

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

**MARK A. FITZPATRICK, and  
JAMES B. PARRISH and MONICA L.  
PARRISH, his wife;**

Plaintiffs,

vs.

CIVIL ACTION NO. 14-C- 74

**SAL CHEMICAL CO., INC.,** an Ohio corporation; **CHEMICAL SOLVENTS, INC.,** an Ohio corporation; **BALL AEROSOL AND SPECIALTY CONTAINER INC. f/k/a UNITED STATES CAN COMPANY,** a Delaware corporation; **BALL CORPORATION,** an Indiana corporation; **BALL METAL FOOD CONTAINER, LLC f/k/a BALL METAL FOOD CONTAINER CORP.,** a Delaware limited liability company,

Defendants.

**COMPLAINT**

COMES NOW, the Plaintiffs, Mark A. Fitzpatrick, James B. Parrish, and Monica L. Parrish, his wife, and for their Complaint against Defendants Sal Chemical Co., Inc.; Chemical Solvents, Inc.; Ball Aerosol and Specialty Container Inc. f/k/a United States Can Company; Ball Corporation; and Ball Metal Food Container, LLC f/k/a Ball Metal Food Container Corp., state and allege as follows:

**Parties**

1. Plaintiff Mark A. Fitzpatrick resides at 590 Mahan Lane, Follansbee, West Virginia 26037 and, at all times material herein, was a resident and citizen of Brooke County, West Virginia.

2. Plaintiffs James B. Parrish and Monica L. Parrish reside at 3924 Hanlin Way, Weirton, West Virginia 26062 and, at all times material herein, were residents and citizens of Brooke County, West Virginia.

3. Defendant Sal Chemical Company, Inc. (hereinafter "Sal Chemical") is an Ohio corporation with its principal place of business at 3036 Birch Drive, Weirton, West Virginia 26062. Sal Chemical is registered to do business in West Virginia and its registered agent for process is Steven Fenell, 3036 Birch Drive, Weirton, West Virginia 26062. Sal Chemical regularly and purposefully engages in commerce in West Virginia, including specific business activities in Brooke County, West Virginia.

4. Defendant Chemical Solvents, Inc. (hereinafter "CSI") is an Ohio corporation with its principal place of business at 3751 Jennings Road, Cleveland, Ohio 44109. CSI is registered to do business in West Virginia and its registered agent for process is Pat Albanese, 3751 Jennings Road, Cleveland, Ohio 44109. CSI regularly and purposefully engages in commerce in West Virginia, including specific business activities in Brooke County, West Virginia.

5. Defendant Ball Aerosol and Specialty Container Inc. f/k/a United States Can Company (hereinafter sometimes referred to as "BASCI/USCANCO") is a Delaware corporation with its principal place of business at 9300 W. 108<sup>th</sup> Circle, Broomfield, CO 8002. Defendant BASCI/USCANCO is registered to do business in West Virginia and its registered agent for process is CT Corporation System, 5400 D Big Tyler Road, Charleston, WV 25313. Defendant BASCI/USCANCO regularly and purposefully engages in commerce in West Virginia, including specific business activities in Brooke County, West Virginia.

6. Defendant Ball Corporation is an Indiana corporation with its principal place of business at 10 Longs Peak Drive, Broomfield, CO 80021. Ball Corporation is registered to do business in West Virginia and its registered agent for process is CT Corporation System, 5400 D Big Tyler Road, Charleston, WV 25313. Ball Corporation regularly and purposefully engages in commerce in West Virginia, including specific business activities in Brooke County, West Virginia.

7. Defendant Ball Metal Food Container, LLC f/k/a Ball Metal Food Container Corp. (hereinafter "Ball Metal") is a Delaware limited liability company with its principal place of business at 9300 West 108<sup>th</sup> Circle, Westminster, CO 80021. Ball Metal is registered to do business in West Virginia and its registered agent for process is CT Corporation System, 5400 D Big Tyler Road, Charleston, WV 25313. Ball Metal regularly and purposefully engages in commerce in West Virginia, including specific business activities in Brooke County, West Virginia.

#### **Jurisdiction and Venue**

8. The Court has subject matter jurisdiction over the claims made by the Plaintiffs herein pursuant to Article VIII, Section 6 of the West Virginia Constitution and W.Va. Code § 51-2-2.

9. This Court has personal jurisdiction over the Defendants because they conducted business in West Virginia at all times material herein and committed acts and/or omissions in West Virginia which caused tortious injury to Plaintiffs.

10. Venue is proper in this Court pursuant to W.Va. Code §56-1-1 in that all material acts described herein occurred in Brooke County, West Virginia and Plaintiffs' causes of action arose in Brooke County, West Virginia.

### Factual Allegations

11. From approximately 1987 through 2006, United States Can Company owned and operated a fabricated metal product manufacturing plant in Weirton, West Virginia located at the Half Moon Industrial Park at or near 3010 Birch Drive, Weirton, West Virginia 26062 (hereinafter "the plant") where steel containers were painted and coated with paints containing organic solvents.

12. In 2006, Defendant Ball Corporation and/or Ball Metal acquired United States Can Company's United States operations and manufacturing plants which included, upon information and belief, the subject Weirton, West Virginia plant. Prior to or shortly after said acquisition, United States Can Company changed its name to Ball Aerosol and Specialty Container Inc. on April 21, 2006.

13. Additionally and/or alternatively, as part of the 2006 acquisition, Defendant Ball Corporation assumed all legal duties and/or liabilities of United States Can Company for its ownership and/or operation of the Weirton, West Virginia fabricated metal product manufacturing plant.

14. Additionally and/or alternatively, as part of the 2006 acquisition, Defendant Ball Metal assumed all legal duties and/or liabilities of United States Can Company for its ownership and/or operation of the Weirton, West Virginia fabricated metal product manufacturing plant.

15. Additionally and/or alternatively, Defendant BASCI/USCANCO retained all legal duties and/or liabilities for its ownership of the Weirton, West Virginia fabricated metal product manufacturing plant.

16. The Weirton, West Virginia fabricated metal product manufacturing plant is currently owned and/or operated by Defendants Ball Corporation and/or BASCI/USCANCO and/or Ball Metal, either individually, jointly or part of a joint venture, and throughout the aforementioned acquisition and/or name change, Defendants Ball Corporation and/or Ball Metal and/or BASCI/USCANCO have continued to operate the plant in the same or similar manner with the same or similar processes, including the utilization of painting and coating metal with paints containing organic solvents.

17. Plaintiff Mark A. Fitzpatrick was employed by Defendants BASCI/USCANCO and/or Ball Corp. and/or Ball Metal in various capacities at the Weirton, West Virginia fabricated metal product manufacturing plant from approximately September of 1996 to the present.

18. Plaintiff James B. Parrish was employed by Defendants BASCI/USCANCO and/or Ball Corp. and/or Ball Metal in various capacities at the Weirton, West Virginia fabricated metal product manufacturing plant from approximately December of 1998 till November of 2011.

19. During said employment, Plaintiffs, whose livelihood was dependent upon the work they did for BASCI/USCANCO and/or Ball Corp. and/or Ball Metal, were exposed to and were required to work in, around, and near aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents.

20. At all times material herein, Defendants BASCI/USCANCO and Ball Corporation and/or Ball Metal had actual knowledge that Plaintiffs were required to work in areas where they would be chronically and systematically exposed to impermissibly high levels of aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents but nevertheless failed to provide Plaintiffs with adequate warnings

of the hazards posed by the same and failed to provide adequate safety equipment thereby intentionally exposing them to known specific unsafe working conditions.

21. Defendants BASCI/USCANCO and Ball Corporation and/or Ball Metal further violated, disregarded, circumvented, and by-passed applicable safety statutes, rules, and/or regulations together with commonly accepted and well-known safety standards within Defendants' industry concerning the warnings which must be given, as well as other precautions which must be taken, when employees, such as Plaintiffs Mark A. Fitzpatrick and James B. Parrish, were required to work with, near, and around aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents, by, without limitation: failing to provide adequate respiratory and other forms of personal protective equipment; failing to provide adequate warnings of the hazards associated with exposure to aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals, and/or solvents; failing to provide adequate ventilation; and otherwise failing to provide, institute, observe, and enforce reasonable, adequate, proper and acceptable safety rules and standards accepted and acceptable in Defendants' industry to make safe the areas in and conditions under which Plaintiffs Mark A. Fitzpatrick and James B. Parrish worked.

22. The aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and solvents to which Plaintiffs were exposed during their employment with BASCI/USCANCO and Ball Corp. and/or Ball Metal were manufactured, processed, supplied and/or sold by Defendants Sal Chemical and CSI, who at all times material herein, were manufactures, processors, sellers, and/or suppliers of aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and solvents.

23. Acting by and through their servants, agents, and employees, duly authorized and acting within the scope and authority of their employment, Defendants Sal Chemical and CSI caused aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents to be placed into the stream of commerce and have done so for a number of years preceding the filing of this civil action. Defendants Sal Chemical and CSI sold, distributed and transported large quantities of aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents to Defendants BASCI/USCANCO and/or Ball Corp. and/or Ball Metal at the subject plant which resulted in said aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and solvents coming into use by and around Plaintiffs.

24. At all times material herein, Defendants Sal Chemical and CSI knew, or in the exercise of reasonable care, should have known, that persons employed, such as Plaintiffs Mark A. Fitzpatrick and James B. Parrish, would be required to and would, in fact, come into contact with, and work in close proximity to aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents in the forms aforesaid.

25. At all times material herein, Plaintiffs Mark A. Fitzpatrick and James B. Parrish were exposed to aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents by means of inhalation and dermal absorption (from direct dermal contact with said products and/or dermal contact with clothes contaminated by said products).

26. As a direct and proximate result of the actions, omissions, and conduct of Defendants which resulted in Plaintiff Mark A. Fitzpatrick being exposed to Defendants' aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents as described herein, Plaintiff Mark A. Fitzpatrick developed chronic

myelogenous leukemia (CML) and has been further injured and damaged as is hereinafter set forth.

27. As a direct and proximate result of the actions, omissions, and conduct of Defendants which resulted in Plaintiff James B. Parrish being exposed to Defendants' aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents as described herein, Plaintiff James B. Parrish developed node positive, perforated, poorly differentiated adenocarcinoma of the sigmoid colon and Plaintiffs James B. Parrish and Monica L. Parrish have been injured and damaged as is hereinafter set forth.

28. Plaintiffs incorporate herein by reference each of the averments set forth in Paragraphs 1 through 27 in each Count of this Complaint.

**COUNT ONE**

*Negligence*

(Sal Chemical and CSI)

29. At all times material herein, Defendants Sal Chemical and CSI owed a duty to Plaintiffs Mark A. Fitzpatrick and James B. Parrish to use care for their safety, which included, without limitation:

A. The duty to advise Plaintiffs Mark A. Fitzpatrick and James B. Parrish of the dangerous characteristics of their aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents;

B. The duty to advise Plaintiffs Mark A. Fitzpatrick and James B. Parrish as to what, if any, would be reasonably safe and sufficient clothing, protective equipment and appliances to protect them from the dangers of Defendants' aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents;

C. The duty to adequately warn of the dangers of their aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents;

D. The duty to publish, adopt, and enforce a safety plan and a safe method of handling and working with their aromatic hydrocarbon-containing and chlorinated-containing products, chemicals and/or solvents;

E. The duty to recommend methods to improve the work environment;



- F. They duty to develop safer, alternative products;
- G. The duty not to use and market known cancer-causing products;
- H. The duty to make reasonable inquiry to assure that Plaintiffs' employer(s) were adequately warning and protecting workers, such as Mark A. Fitzpatrick and James B. Parrish, against the hazards posed by aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents; and
- I. The duty to use due care generally.

30. At all times material herein, Defendants Sal Chemical and CSI, acting by and through their agents, servants, representatives and/or employees, duly authorized and acting within the scope and authority of their employment, negligently and recklessly breached their duty to Plaintiffs by, but not limited to:

A. Failing to advise Plaintiffs Mark A. Fitzpatrick and James B. Parrish of the dangerous characteristics of their aromatic hydrocarbon-containing and chlorinated-containing products, chemicals and/or solvents;

B. Failing to advise Plaintiffs Mark A. Fitzpatrick and James B. Parrish as to what, if any, would be reasonably safe and sufficient clothing, protective equipment and appliances to protect them from being poisoned and disabled, as they were, by exposure to such deleterious and harmful aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents;

C. Failing and omitting to place any warnings, or sufficient warnings, on either their containers of aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents, or shipping or billing documents to warn persons coming into contact with their aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents of the dangers to their health;

D. Failing and omitting 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 aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents;

E. Failing to adequately warn, if in fact they warned at all, persons such as Plaintiffs Mark A. Fitzpatrick and James B. Parrish, of the dangers to one's health as a result of coming into contact with, or breathing aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents;

F. Failing to recommend methods to improve the work environment;

G. Failing to develop safer, alternative products;

H. Continuing to use and market known cancer-causing products, *to-wit*, aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents;

I. Failing to remove or reduce benzene from their aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents when it was economically feasible to do so;

J. Failing to make a reasonable inquiry to assure that Plaintiffs' employer(s) were adequately warning and protecting workers such as Plaintiffs Mark A. Fitzpatrick and James B. Parrish, against the hazards posed by aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents;

K. Failing to use due care generally; and

L. Other acts and omissions both known and unknown to Plaintiffs.

31. Plaintiffs' illnesses, disabilities, and damages were directly and proximately caused by the negligence, willfulness, and recklessness of Defendants Sal Chemical and CSI in that said Defendants manufactured, processed, sold, supplied, or otherwise put aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents upon the market and into the stream of commerce, knowing, or which said Defendants, in the exercise of ordinary care, should have known, that said aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents were deleterious, poisonous, cancer-causing, and inherently dangerous and harmful to Plaintiffs' health and general well-being when Defendants further knew, or in the exercise of reasonable care should have known, that Plaintiffs would not know of such danger to their health and well-being.

32. As a direct and proximate result of the actions, omissions, and/or conduct of Defendants Sal Chemical and CSI, Plaintiff Mark A. Fitzpatrick developed chronic myelogenous leukemia (CML) and has been further injured and damaged as is hereinafter set forth.

33. As a further direct and proximate result of the actions, omissions, and/or conduct of Defendants Sal Chemical and CSI, Plaintiff James B. Parrish developed node positive,

perforated, poorly differentiated adenocarcinoma of the sigmoid colon and Plaintiffs James B. Parrish and Monica L. Parrish have been injured and damaged as is hereinafter set forth.

**COUNT TWO**  
*Breach of Warranty*  
(Sal Chemical and CSI)

34. Plaintiffs incorporate by reference the allegations contained in Count One of this Complaint, as if repeated herein verbatim.

35. Defendants Sal Chemical and CSI impliedly warranted that the aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents manufactured, processed, supplied, and/or sold by them to Plaintiffs' employer(s), and to which Plaintiffs were exposed, were of good and merchantable quality, and fit and suitable for the use for which they were intended.

36. Defendants breached said implied warranties in that certain harmful, poisonous and deleterious and inherently dangerous fumes were given off from said aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents into the air and atmosphere wherein Plaintiffs Mark A. Fitzpatrick and James B. Parrish carried out their job duties, and further in that aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents were absorbed into the human body when workers, such as Plaintiffs Mark A. Fitzpatrick and James B. Parrish, came into contact with said aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents.

37. As a direct and proximate result of the breach of said implied warranties by Defendants Sal Chemical and CSI, as is set forth hereinabove, Plaintiff Mark A. Fitzpatrick developed chronic myelogenous leukemia (CML) and has been further injured and damaged as is hereinafter set forth.

38. As a direct and proximate result of the breach of said implied warranties by Defendants Sal Chemical and CSI, as is set forth hereinabove, Plaintiff James B. Parrish developed node positive, perforated, poorly differentiated adenocarcinoma of the sigmoid colon and Plaintiffs James B. Parrish and Monica L. Parrish have been injured and damaged as is hereinafter set forth.

**COUNT THREE**  
*Strict Liability*  
(Sal Chemical and CSI)

39. Plaintiffs incorporate herein by reference the allegations contained in Counts One and Two of this Complaint, as if repeated herein verbatim.

40. At the time Defendants Sal Chemical and CSI manufactured, processed, sold and/or supplied the aforesaid aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents, and at the time they were used by and around Plaintiffs Mark A. Fitzpatrick and James B. Parrish in the manner and environment intended, said aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents 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 Plaintiffs' body, health, and well-being. As such, Defendants Sal Chemical and CSI are strictly liable in tort to those persons injured as a result of said defects and, in particular, to Plaintiffs for their illnesses, disabilities, and damages.

41. As a direct and proximate result of the defective condition of the aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals, and/or solvents manufactured, processed, sold and/or supplied by Defendants Sal Chemical and CSI, Plaintiff Mark A. Fitzpatrick developed chronic myelogenous leukemia (CML) and has been further injured and damaged as is hereinafter set forth.

42. As a direct and proximate result of the defective condition of the aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals, and/or solvents manufactured, processed, sold and/or supplied by Defendants Sal Chemical and CSI, Plaintiff James B. Parrish developed node positive, perforated, poorly differentiated adenocarcinoma of the sigmoid colon and Plaintiffs James B. Parrish and Monica L. Parrish have been injured and damaged as is hereinafter set forth.

**COUNT FOUR**

*Strict Liability - Defective Design*  
(Sal Chemical and CSI)

43. Plaintiffs incorporate herein by reference the allegations contained in Counts One Two, and Three of this Complaint, as if repeated herein verbatim.

44. At the time Defendants Sal Chemical and CSI manufactured, processed, sold and/or supplied the aforesaid aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents, and at the time they were used by and around Plaintiffs Mark A. Fitzpatrick and James B. Parrish in the manner and environment intended, said aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents were defective in design in that they were deleterious, poisonous, and highly harmful to Plaintiffs' body, health, and well-being. As such, Defendants Sal Chemical and CSI are strictly liable in tort to those persons injured as a result of said defects and, in particular, to Plaintiffs for their illnesses, disabilities, and damages.

45. As a direct and proximate result of the defective design of the aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals, and/or solvents manufactured, processed, sold and/or supplied by Defendants Sal Chemical and CSI, Plaintiff Mark A. Fitzpatrick developed chronic myelogenous leukemia (CML) and has been further injured and damaged as is hereinafter set forth.

46. As a direct and proximate result of the defective design of the aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals, and/or solvents manufactured, processed, sold and/or supplied by Defendants Sal Chemical and CSI, Plaintiff James B. Parrish developed node positive, perforated, poorly differentiated adenocarcinoma of the sigmoid colon and Plaintiffs James B. Parrish and Monica L. Parrish have been injured and damaged as is hereinafter set forth.

**COUNT FIVE**

*Strict Liability - Failure to Warn*  
(Sal Chemical and CSI)

47. Plaintiffs incorporate herein by reference the allegations contained in Counts One Two, Three and Four of this Complaint, as if repeated herein verbatim.

48. At the time Defendants Sal Chemical and CSI manufactured, processed, sold and/or supplied the aforesaid aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents, and at the time they were used by and around Plaintiffs Mark A. Fitzpatrick and James B. Parrish in the manner and environment intended, said aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents 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 Plaintiffs' body, health, and well-being.

49. At all times material herein, Defendants Sal Chemical and CSI knew or reasonably should have known through the exercise of reasonable care that the aforesaid aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents were defective and unreasonably dangerous in that they presented an increased risk of serious injury and/or death when used for their intended purpose.

50. At all times material herein, Defendants Sal Chemical and CSI failed to provide adequate warnings to the users, including Plaintiffs James B. Parrish and Mark A. Fitzpatrick, of the aforesaid aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents about the risks and hazards associated with the use of the aforesaid aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents.

51. As a direct and proximate result of the Defendants Sal Chemical's and CSI's failure to warn about the dangers and risks relating to the use of their aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals, and/or solvents, Plaintiff Mark A. Fitzpatrick developed chronic myelogenous leukemia (CML) and has been otherwise injured and damaged as is hereinafter set forth.

52. As a direct and proximate result of Defendants Sal Chemical's and CSI's failure to warn about the dangers and risks relating to the use of their aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals, and/or solvents, Plaintiff James B. Parrish developed node positive, perforated, poorly differentiated adenocarcinoma of the sigmoid colon and Plaintiffs James B. Parrish and Monica L. Parrish have been otherwise injured and damaged as is hereinafter set forth.

#### **COUNT SIX**

*Strict Liability - Manufacturing Defect*  
(Sal Chemical and CSI)

53. Plaintiffs incorporate herein by reference the allegations contained in Counts One, Two, Three, Four, and Five of this Complaint, as if repeated herein verbatim.

54. At the time Defendants Sal Chemical and CSI manufactured, processed, sold and/or supplied the aforesaid aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents, and at the time they were used by and around

Plaintiffs Mark A. Fitzpatrick and James B. Parrish in the manner and environment intended, said aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents were defective in manufacturing in that Defendants failed to remove or reduce benzene from their aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals, and/or solvents when it was economically feasible to do so. As such, Defendants Sal Chemical and CSI are strictly liable in tort to those persons injured as a result of said defects and, in particular, to Plaintiffs for their illnesses, disabilities, and damages.

55. As a direct and proximate result of the manufacturing defect of the aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals, and/or solvents manufactured, processed, sold and/or supplied by Defendants Sal Chemical and CSI, Plaintiff Mark A. Fitzpatrick developed chronic myelogenous leukemia (CML) and has been further injured and damaged as is hereinafter set forth.

56. As a direct and proximate result of the manufacturing defect of the aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals, and/or solvents manufactured, processed, sold and/or supplied by Defendants Sal Chemical and CSI, Plaintiff James B. Parrish developed node positive, perforated, poorly differentiated adenocarcinoma of the sigmoid colon and Plaintiffs James B. Parrish and Monica L. Parrish have been injured and damaged as is hereinafter set forth.

**COUNT SEVEN**

*Post-Sale Duty to Warn*

(Sal Chemical and CSI)

57. Plaintiffs incorporate herein by reference the allegations contained in Counts One, Two, Three, Four, Five, and Six of this Complaint, as if repeated herein verbatim.



58. Defendants Sal Chemical and CSI had a post-sale duty to warn, which duty they breached.

59. As a direct and proximate result of Defendants Sal Chemical's and CSI's aforesaid breaches of their post-sale duties to warn, Plaintiff Mark A. Fitzpatrick developed chronic myelogenous leukemia (CML) and has been further injured and damaged as is hereinafter set forth.

60. As a direct and proximate result of Defendants Sal Chemical's and CSI's aforesaid breaches of their post-sale duties to warn, Plaintiff James B. Parrish developed node positive, perforated, poorly differentiated adenocarcinoma of the sigmoid colon and Plaintiffs James B. Parrish and Monica L. Parrish have been injured and damaged as is hereinafter set forth.

#### **COUNT EIGHT**

*Deliberate Intention - W.Va. Code § 23-4-2(d)(2)(ii)*  
(BASCI/USCANCO / Ball Corporation / Ball Metal)

61. The conduct of Defendants BASCI/USCANCO, Ball Corporation and Ball Metal as described in this Complaint constitutes "deliberate intention" as defined by W.Va. Code § 23-4-2(d)(2)(ii).

62. At all times material herein, Defendants BASCI/USCANCO, Ball Corporation and Ball Metal by and through their agents, servants, representatives, and/or employees, intentionally exposed Plaintiffs Mark A. Fitzpatrick and James B. Parrish to known specific unsafe working conditions which presented a high degree of risk and strong probability of serious injury or death by, but not limited to: requiring Plaintiffs Mark A. Fitzpatrick and James B. Parrish to work in areas where they would be chronically and systematically exposed to impermissibly high levels of aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals and/or solvents; failing to provide Plaintiffs Mark A. Fitzpatrick

and James B. Parrish with adequate warnings of the hazards associated with exposure to said aromatic hydrocarbon-containing and chlorinated hydrocarbon-containing products, chemicals, and/or solvents; failing to provide adequate respiratory and other forms of personal protective equipment; failing to provide adequate ventilation; and otherwise failing to provide, institute, observe, and enforce reasonable, adequate, proper and acceptable safety rules and standards accepted and acceptable in Defendants' industry to make safe the areas in and conditions under which Plaintiffs Mark A. Fitzpatrick and James B. Parrish worked.

63. At all times material herein, Defendants BASCI/USCANCO, Ball Corporation and Ball Metal violated W.Va. Code § 23-4-2(d)(2)(ii) in that:

A. Specific unsafe working conditions existed in the workplace which presented a high degree of risk and a strong probability of serious injury or death;

B. Defendants BASCI/USCANCO, Ball Corporation and Ball Metal 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 were violations of applicable safety statutes, rules or regulations, whether cited or not, or of commonly accepted and well-known safety standards within the industry or business of Defendants, as demonstrated by competent evidence of written standards or guidelines which reflect a consensus safety standard in the industry or business, which statute, rule, regulation or standard was 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;

D. That notwithstanding the existence of the facts set forth in subparagraphs (A) through (C), inclusive, of this paragraph, Defendants BASCI/USCANCO, Ball Corporation and Ball Metal nevertheless intentionally thereafter exposed Plaintiffs Mark A. Fitzpatrick and James B. Parrish to the specific unsafe working conditions; and

E. Plaintiffs Mark A. Fitzpatrick and James B. Parrish suffered serious compensable injury, as defined in W.Va. Code 23-4-1, as a direct and proximate result of the specific unsafe working conditions.

64. As a direct and proximate result of the actions, omissions, and/or conduct of Defendants BASCI/USCANCO, Ball Corporation, and Ball Metal, as set forth herein, Plaintiff

Mark A. Fitzpatrick developed chronic myelogenous leukemia (CML) and has been otherwise injured and damaged as is hereinafter set forth.

65. As a direct and proximate result of the actions, omissions, and/or conduct of Defendants BASCI/USCANCO, Ball Corporation, and Ball Metal as set forth herein, Plaintiff James B. Parrish developed node positive, perforated, poorly differentiated adenocarcinoma of the sigmoid colon and Plaintiffs James B. Parrish and Monica L. Parrish have been otherwise injured and damaged as is hereinafter set forth.

**Damages**

*(Plaintiff Mark A. Fitzpatrick)*

66. As a direct and proximate result of each wrongful and tortious act of Defendants as described herein, Plaintiff Mark A. Fitzpatrick developed chronic myelogenous leukemia (CML) and has further sustained the following damages, injuries, and losses:

- A. Severe and permanently disabling personal injuries as well as psychological injuries;
- B. Medical bills in an amount presently undetermined and future medical bills;
- C. Lost wages and benefits in an amount presently undetermined;
- D. Loss of future earnings, wages, capacity and benefits;
- E. Lost household services and future lost household services;
- F. Extreme physical pain and suffering, past and future;
- G. Extreme mental anguish and suffering, past and future;
- H. Loss of capacity to enjoy life and engage in normal activities, past and future;
- I. Annoyance and inconvenience, humiliation, embarrassment, and aggravation, past and future; and
- J. A greatly reduced life expectancy, extreme anxiousness, and fear of death.

### Damages

*(Plaintiffs James B. Parrish and Monica L. Parrish)*

67. As a direct and proximate result of each wrongful and tortious act of the Defendants as described herein, Plaintiff James B. Parrish developed node positive, perforated, poorly differentiated adenocarcinoma of the sigmoid colon and has further sustained the following damages, injuries, and losses:

- A. Severe and permanently disabling personal injuries as well as psychological injuries;
- B. Medical bills in an amount presently undetermined and future medical bills;
- C. Lost wages and benefits in an amount presently undetermined;
- D. Loss of future earnings, wages, capacity and benefits;
- E. Lost household services and future lost household services;
- F. Extreme physical pain and suffering, past and future;
- G. Extreme mental anguish and suffering, past and future;
- H. Loss of capacity to enjoy life and engage in normal activities, past and future;
- I. Annoyance and inconvenience, humiliation, embarrassment, and aggravation, past and future;
- J. A greatly reduced life expectancy, extreme anxiousness, and fear of death.

68. As a further direct and proximate result of each wrongful and tortious act of Defendants as described herein, Plaintiff Monica L. Parrish has lost the consortium and services of her husband, James B. Parrish, and, inasmuch as the injuries of James B. Parrish are permanent and lasting in nature, Plaintiff Monica L. Parrish will continue in the future to be deprived of the consortium and services of her husband, James B. Parrish.

**Punitive Damages**

*(Sal Chemical and CSI)*

69. The acts, omission, and/or conduct of Defendants Sal Chemical and CSI as described herein, were willful, wanton, and malicious and/or reckless and/or done with criminal indifference to the civil rights of others, specifically including Plaintiffs Mark A. Fitzpatrick and James B. Parrish, and warrant the assessment of punitive damages.

70. Punitive damages are justified to punish Defendants Sal Chemical and CSI for their willful, wanton, malicious, and reckless behavior which caused and/or contributed to the injuries of Plaintiffs Mark A. Fitzpatrick and James B. Parrish.

71. Punitive damages will further serve to deter these Defendants and other reckless companies/individuals from conducting business in West Virginia in this manner and profiting from such reprehensible conduct.

**Wherefore**, the Plaintiffs, Mark A. Fitzpatrick, James B. Parrish and Monica L. Parrish, his wife, demand judgment against Defendants, jointly and severally, for:

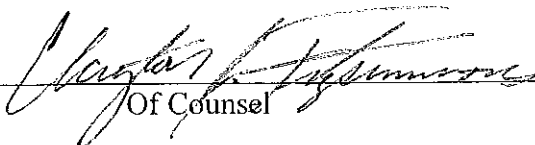
- A. An amount of compensatory damages determined by a jury according to the laws of the State of West Virginia;
- B. An amount of punitive damages determined by a jury according to the laws of the State of West Virginia (except as to Defendants BASCI/USCANCO, Ball Corporation, and Ball Metal);
- C. Pre-judgment and post-judgment interest as provided under the law;
- D. Costs and attorney fees expended in the prosecution of this matter; and
- E. Any and all further relief as a court and/or jury deem just and proper.

The minimum jurisdictional amount established for filing this action is satisfied.

**PLAINTIFFS DEMAND A TRIAL BY JURY.**

Respectfully Submitted,

**MARK A. FITZPATRICK, and  
JAMES B. PARRISH and MONICA L.  
PARRISH, his wife, *Plaintiffs***

By:   
Of Counsel

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