

FILED

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

2018 APR 25 PM 4: 22

**JO ANN BURDETTE, Individually  
and as Executrix of the Estate of  
CARLOS DARRELL BURDETTE, deceased,**

**Plaintiff,**

**ASBESTOS COMPLAINT**

v.

Civil Action No. 18-C-77MSH

**A.O. SMITH CORPORATION, a foreign  
corporation;**

**A.W. CHESTERTON COMPANY,  
a foreign corporation;**

**AIR & LIQUID SYSTEMS CORPORATION,  
successor-by-merger to BUFFALO PUMPS,  
INC., a Delaware corporation;**

**AMETEK, INC.,  
successor-in-interest to Haveg Industries,  
Inc., a Delaware corporation;**

**APPALACHIAN POWER COMPANY, a  
foreign corporation;**

**ARMSTRONG INTERNATIONAL, INC.  
a Michigan corporation;**

**ARMSTRONG PUMPS, INC.  
a New York corporation;**

**ATLAS INDUSTRIES, INC.,  
a Pennsylvania corporation;**

**ATWOOD & MORRILL CO., INC.,  
d/b/a Weir Valves and Controls USA, Inc.  
a foreign corporation;**

**AURORA PUMP COMPANY,  
an Illinois corporation;**

**BEAZER EAST, INC.,  
f/k/a Koppers Company, Inc.,  
a Delaware corporation;**

**BENJAMIN F. SHAW COMPANY, a foreign corporation**

**BLAW-KNOX COMPANY, a foreign corporation;**

**BLOUNT, INC., a foreign corporation;**

**BRAND INSULATIONS, INC.,  
a subsidiary of Waste Management Holdings,  
Inc., f/k/a Waste Management, Inc., f/k/a WMX  
Technologies, Inc., an Illinois corporation;**

**BW/IP., INC.,  
and its Wholly Owned Subsidiaries,  
a Delaware corporation;**

**CAMERON INTERNATIONAL  
CORPORATION, f/k/a Cooper Cameron  
Corporation, a Delaware corporation;**

**CATALYTIC CONSTRUCTION COMPANY,  
a Delaware corporation;**

**CLEAVER-BROOKS COMPANY, INC.,  
a division of AQUA-CHEM, INC.,  
a Wisconsin corporation;**

**COPEES-VULCAN, INC.,  
a Delaware corporation;**

**CRANE COMPANY, INC.,  
a Delaware corporation;**

**DEZURIK, INC.,  
a foreign corporation;**

**DOUGHERTY COMPANY, INC.  
f/k/a W.S. ENDRES, INC., a West Virginia  
corporation;**

**DRAVO CORPORATION,  
a Pennsylvania corporation;**

**EATON CORPORATION,**

**individually and as successor-  
in-interest to Cutler-Hammer, Inc.,  
an Ohio corporation;**

**ELLIOTT COMPANY,  
(f/k/a Elliott Turbomachinery Co., Inc.),  
a Delaware corporation;**

**ENERFAB INC.,  
a foreign corporation;**

**THE FAIRBANKS COMPANY,  
a foreign corporation;**

**FAIRMONT SUPPLY;  
a Pennsylvania corporation;**

**FCC CORPORATION,  
a foreign corporation;**

**FISHER CONTROLS INTERNATIONAL,  
LLC,  
a Texas corporation;**

**FLOWSERVE CORPORATION,  
f/k/a the Duriron Company, Inc.,  
a foreign corporation;**

**FLOWSERVE CORPORATION,  
as successor-in-interest to Valtek, Inc.,  
a foreign corporation;**

**FLOWSERVE US, INC.,  
as successor-in-interest to  
Durametallc Corp.,  
a foreign corporation;**

**FMC CORPORATION,  
On behalf of its former Peerless Pump,  
business, a Delaware corporation;**

**FOSTER WHEELER ENERGY CORP.,  
a foreign corporation;**

**FOSTER WHEELER, LLC, survivor to a  
merger with Foster Wheeler Corporation, f/k/a**

**Foster Wheeler Corporation, a New Jersey corporation;**

**GARDNER DENVER, INC.,  
a Delaware corporation;**

**GENERAL ELECTRIC COMPANY,  
a New York corporation;**

**GOODRICH CORPORATION,  
(f/k/a B. F. Goodrich Company),  
a New York corporation;**

**GORDON GASKET & PACKING CO.,  
a West Virginia corporation;**

**THE GORMAN-RUPP COMPANY,  
an Ohio Corporation;**

**GOULDS PUMPS, INC.,  
a Delaware corporation;**

**GRAYBAR ELECTRIC COMPANY, INC.,  
a New York corporation;**

**GREENE TWEED & COMPANY,  
Individually and as a distributor for  
Palmetto Gaskets, a Pennsylvania corporation;**

**GRINNELL, LLC,  
a Delaware corporation;**

**HOWDEN NORTH AMERICA, INC.,  
formerly known as HOWDEN BUFFALO, INC.,  
a foreign corporation;**

**IMO INDUSTRIES, INC.,  
f/k/a IMO DeLaval, DeLaval, Inc. f/k/a  
Transamerica DeLaval, Inc., f/k/a DeLaval  
Turbine, Inc., DeValco Corporation, and as  
successor to Warren Pumps, Inc., a Delaware  
corporation;**

**IMS COMPANY,  
f/k/a Injection Molders Supply Co., Inc.,  
an Ohio corporation;**

**INDUSTRIAL HOLDINGS CORPORATION,  
f/k/a the Carborundum Company,  
a Delaware corporation;**

**INGERSOLL-RAND CORPORATION,  
successor-in-interest to Blaw-Knox Company, a  
foreign corporation;**

**ITT CORPORATION,  
f/k/a ITT INDUSTRIES, INC.,  
a Mississippi corporation;**

**J. H. FRANCE REFRACTORIES COMPANY,  
a foreign corporation;**

**JOY GLOBAL UNDERGROUND MINING,  
LLC,  
f/k/a Joy Technologies, LLC,  
a Pennsylvania corporation;**

**MECHANICAL PIPING, INC., a West Virginia  
Corporation;**

**MRC GLOBAL (US) INC.,  
f/k/a McJUNKIN RED MAN CORPORATION,  
a West Virginia corporation;**

**MILWAUKEE VALVE COMPANY,  
a foreign corporation;**

**MINNOTTE CONTRACTING  
CORPORATION,  
a foreign corporation;**

**MUELLER STEAM SPECIALTY,  
a North Carolina corporation;**

**NAGLE PUMPS, INC.,  
an Illinois corporation;**

**THE NASH ENGINEERING COMPANY,  
a foreign corporation;**

**NATKIN & COMPANY, a foreign corporation;**

**NITRO INDUSTRIAL COVERINGS, INC.,**  
a West Virginia corporation;

**OHIO POWER COMPANY,**  
a foreign corporation;

**OHIO VALLEY INSULATING COMPANY,**  
**INC.,**  
a West Virginia corporation;

**ONYX INDUSTRIAL SERVICES, INC.,**  
successor in interest to Brand  
Insulations, a Texas corporation;

**PIONEER PIPE INC.,**  
a foreign corporation;

**POWER MAINTENANCE, INC.,** a foreign  
corporation;

**PREMIER REFRACTORIES, INC.,**  
f/k/a Adience, Inc., successor-in-interest  
to Adience Company, PC, as successor to BMI,  
Inc., a Delaware corporation;

**RILEY POWER, INC.,**  
f/k/a BABCOCK BORSIG POWER, INC.,  
f/k/a DB Riley, Inc., f/k/a Riley Stoker  
Corporation, a foreign corporation;

**ROPER PUMP COMPANY,**  
a Georgia corporation;

**RUST CONSTRUCTORS, INC.,**  
f/k/a National Industrial Constructors, Inc.,  
a Delaware corporation

**RUST ENGINEERING & CONSTRUCTION,**  
**INC.,**  
f/k/a Rust International Corporation  
a Delaware corporation;

**SCHNEIDER ELECTRIC USA, INC.,**  
f/k/a SQUARE D COMPANY,  
a foreign corporation;

**SPIRAX SARCO, INC.,  
a Delaware corporation;**

**STATE ELECTRIC SUPPLY COMPANY,  
a West Virginia corporation;**

**STERLING FLUID SYSTEMS (USA), LLC,  
f/k/a Peerless Pump Company,  
a Delaware corporation;**

**SUNBEAM PRODUCTS, INC., as successor-in-  
interest to Sunbeam Corporation,  
a Delaware corporation,**

**SUNDYNE LLC,  
a Delaware corporation;**

**SURFACE COMBUSTION, INC.,  
a foreign corporation;**

**SWINDELL-DRESSLER INTERNATIONAL  
COMPANY,  
a foreign corporation;**

**UB SERVICES, INC., a West Virginia  
corporation;**

**UB WEST VIRGINIA, INC.,  
f/k/a Union Boiler Company,  
a West Virginia corporation;**

**UNITED CONVEYOR CORPORATION,  
an Illinois corporation;**

**UNITED ENGINEERS & COSTRUCTORS and  
WASHINGTON GROUP INTERNATIONAL,  
f/k/a Raytheon Engineers & Constructors, Inc.  
and all its domestic subsidiaries including the  
Badger Company, Inc. n/k/a URS Energy &  
Construction, Inc., a foreign corporation;**

**VIKING PUMP, INC.,  
a Delaware corporation;**

**VIMASCO CORP.,**

**a West Virginia Corporation;**

**WARREN PUMPS, INC.,  
a Delaware corporation;**

**WEST VIRGINIA ELECTRIC SUPPLY,  
a West Virginia corporation;**

**WHEELING RUBBER PRODUCTS, INC.,  
a West Virginia corporation;**

**THE WILLIAM POWELL COMPANY,  
an Ohio corporation;**

**ZURN INDUSTRIES, LLC,  
a foreign corporation.**

**Defendants.**

**COMPLAINT**

1. JO ANN BURDETTE is a citizen and resident of Charleston, West Virginia. JO ANN BURDETTE is the Executrix of the Estate of CARLOS DARRELL BURDETTE, deceased [sometimes hereinafter referred to as “decedent”]. Plaintiff brings this action for the benefit of her deceased husband’s wrongful death beneficiaries under the provisions of W. Va. Code §§55-7-5, *et seq.*, and to recover for the damages incurred by her and her decedent between the time of injury and death, pursuant to W. Va. Code §55-7-8, as well as in her own individual capacity.

2. The Decedent, CARLOS DARRELL BURDETTE, was diagnosed with malignant mesothelioma on or about April 7, 2017 and died on or about June 17, 2017.

3. The danger of asbestos dust to result in a potentially fatal lung disease called asbestosis was recognized in medical and scientific circles by the early 1930's. In the 1940's, the cancer risk from breathing asbestos dust was receiving increasing attention, and most of those



medical writings were concluding that there was an excessive rate of lung cancer among asbestosis victims seen at autopsy. Indeed, the suspicion that asbestos could cause cancer of the lung was considered a probable relationship by 1942, and was generally accepted by 1949, with epidemiological studies in the mid-1950's leaving little room for doubt. By 1960, malignant mesothelioma was recognized as a distinct disease caused by asbestos exposure. This medical literature was widely known, commented on, easily accessible, and available to employers, manufacturers and suppliers of asbestos and asbestos-containing products. This medical information was in such quantity and of such a nature as to constitute clear knowledge that asbestos was a hazardous product to those exposed to it.

4. As a pipefitter, Plaintiff's Decedent worked extensively in West Virginia including, but not limited to, Mobay, New Martinsville, West Virginia, Union Carbide, Alloy, West Virginia, John Amos, Winfield, West Virginia, DuPont, Parkersburg, West Virginia, DuPont, Belle, West Virginia, Kanawha River Powerhouse, Glasgow, West Virginia. Plaintiff's Decedent also worked at a variety of other industrial and chemical plants, as well as residential and commercial plumbing and pipefitting work. Plaintiff's Decedent was exposed to large quantities of asbestos dust while working in West Virginia.

5. The Plaintiff's Decedent served in the United States Navy from 1954 to 1958. For those exposures to asbestos dust which either occurred in a federal enclave and/or were caused by acts or omissions of a party committed at the direction of an officer of the United States government, the Plaintiff disavows all theories of recovery except failure to warn.

6. Defendants' manufacture, sale, distribution, use and/or installation of asbestos-containing products exposed the Decedent to asbestos, resulting in his development of an asbestos-related malignancy.

7. The injuries and causes of action alleged herein are due in part to actions and events hereinafter described occurring in West Virginia, as a result of the Defendant corporations doing business in West Virginia, and as a result of actions elsewhere.

8. The Defendants herein are corporations, some of which are West Virginia corporations. Some Defendants have their principal place of business in West Virginia and has a chief officer residing in West Virginia: DOUGHERTY COMPANY, INC., a successor-in-interest to W.S. Endres, Inc., a West Virginia corporation; GORDON GASKET & PACKING CO., a West Virginia corporation; MECHANICAL PIPING, INC., a West Virginia corporation; MRC GLOBAL (US) INC., f/k/a, McJUNKIN REDMAN CORPORATION, f/k/a McJunkin Corporation, a West Virginia corporation; NITRO INDUSTRIAL COVERINGS, INC., a West Virginia corporation; OHIO VALLEY INSULATING COMPANY, INC., a West Virginia corporation; STATE ELECTRIC SUPPLY COMPANY, a West Virginia corporation; UB SERVICES, INC., a West Virginia Corporation; UB WEST VIRGINIA, INC., f/k/a UNION BOILER COMPANY, a West Virginia corporation; VIMASCO CORPORATION, a West Virginia corporation; WEST VIRGINIA ELECTRIC SUPPLY, a West Virginia corporation; and, WHEELING RUBBER PRODUCTS, INC. a West Virginia corporation. Some Defendants are either licensed or registered to do business in the State of West Virginia or have done business in the State by putting their products into the stream of commerce in the State of West Virginia. Some defendants have continuous and systematic contacts in this State. For some defendants, the allegations against it detailed in this complaint arise out of, or where the result of an action or omission in this State. For some defendants, the Defendant acts as one entity with a parent or a subsidiary, which has continuous and systematic contacts with this state.

9. The Defendants mined, manufactured, processed, imported, converted, compounded, retailed, sold, recommended, distributed supplied and/or used substantial amounts of asbestos and/or asbestos-containing products in West Virginia.

10. Certain Defendants (“Employers”) employed Decedent at various times in Decedent’s career: BENJAMIN F. SHAW COMPANY, a foreign corporation; CATALYTIC CONSTRUCTION COMPANY, a Delaware corporation; DOUGHERTY COMPANY, INC. f/k/a W.S. ENDRES, INC., a West Virginia corporation; FOSTER WHEELER ENERGY CORP., a foreign corporation; BLOUNT, INC., a foreign corporation; FOSTER WHEELER, LLC, survivor to a merger with Foster Wheeler Corporation, f/k/a Foster Wheeler Corporation, a New Jersey corporation; INGERSOLL-RAND CORPORATION, successor-in-interest to Blaw-Knox Company, a foreign corporation; MECHANICAL PIPING, INC., a West Virginia Corporation; NATKIN & COMPANY, a foreign corporation; MINNOTTE CONTRACTING CORPORATION, a foreign corporation; PIONEER PIPE INC., a foreign corporation; POWER MAINTENANCE, INC., a foreign corporation; UB SERVICES, INC., a West Virginia corporation; UB WEST VIRGINIA, INC., f/k/a Union Boiler Company, a West Virginia corporation; and, UB WEST VIRGINIA, INC., a foreign corporation.

11. Certain defendant corporations (hereinafter defendant “sellers” or “asbestos defendants”) or their predecessors in interest, at all times relevant, engaged in one or more of the following activities involving asbestos fibers in their materials including, but not limited to, the mining, milling, manufacturing, distributing, supplying, selling, specifying, and/or using and/or recommending, and/or installing and/or removing asbestos materials and/or other dangerous ingredients and products: A.O. SMITH CORPORATION, a foreign corporation; A.W. CHESTERTON COMPANY, a foreign corporation; AIR & LIQUID SYSTEMS CORPORATION, successor-by-merger to BUFFALO PUMPS, INC., a Delaware corporation;

AMETEK, INC., successor-in-interest to Haveg Industries, Inc., a Delaware corporation;  
APPALACHIAN POWER COMPANY, a foreign corporation; ARMSTRONG  
INTERNATIONAL, INC. a Michigan corporation; ARMSTRONG PUMPS, INC., a New York  
corporation; ATLAS INDUSTRIES, INC., a Pennsylvania corporation; ATWOOD &  
MORRILL CO., INC., d/b/a Weir Valves and Controls USA, Inc. a foreign corporation;  
AURORA PUMP COMPANY, an Illinois corporation; BEAZER EAST, INC., f/k/a Koppers  
Company, Inc., a Delaware corporation; BENJAMIN F. SHAW COMPANY, a foreign  
corporation BLAW-KNOX COMPANY, a foreign corporation; BLOUNT, INC., a foreign  
corporation; BRAND INSULATIONS, INC., a subsidiary of Waste Management Holdings, Inc.,  
f/k/a Waste Management, Inc., f/k/a WMX Technologies, Inc., an Illinois corporation; BW/IP.,  
INC., and its Wholly Owned Subsidiaries, a Delaware corporation; CAMERON  
INTERNATIONAL CORPORATION, f/k/a Cooper Cameron Corporation, a Delaware  
corporation; CATALYTIC CONSTRUCTION COMPANY, a Delaware corporation;  
CLEAVER-BROOKS COMPANY, INC., a division of AQUA-CHEM, INC., a Wisconsin  
corporation; COPES-VULCAN, INC., a Delaware corporation; CRANE COMPANY, INC., a  
Delaware corporation; DEZURIK, INC., a foreign corporation; DOUGHERTY COMPANY,  
INC. f/k/a W.S. ENDRES, INC., a West Virginia corporation; DRAVO CORPORATION, a  
Pennsylvania corporation; EATON CORPORATION, individually and as successor-in-interest to  
Cutler-Hammer, Inc., an Ohio corporation; ELLIOTT COMPANY, (f/k/a Elliott  
Turbomachinery Co., Inc.), a Delaware corporation; ENERFAB INC., a foreign corporation;  
THE FAIRBANKS COMPANY, a foreign corporation; FAIRMONT SUPPLY; a Pennsylvania  
corporation; FCC CORPORATION, a foreign corporation; FISHER CONTROLS  
INTERNATIONAL, LLC, a Texas corporation; FLOWSERVE CORPORATION, f/k/a the  
Duriron Company, Inc., a foreign corporation; FLOWSERVE CORPORATION, as successor-

in-interest to Valtek, Inc., a foreign corporation; FLOWSERVE US, INC., as successor-in-interest to Durametalllic Corp., a foreign corporation; FMC CORPORATION, On behalf of its former Peerless Pump, business, a Delaware corporation; FOSTER WHEELER ENERGY CORP., a foreign corporation; FOSTER WHEELER, LLC, survivor to a merger with Foster Wheeler Corporation, f/k/a Foster Wheeler Corporation, a New Jersey corporation; GARDNER DENVER, INC., a Delaware corporation; GENERAL ELECTRIC COMPANY, a New York corporation; GOODRICH CORPORATION, (f/k/a B. F. Goodrich Company), a New York corporation; GORDON GASKET & PACKING CO., a West Virginia corporation; THE GORMAN-RUPP COMPANY, an Ohio Corporation; GOULDS PUMPS, INC., a Delaware corporation; GRAYBAR ELECTRIC COMPANY, INC., a New York corporation; GREENE TWEED & COMPANY, Individually and as a distributor for Palmetto Gaskets, a Pennsylvania corporation; GRINNELL, LLC, a Delaware corporation; HOWDEN NORTH AMERICA, INC., formerly known as HOWDEN BUFFALO, INC., a foreign corporation; IMO INDUSTRIES, INC., f/k/a IMO DeLaval, DeLaval, Inc. f/k/a Transamerica DeLaval, Inc., f/k/a DeLaval Turbine, Inc., DeValco Corporation, and as successor to Warren Pumps, Inc., a Delaware corporation; IMS COMPANY, f/k/a Injection Molders Supply Co., Inc., an Ohio corporation; INDUSTRIAL HOLDINGS CORPORATION, f/k/a the Carborundum Company, a Delaware corporation; INGERSOLL-RAND CORPORATION, successor-in-interest to Blaw-Knox Company, a foreign corporation; ITT CORPORATION, f/k/a ITT INDUSTRIES, INC., a Mississippi corporation; J. H. FRANCE REFRACTORIES COMPANY, a foreign corporation; JOY GLOBAL UNDERGROUND MINING, LLC, f/k/a Joy Technologies, LLC, a Pennsylvania corporation; MECHANICAL PIPING, INC., a West Virginia Corporation; MRC GLOBAL (US) INC., f/k/a McJUNKIN RED MAN CORPORATION, a West Virginia corporation; MILWAUKEE VALVE COMPANY, a foreign corporation; MINNOTTE CONTRACTING

CORPORATION, a foreign corporation; MUELLER STEAM SPECIALTY, a North Carolina corporation; NAGLE PUMPS, INC., an Illinois corporation; THE NASH ENGINEERING COMPANY, a foreign corporation; NATKIN & COMPANY, a foreign corporation; NITRO INDUSTRIAL COVERINGS, INC., a West Virginia corporation; OHIO POWER COMPANY, a foreign corporation; OHIO VALLEY INSULATING COMPANY, INC., a West Virginia corporation; ONYX INDUSTRIAL SERVICES, INC., successor in interest to Brand Insulations, a Texas corporation; PIONEER PIPE INC., a foreign corporation; POWER MAINTENANCE, INC., a foreign corporation; PREMIER REFRACTORIES, INC., f/k/a Adience, Inc., successor-in-interest to Adience Company, PC, as successor to BMI, Inc., a Delaware corporation; RILEY POWER, INC., f/k/a BABCOCK BORSIG POWER, INC., f/k/a DB Riley, Inc., f/k/a Riley Stoker Corporation, a foreign corporation; ROPER PUMP COMPANY, a Georgia corporation; RUST CONSTRUCTORS, INC., f/k/a National Industrial Constructors, Inc., a Delaware corporation; RUST ENGINEERING & CONSTRUCTION, INC., f/k/a Rust International Corporation a Delaware corporation; SCHNEIDER ELECTRIC USA, INC., f/k/a SQUARE D COMPANY, a foreign corporation; SPIRAX SARCO, INC., a Delaware corporation; STATE ELECTRIC SUPPLY COMPANY, a West Virginia corporation; STERLING FLUID SYSTEMS (USA), LLC, f/k/a Peerless Pump Company, a Delaware corporation; SUNBEAM PRODUCTS, INC., as successor-in-interest to Sunbeam Corporation, a Delaware corporation, SUNDYNE LLC, a Delaware corporation; SURFACE COMBUSTION, INC., a foreign corporation; SWINDELL-DRESSLER INTERNATIONAL COMPANY, a foreign corporation; UB SERVICES, INC., a West Virginia corporation; UB WEST VIRGINIA, INC., f/k/a Union Boiler Company, a West Virginia corporation; UNITED CONVEYOR CORPORATION, an Illinois corporation; UNITED ENGINEERS & COSTRUCTORS and WASHINGTON GROUP INTERNATIONAL, f/k/a Raytheon Engineers & Constructors, Inc. and all its domestic

subsidiaries including the Badger Company, Inc. n/k/a URS Energy & Construction, Inc., a foreign corporation; VIKING PUMP, INC., a Delaware corporation; VIMASCO CORP., a West Virginia Corporation; WARREN PUMPS, INC., a Delaware corporation; WEST VIRGINIA ELECTRIC SUPPLY, a West Virginia corporation; WHEELING RUBBER PRODUCTS, INC., a West Virginia corporation; THE WILLIAM POWELL COMPANY, an Ohio corporation; ZURN INDUSTRIES, LLC, a foreign corporation. For certain sellers the application or use of asbestos or asbestos containing products in conjunction with their product was a foreseeable use.

12. The following defendant corporations, or their predecessors-in-interest, or their subsidiary corporations were, at all relevant times, the owners and operators [hereinafter “Premise Owner Defendants”] of electrical and steam generating plants, processing plants, steel mills, chemical plants, and/or industrial facilities [hereinafter “plants”] situated in West Virginia or elsewhere, at which the Decedent worked: APPALACHIAN POWER COMPANY, a foreign corporation; and OHIO POWER COMPANY, a foreign corporation.

13. The Defendants mined, manufactured, processed, imported, converted, compounded, retailed, sold, recommended, distributed supplied and/or used substantial amounts of asbestos and/or asbestos-containing products in West Virginia, and/or exposed West Virginia residents to the same.

14. The Defendants are amenable to jurisdiction in the courts of West Virginia by virtue of their contacts with the state and the systematic business conducted in West Virginia by them and their predecessors, which subjects the Defendants to the jurisdiction of the West Virginia Courts pursuant to the West Virginia Long Arm Statute.

15. Based upon the above, jurisdiction and venue is proper in this case.

**COUNT I**  
**NEGLIGENCE**

16. Plaintiff incorporates the aforementioned paragraphs by reference hereto as fully set forth herein.

17. Over the course of his working years, the Decedent worked with and/or around products containing asbestos and/or other harmful minerals manufactured, supplied, sold, distributed, installed, used and/or required by Asbestos Defendants. As a result, the Decedent breathed asbestos and other harmful dusts created by the use of said products, and developed a fatal asbestos-related malignancy.

18. The Defendants and each of them by their agents, servants and employees were negligent in that they knew or should have known that the use of their products would cause serious lung diseases and cancer, and knowing the same, did fail to take reasonable precautions to warn the Decedent of the dangers to which he was exposed, did fail to inform the Decedent of what would be safe and sufficient wearing apparel and safety equipment for persons who were exposed to their products, did fail to inform the Decedent of what would be safe and proper methods of handling and using the products, did fail to remove the products from the market when they knew or should have known of the hazards associated with the use of the products, did fail to properly and adequately label the products, did sell the products which were not in a reasonably safe condition, did fail to supply accurate and complete warnings of the known dangers involved in the use of and exposure to the products, did fail to use safe, substitute products when such were available, did negligently install the products without taking precautions to warn and protect the Decedent.

19. Such actions and failure to act on the part of each Defendant constitutes malicious, willful and wanton misconduct with complete disregard for the safety and rights of others,



amounting to extraordinary and outrageous conduct, especially when the Defendants were aware of scientific and medical data made available to them that their products were harmful and deadly to workers, including the Decedent, who were exposed to them.

20. As a direct and proximate result of the negligence of the Defendants which caused the Decedent to develop a serious, permanent and disabling lung disease, the Decedent suffered damages including but not limited to medical expenses, great pain of body and mind, embarrassment, inconvenience, loss of wages and wage earning capacity, loss of quality and enjoyment of his life, shortening of his life expectancy, permanent and disabling injury, and ultimately died, which resulted in further injury and damage to his wrongful death beneficiaries, as set forth more fully below.

WHEREFORE, the Plaintiff individually and as Executrix of the Estate demands judgment against the Defendants, jointly and severally, for compensatory damages in an amount deemed just and proper by trier of fact to adequately and fully compensate the decedent's beneficiaries for their damages, and punitive damages in an amount deemed just by trier of fact, together with interest and the costs incurred in the prosecution of this suit.

## **COUNT II** **STRICT LIABILITY**

21. Plaintiff incorporates the aforementioned paragraphs by reference hereto as fully set forth herein.

22. At the time the Asbestos Defendants placed their products on the market, such products contained defects which created an unreasonable risk of harm to those likely to use or be exposed to the product, to-wit: (a) exposure to the product caused cancer and lung diseases, and (b) no warning or an inadequate warning was given to the Decedent, users and/or persons exposed to these products.

23. At the time of Decedent's exposures, the products were being used for the purposes for which they were intended, the products were in substantially the same condition as when they left the control of each of the Defendants and the Decedent had no knowledge of the defects and no reason to suspect a defective condition.

24. As a direct and proximate result of the defective products manufactured, supplied, sold, used and/or required by the Asbestos Defendants, the Decedent developed a severe, permanent and disabling lung disease and suffered the damages and losses enumerated in this Complaint.

WHEREFORE, the Plaintiff individually and as Executrix of the Estate demands judgment against the Defendants, jointly and severally, for compensatory damages in an amount deemed just and proper by trier of fact to adequately and fully compensate the decedent's beneficiaries for their damages, and punitive damages in an amount deemed just by trier of fact, together with interest and the costs incurred in the prosecution of this suit.

### **COUNT III** **CONSPIRACY**

25. Plaintiff incorporates the aforementioned paragraphs by reference hereto as fully set forth herein.

26. The Decedent was employed in various occupations, which placed him in close proximity to asbestos and asbestos-containing materials manufactured, installed, used, distributed and/or required by one or more of the Defendants. The Decedent's presence around these materials was known or should have been known to the Defendants and each of them.

27. The Decedent was exposed to the asbestos-containing products manufactured, supplied or used by one or more of the named Asbestos Defendants. His exposure to asbestos

dust from asbestos-containing products manufactured by the Defendants proximately contributed to the diseases suffered by Decedent as described more fully throughout this Complaint.

28. Those Defendants specifically identified in the following paragraphs, individually and as agents of one another and as co-conspirators, agreed and conspired among themselves as described herein and with other asbestos manufacturers and distributors to injure the Decedent in the following fashion:

a. Beginning in approximately 1934, conspirator Johns-Manville Corporation, through its agents, Vandiver Brown and attorney J.C. Hobart, and conspirator Raybestos-Manhattan, through its agents, Sumner Simpson and J. Rohrbach, suggested to Dr. Anthony Lanza, Associate Director, Defendant Metropolitan Life Insurance Company (insurers of Manville and Raybestos), that Lanza publish a study on asbestosis in which Lanza would affirmatively misrepresent a material fact about asbestos exposure; that is, the seriousness of the disease process asbestosis. This was accomplished through intentional deletion of Lanza's description of asbestosis as fatal and through other selective editing that affirmatively misrepresented asbestosis as a disease process less serious than it actually is and was known to be at the time the study was written. 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, Raybestos and Defendant Metropolitan Life, as an insurer.

b. In 1936, conspirators American Brake Block Corporation, Asbestos Manufacturing Company, Gatke Corporation, Johns-Manville Corporation, Keasby & Mattison Company (then an alter-ego to conspirator Turner & Newall), Raybestos-

Manhattan, Russell Manufacturing (whose liabilities have been assumed by H. K. Porter Company), Union Asbestos and Rubber Company and United States Gypsum Company, entered into an agreement with the Saranac Laboratories. Under this agreement, these conspirators acquired the power to decide what information Saranac Laboratories could publish about asbestos disease and could also control in what form such publications were to appear. This agreement gave these conspirators power to affirmatively misrepresent the results of the work at Saranac, and also gave these conspirators power to suppress 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.

c. On November 11, 1948, representatives of the following conspirators met at the headquarters of Johns-Manville Corporation: American Brake Block Division of American Brake and Shoe Foundry, Gatke Corporation, Keasby-Mattison Company (then an alter-ego to conspirator Turner & Newall), Raybestos-Manhattan, Inc., Thermoid Company (whose assets and liabilities were later purchased by H.K. Porter Company), Union Asbestos and Rubber Company and United States Gypsum Company. United States Gypsum did not send a representative to the meeting, but instead authorized Vandiver Brown of Johns-Manville to represent its interests at the meeting and to take action on its behalf.

d. At this November 11, 1948, meeting, these conspirators and their representatives 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 the 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 this meeting, these conspirators intentionally and affirmatively determined that Dr. Gardner's work should be edited specifically delete material facts about cancer-causing propensity of asbestos and the health effects of asbestos on humans and the critique of the dust standards and then published the same in the medical literature as edited by Dr. Vorwald. These conspirators thereby fraudulently misrepresented the risks of asbestos exposure to the public, in general, and the class of persons exposed to asbestos, including this Decedent.

f. As a direct result of influence exerted by the above-described conspirators, Dr. 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 university libraries, government officials, agencies and others.

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

h. Asarco was a member of the trade association known as Quebec Asbestos Mining Association (Q.A.M.A.). Asarco acted through Lake Asbestos. The members of

Q.A.M.A. participated and conspired in the above-described misrepresentation of the work of Dr. Leroy Gardner published by Arthur Vorwald in the AMA Archives of Industrial Health in 1951. Evidence of the Q.A.M.A.'s involvement in this misrepresentation arises from co-conspirator Johns-Manville's membership in the Q.A.M.A., as well as correspondence from co-conspirators dated October 29 and November 26, 1947, March 6 and October 15, 1948, March 8, 1949 and September 6, 1950, and all indicating close monitoring of the editing process of Q.A.M.A.'s representative, Ivan Sabourin, acting on behalf of all Q.A.M.A. members.

i. Asarco, through Lake Asbestos, as members of the Q.A.M.A., began on or about 1950 to formulate a plan to influence public opinion about the relationship between asbestos and cancer by influencing the medical literature on this subject and then touting and disseminating this literature to the public and to organizations and legislative bodies responsible for regulatory control of asbestos with the specific intent of misrepresenting the existing scientific information and suppressing contrary scientific data in their possession and control.

j. This plan of misrepresentation and influence over the medical literature began on or about 1950 when the aforementioned Q.A.M.A. members selected Saranac Laboratories to do an evaluation of whether cancer was related to asbestos. After a preliminary report authored by Arthur Vorwald in 1952 indicated that a cancer/asbestos relationship might exist in experimental animals, these Q.A.M.A. members refused to further fund the study and it was terminated and never discussed.

k. As a result of the termination of this study, these conspirators fraudulently withheld significant health information from the public and affirmatively misrepresented to the public and responsible legislative and regulatory bodies that asbestos did not cause

cancer, including affirmative misrepresentations by conspirators' agents K.W. Smith, M.D., Paul Cartier, M.D., A.J. Vorwald, M.D., A.J. Lanza, M.D., Vandiver Brown and Ivan Sabourin, said misrepresentations being directed to inter alia, United States Government officials, Canadian government officials, United States National Cancer Institute, other medical organizations and to the general public, including Arnold Bird and his heirs.

l. Subsequently, the Q.A.M.A. conspirators contracted with the Industrial Hygiene Foundation and Dr. Daniel Braun to further study the relationship between asbestos exposure, asbestosis and lung cancer. In 1957, Drs. Braun and Truan reported to the Q.A.M.A. that asbestosis increased a worker's chances of incurring lung cancer.

m. The Q.A.M.A. conspirators/members thereafter caused, in 1958, a publication of the work by Drs. Braun and Truan in which the findings regarding increased incidence of cancer in persons with asbestosis was edited out by agents of the Q.A.M.A. The published version of this study contained a conclusion that asbestos exposure, alone, did not increase the incidence of lung cancer, a conclusion known by the conspirators to be patently false.

n. By falsifying and causing publication of studies concluding that asbestos exposure did not cause lung cancer and simultaneously omitting a documented finding that asbestosis did increase the risk of lung cancer, the Q.A.M.A. conspirators affirmatively misrepresented to the public and concealed from the public the extent of risks associated with inhalation of asbestos fibers.

o. In approximately 1958, the Q.A.M.A. conspirators publicized the edited works of Dr. Braun and Truan at a symposium in an effort to fraudulently misrepresent to

the public and persons exposed to asbestos that the inhalation of asbestos dust would not cause cancer.

p. The fraudulent misrepresentations beginning in 1946 as elaborated above and continuing with the publication of the 1958 Braun/Truan study influenced the standards set for threshold limit values for development of such standards to fail to lower the threshold limit value because of a cancer risk associated with asbestos inhalation.

q. In 1967, Q.A.M.A. conspirators determined at their trade association meeting that they would intentionally mislead consumers about the extent of risks involved in inhalation of asbestos products.

r. Uniroyal, Inc., individually and through its alter egos, CDU Holding Company, Uniroyal Holding Company and Uniroyal Goodrich Tire Company, was a member of the trade organization known as the Asbestos Textile Institute (ATI).

s. In 1947, Uniroyal, as a member of the ATI, received a report from W.C.L. Hemeon regarding asbestosis, which suggested re-evaluation of the then-existing threshold limit values for asbestos exposure.

t. In 1955, conspirator Johns-Manville, another member of the ATI, through its agent Kenneth Smith, caused to be published in the AMA Archives of Industrial Health, an article entitled Pulmonary Disability in Asbestos Workers. @ This published study materially altered the results of an earlier study in 1949 concerning the same set of workers. This alteration of Dr. Smith's study constituted a fraudulent and material misrepresentation about the extent of the risk associated with asbestos inhalation.

u. In 1955, the National Cancer Institute held a meeting at which conspirator Johns-Manville, individually and as an agent for other co-conspirators, and A. Vorwald, as agent of co-conspirators, affirmatively misrepresented that there were no existing



animal studies concerning the relationship between asbestos exposure and cancer, when, in fact, the conspirators were in secret possession of several studies which demonstrated that positive evidence did exist.

v. In 1957, Uniroyal and other members of the ATI jointly rejected a proposed research study on cancer and asbestos and this resulted in fraudulently concealing from the public, material facts regarding asbestos exposure and also constituted an affirmative misrepresentation of the then-existing knowledge about asbestos exposure and lung cancer.

w. In 1964, conspirators who were members of the ATI met to formulate a plan for rebutting the association between lung cancer and asbestos exposure that had been recently discussed by Dr. Irving J. Selikoff. Thereafter, these members of the ATI embarked upon a campaign to further misrepresent the association between asbestos exposure and lung cancer.

x. All conspirators identified above approved and ratified and furthered the previous conspiratorial acts of conspirators Johns-Manville, Raybestos-Manhattan and A.J. Lanza, acting on behalf of Metropolitan Life Insurance Company, and all alleged co-conspirators during the dates and circumstances alleged above, acted as agents and co-conspirators for the other conspirators.

y. The Mellon Institute and the Industrial Hygiene Foundation (IHF) were a research institute whose functions included involvement in research regarding the health effects of inhaling asbestos dusts. Beginning in the early 1940's, the IHF was involved in a study by W.C.L. Hemeon entitled Report of Preliminary Dust Investigation for Asbestos Textile Institute, June 1947. This study was done in connection with members of the Asbestos Textile Institute (ATI). This study found that workers exposed to less

than the recommended threshold limit value for asbestos were nonetheless developing disease. The IHF never published this study. Beginning in the mid-1950's, the IHF and the Mellon Institute were involved in the publication of works by Drs. Braun and Truan entitled An Epidemiological Study of Lung Cancer in Asbestos Miners. In its original form in September 1957, this study had concluded that workers with asbestosis had an increased incidence of lung cancer and that the Canadian government had been under-reporting cases of asbestosis. The final published version of this study in June 1958, deleted the conclusion that workers with asbestosis suffered an increased incident of lung cancer and that the Canadian government had been under-reporting cases of asbestosis. The IHF and the Mellon Institute conspired with members of the Quebec Asbestos Mining Association (Q.A.M.A.) and their legal counsel, Ivan Sabourin, to delete the above-described information regarding asbestos and cancer. The above-described actions of the IHF and the Mellon Institute constituted intentional deception and fraud in actively misleading the public about the extent of the hazards connected with breathing asbestos dusts. The above-described actions of the IHF and the Mellon Institute substantially contributed to retarding the development of knowledge about the hazards of asbestos and thereby substantially contributed to injuries suffered by the Decedent.

z. The above-mentioned co-conspirators also aided and abetted each other in a joint effort to prevent the ascertainment of the dangers and sundry respiratory ailment associated with asbestos exposure from coming to light.

29. The acts of the conspirators set forth above constitute a fraudulent concealment and/or a fraudulent misrepresentation, which proximately caused injury to the Decedent in the following manner:

a. The material published, or caused to be published, by the conspirators was false and incomplete in that the conspirators knowingly and deliberately deleted references to the known health hazards of asbestos and asbestos-related products.

b. The conspirators, individually, as members of a conspiracy, and as agents of other co-conspirators, intended that the publication of false and misleading reports and/or the nondisclosure of documented reports of the health hazards of asbestos:

(1) maintain a favorable atmosphere for the continued sale and distribution of asbestos and asbestos-related products;

(2) assist in the continued pecuniary gain of the Defendants through the sale of their products;

(3) influence in the Defendants' favor, proposed legislation to regulate asbestos exposure; and,

(4) to provide a defense in lawsuits brought for injury resulting from asbestos disease.

c. The Decedent reasonably relied upon the published medical and scientific data documenting the purported safety of asbestos and asbestos-related products to continue their exposure to asbestos because they believed it to be safe.

d. Defendants individually, as members of a conspiracy, and as agents of other co-conspirators intended that the Decedent rely upon the published reports regarding the safety asbestos and asbestos-related products, and upon the absence of published medical and scientific data regarding the hazards of asbestos and asbestos-related products, to continue the exposure of the Decedent to those products.

e. Defendants individually, as members of a conspiracy, and as agents of other co-conspirators, are in a position of superior knowledge regarding the health

hazards of asbestos and therefore the Decedent had a right to rely on the published reports commissioned by the Defendants regarding the health hazards of asbestos and asbestos-related products.

f. The Decedent suffered injury as a direct and proximate result of the acts alleged herein, and damages as described throughout this Complaint.

WHEREFORE, the Plaintiff individually and as Executrix of the Estate demands judgment against the Defendants, jointly and severally, for compensatory damages in an amount deemed just and proper by trier of fact to adequately and fully compensate the decedent's beneficiaries for their damages, and punitive damages in an amount deemed just by trier of fact, together with interest and the costs incurred in the prosecution of this suit.

#### **COUNT IV** **CONTAMINATED BUILDINGS**

30. Plaintiff incorporates the aforementioned paragraphs by reference hereto as fully set forth herein.

31. Subsequent to the time Defendants caused asbestos products to be sold, used and/or placed in buildings and on job sites, Defendants knew or in the exercise of ordinary care, should have known, that asbestos is deleterious, carcinogenic, and harmful to persons using the buildings or on job sites.

32. Nevertheless, 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 even until the present, despite their knowledge of the presence of the asbestos products in the buildings or on job sites, that to the present, possessed with information uniquely available to Defendants relating to the dangerous effects of continued asbestos exposure, Defendants refused to provide that information

to the Decedent despite Defendants' knowledge that asbestos had contaminated buildings and job sites where the Decedent worked.

33. The Decedent suffered continuing, lingering and permanent injury due to Defendants' asbestos fibers previously inhaled.

34. Asbestos fibers, once inhaled, cause repeated, continuing and permanent injury.

35. The Defendants' aforesaid acts, and the continued presence of asbestos products in buildings and on job sites, was a direct and proximate cause of the Decedent's development of his asbestos-related disease, and the ensuing severe injuries, disability, death and damages.

**COUNT V**  
**FAILURE TO WARN**

36. Plaintiff incorporates the aforementioned paragraphs by reference hereto as fully set forth herein.

37. The Defendants at all times relevant herein, knew or should have known of the hazards to human health associated with exposure to the asbestos, asbestos materials, asbestos products and products containing asbestos that they were selling, packaging, repackaging, supplying, distributing, installing, marketing and/or using in West Virginia and elsewhere. Despite what they knew or should have known, said Defendants marketed, supplied and/or used said asbestos products without taking reasonable precautions or exercising due care to warn the Decedent of the dangers associated with exposure to said hazardous products.

38. As a direct and proximate result of the exposure to the asbestos and asbestos-containing products above described, but not limited thereto, the Plaintiff and her Decedent sustained the injuries hereafter set forth.

WHEREFORE, the Plaintiff individually and as Executrix of the Estate demands judgment against the Defendants, jointly and severally, for compensatory damages in an amount

deemed just and proper by trier of fact to adequately and fully compensate the decedent's beneficiaries for their damages, and punitive damages in an amount deemed just by trier of fact, together with interest and the costs incurred in the prosecution of this suit.

**COUNT VI**  
**BREACH OF IMPLIED/EXPRESS WARRANTY**

39. Plaintiff incorporates the aforementioned paragraphs by reference hereto as fully set forth herein.

40. Asbestos Defendants impliedly or expressly warranted that said asbestos materials were of good and merchantable quality and fit for their intended use.

41. Asbestos Defendants impliedly or expressly warranted that the asbestos and asbestos-containing materials were of good and merchantable quality and suitable and fit for their intended use, and were not abnormally dangerous and did not present any substantial risk of harm to the general public and to persons using said products in the normal and intended manner. Said warranties were false and untrue, and were breached by the Asbestos Defendants in 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.

42. Asbestos Defendants' breach of the aforesaid implied warranties was a direct and proximate cause of the Decedent's development of an asbestos-related malignancy, and his severe injuries, disability, death and damages.

**COUNT VII**  
**CONTRACTOR EMPLOYERS**

43. The Plaintiff adopts and incorporates by reference the previous paragraphs, where relevant, as if fully set forth verbatim herein.

44. In connection with the facility(ies) where the contractor employer performed services, the Decedent was exposed to, among other things, significant quantities of asbestos-containing insulation materials and asbestos-containing products.

45. At all times pertinent hereto, the Decedent was exposed to asbestos and other harmful ingredients disturbed, supplied, manipulated, installed, specified, removed and/or sold by the various defendants identified as contractors. The Decedent was unaware of the dangers from exposure to asbestos at the time of exposure.

46. The Decedent's asbestos-related disease or condition is a direct and proximate result of the negligence of the defendants, both jointly and severally, in that they disturbed, supplied, manipulated, installed, specified, removed and/or sold products containing asbestos and other dangerous ingredients, which products defendants knew, or in the exercise of reasonable care, should have known, were inherently, excessively, and ultra hazardously dangerous to Decedent via the worksite at which the he worked. Plaintiff alleges that her Decedent's asbestos related disease was the direct and proximate result of the acts of the contractor defendants, and that these acts combined with the acts of the employer defendant and the manufacturers of the asbestos-containing insulation and asbestos products to bring about the Decedent's injuries.

47. The defendant contractor employers owed a duty to protect the Decedent from foreseeable harm. The defendant premises contractors, in failing to act in a reasonable manner to protect the Decedent, did breach this standard of care and did further:

- (a) Conceal information from the Decedent and other similarly situated workers, which the defendants possessed and knew from at least the 1940's that exposure to asbestos-containing materials and products presented and posed a significant risk to persons using or exposed to said products of the development of asbestos and/or cancer.
- (b) Elect not to initiate any safety program that would have reduced the risk to individuals who were being exposed to asbestos-containing materials and products.

- (c) Conceal and not informing the Decedent of warnings that had been issued by the manufacturer of the products concerning the dangers of asbestos to the defendants, but which were not provided to the Decedent and others.
- (d) Fail to inform the Decedent of the risk, thereby permitting the Decedent and others similarly situated to continue using the products without taking steps to protect themselves.
- (e) Fail to initiate a training program designed to train the Decedent and others the proper and correct procedure for handling the asbestos-containing materials and products, which the defendant knew were dangerous and present a serious risk of injury or death, or alternatively did undertake a duty to Decedent by establishing or creating a safety program, but did breach such duty by not adequately protecting the Decedent from exposure to asbestos.
- (f) Use products of the type that exceeds hygienic and accepted standards for use in the industrial work place.
- (g) Fail to properly monitor or by monitoring and failing to inform of the amount of dust emitted by the asbestos-containing materials and products that were bought and supplied to the Decedent's worksite and others for use at this period of time.
- (h) Failing to initiate any medical monitoring program to examine and provide medical information to the Decedent and others relating to the effects of the asbestos upon the Decedent and others.
- (i) Engaging in a course of corporate misconduct for the purpose of increasing proceeds at the expense, safety and health of its employees through other numerous corporate acts relating to costs and health risks which the defendant knew was not safe or proper.
- (j) Fail to warn Decedent of the dangers of the said products when the defendants knew, or should have known, that exposure to the asbestos-containing products and other ingredients of said products would cause disease and injury.
- (k) Fail to take reasonable precautions to warn the Decedent of the dangers to which he was exposed when the defendants knew, or should have known, of such dangers.
- (l) Fail to exercise reasonable care to warn the Decedent of the danger to which he was exposed by use of the asbestos-containing products and other ingredients in said defendants' products.
- (m) Fail to inform the Decedent of what would be safe and sufficient apparel for a person who was exposed to or used the product or products.



- (n) Fail to inform the Decedent of what would be safe, sufficient and proper protective equipment and appliances when using or being exposed to asbestos-containing products and other ingredients in said defendants' products.
- (o) Fail to inform the Decedent of what would be safe and proper methods of handling and using their products.
- (p) Fail to test the asbestos-containing products in order to ascertain the dangers involved.
- (q) Fail to test the other ingredients in their products to ascertain the dangers involved.
- (r) Fail to remove the asbestos-containing products from the market when the defendants knew, or should have known, of the hazards of the exposure to asbestos and the use of asbestos-containing products and/or of other ingredients in their products.
- (s) Fail to place any warnings on the asbestos-containing products to warn the handlers thereof of the dangers of said asbestos-containing products and failure to warn of dangers of other ingredients in their products, including silica.
- (t) Specify the use of asbestos-containing products or supervise the maintenance of an asbestos containing product in such a manner as to result in the Decedent being asbestos to asbestos.

Plaintiff alleges that contractor defendants are guilty of “statutory misconduct” in that in exposing the Decedent to visible asbestos-containing dust, they violated standards for limiting exposure to such dust during the relevant time period.

48. As a direct and proximate result of the acts and omissions, both jointly and severally, of the Defendant corporations described in this count, Plaintiff’s Decedent suffered severe personal injury and death. Plaintiff is furthermore entitled to damages specified in later counts.

WHEREFORE, Plaintiff prays that this Honorable Court enter judgment on her behalf against the defendants, both jointly and severally, for an amount that is above this Court’s jurisdictional minimum, as provided by law, and also for the cost of this action and interest to the extent provided for by law.

**COUNT VIII**  
**INTENTIONAL TORT**

49. Plaintiff incorporates the aforementioned paragraphs by reference hereto as fully set forth herein.

50. That at various times from 1929 to the filing of this law suit, Defendants had actual knowledge of the dangers to the Decedent of asbestos exposure, nevertheless, Defendants deliberately, intentionally and purposefully withheld such information from the Decedent, thus denying the Decedent of the knowledge with which to take necessary safety precautions such as periodic x-rays and medical examinations and avoiding further dust exposure, the specifics of Defendants' intentional acts being as follows:

- a. Failing to warn prior users of the need for monitoring due to prior asbestos exposure;
- b. Never issuing recall type letters or notices to prior users;
- c. Frustrating the publication of articles on the asbestos health hazards in the literature;
- d. Top management officials of Defendants rejected advice of 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;
- e. Intentional inadequacy and delay or use of warnings on asbestos products;
- f. Failing to advise the Decedent of medical findings known to defendants concerning the dangers of asbestos exposure; and
- g. Suppressing the dissemination of information to the Decedent concerning the hazards of asbestos exposure.

51. The foregoing deliberate, intentional and purposeful acts of Defendants were a direct and proximate cause of the Decedent's severe injuries, disabilities, death and damages, all of which entitles the Plaintiff to compensatory and punitive damages.

**COUNT IX**  
**MISREPRESENTATIONS**

52. Plaintiff incorporates the aforementioned paragraphs by reference hereto as fully set forth herein.

53. Defendants falsely represented facts, including the dangers of asbestos exposure to the Decedent in the particulars alleged in the paragraphs above, while Defendants had actual knowledge of said dangers of asbestos exposure to persons, such as the Decedent. Defendants knew of the falsity of their representations and/or made the representations in reckless disregard of their truth or falsity.

54. The foregoing representations were material conditions precedent to the Decedent's continued exposure to asbestos-containing products and Defendants intended that the Decedent act upon the representations by continuing his exposure to the asbestos products. The Decedent was ignorant of the falsity of the Defendants' representations and rightfully relied upon the representations, and was injured and damaged as herein stated.

**COUNT X**  
**PREMISES DEFENDANTS**

55. The Plaintiff incorporates by reference the previous paragraphs, where relevant, as though the same were fully set forth herein verbatim.

56. The Decedent was exposed to asbestos and other harmful dusts in West Virginia and elsewhere, and/or was exposed to asbestos dust and other harmful products as the result of the distribution and installation of asbestos-containing products by the defendants.

57. At all relevant times complained of herein, the defendant corporations, as duly authorized and licensed to do business in the State of West Virginia or domestic West Virginia corporation licensed to do business in the State of West Virginia, were doing business in the State of West Virginia or actively advertised and recruited for employees within the State of West Virginia.

58. At all times mentioned herein, the defendant corporations acted through their duly authorized agents, servants and employees, who were at all times relevant herein acting within the course of their employment and within the scope of their employment, for the furtherance of the businesses of each of the said defendant corporations.

59. The Decedent, during the course of his employment, was required to handle and/or use asbestos products supplied to the Decedent by the defendant corporations, and was required to and did remove asbestos insulation from piping, valves and other structures. At those times when Decedent was not himself actually using and handling said asbestos products, he was frequently exposed to the fibers contained in asbestos dusts generated by the use of said products by other workers in the same work environment employed by the defendant corporations and others.

60. The Premises Owner Defendants were, at all times relevant herein, the owners and operators and/or employers, of chemical processing plants, research facilities, electrical and steam generating plants, industrial facilities and other businesses (hereinafter referred to as "plants") and other work sites situated in West Virginia, in close proximity to West Virginia, and/or elsewhere.

61. At all times relevant herein, the Decedent worked at plants and/or work sites owned and operated by Premise Owner Defendants. On such occasions, the Decedent was employed by contractors and assigned to work his trade, at the direction and under the control of

his Employers and the Defendant Premise Owners, in and about the Defendant Premises Owners' plants or was a direct employee of the Premises Owners. The Decedent was present in Defendant Premise Owners' plants with the approval of the said premises owners, pursuant to implied and/or express agreement by and between Decedent's employers and defendant premises owners.

62. The Premise Owner Defendants, as owners and operators of the plants described herein, owed the Decedent the duty to provide the Decedent with a reasonably safe place to work and a duty to exercise reasonable care in protecting the Decedent from work place hazards. The Defendant Premise Owners, and each of them, breached this duty in the following manners:

a. The defendants specified or contracted for the use of asbestos products, and also provided such products for use by the Decedent and his co-workers, further failed to restrict the use of asbestos products in their plants even after the defendants knew or should have known of the dangers associated with work place exposure to airborne asbestos fibers;

b. The defendants, and each of them, knew, or with the exercise of reasonable care should have known, of the dangers associated with work place exposure to airborne asbestos fibers created by the sawing, cutting, application and other use of asbestos products, and by the demolition and tearing out of existing asbestos insulation and of asbestos products, components, and materials;

c. The defendants failed to take reasonable precautions or exercise due to care to warn the Decedent of the danger and harm to which he was exposed while working in close proximity to asbestos insulations and other craftsman whose work activities created airborne asbestos fibers;

d. The defendants failed to provide the Decedent with protective equipment and clothing to guard them him inhalation of asbestos fibers;

e. The design, construction, maintenance, installation, placement or continued placement by failure to remove or render harmless asbestos products in the defendants' facilities as identified above created an unreasonable risk to harm to the Decedent who was directed to work on the defendants' premises;

f. The defendants failed to provide adequate inspection and supervision with regard to the activities of their employees and contractors and subcontractors involved in the use, disturbance or tear out of asbestos as aforesaid, after they had actual or constructive notice of the existence of unsafe working conditions on their premises arising from said asbestos products;

g. The defendants violated applicable statutes and regulations controlling the conduct where the exposures occurred, including the provisions of West Virginia Law dealing with safety and welfare of employees and other applicable laws and regulations.

63. Such specific unsafe working conditions, as alleged, were in violation of West Virginia safety statutes, rules, regulations and commonly accepted and well-known safety standards within defendant's industry. Notwithstanding the facts set out above, the Defendants continued to expose the Plaintiff's Decedent to asbestos and pathogenic dusts and fibers, which he breathed.

64. As a direct and proximate result of Defendants' conduct, Plaintiff's Decedent suffered severe personal injury and death. The Defendants' breaches of duty as aforementioned was a direct and proximate result of the Plaintiff Decedent's exposure to the asbestos dust and fibers above described, which resulted in the Decedent's asbestos related malignancy and resultant injuries, illnesses, disabilities, and damages, as set forth more fully below.

WHEREFORE, the Plaintiff claims compensatory damages and punitive damages in the amount deemed sufficient by the jury with interest and costs of suit herein.

**COUNT XI**  
**CONTRACTORS**

65. The Plaintiff adopts and incorporates by reference the previous paragraphs, where relevant, as if fully set forth verbatim herein.

66. In connection with the facilities where the contractor performed services, the Plaintiff's Decedent was exposed to, among other things, significant quantities of asbestos-containing insulation materials and asbestos-containing products.

67. At all times pertinent hereto, the Plaintiff's Decedent was exposed to asbestos and other harmful ingredients disturbed, supplied, manipulated, installed, specified, removed and/or sold by the various contractor defendants. The Plaintiff's Decedent was unaware of the dangers from exposure to asbestos at the time of exposure.

68. The Plaintiff's Decedent's asbestos-related disease and death are direct and proximate result of the negligence of the defendants, both jointly and severally, in that they disturbed, supplied, manipulated, installed, specified, removed and/or sold products containing asbestos and other dangerous ingredients, which products defendants knew, or in the exercise of reasonable care, should have known, were inherently, excessively, and ultra-hazardously dangerous to Plaintiff's Decedent via the worksites at which the he worked. Plaintiff alleges that her Decedent's asbestos related cancer and death were the direct and proximate result of the acts of the contractor defendants, and that these acts combined with the acts of the employer defendant and the manufacturers of the asbestos-containing insulation and asbestos products to bring about the Plaintiff's injuries.

69. The defendant contractors owed a duty to protect the Plaintiff's Decedent from foreseeable harm. The defendant contractors, in failing to act in a reasonable manner to protect the plaintiff, did breach this standard of care and did further:

- (a) Conceal information from the Plaintiff's Decedent and other similarly situated workers, which the defendants possessed and knew from at least the 1940's that exposure to asbestos-containing materials and products presented and posed a significant risk to persons using or exposed to said products of the development of asbestos and/or cancer;
- (b) Elect not to initiate any safety program that would have reduced the risk to individuals who were being exposed to asbestos-containing materials and products;
- (c) Conceal and not informing Plaintiff's Decedent of warnings that had been issued by the manufacturer of the products concerning the dangers of asbestos to the defendants, but which were not provided to the Decedent and others;
- (d) Fail to inform Plaintiff's Decedent of the risk, thereby permitting the Decedent and others similarly situated to continue using the products without taking steps to protect themselves;
- (e) Fail to initiate a training program designed to train Plaintiff's Decedent and others the proper and correct procedure for handling the asbestos-containing materials and products, which the defendant knew were dangerous and present a serious risk of injury or death, or alternatively did undertake a duty to plaintiff by establishing or creating a safety program, but did breach such duty by not adequately protecting the Decedent from exposure to asbestos;
- (f) Use products of the type that exceeds hygienic and accepted standards for use in the industrial work place;
- (g) Fail to properly monitor or by monitoring and failing to inform of the amount of dust emitted by the asbestos-containing materials and products that were bought and supplied to Decedent's worksites and others for use at this period of time;
- (h) Failing to initiate any medical monitoring program to examine and provide medical information to the Decedent and others relating to the effects of the asbestos upon the Decedent and others;
- (i) Engaging in a course of corporate misconduct for the purpose of increasing proceeds at the expense, safety and health of its employees through other numerous corporate acts relating to costs and health risks which the defendant knew was not safe or proper;



- (j) Fail to warn Plaintiff's Decedent of the dangers of the said products when the defendants knew, or should have known, that exposure to the asbestos-containing products and other ingredients of said products would cause disease and injury;
- (k) Fail to take reasonable precautions to warn Plaintiff's Decedent of the dangers to which he was exposed when the defendants knew, or should have known, of such dangers;
- (l) Fail to exercise reasonable care to warn Plaintiff's Decedent of the danger to which he was exposed by use of the asbestos-containing products and other ingredients in said defendants' products;
- (m) Fail to inform the Plaintiff's Decedent of what would be safe and sufficient apparel for a person who was exposed to or used the product or products;
- (n) Fail to inform the Plaintiff's Decedent of what would be safe, sufficient and proper protective equipment and appliances when using or being exposed to asbestos-containing products and other ingredients in said defendants' products;
- (o) Fail to inform the Plaintiff's Decedent of what would be safe and proper methods of handling and using their products;
- (p) Fail to test the asbestos-containing products in order to ascertain the dangers involved;
- (q) Fail to test the other ingredients in their products to ascertain the dangers involved;
- (r) Fail to remove the asbestos-containing products from the market when the defendants knew, or should have known, of the hazards of the exposure to asbestos and the use of asbestos-containing products and/or of other ingredients in their products;
- (u) Fail to place any warnings on the asbestos-containing products to warn the handlers thereof of the dangers of said asbestos-containing products and failure to warn of dangers of other ingredients in their products; and,
- (v) Specify the use of asbestos-containing products or supervise the maintenance of an asbestos containing product in such a manner as to result in the Plaintiff's Decedent being exposed to asbestos.

Plaintiff alleges that contractor defendants are guilty of "statutory misconduct" in that in exposing the Plaintiff's Decedent to visible asbestos-containing dust, they violated standards for limiting exposure to such dust during the relevant time period.

70. As a direct and proximate result of the acts and omissions, both jointly and severally, of the Defendant corporations described in this count, Plaintiff's Decedent suffered severe personal injury and death. The Defendants' breaches of duty as aforementioned was a direct and proximate result of the Plaintiff Decedent's exposure to the asbestos dust and fibers above described, which resulted in the Decedent's asbestos related malignancy and resultant injuries, illnesses, disabilities, and damages, as set forth more fully below. Plaintiff is furthermore entitled to damages specified in later counts.

**COUNT XII**  
**STRICT LIABILITY/ULTRA HAZARDOUS ACTIVITY**

71. Plaintiff incorporates the aforementioned paragraphs by reference hereto as fully set forth herein.

72. Installing, removing, and utilizing asbestos insulations and other asbestos products, are ultra hazardous activities.

73. The Decedent was exposed to and breathed asbestos dust while working around the Asbestos Defendants' products and/or services and/or on Defendants' premises.

74. The Asbestos Defendants are strictly liable for injuries to the Decedent resulting from this ultra hazardous activity.

WHEREFORE, the Plaintiff individually and as Executrix of the Estate demands judgment against the Defendants, jointly and severally, for compensatory damages in an amount deemed just and proper by trier of fact to adequately and fully compensate the decedent's beneficiaries for their damages, and punitive damages in an amount deemed just by trier of fact, together with interest and the costs incurred in the prosecution of this suit.

**COUNT XIII**  
**PUNITIVE DAMAGES**

75. The Plaintiff hereby realleges and incorporates by reference the previous paragraphs, inclusive of all subparagraphs, as though the same were fully set forth herein verbatim.

76. The conduct of some of the Defendants was willful, wanton, malicious and in reckless disregard of the safety of the Decedent, as well as others and, therefore, justifies the award of punitive damages.

77. As a direct and proximate result of these acts, the Plaintiff's Decedent suffered serious bodily injury, endured great pain and suffering and mental anguish, incurred medical expenses, lost income, and was otherwise damaged through his death.

WHEREFORE, Plaintiff demands judgment against the defendants, jointly and/or severally, for damages in an amount hereinafter prayed for.

**COUNT IV**  
**LOSS OF CONSORTIUM**

78. Plaintiff incorporates the aforementioned paragraphs by reference hereto as fully set forth herein.

79. At all times material hereto, the Plaintiff was the wife of the Decedent; CARLOS DARRELL BURDETTE and JO ANN BURDETTE.

80. At all times material hereto, the Decedent was the financial supporter and provider for his spouse, and as a result of his illness, disease and death, the Plaintiff has lost the financial support of her husband.

81. The Plaintiff and the Decedent's beneficiaries have suffered the loss of general services, companionship, and society of the Decedent.

82. As a result of the Decedent's illness, the Plaintiff rendered nursing services and other services to her husband, which she otherwise would not have rendered except for the illness, until her husband's death.

**COUNT XV**  
**INJURIES COMPLAINED OF AS TO ALL COUNTS ALL DEFENDANTS**

83. Plaintiff incorporates the aforementioned paragraphs by reference hereto as fully set forth herein.

84. As a direct and proximate result of the exposure to the harmful and deleterious asbestos products above described, but not limited thereto, the Decedent sustained permanent and severe injury to his lungs and respiratory system. The Decedent's longevities were diminished. The Decedent's physical activities were limited or were curtailed, and he continued to experience physical pain and suffering, mental anguish and loss of enjoyment of life until his death.

85. As a further direct and proximate result of the negligence of the defendants and each of them, as aforesaid, and the exposures described above and the injuries sustained, the Decedent required medical and hospital treatment and, therefore, the Plaintiff and Decedent incurred expenses for medical and hospital care and treatment, continued to incur such expenses until the Decedent's untimely demise.

86. As a further direct and proximate result of the negligence of these defendants and each of them, and the exposures and injuries described herein, the Decedent suffered great pain, extreme nervousness and mental anguish as a direct result of the aforesaid asbestos-related malignancy, and ensuing injuries.

87. The Plaintiff believes that the injuries and disabilities were permanent in nature, that the Plaintiff's and the Decedent's enjoyment of life was and has been greatly diminished, that CARLOS DARRELL BURDETTE'S expected life span was greatly shortened and that these effects are the direct and proximate result of the negligence or breach of duty by the defendants.

88. As a result of the development of asbestos-related diseases, illnesses, and injuries, the Decedent suffered the injuries and damages listed above, until his death.

WHEREFORE, the Plaintiff individually and as Executrix of the Estate demands judgment against the Defendants, jointly and severally, for compensatory damages in an amount deemed just and proper by trier of fact to adequately and fully compensate the decedent's beneficiaries for their damages, and punitive damages in an amount deemed just by trier of fact, together with interest and the costs incurred in the prosecution of this suit.

**COUNT XV**  
**DEMAND FOR JUDGMENT ALL DEFENDANTS**

89. Plaintiff incorporates the aforementioned paragraphs by reference hereto as fully set forth herein.

90. Plaintiff individually and as Executrix of the Estate demands judgment against the Defendants, jointly and severally, for compensatory damages in an amount deemed just and proper by the trier of fact to adequately and fully compensate the decedent's beneficiaries for their damages, and punitive damages in an amount deemed just by the trier of fact, together with interest and the costs incurred in the prosecution of this suit.

**PLAINTIFF DEMANDS A TRIAL BY JURY.**

**JO ANN BURDETTE**, Executrix of the Estate of  
**CARLOS DARRELL BURDETTE**, Deceased,  
Plaintiff:

By:   
Counsel for Plaintiff

R. Dean Hartley (W.Va. Bar # 1619)  
Leslie Ann James, Esq. (WV Bar #7263)  
ljames@hartleylawgrp.com  
HARTLEY LAW GROUP, PLLC  
The Wagner Building  
2001 Main Street, Suite 600  
Wheeling, WV 26003  
Phone: (304) 233-0777  
Fax: (304) 233-0774