

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

DANIEL A. WINLAND, and his wife,
CLOY WINLAND,

Plaintiffs,

v.

ASBESTOS COMPLAINT

CIVIL ACTION NO.23-C-____MSH

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

ARMSTRONG INTERNATIONAL, INC.,
a Michigan corporation;

ARMSTRONG PUMPS, INC.,
a New York corporation;

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

ATLAS INDUSTRIES,
a Pennsylvania corporation;

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

CATALYTIC CONSTRUCTION COMPANY
a Delaware corporation;

COPE-S-VULCAN, INC.
a Delaware corporation;

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

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

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

**FLOWERVE U.S., INC., as successor-in-interest to
Durametallc Corporation.,**
a foreign corporation;

FLOWERVE U.S., INC., and its Byron Jackson Pump Division,
a Delaware corporation;

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

FOSTER WHEELER ENERGY CORP.,
a foreign corporation;

GARDNER DENVER, INC.,
a Delaware corporation;

GENERAL ELECTRIC COMPANY,
a New York corporation;

GOULDS PUMP, INC.,
a Delaware corporation;

GRINNELL, LLC,
a Delaware corporation;

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

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

I.U. NORTH AMERICA, INC., as successor by

merger to The Garp Company, f/k/a The Gage Company, f/k/a Pittsburgh Gage and Supply Company,
a Pennsylvania 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;

ITT CORPORATION, F/K/A ITT INDUSTRIES,
a Mississippi corporation;

J.H. FRANCE REFRACTORIES COMPANY,
a Pennsylvania corporation;

JOY TECHNOLOGIES, INC. a/k/a and as successor-in-interest to Joy Mining Machinery, individually and as successor-in-interest to Joy Technologies, Inc., individually and as successor-in-interest to Joy Manufacturing, Inc., and its subsidiary, T & L Supply Co.,
a Pennsylvania corporation;

MCJUNKIN REDMAN CORPORATION,
a West Virginia corporation;

NITRO INDUSTRIAL COVERINGS,
a West Virginia corporation;

OHIO VALLEY INSULATING COMPANY,
a West Virginia corporation;

PARAMOUNT GLOBAL F/K/A VIACOM, INC., as successor by merger to CBS Corporation, f/k/a Westinghouse Electric Corporation,
a Delaware corporation;

REDCO Corporation, f/k/a Crane Co.,
a Delaware corporation;

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

SCHNEIDER ELECTRIC USA, INC., f/k/s
Square D Corporation,
a Delaware corporation;

SPIRAX SARCO, INC.,
a Delaware corporation;

STATE ELECTRIC SUPPLY COMPANY,
a West Virginia corporation;

UNIFRAX CORPORATION f/k/a Carborundum
Company,
a Delaware corporation,

VIKING PUMP, INC.
a Delaware corporation,

VIMASCO CORPORATION,
a West Virginia corporation;

WASTE MANAGEMENT OF WEST VIRGINIA, INC. f/k/a WASTE MANAGEMENT, INC.
f/k/a WMX Technologies, Inc., and its subsidiaries, Brand Insulations, Inc. and Treco
Construction Services, Inc., a Delaware corporation

WEST VIRGINIA ELECTRIC SUPPLY COMPANY,
a West Virginia corporation;

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

THE WILLIAM POWELL COMPANY,
an Ohio corporation; and,

ZURN INDUSTRIES, LLC
a Pennsylvania corporation.

Defendants.

ASBESTOS COMPLAINT

1. The Plaintiffs, DANIEL A. WINLAND and his wife, CLOY WINLAND, reside in New Martinsville, West Virginia.

2. Plaintiff DANIEL A. WINLAND was diagnosed with the incurable and asbestos-related disease, malignant mesothelioma, on or about December 13, 2022.

3. The only medically known cause for mesothelioma in America is exposure to asbestos dust.

4. 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.

5. DANIEL A. WINLAND was exposed to asbestos dust in West Virginia while working at Viking Glass, New Martinsville, West Virginia. He also worked at Ormet, Hannibal, Ohio. During the time Plaintiff was exposed to products of various defendants, the products

reached Plaintiff's jobsite without any substantial change in the condition of the product or products from the time they were sold, used or distributed by the defendants. The Plaintiffs expressly disclaim any cause of action for any injuries caused by any exposure to asbestos dust that occurred in a federal enclave as well as any cause of action or recovery for any injuries resulting from exposure to asbestos dust caused by any acts or omissions of a party committed at the direction of an officer of the United States government.

6. Defendants' manufacture, sale, distribution, use, specification, disturbance and/or installation of asbestos-containing products exposed the Plaintiff to asbestos, resulting in the asbestos-caused malignancy. Exposure to and the inhalation of asbestos dust was a direct and proximate cause of the Plaintiff's development of Plaintiff's asbestos-related malignancy. Plaintiffs' severe injury, disability and damages are set forth more fully herein. 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.

7. 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. 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. Some defendants have done business in the State by putting their

products into the stream of commerce in the State of West Virginia. For some defendants, the Defendant acts as one entity with a parent or a subsidiary, which has continuous and systematic contacts with this state.

8. 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.

9. Defendants MCJUNKIN REDMAN CORPORATION, NITRO INDUSTRIAL COVERINGS, OHIO VALLEY INSULATING COMPANY, STATE ELECTRIC SUPPLY COMPANY, VIMASCO CORPORATION, WEST VIRGINIA ELECTRIC SUPPLY COMPANY, WHEELING RUBBER PRODUCTS, INC., which have done and/or are doing business in West Virginia.

10. Defendant corporations 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, manipulating, 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: AIR & LIQUID SYSTEMS CORPORATION successor-by-merger to BUFFALO PUMPS, INC., ARMSTRONG INTERNATIONAL, INC., ARMSTRONG PUMPS, INC., AMETEK, IN., successor-in-interest to Haveg Industries, Inc., ATLAS INDUSTRIES, BW/IP., INC., and its Wholly Owned Subsidiaries, CATALYTIC CONSTRUCTION COMPANY, COPES-VULCAN, INC., EATON CORPORATION, individually and as successor-in-interest to Cutler-Hammer, Inc., FLOWSERVE CORPORATION, f/k/a the Duriron Company, Inc., FLOWSERVE CORPORATION, as successor-in-interest to Valtek, Inc., FLOWSERVE U.S., INC., as successor-in-interest to Durametallc Corporation.,

FLOWERVE U.S., INC., and its Byron Jackson Pump Division, FMC CORPORATION, On behalf of its former Peerless Pump, business, FOSTER WHEELER ENERGY CORP., GARDNER DENVER, INC., GENERAL ELECTRIC COMPANY, GOULDS PUMP, INC., GRINNELL, LLC, GOODRICH CORPORATION, (f/k/a B.F. Goodrich Company), HOWDEN NORTH AMERICA, INC., formerly known as HOWDEN BUFFALO, INC., I.U. NORTH AMERICA, INC., as successor by merger to The Garp Company, f/k/a The Gage Company, f/k/a Pittsburgh Gage and Supply Company, 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., IMS COMPANY f/k/a Injection Molders Supply Co., Inc., ITT CORPORATION, F/K/A ITT INDUSTRIES, J.H. FRANCE REFRACTORIES COMPANY, JOY TECHNOLOGIES, INC. a/k/a and as successor-in-interest to Joy Mining Machinery, individually and as successor-in-interest to Joy Technologies, Inc., individually and as successor-in-interest to Joy Manufacturing, Inc., and its subsidiary, T & L Supply Co., PARAMOUNT GLOBAL F/K/A VIACOM, INC., as successor by merger to CBS Corporation, f/k/a Westinghouse Electric Corporation, REDCO Corporation, f/k/a Crane Co., RUST ENGINEERING & CONSTRUCTION, INC., f/k/a Rust International Corporation, SCHNEIDER ELECTRIC USA, INC., f/k/s Square D Corporation, SPIRAX SARCO, INC., UNIFRAX CORPORATION f/k/a Carborundum Company, VIKING PUMP, INC., WASTE MANAGEMENT OF WEST VIRGINIA, INC. f/k/a WASTE MANAGEMENT, INC. f/k/a WMX Technologies, Inc., and its subsidiaries, Brand Insulations, Inc. and Treco Construction Services, Inc., THE WILLIAM POWELL COMPANY, ZURN INDUSTRIES, LLC.

For certain sellers the application or use of asbestos or asbestos containing products in conjunction with their product was a foreseeable use.

11. 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.

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

COUNT 1
NEGLIGENCE

13. Plaintiffs hereby reallege and incorporate by reference the previous paragraphs as though the same were fully set forth herein verbatim.

14. Over the course of his life, the Plaintiff was exposed to and worked with and/or around products containing asbestos and/or other harmful minerals manufactured, supplied, sold, distributed, installed, used, specified, removed and/or required by the Defendants. As a result, the Plaintiff was exposed to asbestos dust and breathed or ingested asbestos dust created by the use of said products, and developed the serious, fatal and incurable disease, malignant mesothelioma.

15. The Defendants and each of them by their agents, servants and employees were negligent in that they produced, supplied and/or sold, and/or used, and/or specified, and/or delivered products containing asbestos and other dangerous ingredients and did further:

- (a) Fail to warn Plaintiff 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;
- (b) Fail to take reasonable precautions to warn the Plaintiff of the dangers to which he was exposed when the defendants knew, or should have known, of such dangers;

- (c) Fail to exercise reasonable care to warn the Plaintiff of the danger to which he was exposed by use of the asbestos-containing products and other ingredients in said defendants' products;
- (d) Fail to inform the Plaintiff of what would be safe and sufficient apparel for a person who was exposed to or used the product or products;
- (e) Fail to inform the Plaintiff 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;
- (f) Fail to inform the Plaintiff of what would be safe and proper methods of handling and using their products;
- (g) Fail to test the asbestos-containing products in order to ascertain the dangers involved;
- (h) Fail to test the other ingredients in their products to ascertain the dangers involved;
- (i) 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;
- (j) 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.
- (k) The defendants did fail to inform the Plaintiff of what would be safe and sufficient wearing apparel and safety equipment for persons who were exposed to their products or on their premises or in the vicinity of their workers.
- (l) The defendants did fail to take reasonable precautions to warn the Plaintiff of the dangers to which he was being exposed.

16. 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, who were exposed to them.

17. As a direct and proximate result of the negligence of the Defendants which caused the Plaintiff to develop serious, permanent and disabling disease, the Plaintiff has 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 live, shortening of his life expectancy, permanent and disabling injury, all of which will continue into the future.

WHEREFORE, Plaintiffs demand 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 them 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 their suit.

COUNT 2
STRICT LIABILITY

18. Plaintiffs hereby reallege and incorporate by reference the previous paragraphs as though the same were fully set forth herein verbatim.

19. At the time of Plaintiff'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 Plaintiff had no knowledge of the defects and no reason to suspect a defective condition.

20. The Defendants are strictly liable, both jointly and severally, to each Plaintiff for failure to properly, adequately, and safely label the asbestos-containing products, for selling

and/or using and/or specifying asbestos-containing products that were in a defective condition; for selling products that were unreasonably safe; for selling products containing asbestos that were in a defective condition and unreasonably unsafe because of failure to give reliable and complete warnings of the known and knowable dangers involved in the use and exposure to products containing asbestos, and/or the risk of carrying such products on their apparel. Defendants conduct 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 users and/or persons exposed to these products, including the Plaintiff.

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

WHEREFORE, the Plaintiffs demand judgment against the Defendants, jointly and severally, for compensatory damages in an amount deemed just by the trier of fact, together with interest and costs incurred in the prosecution of this suit.

COUNT 3
CONTAMINATED BUILDINGS

22. Plaintiffs hereby reallege and incorporate by reference the previous paragraphs, inclusive of all subparagraphs, as though the same were fully set forth herein verbatim.

23. Subsequent to the time Defendants caused asbestos products to be sold, used, removed 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.

24. Nevertheless, Defendants negligently and recklessly failed and refused to warn and advise the Plaintiff of the dangerous characteristics thereof, and the dangers to the health and welfare of persons coming in contact with and breathing products 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 Plaintiff despite Defendants' knowledge that asbestos had contaminated buildings and job sites where the Plaintiff worked.

25. The Plaintiff has suffered continuing, lingering and permanent injury due to Defendants' asbestos fibers previously inhaled.

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

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

COUNT 4
FAILURE TO WARN

28. The Plaintiffs incorporate by reference the previous paragraphs, including said paragraphs and subparagraphs, as if the same were set forth fully herein verbatim.

29. 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 Plaintiff of the dangers associated with exposure to said hazardous products.

30. As a direct and proximate result of the exposure to the asbestos and asbestos-containing products above described, but not limited thereto, the Plaintiffs have sustained the injuries hereafter set forth.

WHEREFORE, the Plaintiffs demand judgment against the Defendants, jointly and severally, in an amount hereinafter prayed for.

COUNT 5
BREACH OF IMPLIED/EXPRESS WARRANTY

31. Plaintiffs hereby reallege and incorporate by reference the previous paragraphs as though the same were fully set forth herein verbatim.

32. Defendants expressly or impliedly warranted that the products manufactured, supplied, sold and/or delivered and/or specified by each of them were suitable and fit for the purpose for which they were manufactured and sold and were not abnormally dangerous to the general public and persons similarly situated to the Plaintiffs.

33. The Defendants expressly and impliedly 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 Defendants in that certain harmful, poisonous and deleterious matter was given off into the atmosphere wherein the Plaintiff carried out his duties, working with asbestos and asbestos-containing materials.

34. The Defendants' breach of the aforesaid implied and express warranties was a direct and proximate cause of the Plaintiff's development of the asbestos-related disease mesothelioma, and the Plaintiffs' severe injuries, disability and damages.

COUNT 6
CONTRACTORS

35. The Plaintiffs adopt and incorporate by reference the previous paragraphs, where relevant, as if fully set forth verbatim herein.

36. In connection with the facility where the contractor performed services, Plaintiff was exposed to, among other things, significant quantities of asbestos-containing insulation materials and asbestos-containing products.

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

38. The Plaintiff'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 Plaintiff via the worksite at which the Plaintiff worked. Plaintiff alleges that his asbestos related cancer was the direct and proximate result of the acts of the contractor defendants and that these acts combined with the acts of the premises owners and manufacturers of the asbestos-containing insulation and asbestos products to bring about the injury complained of.

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

- (a) Conceal information from the Plaintiff and other similarly situated which the defendant 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 Plaintiff of warnings that had been issued by the manufacturer of the products concerning the dangers of asbestos to the defendant, but which were not provided to the Plaintiff and others;
- (d) Fail to inform the Plaintiff of the risk, thereby permitting the Plaintiff 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 Plaintiff 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 plaintiffs by establishing or creating a safety program, but did breach such duty by not adequately protecting plaintiffs 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 Plaintiff'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 Plaintiff and others relating to the effects of the asbestos upon the Plaintiff 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 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 Plaintiff 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 Plaintiff 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 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 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 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; and,
- (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 Plaintiff being exposed to asbestos.

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

40. As a direct and proximate result of the acts and omissions, both jointly and severally, of the Defendant corporations described in this count, Plaintiff has suffered, and will in the future suffer: damages for medical treatment, drugs and other unknown remedial medical measures, great pain of the body and mind, embarrassment and inconvenience, loss of earning capacity, loss of enjoyment of life, and shortening of his life expectancy, lung injury, such that it has or will progress into other severe and disabling diseases of the body, shock and other attendant nervous or emotional disorders, an increased risk of malignancy and other diseases or injury, all of which are or may be permanent in nature, and death. Plaintiff is furthermore entitled to damages specified in later counts.

WHEREFORE, Plaintiffs pray that this Honorable Court enter judgment on their 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 7
INTENTIONAL TORT

41. Plaintiffs hereby reallege and incorporate and incorporates by reference the paragraphs herein, where relevant, as though the same were fully set forth herein verbatim.

42. That at various times from 1929 to the filing of this law suit, Defendants had actual knowledge of the dangers to the Plaintiff of asbestos exposure, nevertheless, Defendants deliberately, intentionally and purposefully withheld such information from the Plaintiff, thus denying the Plaintiff 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 Plaintiff of medical findings known to defendants concerning the dangers of asbestos exposure; and,

g. Suppressing the dissemination of information to the Plaintiff concerning the hazards of asbestos exposure.

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

COUNT 8
MISREPRESENTATIONS

44. Plaintiffs hereby reallege and incorporate by reference paragraphs stated herein, where relevant, as though the same were fully set forth herein verbatim.

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

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

COUNT 9
STRICT LIABILITY/ULTRA HAZARDOUS ACTIVITY

47. The Plaintiffs hereby reallege and incorporate by reference the previous paragraphs, inclusive of all subparagraphs, above, as though the same were fully set forth herein verbatim.

48. Installing, removing, and utilizing asbestos insulations and other asbestos products, otherwise creating asbestos dust is an ultra hazardous activity.

49. The Plaintiff was exposed to and breathed asbestos dust from using and/or being around the Defendants' products and/or services.

50. The Defendants are strictly liable for injuries to the Plaintiffs resulting from this ultra hazardous activity.

WHEREFORE, Plaintiffs demand judgment against the Defendants, jointly and/or severally, for damages in an amount hereinafter prayed for.

COUNT 10
LOSS OF CONSORTIUM

51. The Plaintiffs hereby reallege and incorporate by reference the previous paragraphs, inclusive of all subparagraphs, above, as though the same were fully set forth herein verbatim.

52. At all times material hereto, the Plaintiff Cloy Winland has been and is the wife of Plaintiff Daniel A. Winland.

53. At all times material hereto, the Plaintiff is and has been the financial supporter and provider for his wife, and as a result of the illness and disease heretofore described, the Plaintiff spouse has and will lose the financial support of her husband for the rest and remainder of her life.

54. Since the Plaintiff contracted malignant mesothelioma, the Plaintiff spouse and family members will progressively lose Plaintiff's general services, companionship and society, and they will continue to suffer the losses for the remainder of their lives.

55. As a result of the Plaintiff's illness and disease, the Plaintiff spouse will render 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 11
DAMAGES

56. The Plaintiffs hereby reallege and incorporate by reference the previous paragraphs, inclusive of all subparagraphs, above, as though the same were fully set forth herein verbatim.

57. As a direct and proximate result of the exposure to the harmful and deleterious asbestos products above described, but not limited thereto, the Plaintiff Daniel A. Winland sustained permanent and severe injury to his lungs and respiratory system from the fatal and incurable disease of malignant mesothelioma. Plaintiff's longevities are diminished. Plaintiff's physical activities are limited or are curtailed, and he will continue to experience or have experienced physical pain and suffering, mental anguish and loss of enjoyment of life.

58. 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 Plaintiff is in need of medical and hospital treatment and, therefore, have incurred expenses for medical and hospital care and treatment, and will continue to incur such expenses in the future until his untimely demise.

59. 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 Plaintiffs have suffered great pain, extreme nervousness and mental anguish as a direct result of the aforesaid asbestos-related disease, malignant mesothelioma, and ensuing injuries.

60. The Plaintiffs believe that the injuries and disabilities are permanent in nature, that their enjoyment of life has been greatly diminished, that Plaintiff's expected life span has been greatly shortened and that these results are the direct and proximate result of the negligence or breach of duty by the defendants.

61. As a result of the development of asbestos-related diseases, illnesses, and injuries, Plaintiff will continue to suffer the injuries and damages listed herein in the future, until his death.

WHEREFORE, Plaintiffs individually demand judgment against these defendants, jointly and/or severally, for compensatory damages in an amount in excess of the jurisdictional minimum to adequately and fully compensate them for their damages, as well as punitive damages where appropriate in an amount deemed just by the jury, with interest and costs of the suit herein.

PLAINTIFFS DEMAND A TRIAL BY JURY

Plaintiffs DANIEL A. WINLAND and his wife, CLOY
WINLAND:

By: 

Leslie Ann James, Esq. (W.V. Bar # 7263)

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