

**IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA**

**NANCY SUE WELLS**, Individually and as  
Executrix of the Estate of **DAVID A. WELLS**,  
deceased,

Plaintiff,

vs.

Civil Action No. \_\_\_\_\_

**WESTLAKE CHLOR-VINYLS CORPORATION**,  
f/k/a **AXIALL CORPORATION**, as successor-in-interest  
to PPG Industries, Inc., a Delaware corporation;

**CONOCOPHILLIPS COMPANY**, as successor by merger  
to Conoco Inc. and f/k/a Phillips Petroleum Company,  
a Delaware corporation;

**CHEVRON U.S.A. INC.**, a California corporation;

**UNION OIL COMPANY OF CALIFORNIA**, a California  
corporation;

**CITGO PETROLEUM CORP.**,  
a Delaware corporation;

**RECOCHEM, INC.**, as successor-in-interest to Record Chemical  
Company, a Delaware corporation;

**BP AMOCO CHEMICAL COMPANY**, as successor-in-interest  
to BP Chemicals, Inc., a Delaware corporation;

**BP PRODUCTS NORTH AMERICA, INC.**, as successor-in-interest  
to BP Exploration & Oil, Inc., d/b/a BP Oil Company, a Maryland corporation;

**SUNOCO (R&M), LLC**, successor-in-interest to Sun Company, Inc.  
(R&M), a Pennsylvania limited liability company;

**UNITED STATES STEEL CORPORATION**, successor-in-interest to  
USX Corporation, USS Chemicals Division, a Delaware corporation;

**SHELL CHEMICAL, LP**, d/b/a Shell Oil Company,  
a Delaware limited partnership;

**FMC CORPORATION,**  
a Delaware corporation;

**THE DOW CHEMICAL COMPANY,**  
a Delaware corporation;

**UNION CARBIDE CORPORATION,**  
a New York corporation;

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

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

**THE B'LLASTER CORPORATION,**  
an Ohio corporation;

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

**GENUINE PARTS COMPANY,**  
a Georgia corporation;

**E. I. du PONT de NEMOURS and COMPANY,**  
a Delaware corporation;

**KANO LABORATORIES, INC.,**  
a Delaware corporation; and

**F&B STEEL ERECTORS, INC.,**  
a West Virginia corporation;

Defendants.

## **COMPLAINT**

### **GENERAL ALLEGATIONS**

1. Plaintiff, Nancy Sue Wells, is a citizen and resident of New Martinsville, Wetzel County, West Virginia. Plaintiff Nancy Sue Wells is the widow of David A. Wells (hereinafter

sometimes referred to as “Wells”). David A. Wells was employed by defendant Westlake Chlor-Vinyl Corporation’s (hereinafter sometimes “Westlake”) predecessor PPG Industries, Inc. (hereinafter sometimes “PPG”) at its Marshall County, West Virginia facility between 1974 and 2012. Mr. Wells was diagnosed pathologically with primary renal cell carcinoma (RCC) in 2020 with pulmonary metastases from RCC primary therefrom, and previously micropapillary carcinoma of thyroid in 2011, and squamous cell carcinoma of tongue in 2011 [hereinafter sometimes “aforementioned cancers”].

2. David A. Wells died on April 24, 2021 from the immediate cause of primary renal cell carcinoma (RCC). A copy of his Death Certificate is attached hereto as Exhibit “A”, and is incorporated herein by reference.

3. Plaintiff is the duly qualified and acting Executrix of the Estate of David A. Wells. 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. (A copy of Plaintiff's appointment paper is attached hereto as Exhibit "B", and is incorporated herein by reference.)

4. Defendant Westlake Chlor-Vinyls Corporation formerly known as Axiall Corporation as successor-in-interest to PPG Industries, Inc. is a Delaware corporation with its principal place of business in Houston, Texas which does business in Marshall County, West Virginia. At all times relevant hereto, Westlake or its predecessor-in-interest, PPG Industries, Inc., owned and operated a chemical manufacturing facility in Marshall County, located at or near Natrium, West Virginia (hereinafter sometimes “Natrium facility” or “Marshall County,

West Virginia facility”).

5. The defendants that supplied benzene to the Natrium facility [hereinafter sometimes referred to as “Benzene Suppliers”] are more specifically identified and defined below:

(a) Defendant ConocoPhillips Company as successor by merger to Conoco Inc. and f/k/a Phillips Petroleum Company [hereinafter sometimes referred to as “ConocoPhillips” and included in the designation “Benzene Suppliers”] is a Delaware corporation with its principal place of business in Houston, Texas which does or has done business in Marshall County, West Virginia.

(b) Defendant Chevron U.S.A. Inc. [hereinafter sometimes referred to as “Chevron” and included in the designation “Benzene Suppliers”] is a Pennsylvania corporation, with its principal place of business in San Ramon, California which does or has done business in Marshall County, West Virginia.

(c) Defendant Union Oil Company of California [hereinafter sometimes referred to as “UNOCAL” and included in the designation “Benzene Suppliers”] is a California corporation with its principal place of business in San Ramon, California which does or has done business in Marshall County, West Virginia.

(d) Defendant Citgo Petroleum Corp. [hereinafter sometimes referred to as “Citgo” and included in the designation “Benzene Suppliers”] is a Delaware corporation with its principal place of business in Houston, Texas which does or has done business in Marshall County, West Virginia.

(e) Defendant, Recochem, Inc. as successor-in-interest to Record Chemical

Company [hereinafter sometimes referred to as “Recochem” and included in the designation “Benzene Suppliers”] is a Delaware corporation with its principal place of business in Montreal, Quebec, Canada which does or has done business through its predecessor in Marshall County, West Virginia.

(f) Defendant BP Amoco Chemical Company, successor-in-interest to BP Chemicals, Inc. [hereinafter sometimes referred to as “BP Amoco” and included in the designation “Benzene Suppliers”] is a Delaware corporation with its principal place of business in Naperville, Illinois which does or has done business in Marshall County, West Virginia.

(g) Defendant BP Products North America, Inc. as successor-in-interest to BP Exploration & Oil, Inc., d/b/a BP Oil Company [hereinafter referred to “BP Products” and included in the designation “Benzene Suppliers”] is a Maryland corporation with its principal place of business in Warrenville, Illinois which does or has done business in Marshall County, West Virginia.

(h) Defendant Sunoco (R&M), LLC successor-in-interest to Sun Company, Inc. (R&M) [hereinafter sometimes referred to as “Sunoco” and included in the designation “Benzene Suppliers”] is a Pennsylvania limited liability corporation with its principal place of business in Philadelphia, Pennsylvania which does or has done business in Marshall County, West Virginia.

(i) Defendant United States Steel Corporation successor-in-interest to USX Corporation, USS Chemicals Division [hereinafter sometimes referred to as “USX” and included in the designation “Benzene Suppliers”] is a Delaware corporation with its principal place of business in Pittsburgh, Pennsylvania which does business in Marshall County, West Virginia.

(j) Defendant Shell Chemical, LP [hereinafter sometimes referred to as “Shell” and included in the designation “Benzene Suppliers”] doing business as Shell Oil Company is a Delaware limited partnership with its principal place of business in Houston, Texas which does or has done business in Marshall County, West Virginia.

6. The defendants that supplied raw chlorinated materials to the Natrium facility [hereinafter sometimes referred to as “Chlorinated Suppliers”] are more specifically identified and defined below:

(a) Defendant Union Carbide Corporation [hereinafter sometimes referred to as “Carbide” and included in the designation “Chlorinated Suppliers”] is a New York corporation with its principal place of business in Seadrift, Texas which has done and/or presently does business in Marshall County, West Virginia.

(b) Defendant The Dow Chemical Company [hereinafter sometimes referred to as “TDCC” and included in the designation “Chlorinated Suppliers”] is a Delaware corporation with its principal place of business in Midland, Michigan which has done and/or presently does business in Marshall County, West Virginia.

(c) Defendant FMC Corporation [hereinafter sometimes referred to as “FMC” and included in the designation “Chlorinated Suppliers”] is Delaware corporation with its principal place of business in Philadelphia, Pennsylvania which has done and/or presently does business in Marshall County, West Virginia.

(d) Defendant E.I. du Pont de Nemours and Company [hereinafter sometimes referred to as “DuPont” and included in the designation “Chlorinated Suppliers” and also included in the designation “Chemical Suppliers”] is a Delaware corporation with its principal

place of business in Wilmington, Delaware which does or has done business in Marshall County, West Virginia.

7. The defendants that supplied various chemical products to the Natrium facility [hereinafter sometimes referred to as “Chemical Suppliers Defendants”] are more specifically identified and defined below:

(a) Defendant Safety-Kleen Systems, Inc. [hereinafter sometimes referred to as “Safety-Kleen” and included in the designation “Chemical Suppliers”] is a Wisconsin corporation with its principal place of business in Richardson, Texas which does or has done business in Marshall County, West Virginia.

(b) Defendant Radiator Specialty Company [hereinafter sometimes referred to as “Radiator Specialty” and included in the designation “Chemical Suppliers”] is a North Carolina corporation with its principal place of business in Charlotte, North Carolina which does or has done business in Marshall County, West Virginia.

(c) Defendant The B’Laster Corporation [hereinafter sometimes referred to as “B’Laster” and included in the designation “Chemical Suppliers”] is an Ohio corporation with its principal place of business in Valley View, Ohio which does or has done business in Marshall County, West Virginia.

(d) Defendant CRC Industries, Inc. [hereinafter sometimes referred to as “CRC” and included in the designation “Chemical Suppliers”] is a Pennsylvania corporation with its principal place of business in Horsham, Pennsylvania which does or has done business in Marshall County, West Virginia.

(e) Defendant Genuine Parts Company [hereinafter sometimes referred to as

“GPC” and included in the designation “Chemical Suppliers”) is a Georgia corporation with its principal place of business in Atlanta, Georgia which does or has done business in Marshall County, West Virginia.

(f) Defendant Kano Laboratories, Inc. [hereinafter sometimes referred to as “Kano” and included in the designation “Chemical Suppliers”) is a Delaware corporation with its principal place of business in Nashville, Tennessee which does or has done business in Marshall County, West Virginia.

8. Defendant F&B Steel Erectors, Inc. [hereinafter sometimes referred to as “F&B”) is a West Virginia corporation with its principal place of business in Sutton, West Virginia. At certain times relevant hereto, F&B operated a chemical tank maintenance and repair facility in Braxton County, West Virginia which does or has done business in Marshall County, West Virginia at the Natrium facility.

9. Wells was for a number of years a member of Local 45 of the International Chemical Workers Union. From approximately 1974 to 2012, Wells was employed by Westlake’s predecessor PPG Industries, Inc. (hereinafter sometimes “PPG”) in various capacities at the Natrium facility. As such, Wells was engaged in employment at PPG which involved working in, around, near, and being exposed to benzene manufactured, processed, supplied, and/or sold by Benzene Suppliers – ConocoPhillips, Chevron, UNOCAL, Citgo, Recochem, BP Amoco, BP Products, Sunoco, USX, and/or Shell – both in the form of a raw material, and as either a contaminant in, or an ingredient of, the various and sundry benzene homologues, benzene derivatives, and/or benzene-containing products manufactured by Westlake’s predecessor PPG at its Natrium, West Virginia facility.



10. Furthermore, Wells employment at PPG involved working in, around, near, and being exposed to trichloroethylene, trichloroethane and/or tetrachloroethylene (perchloroethylene) manufactured, processed, supplied, and/or sold by Chlorinated Suppliers – Carbide, TDCC, FMC, and/or DuPont – both in the form of a raw material, and as either a contaminant in, or an ingredient of, the various and sundry products manufactured by Westlake’s predecessor PPG at its Natrium, West Virginia facility.

11. Upon information and belief, the aforementioned benzene and chlorinated chemicals were stored in vessels manufactured, installed, maintained, and/or repaired by F&B, around which or near Wells worked.

12. Wells was also exposed to various chemical products, manufactured, processed, supplied, and/or sold by the Chemical Supplier Defendants – Safety-Kleen, Radiator Specialty, B’Laster, CRC, GPC, DuPont, and Kano – while employed at PPG.

13. Wells’ exposure to benzene, trichloroethylene, trichloroethane and tetrachloroethylene (perchloroethylene), and the various chemical products at the Natrium facility as aforesaid was by means of inhalation and dermal absorption (from direct dermal contact with said products and/or dermal contact with clothes contaminated by said products).

14. Wells’ exposure to benzene, trichloroethylene, trichloroethane and tetrachloroethylene (perchloroethylene), and the various chemical products at the Natrium facility was a proximate cause of his development of primary renal cell carcinoma (RCC) with pulmonary metastases from RCC, micropapillary carcinoma of thyroid, and squamous cell carcinoma of tongue which resulted in his death on April 24, 2021. Plaintiff brings this suit within two (2) years of her decedent’s death as a result of his contraction of the aforementioned

cancers.

15. As a direct and proximate result of Wells' development of primary renal cell carcinoma (RCC) with pulmonary metastases from RCC, micropapillary carcinoma of thyroid, and squamous cell carcinoma of tongue, as aforesaid, he was severely injured, disabled, damaged, and ultimately died as is set forth more fully below.

### **JURISDICTION AND VENUE**

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

17. 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.

18. Venue is proper before this Court in that (a) Plaintiff's decedent's exposure to the harmful materials occurred in Marshall County, West Virginia, and (b) Plaintiff's claim under W.Va. Code § 23-4-2(e) arose in Marshall County, West Virginia where her decedent was injured, and to the extent 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.

### **COUNT ONE**

#### **(W. Va. Code § 23-4-2(d)(2)(ii) Claim – Westlake Only)**

19. Plaintiff incorporates by reference, as is pleaded herein verbatim, the allegations

of all preceding paragraphs of the Complaint where appropriate.

20. At all times material hereto, a specific unsafe working condition existed in the work place (i.e. requiring Wells to perform his job duties in areas where he would be exposed to unacceptable and hazardous levels of benzene, trichloroethylene, trichloroethane and/or tetrachloroethylene (perchloroethylene) 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 Westlake's predecessor PPG, despite having actual knowledge of the existence of same, nevertheless required Wells 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.

21. Despite such actual knowledge, Westlake's predecessor PPG 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 Wells, was required to work in, around, near, and with benzene, benzene derivatives, and/or benzene-containing products, trichloroethylene, trichloroethane and tetrachloroethylene (perchloroethylene) by failing to provide adequate respiratory and other forms of personal protection equipment; failing to provide adequate warnings of the hazards associated with exposure to benzene, benzene derivatives, and/or benzene-containing products, trichloroethylene, trichloroethane and tetrachloroethylene (perchloroethylene); and otherwise failing 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 Wells worked.

**22.** At all times material herein, the actions and inactions by Westlake's predecessor PPG as here-in-above more specifically set forth, constitute, establish, and demonstrate a deliberate intention on the part of the same to intentionally expose employees in general, and Wells in particular, to the unsafe working conditions set forth above in violation of W. Va. Code § 23-4-2 in that:

**(a)** Specific unsafe working conditions existed in the workplace at the Natrium facility which presented a high degree of risk and a strong probability of serious injury or death;

**(b)** Westlake's predecessor PPG, prior to Wells' injuries, had actual knowledge of the existence of the specific unsafe working conditions and of the high degree of risk and the strong probability of serious injury or death presented by the specific unsafe working conditions;

**(c)** The specific unsafe working conditions constituted a violation of a state or federal safety statute, rule or regulation, whether cited or not, or of a commonly accepted and well-known safety standard within the industry or business of Westlake's predecessor PPG and said statute, rule, or regulation was further (1) specifically applicable to the particular work and working condition involved, as contrasted with a statute, rule, regulation or standard generally requiring safe workplaces, equipment or working conditions; and (2) was intended to address the specific hazard(s) presented by the unsafe working conditions.

(d) Notwithstanding the existence of the facts set forth in subparagraphs (a) through (c), inclusive, of this paragraph, managerial and/or supervisory employee(s) of Westlake's predecessor PPG who had actual knowledge of the existence of the unsafe working conditions existing at the Natrium facility and in the workplace together with their attendant risks and harms, nevertheless intentionally thereafter exposed Wells to the specific unsafe working conditions; and

(e) Wells suffered serious compensable injury and death as a direct and proximate result of the specific unsafe working conditions.

23. Westlake's predecessor PPG's deliberate and intentional acts and omissions were a direct and proximate cause of Wells' development of the aforementioned cancers which resulted in his severe injuries, disabilities, damages, and ultimate death resulting in further injury and damage to his wrongful death distributees as is more fully set forth below.

24. Pursuant to W.Va. Code §23-4-2 (2015), plaintiff incorporates the "verified statement" from a person with knowledge and expertise outlining the applicable workplace safety rules and/or regulations which were violated, as required by W. Va. Code § 23-4-2(d)(2)(c) attached as Exhibit "C"; the workers' compensation claim form related to the underlying occupational disease as required by W. Va. Code § 23-4-2(c) attached as Exhibit "D"; and the death certificate supporting the allegation of a "serious compensable injury" previously referenced as Exhibit "A" as required by W. Va. Code § 23-4-2(d)(2)(B)(v). See Exhibits "A", "C", and "D" attached hereto.

## **COUNT TWO**

### **(Benzene Suppliers – Negligence)**

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

26. Defendant Benzene Suppliers or their predecessors are, or at times relevant hereto were, manufacturers, processors, and/or suppliers of benzene to Westlake's predecessor PPG's Natrium, West Virginia facility.

27. Defendant Benzene Suppliers acting by and through their servants, agents, and employees, duly authorized and acting within the scope and authority of their employment, caused benzene to be placed into the stream of interstate commerce and have done so for a number of years preceding the filing of this Complaint, and in particular Benzene Suppliers sold, distributed, or transported large quantities of benzene to the aforementioned Natrium facility, with the result that said benzene came into use around Wells.

28. Wells, whose livelihood was dependent upon the work he did for Westlake's predecessor PPG at its Natrium facility, was required to work around benzene manufactured, processed, supplied, and/or sold by Benzene Suppliers both in the form of a raw material, and as either a contaminant in, or an ingredient of, the various and sundry benzene homologues, benzene derivatives and/or benzene-containing products manufactured by Westlake's predecessor PPG, and Benzene Suppliers knew or, in the exercise of reasonable care, should have known, that persons employed, as was Wells, would be required to and would, in fact, come into contact with, and work in close proximity to said benzene in the forms aforesaid.

29. The Benzene Suppliers' negligent, careless, willful and reckless actions and

inactions were a direct and proximate cause of Wells' injuries, illnesses, damages and ultimate death in that said defendants manufactured, processed, sold, supplied, or otherwise put benzene 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 benzene was deleterious, poisonous, cancer-causing, and inherently dangerous and harmful to Wells' whole body, body chemistry, and general well-being; and said defendants further knew, or in the exercise of reasonable care should have known that Wells would not know of such danger to his health; and said defendants nonetheless:

- (a) failed to advise Wells of the dangerous characteristics of their benzene, either as a raw material, or as a contaminant in, or as an ingredient of, various and sundry benzene homologues, benzene derivatives and/or benzene-containing products;
- (b) failed to advise Wells as to what, if any, would be reasonably safe and sufficient clothing, protective equipment and appliances to protect him from being poisoned as he was by exposure to such deleterious and harmful benzene, either as a raw material, or as a contaminant in, or as an ingredient of, various and sundry benzene homologues, benzene derivatives and/or benzene-containing products;
- (c) failed and omitted to place any warnings or sufficient warnings, on either their containers of benzene, or shipping or billing documents to warn persons coming into contact with their benzene of the dangers to his 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, either as a raw material, or as a contaminant in, or as an ingredient of, various and sundry benzene homologues, benzene derivatives, and/or benzene-containing products;
- (e) failed to adequately warn, if in fact they warned at all, persons such as Wells of the dangers to his health in coming into contact with, or breathing benzene, either as a raw material, or as a contaminant in, or as an

ingredient of, various and sundry benzene homologues, benzene derivatives, and/or benzene-containing products;

- (f) failed to recommend methods to improve the work environment;
- (g) failed to develop alternative products;
- (h) continued to sell and market a known cancer-causing product, to-wit, benzene;
- (i) failed to make a reasonable inquiry to assure that Westlake's predecessor PPG was adequately warning and protecting individuals, such as Wells, against the hazards posed by benzene, either as a raw material, or as a contaminant in, or as an ingredient of, various and sundry benzene homologues, benzene derivatives and/or benzene-containing products consistent with a "Responsible Care" program or "Product Stewardship" follow through; and
- (j) were generally negligent, and breached their duty of due care.

30. Defendant Benzene Suppliers' negligent, careless, reckless, and willful actions and inactions, as aforesaid, were a direct and proximate cause of Wells' development of the aforementioned cancers, which resulted in his severe injuries, disabilities, damages, and ultimate death resulting in further injury and damage to his wrongful death distributees as is more fully set forth below.

### **COUNT THREE**

#### **(Chlorinated Suppliers – Negligence)**

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

32. Defendant Chlorinated Suppliers or their predecessors are, or at times relevant hereto were, manufacturers, processors, and/or suppliers of trichloroethylene, trichloroethane and/or tetrachloroethylene (perchloroethylene) to Westlake's predecessor PPG's Natrium, West



Virginia facility.

33. Defendant Chlorinated Suppliers acting by and through their servants, agents, and employees, duly authorized and acting within the scope and authority of their employment, caused trichloroethylene, trichloroethane and/or tetrachloroethylene (perchloroethylene) to be placed into the stream of interstate commerce and have done so for a number of years preceding the filing of this Complaint, and in particular Chlorinated Suppliers sold, distributed, or transported large quantities of trichloroethylene, trichloroethane and/or tetrachloroethylene (perchloroethylene) to the aforementioned Natrium facility, with the result that said raw materials came into use around Wells.

34. Wells, whose livelihood was dependent upon the work he did for Westlake's predecessor PPG at its Natrium facility, was required to work around trichloroethylene, trichloroethane and/or tetrachloroethylene (perchloroethylene) manufactured, processed, supplied, and/or sold by Chlorinated Suppliers both in the form of a raw material, and as either a contaminant in, or an ingredient of, the various products and intermediaries manufactured by Westlake's predecessor PPG, and Chlorinated Suppliers knew or, in the exercise of reasonable care, should have known, that persons employed, as was Wells, would be required to and would, in fact, come into contact with, and work in close proximity to said trichloroethylene, trichloroethane and/or tetrachloroethylene (perchloroethylene) in the forms aforesaid.

35. The Chlorinated Suppliers' negligent, careless, willful and reckless actions and inactions were a direct and proximate cause of Wells' injuries, illnesses, damages and ultimate death in that said defendants manufactured, processed, sold, supplied, or otherwise put trichloroethylene, trichloroethane and/or tetrachloroethylene (perchloroethylene) 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 materials were deleterious, poisonous, cancer-causing, and inherently dangerous and harmful to Wells' whole body, body chemistry, and general well-being; and said defendants further knew, or in the exercise of reasonable care should have known that Wells would not know of such danger to his health; and said defendants nonetheless:

- (a) failed to advise Wells of the dangerous characteristics of their trichloroethylene, trichloroethane and/or tetrachloroethylene (perchloroethylene), either as a raw material, or as a contaminant in, or as an ingredient of, various and sundry products manufactured therefrom at the Natrium facility;
- (b) failed to advise Wells as to what, if any, would be reasonably safe and sufficient clothing, protective equipment and appliances to protect him from being poisoned as he was by exposure to such deleterious and harmful trichloroethylene, trichloroethane and/or tetrachloroethylene (perchloroethylene), either as a raw material, or as a contaminant in, or as an ingredient of, various and sundry products manufactured therefrom at the Natrium facility;
- (c) failed and omitted to place any warnings or sufficient warnings, on either their containers of trichloroethylene, trichloroethane, and/or tetrachloroethylene (perchloroethylene), or shipping or billing documents to warn persons coming into contact with their materials of the dangers to his 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 trichloroethylene, trichloroethane and/or tetrachloroethylene (perchloroethylene), either as a raw material, or as a contaminant in, or as an ingredient of, various and sundry products manufactured therefrom at the Natrium facility;
- (e) failed to adequately warn, if in fact they warned at all, persons such as Wells of the dangers to his health in coming into contact with, or breathing trichloroethylene, trichloroethane and/or tetrachloroethylene (perchloroethylene), either as a raw material, or as a contaminant in, or as

an ingredient of, various and sundry products manufactured therefrom at the Natrium facility;

- (f) failed to recommend methods to improve the work environment;
- (g) failed to develop alternative products;
- (h) continued to sell and market a known cancer-causing product, to-wit, trichloroethylene, trichloroethane and/or tetrachloroethylene (perchloroethylene);
- (i) failed to make a reasonable inquiry to assure that Westlake's predecessor PPG was adequately warning and protecting individuals, such as Wells, against the hazards posed by trichloroethylene, trichloroethane and/or tetrachloroethylene (perchloroethylene), either as a raw material, or as a contaminant in, or as an ingredient of, various and sundry products consistent with a "Responsible Care" program or "Product Stewardship" follow through; and
- (j) were generally negligent, and breached their duty of due care.

36. Defendant Chlorinated Suppliers' negligent, careless, reckless, and willful actions and inactions, as aforesaid, were a direct and proximate cause of Wells' development of the aforementioned cancers, which resulted in his severe injuries, disabilities, damages, and ultimate death resulting in further injury and damage to his wrongful death distributees as is more fully set forth below.

#### **COUNT FOUR**

##### **(Chemical Suppliers – Negligence)**

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

38. Defendants Chemical Suppliers or their predecessors are, or at times relevant hereto were, manufacturers, processors, and/or suppliers of various chemical products that

contained aromatic and/or chlorinated hydrocarbons, including solvents, chemicals, penetrating and lubricating oils, and paints, thinners and coatings.

39. Defendants Chemical Suppliers, acting by and through their servants, agents, and employees, duly authorized and acting within the scope and authority of their employment, caused various chemical products to be placed into the stream of interstate commerce and have done so for a number of years preceding the filing of this Complaint, and in particular Chemical Suppliers Defendants sold, distributed, and transported large quantities of chemical products containing aromatic and/or chlorinated hydrocarbons to the Natrium facility in Marshall County, West Virginia facility, with the result that said chemical products came into use by and around Wells.

40. Wells, whose livelihood was dependent upon the work he did for Westlake's predecessor PPG at its Natrium facility, was required to work around and with said chemical products manufactured, processed, supplied, and/or sold by the Chemical Suppliers Defendants, and said defendants knew, or in the exercise of reasonable care should have known, that persons employed, as was Mr. Wells, would be required to and would, in fact, come into contact with, and work in close proximity to the Chemical Suppliers' chemical products containing aromatic and/or chlorinated hydrocarbons.

41. The Chemical Suppliers Defendants' negligent, careless, willful and reckless actions and inactions were a direct and proximate cause of Wells' injuries, illnesses, damages, and ultimate death in that in that said defendants manufactured, processed, sold, supplied, or otherwise put the aromatic and/or chlorinated containing chemical 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 aromatic and/or chlorinated containing chemical products were deleterious, poisonous, cancer-causing, and inherently dangerous and harmful to Wells' whole body, body chemistry, and general well-being; and said defendants further knew, or in the exercise of reasonable care should have known that Wells would not know of such danger to his health; and said defendants nonetheless:

- (a) failed to advise Wells of the dangerous characteristics of their various chemical products;
- (b) failed to advise Wells as to what, if any, would be reasonably safe and sufficient clothing, protective equipment and appliances to protect him from being poisoned as he was by exposure to such deleterious and harmful chemical products;
- (c) failed and omitted to place any warnings or sufficient warnings, on either their containers of toxic chemical products, or shipping or billing documents to warn persons coming into contact with their various chemical 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 their various chemical products;
- (e) failed to adequately warn, if in fact they warned at all, persons such as Wells of the dangers to his health in coming into contact with, or breathing their various chemical products;
- (f) failed to recommend methods to improve the work environment;
- (g) continued to sell and market various chemical products with known cancer-causing components;
- (h) failed to develop alternative products which did not contain known cancer-causing components;
- (i) failed to make a reasonable inquiry to assure that Westlake's predecessor PPG was adequately warning and protecting individuals, such as Wells, against the hazards posed by their various chemical products consistent with a "Responsible Care" program or "Product Stewardship" follow through; and

(j) were generally negligent, and breached their duty of due care.

42. The Chemical Supplier Defendants' negligent, careless, reckless, and willful actions and inactions, as aforesaid, were a direct and proximate cause of Wells' development of the aforementioned cancers, which resulted in his severe injuries, disabilities, damages, and ultimate death resulting in further injury and damage to his wrongful death distributees as is more fully set forth below.

### **COUNT FIVE**

#### **(Benzene Suppliers - Breach of Warranty)**

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

44. Defendant Benzene Suppliers impliedly warranted that the benzene manufactured, processed, supplied, and/or sold by them to Westlake's predecessor PPG, and to which Wells was exposed at the Natrium facility both in the form of a raw material, and as either a contaminant in or an ingredient of, various and sundry benzene homologues, benzene derivatives and/or benzene-containing products, was of good and merchantable quality, and fit and suitable for the use for which it was intended. Said implied warranties were breached, in that certain harmful, poisonous and deleterious and inherently dangerous fumes were given off from said benzene (both as a raw material, and as either a contaminant in or an ingredient of, various and sundry benzene homologues, benzene derivatives and/or benzene-containing products) into the air and atmosphere and without adequate warnings wherein Wells carried out his job duties, and further in that said benzene was absorbed into the human body when workers, such as Wells, came into contact with said benzene both in the form of a raw material, and as either a

contaminant in, or an ingredient of, various and sundry benzene homologues, benzene derivatives and/or benzene-containing products.

45. Defendant Benzene Suppliers' breach of said implied warranty was a direct and proximate cause of Wells' development of the aforementioned cancers, which resulted in his severe injuries, disabilities, damages, and ultimate death resulting in further injury and damage to his wrongful death distributees as is more fully set forth below.

### **COUNT SIX**

#### **(Chlorinated Suppliers - Breach of Warranty)**

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

47. Defendant Chlorinated Suppliers impliedly warranted that the trichloroethylene, trichloroethane and/or tetrachloroethylene (perchloroethylene) manufactured, processed, supplied, and/or sold by them to Westlake's predecessor PPG, and to which Wells was exposed at the Natrium facility both in the form of a raw material, and as either a contaminant in or an ingredient of various products and intermediaries, was of good and merchantable quality, and fit and suitable for the use for which it was intended. Said implied warranties were breached, in that certain harmful, poisonous and deleterious and inherently dangerous fumes were given off from said trichloroethylene, trichloroethane and/or tetrachloroethylene (perchloroethylene) (both as a raw material, and as either a contaminant in or an ingredient of, various products and intermediaries) into the air and atmosphere and without adequate warnings wherein Wells carried out his job duties, and further in that said materials were absorbed into the human body when workers, such as Wells, came into contact with said trichloroethylene, trichloroethane and/or

tetrachloroethylene (perchloroethylene) both in the form of a raw material, and as either a contaminant in, or an ingredient of, various products and intermediaries.

48. Defendant Chlorinated Suppliers' breach of said implied warranty was a direct and proximate cause of Wells' development of the aforementioned cancers, which resulted in his severe injuries, disabilities, damages, and ultimate death resulting in further injury and damage to his wrongful death distributees as is more fully set forth below.

#### **COUNT SEVEN**

##### **(Chemical Suppliers – Breach of Warranty)**

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

50. Defendants Chemical Suppliers impliedly warranted that the aromatic and/or chlorinated containing solvents, chemicals, penetrating and lubricating oils, and paints, thinners and coatings manufactured, processed, supplied, and/or sold by them to Westlake's predecessor PPG, and to which Wells was exposed at the Natrium facility, 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 toxic chemical products into the air and atmosphere and without adequate warnings wherein Wells carried out his job duties, and further in that said products were absorbed into the human body when workers, such as Wells, came into contact with the same.

51. The Chemical Supplier Defendants' breach of said implied warranty was a direct and proximate cause of Wells' development of the aforementioned cancers, which resulted in his



severe injuries, disabilities, damages, and ultimate death resulting in further injury and damage to his wrongful death distributees as is more fully set forth below.

## **COUNT EIGHT**

### **(Benzene Suppliers - Strict Liability)**

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

53. Plaintiff further alleges that at the time Benzene Suppliers manufactured, processed, sold or supplied the aforesaid benzene, and at the time it was used around Wells in the manner and environment intended as either a raw material, or as a contaminant in, or an ingredient of, various and sundry benzene homologues, benzene derivatives and/or benzene-containing products, said benzene was in a defective condition in that it was not reasonably safe for its intended use. As a result, Benzene Suppliers are strictly liable in tort to those persons injured as a result of said defects, and in particular to plaintiff for Wells' illnesses, injuries, damages, and death.

54. The defective condition of the Benzene Suppliers' benzene was a direct and proximate cause of Wells' development of the aforementioned cancers, which resulted in his severe injuries, disabilities, damages, and ultimate death resulting in further injury and damage to his wrongful death distributees as is more fully set forth below.

## **COUNT NINE**

### **(Chlorinated Suppliers - Strict Liability)**

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

56. Plaintiff further alleges that at the time Chlorinated Suppliers manufactured, processed, sold or supplied the aforesaid trichloroethylene, trichloroethane and/or tetrachloroethylene (perchloroethylene), and at the time it was used around Wells in the manner and environment intended as either a raw material, or as a contaminant in, or an ingredient of, various and sundry products and intermediaries, said trichloroethylene, trichloroethane and/or tetrachloroethylene (perchloroethylene) was in a defective condition in that it was not reasonably safe for its intended use. As a result, Chlorinated Suppliers are strictly liable in tort to those persons injured as a result of said defects, and in particular to plaintiff for Wells' illnesses, injuries, damages, and death.

57. The defective condition of the Chlorinated Suppliers' trichloroethylene, trichloroethane and/or tetrachloroethylene (perchloroethylene) was a direct and proximate cause of Wells' development of the aforementioned cancers, which resulted in his severe injuries, disabilities, damages, and ultimate death resulting in further injury and damage to his wrongful death distributees as is more fully set forth below.

#### **COUNT TEN**

##### **(Chemical Suppliers – Strict Liability)**

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

59. Plaintiff further alleges that at the time the Chemical Suppliers manufactured, processed, sold or supplied the aromatic and/or chlorinated containing solvents, chemicals, penetrating and lubricating oils, and paints, thinners and coatings, and at the time they were used by and around Wells in the manner and environment intended, said products were in a defective

condition in that they were not reasonably safe for their intended use. As a result, the Chemical Suppliers are strictly liable in tort to those persons injured as a result of said defects, and in particular to plaintiff for Wells' illnesses, injuries, damages, and death.

60. The defective condition of the Chemical Suppliers Defendants' aromatic and/or chlorinated containing solvents, chemicals, penetrating and lubricating oils, and paints, thinners and coatings products was a direct and proximate cause of Wells' development of the aforementioned cancers, which resulted in his severe injuries, disabilities, damages, and ultimate death resulting in further injury and damage to his wrongful death distributees as is more fully set forth below.

#### **COUNT ELEVEN**

##### **(Negligent Manufacture, Installation, Inspection, Repair, or Maintenance - F&B)**

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

62. Upon information and belief, defendant F&B is, or at times relevant hereto was, a manufacturer, installer, maintenance provider and/or repairer of benzene tanks and vessels at Westlake's predecessor PPG's Natrium facility.

63. Upon information and belief, defendant F&B, acting by and through its servants, agents, and employees, duly authorized and acting within the scope and authority of their employment, manufactured, installed, inspected, repaired, and/or performed maintenance on the benzene tanks and vessels at the Natrium facility.

64. Defendant F&B knew, or in the exercise of ordinary care, should have known, that benzene liquid, vapors, and fumes would escape the confinement of its tanks and vessels if the same were not properly manufactured, installed, thoroughly inspected, imperfections in tank

integrity were not identified, and repairs/maintenance were not done in an adequate and workmanlike manner.

65. Defendant F&B owed and/or voluntarily undertook a duty of care to: (a) properly manufacture and/or install, in an adequate and workmanlike manner, the benzene tanks and vessels at the Natrium facility; (b) thoroughly inspect and examine the Natrium facility benzene tanks and vessels for leaks, faults, flaws, and imperfections to the integrity of the tanks; (c) identify actual leaks, faults, flaws and imperfections to the integrity of the Natrium facility benzene tanks and vessels; and (d) remedy the same in an adequate and workmanlike manner or bring them to the attention of management at the Natrium facility.

66. Furthermore, defendant F&B owed and/or voluntarily undertook a duty of care to create a safety plan for benzene tank use and/or maintenance at the Natrium facility, and further, owed or undertook a duty of care to follow-up with Westlake's predecessor PPG to ensure that these safety plan instructions were being followed.

67. Nevertheless, defendant F&B negligently, carelessly, recklessly, and willfully breached its duties of care: (a) by failing to properly manufacture, in an adequate and workmanlike manner, the benzene tanks at the Natrium facility; (b) by failing to properly install, in an adequate and workmanlike manner, the benzene tanks at the Natrium facility; (c) by failing to thoroughly inspect the Natrium facility benzene tanks for leaks, faults, flaws, and/or imperfections to the integrity of the tanks; (d) by failing to recognize the actual leaks, faults, flaws, and imperfections to the integrity of the Natrium Facility benzene tanks; (e) by failing to properly repair and/or maintain, in an adequate and workmanlike manner, the benzene tanks at the Natrium facility; and/or (f) by failing to create a safety plan for benzene tank use and maintenance, and further, failing to follow-up with Westlake's predecessor PPG to ensure that

these safety plan instructions were being followed all of which resulted in raw benzene and benzene vapors and gas escaping into the general population of workers at the Natrium facility, and in particular into Wells' work areas.

68. Defendant F&B's negligence, carelessness, recklessness, and wantonness, as aforesaid, were a direct and proximate cause of Wells' development of the aforementioned cancers, which resulted in his severe injuries, disabilities, damages, and ultimate death resulting in further injury and damage to his wrongful death distributees as is more fully set forth below.

### **COUNT TWELVE**

#### **(Loss of Consortium – All Defendants)**

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

70. Plaintiff Nancy Sue Wells is the wife of David A. Wells.

71. As a result of her husband's development of the aforementioned cancers, and the injuries, illness, and damages up to the time of his ultimate death, as hereinbefore and after described, Plaintiff Nancy Sue Wells lost the general services, companionship, and society of her husband for which she is entitled to recover.

### **DAMAGES**

72. As a result of his development of primary renal cell carcinoma (RCC) with pulmonary metastases from RCC primary therefrom, micropapillary carcinoma of thyroid, and squamous cell carcinoma of tongue which lead to his ultimate death, Wells suffered and sustained severe illness and injury to his person which forced him to obtain medical treatment, and to incur medical expenses by way of doctor, hospital, and drug bills for which the estate is

entitled to recover damages in this action.

73. Wells further suffered great pain, extreme nervousness and mental anguish as a direct result of his aforesaid development of renal cell carcinoma (RCC) with pulmonary metastases from RCC primary therefrom, micropapillary carcinoma of thyroid, and squamous cell carcinoma of tongue which lead to his ultimate death for which the estate is entitled to recover damages in this action.

74. As a direct and proximate result of his aforesaid development of renal cell carcinoma (RCC) with pulmonary metastases from RCC primary therefrom, micropapillary carcinoma of thyroid, and squamous cell carcinoma of tongue which lead to his ultimate death, Wells' enjoyment of life was greatly impaired for which the estate is entitled to recover damages in this action.

75. As a direct and proximate result of his aforesaid development of renal cell carcinoma (RCC) with pulmonary metastases from RCC primary therefrom, micropapillary carcinoma of thyroid, and squamous cell carcinoma of tongue which lead to his ultimate death, Wells' life expectancy was greatly reduced for which the estate is entitled to recover damages in this action.

76. As a result of the development of renal cell carcinoma (RCC) with pulmonary metastases from RCC primary therefrom, micropapillary carcinoma of thyroid, and squamous cell carcinoma of tongue which lead to his ultimate death, Wells' ability to work and earn a living was greatly impaired for which the Plaintiff is entitled to recover damages in this action.

77. As a direct and proximate result of Wells' development of renal cell carcinoma (RCC) with pulmonary metastases from RCC primary therefrom and subsequent death, as

aforesaid, Plaintiff and other potential Wrongful Death distributees have suffered the enumerated damages set forth in W. Va. Code §§ 55-7-5 and 55-7-6 for which they are entitled to recover damages in this action.

**WHEREFORE**, plaintiff demands compensatory damages from all defendants severally, in an amount to be determined by the trier of fact as permitted by law, as well as an award of punitive damages against all defendants, *except as to Westlake Chlor-Vinyls Corporation*, above, in an amount to be determined by the trier of fact as permitted by law. 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.**

Dated: April 11, 2023.

**NANCY SUE WELLS**, Individually and as  
Executrix of the Estate of **DAVID A. WELLS**,  
deceased, Plaintiff

*/s/ R. Dean Hartley*

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