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Brooke County Circuit Clerk
Glenda Brooks

IN THE CIRCUIT COURT OF BROOKE COUNTY, WEST VIRGINIA

VERONICA L. TALKINGTON, Individually
and as Executrix of the Estate of
Willard Scott Talkington, deceased,

Plaintiff,

vs.

Civil Action No. _____

SAL CHEMICAL CO., INC.,
an Ohio corporation;

CHEMICAL SOLVENTS, INC.,
an Ohio corporation;

BALL CORPORATION,
an Indiana corporation;

BALL METALPACK, LLC,
fka Ball Metal Food Container, LLC
fka Ball Metal Food Container Corp.
a foreign limited liability company;

SONOCO PRODUCTS COMPANY,
a South Carolina corporation;

CHEVRON PHILLIPS CHEMICAL COMPANY LLC,
a Delaware limited liability company;

CITGO PETROLEUM CORP.,
a Delaware corporation;

CELANESE CORPORATION,
a Delaware corporation;

ASHLAND INC.,
a Delaware corporation;

SUNOCO, INC. (R&M),
a Pennsylvania corporation;

UNION CARBIDE CORPORATION,
a New York corporation;

UNION OIL COMPANY OF CALIFORNIA,
a California corporation;

EXXON MOBIL CORPORATION,
a New York corporation;

PPG INDUSTRIES, INC.,
a Pennsylvania corporation;

SHERWIN-WILLIAMS COMPANY, individually
and as successor through acquisition of the
Valspar Corporation, as successor-through-acquisition
of Harwick Industrial Coatings, LLC fka
Watson Standard Industrial Coatings, LLC fka
Watson Standard Company, fka
Watson Standard Limited, Inc., and
through its "Watson Standard" brand,
an Ohio corporation;

THE VALSPAR CORPORATION,
a foreign corporation; and

WATSON STANDARD LIMITED, INC.,
a Delaware corporation;

Defendants.

COMPLAINT

General Allegations

1. Plaintiff, Veronica L. Talkington, is a citizen and resident of Amsterdam, Jefferson County, Ohio. Plaintiff, Veronica L. Talkington is the widow of Willard Scott Talkington (hereinafter sometimes referred to as "Talkington"). Willard Scott Talkington was employed by defendant Ball Metalpack LLC or its predecessors Ball Metal Food Container, LLC and Ball Metal Food Container, Corp. (hereinafter sometimes "Metalpack") and/or defendant Ball Corporation at the Ball Weirton facility located at 3010 Birch Drive Weirton, Brooke

County, West Virginia (hereinafter "Weirton facility") between 1998 and 2017. Talkington was diagnosed pathologically with moderate to poorly differentiated adenocarcinoma involving the gastro-esophageal junction with metastasis (hereinafter "esophageal cancer") in 2020.

Thereafter, Talkington died on December 28, 2020.

2. Plaintiff is the duly qualified and acting Executrix of the Estate of Willard Scott Talkington. A copy of Plaintiff's "Letters of Authority" is attached hereto as Exhibit "A" and is incorporated herein by reference. 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.

3. Defendant, **SAL CHEMICAL CO., INC.** [hereinafter sometimes referred to as "SAL Chemical" and included in the designation "Solvent Suppliers"], is an Ohio corporation with its principal place of business at 3036 Birch Drive, Weirton, Brooke County, West Virginia, is registered to do business in West Virginia, and at all times material hereto regularly and purposefully engaged in commerce in West Virginia, including specific business activities in Brooke County, West Virginia involving Ball's Weirton facility. At all times material herein, SAL Chemical was in the business of and was a manufacturer, processor, seller, distributor, assembler, formulator, designer, creator, maker, and/or remanufacturer of chemicals to Ball's Weirton facility which were used by and around Plaintiff's decedent in carrying out his job duties.

4. Defendant, **CHEMICAL SOLVENTS, INC.** [hereinafter sometimes referred to as "CSI" and included in the designation "Solvent Suppliers"], is an Ohio corporation with its

principal place of business at 3751 Jennings Road, Cleveland Ohio, is registered to do business in West Virginia, and at all times material hereto regularly and purposefully engaged in commerce in West Virginia, including specific business activities in Brooke County, West Virginia involving Ball's Weirton facility. At all times material herein, CSI was in the business of and was a manufacturer, processor, seller, distributor, assembler, formulator, designer, creator, maker, and/or remanufacturer of chemicals to Ball's Weirton facility which were used by and around Plaintiff's decedent in carrying out his job duties.

5. The defendants that owned and/or operated and/or acquired the facility at 3010 Birch Drive, Weirton, West Virginia at various times material hereto, and/or who employed Plaintiff's decedent, Willard Scott Talkington, are more specifically identified and defined below:

a. Defendant, **BALL CORPORATION** [hereinafter sometimes referred to as "Ball"], is an Indiana corporation with its principal place of business at 9200 W. 108th Circle, Broomfield, Colorado, is registered to do business in West Virginia, and at all times material hereto regularly and purposefully engaged in business in West Virginia, including specific business activities in Brooke County, West Virginia. At all times material hereto, Ball owned and/or operated a facility at 3010 Birch Drive, Weirton, West Virginia individually or through its affiliates and/or subsidiaries – Ball Metalpack, LLC fka Ball Metal Food Container, LLC fka Ball Metal Food Container Corp. (previously doing business at various times material hereto as Metal Food & Household Products Packaging Division, Americas, Metal Food Packaging, Metal Food Container Operations, Ball Metal Food Container Operations, and Ball Metal Beverage Container Group) – where Plaintiff's decedent was employed. Ball Corporation has appeared in

and is defending Plaintiff's West Virginia workers' compensation claim for fatal dependents benefits resulting from the death of her husband/decedent.

b. **BALL METALPACK, LLC** fka Ball Metal Food Container, LLC fka Ball Metal Food Container Corp. [hereinafter sometimes "Metalpack"] is/was a foreign limited liability company, which has/had its principal place of business in Broomfield, Colorado, and at all times material hereto was registered to do business in West Virginia and regularly and purposefully engaged in commerce and business activities in West Virginia through its operation of the facility located at 3010 Birch Drive, Weirton, in Brooke County, West Virginia. Plaintiff's decedent was employed by Metalpack or its predecessor(s) Ball Metal Food Container, LLC and/or Ball Metal Food Container Corp. and/or Ball Corporation.

c. **SONOCO PRODUCTS COMPANY** [hereinafter sometimes referred to as "Sonoco"] successor-by-acquisition to Ball Metalpack, LLC is a South Carolina corporation, which has its principal place of business in Hartsville, South Carolina, is registered to do business in West Virginia, and at all times material hereto regularly and purposefully engaged in commerce and business activities in West Virginia individually and through its predecessor Ball Metalpack, LLC in Brooke County, West Virginia. Sonoco acquired Ball Metalpack, a joint venture owned by Platinum Equity and Ball Corporation, in or before 2022 and as such Sonoco is liable for Ball Corporation's, Ball Metalpack's, and its affiliates' and subsidiaries' actions and inactions at the Ball Weirton facility vis-a'-vis Plaintiff's claims as the successor-in-interest by acquisition.

6. The defendants that supplied various solvents and thinners to the Ball Weirton, West Virginia facility [hereinafter sometimes referred to as "Solvent Suppliers"] are more

specifically identified and defined below:

a. Defendant, **CHEVRON PHILLIPS CHEMICAL COMPANY LLC** [hereinafter sometimes referred to as “ChevronPhillips” and included in the designation “Solvent Suppliers”], is a Delaware limited liability company, which has its principal place of business in The Woodlands, Texas, is registered to do business in West Virginia, and at all times material hereto regularly and purposefully engaged in commerce in West Virginia, including specific business activities in Brooke County, West Virginia involving Ball’s Weirton facility. At all times material herein, ChevronPhillips was in the business of and was a manufacturer, processor, seller, distributor, assembler, formulator, designer, creator, maker, and/or remanufacturer of chemicals and solvents to Ball’s Weirton facility which were used by and around Plaintiff’s decedent in carrying out his job duties.

b. Defendant, **CITGO PETROLEUM CORP.** [hereinafter sometimes referred to as “Citgo” and included in the designation “Solvent Suppliers”], is a Delaware corporation, which has its principal place of business in Houston, Texas, is registered to do business in West Virginia, and at all times material hereto regularly and purposefully engaged in commerce in West Virginia, including specific business activities in Brooke County, West Virginia involving Ball’s Weirton facility. At all times material herein, Citgo was in the business of and was a manufacturer, processor, seller, distributor, assembler, formulator, designer, creator, maker, and/or remanufacturer of chemicals and solvents to Ball’s Weirton facility which were used by and around Plaintiff’s decedent in carrying out his job duties.

c. Defendant, **CELANESE CORPORATION** [hereinafter sometimes referred to as “Celanese” and included in the designation “Solvent Suppliers”], is a Delaware corporation,

which has its principal place of business in Irving, Texas, is registered to do business in West Virginia, and at all times material hereto regularly and purposefully engaged in commerce in West Virginia, including specific business activities in Brooke County, West Virginia involving Ball's Weirton facility. At all times material herein, Celenase was in the business of and was a manufacturer, processor, seller, distributor, assembler, formulator, designer, creator, maker, and/or remanufacturer of chemicals and solvents to Ball's Weirton facility which were used by and around Plaintiff's decedent in carrying out his job duties.

d. Defendant, **ASHLAND INC.** [hereinafter sometimes referred to as "Ashland" and included in the designation "Solvent Suppliers"], is a Delaware corporation, which has its principal place of business in Wilmington, Delaware, is registered to do business in West Virginia, and at all times material hereto regularly and purposefully engaged in commerce in West Virginia, including specific business activities in Brooke County, West Virginia involving Ball's Weirton facility individually and through its predecessors and subsidiaries. At all times material herein, Ashland was in the business of and was a manufacturer, processor, seller, distributor, assembler, formulator, designer, creator, maker, and/or remanufacturer of chemicals and solvents to Ball's Weirton facility which were used by and around Plaintiff's decedent in carrying out his job duties.

e. Defendant, **SUNOCO, INC. (R&M)**, individually and as successor-in-interest to Sun Company, Inc. (R&M), Sun Petroleum Products Company, Inc., and Sun Oil Company of Pennsylvania, [hereinafter sometimes referred to as "Sun" and included in the term "Solvent Suppliers"], is a Pennsylvania corporation, which has its principal place of business in Newtown Square, Pennsylvania, is registered to do business in West Virginia, and at all times

material hereto regularly and purposefully engaged in commerce in West Virginia, including specific business activities in Brooke County, West Virginia involving Ball's Weirton facility individually and through its predecessors and subsidiaries. At all times material herein, Sun was in the business of and was a manufacturer, processor, seller, distributor, assembler, formulator, designer, creator, maker, and/or remanufacturer of chemicals and solvents to Ball's Weirton facility which were used by and around Plaintiff's decedent in carrying out his job duties.

f. Defendant, **UNION CARBIDE CORPORATION** [hereinafter sometimes "Carbide" and included in the term "Solvent Suppliers"], is a New York corporation with its principal place of business in Seadrift, Texas, is registered to do business in West Virginia, and at all times material hereto regularly and purposefully engaged in commerce in West Virginia, including specific business activities in Brooke County, West Virginia involving Ball's Weirton facility. At all times material herein, Carbide was in the business of and was a manufacturer, processor, seller, distributor, assembler, formulator, designer, creator, maker, and/or remanufacturer of chemicals and solvents to Ball's Weirton facility which were used by and around Plaintiff's decedent in carrying out his job duties.

g. Defendant, **UNION OIL COMPANY OF CALIFORNIA** [hereinafter sometimes "Union Oil" and included in the term "Solvent Suppliers"] is a California corporation with its principal place of business in San Ramon, California, is registered to do business in West Virginia, and at all times material hereto regularly and purposefully engaged in commerce in West Virginia, including specific business activities in Brooke County, West Virginia involving Ball's Weirton facility. At all times material herein, Union Oil was in the business of and was a manufacturer, processor, seller, distributor, assembler, formulator, designer, creator, maker,

and/or remanufacturer of chemicals and solvents to Ball's facility which were used by and around Plaintiff's decedent in carrying out his job duties.

h. Defendant, **EXXONMOBIL CORPORATION** [hereinafter sometimes referred to as "Exxon Mobil" and included in the term "Solvent Suppliers"], is a New York corporation, with its principal place of business in Irving, Texas, is registered to do business in West Virginia, and at all times material hereto regularly and purposefully engaged in commerce in West Virginia, including specific business activities in Brooke County, West Virginia involving Ball's Weirton facility. At all times material herein, Exxon Mobil was in the business of and was a manufacturer, processor, seller, distributor, assembler, formulator, designer, creator, maker, and/or remanufacturer of chemicals and solvents to Ball's Weirton facility which were used by and around Plaintiff's decedent in carrying out his job duties.

7. The defendants that supplied various coating and thinners to the Ball's Weirton facility [hereinafter sometimes referred to as "Coating Suppliers"] are more specifically identified and defined below:

a. Defendant, **PPG INDUSTRIES, INC.** [hereinafter sometimes referred to as "PPG" and/or included in the term "Coating Suppliers"], is a Pennsylvania corporation with its principal place of business at One PPG Place, Pittsburgh, Pennsylvania 15272 which at all times material hereto regularly and purposefully engaged in commerce in West Virginia, including specific business activities in Brooke County, West Virginia involving Ball's Weirton facility. At all times material herein, PPG was in the business of and was a manufacturer, processor, seller, distributor, assembler, formulator, designer, creator, and/or maker of coatings, thinners, and solvents for Ball's Weirton facility which were used by and around Plaintiff's decedent in

carrying out his job duties.

b. Defendant, **THE SHERWIN-WILLIAMS COMPANY**, individually and as successor-through-acquisition of the Valspar Corporation and as successor-through-acquisition of Harwick Industrial Coatings, LLC fka Watson Standard Industrial Coatings, LLC fka Watson Standard Company, fka Watson Standard Limited, Inc., a manufacturer of specialty coatings, inks and adhesives which it operates as its “Watson Standard” brand [hereinafter sometimes referred to as “S-W” and/or included in the term “Coating Supplier”], is an Ohio corporation with its principal place of business in Cleveland, Ohio 44115 which at all times material hereto regularly and purposefully engaged in commerce in West Virginia, including specific business activities in Brooke County, West Virginia involving Ball’s Weirton facility individually and through its predecessors and subsidiaries. At all times material herein, S-W was in the business of and was a manufacturer, processor, seller, distributor, assembler, formulator, designer, creator, and/or maker of coatings and solvents to and for Ball’s Weirton facility which were used by and around Plaintiff’s decedent in carrying out his job duties.

c. Defendant, **THE VALSPAR CORPORATION** [hereinafter sometimes referred to as “Valspar” and/or included in the term “Coating Suppliers”], is a foreign corporation with its principal place of business in Minneapolis, Minnesota which at all times material hereto regularly and purposefully engaged in commerce in West Virginia, including specific business activities in Brooke County, West Virginia involving Ball’s Weirton facility. At all times material herein, Valspar was in the business of and was a manufacturer, processor, seller, distributor, assembler, formulator, designer, creator, and/or maker of coatings and solvents to and for Ball’s Weirton facility which were used by and around Plaintiff’s decedent in carrying out his

job duties.

d. Defendant, **WATSON STANDARD LIMITED, INC.** [hereinafter sometimes referred to as “Watson Standard” and/or included in the term “Coating Suppliers”], is a Delaware corporation with its principal place of business in Harwick, Pennsylvania which at all times material hereto regularly and purposefully engaged in commerce in West Virginia, including specific business activities in Brooke County, West Virginia involving Ball’s Weirton facility. At all times material herein, Watson Standard was in the business of and was a manufacturer, processor, seller, distributor, assembler, formulator, designer, creator, and/or maker of coatings and solvents to and for Ball’s Weirton facility which were used by and around Plaintiff’s decedent in carrying out his job duties.

8. Defendants Solvent Suppliers (SAL, CSI, ChevronPhillips, Citgo, Celanese, Ashland, Sunoco, Carbide, Union Oil, and ExxonMobil) and Defendants Coating Suppliers (PPG, S-W, Valspar, and Watson Standard) manufactured, processed, imported, converted, compounded, retailed, sold, recommended, and/or distributed substantial amounts of solvents, thinners, reducers, coatings, paints, chemicals and/or products (hereinafter sometimes referred to as simply “coatings, thinners and solvents”) that were used by and around Plaintiff’s decedent during his employment with his employer at Ball’s Weirton facility in Brooke County, West Virginia.

9. From approximately 1998 until 2017 (when the plant closed), Plaintiff’s decedent was employed by Defendant Ball Corporation or Metalpack and/or its predecessors, subsidiaries – Ball Metal Food Container, LLC or Ball Metal Food Container Corp. – at the Weirton, Brooke County, West Virginia facility. During said employment Plaintiff’s decedent worked as a bagger,

stacker, coater operator, and multi-die operator. As such, Mr. Talkington was engaged in employment which involved working in, around, near, and being exposed to coatings, thinners, solvents, and chemicals manufactured, processed, supplied, and/or sold by Solvent Suppliers and Coatings Suppliers Defendants at Ball's Weirton facility.

10. Solvent Suppliers and Coating Suppliers Defendants' manufacture, sale, and/or distribution of the aforementioned coatings, thinners, solvents, and chemicals resulted in Mr. Talkington being exposed to their hazardous and carcinogenic liquids, dust, vapors, and fumes.

11. In addition to the aforementioned exposure to coatings, thinners, solvents, and chemicals Plaintiff's decedent was exposed to toxic fumes, vapors, dusts, and exhaust permitted to escape from the coating line ovens and chemical mists, dust, and diesel exhaust permitted to accumulate in the multi-die portion of the Brooke County facility while Mr. Talkington was employed by Metalpack and/or Ball Corporation.

12. Mr. Talkington's exposure to said liquids, fumes, vapors, mist, dust, and exhaust by means of inhalation and dermal absorption (from direct dermal contact with said products and/or dermal contact with clothes contaminated by said products) as aforementioned was a proximate cause of his development of esophageal cancer and his ultimate demise.

13. As a direct and proximate result of Mr. Talkington's development of esophageal cancer, as aforesaid, he was severely injured, disabled, damaged, and ultimately died resulting in further injury and damage to his wrongful death distributees, as is set forth more fully below.

14. Plaintiff brings her suit for damages as a result of her decedent's development of and death from esophageal cancer within two (2) years of his death on December 28, 2020 at the age of 55 years.

JURISDICTION AND VENUE

15. The injuries and causes of action alleged herein are due in part to actions and events herein described occurring in Brooke County, West Virginia, as a result of the defendant entities doing business in West Virginia, and as a result of actions elsewhere.

16. 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.

17. Venue is proper before this Court in that (a) Plaintiff's decedent's exposure to the harmful materials occurred in Brooke County, West Virginia, (b) SAL Chemical Co., Inc.'s principal office is located in Brooke County, West Virginia, and (c) Plaintiff's claim under W.Va. Code § 23-4-2(e) arose in Brooke 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

SOLVENT SUPPLIERS AND COATING SUPPLIERS – NEGLIGENCE

18. Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of the Complaint, where applicable, as if repeated herein verbatim.

19. Defendants, Solvent Suppliers and Coating Suppliers, are, or at times relevant hereto were manufacturers, processors, sellers, and/or suppliers of coatings, thinners, solvents,

and chemicals to Ball's Weirton, Brooke County, West Virginia facility.

20. Defendants, Solvent Suppliers and Coating Suppliers, acting by and through their servants, agents and employees, duly authorized and acting within the scope and authority of their employment, caused toxic and carcinogenic coatings, thinners, solvents, and chemicals to be placed into the stream of interstate commerce and have done so for a number of years preceding the filing of this civil action, and in particular, Defendants, Solvent Suppliers and Coating Suppliers, sold, distributed and transported large quantities of toxic and carcinogenic coatings, thinners, solvents, and chemicals to the Ball's Weirton facility with the result that said toxic and carcinogenic coatings, thinners, solvents, and chemicals came into use by and around Talkington.

21. Talkington, whose livelihood was dependent upon the work that he did for his employer, was required to work with and around the toxic and carcinogenic coatings, thinners, solvents, and chemicals manufactured, processed, supplied, and/or sold by Solvent Suppliers and Coating Suppliers, and said defendants knew, or in the exercise of reasonable care, should have known that persons employed, as Talkington was, would be required to and would, in fact, come into contact with, and work in close proximity to toxic and carcinogenic coatings', thinners', solvents', and chemicals' liquids, fumes, vapors, mists, and dust.

22. Talkington's work he did for his employer caused him to experience exposure to the liquids, fumes, vapors, mists, and dust from the Defendant Solvent Suppliers' and Coating Suppliers' toxic and carcinogenic coatings, thinners, solvents, and chemicals.

23. Talkington's illness, disability, damages, and ultimate death were a direct and proximate cause of the negligence, carelessness, willfulness and recklessness of the Defendants

Solvent Suppliers and Coating Suppliers in that said defendants manufactured, processed, sold, supplied or otherwise put toxic and carcinogenic coatings, thinners, solvents, and chemicals 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 toxic and carcinogenic coatings, thinners, solvents, and chemicals were deleterious, poisonous, cancer-causing, and inherently dangerous and harmful to Talkington's whole body, body chemistry, and general well-being; and said defendants further knew, or in the exercise of reasonable care should have known that Talkington would not know of such danger to his health; and said defendants nonetheless:

- a. Failed to advise Talkington of the dangerous characteristics of their toxic and carcinogenic coatings, thinners, solvents, and chemicals;
- b. Failed to advise Talkington as to what, if any, would be reasonably safe and sufficient clothing, protective equipment and appliances to protect him from being poisoned and disabled as he was by exposure to such deleterious and harmful toxic and carcinogenic coatings, thinners, solvents, and chemicals;
- c. Failed and omitted to place any warnings, or sufficient warnings, on either their containers of toxic and carcinogenic coatings, thinners, solvents, and chemicals, or shipping or billing documents to warn persons coming into contact with their toxic and carcinogenic coatings, thinners, solvents, and chemicals 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 toxic and carcinogenic coatings, thinners, solvents, and chemicals;
- e. Failed to adequately warn, if in fact they warned at all, persons such as

Talkington of the dangers to their health in coming into contact with, or breathing toxic and carcinogenic coatings, thinners, solvents, and chemicals;

f. Failed to recommend to Talkington's employer methods to improve the work environment;

g. Failed to develop alternative products;

h. Continued to use and market known cancer-causing products, to-wit, toxic and carcinogenic coatings, thinners, solvents, and chemicals; and

i. Failed to make a reasonable inquiry to assure that Talkington's employer was adequately warning and protecting individuals, such as Talkington, against the hazards posed by toxic and carcinogenic coatings, thinners, solvents, and chemicals.

24. As a direct and proximate result of the aforesaid negligence, carelessness, recklessness and willfulness of Defendants, Solvent Suppliers and Coating Suppliers, Talkington developed esophageal cancer, as a consequence of which Talkington was severely injured, disabled, damaged, and died resulting in further injury and damage to his wrongful death distributees, as is more fully set forth below.

COUNT TWO

SOLVENT SUPPLIERS AND COATING SUPPLIERS – BREACH OF WARRANTY

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

26. Defendants, Solvent Suppliers and Coating Suppliers, impliedly warranted that the coatings, thinners, solvents, and chemicals manufactured, processed, supplied, and/or sold by them to Talkington's employer, and to which Talkington was exposed were of good and

merchantable quality, and fit and suitable for the use for which they were intended. Said implied warranties were breached, in that certain harmful, poisonous and deleterious and inherently dangerous fumes, vapors, dusts, mists, and liquids were given off from said toxic and carcinogenic coatings, thinners, solvents, and chemicals into the air, atmosphere, and work environment wherein Talkington carried out his job duties, and further in that coatings, thinners, solvents, and chemicals were absorbed into the human body when workers, such as Talkington, came into contact with such toxic and carcinogenic materials.

27. As a direct and proximate result of the breach of said implied warranties by Defendants, Solvent Suppliers and Coating Suppliers, as here-in-above set forth, Talkington developed esophageal cancer, as a consequence of which Talkington was severely injured, disabled, damaged, and died resulting in further injury and damage to his wrongful death distributees, as is more fully set forth below.

COUNT THREE

SOLVENT SUPPLIERS AND COATING SUPPLIERS – STRICT LIABILITY

28. Plaintiff incorporates by reference the allegations of the preceding paragraphs contained in the Complaint where applicable, as if repeated herein verbatim.

29. The plaintiff further alleges that at the time Defendants Solvent Suppliers and Coating Suppliers imported, manufactured, processed, sold, distributed and/or supplied the aforesaid toxic and carcinogenic coatings, thinners, solvents, and chemicals, and at the time they were used by and around Mr. Talkington in the manner and environment intended, said products' design, manufacture, and warnings 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 Mr. Talkington's body, and Defendant Solvent Suppliers and Coating Suppliers failed to adequately warn of such hazards, failed to design out such hazards, and generally failed in their manufacture of said coatings, thinners, solvents, and chemicals. As a result, Defendants Solvent Suppliers and Coating Suppliers are strictly liable in tort to those persons injured as a result of said defects, and in particular to the plaintiff for Mr. Talkington's illness, disability, damages, and death.

30. As a direct and proximate result of the defective condition of the coatings, thinners, solvents, and chemicals manufactured, processed, sold, distributed, and/or supplied by Defendants Solvent Suppliers and Coating Suppliers, Mr. Talkington developed esophageal cancer, as a consequence of which Mr. Talkington was severely injured, disabled, damaged, and died resulting in further injury and damage to his wrongful death distributees, as is more fully set forth below.

COUNT FOUR

EMPLOYER – W. VA. CODE § 23-4-2 LIABILITY

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

32. During his employment with Ball and/or Metalpack (from approximately 1998 until 2017), Mr. Talkington worked as a bagger, stacker, coater operator, and multi-die operator. During this time period, his employer permitted an extremely hazardous work environment to exist as described below.

a. The ventilation at the Ball Weirton facility was poor throughout the plant. Fumes were strong in and around the coating lines. At times Ball and/or Metalpack required all

overhead outside doors to be closed, especially in the summer months which prevented fresh air exchanges within the plant and increased fume accumulation. In summer months the heat in the plant would exceed 120 degrees Fahrenheit increasing vapor evaporation within the work areas. Diesel exhaust accumulated in the multi-die area of the plant, especially when trains came into the area to switch out scrap cars and tow-motors were operating. The diesel exhaust would be very strong at times, making the employees' eyes burn. The coating line ovens spewed intense fumes and smoke into the employees' work area. At times the seals on the ovens did not seal properly causing additional fumes and smoke to escape from the oven operations. The exposure to oven smoke and fumes occurred constantly during the 12 to 16 hour shifts employees worked. Employees received no protective respiratory equipment from Ball and/or Metalpack.

b. Bulk coating product tanks would overflow causing coating to flow onto the floor. Employees were required to mop the floors with solvents for hours trying to clean up the coating spills with no personal protective equipment. Employees' eyes would burn. They would get dizzy and light-headed. Frequent breaks were needed to breath fresh air.

c. As a coater-operator, Mr. Talkington mostly ran Coater C-2 (known as the wash-up line – because the coating of the products changed 7 or 8 times a shift requiring 7 or 8 clean-ups). Clean-ups on C-2 required exposures to solvents and coatings which caused Mr. Talkington to become acutely ill. These clean-ups were done without respiratory protection, and with green dishwasher-style rubber gloves that would tear and fall apart. When employees were cleaning the coaters, the mechanical ventilation system pulled the fumes directly past the workers' breathing zone increasing the employees' exposures to toxic solvents and coatings.

d. Clean-up of parts on the coating lines took place over work tubs filled with

solvents. The employee stood bent over tubs filled with solvent and breathed solvent fumes while cleaning parts with no respiratory protection. Dermal protection was again green dishwasher-style rubber gloves that would tear permitting solvents to come in contact with employees' skin causing burning and discoloration. At times the cheap gloves made for washing dishes would melt or disintegrate while in use causing additional dermal exposure.

e. Louvers within the curing ovens on the coating lines required repair. Once the oven temperature was reduced so as to permit employees' safe entrance, Mr. Talkington would enter the oven and fix the louvers that needed repair. This job was done without respiratory protection even though working within the oven exposed the employee to "nasty" black colored dust, fumes and vapors, and a supervisor stood watch as the hourly employee worked inside the oven. The employee repairing the louvers breathed the toxic dust created by the repairs with no protection.

f. Employees in the multi-die department were constantly cleaning liners with bare hands and solvent soaked rags. Maintenance work changing compound pumps was done with bare hands. Misters in the multi-die department sprayed a mixture of heptane and mineral oil. The misters ran continuously causing employees to constantly work in a heptane/mineral oil mist. When working in the multi-die area Mr. Talkington breathed a combination of heptane and mineral oil 12 hours a day.

g. Mr. Talkington ran the UV line in the multi-die department. The ventilation system on the UV line was too small to adequately remove the fumes and vapors. Clean-up required employees to get down on their hands and knees with their face right above the paint pot as they washed up the equipment. The exhaust fan pulled all the fumes right across

the employees' faces and breathing zones. While operating and maintaining the UV line, Mr. Talkington became sick to his stomach, developed instant indigestion, nose bleeds, and headaches as a result of the smell released by the UV coater operation and clean-up.

33. At all times material hereto, specific unsafe working conditions existed in the work place (i.e. requiring Talkington to perform his job duties in areas where he would be exposed to unacceptable and hazardous levels of coatings, solvents, exhausts, fumes mists, dust, and liquids 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. Ball and/or Metalpack despite having actual knowledge of the existence of same, as well as having actual knowledge that the solvents, exhausts, fumes mists, dust, and liquids to which Talkington was exposed were carcinogenic, hazardous, poisonous and otherwise highly harmful to the health of Talkington and other workers, nevertheless required Talkington 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.

34. Despite this knowledge, at no time did Ball and/or Metalpack seek to abate, remediate, or correct the specific unsafe working conditions which existed in the workplace, and indeed local management advised the Weirton workforce that the materials were not harmful and that personal protective equipment was not necessary, thereby intentionally exposing Talkington and other similarly situated employees to those specific unsafe working conditions previously enumerated.

35. Despite such actual knowledge, Ball and/or Metalpack 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 Talkington, was required to work in, around, near, and with toxic and carcinogenic coatings, thinners, solvents, chemicals, fumes, exhausts, dust, and mists 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 toxic and carcinogenic coatings, thinners, solvents, chemicals, fumes, exhausts, dust, and mists; 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 Talkington worked.

36. At all times material herein, the actions and inactions by Ball and/or Metalpack 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 Talkington 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 Ball Weirton facility which presented a high degree of risk and a strong probability of serious injury or death;

b. Metalpack and/or Ball Corp., prior to Talkington's 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 Metalpack and/or Ball 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 Metalpack and/or Ball who had actual knowledge of the existence of the unsafe working conditions existing at the Ball Weirton facility and in the workplace together with their attendant risks and harms, nevertheless intentionally thereafter exposed Talkington to the specific unsafe working conditions; and

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

37. Ball's and/or Metalpack's deliberate and intentional acts and omissions were a direct and proximate cause of Talkington's development of esophageal cancer, 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.

38. 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 “B”; the workers’ compensation claim form related to the underlying occupational disease as required by W. Va. Code § 23-4-2(c) attached as Exhibit “C”; and the death certificate supporting the allegation of a “serious compensable injury” attached as Exhibit “D” as required by W. Va. Code § 23-4-2(d)(2)(B)(v). *See* Exhibits “B”, “C”, and “D” attached hereto.

COUNT FIVE

(Ball Corporation – Negligence and Unsafe Workplace)

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

40. In the alternative, should Defendant Ball Corporation not be found to have been Mr. Talkington’s employer, Ball Corporation was negligent in failing to provide a safe place to work as set forth below, and thus liable to Plaintiff for her decedent’s injuries, damages and death.

41. Under West Virginia law, a parent/affiliate company is legally responsible for injuries and deaths which occur at a subsidiary/affiliate location when the parent and/or affiliate company, through its officers, employees or agents, actually exercises control over or is intimately involved in the operation of the subsidiary’s/affiliate’s facility.

42. Under West Virginia law, a parent company or an affiliate company is also legally responsible for injuries and deaths which occur at its subsidiary or affiliate location when:

a. The parent or affiliate company voluntarily assumes a duty to perform a service for the subsidiary;

- b. That service is necessary for the protection of third parties, such as employees of the subsidiary/affiliate; and
- c. The services are provided in a negligent manner resulting in harm or death to those third parties.

43. At the time Talkington entered the Ball Weirton facility it was part of Ball's Packaging Operations in West Virginia, and upon information and belief, was owned by or under the reasonable supervision of and/or controlled by Ball Corporation. Defendant Ball Corporation, as the entity that owned the facilities described herein or as the entity with reasonable supervision and/or control over the same, owed Talkington and those similarly situated a duty to provide a reasonably safe place to work, and a duty to exercise reasonable care in protecting him from work place hazards associated with the premises.

44. At all times material herein, Ball actively participated in and/or directed and/or exerted significant control over the safety, operations, and decision making regarding the Ball Weirton facility as described herein.

45. Furthermore, Ball shared or assumed through conduct, at least, joint responsibility for health and safety at the Ball Weirton facility at all times material herein. Examples of Ball's assumed responsibility for health and safety include, but are not limited to:

- a. Ball Corporation retained L. Robert Kimball & Associates, Inc. to complete a study of employee chemical exposures at Ball Corporation – Plants 20 and 33 located in Weirton, West Virginia in 2009.
- b. Ball Corporation retained Bureau Veritas North America, Inc., (BVNA) Health Safety and Environmental Services to provide an Industrial Hygiene assessment at the

Ball Corporation facility located at Birch Drive, Weirton, West Virginia in 2015.

c. Ball Corporation Rules and Regulations for all Employees controlled all health and safety at the Ball Weirton facility.

d. Ball Corporation manuals included a section entitled "Essential Functions and Responsibilities" for Coaters which were implemented, utilized, and controlling at Ball's Weirton facility. Coaters were required to "follow company policies, procedures, practices and standards of conduct as outlined in the Ball Corporation manuals."

e. Ball Corporation established and required compliance with a Ball Hazard Communication Program at the Ball Weirton facility.

f. Ball Corporation established and required compliance with a Ball Personal Protective Equipment Program at the Ball Weirton facility.

46. Nevertheless, as a result of his work at the Ball Weirton facility, Talkington was exposed to hazardous conditions, specifically the risk of injury from exposures to toxic chemicals, substances, and products used at the facility, including, but not limited to carcinogenic and toxic coatings, thinners, solvents, exhausts, fumes mists, dust, liquids and chemicals.

47. At all times relevant hereto, Talkington was exposed to the hazards described above in the ordinary and regular course of his employment with Ball Metalpack or its predecessors while plant operations at Ball's Weirton facility took place.

48. Defendant Ball Corporation, knowing, or in the exercise of reasonable care, should have known, of the dangers associated with the carcinogenic and toxic coatings, thinners, solvents, exhausts, fumes mists, dust, liquids and chemicals (hereinafter "hazardous materials") which Talkington worked with and around breached its duties of care in the following manners

and particulars:

a. Failing to take reasonable precautions and/or failing to exercise due care to warn Talkington and those similarly situated of the danger and harm to which he was exposed as a result of his working in, around, and on the aforementioned facilities where exposure to the hazardous materials occurred;

b. Failing to render harmless the hazardous materials at its facility, creating an unreasonable risk of harm to Talkington as a result of his work on the aforementioned premises;

c. Failing to provide adequate inspection and supervision with regard to the exposure to the hazardous materials at the facility, and the associated activities of employees so that those working on the premises would have a reasonably safe place to work;

d. Failing to require that Metalpack provide Talkington with proper protective equipment and clothing sufficient to protect him from dermal, inhalation, and ingestion exposure;

e. Failing to require that Metalpack provide adequate respiratory protection, if any at all;

f. Failing to require that Metalpack provide proper personal protective equipment;

g. Failing to provide adequate warnings of the hazards associated with exposure to hazardous and toxic chemicals;

h. Failing to provide adequate environmental monitoring;

i. Failing to provide, institute, observe, and enforce reasonable, adequate,

proper, and acceptable safety rules and standards in order to make safe the areas in, and conditions under, which Talkington worked;

j. Failing to make a reasonable inquiry to assure that defendant Metalpack was adequately warning and protecting individuals, such as Talkington, against the hazards posed by the hazardous materials;

k. Failing to make safe the Ball Weirton facility under its ownership, supervision and/or control whereon Talkington labored; and

l. Being generally negligent, careless, and reckless in breaching its duty of providing a reasonably safe place to work and its duty of reasonable care as it relates to defendant Metalpack's employees, such as Talkington.

49. As a direct and proximate result of the breaches of duty, carelessness, negligence, and recklessness of defendant Ball Corporation, Mr. Talkington developed esophageal cancer, as a consequence of which he was severely injured, disabled, damaged, and died resulting in further injury and damage to his wrongful death distributees, as is more fully set forth below.

COUNT SIX

(Ball Corporation – Negligent Undertaking)

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

51. Between 1998 and 2017, upon information and belief, defendant Ball Corporation maintained a relationship with defendant Metalpack and its predecessors for the operation of the Ball Weirton facility. Defendant Metalpack and its predecessors operated the Ball Weirton facility under the direction and control of defendant Ball Corporation, which provided Ball

Corporation the right to operate, maintain and make business decisions relative to the day-to-day activities of Metalpack and its predecessors. Upon information and belief, defendant Ball Corporation directly provided safety, technical and operational support and supervision to defendant Metalpack and its predecessors. As such, defendant Ball Corporation owed a duty to Talkington and other workers to do so in order to ensure a safe and healthy work environment at defendant Weirton facility.

52. As part of this relationship, defendant Ball Corporation undertook to render services, including health and safety obligations, at Ball's Weirton facility and for Metalpack and its predecessors necessary for the protection of third parties, including employees such as Talkington.

53. Defendant Ball had the power to control the Ball Weirton facility, its operations, and employees, and in exercising that control it had a duty to do so with the safety and welfare of Metalpack's and its predecessors' employees, including Talkington, in mind.

54. Defendant Ball Corporation negligently, carelessly, recklessly, wilfully, and wantonly failed to exercise reasonable care in protecting its undertaking, in that it failed to provide a safe place to work for Talkington at the aforementioned manufacturing facility as alleged herein.

55. Defendant Ball Corporation's negligent, careless, reckless, wilful, and wanton failure to exercise reasonable care in protecting its undertaking in connection with the Weirton facility increased the risk that Talkington would suffer harm, and in fact was a direct and proximate cause of Talkington's development of esophageal cancer.

56. As a direct and proximate result of Ball Corporation's negligent, careless,

reckless, wilful, and wanton breaches of duty, Talkington developed esophageal cancer, as a consequence of which he was severely injured, disabled, damaged, and died resulting in further injury and damage to his wrongful death distributees, as is more fully set forth below.

DAMAGES

57. As a result of Talkington's development of esophageal cancer, as aforesaid, Talkington suffered and sustained a severe illness and injury to his person which forced him to obtain medical care and treatment from the time of his esophageal cancer diagnosis in 2020 until his death on December 28, 2020 in an amount as yet undetermined for which his estate is entitled to recover damages in this action.

58. From the time of Talkington's esophageal cancer diagnosis in 2020 until his death on December 28, 2020, Talkington suffered great pain, extreme nervousness, mental anguish, and death as a direct and proximate result of his development of esophageal cancer, as aforesaid, for which his estate is entitled to recover damages in this action.

59. As a direct and proximate result of his aforesaid development of esophageal cancer, Talkington's enjoyment of life was greatly impaired from the time of his esophageal cancer diagnosis in 2020 until his death on December 28, 2020, for which his estate is entitled to recover damages in this action.

60. As a direct and proximate result of his aforesaid development of esophageal cancer, Talkington's life expectancy was reduced for which his estate is entitled to recover damages in this action.

61. As a result of the development of esophageal cancer, Talkington's earning capacity was impaired, for which for which his estate is entitled to recover damages in this

action.

62. As a direct and proximate result of Talkington's development of esophageal cancer 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 jointly or severally as applicable, in an amount to be determined by the trier of fact. Plaintiff further demands prejudgment and post-judgment interest, as well as such other relief as a judge or jury shall find fair and just.

PLAINTIFF DEMANDS A TRIAL BY JURY.

Dated: December 20, 2022.

VERONICA L. TALKINGTON, Individually and
as Executrix of the Estate of **WILLARD SCOTT
TALKINGTON**, deceased, Plaintiff

By: 

Counsel for Plaintiff

R. Dean Hartley (W. Va. Bar # 1619)
David B. Lunsford (W. Va. Bar # 12555)
Sean X. Xing (W. Va. Bar #13492)
HARTLEY LAW GROUP, PLLC
7 Pine Avenue
Wheeling, West Virginia 26003
(304) 233-0777 // (304) 233-0774 [fax]
dhartley@hartleylawgrp.com
dlunsford@hartleylawgrp.com
sxing@hartleylawgrp.com

Clayton J. Fitzsimmons (W. Va. Bar # 10823)
Robert P. Fitzsimmons (W. Va. Bar # 1212)
FITZSIMMONS LAW FIRM PLLC
1609 Warwood Avenue
Wheeling, West Virginia 26003
(304) 277-1700 // (304) 277-1705 [fax]
bob@fitzsimmonsfirm.com
clayton@fitzsimmonsfirm.com