SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In Re: NEW YORK CITY ASBESTOS LITIGATION

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This Document Relates To:

ALL THE EARLY LAW FIRM, LLC CASES

THE EARLY LAW FIRM, LLC STANDARD ASBESTOS COMPLAINT FOR PERSONAL INJURY NO. 1

VERIFIED COMPLAINT

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Plaintiffs, by their lawyers, THE EARLY LAW FIRM, LLC, upon information and belief, at all times hereinafter mentioned, alleges as follows:

1. Plaintiff is at all times herein mentioned a resident of the state alleged in the individual complaint.

2. Plaintiff's spouse ("Spouse"), a party herein, was and still is Plaintiff's lawful spouse and is a resident of the state alleged in the individual Complaint.

3. The term "Defendants" shall apply to all corporate and business entities, and/or their predecessors and/or successors in interest, authorized agents, servants, employees as more fully described and enumerated in the captions of individual complaints subsequently filed in the "short form" in accordance with the applicable case management order of this Court.

4. Each Defendant was and still is a duly organized foreign or domestic corporation doing business and/or transacting business in New York and/or should have expected its acts to have consequences within New York.

5. Defendants have done business in this State and/or have conducted and/or transacted business in this State, have committed one or more tortious acts within this

State and/or have otherwise performed acts within and/or without this State giving rise to injuries and losses within this State, which acts subject each Defendant to the jurisdiction of the Courts of this State.

6. Defendants have regularly done and/or solicited business in New York; engaged in a persistent course of conduct in New York; and/or derived substantial revenue from goods used or consumed or services rendered in New York.

7. Defendants expected or should reasonably have expected their acts to have consequences in New York and derive substantial revenue from interstate and/or international commerce.

8. Defendants own, use and/or possess real property situated within New York.

9. Venue is proper in this case because: (1) Defendants reside in New York County and/or (2) a substantial part of the events or omissions giving rise to the claim occurred in New York County; and/or (3) pursuant to the New York City Asbestos Litigation Case Management Order, Plaintiff qualifies for placement in the "*in extremis*" docket because Plaintiff satisfies the medical criteria and was exposed to asbestos in one or more of the five boroughs of New York City and/or there is a substantial connection between Plaintiff's injuries and New York City and/or Plaintiff currently resides in New York City.

10. The actions and conduct of the Defendants as more fully described below were carried out through their respective offices, by authorized agents, servants and employees, who were acting in the course and scope of their employment and authority, and in furtherance of the business and profits of the Defendants.

11. The terms "asbestos-containing product(s)" and "product(s)", as used in this Complaint, shall include: (a) all products that contained asbestos as an ingredient,

component or contaminant; (b) all raw materials that contained asbestos as an ingredient, component or contaminant; (c) all machinery or equipment that specified, required or foreseeably used asbestos-containing materials or component parts to function properly; and (d) all materials and products, including but not limited to talc and vermiculite, that contain asbestos as a contaminant or accessory mineral.

12. Upon information and belief, the Defendants mined, processed, manufactured, designed, fabricated, fashioned, packaged, distributed, sold and/or delivered various asbestos-containing products and materials and/or asbestos-containing equipment to which plaintiff was exposed during the period of time he was employed.

13. During the scope and course of plaintiff's employment he was necessarily and unavoidably exposed to and did inhale and ingest dust and/or asbestos fibers emanating from the asbestos and asbestos-containing products and/or equipment of the Defendants.

14. During the course of his life, Plaintiff was exposed – directly and/or indirectly – on numerous occasions to asbestos-containing products and/or equipment which were mined, produced, processed, designed, manufactured, marketed, supplied, delivered, distributed, installed, used, purchased, imported, converted, compounded, removed, sold or otherwise placed in the stream of commerce by Defendants.

15. Plaintiff was unavoidably exposed to, inhaled and ingested asbestos fibers and dust contained within and emanating from the Defendants asbestos-containing products and/or equipment and/or as a result of Defendants' actions, omissions and/or failures to act.

16. At all relevant times, Defendants knew or should have known of the health hazards associated with exposure to asbestos.

17. As a direct and proximate result of the exposure to the asbestos and asbestos-containing products and/or equipment of these Defendants, and the unavoidable and necessary inhalation of said asbestos, Plaintiff developed an asbestos-related disease.

18. Plaintiff alleges that his exposure to Defendants' asbestos-containing products and materials caused or substantially contributed to his asbestos-related injuries such that the Defendants are jointly and severally liable to him for same.

19. If it is deemed that Article 16 of the C.P.L.R. applies to this action, Plaintiff asserts that this action falls within one or more of the exceptions set forth in C.P.L.R. §1602, including, but not limited to, the exception for public employees (C.P.L.R. §1602(1)(b)); the exception based upon defendants' non-delegable duty to warn of the health hazards of asbestos (C.P.L.R. §1602(2)(iv)); the exception for cases in which a claimant suffers a "grave injury" (C.P.L.R. §1602(4)); the exception for actions requiring proof of intent (C.P.L.R. §1602(5)); the exception for cases in which a person is held liable for causing a claimant's injury by having acted with reckless disregard for the safety of others (C.P.L.R. §1602(7)); the exception for cases in which a defendant is held liable by reason of the applicability of Article 10 of the Labor Law (C.P.L.R. §1602(8)); the exception for cases involving any person held liable for causing a claimant's injury by having unlawfully released into the environment a substance hazardous to public health, safety or the environment (C.P.L.R. §1602(9)); the exception for any parties found to have acted knowingly or intentionally and in concert to cause the acts or failure upon which liability is based (C.P.L.R. §1602(11)); and the exception for persons held liable in a product liability action in which the manufacturer of the product is not a party to the action and jurisdiction over the manufacturer could not with due diligence be obtained (C.P.L.R. §1602(10)).

20. The amount of damages sought exceeds the jurisdiction of all lower courts that might otherwise have jurisdiction.

FIRST CAUSE OF ACTION FOR NEGLIGENCE

21. Plaintiff repeats and incorporates each and every prior and subsequent allegation of this Complaint as if fully set forth herein.

22. Plaintiff continuously worked with and was exposed to the asbestos and asbestos-containing products and materials mined, manufactured, processed, imported, converted, compounded, installed, or sold by the Defendants. During the course of his employment, Plaintiff was exposed to the defendants' asbestos and asbestos-containing materials to which exposure directly and proximately caused him to develop an asbestos-related disease.

23. Upon information and belief, the defendants mined, processed, manufactured, designed, fabricated, fashioned, packaged, distributed, sold and/or delivered various asbestos-containing products and materials and/or asbestos-containing equipment to which Plaintiff was exposed during the period of time he was employed.

24. At all times pertinent hereto the defendants acted through their duly authorized agents, servants, and employees, who were then and there acting in the course of and scope of their employment and in furtherance of the business of said defendants.

25. Plaintiff was necessarily and unavoidably exposed to and did inhale and ingest asbestos dust and/or asbestos fibers emanating from the asbestos and asbestos-containing products and/or equipment of the defendants.

26. As a proximate result of the exposure to asbestos and asbestos-containing products and/or equipment of these defendants, and the unavoidable and necessary inhalation of said asbestos, plaintiff developed an asbestos related disease.

27. At all relevant times, the Defendants knew or with reasonable diligence should have known that the asbestos and asbestos-containing products and materials which they were providing were inherently dangerous beyond the expectations of the ordinary user or handler who would come into contact with these products.

28. The Defendants negligently failed to provide any or adequate and proper warnings of all latent dangers of the use of said products and materials to those persons using, handling, or coming into contact therewith.

29. The Defendants negligently failed to warn and failed to provide adequate instructions of any potentially safer handling methods which should have been utilized by users, handlers, or other persons who were reasonably and foreseeably known to come into contact with the asbestos-containing products and/or equipment and materials.

30. The Defendants negligently failed to investigate and/or test for the hazards of asbestos products and materials.

31. To the extent that some defendants may have inquired as to the hazards of said materials, the Defendants negligently failed to convey whatever knowledge of dangers, health hazards, or safety precautions they may have had the users and consumers of their asbestos-containing products.

32. The Defendants negligently failed to develop, make available and/or provide nonhazardous substitutes which could have been used for the same purpose as their asbestos-containing products and/or equipment.

33. The Defendants negligently failed to design asbestos-containing products and/or equipment in such a fashion as to prohibit or minimize the release of airborne, inhalable and ingestible asbestos dust and/or fibers.

34. As a direct result of working with or near the asbestos materials supplied by the Defendants with the consequent unavoidable and necessary inhalation and ingestion of said asbestos fibers, Plaintiff developed an asbestos related disease and as a result has been disabled. Plaintiff has suffered and endured great pain and mental anguish and suffered a loss of enjoyment of life.

35. The asbestos related disease of the Plaintiff was proximately caused by the Defendants' negligent actions in that, *inter alia*, they negligently designed, processed, manufactured, packaged, distributed, delivered and/or installed the asbestos-containing products to which the Plaintiff was exposed, all of which evidenced a callous, reckless, wanton, oppressive, malicious, willful, depraved indifference to the health, safety and welfare of the rights of others and more particularly the rights of the Plaintiff, all of which Defendants had due and timely notice.

36. Defendants negligently failed to render warnings, advise, give instructions and/or information to Plaintiff so that he may have made an adequate and informed judgment as to the use of said products and were otherwise negligent.

37. The Defendants individually and as a group since the early 1900's have possessed medical and scientific data which clearly indicates that their asbestos-containing products are hazardous to health; and prompted by pecuniary motives, the Defendants individually and collectively ignored and failed to act upon said medical and scientific data and conspired to deprive the public and particularly the users including Plaintiff of said medical and scientific data and therefore deprived the public at large and the Plaintiff in particular, of the opportunity of free choice as to whether or not to expose himself to the asbestos and asbestos-containing products of said Defendants; and further willfully, intentionally and wantonly failed to warn Plaintiff of

the serious bodily harm which would result from the inhalation of their asbestos fibers and the dust from their asbestos products.

38. Furthermore, Defendants, during the 1930s through 1960s came into possession of (or should have acquired) voluminous published medical and scientific data, studies and reports, which conclusively established that asbestos-containing products were hazardous and carcinogenic and caused numerous malignant and non-malignant medical conditions including but not limited to asbestosis, lung cancer and mesothelioma.

39. In the 1970s, and in later years, Defendants continued to acquire, or should have acquired, information about the cancer-causing properties of asbestos and the widespread incidents of disease, illness and death caused by asbestos exposure.

40. Defendants had a continuing duty to exercise reasonable care to advise and warn purchasers, consumers, and users, and all prior purchasers, consumers, and users, of all dangers, discovered subsequent to their initial marketing or sale of their asbestos-containing products.

41. The Defendants utter failure to use reasonable care under all the circumstances is the proximate cause of Plaintiff's asbestos-related disease and injuries.

42. As a direct and proximate result of working with, using or otherwise being present near Defendants' asbestos-containing products and/or equipment and the consequent and unavoidable inhalation and ingestion of asbestos dust and fibers therefrom, Plaintiff developed asbestos-related injuries and endured great physical pain and suffering, mental anguish, and loss of enjoyment of life.

SECOND CAUSE OF ACTION FOR BREACH OF WARRANTY

43. Plaintiff repeats and incorporates each and every prior and subsequent allegation of this Complaint as if fully set forth herein.

44. The Defendants expressly and/or impliedly warranted that said asbestos and asbestos-containing materials were of good and merchantable quality and fit for their intended uses and purposes.

45. The express and/or implied warranties made by Defendants were false, misleading, and consequently, breached, since these products were unreasonably dangerous, defective, hazardous and harmful when used, applied or installed in the manner and for the purposes intended or reasonably anticipated.

46. In reliance on Defendants' warranties, Plaintiff used, came into contact with and/or was otherwise exposed to said asbestos and asbestos-containing materials, causing him to unknowingly and unwittingly inhale and ingest asbestos fibers and dust resulting from the ordinary and foreseeable use of said products.

47. As a direct and proximate result of Defendants' breach of the express and implied warranties of good and merchantable quality and fitness for particular use, Plaintiff developed an asbestos-related disease, endured great pain and suffering and mental anguish, and has been otherwise damaged.

THIRD CAUSE OF ACTION FOR STRICT LIABILITY

48. Plaintiff repeats and incorporates each and every prior and subsequent allegation of this Complaint as if fully set forth herein.

49. At all relevant times, Defendants, as part of their business, manufactured, designed, supplied, developed, fashioned, packaged, distributed, delivered, installed, sold, and/or otherwise placed asbestos and asbestos products and/or equipment and

materials into the stream of commerce in a defective, unsafe and inherently dangerous condition and the products and materials were expected to and did reach users, handlers and persons coming into contact with the said products and materials without substantial change in the condition in which they were sold.

50. The asbestos-containing products and/or equipment sold by the Defendants did not contain a warning and/or information concerning the dangers to persons using, handling or coming into contact therewith.

51. The asbestos-containing products and/or equipment sold by the Defendants did not contain adequate and/or correct warnings and instructions of safety precautions to be observed by users, handlers, and persons who would reasonably and foreseeably come into contact with said products and/or equipment.

52. That at all times herein, the products and/or equipment being used herein were being employed for the purposes and in the manner normally intended and the defects of the said products were not discoverable by the Plaintiff by the exercise of reasonable care, nor were the dangers of said products perceivable on the part of the Plaintiff and the Plaintiff would not have otherwise averted his injury by the exercise of reasonable care.

53. Said asbestos and asbestos-containing materials were defective and dangerous at the time they were sold as the products and/or equipment contained a latent defect and were harmful, poisonous and deleterious when introduced into the atmosphere where the Plaintiff carried on his work duties.

54. The Defendants selling their asbestos and asbestos-containing materials in a defective and dangerous condition to the users thereof, such as the Plaintiff, are strictly liable to the Plaintiff for any illness resulting from said defective products.

55. As a direct and proximate result of the sale by the Defendants to Plaintiff's employers, and/or other contractors, of said defective and unreasonably dangerous products and/or equipment, the Plaintiff sustained serious and permanent injuries and suffered a loss of enjoyment of his life.

FOURTH CAUSE OF ACTION FOR PREMISES LIABILITY & LABOR LAW AND NYS INDUSTRIAL CODE VIOLATION

56. Plaintiff repeats and incorporates each and every prior and subsequent allegation of this Complaint as if fully set forth herein.

57. Defendants, their subsidiaries, agents, employees and/or servants were/are owners, possessors, lessors, lessees, operators, controllers, managers, supervisors, general contractors, subcontractors, architects, engineers or were otherwise responsible for the maintenance, control and/or safety at the premises at which Plaintiff was lawfully frequenting and exposed to asbestos.

58. Defendants, their subsidiaries, agents, employees and/or servants had a legal duty to maintain and keep their premises in a safe and proper condition and/or to not create an unsafe condition at those premises.

59. At all times relevant hereto, Plaintiff was lawfully frequenting the premises at which he was exposed to asbestos.

60. At all times relevant hereto, Plaintiff's presence at said premises was known or knowable to the Defendants.

61. Defendants negligently created, caused and/or permitted to exist, an unsafe condition to exist on the premises where Plaintiff was present by, among other things: (a) specifying, using and/or permitting the use of asbestos-containing products in an unsafe manner; (b) permitting such products to be used in an unsafe manner; (c) failing to take safety precautions that would have minimized or prevented asbestos exposure at

the premises; (d) failing to correct an unsafe condition within a reasonable time period after learning about it; (e) failing to warn the Plaintiff of the existence of the unsafe condition; (f) failing to provide Plaintiff with the information and/or means to protect himself/herself from the unsafe condition; (g) negligently exercising supervisory control over the work that injured Plaintiff; and/or (h) negligently coordinating the work on the premises in a manner that exposed Plaintiff to airborne asbestos and thereby created an unsafe condition for Plaintiff.

62. Defendants' negligence violated the common law duty to maintain a safe work place for individuals, such as Plaintiff, who were working in, lawfully frequenting and exposed to asbestos on premises owned, maintained and/or controlled by Defendants.

63. Defendants, their subsidiaries, agents, employees and/or servants breached the duty imposed on possessors of land, contractors and subcontractors and codified in the Restatement (Second) of Torts, including, but not limited to, Sections 342, 343, 343A, 410, 411, 412, 413, 414, 414A, 416, 422, 424 and 427.

64. Defendants, their subsidiaries, agents, employees and/or servants also violated New York Labor Law §200 *et seq.*, including, but not limited to, §§200, 240 and 241(6), and the New York Industrial Code (12 NYCRR §§12 and 23) by their failure to provide a safe workplace, including, but not limited to: (a) failure to make reasonable inspections to detect dangerous conditions and hidden defects and to warn of dangers of which they knew or should have known, (b) by their failure to provide reasonable and adequate protection for individuals, including Plaintiff, who were lawfully at a site owned, maintained and/or controlled by them; (c) failing to coordinate the work of the various trades at the jobsite so as to avoid unnecessary exposure to asbestos by the Plaintiff and other working in the area; and/or (d) exercising supervisory control over

the injury-producing work (i.e., the work that resulted in Plaintiff's exposure to asbestos).

65. Through the foregoing misconduct, Defendants also violated various provisions of the New York State Industrial Code (including, but not limited to, §§12-1.4, 12-1.5, 12-1.6, 12-3.1, 23-1.7, 23-2.1, 23-1.5, 23-3.2(d), 56-5.1 and 5.2), resulting in Plaintiff's exposure to asbestos and Plaintiff's asbestos-related injuries.

66. Defendants, their subsidiaries, agents, employees and/or servants negligently designed the construction of the premises at which Plaintiff was lawfully frequenting and exposed to asbestos by directing and/or specifying the use, installation, removal and/or disturbance of asbestos-containing products, equipment and/or fixtures at said premises.

67. Defendants, their subsidiaries, agents, employees and/or servants negligently breached their contractual duty to Plaintiff, a third-party beneficiary, to provide for the health, welfare and/or safety of those, including Plaintiff, lawfully frequenting the premises on which Plaintiff was exposed to asbestos.

68. Defendants, their subsidiaries, agents, employees and/or servants breached their warranty to provide for the health, welfare and/or safety of those, including Plaintiff, lawfully frequenting the premises on which Plaintiff was exposed to asbestos.

69. The aforementioned acts and/or omissions of the Defendants constitutes willful misconduct and conscious disregard of the health of the public, including Plaintiff.

70. As a direct and proximate result of the Defendants' conduct and/or failures to act, Plaintiff was exposed to asbestos and asbestos-containing products and sustained injuries as described here.

FIFTH CAUSE OF ACTION
(AGAINST DEFENDANT CONTRACTORS ONLY)

71. Plaintiff repeats and incorporates each and every prior and subsequent allegation of this Complaint as if fully set forth herein.

72. The term "contractor" refers to any business, individual or other entity engaged, employed or otherwise contracted to perform, in whole or part, construction work, renovation, excavation, demolition, installation or equipment and/or such other activities commensurate with the term "contractor" as used in the ordinary course of business and otherwise commonly defined.

73. Defendant contractors, individually and by and/or through their subcontractors, agents, servants, assigns and employees, developed, authored, devised and/or implemented specifications and plans relating to the construction, renovation, excavation and/or demolition of buildings and other structures at which the Plaintiff was present and which Defendant contractors knew – or should have ascertained in the exercise of due care – involved the use, application, installation, disturbance and/or removal of asbestos, asbestos-containing materials and/or asbestos-containing equipment.

74. Defendant contractors knew, or in the exercise of reasonable diligence should have known, that the aforementioned specifications and/or plans were dangerous and/or unsafe and presented a potential and/or actual health hazard to those individuals, including Plaintiff, present at such sites where construction, renovation, excavation and/or demolition as described above was being carried out.

75. Defendant contractors hired, employed, contracted with or otherwise engaged subcontractors and others to carry out the work required by and in accordance with the above-described specifications and plans.

76. Defendant contractors supervised, oversaw and directed the activities, conduct and work of their own employees, and the employees, agents and assigns of their subcontractors, in the performance of the above-described specifications and plans at various locations, including the Plaintiff's work site(s).

77. Defendant contractors purchased, delivered and/or caused to be delivered various asbestos-containing materials, products and equipment to Plaintiff's work site(s) and other locations or facilities from which Plaintiff's work site(s) received, inventories and/or warehoused said materials, products and equipment.

78. Defendant contractors engaged in, substantially undertook, joined and/or otherwise supported abnormally dangerous activities that posed a high risk of harm to others, and there were reasonable, safer alternatives that could have been employed or otherwise utilized.

79. Defendant contractors exercised control over the work site(s) at which their employees, subcontractors, agents and assigns were engaged in carrying out the specifications and plans of construction, renovation, excavation and/or demolition as described above; retained unlimited access to said work site(s); and directed all related construction, remodeling, excavating and demolition activities concerned therewith.

80. Plaintiff was exposed to asbestos at Defendants' work sites and other locations where construction, renovation, excavation and demolition of buildings and/or other structures was being performed while Plaintiff was engaged in his occupational duties and responsibilities or while Plaintiff was otherwise lawfully at such work sites and locations.

81. Plaintiff sustained asbestos-related personal injuries as a consequence of his exposure to asbestos at the aforementioned location(s) described above.

82. Plaintiff's injuries resulted from Defendant contractors' breach of common law and statutory obligations including, *inter alia*, violations of New York State Labor Law §§200, 240 and 241.

83. Through the foregoing misconduct, Defendants also violated various provisions of the New York State Industrial Code (including but not limited to §§12-1.4, 12-1.5, 12-1.6, 12-3.1, 23-1.7, 23-2.1, 23-1.5, 23-3.2(d), 56-5.1 and 5.2), resulting in Plaintiffs exposure to asbestos and asbestos-related injuries.

84. The above-described exposures were caused solely and wholly by the acts and/or omissions of the Defendant contractors, their agents, servants, employees and assigns as a consequence of their negligent, careless and reckless ownership, management, direction and control of the various premises and work sites where construction, renovation, demolition and excavation activities, as described above, occurred.

85. Defendant contractors were negligent, careless and reckless in *inter alia*: (1) permitting Plaintiff to work under dangerous and unsafe conditions; (2) requiring Plaintiff to work in areas in which he was exposed to asbestos; (3) in permitting and allowing the dangerous conditions to remain in working areas and other locations; (4) in failing to warn Plaintiff and other members of the work force of the dangerous conditions; (5) in failing to follow or implement the usual workplace safety customs and procedures; (6) in failing to abide by the Labor Law, including, without limitation, Sections 200, 240 and 241 thereof; and (7) in otherwise acting with reckless disregard of the safety, well-being and health of Plaintiff and the general work force.

86. As a direct and proximate result of the Defendants' tortious conduct, including Defendants' common law negligence, and breach of various provisions of the New

York Labor Law and New York Industrial Code, Plaintiff was exposed to asbestos at the premises where he was lawfully present, proximately causing the development of Plaintiff's asbestos-related injuries and causing the damages set forth in this Complaint.

SIXTH CAUSE OF ACTION
(AGAINST "DUST MASK" DEFENDANTS ONLY)

87. Plaintiff repeats and incorporates each and every prior and subsequent allegation of this Complaint as if fully set forth herein.

88. Defendants were engaged in the business of manufacturing and selling respiratory devices known as "dust masks" or "respirators."

89. Defendants knew or in the exercise of reasonable diligence should have ascertained that their dust masks or respirators would be used without inspection for defects, and by placing same into the stream of commerce represented that the dust mask or respirator would safely prevent the inhalation of asbestos fibers.

90. The dust masks or respirators designed, manufactured, distributed and sold by Defendants were dangerous and defective in that they failed to protect against the inhalation of asbestos dust and fibers.

91. Defendants' expressly and/or impliedly represented that their dust masks or respirators would be effective in protecting against the inhalation of asbestos.

92. The dust masks and/or respirators designed, manufactured, distributed and sold by Defendants were placed into the stream of commerce in a defective, unsafe and inherently dangerous condition at the time they left Defendants' possession and were expect to, and did, reach the intended users, including Plaintiff, without substantial change in the condition in which the dust mask or respirators were originally designed, manufactured, distributed and sold by Defendants.

93. Defendants' dust masks and/or respirators did not contain adequate warnings, information or instructions regarding use or safety precautions to persons, including the Plaintiff, who reasonably and foreseeably came into contact with and otherwise utilized such dust masks or respirators.

94. Defendants knew or should have known that their dust masks and/or respirators did not protect against the inhalation of asbestos.

95. These acts and/or omissions of the defendants constituted willful, intentional and reckless misconduct and reflected a conscious disregard for the health and safety of the public, including Plaintiff.

96. The negligence of the Defendants and the defects in the dust masks and/or respirators were proximate causes of Plaintiff being repeatedly exposed to asbestos, when a properly designed and non-defective mask could have protected the Plaintiff from inhaling asbestos. The negligence of Defendants' and the defects in the dust masks/respirator also created a false sense of security in that Plaintiff believed he/she was being protected from asbestos while wearing the mask/respirator, when, in fact, that mask/respirator did not protect against the inhalation of asbestos.

97. As a direct and proximate result of the design, manufacture, distribution and sale by Defendants of said defective and unreasonably dangerous dust masks and/or respirators to Plaintiff and/or his employer(s) and others, Plaintiff sustained serious and permanent asbestos-related injuries and damages.

SEVENTH CAUSE OF ACTION FOR CONSPIRACY AND COLLECTIVE LIABILITY/CONCERT OF ACTION,

98. Plaintiff repeats and incorporates each and every prior and subsequent allegation of this Complaint as if fully set forth herein.

99. Defendants since the early 1900s possessed medical and scientific data which raised questions concerning the safety of asbestos and which demonstrated the existence of health hazards to those exposed to asbestos and asbestos-containing products.

100. Defendants, collectively and through explicit agreement and consciously parallel behavior, controlled industry standards regarding the testing, manufacture, sale, distribution and use of asbestos-containing products, including their asbestos products, and controlled the level of knowledge and information available to the public, including Plaintiff, regarding the hazards of exposure to asbestos dust and fibers.

101. Defendants, through agreement and consciously parallel behavior, intentionally failed to warn potential users, including Plaintiff, of the serious bodily harm and/or death which may result from the inhalation of, ingestion of and exposure to asbestos fibers and dust emanating from and released by Defendants' asbestos-containing products, materials and/or equipment.

102. Defendants conspired and/or acted in concert to withhold, conceal and suppress the distribution of medical and scientific data and literature regarding the risks of exposure to asbestos and asbestos-containing products and the association of this exposure with the development of asbestosis, cancer, mesothelioma and other illnesses and diseases.

103. Defendants distorted the results of medical examinations conducted upon Plaintiff and/or individuals similar situated who were exposed to asbestos fibers and dust by falsely stating and/or concealing the nature and extent of hazard to which Plaintiff and those similarly situated had been subjected to.

104. Defendants, while cognizant of the aforementioned data, deliberately chose to ignore the health and safety issues raised in said data and embarked upon a

plan of deception intended to deprive the public at large, including Plaintiff, of alarming medical and scientific findings which remained in their exclusive possession and under their exclusive control.

105. Defendants conspired and/or acted in concert with each other and/or with other entities through agreement and consciously parallel behavior:

a. to withhold from users of the asbestos-containing products, materials and/or equipment – and from persons who Defendants knew or should have known would be exposed to said asbestos products – information regarding the health risks of inhaling and ingesting asbestos fibers and dust;

b. to eliminate or prevent investigation into the health hazards of exposure to asbestos fibers and dust; and

c. to ensure that asbestos products became widely used in commerce and industry, irrespective of the potential and actual risk of harm to the users and consumers.

106. Plaintiff reasonably and in good faith relied upon the false and fraudulent representations, omissions and concealments made by Defendants regarding the nature of their asbestos-containing products, materials and/or equipment and was deprived of an opportunity to make an informed decision concerning his use of, exposure to and contact with said asbestos products.

107. Defendants, whether acting individually or in concert with others, violated the common-law duty of care owed to Plaintiff or otherwise engaged in culpable activity that caused him to suffer severe injuries and damages.

108. The actions and inactions of Defendants, independently and collectively, constitute a pattern or practice of intentionally wrongful conduct and/or malice resulting in injuries to Plaintiff and others similarly situated.

109. By reason of the foregoing, Defendants are jointly and severally liable to Plaintiff for the injuries and damages sustained by virtue of industry-wide or enterprise liability.

110. Defendants are also liable to Plaintiff for the injuries and damages sustained by virtue of their substantial share of the asbestos products market within the geographic area in which Plaintiff was exposed to asbestos.

111. As a direct and proximate consequence of his wrongful exposure to asbestos dust and fibers resulting from Defendants' actions and/or failures to act, Plaintiff contracted an asbestos-related illness with sequela and was caused to suffer severe physical pain, mental anguish, pecuniary loss, and loss of enjoyment of life.

EIGHTH CAUSE OF ACTION FOR JOINT AND SEVERAL LIABILITY – EXCEPTIONS TO ARTICLE 16

112. Plaintiff repeats and incorporates each and every prior and subsequent allegation of this Complaint as if fully set forth herein.

113. Defendants are also jointly and severally liable to Plaintiff, as the limitation of liability articulated in C.P.L.R. § 1601 does not apply to Plaintiff's cause of action by operation of the exceptions in C.P.L.R. §1602, which state, *inter alia*, that the limitation of liability shall:

(7) Not apply to any person held liable for causing claimant's injury by having acted with reckless disregard for the safety of others.

(8) Not apply to any person held liable by reason of the applicability of article ten of the Labor Law

(10) Not apply to any person held liable in a product liability action where the manufacturer of the product is not a party to the action and the claimant establishes by a preponderance of the evidence that jurisdiction over the manufacturer could not with due diligence be obtained and that if the manufacturer were a party to the action, liability for claimant's injury would have been imposed upon said manufacturer by reason of the doctrine of strict liability, to the extent of the equitable share of such manufacturer.

(11) Not apply to any parties found to have acted knowingly or intentionally, and in concert, to cause the acts or failures upon which liability is based; provided, however, that nothing in this subdivision shall be construed to create, impair, alter, limit, modify, enlarge, abrogate, or restrict any theory of liability upon which said parties may be held liable to the claimant.

114. Therefore, Defendants are jointly and severally liable, based on their *pro rata* market share, to the Plaintiff for the injuries and damages inflicted upon him which were directly and proximately caused by his exposure to Defendants' asbestos products.

NINTH CAUSE OF ACTION
(AGAINST FELA DEFENDANTS ONLY)

115. Plaintiff repeats and incorporates each and every prior and subsequent allegation of this Complaint as if fully set forth herein.

116. This cause of action arises the Federal Employers' Liability Act, (45 U.S.C. Sec. 51 *et seq.*), as hereinafter more fully appears, and is addressed only to those above identified defendants to which said Act applies, hereinafter referred to as the "FELA defendants".

117. Upon information and belief, at all relevant times the FELA defendants, and/or their predecessors in business, have been and still are doing business in the County, City and State of New York.

118. At all times herein mentioned, the FELA defendants were and now are common carriers by rail and/or were otherwise engaged in interstate commerce between and among the different states of the United States.

119. At all relevant times, the FELA defendants, employed Plaintiff as employee and/or servant under their direction, supervision and control, and in furtherance of their business in interstate commerce, and at all relevant times Plaintiff decedent acted within the scope of their employment.

120. At all relevant times, Plaintiff was working on and about commuter and freight lines, railroad yards, shops and/or other facilities serving interstate commerce, which were owned, leased and/or operated by the FELA defendants and/or their predecessor(s) in interest, successively and/or concurrently.

121. The FELA defendants controlled and maintained such property, including but not limited to shops, yards, tracks, rails, switches, sidings, roadbeds and appurtenances thereto, over, through and upon which the FELA defendants operated their engines, trains, cars and/or other equipment and instrumentalities of interstate commerce under its/their direction and control.

122. Throughout the entire time while Plaintiff was employed by the FELA defendants, the FELA defendants acting through their agents, servants and employees, negligently required the Plaintiff to perform work which caused serious and permanent injuries as described previously and subsequently herein.

123. Through his employment with the FELA defendants, Plaintiff was required to perform certain work with, and in the vicinity of, harmful substances including asbestos-containing products. Plaintiff was injured in the course of and as a result of said exposure, said injuries being the direct and proximate result of the negligence of the FELA defendants acting by and through its/their agents, servants and employees.

124. Plaintiff, in the course of his employment with the FELA defendants, and its predecessors in interest, in furtherance of his employment duties with the FELA defendants and their predecessors in interest, was/were required to work on and about railroad cars, diesel and steam engines, boilers and other equipment, under unsafe and hazardous conditions created by the dust of various asbestos-containing and other harmful products. As a result of and during the exposure of the Plaintiff to said products, Plaintiff was caused to be seriously and permanently injured as a direct and proximate result of a defect or insufficiency in their cars, engines, appliances, boilers, machinery or other equipment or instrumentalities of interstate commerce, due to the FELA defendants' negligence.

125. Plaintiff was exposed to dust, fibers, fumes and other toxic substances created by the use, handling, application, repair and/or removal of asbestos and asbestos-containing and other products and other duties performed in the course of his employment and during the course of his employment. Plaintiff was injured as a result of said exposure; and said injuries being the direct result of the negligence of the FELA defendants and/or other predecessors in interest.

126. That the said resulting injuries to the Plaintiff were caused by reason of the negligence, carelessness and recklessness of the aforementioned FELA defendants, their agents, servants and/or employees; in failing to exercise due care and diligence; in

failing to provide Plaintiff with a safe place to work and safe equipment with which to work; in failing to provide Plaintiff with the proper tools and equipment; in failing to warn the Plaintiff of the existence of dangers involved in the performance of his duties; in failing to provide Plaintiff with proper and adequate protective clothing and equipment necessary for the duties being performed; in that employees of defendants failed to take proper precautions to prevent the injuries sustained by Plaintiff; in failing to make proper and adequate provisions for the safety of the Plaintiff; in failing to promulgate safety rules and procedures for activities carried out by the personnel at the aforesaid location; in failing to adequately ventilate the area; in allowing a dangerous accumulation of asbestos; in failing to inspect the area; in failing to correct the defective and/or unsafe condition; in failing to make proper and adequate provision for the safety of Plaintiff in that the FELA defendants were otherwise generally negligent under the circumstance; in that the FELA defendants failed to advise Plaintiff of the existence of the conditions and defects alleged herein.

127. Plaintiff's resulting injuries were due to the negligence of the FELA defendants, their agents, servants and employees, and the defects in the FELA defendants' property and equipment as aforesaid, without any fault or negligence on the part of the Plaintiff contributing thereto.

128. The railroad defendants had actual and constructive knowledge of the dangers posed by asbestos exposure through the Association of American Railroads and Medical and Surgical Section which issued reports about asbestos disease as early as 1935 and through the Alton Railroad Studies in 1936 and 1938

129. By reason of the tortious conduct aforesaid, Plaintiff was severely and seriously injured, suffered pain and injury, was/were compelled to spend sums of money for medical attention and treatment.

130. That said injuries were incurred while Plaintiff was acting in furtherance of interstate commerce, or in work closely or substantially affecting the same, on behalf of the FELA defendants aforesaid.

131. Upon information and belief that at all relevant times, the FELA defendants' tortious acts set forth herein caused injury to Plaintiff in the State of New York where the FELA defendants regularly did or solicited business and/or engaged in a persistent course of conduct and/or derived substantial revenue from goods used and/or consumed in the State of New York.

132. This action falls within one or more of the exceptions set forth in the C.P.L.R. §1602.

133. Plaintiff's injury was proximately caused by the negligence of the railroad defendants in one or more of the following ways:

i) In failing to furnish workers, including the Plaintiff, with a reasonable and safe place in which to perform his/her duties;

ii) In failing to furnish workers, including the Plaintiff, with safe and suitable tools and equipment, including adequate protective masks and/or adequate protective inhalation devices;

iii) In failing to warn workers, including the Plaintiff of the nature and hazardous effects of the asbestos-related materials which they were required to work with or about;

iv) In failing to provide instructions and/or methods for the safe use of asbestos, if such exists;

v) In failing to test asbestos-containing products prior to requiring employees, including the Plaintiff, to work with them, and in failing to determine the ultra-hazardous nature of the asbestos-containing products which its workers were required to work with or about;

vi) In failing to inquire of the manufacturers and/or suppliers of the asbestos-containing products which its workers, including the Plaintiff, were required to work with or about, of the hazardous nature of said products;

vii) In requiring its employees, including the Plaintiff, to work with an ultra-hazardous product such as asbestos;

viii) In failing to exercise adequate, if any, care as to the health and safety of its employees, including the Plaintiff; and

ix) In violating the standards set under 45 U.S.C.A. Sections 22-34.

134. As a direct and proximate result of the acts of the Defendants, Plaintiff suffered serious bodily injury, endured great pain and suffering, incurred medical expenses, suffered mental anguish, lost earning and earning capacity.

TENTH CAUSE OF ACTION
(AS TO LWCA DEFENDANTS ONLY)

135. Plaintiff repeats and incorporates each and every prior and subsequent allegation of this Complaint as if fully set forth herein.

136. At all times pertinent hereto, Plaintiff was a longshoreman employed aboard American flag vessels and entitled to the benefits of the laws pertaining to the status of merchant seamen and longshoremen, including but not limited to, the Longshore Workers' Compensation Act (hereinafter the "LWCA").

137. Plaintiff, during the course of his service, was caused to handle and work directly with and in close proximity to, asbestos-containing products that were part of, and appurtenant to, as well as asbestos-containing products and raw asbestos fiber and asbestos-containing products that constituted cargo and parcel upon, said vessels.

138. At the times and dates previously set forth, Plaintiff was employed as a longshoreman aboard and unloading merchant vessels owned, operated and/or controlled by the defendants, as set forth above.

139. Defendants were engaged, directly or indirectly, in the ownership, operation, and/or control of the aforesaid vessels, and thereby in the importing, transporting or supplying of asbestos-containing products and raw asbestos fiber of various kinds and grades on board said vessels.

140. Defendants, directly or indirectly, caused their asbestos products to be cargo and parcel upon merchant vessels.

141. Plaintiff, during the course of his service, was exposed to and came in contact with asbestos products present on board and unloaded from defendants' vessels, and inhaled or ingested the asbestos dust and fibers emanating from said asbestos products.

142. As a direct and proximate result of Plaintiff's inhalation and ingestion of dust particles and fibers from asbestos products present on board and unloaded from defendants' vessels, Plaintiff developed permanent and disabling personal injuries and/or died.

143. During the time that defendants shipped, imported, and transported their asbestos products, and placed asbestos products on board their vessels, defendants knew, or in the exercise of reasonable care, should have known that asbestos products present on board their vessels were defective, ultrahazardous, dangerous and otherwise highly harmful to Plaintiff.

144. Defendants knew, or in the exercise of reasonable care should have known, that the presence on board their vessels and the unloading therefrom of asbestos products would cause asbestos dust and fibers to be released into the air and would create dangerous and unreasonable risk of injury to the lungs, respiratory systems, larynx, stomach and other bodily organs of users and handlers of their products and to others breathing that air and coming into contact with that dust.

145. Defendants knew, or in the exercise of reasonable care should have known that Plaintiff would come into contact with and be exposed to asbestos products present on board and unloaded from their vessels and would inhale or ingest asbestos dust and fibers as a result of the ordinary and foreseeable use and handling of defendants' asbestos products.

146. Despite the facts as set forth above, defendants negligently, recklessly and intentionally:

a. Shipped, imported, supplied, transported, consigned, caused to be present on board and unloaded from their vessels, or otherwise placed in the stream of commerce asbestos products which defendants knew or in the exercise of reasonable care should have known, were defective, dangerous, ultrahazardous and otherwise unreasonably harmful to Plaintiff;

b. Failed to take reasonable precautions or exercise reasonable care to warn Plaintiff adequately of the risks, dangers and harm to which Plaintiff would be exposed by exposure to, contact with, use and handling of asbestos products present on board and unloaded from defendants' vessels, or by inhalation or ingestion of the asbestos dust and fibers resulting from the ordinary and foreseeable use and handling of asbestos products present on board and unloaded from defendants' vessels;

c. Failed to provide information or reasonably safe and sufficient safeguards, protective clothing, proper equipment and appliances necessary to protect Plaintiff from being injured, poisoned, disabled, killed, or otherwise harmed by working with, using, handling, coming

into contact with, and being exposed to asbestos products present on board or unloaded from defendant's vessels, or by inhalation or ingestion of the asbestos dust and fibers resulting from the ordinary and foreseeable use and handling of asbestos products on board defendants' vessels;

d. Failed to cause asbestos products on board or unloaded from their vessels to be packaged in a manner that would assure that Plaintiff would not come into contact with or be exposed to the asbestos dust and fibers resulting from the ordinary and foreseeable use and handling of asbestos products present on board defendants' vessels;

e. Failed to advise Plaintiff of the necessity to adopt and enforce a safe, sufficient and proper method and plan of working with, using, handling, coming into contact with and being exposed to asbestos products on board or unloaded from defendants' vessels so that Plaintiff would not inhale or ingest the asbestos dust and fibers resulting from the ordinary and foreseeable use of defendants' asbestos products;

f. Disregarded medical and scientific information, studies, tests, data and literature concerning the causal relationship between the inhalation or ingestion of asbestos dust and fibers, and such diseases as asbestosis, mesothelioma, scarred lungs, cancer, respiratory disorders and other illnesses and diseases;

g. Exposed and continued to expose Plaintiff, and other persons similarly situated, to the risk of developing asbestosis, mesothelioma, scarred lungs, cancer and other illnesses, all of which risks defendants knew, or

in the exercise of reasonable care, should have known, were consequences of exposure to asbestos dust and fibers;

h. Failed to advise Plaintiff, who defendants knew, or in the exercise of reasonable care should have known, had been exposed to inhalation or ingestion of asbestos dust and fibers resulting from the ordinary and foreseeable use and handling of asbestos products present on board or unloaded from defendants' vessels, to cease further uncontrolled or unprotected exposure to asbestos products and the inhalation or ingestion of asbestos dust and fibers and all other kinds of smoke, dusts, and fumes; to be examined by competent medical doctors to determine the nature and extent of any and all diseases caused by inhalation or ingestion of asbestos dust and fibers; and to receive medical care and treatment for such diseases; and

i. Defendants' otherwise acted negligently, recklessly and with intentional disregard for the welfare of Plaintiff in the shipping, importing, transporting, supplying, causing to be unloaded or otherwise placing in the stream of commerce asbestos products carried on board defendants' vessels.

147. The dangerous and unreasonable risk of injury to Plaintiff created by the presence on board or unloading from defendants' vessels of asbestos products existed in each instance prior to the beginning of stevedoring operations, during which Plaintiff was exposed to asbestos dust and fibers emanating from such products.

148. Defendants transported, bailed and supplied their asbestos products and knew or reasonably should have known that Plaintiff would handle, use and come into contact

with defendants' asbestos products and that Plaintiff's foreseeable use and contact with defendants' asbestos products would create a dangerous and unreasonable risk of injury to Plaintiff.

149. Defendants had no reason to believe that Plaintiff would realize the dangerous and unreasonable risk of injury to himself created by his use, handling, contact and exposure to defendants' asbestos products.

150. Defendants failed to exercise reasonable care to warn or inform Plaintiff of the dangerous condition of defendants' asbestos products or of the unreasonable risk of injury to which defendants' asbestos products exposed Plaintiff.

151. As a result of defendants' conduct, Plaintiff came in contact with defendants' asbestos products and inhaled or ingested asbestos dust and fibers from these products. Plaintiff was caused to suffer the injuries, expenses and losses alleged in prior count of this Complaint.

152. Defendants, for their business purposes, directly or indirectly, caused their asbestos products to be supplied, handled, or used by Plaintiff in the course of or at the place of Plaintiff's employment.

153. Defendants knew, or in the exercise of reasonable care should have known, that Plaintiff's use of their asbestos products would create dangerous and unreasonable risk of injury to the lungs, respiratory systems, larynx, stomach and other bodily organs of Plaintiff.

154. As a result of defendants' conduct, Plaintiff came in contact with defendants' asbestos products and inhaled or ingested asbestos dust and fibers from these products. Plaintiff was caused to suffer the injuries, expenses and losses alleged in prior counts of this Complaint.

155. As a direct and proximate result of the defendant shipowners' negligence and the unseaworthiness of their respective vessels, Plaintiff was exposed to asbestos products and was caused to suffer severe, permanent and disabling personal injury and/or death, expended sums of money for medical care and treatment related thereto, was prevented from pursuing his normal activities and employment, experienced severe pain and suffering and mental anguish, was deprived of his ordinary pursuits and enjoyments of life.

ELEVENTH CAUSE OF ACTION
(AS TO JONES ACT DEFENDANTS ONLY)

156. Plaintiff repeats and incorporates each and every prior and subsequent allegation of this Complaint as if fully set forth herein.

157. At all times material hereto, defendants owned, operated, managed, possessed and controlled certain vessels in navigable waters of the United States and were doing business in the State of New York.

158. At all times material hereto, Plaintiff was a member of the crew of such vessels and an employee of Defendant who spent time as a seaman on American ships, plying waters, domestic and foreign, port-to-port throughout the world. While aboard Defendants' ships as a merchant marine, Plaintiff was constantly exposed to asbestos fibers, causing him to breathe into his system carcinogenic asbestos dust, which resulted in physical harm to Plaintiff.

159. Over the course of his employment, without any fault on the part of Plaintiff and by reason of the negligence, recklessness and carelessness of defendants, acting by and through their agents, servants and/or employees, all acting within the course and scope of their employment, Plaintiff was caused to sustain injuries as described above.

160. Aboard the ships the Plaintiff sailed throughout his career, asbestos products were placed on the vessels by Defendants, creating shipboard atmospheric environment of perilous carcinogen toxin, rendering the workplace of the Plaintiff aboard each vessel an unseaworthy condition.

161. Defendant Shipowners negligently maintained each respective vessel in an unsafe, unseaworthy condition by allowing crewman to be exposed to friable asbestos and by not providing adequate ventilation.

162. As against Shipowner employers, independently or as successors-in-interest, Plaintiff claims that Defendants were negligent according to New York State's interpretation and application of the Jones Act and due to the unseaworthiness of each vessel under the General Admiralty and Maritime Law whereby the Shipowner warranted to crewman to provide a reasonably safe vessel and working conditions, reasonably fit for the purpose for which it was intended. By causing Plaintiff to be exposed to asbestos, said warranty was substantially breached by the Shipowner Defendants.

163. As to Machinery and Manufacturer Defendants, independently or as successor-in- interest, *i.e.*, manufacturers of boilers, generators, etc. aboard the respective vessels, each of said Defendants contemplated use of asbestos insulation thereon as well as use of asbestos products as integral parts thereof, fibers from which emitted into the atmosphere and circulated about the work and living areas of the vessel to which the crewmen were forced to breathe into their systems.

164. As to the Manufacturers and Distributors, independently or as successor-in-interest, of asbestos and asbestos products, said Defendants designed, manufactured and marketed asbestos products which were placed aboard divers merchant ships on which Plaintiff served as crewman; and Plaintiff thereupon was exposed to asbestos toxic dust,

coupled with inadequate shipboard enclosed area ventilation, caused the pulmonary disease Plaintiff now suffers.

165. As a result of the injuries sustained by Plaintiff over the course of his employment, while a member of the crew of the Motor Vessels identified above, he is entitled to maintenance and cure.

166. Plaintiff is entitled to maintenance, cure and medical expenses for the period that he was disabled and unable to work.

167. By reason of the carelessness, negligence and recklessness of defendants, Plaintiff was exposed to dust from asbestos and asbestos-containing products and he contracted an asbestos related disease. He has in the past and will in the future continue to endure pain and suffering; he has in the past been prevented and will in the future continue to be prevented from attending to his daily labors, thereby losing sums of money which he otherwise would have earned as wages.

TWELFTH CAUSE OF ACTION FOR SPOUSAL LOSS OF CONSORTIUM

168. Plaintiff repeats and incorporates each and every prior and subsequent allegation of this Complaint as if fully set forth herein.

169. By reason of the foregoing, Plaintiff's spouse has been deprived of the services and consortium of Plaintiff, including, but not limited to, Plaintiff's support, services, love, companionship, affection, advice, society, physical relations and solace, and Spouse suffered a loss of enjoyment of life, all to his damage as against each Defendant.

THIRTEENTH CAUSE OF ACTION FOR PUNITIVE DAMAGES

170. Plaintiff repeats and incorporates each and every prior and subsequent allegation of this Complaint as if fully set forth herein.

171. Defendants acted maliciously, wantonly and recklessly, and demonstrated a conscious indifference and utter disregard of the health, safety and rights of others, including Plaintiff, by acting with an improper motive or vindictiveness and with outrageous or oppressively intentional misconduct, and such actions represented a high degree of immorality and showing a wanton dishonesty as to imply a criminal indifference to civil obligations, thereby warranting an award of punitive damages.

DISCLAIMER OF FEDERAL JURISDICTION

172. To the extent that any of Plaintiff's asbestos exposure took place on a federal enclave, or to the extent that any of Plaintiff's asbestos exposures occurred on board vessels of the United States military (including Naval ships) or in the construction, maintenance and/or repair of United States military vessels and/or aircraft, Plaintiff's claims against manufacturers, sellers and suppliers of asbestos-containing products installed on such vessels and/or aircraft are not based on the theory of defective design, but rather are based only on the theory of failure to warn. Since there is no evidence that the United States Government, or any of its military branches, instructed manufacturers from which it purchased asbestos-containing products not to warn about the health hazards associated with exposure to asbestos, there can be no valid claim to federal jurisdiction pursuant to federal enclave, federal officer or federal contractor provision of the United States Code. This disclaimer pertains to all of Plaintiff's claims asserted herein.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally, on each cause of action, with interest together with costs and disbursements in this action, and all other damages permitted by law.

Dated: June 25, 2019

EARLY, LUCARELLI, SWEENEY & MEISENKOTHEN
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New York, New York

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By: _____
Brian F. Early, Esq.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

The undersigned, an attorney admitted to practice law before the Courts of the State of New York, shows:

Deponent is a partner of THE EARLY LAW FIRM, LLC, counsel for Plaintiff in the within action; deponent has read the foregoing Summons and Verified Complaint and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters deponent believes same to be true. This verification is made by deponent and not by Plaintiff because Plaintiff resides outside of the County of New York where deponent maintains his office.

Dated: June 25, 2019
New York, NY

Brian F. Early, Esq.

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SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK

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In Re: NEW YORK CITY ASBESTOS LITIGATION Index No. 40000/1988

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This Document Relates To:

ALL THE EARLY LAW FIRM, LLC CASES **VERIFICATION**

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Brian F. Early, Esq., an attorney duly admitted to practice before the Courts of the State of New York, hereby certifies, in accordance with 22 NYCRR Part 130-1.1-a of the Rules of the Chief Administrator, that to the best of my knowledge, information and belief, which was formed after a reasonable inquiry under the circumstances, the presentation of the foregoing Summons and Verified Complaint and their contents are not frivolous, as the term is defined in Part 130.

Dated: June 25, 2019
New York, NY

Brian F. Early, Esq.