

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

**STEVEN ANSELL,**

Plaintiff,

vs.

Civil Action No. 13-C- 119 K

**EXXON MOBIL CORPORATION**, a New Jersey corporation;

**SAFETY-KLEEN SYSTEMS, INC.**,  
a Wisconsin corporation;

**RADIATOR SPECIALTY COMPANY**, a  
North Carolina corporation;

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

**WEST VIRGINIA, DEPARTMENT OF TRANSPORTATION,  
DIVISION OF HIGHWAYS**, an agency of the State of West  
Virginia;

**NAZDAR COMPANY**, Individually and as  
Successor-by-Acquisition/Merger  
to **ADVANCE PROCESS SUPPLY CO.**, an  
Illinois corporation;

**ADVANCE PROCESS SUPPLY CO.**, an  
Illinois corporation;

**3M COMPANY**, a Delaware corporation;

**FUJIFILM NORTH AMERICA CORPORATION**,  
as Successor-by Merger to **FUJIFILM SERICOL U.S.A., INC.**,  
as Successor-by-Merger to **SERICOL, INC.**,  
a New York corporation;

**UNCOMMON CONGLOMERATES, INC.**, a Division  
of **CYBERBOND, LLC**, a Delaware limited  
liability company;

Defendants.

DAVID R. ENY  
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# COMPLAINT

## **General Allegations**

1. Steven Ansell [hereinafter sometimes referred to as "Ansell"] is a citizen and resident of East Bank, Kanawha County, West Virginia.
2. Plaintiff was employed at the East Hills Exxon service station (aka Cloverleaf Exxon) in Huntington, West Virginia from 1983 to 1986 as a mechanic. From 1986 to 1987, Ansell was employed at the University Esso service station in Huntington, West Virginia as a mechanic. From 1989 to 1990, Ansell was employed at Dottie's Tiger Shop service station in Huntington, West Virginia as a mechanic. During his employment as a mechanic at all three aforementioned service stations, Ansell was engaged in activity which involved working in, around, near and being exposed to benzene-containing gasoline, mixed solvents, aromatic hydrocarbon-containing and/or chlorinated hydrocarbon-containing products, manufactured, rebranded, processed, supplied and/or sold by defendants, Exxon Mobil Corporation, Safety-Kleen Systems, Inc., Radiator Specialty Company, and/or CRC Industries, Inc. or their corporate predecessors. Ansell was exposed to said products and their contents by means of inhalation and dermal absorption (from direct dermal contact with said products and/or dermal contact with clothes contaminated by said products).
3. Defendant Exxon Mobil Corporation [hereinafter sometimes referred to as "Exxon"] is a New Jersey corporation, which has its principal place of business in Irving, Texas, and which does or has done business in Marshall County, West Virginia. Defendant Exxon manufactured, supplied, and/or distributed benzene-containing gasoline and mixed solvents, including aromatic hydrocarbon-containing and/or chlorinated hydrocarbon-containing products

to plaintiff's aforementioned service station places of employment identified in paragraph 2 above.

4. Defendant Safety-Kleen Systems, Inc. [hereinafter sometimes referred to as "Safety-Kleen"] is a Wisconsin corporation which has its principal place of business in Plano, Texas, and which does or has done business in Marshall County, West Virginia. Defendant Safety-Kleen manufactured, supplied, and/or distributed mixed solvents, including aromatic hydrocarbon-containing and/or chlorinated hydrocarbon-containing products to plaintiff's aforementioned service station places of employment identified in paragraph 2 above.

5. Defendant Radiator Specialty Company [hereinafter sometimes referred to as "Radiator Specialty"] is a North Carolina corporation which has its principal place of business in Charlotte, North Carolina, and which does or has done business in Marshall County, West Virginia. Defendant Radiator Specialty manufactured, supplied, and/or distributed mixed solvents, including aromatic hydrocarbon-containing and/or chlorinated hydrocarbon-containing products to plaintiff's aforementioned service station places of employment identified in paragraph 2 above.

6. Defendant CRC Industries, Inc. [hereinafter sometimes referred to "CRC"] is a Pennsylvania corporation which has its principal place of business in Warminster, Pennsylvania, and which does or has done business in Marshall County, West Virginia. Defendant CRC manufactured, supplied, and/or distributed mixed solvents, including aromatic hydrocarbon-containing and/or chlorinated hydrocarbon-containing products to plaintiff's aforementioned service station places of employment identified in paragraph 2 above.

7. Beginning in 1990, Ansell was employed by the West Virginia Department of

Transportation, Division of Highways, and continued to be so employed until he was forced to retire due to health reasons on September 5, 2012. During this twenty-two year period Ansell worked as a highway laborer, craft/transportation worker 1 and craft/transportation worker 2 at two locations in the Charleston, West Virginia area creating highway signage. Specifically from 1990 until approximately 2000 he was assigned to the West Virginia Department of Transportation, Division of Highways' facility located at 1334 Smith Street, Charleston, West Virginia, and from 2000 until his retirement on September 5, 2012, he was assigned to the West Virginia Department of Transportation, Division of Highways' facility located at 190 Dry Branch Drive, Charleston, West Virginia.

8. During his employment with the West Virginia Department of Transportation, Division of Highways, Ansell was engaged in activity which involved working in, around, near and being exposed to aromatic hydrocarbon-containing and/or chlorinated hydrocarbon-containing products, manufactured, rebranded, processed, supplied and/or sold by defendants, Nazdar Company, Advance Process Supply Co., 3M Company, FUJIFILM North America Corporation, and Sericol, Inc. or their corporate predecessors and/or successors. Ansell was exposed to said products and their contents by means of inhalation and dermal absorption (from direct dermal contact with said products and/or dermal contact with clothes contaminated by said products).

9. During his employment with the West Virginia Department of Transportation, Division of Highways, as aforesaid, Ansell was also engaged in activity which involved working in, around, near and being exposed to products which contained hydroquinone manufactured, rebranded, processed, supplied and/or sold by defendant Uncommon

Conglomerates, Inc. Ansell was exposed to said hydroquinone-containing products and their contents by means of inhalation and dermal absorption (from direct dermal contact with said products and/or dermal contact with clothes contaminated by said products).

10. Defendant West Virginia Department of Transportation, Division of Highways [hereinafter sometimes referred to as "WVDOH"] is an agency of the State of West Virginia that sues and can be sued. Defendant WVDOH's Charleston area facilities produced signage that was erected in Marshall County, West Virginia. Plaintiff's claim against the West Virginia Department of Transportation, Division of Highways, seeks no recovery from State funds; rather, recovery is sought under and up to the limits of the State's limits of liability coverage.

11. Defendant Nazdar Company [hereinafter sometimes referred to as "Nazdar"] is an Illinois corporation, which has its principal place of business in Shawnee, Kansas, and which does or has done business in West Virginia. Defendant Nazdar is the successor in interest by acquisition and/or merger to defendant Advance Process Supply Co. Defendant Nazdar as well as its predecessor, Advance Process Supply Co., manufactured, supplied, and/or distributed aromatic hydrocarbon-containing and/or chlorinated hydrocarbon-containing products to plaintiff's employer, WVDOH, during his employment with said entity as described in paragraphs 7 and 8 above.

12. Defendant 3M Company [hereinafter sometimes referred to as "3M"] is a Delaware corporation, which has its principal place of business in St. Paul, Minnesota, and which does or has done business in Marshall County, West Virginia. Defendant 3M manufactured, supplied, and/or distributed aromatic hydrocarbon-containing and/or chlorinated hydrocarbon-containing products to plaintiff's employer, WVDOH, during his employment with said entity as

described in paragraphs 7 and 8 above.

13. Defendant FUJIFILM North America Corporation [hereinafter sometimes referred to as "FUJIFILM"] is a New York corporation, which has its principal place of business in Valhalla, New York, and which does or has done business in West Virginia. Defendant FUJIFILM is the successor in interest by acquisition and/or merger to FUJIFILM Sericol U.S.A., Inc. which is the successor in interest by acquisition and/or merger to Sericol, Inc. Defendant FUJIFILM's predecessor Sericol, Inc. manufactured, supplied, and/or distributed aromatic hydrocarbon-containing and/or chlorinated hydrocarbon-containing products to plaintiff's employer, WVDOH, during his employment with said entity as described in paragraphs 7 and 8 above.

14. Defendant Uncommon Conglomerates, Inc. [hereinafter sometimes referred to as "Uncommon"] is a division of Cyberbond, LLC a Delaware limited liability company, which has its principal place of business in Batavia, Illinois, and which does or has done business in West Virginia. Defendant Uncommon manufactured, supplied, and/or distributed hydroquinone-containing products to plaintiff's employer, WVDOH, during his employment with said entity as described in paragraphs 7, 8, and 9 above.

15. Ansell's exposures to benzene-containing gasoline, mixed solvents, aromatic hydrocarbon-containing and/or chlorinated hydrocarbon-containing products while working as a mechanic as aforesaid, as well as his exposures to aromatic hydrocarbon-containing and/or chlorinated hydrocarbon-containing products and hydroquinone-containing products while working for the WVDOH as described previously was a proximate cause of Ansell's development of non-Hodgkins lymphoma (sometimes hereinafter referred to as "NHL")

diagnosed on October 4, 2012.

16. As a direct and proximate result of Ansell's NHL, as aforesaid, Ansell has been severely injured, disabled, and damaged, as is set forth more fully below.

### **JURISDICTION AND VENUE**

17. The Plaintiff incorporates by reference, as if pleaded herein verbatim, the allegations of all preceding paragraphs of the Complaint where appropriate.

18. Based upon information and belief, WVDOH has "stop gap" coverage in the amount of one million dollars (\$1,000,000.00) for actions brought by employees of the West Virginia Department of Transportation, Division of Highways pursuant to *W.Va. Code* §23-4-2. The venue provision in *W. Va. Code* §14-2-2 requiring exclusive venue in Kanawha County is, therefore, not applicable since recovery is sought only against liability insurance coverage of the WVDOH. *See Pittsburgh Elevator v. WV Bd. of Regents*, 310 S.E.2d 675 (W.Va. 1983) (exclusive venue provision in not applicable to cause of action wherein recovery is sought against liability insurance coverage of a state agency).

19. The defendants are amenable to jurisdiction before the courts of West Virginia by virtue of the fact that they are either citizens and residents of West Virginia, and/or to the extent they maintain minimum contacts with and/or conduct systematic business in West Virginia such that jurisdiction over the defendants is consistent with traditional notions of fair play and substantial justice, and/or to the extent they are otherwise amenable to jurisdiction in accordance with West Virginia's Long Arm Statutes.

20. The claims herein are brought solely under West Virginia and other applicable State common and State statutory laws. Every claim arising under the Constitution, treaties, or

laws of the United States is expressly disclaimed (including any claim arising from any act or omission on a federal enclave, or any officer of the United States, or any agency or person acting under him occurring under color of such office). The plaintiff withdraws any asserted State claim that is pre-empted by federal law.

21. There is not complete diversity of citizenship in this action due to the presence of a plaintiff who is domiciled in and is a citizen of West Virginia and a defendant agency of the State of West Virginia which is construed for diversity purposes to be a citizen of the State. There is no federal question at issue pursuant to 28 U.S.C. §1441(b). Plaintiff is not asserting any claim against any defendant who was acting under any officer of the United States or any agency thereof, or person acting under him or her, for any act under color of such office, or against defendant during any time period when its facility was a federal enclave.

22. Venue is proper before this Court since West Virginia follows the venue-giving defendant principle, whereby, once venue is proper for one defendant, it is proper for all other defendants subject to process. Upon information and belief, defendants Exxon, Safety-Kleen, Radiator Specialty, CRC, 3M, and WVDOH do or have done business in Marshall, County, West Virginia.

### **COUNT ONE**

#### ***Negligence, Carelessness, Recklessness, Wilfulness, and Wantonness***

23. Plaintiff incorporates by reference paragraphs 1 through 9, and paragraphs 11 through 22 of the Complaint, as if repeated herein verbatim.

24. Defendants Exxon, Safety-Kleen, Radiator Specialty, CRC, Nazdar, Advance Process, 3M, FUJIFILM, Sericol, and Uncommon are or at times relevant hereto, were



manufacturers, processors, and/or suppliers of benzene-containing gasoline, mixed solvents or aromatic hydrocarbon-containing products, chlorinated hydrocarbon-containing products, or hydroquinone-containing products.

25. Defendants Exxon, Safety-Kleen, Radiator Specialty, CRC, Nazdar, Advance Process, 3M, FUJIFILM, Sericol, and Uncommon acting by and through their servants, agents and employees, duly authorized and acting within the scope and authority of their employment, caused benzene-containing gasoline, mixed solvents or aromatic hydrocarbon-containing products, chlorinated hydrocarbon-containing products or hydroquinone-containing products to be placed into the stream of interstate commerce and have done so for a number of years preceding the filing of this civil action, and in particular, defendants sold, distributed and transported large quantities of benzene-containing gasoline, mixed solvents or aromatic hydrocarbon-containing products, chlorinated hydrocarbon-containing products or hydroquinone-containing products to the Ansell's places of employment identified above, with the result that said products came into use by and around Ansell.

26. Ansell, whose livelihood was dependent upon the work that he did for his employers, was required to work with and around benzene-containing gasoline, mixed solvents, aromatic hydrocarbon-containing products, chlorinated hydrocarbon-containing products or hydroquinone-containing products manufactured, processed, supplied, and/or sold by defendants Exxon, Safety-Kleen, Radiator Specialty, CRC, Nazdar, Advance Process, 3M, FUJIFILM, Sericol, and Uncommon, and said defendants knew, or in the exercise of reasonable care, should have known that persons employed, as Ansell was, would be required to and would, in fact, come into contact with, and work in close proximity to the benzene-containing gasoline, mixed

solvents, aromatic hydrocarbon-containing products, chlorinated hydrocarbon-containing products or hydroquinone-containing products in the forms aforesaid.

27. Ansell's illness, disability, and damages were directly and proximately caused by the negligence, carelessness, wilfulness, recklessness, and wantonness of defendants Exxon, Safety-Kleen, Radiator Specialty, CRC, Nazdar, Advance Process, 3M, FUJIFILM, Sericol, and Uncommon in that said defendants manufactured, processed, sold, supplied or otherwise put benzene-containing gasoline, mixed solvents, aromatic hydrocarbon-containing products, chlorinated hydrocarbon-containing products or hydroquinone-containing products upon the market and into the stream of interstate commerce, knowing, or which said defendants, in the exercise of ordinary care, should have known, that said products were deleterious, poisonous, cancer-causing, and inherently dangerous and harmful to Ansell's whole body, body chemistry, and general well-being; and said defendants further knew, or in the exercise of reasonable care should have known that Ansell would not know of such danger to his health; and said defendants nonetheless negligently, carelessly, wilfully, wantonly, and recklessly:

a. failed to advise Ansell of the dangerous characteristics of their benzene-containing gasoline, mixed solvents, aromatic hydrocarbon-containing products, chlorinated hydrocarbon-containing products or hydroquinone-containing products;

b. failed to advise Ansell as to what, if any, would be reasonably safe and sufficient clothing, protective equipment and appliances to protect him from being poisoned and disabled as he was by exposure to such deleterious and harmful benzene-containing gasoline, mixed solvents, aromatic hydrocarbon-containing products, chlorinated hydrocarbon-containing products or hydroquinone-containing products;

- c. failed and omitted to place any warnings, or sufficient warnings, on either their containers of the benzene-containing gasoline, mixed solvents, aromatic hydrocarbon-containing products, chlorinated hydrocarbon-containing products or hydroquinone-containing products, or shipping or billing documents to warn persons coming into contact with their benzene-containing gasoline, mixed solvents, aromatic hydrocarbon-containing products, chlorinated hydrocarbon-containing products or hydroquinone-containing products of the dangers to their health;
- d. failed and omitted to take reasonable precautions or to exercise reasonable care to publish, adopt and enforce a safety plan and a safe method of handling and working with benzene-containing gasoline, mixed solvents, aromatic hydrocarbon-containing products, chlorinated hydrocarbon-containing products or hydroquinone-containing products;
- e. failed to adequately warn, if in fact they warned at all, persons such as Ansell of the dangers to their health in coming into contact with, or breathing their benzene-containing gasoline, mixed solvents, aromatic hydrocarbon-containing products, chlorinated hydrocarbon-containing products or hydroquinone-containing products;
- f. failed to recommend methods to improve the work environment;
- g. failed to develop alternative products;
- h. continued to use and market known cancer-causing products, to-wit, benzene-containing gasoline, mixed solvents, aromatic hydrocarbon-containing products, chlorinated hydrocarbon-containing products or hydroquinone-containing products;
- i. failed to remove or reduce the cancer-causing components of their benzene-containing gasoline, mixed solvents, aromatic hydrocarbon-containing products,

chlorinated hydrocarbon-containing products or hydroquinone-containing products when it was feasible to do so; and

j. failed to make a reasonable inquiry to assure that Ansell's employers were adequately warning and protecting individuals, such as Ansell, against the hazards posed by exposure to their benzene-containing gasoline, mixed solvents, aromatic hydrocarbon-containing products, chlorinated hydrocarbon-containing products or hydroquinone-containing products.

28. As a direct and proximate result of the aforesaid negligence, carelessness, recklessness, wilfulness, and wantonness of Defendants Exxon, Safety-Kleen, Radiator Specialty, CRC, Nazdar, Advance Process, 3M, FUJIFILM, Sericol, and Uncommon, Ansell developed NHL, and as a consequence of which Ansell has been severely injured, disabled, and damaged as is more fully set forth below.

## **COUNT TWO**

### ***Breach of Warranty***

29. Plaintiff incorporates by reference the allegations contained in Count One of the Complaint, as if repeated herein verbatim.

30. Defendants Exxon, Safety-Kleen, Radiator Specialty, CRC, Nazdar, Advance Process, 3M, FUJIFILM, Sericol, and Uncommon impliedly warranted that the benzene-containing gasoline, mixed solvents, aromatic hydrocarbon-containing products, chlorinated hydrocarbon-containing products and/or hydroquinone-containing products manufactured, processed, supplied, and/or sold by them to Ansell's employers, and to which Ansell was exposed were of good and merchantable quality, and fit and suitable for the use for which they were intended. Said implied warranties were breached, in that certain harmful, poisonous and

deleterious and inherently dangerous fumes were given off from said products into the air and atmosphere wherein Ansell carried out his job duties, and further in that said products were absorbed into the human body when workers, such as Ansell, came into contact with said cancer-causing products.

31. As a direct and proximate result of the breach of said implied warranties, by Defendants Exxon, Safety-Kleen, Radiator Specialty, CRC, Nazdar, Advance Process, 3M, FUJIFILM, Sericol, and Uncommon, as hereinabove set forth, Ansell developed NHL as a consequence of which Ansell has been severely injured, disabled, and damaged as is more fully set forth below.

### **COUNT THREE**

#### ***Strict Liability***

32. Plaintiff incorporates by reference the allegations contained in Counts One and Two of the Complaint, as if repeated herein verbatim.

33. Plaintiff further alleges that at the time defendants Exxon, Safety-Kleen, Radiator Specialty, CRC, Nazdar, Advance Process, 3M, FUJIFILM, Sericol, and Uncommon manufactured, processed, sold or supplied the aforesaid benzene-containing gasoline, mixed solvents, aromatic hydrocarbon-containing, chlorinated hydrocarbon-containing, and/or hydroquinone-containing products, and at the time they were used by and around Ansell in the manner and environment intended, said products were in a defective condition and were unreasonably dangerous and unfit for their intended use in that they were deleterious, poisonous and highly harmful to Ansell's body. As a result, defendants Exxon, Safety-Kleen, Radiator Specialty, CRC, Nazdar, Advance Process, 3M, FUJIFILM, Sericol, and Uncommon are strictly

liable in tort to those persons injured as a result of said defects, and in particular to the plaintiff for his illness, disability, and damages.

34. As a direct and proximate result of the defective condition of the benzene-containing gasoline, mixed solvents, aromatic hydrocarbon-containing products, chlorinated hydrocarbon-containing, and/or hydroquinone-containing products manufactured, processed, sold or supplied by defendants Exxon, Safety-Kleen, Radiator Specialty, CRC, Nazdar, Advance Process, 3M, FUJIFILM, Sericol, and Uncommon, Ansell developed NHL as a consequence of which Ansell has been severely injured, disabled, and damaged as is more fully set forth below.

#### **COUNT FOUR**

##### ***Exxon-Negligent Performance of Voluntary Undertaking***

35. Plaintiff incorporates by reference, as if pleaded herein verbatim, the allegations of all preceding paragraphs of the Complaint where appropriate.

36. Between 1983 and 1986, upon information and belief, defendant Exxon maintained a contractual relationship with an individual or entity who operated the East Hills Exxon (aka Cloverleaf Exxon) in Huntington, West Virginia. Upon information and belief, as part of this relationship, Exxon undertook to render services at and for the East Hills Exxon necessary for the protection of third parties, including employees such as Ansell.

37. Between 1986 and 1987, upon information and belief, defendant Exxon maintained a contractual relationship with an individual or entity who operated the University Esso in Huntington, West Virginia. Upon information and belief, as part of this relationship, Exxon undertook to render services at and for the University Esso necessary for the protection of third parties, including employees such as Ansell.

38. Between 1989 and 1990, upon information and belief, defendant Exxon maintained a contractual relationship with an individual or entity who operated the Dottie's Tiger Shop in Huntington, West Virginia. Upon information and belief, as part of this relationship, Exxon undertook to render services at and for Dottie's Tiger Shop necessary for the protection of third parties, including employees such as Ansell.

39. Defendant Exxon negligently, carelessly, recklessly, wilfully, and wantonly failed to exercise reasonable care in protecting its undertaking, in that it failed to provide safe places to work for Ansell at East Hills Exxon, University Esso, and Dottie's Tiger Shop as alleged herein.

40. Defendant Exxon's negligent, careless, reckless, wilful, and wanton failure to exercise reasonable care in protecting its undertaking in connection with the East Hills Exxon, University Esso, and Dottie's Tiger Shop increased the risk that Ansell would suffer harm, and in fact was a direct and proximate cause of Ansell's development of NHL, as a consequence of which Ansell has been severely injured, disabled, and damaged as is more fully set forth below.

### **COUNT FIVE**

#### ***Exxon Master-Servant Liability***

41. Plaintiff incorporates by reference, as if pleaded herein verbatim, the allegations of all preceding paragraphs of the Complaint where appropriate.

42. Plaintiff further alleges that, throughout his entire course of employment with East Hills Exxon, University Esso and Dottie's Tiger Shop, defendant Exxon exercised control over the financial, marketing, business and safety operations of each service station in such a manner as to render Exxon liable under the doctrine of respondeat superior as master for its servants, East Hills Exxon, University Esso and Dottie's Tiger Shop.

43. Exxon is responsible for its servants' negligent, careless, and reckless failures to provide Ansell with reasonably safe places to work.

44. As a direct and proximate result of Exxon's servants, East Hills Exxon's, University Esso's and Dottie's Tiger Shop's negligence, carelessness, and recklessness, Ansell developed NHL, as a consequence of which Ansell has been severely injured, disabled, and damaged as is set forth below.

## **COUNT SIX**

### ***Exxon Joint Venture Liability***

45. Plaintiff incorporates by reference, as if pleaded herein verbatim, the allegations of all preceding paragraphs of the Complaint where appropriate.

46. Plaintiff further alleges that, throughout Ansell's employment with East Hills Exxon, University Esso and Dottie's Tiger Shop, defendant Exxon and East Hills Exxon, University Esso and/or Dottie's Tiger Shop were engaged in a contractual association to carry out a single business enterprise, to wit the sale of Exxon gasoline, for profit; and that Exxon and East Hills Exxon, University Esso and/or Dottie's Tiger Shop combined their property, money, effects, skills and knowledge to accomplish said business enterprise in such a manner as to render Exxon liable, as a joint venturer, for East Hills Exxon's, University Esso's and Dottie's Tiger Shop's negligent, careless, and reckless failure to provide Ansell with reasonably safe places to work.

47. As a direct and proximate result of the negligent, careless, and reckless manner in which the joint ventures between Exxon and East Hills Exxon, University Esso and/or Dottie's Tiger Shop were operated, *i.e.* failing to provide a safe place to work, Ansell developed NHL, as



a consequence of which Ansell has been severely injured, disabled, and damaged as is set forth below.

## COUNT SEVEN

### *Exxon Premises Liability*

48. Plaintiff incorporates by reference, as if pleaded herein verbatim, the allegations of all preceding paragraphs of the Complaint where appropriate.

49. Upon information and belief, Exxon owned, operated, maintained, controlled, supervised, inspected, and/or regulated the premises upon which East Hills Exxon (aka Cloverleaf Exxon), University Esso and/or Dottie's Tiger Shop did business.

50. Exxon, as the owner and/or operator of the premises upon which East Hills Exxon, University Esso and/or Dottie's Tiger Shop operated and did business, owed plaintiff the duty to provide a reasonably safe place to work and a duty to exercise reasonable care in protecting him from work place hazards.

51. Through his work on the Exxon premises, plaintiff was exposed to cancer-causing benzene-containing gasoline, mixed solvents, aromatic hydrocarbon-containing products, and chlorinated hydrocarbon-containing products.

52. At all times relevant herein, plaintiff was exposed to the hazards of the above-mentioned substances in the ordinary and regular course of his employment on the Exxon's facilities.

53. At all times mentioned herein, Exxon, carelessly, negligently, recklessly and wantonly operated, maintained, controlled, supervised, inspected and/or regulated the aforementioned service station work places in that Exxon carelessly, negligently, recklessly and

wantonly failed to maintain proper and adequate safeguards about the service stations; failed to provide safe and sufficient safeguards, precautions and devices over and about the service stations, so as to permit the creation of dangerous and unsafe working places, which the defendant Exxon knew, or in the exercise of reasonable care should have known existed.

54. As a direct and proximate result of the carelessness, negligence, recklessness and wantonness of Exxon, Ansell developed NHL, as a consequence of which Ansell was severely injured, disabled, and damaged as more fully set forth below.

### **COUNT EIGHT**

#### ***(West Virginia Code §23-4-2(d)(2)(ii) Claim)***

55. Plaintiff incorporates paragraphs 1, 2, 7, 8, 9, 10, and 15 through 22 of the Complaint, as if repeated herein verbatim.

56. At all times relevant hereto, defendant WVDOH's actions and inactions, as described below, were conducted by and through their servants, agents and employees, duly authorized and acting within the scope and authority of their employment.

57. Ansell began employment with the WVDOH in 1990 at its facility on Smith Street in Charleston, West Virginia, and worked there until approximately 2000 when a new facility was opened on Dry Branch Drive in Charleston, West Virginia. Plaintiff's work area was a small area in the basement of the Smith Street facility with the only mechanical ventilation being a small exhaust fan. Vegetation, bushes, and plants near the outside of the exhaust fan regularly died.

58. Plaintiff would get light-headed and dizzy regularly during the work week, and complain to his supervisor. At times he told his supervisors that he felt as if he was smoking a

pack of cigarettes a day because he had a hard time breathing. His supervisors would tell him to “go get some fresh air.” On other occasions, plaintiff complained to his supervisors about the smells and odors that permeated the work area. Plaintiff was told by his supervisors that “there was nothing in the products that are a problem.” Due to the fumes and vapors in the work area, plaintiff requested respiratory protection. Ansell was given an inadequate paper dust mask as opposed to an organic vapor respirator. When Ansell would voice his concerns, he was told by his supervisors there were “no problems,” and to “wear the mask” he was given.

59. The gloves Ansell was given to work with would regularly degrade resulting in the skin of his hands and forearms being covered with the aforementioned cancer-causing materials. His skin would dry and split open as a result of the dermal exposure to the aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products. “Backspray” of the materials would wet his work clothes when he hosed off the printing screens causing them to degrade and fall apart. The spray from the printing process would soften the bottom of his shoes. When Ansell informed his supervisors of the destruction of his clothing and boots, he was told by his supervisors to “get new clothes”.

60. At some point during his employment, after the sign shop was moved to the Dry Branch location, Ansell noticed a cancer warning on one of the products. He inquired of his supervisors about the cancer warning. Despite the cancer warnings, plaintiff was told by his supervisors that there was “no problem” or “there was nothing in the products that are a problem.” During his employment at the Dry Branch facility, upper management came to the facility on a regular basis.

61. Despite actual knowledge that the aromatic hydrocarbon-containing products,

chlorinated hydrocarbon-containing products, and hydroquinone-containing products Ansell was working with, near and around were destroying his work clothing, work gloves, causing his skin to dry and split open, causing Ansell to regularly get dizzy and light-headed and impairing his breathing, and were cancer-causing agents, plaintiff's supervisors continually misled plaintiff as to the harm associated with the aforementioned products, and continually failed to provide plaintiff with adequate personal protective equipment.

62. At all times material hereto, a specific unsafe working condition existed in the WVDOH work places in the Charleston, West Virginia area (i.e. requiring Ansell to perform his job duties in areas where he would be exposed to impermissibly high levels of aromatic hydrocarbon-containing products, chlorinated hydrocarbon-containing products, and hydroquinone-containing products, without being warned of the hazards posed by the same, and without being provided adequate safety equipment) which presented a high degree of risk and a strong probability of serious injury or death, and WVDOH despite having actual knowledge of the existence of same, nevertheless required Ansell to perform his job duties without adequate training, and without being warned of the hazards posed by the same, and without being provided adequate safety equipment, controls and/or procedures when so performing his job duties.

63. Despite such actual knowledge, WVDOH violated, disregarded, circumvented, and by-passed the applicable state and federal safety statutes, rules, regulations, and standards, as well as commonly accepted and well-known safety standards of the defendant's industry concerning the warnings which must be given, as well as the other precautions which must be taken when an employee, such as Ansell was required to work in, around, near, and with aromatic hydrocarbon-containing products, chlorinated hydrocarbon-containing products, and

hydroquinone-containing products, by having: failed to provide adequate respiratory and other forms of personal protective equipment; failed to provide adequate warnings of the hazards associated with exposure to aromatic hydrocarbon-containing products, chlorinated hydrocarbon-containing products, and hydroquinone-containing products; and otherwise failed to provide, institute, observe, and enforce reasonable, adequate, proper and acceptable safety rules and standards accepted and acceptable in the defendant's industry in order to make safe the areas in, and conditions under which Ansell worked.

64. All such actions and inactions by WVDOH as here-in-above more specifically set forth, constitute, establish and demonstrate a deliberate intention on the part of WVDOH to expose employees in general, and Ansell in particular, to the unsafe working conditions set forth above.

65. WVDOH's deliberate and intentional acts and omissions were a direct and proximate cause of Ansell's development of NHL, which resulted in his severe injuries, disabilities, and damages as set forth more fully below.

### **DAMAGES**

66. As a result of his development of NHL, Ansell has suffered and sustained severe illness and injury to his person which has forced him to obtain medical treatment, and to incur medical expenses by way of doctor, hospital, and drug bills, and he will be forced to incur medical expenses in the future.

67. Ansell has suffered and will continue to suffer in the future physical pain, extreme nervousness, and mental anguish as a direct result of his aforesaid development of NHL.

68. As a direct and proximate result of his aforesaid development of NHL, Ansell's

enjoyment of life has been greatly impaired and will continue to be impaired in the future.

69. As a direct and proximate result of his aforesaid development of NHL, Ansell's life expectancy has been greatly diminished.

70. As a direct and proximate result of his aforesaid development of NHL, Ansell's ability to work and earn a living has been greatly impaired, and he has lost the capacity to earn wages as a result thereof. Plaintiff's inability to work and earn a living is permanent in nature and as such plaintiff has lost the capacity to support his family in the future.

WHEREFORE, plaintiff demands compensatory damages from all defendants, jointly and severally, in an amount to be determined by the trier of fact. Plaintiff demands punitive damages from defendants Exxon Mobil Corporation, Safety-Kleen Systems, Inc., Radiator Specialty Company, CRC Industries, Inc., Nazdar Company, Advance Process Supply Co., 3M Company, FUJIFILM North America Corporation, and Sericol, Inc. in an amount to be determined by the trier of fact. Plaintiff further demands prejudgment and post-judgment interest, as well as such other relief as a judge or jury shall find fair and just.

PLAINTIFF DEMANDS A TRIAL BY JURY.

STEVEN ANSELL, Plaintiff

By: 

R. Dean Hartley (WV Bar # 1619)  
J. Michael Prascik (WV Bar # 9135)  
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