

Exhibit A

Trial Court Order

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

TERRAN DUPREE,)
Plaintiff,)

Vs)
JOHNSON & JOHNSON, et al,))
Defendants)

IN THE COURT OF
COMMON PLEAS

RECEIVED
Apr 23 2020
SC Court of Appeals

CASE NO. 2018-CP-10-2899

MARCH 13, 2020

COLUMBIA, SOUTH CAROLINA

HONORABLE JEAN TOAL, JUDGE

A P P E A R A N C E S:

BY: W. CHRISTOPHER SWEET, ESQUIRE

Attorney for the Plaintiff

BY: LOUIS P. HERNS, ESQUIRE

Attorney for the Defendants

KATHERINE A. SPIRES

REGISTERED PROFESSIONAL REPORTER

1 STATE OF SOUTH CAROLINA)
 2) IN THE COURT OF
 3 COUNTY OF CHARLESTON) COMMON PLEAS
 4
 5 MARY MARGARET DEVEY,)
 6 Individually and as Personal)
 7 Representative of the Estate)
 8 of ROBERT L. DEVEY,)
 9 Plaintiffs,)
 10 Vs) CASE NO. 2018-CP-10-710
 11 JOHNSON & JOHNSON, et al,)
 12 Defendants)

13
 14 MARCH 13, 2020
 15 COLUMBIA, SOUTH CAROLINA
 16

17 HONORABLE JEAN TOAL, JUDGE

18 A P P E A R A N C E S:

19 BY: W. CHRISTOPHER SWEET, ESQUIRE

20 Attorney for the Plaintiff

21 BY: LOUIS P. HERNS, ESQUIRE

22 Attorney for the Defendants
 23

24 KATHERINE A. SPIRES

25 REGISTERED PROFESSIONAL REPORTER

1 briefing that Judge Viscomi -- it's the exact same brief
2 and they just changed it. And she consolidated the
3 cases. In light of this exact same briefing.

4 On one page of their brief it talks about towards
5 the end, it talks about these three plaintiffs. And
6 that was the Barden case up in New Jersey because we
7 don't have three plaintiffs in this case. So I would
8 say these arguments have been tried and failed in New
9 Jersey in front of Judge Viscomi. She consolidated the
10 cases.

11 Your Honor, I just ask again reiterate, I think it's
12 appropriate to consolidate these cases. And unless Your
13 Honor has any questions, I'll rest on that.

14 THE COURT: Very good.

15 MR. HERNS: Thank you.

16 THE COURT: All right. In the case of Mary Margaret
17 Devey verses Johnson & Johnson and Johnson & Johnson
18 Consumer Inc., 2018-CP-10-790; and Terran, T-E-R-R-A-N,
19 Dupree against Johnson & Johnson and Johnson & Johnson
20 Consumer Inc., 2018-CP-10-2899; both cases pending in
21 Charleston County, I grant the plaintiff's motion to
22 consolidate. I find that there are sufficient common
23 issues of fact and law that judicial economy in the
24 trial of these lengthy but very similar cases would be
25 well served by consolidating these cases.

1 I do not consolidate 21 cases as was done in
2 Missouri. I can understand the confusion that may arise
3 in such a large consolidation. This is a consolidation
4 of two cases. And I believe the jury will well be able
5 to differentiate between the two cases in the areas
6 where differentiation is needed.

7 Each case is a personal injury case involving the
8 personal injury damages and no others. There are
9 certainly factual differences between these two
10 plaintiffs. And some factual difference between the
11 exposure in terms of an occupational exposure in
12 addition to an exposure to baby powder in the case of
13 Mr. Devey. And a personal exposure to Johnson & Johnson
14 Baby Powder and allegedly some take-home exposure to
15 occupational type asbestos exposure in the case of
16 Ms. Dupree or Miss Dupree. But those differences can be
17 very easily made in a way that is comprehensible to the
18 jury.

19 The big issue in this case is whether Johnson &
20 Johnson Baby Powder contains asbestos. And whether --
21 and the second issue is whether Johnson & Johnson -- the
22 use of Johnson & Johnson Baby Powder by Mr. Devey and
23 Miss Dupree resulted in their contraction of
24 mesothelioma.

25 The answer to these questions depends on an almost

1 completely common set of facts. Because the big issue
2 in these type cases and particularly in these baby
3 powder cases is a clash of experts who are very
4 well-known and seen time after time in these cases. A
5 constellation of experts on the plaintiff's side and on
6 the defendant's side a corporate representative is
7 always one individual from Johnson & Johnson and other
8 expert witnesses that are common to everyone of these
9 cases that I've tried and I've now tried several Johnson
10 & Johnson cases to verdict or to impasse.

11 So I believe that not only to these cases, but for
12 what it will teach us as we move through this -- the
13 other Johnson & Johnson Baby Powder cases or other
14 defendant baby powder manufacturing cases that are
15 pending in South Carolina now asbestos docket which I
16 manage, it behooves us to take some steps towards
17 judicial economy in the interest of giving both
18 plaintiffs and defendants their day in court on a basis
19 that can be as accelerated as possible particularly for
20 living mesothelioma claimants as is anticipated by the
21 statutory laws of South Carolina that discuss how to
22 docket and how to schedule the trial of these cases.

23 So I will acknowledge the very well researched and
24 well presented arguments of plaintiffs and defendant and
25 realizing that the matter is not one of -- upon which

1 bright minds can't always agree, I nevertheless think it
2 is in the best interest of justice generally and for the
3 participants in these two cases to consolidate them to
4 trial in November and that is what I have ordered be
5 done.

6 MR. SWETT: Your Honor, I think I heard you, but I
7 just want to make sure I heard you correctly. And you
8 make your ruling, you considered the fact that Ms. Devey
9 has the small component of wrongful death damages as
10 well? You considered that and still --

11 THE COURT: Yes. But the -- again, they're just two
12 cases. And the individualized claims are very easy to
13 explain in an individualized way to the jury. Frankly,
14 this is a much easier case to try than cases that have
15 one plaintiff, but a host of defendants. And I've tried
16 those cases many times. Those cases sometimes present
17 more difficult considerations to the jury than does
18 this.

19 But Johnson & Johnson still has available to it all
20 kinds of theories that involve other sources of possible
21 contraction of cancers which it will be free to explore
22 in each of these cases. And I think can explore in a
23 way that protects the individual nature of the decision
24 that must be made.

25 I will tell you with respect to both the actual and

1 punitive damages, separate verdicts will be submitted.
2 I will bifurcate the punitive damage part of the case as
3 I always do in asbestos cases and in the punitive part
4 of the case there won't be any confusion about what is
5 being asked. It will be asked with respect to each case
6 individually. And that may vary depending on what the
7 evidence discloses about the contraction and what the
8 state of knowledge was of J&J at the various points in
9 times when the exposure was had.

10 So I think that judicial efficiency is much served
11 by a consolidation of these very similar expert witness
12 presentations that take up the vast majority of these
13 cases and those things which are individualized for the
14 two plaintiffs and to the various defenses involving
15 those individual plaintiffs can certainly be explored in
16 a way that does not inhibit or negatively affect either
17 plaintiffs or defendant.

18 MR. SWETT: Thank you, Your Honor.

19 THE COURT: All right. What else do I need to do?

20 MS. MCVEY: I don't think there's anything else.

21 THE COURT: Mr. HERNs, anything further?

22 MR. HERNs: No, Your Honor. Nothing further.

23 THE COURT: Very good. Court will be adjourned.

24 - - -END OF REQUESTED TRANSCRIPT OF RECORD- - -
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, KATHERINE A. SPIRES, Registered Professional Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for South Carolina, on the 13th of March, 2020.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 28, 2020

Katherine A. Spires

Katherine A. Spires

Registered Professional Reporter

Exhibit B

Email from Judge Toal

-----Original Message-----

From: Toal, Jean <JToal@sccourts.org>

Sent: Friday, April 10, 2020 10:56 AM

To: Louis HERNs <Louis@milliganlawfirm.com>

Cc: Selert, Hali <hselert@sccourts.org>; Chris Swett (cswett@motleyrice.com) <cswett@motleyrice.com>; LeBlanc, Sarah <sleblanc@motleyrice.com>; Jackie Mazade <Jackie@milliganlawfirm.com>

Subject: Re: Motion to Consolidate DeVey and Dupree

Louis: sorry to be tardy replying to this. Attending Stations and Good Friday devotions remotely. You are correct but if you feel you need more to preserve your clients' position for appeal, let me know. Be safe and well. Have a blessed Easter. Jean Toal

Sent from my iPhone

On Apr 9, 2020, at 5:22 PM, Louis HERNs <Louis@milliganlawfirm.com> wrote:

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. *** Dear Judge Toal,

Trust that you are staying healthy during these "Stay at Home" times.

I am writing regarding the Hearing that was held regarding the Motion to Consolidate the DeVey and Dupree Motley Rice cases pending in Charleston. You granted Mr. Sweet's motion and placed your reasons for granting the motion on the record at the end of the hearing. After the hearing had concluded, I approached the bench to give my card to the Court Reporter and exchange pleasantries with you. During our discussions, I addressed whether a written Order would be filed and believe you stated that the record should suffice. I am writing to confirm that a written Order granting Mr. Swett's Motion to Consolidate will not be forthcoming.

As I end all my e-mails these days: "Stay healthy my friend."

Louis

MILLIGAN

<image001.jpg>

HERNS

Louis P. HERNs, Esq.

Milligan HERNs, PC

721 Long Point Road

Suite 401

Mt. Pleasant SC 29464

(843) 971-6750

(843) 834-2377 (Cell)

louis@milliganlawfirm.com<mailto:louis@milliganlawfirm.com>

This email is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 and is legally privileged. The Information contained in this communication is confidential, is subject to the attorney-client privilege, may constitute inside information, and is intended only for the use of the addressee. It is the property of Milligan Hems, PC. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return e-mail, and destroy this communication and all copies thereof, including all attachments.

~~~ 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.

# **Exhibit C**

## **Operative Complaints**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
  
NINTH JUDICIAL CIRCUIT

MARY MARGARET DEVEY, )  
Individually and as Personal )  
Representative of the Estate of ROBERT )  
L. DEVEY )

C/A No. 18-CP-10-790

Plaintiffs, )  
)  
)

v. )  
)  
)

JOHNSON & JOHNSON )  
A New Jersey Corporation )

(Wrongful Death, Consortium, Survival)  
Mesothelioma

JOHNSON & JOHNSON CONSUMER, )  
INC. )  
A New Jersey Corporation )

**AMENDED COMPLAINT**

Plaintiffs Demand  
A Jury Trial

CVS PHARMACY, INC )  
A Rhode Island Corporation )

PIGGLY WIGGLY CAROLINA )  
COMPANY, INC. )  
A South Carolina Corporation )

METROPOLITAN LIFE INSURANCE )  
COMPANY )  
A New York Corporation )

RITE AID OF SOUTH CAROLINA, )  
INC. )  
A South Carolina Corporation )

Defendants. )  
)  
)  

---

BY \_\_\_\_\_

JULIE J. ARMSTRONG  
CLERK OF COURT

2019 FEB 26 AM 10:52

FILED

Now comes Plaintiff Mary Margaret DeVey, Individually and as Personal Representative of the Estate of Robert L. DeVey, deceased, and sues the Defendants. Plaintiff amends her Complaint and alleges as follows:

## PARTIES

1. Plaintiff is a citizen and resident of the State of South Carolina. ROBERT L. DEVEY was exposed to asbestos while using Johnson & Johnson Baby Powder (the "PRODUCTS") in various homes from the 1960s through the 2000s. The dust and fibers from the asbestos-containing products permeated his person and clothes. As a direct and proximate result of his inhalation and ingestion of dust particles and fibers, he was diagnosed with Mesothelioma on or about November 21, 2017 which resulted in his death October 21, 2018.

2. Defendant JOHNSON & JOHNSON is a New Jersey corporation with its principal place of business in the State of New Jersey. At all pertinent times, JOHNSON & JOHNSON was engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing asbestos-containing TALC PRODUCTS to which ROBERT L. DEVEY was exposed. At all pertinent times, JOHNSON & JOHNSON regularly transacted, solicited, and conducted business in all States of the United States, including the State of South Carolina. JOHNSON & JOHNSON can be served via its agent for process: M.H. Ullman, Registered Agent, One Johnson & Johnson Plaza, New Brunswick, NJ 08933.

3. Defendant JOHNSON & JOHNSON CONSUMER, INC. is a New Jersey corporation with its principal place of business in the State of New Jersey. At all pertinent times, JOHNSON & JOHNSON CONSUMER, INC. was engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing asbestos-containing TALC PRODUCTS to which ROBERT L. DEVEY was exposed. At all pertinent times, JOHNSON & JOHNSON CONSUMER, INC. regularly transacted, solicited, and conducted business in all States of the United States, including the State of South Carolina. JOHNSON & JOHNSON CONSUMER, INC. can be served via its agent for process: Johnson & Johnson Registered Agent, One Johnson & Johnson Plaza, New Brunswick, NJ 08933.

4. Defendants JOHNSON & JOHNSON and JOHNSON & JOHNSON CONSUMER, INC. are hereinafter referred to as the "Talc Defendants."

5. All other defendant corporations (hereinafter "Product Defendants") or their predecessors in interest, at all times relevant, engaged in one or more of the following activities involving asbestos fibers in their asbestos-containing products including, but not limited to, the mining, milling, manufacturing, designing, distributing, supplying, selling, specifying, using, recommending, and/or installing asbestos materials or other dangerous products. The application or use of asbestos or asbestos-containing products in conjunction with their products or the selling of said products was a foreseeable use.

6. At all times pertinent hereto, the defendant corporations acted through their duly authorized agents, servants and employees who were in all times acting within the course of their respective employment and in the course and scope of their duties in furtherance of the business of the defendant corporations and for their benefit.

## JURISDICTION

8. As evidenced by the caption of the instant Complaint, which is specifically incorporated herein, some of the 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 and/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, as well as the due process clause of the United States and South Carolina Constitutions.

9. At all pertinent times, all Defendants were engaged in the research, development, mining, manufacturing, processing, designing, testing, supplying, selling, labeling, and marketing of asbestos-containing PRODUCTS, and introduced such products into interstate commerce with knowledge and intent that such products be sold in various States, including South Carolina, and/or conspired to suppress the knowledge about the hazards of such asbestos-containing PRODUCTS being distributed, marketed, supplied, sold, and used in the State of South Carolina.

10. ROBERT L. DEVEY was exposed to asbestos-containing PRODUCTS for which the Defendants are responsible and developed mesothelioma while living in South Carolina. Specifically, he was diagnosed with mesothelioma in November 2017 at MUSC Health in Charleston, South Carolina.

11. During the time Decedent was exposed to asbestos fibers from PRODUCTS of various defendants, the PRODUCTS reached Decedent's locale without any substantial change in their condition from the time they were sold or distributed by the Defendants.

12. Mesothelioma is a progressive, insidious disease and, on information and belief, such exposure in South Carolina substantially contributed to Decedent's contraction of his mesothelioma and ultimate death caused by breathing dust and fibers from defendants' asbestos-containing products.

13. Venue is proper in Charleston County pursuant to S.C. Code § 15-7-30.

### ALLEGATIONS COMMON TO ALL COUNTS

14. Talc was the main substance used in talcum and baby powders during the 1960s through the 2000s.

15. The JOHNSON & JOHNSON defendants manufactured the PRODUCTS.

16. PIGGLY WIGGLY CAROLINA COMPANY, INC., CVS PHARMACY, INC. and RITE AID sold the PRODUCTS to ROBERT L. DEVEY.

17. The talc mined and incorporated into the PRODUCTS by defendants and sold by defendants to ROBERT L. DEVEY contained up to 50% asbestos.

18. At all pertinent times, a feasible alternative to the PRODUCTS has existed. Cornstarch is an organic carbohydrate that is quickly broken down by the body with no known health effects. Cornstarch powders have been sold and marketed for the same uses with nearly the same effectiveness.

19. Historically, JOHNSON & JOHNSON Baby Powder has been a symbol of freshness, cleanliness, and purity. During the time in question, the JOHNSON & JOHNSON defendants advertised and marketed this product as the beacon of “freshness” and “comfort”, eliminating friction on the skin, absorbing “excess wetness” helping keep skin feeling dry and comfortable, and “clinically proven gentle and mild.”

## COUNT ONE

### Negligence as to All Defendants

20. Plaintiffs adopt and re-allege each prior paragraph, where relevant, as if set forth fully herein.

21. Defendants, at all times material hereto, acted through their respective officers, employees and agents, who in turn were acting within the scope of their authority and employment in furtherance of the business of Defendants.

22. Defendants were engaged, directly or indirectly, in the business of mining, milling, producing, processing, compounding, converting, designing, manufacturing, selling, merchandising, importing, supplying, distributing or retailing the PRODUCTS and placed them in the stream of commerce.

23. At all pertinent times, Defendants had a duty to exercise reasonable care to consumers, including ROBERT L. DEVEY, in the design, development, manufacturing, testing, inspection, packaging, promotion, marketing, distribution, supplying, labeling and/or sale of the PRODUCTS.

24. Defendants, directly or indirectly, caused their asbestos-containing PRODUCTS to be sold to or used by ROBERT L. DEVEY in his home.

25. ROBERT L. DEVEY neither misused nor materially altered the PRODUCTS, and they were in the same or substantially similar condition that they were in at the time that they left the hands of the Defendants.

26. At all relevant times, the PRODUCTS were used in an intended and foreseeable manner, and ROBERT L. DEVEY was exposed to and came in contact with Defendants' asbestos PRODUCTS and inhaled or ingested the asbestos dust and fibers emanating from said PRODUCTS.

27. During the time that Defendants were engaged, directly or indirectly, in the business of mining, milling, producing, processing, compounding, converting, designing, manufacturing, selling, merchandising, importing, supplying, distributing or retailing the PRODUCTS, Defendants knew or in the exercise of reasonable care should have known, that their asbestos PRODUCTS were defective, ultra-hazardous, dangerous and otherwise highly harmful to consumers such as ROBERT L. DEVEY.

28. Defendants knew, or the exercise of reasonable care should have known, that the use of their asbestos PRODUCTS would cause asbestos dust and fibers to be released into the air and would create dangerous and unreasonable risks of injury to the lungs, respiratory systems, and other bodily organs of users of their products and to others breathing that air and coming into contact with that dust.

29. ROBERT L. DEVEY did not know the nature and extent of the injuries that would result from contact with and exposure to Defendants' asbestos PRODUCTS or from the inhalation or ingestion of the asbestos dust and fibers.

30. Defendants knew, or in the exercise of reasonable care should have known, that consumers such as ROBERT L. DEVEY would come into contact with and be exposed to their asbestos PRODUCTS and would inhale or ingest asbestos dust and fibers as a result of the ordinary and foreseeable use of said PRODUCTS.

31. Despite the facts set forth above, Defendants were negligent, grossly negligent, willful, wanton, reckless and careless, and breached their respective duties of care in one or more of the following respects:

(a) In designing and placing into the stream of commerce PRODUCTS that were defective, ultra-hazardous, dangerous and otherwise highly harmful to consumers such as ROBERT L. DEVEY.

(b) In manufacturing and placing into the stream of commerce PRODUCTS that were defective, ultra-hazardous, dangerous and otherwise highly harmful to consumers such as ROBERT L. DEVEY.

(c) In selling and placing into the stream of commerce PRODUCTS that were defective, ultra-hazardous, dangerous and otherwise highly harmful to consumers such as ROBERT L. DEVEY.

(d) In failing to warn or provide sufficient warnings to ultimate users such as ROBERT L. DEVEY of the risks, dangers and harms associated with exposure to, contact with, and the use and handling of Defendants' asbestos PRODUCTS, including the inhalation or ingestion of the asbestos dust and fibers resulting from the ordinary and foreseeable use of the PRODUCTS;

(e) In failing to package their asbestos PRODUCTS in a manner that would assure that users such as ROBERT L. DEVEY would not come into contact with or be exposed to the asbestos dust and fibers resulting from the ordinary and foreseeable use of Defendants' asbestos PRODUCTS;

(f) In failing to properly test their PRODUCTS to determine adequacy and effectiveness or safety measures, if any, prior to releasing the PRODUCTS for consumer use and failing to test their PRODUCTS to determine the increased risk of cancer, including mesothelioma, resulting from the ordinary and foreseeable use of the PRODUCTS;

(g) In failing to inform the ultimate users such as ROBERT L. DEVEY as to the safe and proper methods of handling and using the products or of any safeguards or protective equipment necessary so that he would not inhale or ingest the asbestos dust and fibers resulting from the ordinary and foreseeable use of Defendants' asbestos PRODUCTS;

(h) In failing to instruct the ultimate users such as ROBERT L. DEVEY as to any methods available for reducing the type of exposure to the asbestos PRODUCTS which causes increased risk of cancer, including mesothelioma;

(i) In failing to remove the PRODUCTS from the market when Defendants knew or should have known the PRODUCTS were defective;

(j) In failing to develop alternate products or seek substitute materials in lieu of the use of asbestos in the PRODUCTS;

(k) In failing to use reasonable care in the specification, selection, and distribution of component parts for the PRODUCTS;

(l) In marketing and labeling the asbestos PRODUCTS as safe for all uses despite knowledge to the contrary;

(m) In ignoring and suppressing medical and scientific information, studies, tests, data and literature which Defendants acquired during the course of their normal business activities concerning the risk of asbestosis, scarred lungs, cancer, mesothelioma, respiratory disorders and other illnesses and diseases to people such as ROBERT L. DEVEY who were exposed to Defendants' asbestos PRODUCTS;

(n) In disregarding medical and scientific information, studies, tests, data and literature concerning the causal relationship between the inhalation or ingestion of asbestos dust and fibers, and such diseases as asbestosis, mesothelioma, scarred lungs, cancer, respiratory disorders and other illnesses and diseases; and

(o) In failing to act like a reasonably prudent company under similar circumstances.

32. Defendants otherwise acted negligently, recklessly and with intentional disregard for the welfare of ROBERT L. DEVEY in the mining, milling, producing, processing, compounding, converting, designing, manufacturing, selling, merchandising, importing, supplying, distributing, retailing, or otherwise placing in the stream of commerce their asbestos PRODUCTS.

33. At all times relevant, it was feasible for Defendants to have warned ROBERT L. DEVEY, tested their asbestos PRODUCTS, designed safer PRODUCTS and/or substituted asbestos-free PRODUCTS;

34. Each Defendant's negligence was a substantial factor in causing ROBERT L. DEVEY's mesothelioma.

35. As a direct and proximate result of the Defendants' negligence and the breaches complained of herein, ROBERT L. DEVEY was exposed to and came in contact with Defendants' asbestos PRODUCTS and inhaled or ingested asbestos dust and fibers resulting from the ordinary and foreseeable use of said asbestos PRODUCTS.

36. ROBERT L. DEVEY developed mesothelioma and died as a direct and proximate result of said exposure to asbestos PRODUCTS.

37. As a direct and proximate result of the Defendants' negligent and/or grossly negligent misconduct or omissions, ROBERT L. DEVEY has:

- (a) suffered serious personal injuries, which have caused permanent impairment;
- (b) endured physical pain and suffering;
- (c) suffered mental and emotional distress;
- (d) suffered scarring and permanent disfigurement and disability;
- (e) has incurred unnecessary medical expenses – past, present and future;
- (f) experienced loss of enjoyment of life – past, present, and future; and
- (g) has been injured and damaged on such other and further particulars as the evidence may show.

38. Wherefore, Plaintiff demands judgment against Defendants, jointly and severally, for all actual and compensatory damages together with interest, if applicable, and all costs of this action and for such other and further relief as this Honorable Court and/or jury may deem just and proper

**COUNT TWO**  
Strict Liability as to All Defendants

39. Plaintiffs adopt and re-allege each prior paragraph, where relevant, as if set forth fully herein.

40. Defendants were engaged, directly or indirectly, in the business of mining, milling, producing, processing, compounding, converting, designing, manufacturing, selling, merchandising, importing, supplying, distributing or retailing the PRODUCTS and placed them in the stream of commerce.

41. Defendants knew or had reason to know that ROBERT L. DEVEY and other persons similarly situated would be ultimate users or consumers of their asbestos PRODUCTS or would be exposed to their asbestos PRODUCTS.

42. Defendants sold or otherwise placed the asbestos PRODUCTS into the stream of commerce in a defective condition, unreasonably dangerous to ROBERT L. DEVEY and other persons similarly situated.

43. Throughout the many years that ROBERT L. DEVEY and other persons similarly situated were exposed to and used Defendants' asbestos PRODUCTS, said asbestos PRODUCTS reached the users and consumers without substantial change in the condition in which they were sold.

44. The ordinary and foreseeable use of Defendants' asbestos PRODUCTS constituted a dangerous and ultra-hazardous activity and created an unreasonable risk of injury to users and bystanders.

45. The Defendants' PRODUCTS posed potential risks that were known and/or should have been known by Defendants at the time of design, manufacture, distribution, and/or sale.

46. The Defendants' PRODUCTS presented a substantial danger during intended ordinary and reasonably foreseeable use not readily recognizable to the ordinary user.

47. The danger associated with the use of the Defendants' PRODUCTS as designed outweighed the utility.

48. Defendants' asbestos PRODUCTS were defective in that they were incapable of being made safe for their ordinary and intended use and purpose, and Defendants failed to give any warnings or instructions, or failed to give adequate or sufficient warnings or instructions about the risks, dangers and harms associated with the use of their asbestos PRODUCTS.

49. As a direct and proximate result of the defective condition of Defendants' asbestos PRODUCTS, ROBERT L. DEVEY was exposed to and came in contact with Defendants' asbestos PRODUCTS and inhaled or ingested asbestos dust and fibers resulting from the ordinary and foreseeable use of said asbestos PRODUCTS.

50. ROBERT L. DEVEY developed mesothelioma and died as a direct and proximate result of said exposure to asbestos PRODUCTS and has:

- (a) suffered serious personal injuries, which have caused permanent impairment;
- (b) endured physical pain and suffering;
- (c) suffered mental and emotional distress;
- (d) suffered scarring and permanent disfigurement and disability;
- (e) has incurred unnecessary medical expenses – past, present and future;
- (f) experienced loss of enjoyment of life – past, present, and future; and
- (g) has been injured and damaged on such other and further particulars as the evidence may show.

51. Wherefore, Plaintiff demands judgment against Defendants, jointly and severally, for all actual and compensatory damages together with interest, if applicable, and all costs of this action and for such other and further relief as this Honorable Court and/or jury may deem just and proper.

### COUNT THREE

#### Breach of Warranty as to All Defendants

52. Plaintiffs adopt and re-allege each prior paragraph, where relevant, as if set forth fully herein.

53. Defendants expressly or impliedly warranted that their asbestos PRODUCTS, which they mined, milled, produced, processed, compounded, converted, designed, manufactured, sold, imported, supplied, distributed, merchandised, or otherwise placed in the stream of commerce, were merchantable, reasonably fit for ordinary use, and safe for their intended purposes.

54. Defendants breached said warranties in that their asbestos PRODUCTS were defective; ultra-hazardous; dangerous; unfit for use; not merchantable; not safe for their intended, ordinary and foreseeable use and purpose; and certain harmful, poisonous and deleterious matter was given off into the atmosphere when ROBERT L. DEVEY used the asbestos PRODUCTS.

55. As a direct and proximate result of Defendants' breach of warranties, ROBERT L. DEVEY was exposed to and came in contact with Defendants' asbestos PRODUCTS and inhaled or ingested asbestos dust and fibers resulting from the ordinary and foreseeable use of said asbestos PRODUCTS.

56. ROBERT L. DEVEY developed mesothelioma and died as a direct and proximate result of said exposure to asbestos PRODUCTS.

57. As a direct and proximate result of the Defendants' breach of warranties, ROBERT L. DEVEY has:

- (a) suffered serious personal injuries, which have caused permanent impairment;
- (b) endured physical pain and suffering;
- (c) suffered mental and emotional distress;
- (d) suffered scarring and permanent disfigurement and disability;
- (e) has incurred unnecessary medical expenses – past, present and future;
- (f) experienced loss of enjoyment of life – past, present, and future; and
- (g) has been injured and damaged on such other and further particulars as the evidence may show.

58. Wherefore, Plaintiff demands judgment against Defendants, jointly and severally, for all actual and compensatory damages together with interest, if applicable, and all costs of this action and for such other and further relief as this Honorable Court and/or jury may deem just and proper.

## COUNT FOUR

### Fraud and Misrepresentation as to All Defendants

59. Plaintiffs adopt and re-allege each prior paragraph, where relevant, as if set forth fully herein.

60. Defendants failed to disclose and intentionally and negligently misrepresented to ROBERT L. DEVEY and other persons similarly situated the health risks created by the ordinary and foreseeable use of Defendants' asbestos PRODUCTS.

61. Defendants knew that their misrepresentations were false and acted with a reckless disregard for the truth with the intent that their misrepresentations be relied upon by consumers, such as ROBERT L. DEVEY.

62. ROBERT L. DEVEY was ignorant of the falsity of Defendants' misrepresentations, which were material to his use of the PRODUCTS.

63. ROBERT L. DEVEY relied upon said misrepresentations, and his reliance was foreseeable to Defendants.

64. As a result of Defendants' conduct, omissions and misrepresentations, ROBERT L. DEVEY was exposed to and came in contact with Defendants' asbestos PRODUCTS and inhaled or ingested asbestos dust and fibers resulting from the ordinary and foreseeable use of said asbestos PRODUCTS.

65. ROBERT L. DEVEY developed mesothelioma and died as a direct and proximate result of said exposure to asbestos PRODUCTS.

66. As a direct and proximate result of the Defendants' misrepresentations, Plaintiff has:

- (a) suffered serious personal injuries, which have caused permanent impairment;
- (b) endured physical pain and suffering;
- (c) suffered mental and emotional distress;
- (d) suffered scarring and permanent disfigurement and disability;
- (e) has incurred unnecessary medical expenses – past, present and future;
- (f) experienced loss of enjoyment of life – past, present, and future; and
- (g) has been injured and damaged on such other and further particulars as the evidence may show.

67. Wherefore, Plaintiff demands judgment against Defendants, jointly and severally, for all actual and compensatory damages together with interest, if applicable, and all costs of this action and for such other and further relief as this Honorable Court and/or jury may deem just and proper

#### **COUNT FIVE**

##### Violation of the South Carolina Unfair Trade Practices Act as to All Defendants

68. Plaintiffs adopt and re-allege each prior paragraph, where relevant, as if set forth fully herein.

69. Defendants' misrepresentations, actions and omissions described above and hereafter constitute unfair and deceptive acts and practices in the conduct of trade and commerce in violation of South Carolina Code section 39-5-20.

70. Defendants' misrepresentations, actions and omissions are capable of repetition and adversely affect the public interest.

71. Defendants' use of unfair and deceptive methods and practices was, and is, a willful and knowing violation of South Carolina Code section 39-5-20.

72. Decedent has been injured and damaged as set forth above as a result of Defendants' unfair and deceptive trade practices and acts.

73. Wherefore, Plaintiff is informed and believes that he is entitled to recover actual damages, attorneys' fees, and treble the actual damages pursuant to South Carolina Code section 39-5-140 from Defendants, jointly and severally, for unfair and deceptive trade practices and acts and prays for such relief.

#### **COUNT SIX**

##### Wrongful Death as to All Defendants

74. Plaintiffs adopt and re-allege each prior paragraph, where relevant, as if set forth fully herein.

75. As a result of the development of mesothelioma caused by breathing defendant's asbestos-containing PRODUCTS, Decedent suffered and sustained very serious injuries to his person requiring medical treatment, conscious pain and suffering, and ultimately death.

76. Plaintiff alleges that as a result of the aforesaid wrongful death of Decedent, Decedent's beneficiaries have and will suffer pecuniary loss, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, deprivation of use and comfort of Decedent's society, all both past and future, and funeral expenses, all to the beneficiaries actual and punitive damages in an amount to be determined by the trier of fact.

77. Wherefore, Plaintiff prays judgment, joint and several, against the Defendants for compensatory and punitive damages in amounts to be determined by the trier of fact, and the costs of this action.

## COUNT SEVEN

### Loss of Consortium as to All Defendants

78. Plaintiffs adopt and re-allege each prior paragraph, where relevant, as if set forth fully herein.

79. The Defendants' combined and respective actions and inactions were each a direct and proximate cause of decedent's injuries and a tortious violation of MARY MARGARET DEVEY's right to the companionship, aid, society and services of his spouse.

80. As a direct and proximate result of the conduct and misconduct of the Defendants, MARY MARGARET DEVEY has suffered and continues to suffer the loss of consortium, household services, aid, society, support, and companionship.

81. Wherefore, MARY MARGARET DEVEY demands judgment against all Defendants, jointly and severally, for the loss of consortium, household services, aid, society, support, and companionship to which he is entitled with his spouse.

### Punitive Damages as to All Defendants

82. Plaintiffs adopt and re-allege each prior paragraph, where relevant, as if set forth fully herein.

83. The actions and inactions of Defendants were of such a character as to constitute a pattern or practice of willful, wanton and reckless misconduct causing substantial harm and resulting in damages to Plaintiffs.

84. More specifically, Defendants acted with a conscious and flagrant disregard for the rights and safety of Decedent, and/or deliberately engaged in willful, wanton and reckless disregard for the life and safety of Decedent.

85. Examples of Defendants' willful, wanton and reckless misconduct include, but are not limited to:

a) Purposefully not warning consumers about the hazards of their asbestos PRODUCTS despite knowing that ordinary and foreseeable use created an unreasonable risk of lung disease and cancer, including mesothelioma, to ultimate users;

b) The intentional inadequacy and delay of safe use instructions on their asbestos PRODUCTS;

c) Never issuing recall-type letters or notices to ultimate and prior users;

d) Frustrating the publication of articles on the asbestos health hazards in the literature;

e) Top management officials of Defendants rejected advice of medical and other corporate officials to warn of the hazards of their asbestos PRODUCTS; such rejection by top management officials being motivated by the possibility of adverse effects on profits;

f) Refusing to advise consumers of medical findings known to Defendants concerning the dangers of asbestos exposure; and

g) Suppressing the dissemination of information to consumers, including Decedent, concerning the hazards of asbestos exposure.

86. By reason of the foregoing, Defendants are liable for punitive and exemplary damages.

87. Wherefore, Plaintiff demands judgment against Defendants, jointly and severally, for punitive and exemplary damages, plus interest, costs and attorneys' fees for having to bring this action, and such other and further relief as this Honorable Court or jury may deem just and proper.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs pray as follows:

88. For a trial by jury and judgment against the Defendants, jointly and severally, for such sums as actual and other compensatory damages in an amount as a jury may determine;

89. For exemplary and punitive damages against Defendants in an amount as a jury may determine to halt and deter such conduct;

90. For the costs of this suit, including attorney's fees, expenses, and interest; and

91. For such other and further relief to which they may be entitled and as this Honorable Court may deem just and proper.

BY:  
MOTLEY RICE LLC



W. Christopher Swett (SC Bar No. 78251)  
28 Bridgeside Blvd.  
PO Box 650001  
Mt. Pleasant, SC 29464  
Tel: (843) 216-9000  
Fax: 843-216-9450  
[cswett@motleyrice.com](mailto:cswett@motleyrice.com)  
ATTORNEY FOR PLAINTIFFS

February 25, 2019  
Mt. Pleasant, SC



## PARTIES

1. TERRAN DUPREE resides at 745 George Washington Blvd., Sumter, South Carolina 29154. TERRAN DUPREE was exposed to asbestos from the use of Johnson & Johnson Baby Powder (the “PRODUCTS”) beginning at birth in 1999. The dust and fibers from the asbestos-containing PRODUCTS permeated her person and clothes. As a direct and proximate result of TERRAN DUPREE’s inhalation and ingestion of asbestos dust particles and fibers, she was diagnosed with Peritoneal Malignant Mesothelioma on or about 2014. TERRAN DUPREE was a minor until August 6, 2017. TERRAN DUPREE did not know, nor should she have known that she had a cause of action until it was revealed for the very first time during litigation in 2017 that Johnson & Johnson’s Baby Powder contained asbestos, which is a signature cause of mesothelioma, and that Johnson & Johnson had actively concealed this fact for over 40 years.
2. Defendant JOHNSON & JOHNSON is a New Jersey corporation with its principal place of business in the State of New Jersey. At all pertinent times, JOHNSON & JOHNSON was engaged in the business of manufacturing, marketing, testing, promoting, selling, and/or distributing asbestos-containing PRODUCTS to which TERRAN DUPREE was exposed. At all pertinent times, JOHNSON & JOHNSON regularly transacted, solicited, and conducted business in all States of the United States, including the State of South Carolina. JOHNSON & JOHNSON can be served via its agent for process: M.H. Ullman, Registered Agent, One Johnson & Johnson Plaza, New Brunswick, NJ 08933.
3. Defendant JOHNSON & JOHNSON CONSUMER, INC. is a New Jersey corporation with its principal place of business in the State of New Jersey. At all pertinent times, JOHNSON & JOHNSON CONSUMER, INC. was engaged in the business of manufacturing,

marketing, testing, promoting, selling, and/or distributing asbestos-containing PRODUCTS to which TERRAN DUPREE was exposed. At all pertinent times, JOHNSON & JOHNSON CONSUMER, INC. regularly transacted, solicited, and conducted business in all States of the United States, including the State of South Carolina. JOHNSON & JOHNSON CONSUMER, INC. can be served via its agent for process: Johnson & Johnson Registered Agent, One Johnson & Johnson Plaza, New Brunswick, NJ 08933.

4. Defendant IMERYYS TALC AMERICA, INC. f/k/a LUZENAC AMERICA, INC. f/k/a CYPRUS INDUSTRIAL MINERALS COMPANY is a Delaware corporation with its principal place of business in California. At all pertinent times, IMERYYS TALC AMERICA, INC. f/k/a LUZENAC AMERICA, INC. f/k/a CYPRUS INDUSTRIAL MINERALS COMPANY has been in the business of mining and distributing asbestos-containing talc for use in talcum powder based products, including the asbestos-containing PRODUCTS to which TERRAN DUPREE was exposed. IMERYYS TALC AMERICA, INC. is the successor or continuation of LUZENAC AMERICA, INC. and is legally responsible for all liabilities incurred when it was known as LUZENAC AMERICA, INC. IMERYYS TALC AMERICA, INC. f/k/a LUZENAC AMERICA, INC. can be served via its agent for process: CT Corporation, 120 South Clayton Avenue, St. Louis, MO 63105.
5. Defendant PIGGLY WIGGLY CAROLINA COMPANY, INC. is a South Carolina corporation with its principal place of business in South Carolina. At all pertinent times, PIGGLY WIGGLY CAROLINA COMPANY, INC. was engaged in the business of marketing, promoting, selling, and/or distributing asbestos-containing PRODUCTS to which TERRAN DUPREE was exposed. At all pertinent times, PIGGLY WIGGLY

CAROLINA COMPANY, INC. regularly transacted, solicited, and conducted business in the State of South Carolina. PIGGLY WIGGLY CAROLINA COMPANY, INC. can be served via its agent for process: David R. Schools, 884 Johnnie Dodds Blvd. Suite 201, Mt. Pleasant, SC 29464.

6. Defendant CVS PHARMACY, INC. is a Rhode Island corporation with its principal place of business in Rhode Island. At all pertinent times, CVS PHARMACY, INC. was engaged in the business of marketing, promoting, selling, and/or distributing asbestos-containing PRODUCTS to which TERRAN DUPREE was exposed. At all pertinent times, CVS PHARMACY, INC. regularly transacted, solicited, and conducted business in the State of South Carolina. CVS PHARMACY, INC. can be served via its agent for process: CT Corporation System, 450 Veterans Memorial Parkway, Suite 7A, East Providence, Rhode Island 02914.
7. Defendant RITE AID OF SOUTH CAROLINA, INC. ("RITE AID") is a South Carolina corporation with its principal place of business in South Carolina. At all pertinent times, RITE AID OF SOUTH CAROLINA, INC. was engaged in the business of marketing, promoting, selling, and/or distributing asbestos-containing PRODUCTS to which TERRAN DUPREE was exposed. At all pertinent times, RITE AID OF SOUTH CAROLINA, INC. regularly transacted, solicited, and conducted business in the State of South Carolina. RITE AID OF SOUTH CAROLINA, INC. can be served via its agent for process: CT Corporation System, 2 Office Park Court, Suite 103, Columbia, SC 29223.

## JURISDICTION

8. As evidenced by the caption of the instant Complaint, which is specifically incorporated herein, some of the 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 and/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, as well as the due process clause of the United States and South Carolina Constitutions.
9. At all pertinent times, all Defendants were engaged in the research, development, mining, manufacturing, processing, designing, testing, supplying, selling, labeling, and/or marketing of asbestos-containing PRODUCTS, and introduced such products into interstate commerce with knowledge and intent that such products be sold in various States, including South Carolina, and/or conspired to suppress the knowledge about the hazards of such asbestos-containing PRODUCTS being distributed, marketed, supplied, sold, and used in the State of South Carolina.
10. TERRAN DUPREE was exposed to asbestos-containing PRODUCTS for which the Defendants are responsible and developed mesothelioma while living in South Carolina. Furthermore, she has received medical treatment for her mesothelioma in South Carolina.
11. Mesothelioma is a progressive, insidious disease and, on information and belief, such asbestos exposure was a substantial cause of TERRAN DUPREE's contraction of her mesothelioma caused by breathing dust and fibers from Defendants' asbestos-containing PRODUCTS.
12. Venue is proper in Charleston County pursuant to S.C. Code § 15-7-30.

### ALLEGATIONS COMMON TO ALL COUNTS

13. Talc was the main substance used in talcum and baby powders during the time period at issue in this case.
14. Talc is a magnesium trisilicate and is mined from the earth. IMERY'S TALC AMERICA, INC. f/k/a LUZENAC AMERICA, INC. mined the talc used in the PRODUCTS.
15. The JOHNSON & JOHNSON defendants designed, manufactured and placed the PRODUCTS in the stream of commerce.
16. PIGGLY WIGGLY CAROLINA COMPANY, INC., CVS PHARMACY, INC. and RITE AID sold the PRODUCTS to TERRAN DUPREE or her family.
17. The talc mined and incorporated into the PRODUCTS by defendants and sold by defendants to TERRAN DUPREE contained up to 50% asbestos.
18. At all pertinent times, a feasible alternative to the PRODUCTS has existed. Cornstarch is an organic carbohydrate that is quickly broken down by the body with no known health effects. Cornstarch powders have been sold and marketed for the same uses with nearly the same effectiveness.
19. IMERY'S TALC AMERICA, INC. has continually advertised and marketed talc as safe for human use.
20. IMERY'S TALC AMERICA, INC. supplies customers, such as JOHNSON & JOHNSON, with material safety data sheets for talc. These material safety data sheets are supposed to convey adequate health and warning information to its customers.
21. Historically, JOHNSON & JOHNSON Baby Powder has been a symbol of freshness, cleanliness, and purity. During the time in question, the JOHNSON & JOHNSON defendants advertised and marketed this product as the beacon of "freshness" and

“comfort”, eliminating friction on the skin, absorbing “excess wetness” helping keep skin feeling dry and comfortable, and “clinically proven gentle and mild.”

**COUNT ONE**  
Negligence as to All Defendants

22. Plaintiff adopts and re-alleges each prior paragraph, where relevant, as if set forth fully herein.
23. Defendants, at all times material hereto, acted through their respective officers, employees and agents, who in turn were acting within the scope of their authority and employment in furtherance of the business of Defendants.
24. Defendants were engaged, directly or indirectly, in the business of mining, milling, producing, processing, compounding, converting, designing, manufacturing, selling, merchandising, importing, supplying, distributing or retailing the PRODUCTS and placed them in the stream of commerce.
25. At all pertinent times, Defendants had a duty to exercise reasonable care to consumers, including TERRAN DUPREE, in the design, development, manufacturing, testing, inspection, packaging, promotion, marketing, distribution, supplying, labeling and/or sale of the PRODUCTS.
26. Defendants, directly or indirectly, caused their asbestos-containing PRODUCTS to be sold to or used by TERRAN DUPREE in her home.
27. TERRAN DUPREE neither misused nor materially altered the PRODUCTS, and they were in the same or substantially similar condition that they were in at the time that they left the hands of the Defendants.

28. At all relevant times, the PRODUCTS were used in an intended and foreseeable manner, and TERRAN DUPREE was exposed to and came in contact with Defendants' asbestos PRODUCTS and inhaled or ingested the asbestos dust and fibers emanating from said PRODCUTS.
29. During the time that Defendants were engaged, directly or indirectly, in the business of mining, milling, producing, processing, compounding, converting, designing, manufacturing, selling, merchandising, importing, supplying, distributing or retailing the PRODUCTS, Defendants knew or in the exercise of reasonable care should have known, that their asbestos PRODUCTS were defective, ultra-hazardous, dangerous and otherwise highly harmful to consumers such as TERRAN DUPREE.
30. Defendants knew, or the exercise of reasonable care should have known, that the use of their asbestos PRODUCTS would cause asbestos dust and fibers to be released into the air and would create dangerous and unreasonable risks of injury to the lungs, respiratory systems, and other bodily organs of users of their products and to others breathing that air and coming into contact with that dust.
31. TERRAN DUPREE did not know the nature and extent of the injuries that would result from contact with and exposure to Defendants' asbestos PRODUCTS or from the inhalation or ingestion of the asbestos dust and fibers.
32. Defendants knew, or in the exercise of reasonable care should have known, that consumers such as TERRAN DUPREE would come into contact with and be exposed to their asbestos PRODUCTS and would inhale or ingest asbestos dust and fibers as a result of the ordinary and foreseeable use of said PRODUCTS.

33. Despite the facts set forth above, Defendants were negligent, grossly negligent, willful, wanton, reckless and careless, and breached their respective duties of care in one or more of the following respects:

- a. In designing and placing into the stream of commerce PRODUCTS that were defective, ultra-hazardous, dangerous and otherwise highly harmful to consumers such as TERRAN DUPREE.
- b. In manufacturing and placing into the stream of commerce PRODUCTS that were defective, ultra-hazardous, dangerous and otherwise highly harmful to consumers such as TERRAN DUPREE.
- c. In selling and placing into the stream of commerce PRODUCTS that were defective, ultra-hazardous, dangerous and otherwise highly harmful to consumers such as TERRAN DUPREE.
- d. In failing to warn or provide sufficient warnings to ultimate users such as TERRAN DUPREE of the risks, dangers and harms associated with exposure to, contact with, and the use and handling of Defendants' asbestos PRODUCTS, including the inhalation or ingestion of the asbestos dust and fibers resulting from the ordinary and foreseeable use of the PRODUCTS;
- e. In failing to package their asbestos PRODUCTS in a manner that would assure that users such as TERRAN DUPREE would not come into contact with or be exposed to the asbestos dust and fibers resulting from the ordinary and foreseeable use of Defendants' asbestos PRODUCTS;
- f. In failing to properly test their PRODUCTS to determine adequacy and effectiveness or safety measures, if any, prior to releasing the PRODUCTS for

consumer use and failing to test their PRODUCTS to determine the increased risk of cancer, including mesothelioma, resulting from the ordinary and foreseeable use of the PRODUCTS;

- g. In failing to inform the ultimate users such as TERRAN DUPREE as to the safe and proper methods of handling and using the products or of any safeguards or protective equipment necessary so that she would not inhale or ingest the asbestos dust and fibers resulting from the ordinary and foreseeable use of Defendants' asbestos PRODUCTS;
- h. In failing to instruct the ultimate users such as TERRAN DUPREE as to any methods available for reducing the type of exposure to the asbestos PRODUCTS which causes increased risk of cancer, including mesothelioma;
- i. In failing to remove the PRODUCTS from the market when Defendants knew or should have known the PRODUCTS were defective;
- j. In failing to develop alternate products or seek substitute materials in lieu of the use of asbestos-containing talc in the PRODUCTS;
- k. In failing to use reasonable care in the specification, selection, and distribution of component parts for the PRODUCTS;
- l. In marketing and labeling the asbestos PRODUCTS as safe for all uses despite knowledge to the contrary;
- m. In ignoring and suppressing medical and scientific information, studies, tests, data and literature which Defendants acquired during the course of their normal business activities concerning the risk of asbestosis, scarred lungs, cancer, mesothelioma,

respiratory disorders and other illnesses and diseases to people such as TERRAN DUPREE who were exposed to Defendants' asbestos PRODUCTS;

n. In disregarding medical and scientific information, studies, tests, data and literature concerning the causal relationship between the inhalation or ingestion of asbestos dust and fibers, and such diseases as asbestosis, mesothelioma, scarred lungs, cancer, respiratory disorders and other illnesses and diseases; and

o. In failing to act like a reasonably prudent company under similar circumstances.

34. Defendants otherwise acted negligently, recklessly and with intentional disregard for the welfare of TERRAN DUPREE in the mining, milling, producing, processing, compounding, converting, designing, manufacturing, selling, merchandising, importing, supplying, distributing, retailing, or otherwise placing in the stream of commerce their asbestos PRODUCTS.

35. At all times relevant, it was feasible for Defendants to have warned TERRAN DUPREE, tested their asbestos PRODUCTS, designed safer PRODUCTS and/or substituted asbestos-free components into the PRODUCTS;

36. Each Defendant's negligence was a substantial factor in causing TERRAN DUPREE's mesothelioma.

37. As a direct and proximate result of the Defendants' negligence and the breaches complained of herein, TERRAN DUPREE was exposed to and came in contact with Defendants' asbestos PRODUCTS and inhaled or ingested asbestos dust and fibers resulting from the ordinary and foreseeable use of said asbestos PRODUCTS.

38. TERRAN DUPREE developed mesothelioma as a direct and proximate result of said exposure to asbestos PRODUCTS.

39. As a direct and proximate result of the Defendants' negligent and/or grossly negligent misconduct or omissions, Plaintiff has:

- a. suffered serious personal injuries, which have caused permanent impairment;
- b. endured physical pain and suffering;
- c. suffered mental and emotional distress;
- d. suffered scarring and permanent disfigurement and disability;
- e. has incurred unnecessary medical expenses – past, present and future;
- f. experienced loss of enjoyment of life – past, present, and future; and
- g. has been injured and damaged on such other and further particulars as the evidence may show.

40. Wherefore, TERRAN DUPREE demands judgment against Defendants, jointly and severally, for all actual and compensatory damages together with interest, if applicable, and all costs of this action and for such other and further relief as this Honorable Court and/or jury may deem just and proper

**COUNT TWO**  
Strict Liability as to All Defendants

41. Plaintiff adopts and re-alleges each prior paragraph, where relevant, as if set forth fully herein.

42. Defendants were engaged, directly or indirectly, in the business of mining, milling, producing, processing, compounding, converting, designing, manufacturing, selling, merchandising, importing, supplying, distributing or retailing the PRODUCTS and placed them in the stream of commerce.

43. Defendants knew or had reason to know that TERRAN DUPREE and other persons similarly situated would be ultimate users or consumers of their asbestos PRODUCTS or would be exposed to their asbestos PRODUCTS.
44. Defendants sold or otherwise placed the asbestos PRODUCTS into the stream of commerce in a defective condition, unreasonably dangerous to TERRAN DUPREE and other persons similarly situated.
45. Throughout the many years that TERRAN DUPREE and other persons similarly situated were exposed to and used Defendants' asbestos PRODUCTS, said asbestos PRODUCTS reached the users and consumers without substantial change in the condition in which they were sold.
46. The ordinary and foreseeable use of Defendants' asbestos PRODUCTS constituted a dangerous and ultra-hazardous activity and created an unreasonable risk of injury to users and bystanders.
47. The Defendants' PRODUCTS posed potential risks that were known and/or should have been known by Defendants at the time of design, manufacture, distribution, and/or sale.
48. The Defendants' PRODUCTS presented a substantial danger during intended ordinary and reasonably foreseeable use not readily recognizable to the ordinary user.
49. The danger associated with the use of the Defendants' PRODUCTS as designed outweighed the utility.
50. Defendants' asbestos PRODUCTS were defective in that they were incapable of being made safe for their ordinary and intended use and purpose, and Defendants failed to give any warnings or instructions, or failed to give adequate or sufficient warnings or

instructions about the risks, dangers and harms associated with the use of their asbestos PRODUCTS.

51. As a direct and proximate result of the defective condition of Defendants' asbestos PRODUCTS, TERRAN DUPREE was exposed to and came in contact with Defendants' asbestos PRODUCTS and inhaled or ingested asbestos dust and fibers resulting from the ordinary and foreseeable use of said asbestos PRODUCTS.

52. TERRAN DUPREE developed mesothelioma as a direct and proximate result of said exposure to asbestos PRODUCTS and has:

- a. suffered serious personal injuries, which have caused permanent impairment;
- b. endured physical pain and suffering;
- c. suffered mental and emotional distress;
- d. suffered scarring and permanent disfigurement and disability;
- e. has incurred unnecessary medical expenses – past, present and future;
- f. experienced loss of enjoyment of life – past, present, and future; and
- g. has been injured and damaged on such other and further particulars as the evidence may show.

53. Wherefore, TERRAN DUPREE demands judgment against Defendants, jointly and severally, for all actual and compensatory damages together with interest, if applicable, and all costs of this action and for such other and further relief as this Honorable Court and/or jury may deem just and proper.

### **COUNT THREE**

#### Breach of Warranty as to All Defendants

54. Plaintiff adopts and re-alleges each prior paragraph, where relevant, as if set forth fully herein.
55. Defendants expressly or impliedly warranted that their asbestos PRODUCTS, which they mined, milled, produced, processed, compounded, converted, designed, manufactured, sold, imported, supplied, distributed, merchandised, or otherwise placed in the stream of commerce, were merchantable, reasonably fit for ordinary use, and safe for their intended purposes.
56. Defendants breached said warranties in that their asbestos PRODUCTS were defective; ultra-hazardous; dangerous; unfit for use; not merchantable; not safe for their intended, ordinary and foreseeable use and purpose; and certain harmful, poisonous and deleterious matter was given off into the atmosphere when TERRAN DUPREE used the asbestos PRODUCTS.
57. As a direct and proximate result of Defendants' breach of warranties, TERRAN DUPREE was exposed to and came in contact with Defendants' asbestos PRODUCTS and inhaled or ingested asbestos dust and fibers resulting from the ordinary and foreseeable use of said asbestos PRODUCTS.
58. TERRAN DUPREE developed mesothelioma as a direct and proximate result of said exposure to asbestos PRODUCTS.
59. As a direct and proximate result of the Defendants' breach of warranties, Plaintiff has:
- a. suffered serious personal injuries, which have caused permanent impairment;
  - b. endured physical pain and suffering;
  - c. suffered mental and emotional distress;

- d. suffered scarring and permanent disfigurement and disability;
- e. has incurred unnecessary medical expenses – past, present and future;
- f. experienced loss of enjoyment of life – past, present, and future; and
- g. has been injured and damaged on such other and further particulars as the evidence may show.

60. Wherefore, TERRAN DUPREE demands judgment against Defendants, jointly and severally, for all actual and compensatory damages together with interest, if applicable, and all costs of this action and for such other and further relief as this Honorable Court and/or jury may deem just and proper.

#### **COUNT FOUR**

##### Fraud and Misrepresentation as to All Defendants

61. Plaintiffs adopt and re-allege each prior paragraph, where relevant, as if set forth fully herein.
62. Defendants failed to disclose and intentionally and negligently misrepresented to TERRAN DUPREE and other persons similarly situated the health risks created by the ordinary and foreseeable use of Defendants' asbestos PRODUCTS.
63. Defendants knew that their misrepresentations were false and acted with a reckless disregard for the truth with the intent that their misrepresentations be relied upon by consumers, such as TERRAN DUPREE.
64. TERRAN DUPREE was ignorant of the falsity of Defendants' misrepresentations, which were material to her use of the PRODUCTS.
65. TERRAN DUPREE relied upon said misrepresentations, and her reliance was foreseeable to Defendants.

66. As a result of Defendants' conduct, omissions and misrepresentations, TERRAN DUPREE was exposed to and came in contact with Defendants' asbestos PRODUCTS and inhaled or ingested asbestos dust and fibers resulting from the ordinary and foreseeable use of said asbestos PRODUCTS.
67. TERRAN DUPREE developed mesothelioma as a direct and proximate result of said exposure to asbestos PRODUCTS.
68. As a direct and proximate result of the Defendants' misrepresentations, Plaintiff has:
- a. suffered serious personal injuries, which have caused permanent impairment;
  - b. endured physical pain and suffering;
  - c. suffered mental and emotional distress;
  - d. suffered scarring and permanent disfigurement and disability;
  - e. has incurred unnecessary medical expenses – past, present and future;
  - f. experienced loss of enjoyment of life – past, present, and future; and
  - g. has been injured and damaged on such other and further particulars as the evidence may show.
69. Wherefore, TERRAN DUPREE demands judgment against Defendants, jointly and severally, for all actual and compensatory damages together with interest, if applicable, and all costs of this action and for such other and further relief as this Honorable Court and/or jury may deem just and proper.

Punitive Damages as to All Defendants

70. Plaintiff adopts and re-alleges each prior paragraph, where relevant, as if set forth fully herein.
71. The actions and inactions of Defendants were of such a character as to constitute a pattern or practice of willful, wanton and reckless misconduct causing substantial harm and resulting in damages to TERRAN DUPREE.
72. More specifically, Defendants acted with a conscious and flagrant disregard for the rights and safety of TERRAN DUPREE, and/or deliberately engaged in willful, wanton and reckless disregard for the life and safety of TERRAN DUPREE.
73. Examples of Defendants' willful, wanton and reckless misconduct include, but are not limited to:
- a. Purposefully not warning consumers about the hazards of their asbestos PRODUCTS despite knowing that ordinary and foreseeable use created an unreasonable risk of lung disease and cancer, including mesothelioma, to ultimate users;
  - b. The intentional inadequacy and delay of safe use instructions on their asbestos PRODUCTS;
  - c. Never issuing recall-type letters or notices to ultimate and prior users;
  - d. Frustrating the publication of articles on the asbestos health hazards in the literature;
  - e. Top management officials of Defendants rejected advice of other corporate officials and doctors to warn of the hazards of their asbestos PRODUCTS or quit using talc

as a component; such rejection by top management officials being motivated by the possibility of adverse effects on profits;

- f. Refusing to advise consumers of medical findings known to Defendants concerning the dangers of asbestos exposure; and
- g. Suppressing the dissemination of information to consumers, including TERRAN DUPREE, concerning the hazards of asbestos exposure from the PRODUCTS.

74. By reason of the foregoing, Defendants are liable for punitive and exemplary damages.

75. Wherefore, TERRAN DUPREE demands judgment against Defendants, jointly and severally, for punitive and exemplary damages, plus interest, costs and attorneys' fees for having to bring this action, and such other and further relief as this Honorable Court or jury may deem just and proper.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays as follows:

- 76. For a trial by jury and judgment against the Defendants, jointly and severally, for such sums as actual and other compensatory damages in an amount as a jury may determine;
- 77. For exemplary and punitive damages against Defendants in an amount as a jury may determine to halt and deter such conduct;
- 78. For the costs of this suit, including attorney's fees, expenses, and interest; and
- 79. For such other and further relief to which she may be entitled and as this Honorable Court may deem just and proper.

[SIGNATURE LINE ON NEXT PAGE]

BY:  
MOTLEY RICE LLC

A handwritten signature in black ink, appearing to read "W. Christopher Swett". The signature is written in a cursive style with a horizontal line underneath it.

W. Christopher Swett (SC Bar No. 78251)  
28 Bridgeside Blvd.  
Mt. Pleasant, SC 29464  
Tel: (843) 216-9000  
Fax: 843-216-9450  
[cswett@motleyrice.com](mailto:cswett@motleyrice.com)

ATTORNEY FOR PLAINTIFF

June 7, 2018  
Mount Pleasant, South Carolina