturner@hsblawfirm.com, mark.wall@walltempleton.com, Sarah.Schrodetzki@WallTempleton.com, Sheri.ackerman@walltempleton.com, asrogers@ewhlaw.com, spugh@richardsonplowden.com, jthoensen@richardsonplowden.com, vstorey@richardsonplowden.com, souzts@turnerpadget.com, Robert.meriwether@nelsonmullins.com, mark.phillips@nelsonmullins.com, David.traylor@nelsonmullins.com, Susan.collings@nelsonmullins.com, Carolyn.blackwell@nelsonmullins.com, tkennaday@turnerpadget.com, lbrown@turnerpadget.com, jmtechman@ewhlaw.com, arogers@ewhlaw.com, plsisk@ewhlaw.com, RLHuenefeld@ewhlaw.com, pamcgrath@ewhlaw.com, byntema@goldbergsegalla.com, kfesperman@goldbergsegalla.com, schisholm@goldbergsegalla.com, christopher.jaros@klgates.com, Kim.Taylor@klgates.com, tbouch@leathbouchlaw.com, ymcleod@leathbouchlaw.com, amelvin@leathbouchlaw.com, cscott@leathbouchlaw.com, Bobbyjr.hood@hoodlaw.com, walker.barnes@hoodlaw.com, ben.joyce@hoodlaw.com, julie.dunn@hoodlaw.com, melinda.accardo@hoodlaw.com, Gwyn.Martin@klgates.com, eric@greenvillesclaw.com, ren@cs-law.com, susan.miller@cs-law.com, clif@cs-law.com, Jase.glenn@nelsonmullins.com, Douglas.Pratt-Thomas@rtt-law.com, Dolores.Catapano@rtt-law.com, kurt.rozelsky@smithmoorelaw.com, Stephanie.flynn@smithmoorelaw.com, tim.peck@smithmoorelaw.com, diane.carnes@smithmoorelaw.com, rtate@gwblawfirm.com, drheney@gwblawfirm.com, ksullivan@carlockcopeland.com, ctowers@gwblawfirm.com, jdungee@gwblawfirm.com, dwhite@gwblawfirm.com, kwhite@gwblawfirm.com, jnelson@dmclaw.com, jholden@dmclaw.com, mpritt@dmclaw.com, ageddes@nexsenpruet.com, LThomason@nexsenpruet.com, sdavies@mgclaw.com, greg.collins@mgclaw.com, cwells@mgclaw.com, Will Early, Robin Spitz, Rachael Tomlinson, diane.carnes@smithmoorelaw.com, McDonald, Mott, Frick, Scott, Conner, David, Robert.meriwether@nelsonmullins.com, David.traylor@nelsonmullins.com, jase.glenn@nelsonmullins.com, susan.collings@nelsonmullins.com, Kelli.Eargle@nelsonmullins.com, Linda.Wilson@nelsonmullins.com, Carolyn.blackwell@nelsonmullins.com, ren@cs-law.com, susan.miller@cs-law.com, louispherns@phswlaw.com, willearly@phswlaw.com, robinspitz@phswlaw.com, Brendacasey@phswlaw.com, eric@greenvillesclaw.com, byntema@goldbergsegalla.com, ccollier@hptylaw.com, jdoxey@hptylaw.com, cgriffin@hptylaw.com, spugh@richardsonplowden.com, jthoensen@richardsonplowden.com, cmcqueen@richardsonplowden.com, dwhite@gwblawfirm.com, ctowers@gwblawfirm.com, Christopher.jaros@klgates.com, gwyn.martin@klgates.com, Kim.taylor@klgates.com, tbouch@leathbouchlaw.com, amelvin@leathbouchlaw.com, cscott@leathbouchlaw.com, mark.wall@walltempleton.com, Brown.mcleod@walltempleton.com, Sheri.ackerman@walltempleton.com, Bobbyjr.hood@hoodlaw.com, Melinda.accardo@hoodlaw.com, Walker.barnes@hoodlaw.com, Ben.joyce@hoodlaw.com, joye.ullery@hoodlaw.com, souzts@turnerpadget.com, tkennaday@turnerpadget.com, ngladd@turnerpadget.com, lbrown@turnerpadget.com, jbrown@turnerpadget.com, kristamcguire@parkerpoe.com, ginacornwell@parkerpoe.com, kimnagy@parkerpoe.com,

Evans, Pat, Stephanie.flynn@smithmoorelaw.com, jdungee@gwblawfirm.com, rtate@gwblawfirm.com, drheney@gwblawfirm.com, callierobertson@phswlaw.com, dolores.Catapano@rtt-law.com, Douglas.Pratt-Thomas@rtt-law.com, Lindsay.Smith-Yancey@rtt-law.com, VStorey@richardsonplowden.com, jonathan.paul@klgates.com, michael.zukowski@klgates.com, ymcleod@leathbouchlaw.com, Christie.Gilbert@walltempleton.com, julie.dunn@hoodlaw.com, bill.starr@nelsonmullins.com, Dawson, Kathy, Hannah A. Wood, kfesperman@goldbergsegalla.com, schisholm@goldbergsegalla.com, dharris@goldbergsegalla.com

CC: Theile McVey, Elizabeth Moultrie, Lisa Dittemore, Trey Branham, Jessica Dean

Attachments: Howe - Plaintiffs 30(b)(6) NOD - Viking Pump, Inc..pdf, Howe - Plaintiffs 30(b)(6) NOD - Albany International Corp..pdf, Howe - Plaintiffs 30(b)(6) NOD - Scapa.pdf, Howe - Plaintiffs 30(b)(6) NOD - Celanese.pdf, Howe - Plaintiffs 30(b)(6) NOD - Black Clawson Converting Machinery, LLC.pdf, Howe - Plaintiffs 30(b)(6) NOD - Davis Standard, LLC.pdf, Howe - Plaintiffs 30(b)(6) NOD - AstenJohnson, Inc..pdf, Howe - Plaintiffs 30(b)(6) NOD - Airgas USA Inc..pdf, Howe - Plaintiffs 30(b)(6) NOD - Cleaver Brooks, Inc..pdf, Howe - Plaintiffs 30(b)(6) NOD - CGR Products, Inc..pdf, Howe - Plaintiffs 30(b)(6) NOD - Marsulex Environmental Technologies.pdf, Howe - Plaintiffs 30(b)(6) NOD - Flowserve Corp..pdf, Howe - Plaintiffs 30(b)(6) NOD - Crown Cork and Seal Company, Inc..pdf, Howe - Plaintiffs 30(b)(6) NOD - Fisher-Klosterman.pdf, Howe - Plaintiffs 30(b)(6) NOD - The Gorman-Rupp Co..pdf, Howe - Plaintiffs 30(b)(6) NOD - Union Carbide Corp. UCC.pdf, Howe - Plaintiffs 30(b)(6) NOD - Sterling Fluid Systems (USA) Inc..pdf, Howe - Plaintiffs 30(b)(6) NOD - Daniel, Fluor Enterprises, Fluor Daniel Services Corp..pdf, Howe - Plaintiffs 30(b)(6) NOD - CBS Corp..pdf, Howe - Plaintiffs 30(b)(6) NOD - Foster Wheeler Energy Corp..pdf, Howe - Plaintiffs 30(b)(6) NOD - Ingersoll Rand Co..pdf, Howe - Plaintiffs 30(b)(6) NOD - Trane US Inc..pdf, Howe - Plaintiffs 30(b)(6) NOD - Linde, LLC, The BOC Group, Inc., Airco, Inc..pdf, Howe - Plaintiffs 30(b)(6) NOD - General Electric Corp..pdf, Howe - Plaintiffs 30(b)(6) NOD - A.W. Chesterton Co..pdf, Howe - Plaintiffs 30(b)(6) NOD - Zurn Industries.pdf, Howe - Plaintiffs 30(b)(6) NOD - Goulds Pumps, Inc..pdf, Howe - Plaintiffs 30(b)(6) NOD - Yuba Heat Transfer Corp..pdf, Howe - Plaintiffs 30(b)(6) NOD - DeZurik, Inc..pdf, Howe - Plaintiffs 30(b)(6) NOD - Aurora Pump Co..pdf, Howe - Plaintiffs 30(b)(6) NOD - Air and Liquid Sys. Corp..pdf, Howe - Plaintiffs 30(b)(6) NOD - Covil Corp..pdf

Dear all-

Please find attached for the purposes of service on your clients, Plaintiffs' 30(b)(6) Notices of Deposition for Defendants in the Howe case. Currently, these depositions are scheduled for December 14, 15, 18, 19, 20, and 21, at the law offices of each Defendant's respective counsel. If the time, day or location does not work for your client, please let us know, and we are happy to amend the notice for a different date, time or location in order to accommodate all reasonable requests. Thank you.

Jonathan M. Holder

Dean | Omar | Branham
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CONFIDENTIALITY NOTICE: This electronic message transmission contains information from Dean Omar

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SIXTEENTH JUDICIAL
COUNTY OF YORK	)	CIRCUIT
	)	
TIMOTHY W. HOWE, as Personal Representative of the Estate of **WAYNE E. HOWE,** deceased, and **JEANETTE HOWE,** surviving spouse,	)	**C/A NO. 2015-CP-46-03456**
Plaintiffs,	)	In re: Asbestos Personal Injury Litigation Coordinated Docket
v.	)	
AIR & LIQUID SYSTEMS CORPORATION, et al.,	)	
Defendants.	)	

PLAINTIFFS' 30(b)(6) NOTICE OF DEPOSITION OF DEFENDANT COVIL CORPORATION

PLEASE TAKE NOTICE that Plaintiffs, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, will take the videotaped deposition of the designated representative of Defendants **COVIL CORPORATION** on **December 19, 2017 at 9:00 a.m. (EST)** and will take place **at the location indicated below,** at which time you are notified to appear and take part as you see fit and proper in such examination. The deposition will take place before a certified court reporter and videographer. **If necessary, the deposition shall continue day to day.**

LOCATION: **Gallivan White Boyd**
One Liberty Square
55 Beattie Place, Ste. 1200
Greenville, SC 29601

Conf. Call-in: **866-640-4044**
Passcode: **241131**

The deposition is to be taken for the purpose of discovery or for use at trial, or both. The topics to be covered at the deposition are listed in Exhibit "A" attached hereto. Pursuant to Rule

30(b)(5), Defendant requested to produce documents responsive to the descriptions listed in Exhibit "B" also attached hereto. To avoid the deponent having to waste time sitting while Plaintiffs' counsel reviews documents produced, please produce all documents at least 48 hours prior to the start of the deposition.

DEAN, OMAR, & BRANHAM, LLP

s/ *Jonathan M. Holder*
Jessica M. Dean (TX Bar No. 24025520)
To be Admitted Pro Hac Vice
Jonathan M. Holder (SC Bar No. 77935)
302 N. Market Street, Ste. 300
Dallas, TX 75202

KASSEL MCVEY ATTORNEYS AT LAW
Theile B. McVey (SC Bar No. 16682)
1330 Laurel Street
Columbia, South Carolina 29202
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was served on counsel for all parties via Certified U.S. Mail Return Reciept, U.S. Mail Standard First Class, and/or electronic mail this 13th day of November, 2017.

s/ *Jonathan M. Holder*
Jonathan M. Holder
Attorney for Plaintiff

EXHIBIT A

Please provide a corporate representative to be deposed on the following subject matters:

1. The identity of any product(s) that contained any asbestos component, whether or not classified as an asbestos product by you, including but not limited to valves, boilers, pumps, turbines, steam traps, gaskets, or packing (hereinafter referred to simply as "asbestos-containing products") designed, manufactured, fabricated, purchased, marketed, advertised, sold, supplied, distributed, contracted, installed, specified, required, recommended, and/or used by the Defendant including its predecessors, successors, affiliates, subcontractors, agents, assigns, subsidiary or parent companies, and any divisions or subdivisions, including but not limited to, any person, corporation, company or business entity which formed part of any combination, consolidation, merger or reorganization from which it was created or was the surviving corporation whose assets, stock, property, products or product line was acquired by it (hereinafter referred to as "the company" "you" or "your"), including: the brand name, trademark name, and generic name of the product(s); the inclusive dates of design, manufacture, fabrication, purchase, marketing, advertising, sale, supply, distribution, installation, specification, requirement, recommendation, or use; a physical description of the product(s), including color, shape, size, and weight per unit, texture, the percentage of asbestos contained therein, the type of asbestos and other mineralogical content; the percentage of each type of asbestos contained therein; the amount of product(s) that were designed, manufactured, fabricated, purchased, marketed, advertised, sold, supplied, distributed, installed, specified, required, recommended, or used; the use for which the product(s) was designed, manufactured, fabricated, purchased, marketed, advertised, sold, supplied, distributed, installed, specified, required, recommended, or used; and other information about the product(s).

2. Information regarding the use of any asbestos-free product as a replacement, substitution, or alternative for any asbestos-containing product designed, manufactured, purchased, marketed, advertised, sold, supplied, distributed, installed, specified, required, recommended, and/or used by you, including but not limited to: the name of the product; the date on which the product was discontinued or asbestos was removed from the product; the reason for the discontinuation or removal of asbestos from the product; and the identity of each employee or officer who participated in the decision or was present at any meeting at which the decision to remove or discontinue using asbestos in the product was discussed or made.

2. Information regarding all designers, manufacturers, sellers, suppliers, distributors, contractors, subcontractors, dealers, wholesalers or other entities who provided asbestos-containing products to you to market, advertise, supply and sell, including but not limited to: the name of the designer, manufacturer, seller, supplier, contractor, subcontractor, dealer, wholesaler or other entity; the brand name, trademark name and generic name of the materials supplied; the amounts supplied; the inclusive dates of supply for each material; the total dollar amount of materials supplied; the asbestos content of the

materials supplied; the place to where the materials were shipped; the place where the materials were used by you; the products of yours in which the materials were incorporated; whether any documents exist regarding the materials supplied; any other information concerning the materials and the transactions.

4. Any and all information regarding contracts, agreements, arrangements, communications, sales and/or dealings between, by, or among you and (a) any of the above-captioned Plaintiff(s); (b) any of the above-captioned Plaintiff(s)' employers, (c) any of the above-captioned Plaintiff(s)' jobsites, (d) any manufacturer of asbestos-containing insulating products and/or any other asbestos-containing products you marketed, advertised, supplied, and/or sold, (e) any co-defendant named in this litigation, (f) any other persons or entities concerning any jobsites or employers at issue in the above-captioned cases, and/or (g) any other company, entity or person which did business with you for the design, manufacture, marketing, advertising, sale, supply, distribution, installation, specification, requirement, recommendation, and/or use of asbestos-containing products in North Carolina and/or South Carolina.

5. All information concerning design, manufacture, sale, installation, inspection, service, maintenance, repair, conversion, use and replacement of your products and/or other products or equipment at any of above-captioned plaintiff(s) jobsites.

6. Any information you have to either confirm or dispute that the products identified by the above-captioned Plaintiff(s) or any of their coworkers were or were not present at the jobsites at issue and the asbestos content or absence thereof of such products.

7. Any and all information regarding the identity of any company, person, government agency or other entity that purchased, distributed, sold, supplied, installed, applied or used asbestos-containing products marketed, advertised, supplied, and/or sold by you, including but not limited to: the identity, address and telephone number of each such entity; the date of each such transaction; the identity of the product(s) involved in each such transaction; the quantity of the product(s) involved in each such transaction; the asbestos content of the product(s) involved in each such transaction; and whether any written agreements exist reflecting the nature, terms, and extent of any such dealings.

8. Segregated sales information for every customer or purchaser for which you contracted, designed, engineered, manufactured, marketed, advertised, sold, supplied, distributed, installed, specified, required, recommended, or used asbestos-containing products.

9. The identity and last known address and phone number of all corporate officers, officials, directors and employees having responsibility for creating, directing, executing, managing, supervising, overseeing or setting any of the following: the business, policy or procedures of your company with regard to the manufacture, design, engineering, purchase, marketing, advertising, sale, supply, distribution, installation, specification, requirement, recommendation, or use of asbestos-containing products; the formulation, design, content, and wording of any warning, caveat, caution, information or statement placed on any asbestos-containing product or container for such product regarding the

dangers of asbestos inhalation; the assembly, handling, application, service, maintenance, repair or use of your asbestos-containing products; and whether the assembly, handling, application, service, maintenance, repair or use of your asbestos-containing products released dust or asbestos fibers.

10. Information regarding any warning, caveat, caution, information or statement given on or with any asbestos-containing products or container by you regarding the dangers of asbestos inhalation; including but not limited to the date, content and samples of any such warning.

11. Information regarding any studies, evaluations, inquiries, investigations or analyses conducted or received by you concerning any potential hazards resulting from the release of asbestos dust or fibers during the manufacture, assembly, handling, application, installation, service, maintenance, repair, use, or removal of asbestos-containing products.

12. Information regarding the inspection of any of your facilities in any way related to asbestos, including but not limited to, the dates of the inspection(s), parties conducting the inspection(s), results of the inspection(s), and all other information related to the inspection(s).

13. Any information gathered or received by you concerning your competitors for the design, manufacture, purchase, marketing, advertising, sale, supply, distribution, installation, specification, requirement, recommendation, or use of asbestos-containing products.

14. Information about any claims for workers' compensation benefits filed by your present or former employees, officers or directors based upon pneumoconiosis, pleural disease, pulmonary fibrosis, asbestosis, lung cancer, mesothelioma, and any other cancers and lung diseases.

15. Information regarding any inquiries or communications received from any of your suppliers, customers, purchasers, product users or any other persons or entities concerning the possible, potential, alleged or actual health hazard associated with the inhalation of asbestos dust or fibers.

16. Information regarding the date, source, nature and extent of any notice or knowledge received by you or any of your employees, officers or directors, or by any of your parent or subsidiary companies, or by any of your distributors, that there was a possible, potential, alleged, or actual health hazard associated with the inhalation of asbestos dust or fibers during the manufacture, handling, application, installation, service, maintenance, repair, removal, or use of any asbestos-containing product.

17. Information concerning asbestos-related personal injury or wrongful death civil suits in which you were an interested party, which were in any way related to the manufacture, purchase, marketing, advertising, sale, supply, distribution, installation, service, maintenance, repair or use of asbestos-containing products, or any injury therefrom, including but not limited to: the court and district in which each claim was filed and

heard; the case number(s) or civil action number(s); the substance of any court rulings made concerning your successor or parent liability; the names and addresses of all witnesses identified in the suit(s); whether any deposition or trial testimony was taken; whether you have copies of any of the discovery, deposition or trial testimony from the suit(s); the name, address and telephone number of the attorneys that represented you in the suit(s); and the outcome of the suit(s).

18. Information regarding all professional, trade, industrial, safety, hygiene or health associations, research foundations or organizations to which you or any of your employees, officers or directors, or any of your parent or subsidiary companies have belonged or held memberships in, including but not limited to: the name and address of the association or organization; the dates of membership; the dates, locations and subject matters of any meetings attended; the identity and location of all minutes, digests, reports, journals, periodicals, newsletters and/or other documents received from any such association or organization.

19. Any information concerning the inception, formation, incorporation, reformation, and/or re-incorporation of your company, including but not limited to the date(s), interested parties, states(s) of incorporation, and business intention or purpose.

20. Any information concerning your past and present corporate history and structure, including but not limited to: the names and addresses of each of your past and present parent and subsidiary companies, whether the ownership was in whole or in part, as well as any companies that you have or had an interest in; your business activities over the years; the identity, title, years of employment, and other information regarding your directors, executives and employees over the years; the make-up of current and past boards of directors; your present and former assets, trade names, goodwill and liabilities; corporate transactions of which you have been a part; the location, years of operation, and business activities of each of your facilities and the facilities of your parent or subsidiary companies; and other information regarding your corporate history and structure.

21. The identity and address of all of your insurers, past and present, including but not limited to policy specifics, such as claim limits, aggregate limits, and coverage dates.

22. Financial data for your company from its inception to the present time.

23. Information regarding your record or document retention program, including the titles, names, addresses and telephone numbers of any present and former employee, officer or director responsible for the retention, retrieval, removal and/or destruction of the company's records and documents from your inception to the present time.

24. The identity and last known address and phone number of all present and former employees, officers, directors or other persons with any involvement with, or potential information about, any topic listed herein.

25. The source and basis of any information provided by you in response to any discovery request in this case.

26. Information and documents requested in Plaintiff's Requests for Production of Documents in this matter.

27. The identity and location of all records and documents in your custody or control regarding the subject matter of the foregoing paragraphs of this notice.

28. Defendant's membership in any trade organizations or trade organizations at which asbestos was discussed or participation on any committees, boards, foundations, institutes, or other bodies who discussed the use of asbestos-containing materials in the industry engaged in by Defendant including, but not limited to:
    (a) The American Society of Mechanical Engineers;
    (b) The American Society for Testing and Materials;
    (c) The American Petroleum Institute;
    (d) The Chemical Manufacturer's Association (or its predecessor, the MCA);
    (e) Chlorine Institute;
    (f) Industrial Hygiene Foundation;
    (g) The American Industrial Hygiene Association;
    (h) National Insulation Manufacturers Association;
    (i) The Asbestos Textile Institute;
    (j) The Asbestos Information Association of North America;
    (k) The Asbestos Information Association;
    (l) The National Safety Council;
    (m) ACGIH
    (n) The American Occupational Medicine Association;
    (o) The American Public Health Association;
    (p) The American Medical Association;
    (q) The American Chemical Society;
    (r) NIOSH; and
    (s) Any other organizations or publications/articles received, which address occupational diseases or industrial hygiene concerns relating to asbestos.

29. Any and all evidence and/or testimony that you intend to use to dispute any of the above-captioned Plaintiff(s) use and exposure to asbestos-containing products manufactured by you.

EXHIBIT B

For purposes of this request, the following words shall have the following meanings: Definitions: "RECORD" or "RECORDS" or "DOCUMENT" or "DOCUMENTS" means any and all written, printed, typed, recorded or graphic material, however produced, or reproduced, stored, known to exist, by way of example and not by limitation, invoices, contracts evidencing purchase or receipt, ledger cards, material requests, communications, writings, printings, records, worksheets, abstracts, summaries, statistics, notes, market data, journals, ledgers, expense reports, specifications, contracts, contract bids, purchase orders, bills of lading, shipping orders, dock receipts, cancelled checks, computer print-outs, microfilm, microfiche, which in any way pertain to the document request made herein.

The terms "YOU" and "YOUR" mean responding party and all of its divisions, predecessors-in-interest, successors-in-interest, subsidiaries, parent companies, sister companies, joint ventures, partners and divisions thereof, including all current and former owners, employees, managers, officers, directors, agents, attorneys and any other person(s) acting upon its behalf

The term "PERSON" and "PERSONS" means a natural person, firm, association, organization, partnership, business trust, limited liability company, corporation, or public entity.

The term "PREMISES AT ISSUE" means the following premises at which Wayne Howe worked during his career:

1. **American Enka Corp.** – Enka, NC (1962-1965, fulltime)
2. **Crown Cork & Seal Company, Inc.** – around Gastonia, NC (1962-1965, weekends)
3. **Celanese** – Rock Hill, SC (1967-1977)
4. **Celanese** – Narrows, VA (intermittently during 1967-1977)
5. **Bowater Southern Paper,** (aka Bowater Paper Mill, aka Bowater Carolina) (1977-2008)

Please produce the following:

1) Any and all documents relating to the Defendant's knowledge of the potential health hazards associated with asbestos.

2) All documents which you contend support your claim that you adequately warned anybody that exposure to asbestos could cause any cancer.

3) All vendor invoice and purchase order records for all asbestos-containing products sold to any Premises at Issue between 1962 and 2008.

4) All Industrial Hygiene records pertaining to any Premises at Issue, including any correspondence, air monitoring and test results conducted between 1962 and 2008.

5) Produce all sales records, and any summaries or compilations, showing any supplier of asbestos-containing component parts which YOU utilized in any asbestos-containing product *sold or supplied to any Premises at Issue* between 1962 and 2008.

6) Produce all vendor invoices and purchase order records for all asbestos-containing component parts, including but not limited to gaskets, gasket material, packing, raw asbestos fiber, etc. *sold to any Defendant or predecessor of Defendant in this matter* between 1962 and 2008.

7) Produce all vendor invoices and purchase order records for all asbestos-containing component parts, including but not limited to gaskets, gasket material, packing, raw asbestos fiber, etc. *sold to any Premises at Issue* between 1962 and 1982.

8) For any asbestos-containing product YOU manufactured for, sold to, or supplied to any Premises at Issue between 1962 and 2008, produce all product manuals, including but not limited to any owner's manual, any shop manual, or any other repair manual or maintenance manual or other literature produced or recommended by YOU associated with such asbestos-containing product.

9) For any asbestos-containing component parts, (including but not limited to gaskets, gasket material, packing, raw asbestos fiber, etc.), which YOU sold to any Defendant or predecessor of Defendant in this matter between 1962 and 2008, produce all associated product manuals, including but not limited to any owner's manual, any shop manual, or any other repair manual or maintenance manual or other literature produced or recommended by YOU associated with such asbestos-containing component part.

10) For any Premises at Issue for which YOU hold any liability, produce all Industrial Hygiene records pertaining to such premises including any correspondence, air monitoring and test results conducted between 1962 and 2008.

11) For any asbestos-containing product manufactured by YOU at issue in this case, produce all Industrial Hygiene records including any correspondence, air monitoring and test results in any way related to asbestos, conducted at the manufacturing facilities of such asbestos-containing products in United States between 1962 and 2008.

12) Any and all documents relating to all precautions, warnings and actions taken by Defendant at any time to any risk from exposure to asbestos;

13) Any and all documents relating to the last year asbestos or asbestos components or asbestos products were used with Defendant's or any suppliers' asbestos-containing products and/or equipment manufactured, marketed, promoted, sold by Defendant and the reason(s) why such products were no longer used;

14) Any and all documents relating to any tests, studies, precautions, dust level counts or actions taken by Defendant or those hired by Defendant to determine the amount of asbestos released when working with or around asbestos-containing products and/or

equipment manufactured, marketed, promoted, sold by the Defendant or any component part of asbestos-containing products and/or equipment manufactured, marketed, promoted, sold by the Defendant;

15) Any and all documents relating to any specification by Defendant in relation to the use of asbestos in any of asbestos-containing products and/or equipment manufactured, marketed, promoted, sold by the Defendant or any component part of asbestos-containing products and/or equipment manufactured, marketed, promoted, sold by the Defendant;

16) Any and all documents relating to any and all sales literature including, but not limited to sales brochures and promotional literature regarding asbestos-containing products and/or equipment manufactured, marketed, promoted or sold by Defendant;

17) Any and all documents relating to any and all lists, indexes, business cards or other documents reflecting the names of companies, individuals, or locations who sold asbestos-containing products and/or equipment manufactured, marketed, promoted, sold by Defendant;

18) Any and all documents relating to any and all warnings, caution, or hazard information concerning asbestos-containing products and/or equipment manufactured, marketed, promoted, sold by the Defendant. This request includes any and all Material Safety Data Sheets;

19) Any and all documents listing the purchasing personnel responsible for obtaining asbestos-containing products manufactured, marketed, promoted, sold by the Defendant. This request includes those responsible for purchasing who are currently employed by Defendant and all former sales people who were with Defendant;

20) Any and all documents relating to the current net worth of Defendant;

21) Any and all documents relating to the conduct of the Defendant;

22) Any and all documents demonstrating any and all agreements or other information regarding any work done by Defendant or by Plaintiff(s) employer(s) at any of the jobsites at issue in any of the above-captioned cases;

23) Documents relating to Defendant's membership in any trade organizations or trade organizations at which asbestos was discussed or participation on any committees, boards, foundations, institutes, or other bodies who discussed the use of asbestos-containing materials in the industry engaged in by Defendant including, but not limited to:
   a) The American Society of Mechanical Engineers;
   b) The American Society for Testing and Materials;
   c) The American Petroleum Institute;
   d) The Chemical Manufacturer's Association (or its predecessor, the MCA);
   e) Chlorine Institute;
   f) Industrial Hygiene Foundation;

g) The American Industrial Hygiene Association;
h) National Insulation Manufacturers Association;
i) The Asbestos Textile Institute;
j) The Asbestos Information Association of North America;
k) The Asbestos Information Association;
l) The National Safety Council;
m) ACGIH
n) The American Occupational Medicine Association;
o) The American Public Health Association;
p) The American Medical Association;
q) The American Chemical Society;
r) NIOSH; and
s) Any other organizations or publications/articles received, which address occupational diseases or industrial hygiene concerns relating to asbestos.

ELECTRONICALLY FILED - 2018 Jan 23 10:51 AM - HAMPTON - COMMON PLEAS - CASE#2016CP2500440

STATE OF SOUTH CAROLINA **COUNTY OF HAMPTON** **JAMES COLEMAN SIZEMORE, as Personal Representative of the Estate of JAMES CALVIN SIZEMORE, deceased,** **Plaintiff,** **v.** **BOWATER PAPER MILL., et al.,** **Defendants.**	)	**IN THE COURT OF COMMON PLEAS** **FOR THE FOURTEENTH JUDICIAL CIRCUIT** **C/A No.: 2016-CP-25-0440** **PLAINTIFFS' NOTICE OF MOTION AND MOTION TO COMPEL**

YOU WILL PLEASE TAKE NOTICE that Plaintiffs will move before the court for an order compelling Defendants to (1) produce a 30(b)(6) representative for deposition, (2) to produce fully responsive documents to requests for documents served pursuant to Rule 30(b)(5) of the South Carolina Rules of Civil Procedure attached to the notice of 30(b)(6) deposition. This motion is brought pursuant to Rule 33 and Rule 37 of the South Carolina Rules of Civil Procedure.

BACKGROUND

Plaintiffs sued Defendants for damages arising from the death of James Calvin Sizemore due to exposure to asbestos from his work as a welder, pipefitter, boilermaker and instrument technician from approximately 1962 to 2009 while employed for various contractors. Plaintiffs have attempted for months to obtain dates for Defendants 30(b)(6) deposition and have offered to accommodate Defendants choice of date, location and time, but still certain Defendants have refused to respond with a date for deposition or documents responsive to the requests for documents. Plaintiffs now move to compel dates for 30(b)(6) deposition and documents responsive to the requests made pursuant to Rule 30(b)(5).

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NOTICE OF 30(b)(6) DEPOSTION AND ATTENDANT DOCUMENT REQUESTS

Mr. Sizemore was deposed in Spartanburg, South Carolina for ten (10) days in September and October 2016. Mr. Sizemore testified at his deposition to his work on, in and around boilers, valves and pumps, at scores of worksites across South Carolina and in other states. In the spring of 2016, James Calvin Sizemore was diagnosed with the asbestos cancer known as mesothelioma. On June 10, 2017 James Calvin Sizemore died from asbestos cancer known as mesothelioma at the age of 69.

Plaintiffs served their notices of 30(b)(6) deposition of Defendants on December 3, 2017, setting depositions almost two months out, and stating "[i]f the time, day or location does not work for your client, please let us know, and we are happy to amend the notice for a different date, time or location in order to accommodate all reasonable requests." *See* **Exhibit-1**, attached hereto.

Plaintiffs 30(b)(6) notices were accompanied by document requests pursuant to Rule 30(b)(5) asking in part, for records and evidence Defendants have regarding their products at the worksite locations of Decedent James Calvin Sizemore. Rule 30(b)(5) states that the time requirements of Rule 34 control for the document requests propounded with notices for 30(b)(6) depositions. Rule 34 requires a party to serve responsive documents on the proponent of the request within 30 days of service of the request. Responsive records were due from Defendants January 4, 2018.

The following Defendants still have not provided an agreeable date for deposition or records responsive to the document request: Cleaver Brooks, CBS Corp., Covil Corp., Daniel International Corporation, Riley Power, Scana Corp., and Waste Management of South Carolina. As a result, Plaintiffs request an order compelling Defendants to produce requested documents in electronic form within a week of this hearing, on January 31, 2018.

ELECTRONICALLY FILED - 2018 Jan 23 10:51 AM - HAMPTON - COMMON PLEAS - CASE#2016CP2500440

While the remaining notices set the depositions for later this week (January 25-26) these are unilaterally chosen dates by Plaintiffs in an effort to give Defense counsel time to obtain available dates from their clients. Counsel for some of these defendants have indicated that they are trying but their clients are not responsive and not providing the requested information. Not responding to Plaintiffs' request not only results in unnecessary delay but leaves all the parties (Plaintiffs and co-defendants) unclear as to when the deposition is proceeding. No reason for this failure to respond has been given. As a result, Plaintiffs request that Defendants to provide date(s) to complete the deposition by 5:00 p.m. on Friday, January 26th to Plaintiffs' counsel for a deposition date on or before February 9th.

CONCLUSION AND PRAYER FOR RELIEF

Plaintiffs request the Court to issue an order (1) compelling production of documents in electronic form within a week of this hearing, on January 31, 2018; (2) instructing Defendants to provide date(s) to complete the deposition by 5:00 on Friday, January 26th to Plaintiffs' counsel for a deposition date on or before February 9th; and (3) if the production of documents and date for a deposition is not provided by the given dates, Defendants forfeit the right to go forward with MSJ on February 26th because the requested discovery was not produced. Plaintiffs further request an award of costs and attorney's fees attendant to this motion as provided by Rule 37, SCRCP.

Respectfully submitted,

s/Jonathan M. Holder
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ELECTRONICALLY FILED - 2018 Jan 23 10:51 AM - HAMPTON - COMMON PLEAS - CASE#2016CP2500440

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January 23, 2018
Dallas, TX

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing motion was served electronically on all counsel of record, this 23rd day of January, 2018.

/s/ Jonathan M. Holder
Jonathan M. Holder
Attorney for Plaintiff

EX. 1

ELECTRONICALLY FILED - 2018 Jan 23 10:51 AM - HAMPTON - COMMON PLEAS - CASE#2016CP2500440

ELECTRONICALLY FILED - 2018 Jan 23 10:51 AM - HAMPTON - COMMON PLEAS - CASE#2016CP2500440

Jonathan Holder

Subject: Sizemore v. Bowater - Plaintiffs 30(b)(6) Notices of Depositions of Defendants

Date: Sunday, December 3, 2017 at 5:54:29 PM Central Standard Time

From: Jonathan Holder

To: Allyson Twilley, Amy E. Melvin Esquire (amelvin@leathbouchlaw.com), Andrew Shelby Rogers, Dawson, Kathy, Breon C.M. Walker - Gallivan, White & Boyd, P.A. (bwalker@gwblawfirm.com), Daniel B. White (dwhite@gwblawfirm.com), David Traylor - Nelson Mullins Riley & Scarborough LLP (david.traylor@nelsonmullins.com), Dell P. Chappell, Esquire, James Glenn - Nelson Mullins Riley & Scarborough LLP (jase.glenn@nelsonmullins.com), Jennifer Techman - Evert Weathersby Houff (JMTechman@ewhlaw.com), Joseph E. Thoensen - Richardson Plowden (jthoensen@RichardsonPlowden.com), K. Harbison (kharbison@gwblawfirm.com), Moffatt G. McDonald, Esquire, Andy Rogers, susan.collings@nelsonmullins.com, Robert Meriwether - Nelson Mullins Riley & Scarborough LLP (robert.meriwether@nelsonmullins.com), Ron Tate, S. Pugh, Scott E. Frick - Haynsworth Sinkler Boyd P.A. (sfrick@hsblawfirm.com), Stacy Said, Steven W. Ouzts, Esquire (Mercedes-Benz), Timothy W. Bouch (tbouch@leathbouchlaw.com), V. Clark Price, W. David Conner - Haynsworth Sinkler Boyd P.A. (dconner@hsblawfirm.com), William A. Coates, Yaney A. McLeod III, Sarah A. Wells, Paralegal

CC: Theile McVey, Jessica Dean, Trey Branham, Elizabeth Moultrie, Lisa Dittemore, Teresa Gilliland, Debbie Smith-Hogan, Lisa Shirley

Attachments: Sizemore (SC) - Plaintiffs 30(b)(6) NOD - Daniel, Fluor Enterprises, Fluor Daniel Services Corp..pdf, Sizemore - Plaintiffs 30(b)(6) NOD - Resolute FP (Bowater).pdf, Sizemore - Plaintiffs 30(b)(6) NOD - DuPont.pdf, Sizemore - Plaintiffs 30(b)(6) NOD - Foster Wheeler.pdf, Sizemore - Plaintiffs 30(b)(6) NOD - CBS Corp..pdf, Sizemore - Plaintiffs 30(b)(6) NOD - Cleaver Brooks.pdf, Sizemore - Plaintiffs 30(b)(6) NOD - Covil Corp..pdf, Sizemore - Plaintiffs 30(b)(6) NOD - GE.pdf, Sizemore - Plaintiffs 30(b)(6) NOD - GPCP, LP (Fort Howard Paper Mill).pdf, Sizemore - Plaintiffs 30(b)(6) NOD - Scana Corp..pdf, Sizemore - Plaintiffs 30(b)(6) NOD - Riley Power.pdf, Sizemore - Plaintiffs 30(b)(6) NOD - Genuine Parts Co..pdf, Sizemore - Plaintiffs 30(b)(6) NOD - Waste Manag. of SC.pdf

Dear all-

Please find attached for the purposes of service on your clients, Plaintiffs' 30(b)(6) Notices of Deposition for Defendants in the Sizemore case pending in Hampton County, SC. These depositions are currently scheduled for January 18-26, 2018, at the law offices of each Defendants' respective counsel. If the time, day or location does not work for your client, please let us know, and we are happy to amend the notice for a different date, time or location in order to accommodate all reasonable requests. Thank you.

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CONFIDENTIALITY NOTICE: This electronic message transmission contains information from Dean Omar Branham, LLP which may be confidential or protected by the attorney-client privilege and/or the work product

ELECTRONICALLY FILED - 2018 Mar 02 10:47 AM - YORK - COMMON PLEAS - CASE#2015CP4602155

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Jean Hoefer Toal, Circuit Court Judge

Roxanne Falls, individually and as Personal Representative of the Estate of Charlotte Gaye Smith, Plaintiff.....Respondent,

v.

CBS Corporation; CNA Holdings, Inc.; Celanese Corporation; Cleaver-Brooks, Inc.; Covil Corporation; Daniel International Corporation; Fluor Daniel, Inc.; Fluor Daniel Services Corporation; Foster Wheeler Energy Corporation; General Electric Company; MP Supply, Inc.; Resolute FP US, Inc.; Union Carbide Corporation; United States Fidelity and Guaranty Company; Uniroyal, Inc.; United Conveyor Corporation, Defendants,

Of which, Covil Corporation is.....Appellant.

Case No. 2015-CP-46-2155

NOTICE OF APPEAL

Pursuant to S.C. Code Ann. § 14-3-330(2) (2017), Appellant, Covil Corporation, appeals the Order of the Honorable Jean Hoefer Toal dated February 23, 2018, and electronically filed on February 28, 2018, which improperly struck Appellant's pleadings. Appellant received a copy of the signed order via electronic mail, and received Notice of electronic filing of the order, on February 28, 2018.

March 1, 2018.

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ELECTRONICALLY FILED - 2018 Mar 02 10:47 AM - YORK - COMMON PLEAS - CASE#2015CP4602155

ELECTRONICALLY FILED - 2018 Mar 02 10:41 AM - YORK - COMMON PLEAS - CASE#2015CP4603456

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Jean Hoefer Toal, Circuit Court Judge

Timothy W. Howe, Individually and as Personal Representative of the Estate of Wayne Erwin Howe, Deceased, and Jeanette Howe, Plaintiffs.....Respondent,

v.

Air & Liquid Systems Corp.; Airco, Inc.; Airgas USA, LLC; Albany International Corp.; Asten-Johnson, Inc.; Aurora Pump Company; A.W. Chesterton Company; Beloit Corporation; Black Clawson Converting Machinery LLC; CBS Corporation; CGR Products, Inc.; CNA Holdings, Inc.; Celanese Corporation; Cleaver Brooks, Inc.; Covil Corporation; Crane Co.; Crown Cork & Seal Company, Inc.; Daniel International Corporation; Davis-Standard Corporation, LLC; Dezurik, Inc.; Fisher-Klosterman, Inc.; Flowserve Corporation; Fluor Enterprises, Inc.; Fluor Daniel Services Corporation; Foster Wheeler Energy Corporation; General Electric Company; The Gorman-Rupp Company; Goulds Pumps, Incorporated; Ingersoll-Rand Company; Linde, LLC; Marsulex Environmental Technologies Corporation; Marsulex Environmental Technologies, LLC; Metropolitan Life Insurance Company; Peerless Pump Company; Presnell Insulation, Inc.; Riley Power, Inc.; SCAPA Waycross, Inc.; SEPCO Corporation; SPX Cooling Technologies, Inc.; Sterling Fluid Systems (USA) LLC; Trane U.S., Inc.; Union Carbide Corporation; Uniroyal, Inc.; United Conveyor Corporation; Velan Valve Corp.; Viking Pump, Inc.; Warren Pumps LLC; Yuba Heat Transfer Corporation; Zurn Industries, Defendants,

Of which, Covil Corporation is.....Appellant.

Case No. 2015-CP-46-3456

NOTICE OF APPEAL

Pursuant to S.C. Code Ann. § 14-3-330(2) (2017), Appellant, Covil Corporation, appeals the Order of the Honorable Jean Hoefer Toal dated February 23, 2018, and electronically filed on March 1, 2018, which improperly struck Appellant's pleadings. Appellant received a copy of the signed order via electronic mail, and received Notice of electronic filing of the order, on March 1, 2018.

ELECTRONICALLY FILED - 2018 Mar 02 10:41 AM - YORK - COMMON PLEAS - CASE#2015CP4603456

March 1, 2018.

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ELECTRONICALLY FILED - 2018 Mar 02 10:41 AM - YORK - COMMON PLEAS - CASE#2015CP4603456

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ELECTRONICALLY FILED - 2018 Mar 01 6:36 PM - HAMPTON - COMMON PLEAS - CASE#2016CP2500440

March 1, 2018

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: James Coleman Sizemore, as Personal Representative of the Estate of James Calvin Sizemore v. Bowater Paper Mill, et al
Case No. 2016-CP-25-440

Dear Ms. Kitchings:

Pursuant to Rule 203(d)(1)(B), enclosed for filing please find the original and one (1) copy of Appellant Covil Corporation's Notice of Appeal, Proof of Service, and a copy of the Order to be challenged on appeal. I am also enclosing a check in the amount of $100.00 for the filing fee. Please return a clocked copy of the documents to me in the enclosed envelope.

Thank you for your assistance in this matter.

Sincerely,

GALLIVAN, WHITE & BOYD, P.A.

Allyson R. Twilley

Allyson R. Twilley

ART/ct
Enclosures
cc: All Counsel of Record (via electronic mail only)

ELECTRONICALLY FILED - 2018 Mar 01 6:36 PM - HAMPTON - COMMON PLEAS - CASE#2016CP2500440

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Jean Hoefer Toal, Circuit Court Judge

James Coleman Sizemore, as Personal Representative of the Estate of James Calvin Sizemore, Decedent.....Respondent,

v.

Bowater Paper Mill; E.I. DuPont De Nemours and Company; Foster Wheeler Energy Corporation; Daniel International Corporation; Resolute FP US Inc.; CBS Corporation; Cleaver Brooks, Inc.; Covil Corporation; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc., General Electric Company; Genuine Parts Company; Georgia-Pacific Consumer Products LP; Honeywell International, Inc.; SCANA Corporation; Riley Power, Inc.; and Waste Management of South Carolina, Inc., Defendants,

Of which, Covil Corporation is.....Appellant.

Case No. 2016-CP-25-0440

NOTICE OF APPEAL

Pursuant to S.C. Code Ann. § 14-3-330(2) (2017), Appellant, Covil Corporation, appeals the Order of the Honorable Jean Hoefer Toal dated February 23, 2018, electronically signed on February 27, 2018, and electronically filed on February 28, 2018, which improperly struck Appellant's pleadings. Appellant received a copy of the signed order via electronic mail, and received Notice of electronic filing of the order on February 28, 2018.

March 1, 2018.

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ELECTRONICALLY FILED - 2018 Mar 01 6:36 PM - HAMPTON - COMMON PLEAS - CASE#2016CP2500440

ELECTRONICALLY FILED - 2018 Mar 01 6:36 PM - HAMPTON - COMMON PLEAS - CASE#2016CP2500440

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Jean Hoefer Toal, Circuit Court Judge

James Coleman Sizemore, as Personal Representative of the Estate of James Calvin Sizemore, Decedent.....Respondent,

v.

Bowater Paper Mill; E.I. DuPont De Nemours and Company; Foster Wheeler Energy Corporation; Daniel International Corporation; Resolute FP US Inc.; CBS Corporation; Cleaver Brooks, Inc.; Covil Corporation; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc., General Electric Company; Genuine Parts Company; Georgia-Pacific Consumer Products LP; Honeywell International, Inc.; SCANA Corporation; Riley Power, Inc.; and Waste Management of South Carolina, Inc., Defendants,

Of which, Covil Corporation is.....Appellant.

Case No. 2016-CP-25-0440

PROOF OF SERVICE

I certify that I have served the Notice of Appeal upon all counsel of record, The Honorable Jenny Abbott Kitchings, Clerk of Court, South Carolina Court of Appeals, P.O. Box 11629, Columbia, SC 29211, and The Honorable Mylinda Nettles, Clerk of Court Hampton County, by electronic mail, by depositing copies of it in the United States Mail, and/or by hand-delivery, on March 1, 2018.

Allyson R. Twilley

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ELECTRONICALLY FILED - 2018 Mar 01 6:36 PM - HAMPTON - COMMON PLEAS - CASE#2016CP2500440
ELECTRONICALLY FILED - 2018 Feb 28 12:19 PM - HAMPTON - COMMON PLEAS - CASE#2016CP2500440

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF HAMPTON	)	**FOR THE FOURTEENTH JUDICIAL CIRCUIT**
James Calvin Sizemore,	)	
	)	**C/A No.: 2016-CP-25-440**
Plaintiff,	)	
	)	
v.	)	**ORDER REGARDING COVIL CORPORATION DISCOVERY MOTIONS**
	)	
Bowater Paper Mill, *et al.*	)	
	)	
Defendants.	)	

A hearing was held in Columbia, South Carolina on January 24, 2018. The Court ordered the Defendant to produce documents requested in Plaintiff's 30(b)(6) deposition notice by Monday, January 29, 2018. The Court further ordered to produce a witness on or before February 9, 2018 to discuss the noticed topics based on what was known or reasonably available to the company.

The deposition of Jim Covil demonstrates that the company made no effort to ascertain what was available to the company regarding multiple locations identified in Plaintiff's notice. Additionally, a reasonable effort to ascertain insurance coverage and limits for the company was not made despite a properly noticed deposition request.

"The rights of discovery provided by the Rules give the trial lawyer the means to be prepared for trial." *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct. App. 1987). "Where these rights are not accorded, prejudice must be presumed and, unless the party who has failed to submit to discovery can show a lack of prejudice," sanctions must be imposed. *Id.* While Without adequate sanctions, discovery procedures would be ineffectual. *Id.* As a result,

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over leniency must be avoided. *Id.* "If a party fails to obey an order or provide or permit discovery, the trial court may impose sanctions such as striking pleadings, dismissing the action, or rendering a default judgment." *Griffin Grading & Clearing, Inc. v. Tire Serv. Equipment Mfg. Co., Inc.*, 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999).

"In determining the appropriateness of a sanction, the court should consider such factors as the precise nature of the discovery and the discovery posture of the case, willfulness, and degree of prejudice." *Id.* at 199, 511 S.E.2d at 719. In *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997), the South Carolina Court of Appeals stated "[t]he entire thrust of the discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party." *Id.* "Discovery sanctions are imposed to penalize those whose conduct may be deemed to warrant such a sanction, and to deter those who might be tempted to such conduct in the absence of such a deterrent." *Creighton v. Coligny Plaza Ltd. P'ship*, 334 S.C. 96, 123, 512 S.E.2d 510, 524 (Ct. App. 1998).

Defendant has failed to produce a witnesses to discuss what is known to the company regarding the location and nature of its work as an insulation supplier and contractor. This information was sought in the corporate representative deposition notice as well as in this Court's Standing Order Discovery. Defendant repeatedly failed to produce relevant and requested information. Thereafter, Defendant failed to comply with this Court's order on January 24, 2018. Trial is set for March 12, 2018. The failure to produce records prevents the parties from preparing for trial. Plaintiff alleges injuries as a result of exposure from insulation. Defendant is an insulation contractor who failed to comply with this Court's order to ascertain what is known or reasonably available to the company about the location of its work. As such, the court will strike Defendant's pleadings.

In addition, the Court orders Covil to produce a witness regarding Topic 21 who has researched the issue of what insurance coverage exists for the company. This request, requires Covil to obtain information from your insurers regarding the nature and limit of the policies at issue. This deposition is to occur on or before March 2, 2018.

AND IT IS SO ORDERED.

Jean Hoefer Toal, Chief Justice of the South Carolina Supreme Court, Retired, Acting as Circuit Court Judge

February 23, 2018

Columbia, South Carolina.

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Hampton Common Pleas

Case Caption: James Calvin Sizemore VS Bowater Paper Mill , defendant, et al

Case Number: 2016CP2500440

Type: Order/Discovery and Disclosure of Evidence

IT IS SO ORDERED.

s/ Jean H. Toal #2758

State of South Carolina)
)
County of York)

In The Court of Common Pleas
Sixteenth Judicial Circuit
2015-CP-46-3456

Timothy W. Howe, as Personal Representative of the Estate of Wayne Ervin Howe, deceased, and Jeanette Howe, surviving spouse,

Plaintiffs,

vs.

Air & Liquid Systems Corporation, et al.,

Defendants.

Transcript of Record

January 24, 2018
Columbia, South Carolina

B E F O R E:

The Honorable Jean Hoefer Toal, Judge

A P P E A R A N C E S:

Jessica M. Dean Esquire
Jonathan M. Holder, Esquire
Theile B. McVey, Esquire

William P. Early, Esquire
Thomas M. Kennaday, Esquire
Moffatt G. McDonald, Esquire
Yancey A. McLeod, Jr., Esquire
Robert O. Meriwether, Esquire
G. Mark Phillips, Esquire
T. David Rheney, Esquire
Andrew S. Rogers, Esquire
Kurt M. Rozelsky, Esquire
Jennifer M. Techman, Esquire
Joseph E. Thoensen, Esquire
Daniel B. White, Esquire

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

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NO EXHIBITS INTRODUCED.

THE COURT: All right, ladies and gentlemen, we have a whole lot going on here today, and I'm going to tell you what I think we've got going on, and then you all let me know before we get started how you want to proceed.

I have got a notebook from Kassel McVey that outlines the various motions in their various cases that have been requested to be heard, and those cases are *Howe*, *Smith*, *Sizemore*, and *Glenn* and of course *Smith* involves Roxanne Falls, who's the PR for Smith. In addition to that, I see lawyers with plenty of other cases on the docket, and if there other matters that need to be attended to, particularly those that involve our *Stewart* case -- you're shaking your head no, Mr. Early.

MR. EARLY: Your Honor, Will Early for the defendant in *Stewart*. We don't have anything before the court right now. I told you on the phone last week if we do, I'd bring it to your attention, but we don't have anything right now.

THE COURT: Good. Good. Well, I've been up there yesterday. Spent a good deal of time up in York checking on all the arrangements, and they are ready for us. That commercial company that makes money filming these asbestos cases will again be filming this one, and I think I've got -- they are peaceful with it if I am and, you know, the usual things. Don't take pictures of the jury, and cut it off when we're doing something that's off the record, but I

think they are all in place.

MR. EARLY: Okay.

THE COURT: They have done something about the acoustics at York. We'll just have to find out whether it's enough, but even to somebody as deaf as I am, it sounded a lot better when we tested it out. So, that's what I know about York.

Now, are there other things, Mr. Meriwether, besides the cases I have listed that we are going to be covering this morning by way of motions and other things?

MR. MERIWETHER: Your Honor, from my -- well, my name is Meriwether. From my client's perspective, I think that you've covered the cases that we have.

THE COURT: Well, let's just march down those, then, *Howe, Smith, Falls* by whatever name now known, *Sizemore*, and *Glenn*, and we will try to arrange these in such a way that our court reporter, Ms. Harris, understands which case we're on, and so, Madame Court Reporter, we are going to begin with motions relative to the *Howe* case. This is *Howe as PR against Air Liquid* and many others. It's 2015-CP-46-3456. It's a York County case currently, tentatively scheduled for March.

Am I right, Ms. McVey?

MS. McVEY: Yes, ma'am.

THE COURT: And we'll start with you. There are

plenty of things that have been filed with me, but we'll start with matters upon which you are the moving party.

MS. McVEY: Thank you, Your Honor. Just briefly, Theile McVey for the plaintiff in this trial block in March. With me is Jessica Dean.

THE COURT: Ms. Dean, nice to have you with us.

MS. McVEY: And Mr. Holder, Jonathan Holder.

THE COURT: Mr. Holder, nice to have you with us.

MR. HOLDER: Thank you, Your Honor.

MS. McVEY: Your Honor, just as a preliminary matter, I wanted to start with Bowater documents. Both in the *Howe*, *Smith*, and *Sizemore* cases, Bowater, they worked at the Bowater premises. Bowater has produced to us defendants documents under a confidentiality provision. Other defendants have asked us for those documents, and we think they are discoverable and they ought to be produced. So, I would like the court to order me to produce the Bowater documents to everyone for litigation purposes so that we can -- I don't want to foul up a confidentiality provision.

MR. PHILLIPS: I'll join in the motion.

MR. EARLY: Your Honor, Will early.

THE COURT: Now wait a minute, Mr. Phillips, you know the rules. You get up, the first thing you say ---

MR. PHILLIPS: Please excuse me, Your Honor.

THE COURT: --- is Mark Phillips.

MR. PHILLIPS: Mark Phillips.

THE COURT: Bowater. Bowater.

MR. PHILLIPS: Yeah, for Bowater.

THE COURT: Right.

MR. PHILLIPS: Precisely. Mark Phillips, *Howe* case.

UNIDENTIFIED MAN: You don't represent ---

SECOND UNIDENTIFIED MAN: No, you don't represent Bowater.

MR. PHILLIPS: I've got a party defendant, Your Honor, never mind. I'd like to get those documents, though.

THE COURT: Now, Mr. Early, are you for Bowater?

MR. EARLY: I am not, Your Honor, but I am a signatory to the confidentiality order that Theile just brought up. I would like the court to order likewise.

THE COURT: And I see someone standing in the audience. Yes, sir. Say your name.

MR. KENNADAY: Tom Kennaday.

THE COURT: Say your name, of course.

MR. KENNADAY: Tom Kennaday for Resolute or Primex, formerly known as Bowater.

THE COURT: Very good. What's your position?

MR. KENNADAY: Our -- my position is a little bit complicated because my national counsel's father-in-law passed away and he's making arrangements, and I haven't

been able to talk to him. There's some confusion about what we're waiving and what we're not. There are ---

THE COURT: Well, why don't you do this, Mr. Kennaday? This obviously is going to have a little substance to it. Come on down here to the counsel table so that we can easily pick up what you say.

MR. KENNADAY: Certainly.

THE COURT: For our court reporter.

MR. KENNADAY: So, Your Honor, we produced documents in response to a subpoena from Mr. Early's firm, and there's a confidentiality order entered. We then produced many more documents and withheld a few, and under that same confidentiality order, although we've waived some them, and I, I think we may be waiving a good bit more, but I said I can't get in touch with my national counsel on that. A little bit of confusion on that. A day or two and I could have that cleared up.

Plus, there are some documents that we haven't produced because there are pictures of a paper machine and blueprints of a paper machine that are still commercially sensitive trade secret documents. I don't think there's a dispute over that, and that's not what they're trying to produce now because they don't have them.

And then there's a set of documents, and I'd like everybody, if they have received these documents already,

take note of this. We produced a workers' comp file that we later realized the judge had sealed and I've got the numbers for. That's labeled RFP00369 to 000423 -- well, actually to 430, all the way to 430. So, if those -- if anybody's got those, please destroy them, delete them.

I'm afraid I can't consent to your order today, Your Honor, to, to produce all the documents.

THE COURT: All right.

MR. KENNADAY: But they don't have any of the trade secret documents, so I'm not worried about those.

THE COURT: All right. So, what we've got is a group of documents that are trade secrets, but they've been produced for plaintiff, and now plaintiff wants to order that those documents be produced to other defendants who want them, right?

MR. KENNADAY: No.

THE COURT: All right.

MR. KENNADAY: The ones that are trade secret have not been produced.

THE COURT: All right, you have not produced trade secrets, machine blueprints, and you have produced a comp file but you wish you hadn't.

MR. KENNADAY: One of those, yeah. We produced several comp files, one of them we wish we hadn't.

THE COURT: All right.

MR. KENNADAY: And then other documents are just business confidential. We may be waive -- we've waived some of that. We may be waiving all of it. I'm not sure because I can't get in touch with my national counsel, and this just came up Saturday.

THE COURT: All right, let me turn back to -- you stay right where you are, and let me turn back to Ms. McVey and see what you've got to say about it.

MS. McVEY: Your Honor, we don't have the documents they've labeled as trade secrets. We would like to the ability to assess those documents, and I think we can work that out between us.

The other documents I would argue, and I think everyone would agree, are not trade secret documents and that they should be produced. The issue is this is time sensitive obviously since we're all getting ready for trial, and these defendants, part of their motions against us are that they want these documents, and so I want them to have them. I think they are discoverable, and I think if you order us to do that, it would be reasonable.

MR. KENNADAY: Your Honor.

MS. McVEY: To keep things moving.

THE COURT: Well, let me -- hold for a minute, Mr. Kennaday.

With regard to the business confidential documents, I

understand what you're saying. You want all those orders to be disclosed. They were disclosed to you, but while we are here, the trade secret documents you haven't seen and you don't know exactly what they are, but you'd like a chance to examine them.

I've got to tell you that the second and third category of things, machine blueprints and the comp file, is discoverable in my view. The comp file, I presume, is of the injured worker or deceased worked. Am I right?

MR. KENNADAY: The comp file issue is that Judge Childs, when she was the ---

THE COURT: I get that.

MR. KENNADAY: --- trial -- she ordered that it can't be used by anybody for any purpose and that we're not supposed to disclose it.

THE COURT: I get that. She was operating as a circuit court judge, and of course I have to look at this thing now as a circuit court judge in a different set of circumstances and decide. She obviously used it and then sealed it.

MR. KENNADAY: And I don't think they're disputing that those should be filed back.

MR. HOLDER: Wait, are you talking about Wayne Howe's?

MR. KENNADAY: No, I'm talking about the English. There was one of the files ---

MR. HOLDER: Right, but not, not this case.

MS. McVEY: We don't -- it's not ---

THE COURT: It's not *Howe*. Okay.

MR. KENNADAY: It's not *Howe*.

THE COURT: Well, let's strike that from consideration and give it back to them. All right, then we've got machine blueprints. I can't -- is this the machine that allegedly injured the worker?

MR. KENNADAY: No.

THE COURT: They're going to get the ---

MR. KENNADAY: No, it's not. It's a paper machine.

THE COURT: Well, it's a paper machine used in Bowater, the plant he was in, and it at least allegedly contributes to having those big felt things that put out dust, and they allege causing them to get mesothelioma.

MR. KENNADAY: Your Honor, again, I don't think we have a dispute over this. There's no motion to compel us to produce them. The only thing they're talking about is an order on the other documents.

THE COURT: How about it, Ms. McVey?

MS. McVEY: Well, I would like to look at those.

MR. KENNADAY: And we don't have a problem with that.

THE COURT: All right. Well, then here's what we do. Ms. McVey, prepare an order that says as follows. First of all, that all the business confidential documents, you're

going to be ordered to produce to defendants under whatever kind of protective arrangement Mr. Kennaday's general counsel wants to have in regard to that. Number two, with respect to trade secrets and machine blueprints, you are going to be allowed to look at those and then bring to the court such issues as you and Mr. Kennaday cannot resolve about those.

Prepare an order like that. Send it to Mr. Kennaday. Then when his general counsel is available, which I hope would be in the next couple of days since we are kind of time sensitive on *Howe*, you all put your heads together and see if you can agree upon something and send it to me, and I'll sign it.

MR. KENNADAY: Thank you, Your Honor.

THE COURT: Is that fair enough?

MR. KENNADAY: That's fine, Your Honor. Thank you very much.

THE COURT: Okay. Very good.

MS. McVEY: Thank you, Your Honor.

THE COURT: All right, that's the first thing, which is the Bowater's documents. All right, so we've got that dealt with. I'm just going to say order drafted by McVey/Kennaday because the rest of counsel don't really care as long as they get the ones they want.

MR. PHILLIPS: Your Honor, excuse me. Mark Phillips

in this case for Buffalo Pumps. We are interested in these documents. I know a lot of the motions -- the discovery motion was literally filed a day or two ago. The one you just dictated, the order you actually said produce to the defendants, which is fine for me, we'd like to get them, and it would be a heck of a lot easier to get them now than to have to request between now and trial and then ---

MS. McVEY: I think she said you're getting them.

THE COURT: I, I ---

MR. PHILLIPS: That's good. That's good.

THE COURT: My order is going to give you those documents. I'm just going ---

MR. PHILLIPS: That's good. I just want to make sure it's clear.

THE COURT: I'm just going to have Kennaday and McVey consult ---

MR. PHILLIPS: Your Honor, that's good.

THE COURT: --- because they are the main people that need to give me input on this thing, particularly since Mr. Kennaday is the source of the documents, but yeah, it's going to be an order that produces them to all the defendants.

MR. PHILLIPS: Good. Thank you.

THE COURT: Very good. So, we got that.

MS. McVEY: Fabulous.

THE COURT: Number two.

MS. McVEY: Number two is -- I'm going to let Ms. Dean address the motion to compel for the plaintiffs.

THE COURT: Yes.

MS. McVEY: Which will also overlap with some of the defendants' motions for protective order, and I'll let Ms. Dean and Mr. Holder explain, but we have been able to resolve a number of these. So with that, I will let Ms. Dean address the court.

THE COURT: Very good. Ms. Dean.

MS. DEAN: Good morning. Jessica Dean for the Howe family. We have a notebook where we have each of our motions, and I've also just X'd out the ones we've resolved. Is that helpful to hand to the court?

THE COURT: Well, yeah. I've got the notebook. I've added a lot of stuff to it because defendants have sent me a lot of stuff, but you tell me what you think is resolved.

MS. DEAN: That may be easier if you already have identical, but for the *Howe* motion, if we just want to limit it to that for now, we have been able to work out a resolution with Asten Johnson.

THE COURT: What now?

MS. DEAN: If you look to number two in our *Howe* motion to compel, one of the ---

THE COURT: Wait a minute. They're not numbered that

way. What you did was to give me a tab that has 1 is all the *Howe* stuff, 2 is Roxanne Falls against CBS. I thought the notebook I got was a little slim, but maybe you have another one that I don't have.

MS. DEAN: It should be slim, a group of tab 1 with *Howe*.

THE COURT: Yeah, and what is it entitled?

MS. DEAN: And page 3 of that, number 2 we list out what we are seeking from individual parties.

THE COURT: Ms. Dean, I haven't got that. Bring, bring what you're talking about and show it to me.

MS. DEAN: Okay. Sorry. This is the *Howe*.

THE COURT: Oh, okay. Wait a minute. I have got it. All right.

MS. DEAN: And on the third page of that, we can, we list out ---

THE COURT: Oh, okay. Very good.

MS. DEAN: And in number 1 at the last line of that, which is at the top of page 3, we can cross out SPX.

THE COURT: All right.

MS. DEAN: For number 2 we can cross out Asten Johnson, which is ---

THE COURT: All right.

MS. DEAN: And then add SPX. They kind of went to a different group.

THE COURT: SPX?

MS. DEAN: Yes, ma'am. Yes, Your Honor.

THE COURT: All right.

MS. DEAN: And then that's the only changes.

THE COURT: Okay. Very good. You may proceed.

MS. DEAN: Is it better here or back here?

THE COURT: However it suits you and however it suits Ms. Harris.

Is it better for her to be there?

COURT REPORTER: There.

THE COURT: Very good.

MR. MERIWETHER: Your Honor, Robert Meriwether. Did, did, did I just hear that SPX was resolved or wasn't?

MS. DEAN: It was ---

THE COURT: It goes to a different category. If you will look at plaintiff's motion to compel defendant, and if you will look at page 3 of that document.

MR. MERIWETHER: I'm with you, Your Honor.

THE COURT: All right, page, the first item:

> Plaintiffs do not have complete responses. Broadly, these companies fall in three categories. Category number one is defendants who have provided deposition date but have not provided responsive documents.

They X SPX out of that. Apparently SPX has provided

the documents. Then in number 2:

Defendants who have provided responsive documents but have not provided deposition date.

They X'd out Asten Johnson and they added SPX to that. So, that's what happened with SPX.

MR. MERIWETHER: Thank you, Your Honor.

THE COURT: Now before Ms. Dean commences, how about some of you husky, younger lawyers in here get that podium for Ms. Dean and bring it up here to the ---

MR. EARLY: I'll get it, Judge. I'm a husky, young lawyer. I'm not a young lawyer. I'm a husky lawyer.

(A PAUSE.)

THE COURT: There we go. Now we're cooking. All right, Ms. Dean. Yes, ma'am.

MS. DEAN: So again this is Jessica Dean. First just to explain kind of the structure of our motion is we had certain defendants that provided us a deposition date but have not provided us the documents. And sometimes they promise they or they provided us some, but at the end of the day, a good chunk of documents that we have asked for timely, the time that they are supposed to be produced has come and passed, and we don't have them. So, where we have a deposition but no documents are the first group.

In the second group, we have been produced documents. We believe that we have all responsive documents. I kind

of put that kind of limitation in there because some of them were produced yesterday; some of them were produced four days ago. We are basing it on representations. If there's problems down the road, I just am alerting the court we haven't been able to verify. But for what we care about today is that we asked for a deposition. It was properly noticed under the rules. They didn't give us a date.

And then the third category is where we're lacking both and for different defendants, there are wildly different reasons. Some defendants have genuinely ignored us for two months and just not provided us the dates we need until this hearing got set. The power of just having this hearing has caused a lot of work to be done in the last five days, I mean, and even some resolutions. So, I don't want to minimize that almost, I think, everyone in this room has really worked with us in the last week. But we did have for many defendants a lot of silence for a long time despite clear rules that you have thirty days and you need to do this, and despite clear communication from Mr. Holder while we unilaterally noticed these -- and in one case we accidentally did it on a Sunday -- we are willing to change the date, the location, the time. We're willing to consolidate them if that helps them in cases where there are multiple things. We just need you to get your clients

to talk to us.

And so the good news is that I think the breadth of the problems with the vast majority of these have reduced, but we're still in a position where a huge amount of information that was sought overwhelmingly back in November -- they were noticed in November. We needed to get it before Christmas in December. Still hasn't been provided.

THE COURT: Okay. Well, now in your categories, then, category one is provided the deposition dates but no documents, and that is Aurora and Yuba?

MS. DEAN: Yes.

THE COURT: All right. Well, let's stop you right there and find out from Aurora and Yuba.

MS. DEAN: Okay.

THE COURT: Mr. Meriwether.

MR. MERIWETHER: Yes, Your Honor, Robert Meriwether on behalf of Aurora and Yuba.

THE COURT: All right, what's going on?

MR. MERIWETHER: The -- Aurora, of course, is a long-standing defendant in this litigation and Ms. Dean and, and all the folks on the plaintiffs' side of the bar are thoroughly familiar ---

THE COURT: All I need to know now is why there are no documents.

MR. MERIWETHER: Well, Your Honor, Aurora has never

had the ability to search for documents by anything other than serial number. The other way we can find out -- we can either give you the keys to the warehouse, but, I mean, it's a bunch of microfilm or something like that, but I, I won't swear to that, but it's, it's all kept by serial number, by pump serial number.

THE COURT: That's not acceptable. They're going to have to find out some way to decipher that. We're not just going to make them go to a big warehouse with numbers and have to look at it, Mr. Meriwether. They're going to have to make some better response than that.

MR. MERIWETHER: Well, I understand that, Your Honor. The -- we -- this has been the fact of the matter for Aurora for a long time.

THE COURT: Well, in this court it's not going to do, and the sanctions will be severe if they don't get these documents to us.

MR. MERIWETHER: Well, we'll, we will -- I will certainly let them know that ---

THE COURT: It's not your fault; I'm not fussing with you.

MR. MERIWETHER: I understand. I understand.

THE COURT: But deliberately having a system that makes it impossible to access anything you've stored is not going to cut it with me.

MR. MERIWETHER: Well, I understand that, Your Honor, but I want to be careful about the deliberate part because this is, this is the way that this company has kept records, you know, fifty years.

THE COURT: Well, they officially have some ability to decode it if they need documents. So, they are going to have to decode it to give the documents in a lawsuit that's been legitimately filed in which they have been a party forever. They're going to have to -- they know about this problem. They've been knowing about this problem. I'm sure as thorough as you and your staff are you have advised them from the beginning that these requests were made. They're going to have to do something about this, and we can talk here for a minute about what kind of timeframe we're talking about. But that's just not going to cut it.

MR. MERIWETHER: Well, Your Honor, I think that as far as timeframe goes, I think Ms. Dean may be mistaken about the deposition. They, they said that ---

THE COURT: You mean they haven't agreed to deposition dates either?

MR. MERIWETHER: No. We've got deposition dates. I was thinking she was saying we had.

THE COURT: No. She says you're in the category, the first category. You've set deposition dates, but she's received no documents. That, that really is beyond any

kind of understanding.

MR. MERIWETHER: Well, that, that -- believe me. We will have a telephone conference this afternoon with Aurora.

THE COURT: Okay. Well, the case is scheduled for March. When is this deposition scheduled?

MR. MERIWETHER: February the 8th, I believe.

THE COURT: All right, and today is January the 24th.

(A PAUSE.)

THE COURT: You tell them that these documents are going to have to be produced by January 29th, which is next Monday, and if not, sanctions will be forthcoming. I will of course have a hearing on those, but I have to tell you that there's certainly a precedent for striking pleadings when no documents are produced and when the production request is of a long-standing and the trial date and the depositions are set. And that's not your fault at all.

MR. MERIWETHER: I understand, Your Honor.

THE COURT: But they've got to get with the program. They can't just say what you just said, and it's the only thing they've given you to say. So, it's again not your fault at all, Mr. Meriwether, and I'm not trying to be harsh, but they've got to produce some documents.

MR. MERIWETHER: I believe that we will have an interesting chat this afternoon.

THE COURT: Very good. Get me an order, Ms. Dean. Just make notes now as we go along because there are going to have to be separate orders on these issues because they will go to different parties and folks, but this would be an order directed to Aurora. All documents requested must be produced by January the 29th.

MS. DEAN: Yes, Your Honor.

THE COURT: All right.

MR. MERIWETHER: Yuba, I think, was the next one that I needed to speak to.

THE COURT: Yes.

MR. MERIWETHER: Yuba is, Yuba is in an interesting position in this lawsuit. Yuba was not a party to this lawsuit when Mr. Howe was deposed. I know his deposition never finished, and it was incomplete when he passed away untimely, but Yuba was not a defendant. The only deposition which -- of a fact witness that Yuba was in the case for was Gilbert Small, I believe, the coworker at Bowater.

Yuba did an asset transfer where they, they essentially sold their company but they kept the liabilities, and so all the documents went with them. They have -- they've got to go to somebody else to ask them to search their own documents and say please as a favor, we need you to look for the stuff. They've done that.

I told them when we got the request that if they could get the purchaser of the company to go and look for records, they needed to focus on Bowater because it's the only site that we've had a coworker in.

THE COURT: That makes sense.

MR. MERIWETHER: And so they did. They got in touch. Bless their hearts, the, the people that we sold the company to did do the work of looking through it all, and they let me know last night and I let Ms. Dean know this morning that there are no new ---

THE COURT: There are no new Bowater documents?

MR. MERIWETHER: Exactly. There's nothing -- we, we searched for Bowater, for paper mill, for Catawba, for Rock Hill, for whatever the Resolute FPUS name that they are now, we searched all those critters and we got nothing. So, we would -- right now it would be most helpful if we, we could get a dismissal because we're not at Bowater, and I feel it would be -- it's somewhat onerous to have to put up a corporate rep. We'll, we'll do it if we have to, but if we can get an affidavit that just says, you know, we've had these searches run and we're not there.

THE COURT: Okay. All right. Here's what we need to do there.

MS. DEAN: If I may just explain two things quickly?

THE COURT: Yes, ma'am.

MS. DEAN: I'm sorry to interrupt.

THE COURT: No, ma'am. That's all right.

MS. DEAN: The first is that the implications of the lack of records means very different things for very different companies. Durco testified -- Duriron, a defendant I know well -- that they have incredibly complete records and if they're not there, that means we don't believe it happened. Yuba has not made that clear at all.

One of the things our document request asked for is their document retention. Are they claiming that our witness was wrong that it was a Yuba heat exchanger because their records didn't bear it out? Or are they saying they just don't know internally? Either way, all the other elements of proof that I have to prove -- because I have testimony that those Yuba heat exchangers are there. What do they know, where is the asbestos, when did they know it, were there alternatives are still things that I have to prove in the case. I have a very triable case.

So, the first premise is when I found out this morning for the first time that, despite asking for months about these records, they don't have them -- and, I mean, Robert told -- Mr. Meriwether told me the moment he knew. My follow-up question is what does that mean? He doesn't know yet.

The second thing, and this is the one that's going to

come up a lot, and that's why I wanted to pause on it. Mr. Meriwether said we -- despite the notice asking for each location where Wayne Howe worked, which included Celanese, not just Bowater, we only looked at Bowater because that's the only place where a coworker said the name Yuba. And Yuba responded by saying okay, that makes sense.

I respectfully disagree and it's a big disagreement and want to spend a moment on it. Examples help me. In the Pete Bumgardner case, I was in this courtroom. Pete Bumgardner testified he worked in Celanese boiler drives by crawling around in them, but he had no idea who made them, none. Cleaver Brooks knew. They have records that said every single one of them was their boilers. They didn't give me any of those records, and Judge Hill at first did not push them to until I found a coworker that said those are Cleaver Brooks, and then it turned out that what they knew for fourteen months and I didn't is that every one of their boilers were their boilers.

My point is this. Often people don't remember certain things. They could work on something every day and not remember the name plate that says Foster Wheeler or Cleaver Brooks or Yuba when we know that they are working on the boilers. Where these heat exchangers are at Celanese, if they have records that say those are ours, the first step -- and, and it's literally question number one in the

standing order of discovery is is your equipment there. I don't know the answer to that. And so when I talked to Mr. Meriwether, he said, well, I only questioned them on Bowater.

I get why that's the first place to push because they know we've got them there despite what their records say. But it doesn't limit that we have both in the standing order of discovery and in the notice a reasonable request that they've had, according to the rules, was sufficient time to tell us so that if they're at Celanese and they're sitting on that, I still don't know.

THE COURT: Okay, here's what we're going to do.

MR. MERIWETHER: Your Honor, might I correct a few misstatements because I think it's very important. Number one, number one, we're not identified in here as, as Bowater. The only thing that I say ---

THE COURT: Well, what she said ---

MR. MERIWETHER: I thought she did.

THE COURT: --- is that she has other witnesses that may identify you with Bowater, but she definitely has witnesses that identify Yuba at Celanese, which is another place he worked. That's what I understood.

MR. MERIWETHER: Your Honor, I don't think she's got a witness that identifies Yuba anywhere in the case.

MS. DEAN: Let me, let me -- we have him working

around boilers, which is where the heat exchangers are. We don't at Celanese know who made it. That's kind of my point. If I can figure out who made them, I have sufficient testimony I believe ---

THE COURT: Well, let me get this straight. They said their information is that they don't have any heat exchangers at Bowater, okay? That's what they looked for, and they couldn't find any heat exchangers at Bowater.

MS. DEAN: That's my understanding.

THE COURT: Do you have any information contrary to that?

MS. DEAN: No.

THE COURT: All right. Next we go to Celanese, another place he worked. They haven't looked for that, right?

MS. DEAN: That's my understanding.

THE COURT: Are there other places besides Celanese that will be involved in this thing that you think might lead to information about a Yuba heat exchanger?

MS. DEAN: Yes. There, there is, and we've listed them out in our notice so it will be clear. Five locations at issue: American Enka, Crown Cork and Seal, two Celanese locations -- one in Narrows and one in Rock Hill -- and Bowater. So, my point is at Bowater where they say they don't have records, I want to know what that means. And in

the other four locations, given that we have testimony -- and Celanese is where we have the strongest testimony that he worked in the vicinity of the heat exchangers -- they need to tell us if those are theirs, if they know.

THE COURT: All right.

MR. MERIWETHER: Your Honor, I respectfully must correct the record. There is no indication from any witness available to be used against Yuba that he worked anywhere but Bowater.

Here's the point. They took Mr. Howe's deposition without suing Yuba. He talked about where he worked. Mr. Howe died. They then amended it and put in a coworker. He happens to be a coworker only from Bowater. The only place that Yuba is in this case is Bowater because the only witness available to be used against them, the only witness who has been -- fact witness who has been taken since Yuba was added to the case is a Bowater witness. That's why I had them search for it.

THE COURT: Well, here's what we're going to do; here's what we're going to do. First of all, you want the now controller of the records at Yuba, which is the company they sold to, we want them to be -- am I right here?

MR. MERIWETHER: No, Your Honor. Yuba's got no records left. Yuba goes ---

THE COURT: That's exactly what I said, Mr.

Meriwether.

MR. MERIWETHER: Oh, I'm sorry.

THE COURT: I said we've got a company to which Yuba sold ---

MR. MERIWETHER: Right.

THE COURT: --- that now controls the records.

MR. MERIWETHER: Correct.

THE COURT: That's who you made the inquiries of.

MR. MERIWETHER: Exactly.

THE COURT: What Ms. Dean wants to know -- and they were all targeted to Bowater. She wants to know what it means to say that there are no documents relative to Bowater. She wants some kind of more definitive statement about whether there is any information that Yuba supplied any equipment at Bowater.

MR. MERIWETHER: Right.

THE COURT: And she doesn't want to play nice games about whether they have a document to that effect or some other kind of information to that effect. She wants to know whether Yuba had any equipment at Bowater.

MR. MERIWETHER: Right.

THE COURT: So, that needs to be asked to the people to whom -- that needs to be asked to the Yuba people because they certainly would know that, whether or not they've got the documents not. And second of all, that

needs to be asked to the people who now have their records.

MR. MERIWETHER: Right, Your Honor.

THE COURT: So, that's the first thing. The second thing is she's got four other, as I recollect it, that you haven't asked about.

MR. MERIWETHER: Correct.

THE COURT: She wants you to ask them whether they have any records relative to those other four companies, and I am going to require that that be asked to them, and get an answer to her by Monday the 29th, January the 29th, and then we'll see where we go from there.

MR. MERIWETHER: All right, Your Honor. Thank you so much.

THE COURT: All right, and it doesn't obligate you. It doesn't put you on the hook for anything. We just have to see what they produce, if anything. They might not produce anything, but that I think is at least a reasonable request to make.

And, Ms. Dean ---

MR. MERIWETHER: And we -- I'll make it to them. They'll make it to their, their buyer ---

THE COURT: Exactly, but ---

MR. MERIWETHER: And we'll get it back.

THE COURT: I think you need to, also need to emphasize to your client at Yuba who are still controlling

-- the new company is not controlling this. Your client is Yuba, as I understand it.

MR. MERIWETHER: Correct. They still have the liabilities.

THE COURT: Right, and they're going to have to be asked whether there's any other information they have besides the records that now are at their purchasing company that ---

MR. MERIWETHER: They -- absolutely, Your Honor.

THE COURT: --- that indicate that they have any equipment or had any equipment at the these locations, Bowater and the other four.

MR. MERIWETHER: Absolutely.

THE COURT: And, you know ---

MR. MERIWETHER: We understand. I believe that Yuba has nothing left whatsoever about that.

THE COURT: It's not a question of what they have left. They have some people that worked and ran the Yuba corporation. They need to be asked ---

MR. MERIWETHER: Your Honor, I believe they went with the sale.

THE COURT: Well, some kind of way those people have got to be asked what they know about whether there was any equipment at these various locations.

MR. MERIWETHER: Understood.

THE COURT: Okay. Very good.

And, Ms. Dean, you'll get up some kind of order to that effect.

MS. DEAN: Yes, Your Honor.

THE COURT: I can't do anything more than that. I mean, Mr. Meriwether is as honest as they make them. He's going to ask them what we have said they need to be asked, and we'll see what they produce.

MS. DEAN: Yes, Your Honor.

THE COURT: Very good. All right, that's Yuba. All right.

MS. DEAN: The next group.

THE COURT: Item A or item 1, we know where we're going. On Aurora and on Yuba, you're going to get up orders and they got to produce the things by January the 29th, right?

MS. DEAN: Yes.

THE COURT: Now we go to the second category and the second category is they're produced documents, but there's no date for depositions.

MS. DEAN: Yes, and first one on this is Daniel where -- just at least a little context with how many moving parts that are here. We first sought these depositions in November to occur in December, then amended to January, and we're now in a position where your scheduling order

indicates these are to be completed by the 9th.

One just kind of procedural thing I'd like to take up, and it may be at an odd time, is if the parties agreed to do it after the 9th, is that agreeable to the court?

THE COURT: Oh, you know it is, yeah.

MS. DEAN: Okay.

THE COURT: If the parties agree to do it later, that's perfectly fine. But I am a little tired of Daniel and Union Carbide going back to the beginning of time and saying, you know ---

MR. McDONALD: Sure.

THE COURT: --- this is all. We can't do anything because this is -- we don't have enough time and so forth. This is an old case, and they've been knowing about it for a long time. Whether they've been parties or not, this isn't any new mystery that's just come up upon the horizon to these two defendants.

MR. McDONALD: Sure. This ---

THE COURT: I want them to get with the program and quit filing all these motions that talk about wanting to get out of the case and ---

MR. McDONALD: Okay.

THE COURT: --- have the trial delayed. I'm not going to do that.

MR. McDONALD: Well, let's put Union Carbide to the

side. That a different -- we're talking about Daniel, if you don't mind.

THE COURT: All right.

MR. McDONALD: And Daniel has produced the documents in *Howe*. We objected to the deposition notice as being incredibly overly broad. You're familiar with the Colleton case. We felt like, you know, if we pushed it all the way we could get stricken, but Mr. Holder and I spent two hours on Saturday ---

MR. HOLDER: Saturday night.

MR. McDONALD: Saturday night, I mean, really, and we greatly -- we agreed to the basic outline of the scope of an appropriate deposition against Daniel, that Daniel would give, and that would be really *Howe*, *Sizemore*. *Smith* really is a big one for Daniel coming up, okay?

THE COURT: Is that at a 30(b)(6) deposition?

MR. McDONALD: That's right, Your Honor.

THE COURT: Let me tell you something. I am not going to get in these wrangles. 30(b)(6) ought to be done, and it ought never have any kind of ---

MR. McDONALD: Well.

THE COURT: --- contention about it.

MR. McDONALD: I just suggest to you, Judge, and we're not -- we've agreed. So, we've got an outline, but there are times when a 30(b)(6) is overly broad. I'll ---

THE COURT: Rare as hen's teeth.

MR. McDONALD: Well, you'd have to ---

THE COURT: Rare as hen's teeth.

MR. McDONALD: These are, these are very broad, and I just hope you'll have an open mind about that.

THE COURT: All right.

MR. McDONALD: But we're agreed ---

THE COURT: But you've agreed on Daniel.

MR. McDONALD: That's right.

THE COURT: True, Ms. Dean?

MR. McDONALD: Well, I'll -- let me just finish. So, they needed dates and so I offered the Tuesday or Thursday before the 9th and, in fact, probably any time that week I could get the witness available to work that. So, I've offered a date and we have produced all of our documents at Bowater. Mr. Holder came and reviewed the documents.

MS. DEAN: Your Honor, there's two, two issues, and I -- this, this isn't a Daniel-specific issue.

THE COURT: That's what I'm trying to resolve right now is Daniel, where there's been a lot of back and forth, and now we're down to either Tuesday or Thursday before the 9th or some other date that we -- can we get that resolved?

MS. DEAN: Here's why it's harder to resolve. By all of the -- by this not being isolated to Daniel, but Daniel definitely fits in the problem. What we are getting is an

influx of documents. In the last forty-eight hours, I was able to review Cleaver Brooks's documents that I didn't get for fourteen months and I believe I should have that shows that Daniels was involved with installing their boiler at Bowater. This morning I find out from Mr. Meriwether that one of the cooling towers at Bowater which our client describes working with was put in by Fluor. I don't even know of Moff knows that. I found that out as I'm walking in here.

By defendants ignoring properly noticed depositions that should have happened last year, if we get into a situation where all these deposition -- because you're hearing it the first time right now. We'll get it before the depo date. I'll get before the 8th. There's now twenty people that are going to say same thing. We are good and we are efficient, but our lawyers can't go through 10,000 documents from twenty different parties and depose people in a nine-day period.

THE COURT: Well, that's not before me right now. What is before me right now is just trying to get these deposition dates set. That, that ---

MS. DEAN: That is why.

THE COURT: You know, if you are going to have them set in any kind of a framework that allows the case to be tried in March, which Ms. McVey has very, very strongly

insisted upon -- that's that reason why it finally got set. It's an old case. That's what happens in these things. I'm as sympathetic as I can be about that. I used to deal with document dumps all the time by these folks. But you've got the documents, and you're going to make your best effort at it, but right now all I'm talking about is setting the depositions.

MS. DEAN: So, that's why we have request number 3 which is listed on page 4 of our motion, and that is even if they give us our documents after we requested them, even if they give us a depo date, because we have asked for well over thirty days -- we're talking more than double -- the notion that we should lose our trial date is rewarding them. What should happen is that we should have more time the entire month of February to get this done, which can't occur if summary adjudication happens on the 26th.

And sure, we're saying for people that know what you want -- you were very clear; Fluor Daniels, Daniel, UCC, get with the program -- and have caused this delay shouldn't be rewarded for putting plaintiff in a pinch and, therefore, they can still have directed verdicts heard, they can still have motions heard, but we shouldn't have to be pushed in this two-week timeframe. So, part of our request is not only do we confirm the date, which is very helpful so that everybody knows what's happening in the

next two weeks, but that as we confirm these dates.

If we sit down and it turns out there are four depositions on the 8th -- and I think that's a reality -- we can then look at the entire month of February on working this out with everybody because summary adjudication isn't occurring because discovery wasn't completed. And the only reason it wasn't completed is because they did not respond to a request that they should have. And I think given that those are the clear facts, that is a fair request. So ---

THE COURT: Well, let me say this. I have no hesitation about having sanctions hearings on people that don't produce documents when they're supposed to, but I'm not going to sanction them by saying they can't pursue their motion for summary judgment. I don't know why they pursue all these motions for summary judgment; that's another hen's teeth proposition. They are rarely granted, but the deck is going to have to be cleared on that if they stay in the case or don't settle the case before we try the case. So, and I'm not -- I would not be prepared to just simply say they can't pursue their motion for summary judgment. So, I'm not going to do that, Ms. Dean.

MS. DEAN: Okay.

THE COURT: Okay.

MS. DEAN: Okay, and so we made that request for everybody in this category, the third. I hear you saying

no, so ---

THE COURT: Okay. Very good.

MR. McDONALD: Could I ---

MS. DEAN: --- in that case, we will figure out a way to make the 8th work.

THE COURT: All right. Very good.

MR. McDONALD: Can I just add one more thing, Your Honor?

THE COURT: You just won, so what are you fussing about?

MR. McDONALD: I, I want Your Honor to understand something about Daniel's responses to discovery, all right, and this hold true for every case, all right? When we respond to the initial discovery, we say -- I mean, we don't -- we're out of business now, all right? Our -- whatever project records are left are in warehouses in Greenville. We will run a search and we will pull them together and you can review them. And there have been responses from Daniel to the plaintiffs a couple of years old, and the ---

THE COURT: You don't need to get into that because ---

MR. McDONALD: Well, that's right, but ---

THE COURT: --- because this was ---

MR. McDONALD: --- when they complain about the lack

of production ---

THE COURT: This was not a squabble about production.

MR. McDONALD: Well, she tried to make it one.

THE COURT: Well, and I didn't allow that.

MR. McDONALD: Sure.

THE COURT: So I don't need to go into that.

MR. McDONALD: Okay. I just wanted you to understand. Anybody that wants to come see our documents, call us.

THE COURT: Noted.

MR. McDONALD: Okay.

THE COURT: Okay, Union Carbide.

MR. McDONALD: Oh, yes, sir -- yes, ma'am, Your Honor.

THE COURT: Let her speak first.

MR. McDONALD: Okay.

THE COURT: Ms. Dean.

MS. DEAN: Union Carbide and Mr. McDonald is okay with this. This is -- this parallels three of the cases, I believe, that are before the court. It's in *Howe*, *Smith*...

MR. McDONALD: *Howe* and *Smith*.

MS. DEAN: Just *Howe* and *Smith*.

MR. McDONALD: Just *Howe* and *Smith*.

MS. DEAN: Okay, but that the arguments are the same, and so I think efficiency wise we might want to tackle them ---

THE COURT: Sure.

MS. DEAN: --- in the same manner. But we are seeking their corporate representative depositions. I know him and Mr. Holder have been trying to discuss a resolution to that. We are even willing to consolidate the two if that is something they want. But we believe that given that we have confirmed that there was the sale of millions of pounds of asbestos insulation to Bowater where our client worked -- in the case of Ms. Smith during the time that her husband was there and in the case of Mr. Howe in locations where we believe he works -- and we need to figure out how long the asbestos would have remained because there is a gap in time that -- it's the same place, same location. We just need a date and to be able to find out.

And I know Union Carbide fairly well, and I think Mr. McDonald would say the same thing in the context of supplying asbestos for joint compound. This is my first case and our firm's first case where they supplied the same raw material, asbestos, put in a paper mill. And so we've been eager to get this deposition because unlike a lot of asbestos litigation, this is something that's at least new to me, and so learning how pellet sized versus powder asbestos worked, where it was in the plant, how it worked is really important to us understanding how we're going to prove this case and how, how quick the case is.

MR. McDONALD: If I could respond, Your Honor?

THE COURT: Again, just so I understand, documents have been exchanged. This is all about ---

MR. McDONALD: A deposition.

THE COURT: --- setting a deposition ---

MR. McDONALD: That's right, Your Honor.

THE COURT: A 30(b)(6) deposition ---

MR. McDONALD: Right, Your Honor.

THE COURT: --- by Union Carbide people to answer questions like she talked about.

MR. McDONALD: That right, Your Honor, and let's just, let's just walk through it.

THE COURT: All right.

MR. McDONALD: And I know you understand. A 30(b)(6) deposition is expensive and burdensome for the, for the defendant and, of course, it's up to the court to balance the need and the relevance, et cetera, all right?

Now, here's the situation in the case. We're talking about the *Howe* case, all right? Mr. Howe, Mr. Grant, Mr. Newland, Mr. Small all deposed. No testimony about any exposure to a Union Carbide product, all right? Put that aside. Union Carbide did provide the raw asbestos fiber, not insulation, but fibers. They had a line to Bowater, all right? So that's what they're sued about. Union Carbide responded here are our sales records to Bowater. They're all between 1965 and 1967, all right? Mr. Howe did

not arrive at Bowater until 1978, all right?

Bowater -- now, Union Carbide, it's a little bit of a mystery to them what was done with the fiber at Bowater. So, in June we served discovery on the plaintiff: what information do you have about exposure to our product? Plaintiffs did not respond to that discovery. We sent new discovery in November specifically asking what information do you have about the use of calidria at Bowater. That discovery has been ignored; plaintiffs have not responded to it. Union Carbide has moved to compel. What do you have? Do you have Bowater depositions, information? What do you have?

Bowater has now produced documents. In the document production they made this week are sworn affidavits and sworn testimony in Madison County, Illinois, that the calidria was used in the process to remove some kind of byproduct, and it was used from 19 -- sometime '66, '67, but it ended in December of 1968s. Mr. Howe did not arrive at Bowater until 1978. So, why is Union Carbide having to answer any other questions about it? There's no possible link between that fiber and Mr. Howe.

It gets slightly more complicated in the *Smith* case, slightly, but only slightly. *Smith* is a claimed take-home exposure. Ms. Smith's former husband, Lewis Childers, worked at the Bowater plant in the second half of 1968, but

he worked as an insulator employed by Daniel Construction in the construction of paper machine number 3, all right? The production was over on paper machine number 1, the Bowater documents show.

Now, just so -- we talk a lot about paper machines. A paper machine is an entire plant, all right? They are giant things, cost hundreds of millions of dollars, a thousand people in the sixties to construct. Giant construction project. Their witness in the *Howe* case, Mr. Small, said it's a separate plant, a separate building. During construction they put a fence around it. That was it. So, there's no way Childers is ever involved over there in the production in unit number 1 and involved with calidria. So, that is why we oppose.

Plaintiffs have not provided -- responded to our discovery and when you put together what's in the case, there's no way to tie back to Union Carbide. It's quite burdensome for Union Carbide to have to prepare a witness to respond to this point.

THE COURT: All right, Ms. Dean.

MS. DEAN: Briefly, twofold. The discovery requests and October request, I respectfully disagree with Mr. McDonald's depiction that we didn't respond. I've seen emails from Mr. Holder's. He explicitly and directly and quickly responded that ---

THE COURT: Well, what was the response?

MS. DEAN: We don't have documents, and December is when we first obtained the Bowater documents, and we have been very clear that we think that they are relevant. I understand Mr. McDonald has them, but there are other people like Moose that are still looking to get them. But there is nothing that we have that is discoverable that hasn't been produced.

We understood Union Carbide's fibers were sold to paper mills, including Bowater, from attorneys telling us that. That's why we included them in the suit, and we have been eager from day one to say please verify whether that's so. And so when Mr. McDonald asked, hey, how do you know that ---

MR. McDONALD: Well.

MS. DEAN: --- we did respond. We don't have documents. We just have been told you were here.

MR. McDONALD: And we ---.

MS. DEAN: So ---

THE COURT: Wait a minute. Wait a minute. Whoa, whoa, whoa. No. We're not ---

MR. McDONALD: Okay.

THE COURT: --- going to do it that way. Ms. Dean is going to complete, and of course I will always come back to you, Mr. McDonald.