WILENTZ, GOLDMAN & SPITZER
A Professional Corporation
90 Woodbridge Center Drive
P.O. Box 10
Woodbridge, New Jersey 07095
(908) 636-8000
Attorneys for Plaintiffs

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-MIDDLESEX COUNTY
DOCKET NO. L-52237-81

IN THE MATTER OF ASBESTOS LITIGATION VENUED IN MIDDLESEX COUNTY	Civil Action **AMENDED STANDARD COMPLAINT, DEMAND FOR TRIAL BY JURY AND DEMAND FOR ANSWERS TO INTERROGATORIES**

Plaintiffs, by way of Complaint against defendants, upon information and belief allege as follows:

PARTIES - PLAINTIFFS

1. **[SEE INDIVIDUAL COMPLAINT FOR PLAINTIFF INFORMATION].**

2. Reference herein to "plaintiff" or "plaintiffs' decedent" is reference to all the persons set forth above as is syntactically and contextually correct.

PARTIES - DEFENDANTS

1. **[SEE INDIVIDUAL COMPLAINT FOR DEFENDANT INFORMATION].**

2. Defendant, John Doe 1 (believed to be Johns-Manville Sales Corporation); John Doe 2 (believed to be Johns-Manville Sales Corporation, successor to Johns-Manville Products Corporation); John Doe 3 (believed to be Johns-Manville Corporation); John Doe 4 (believed to be Johns-Manville Canada,

Inc., formerly known as Canadian Johns-Manville Co., Ltd.); John Doe 5 (believed to be Canadian Johns-Manville Amiante Ltd., formerly known as Canadian Johns-Manville Asbestos, Ltd.); John Doe 6 (believed to be Manville Corporation); and John Doe 7 (believed to be International Johns-Manville Corporation, Ltd.) are the fictitious names of corporations, partnerships, or other business entities or organizations, whose identities are not presently known.

3. John Doe 8 through John Doe 50, are the fictitious names of corporations, partnerships, or other business entities or organizations whose identities are not presently known, and who mined, manufactured, sold, marketed, installed or removed, asbestos or asbestos containing products which plaintiff used or was exposed to.

4. John Doe 51 through John Doe 75 are the fictitious names of corporations, partnerships, or other business entities or organizations whose identities are not presently known, and who are the alter egoes of or are otherwise responsible for the conduct or liability of those who mined, milled, manufactured, sold, marketed, installed or removed asbestos or asbestos containing products which plaintiff used or to which plaintiff was exposed.

5. The term "defendants" is used hereafter to refer to all of the entities named above.

6. Defendants do business in Middlesex County, New Jersey.

FIRST COUNT

1. Plaintiffs repeat the prior allegations of this Complaint.

2. Defendants, at all times material hereto, acted through their respective officers, employees and agents, who in turn were acting within the scope of their authority and employment in furtherance of the business of defendants.

3. Defendants were engaged, directly or indirectly, in the mining, milling, producing, processing, compounding, converting, selling, merchandising, supplying, distributing or installing of asbestos containing products and raw asbestos fiber of various kinds and grades, or of products, including equipment, which defendants knew or should have foreseen would be used with asbestos containing products and/or raw asbestos fiber (hereinafter collectively referred to as "asbestos products").

4. Defendants, directly or indirectly, caused their asbestos products to be sold to or used at plaintiffs' place of employment.

5. Plaintiffs, during their employment, were exposed to and came in contact with defendants' asbestos products and inhaled or ingested the asbestos dust and fibers emanating from defendants' asbestos products.

6. As a direct and proximate result of plaintiffs' inhalation and ingestion of dust particles and fibers from defendants' asbestos products, plaintiffs developed permanent and disabling personal injuries.

7. During the time that defendants mined, milled, produced, processed, compounded, converted, sold, merchandised, distributed, supplied and installed their asbestos products, defendants knew, or in the exercise of reasonable care should have known, that their asbestos products were defective, ultra-hazardous, dangerous and otherwise highly harmful to plaintiffs.

8. Defendants knew, or in the exercise of reasonable care should have known, that the use of their 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 of their products and to others breathing that air and coming into contact with that dust.

9. Plaintiffs did not know the nature and extent of the injury that would result from contact with and exposure to defendants' asbestos products or from the inhalation or ingestion of the asbestos dust and fibers.

10. Defendants knew, or in the exercise of reasonable care should have known, that plaintiffs would come into contact with and be exposed to their asbestos products and would inhale or ingest asbestos dust and fibers as a result of the ordinary and foreseeable use of defendants' asbestos products.

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

(a) mined, milled, produced, processed, compounded, converted, sold, supplied, merchandised, distributed,

installed 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 plaintiffs;

(b) failed to take reasonable precautions or exercise reasonable care to warn plaintiff adequately of the risks, dangers and harm to which plaintiffs would be exposed by exposure to, contact with, use and handling of defendants' asbestos products, or by inhalation or ingestion of the asbestos dust and fibers resulting from the ordinary and foreseeable use of defendants' asbestos products;

(c) failed to provide information or reasonably safe and sufficient safeguards, wearing apparel, proper equipment and appliances necessary to protect plaintiffs from being injured, poisoned, disabled, killed, or otherwise harmed by working with, using, handling, coming into contact with, and being exposed to defendants' asbestos products, or by inhalation or ingestion of the asbestos dust and fibers resulting from the ordinary and foreseeable use of defendants' asbestos products;

(d) failed to package their asbestos products in manner that would assure that plaintiffs would not come into contact with or be exposed to the asbestos dust and fibers resulting from the ordinary and foreseeable use of defendants' asbestos products;

(e) failed to advise plaintiffs 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 defendants' asbestos products so that plaintiffs would not inhale or ingest the asbestos dust and fibers resulting from the ordinary and foreseeable use of defendants' asbestos products;

(f) ignored and suppressed medical and scientific information, studies, tests, data and literature which defendants acquired during the course of their normal business activities concerning the risk of asbestosis, scarred lungs, cancer, mesothelioma, respiratory disorders, and other illnesses and diseases to workers such as plaintiffs, and other persons similarly situated, who were exposed to defendants' asbestos products;

(g) 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;

(h) exposed and continued to expose plaintiffs, 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;

(i) failed to seek substitute materials in lieu of the use of their asbestos;

(j) failed to advise plaintiffs, 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 of defendants' asbestos products: 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

(k) defendants' otherwise acted negligently, recklessly and with intentional disregard for the welfare of plaintiffs in the mining, milling, producting, processing, compounding, converting, selling, merchandising, supplying, distributing, installing, or otherwise placing in the stream of commerce their asbestos products.

12. As a direct and proximate result of the acts and omissions of defendants, plaintiffs were exposed to and came in contact with defendants' asbestos products and inhaled or ingested asbestos dust and fibers resulting from the ordinary and foreseeable use of said asbestos products. Plaintiffs were caused to suffer severe, permanent and disabling personal

injuries or death and to be placed at increased risk of developing other serious bodily injury, have expended and will be caused to expend sums of money for medical care and treatment related thereto, have been prevented and will be prevented from pursuing their normal activities and employment, have experienced and will continue to experience severe pain and suffering and mental anguish, and have been deprived and will continue to be deprived of their ordinary pursuits and enjoyments of life.

WHEREFORE, plaintiffs demand judgment against defendants jointly, severally, or in the alternative, for compensatory damages, punitive damages and costs of suit as provided by law.

SECOND COUNT

1. Plaintiffs repeat the prior allegations of this Complaint.

2. Defendants expressly or impliedly warranted that their asbestos products, which they mined, milled, produced, compounded, converted, processed, sold, supplied, merchandised, distributed, installed or otherwise placed in the stream of commerce were merchantable, reasonably fit for use, and safe for their intended purposes.

3. Defendants breached said warranties in that their asbestos products were defective, ultrahazardous, dangerous, unfit for use, not merchantable, and not safe for their intended, ordinary and foreseeable use and purpose.

4. As a direct and proximate result of defendants' breach of warranties, plaintiffs were exposed to and came in contact with defendants' asbestos products and inhaled or ingested asbestos dust and fibers resulting from the ordinary and foreseeable use of defendants' asbestos products. Plain tiffs were caused to suffer the injuries, expenses and losses alleged in prior counts of this complaint.

WHEREFORE, plaintiffs demand judgment against defendants, jointly, severally, or in the alternative, for compensatory damages, punitive damages and costs of suit as provided by law.

THIRD COUNT

1. Plaintiffs repeat the prior allegations of this Complaint.

2. Defendants failed to disclose and intentionally and negligently misrepresented to plaintiffs the health risks created by the ordinary use of defendants' asbestos products.

3. Plaintiffs relied upon said representations. Plaintiffs' reliance was foreseeable to defendants.

4. Ás a result of defendants' conduct, plaintiffs came in contact with defendants' asbestos products and inhaled or ingested asbestos dust and fibers from these products. Plaintiffs were caused to suffer the injuries, expenses and losses alleged in prior counts of this complaint.

WHEREFORE, plaintiffs demand judgment against defendants, jointly, severally, or in the alternative, for

compensatory damages, punitive damages and costs of suit as provided by law.

FOURTH COUNT

1. Plaintiffs repeat the prior allegations of this Complaint.

2. Defendants are strictly liable to plaintiffs by reason of the following:

(a) defendants were engaged in the business of being miners, millers, producers, processors, sellers, suppliers, installers and distributors of their asbestos products;

(b) defendants knew or had reason to know that plaintiffs, plaintiffs' employer and other persons similarly situated would be ultimate users or consumers of their asbestos products or would be exposed to their asbestos products;

(c) defendants sold or otherwise placed their asbestos products into the stream of commerce in a defective condition, unreasonably dangerous to plaintiffs and other persons similarly situated;

(d) throughout the many years that plaintiffs and other similarly situated persons were exposed to and used defendants' asbestos products, said asbestos products reached the users and consumers without substantial change in the condition in which they were sold;

(e) the ordinary and foreseeable use of defendants' asbestos products constituted a dangerous and

ultrahazardous activity and created an unreasonable risk of injury to users and bystanders;

(f) defendants' asbestos products were defective in that they were incapable of being made safe for their ordinary and intended use and purpose, and defendants failed to give any warnings or instructions, or failed to give adequate or sufficient warnings or instructions, about the risks, dangers, and harm associated with the use of their asbestos products.

3. As a consequence of the defective condition of defendants' asbestos products, plaintiffs inhaled or ingested asbestos dust and fibers during ordinary and foreseeable use of those asbestos products. Plaintiffs were caused to suffer the injuries, expenses and losses alleged in prior counts of this complaint.

WHEREFORE, plaintiffs demand judgment against defendants, jointly, severally or in the alternative, for compensatory damages, punitive damages and costs of suit as provided by law.

FIFTH COUNT

1. Plaintiffs repeat the prior allegations of this Complaint.

2. Defendants mined, milled, produced, processed, compounded, converted, sold, merchandised, supplied, distributed or installed all, or substantially all, of the asbestos products to which plaintiffs were exposed.

3. Defendants controlled the market, or a substantial portion of the market, from which the asbestos products which caused plaintiffs' injuries emanated.

4. Defendants collectively, through explicit agreement, tacit agreement, and conscious parallel behavior, controlled industry standards regarding the testing, manufacture, sale, distribution and use of asbestos products and controlled the level of knowledge on the part of the public regarding the hazards of exposure to dust and fibers from defendants' asbestos products.

5. As a direct and proximate consequence of defendants' acts and omissions, plaintiffs were exposed to and came in contact with defendants' asbestos products and inhaled or ingested asbestos dust and fibers resulting from the ordinary and foreseeable use of said asbestos products. Plaintiffs were caused to suffer the injuries, expenses and losses alleged in prior counts of this complaint.

WHEREFORE, plaintiffs demand judgment against defendants, jointly, severally, in the alternative, or in proportion to defendants' respective market shares, for compensatory damages, punitive damages and costs of suit.

SIXTH COUNT

1. Plaintiffs repeat the prior allegations of this Complaint.

2. Defendants acted in concert with each other and with other members of the asbestos industry, through express agreement, implicit agreement, imitative behavior and conscious parallel behavior:

(i) to withhold from users of their products, and from persons who defendants knew or should have known would be exposed to their products, information regarding the health risks of breathing or ingesting asbestos dust and fibers.

(ii) to eliminate or prevent development of adequate procedures and tests relating to the health hazards of exposure to asbestos fibers and dust.

(iii) to assure that asbestos products became widely used in industries such as construction, shipbuilding, machine fabrication and similar such industries.

3. Defendants knew that their activities were violative of common law standards of care and that their withholding of information, failure to develop tests and procedures, and promotion of widespread use of asbestos products would expose persons such as plaintiffs to unreasonable risk of bodily injury.

4. Defendants nevertheless gave substantial assistance and encouragement to each other and to other members of the asbestos industry and assisted each other and other members of the asbestos industry in: withholding information regarding the dangers of asbestos; failing to develop tests and procedures to assure that users of asbestos would not be subjected to risk of injury; and promoting widespread use of products which defendants knew would expose plaintiffs to unreasonable risk of bodily injury.

5. As a direct and proximate consequence of the concerted actions of defendants and other members of the asbestos industry, plaintiffs were exposed to and came in contact with defendants' asbestos products and the asbestos products of others and inhaled or ingested asbestos dust and fibers resulting from the ordinary and foreseeable use of said asbestos products. Plaintiffs were caused to suffer the injuries, expenses and losses alleged in prior counts of this complaint.

WHEREFORE, plaintiffs demand judgment against defendants, jointly, severally or in the alternative, for compensatory damages, punitive damages and costs of suit as provided by law.

SEVENTH COUNT

1. Plaintiffs repeat the prior allegations of this complaint.

2. The defendants constitute all known, non-remote producers, manufacturers, suppliers, installers, and distributors

of the asbestos products which could have caused plaintiffs' injuries.

3. Each of the defendants, whether acting individually or in concert with others, violated a duty of care owed to plaintiffs or otherwise engaged in culpable activity against plaintiffs. The acts and omissions of at least one of the defendants caused plaintiffs to sustain the injuries, losses and expenses alleged in prior counts of this complaint.

4. Plaintiffs in no respect can be blamed should they be unable to establish which of the asbestos products caused the injuries complained of herein.

5. The burden of proof in this matter thus should shift to defendants to demonstrate that their respective conduct and their respective products could not have caused plaintiffs' injuries, and, failing such proof, defendants should be held jointly, severally or alternatively liable for plaintiffs' injuries.

WHEREFORE, plaintiffs demand judgment against defendants, jointly, severally or in the alternative, for compensatory damages, punitive damages and costs of suit as provided by law.

EIGHTH COUNT

1. Plaintiffs repeat the prior allegations of this Complaint.

2. During the course of their working careers, plaintiffs were required to work with and around asbestos and

asbestos containing insulation products and other products which contained asbestos. In their work, plaintiffs were exposed to asbestos dust and fiber.

3. The asbestos products plaintiffs were exposed to were located on the property owned, operated, controlled and inter alia maintained by **[NAMED WORK SITE DEFENDANTS]**.

4. These properties were owned by the defendants delineated above and were negligently owned, operated, maintained and controlled.

5. Defendants failed to institute reasonable industrial hygiene procedures on their property and failed to take precautions to protect plaintiffs from the hazards of asbestos and failed to warn plaintiffs of said hazards.

6. As a direct and proximate consequence of the concerted actions of defendants and other members of the asbestos industry, plaintiffs were exposed to and came in contact with defendants' asbestos products and the asbestos products of others and inhaled or ingested asbestos dust and fibers resulting from the ordinary and foreseeable use of said asbestos products. Plaintiffs were caused to suffer the injuries, expenses and losses alleged in prior counts of this complaint.

WHEREFORE, plaintiffs demand judgment against defendants, jointly, severally or in the alternative, for compensatory damages, punitive damages and costs of suit as provided by law.

NINTH COUNT

1. Plaintiffs, [**NAMES OF SPOUSES**], repeats the prior allegations of this complaint.

2. As a consequence of the injuries to their respective spouses, plaintiffs have suffered loss of consortium, companionship, services, society and support.

WHEREFORE, plaintiffs demand judgment against defendants, jointly, severally and in the alternative, for compensatory damages, punitive damages and costs of suit.

TENTH COUNT

1. Plaintiffs repeat the prior allegations of this Complaint.

2. Plaintiffs, [**NAMES OF EXECUTOR/EXECUTRIX and/or GENERAL ADMINISTRATOR/ADMINISTRATRIX and ADMINISTRATOR/ ADMINISTRATRIX AD PROSEQUENDUM**], is the [**SEE ABOVE**] of the estate of [**NAME OF DECEDENT**].

3. Plaintiffs bring this action pursuant to the Survival Statute under the theories of liability alleged in preceding counts, for such damages decedents would have been entitled to recover from defendants had they not perished.

4. Plaintiffs also bring this action pursuant to the Wrongful Death Statute under the theories of liability alleged in preceding counts, for such damages and pecuniary loss that the next of kin of decedents have sustained as a consequence of their death.

WHEREFORE, plaintiffs demand judgment against defendants, jointly, severally and in the alternative, for compensatory damages, punitive damages and costs of suit.

ELEVENTH COUNT

1. Plaintiffs repeat the prior allegations of this Complaint.

2. Defendant, [**NAMED EMPLOYERS**], have been made party to this litigation for the purpose of obtaining discovery and plaintiffs seek equitable relief pursuant to the cause of action cognizable in Arcell v. Ashland Chemical Company, Inc., 378 A.2d 53.

WHEREFORE, plaintiffs demand judgment against defendant [**NAMED EMPLOYERS**], compelling production of the following information:

a. Any records in the personnel files of plaintiffs;

b. The name of all positions, along with the job description for each, which each plaintiff held during the course of their employment;

c. The name of plaintiffs' supervisors in each position which they held;

d. The name of all employees who worked with plaintiffs during the course of their employment;

e. The name and address of all suppliers, distributors and retailers of all asbestos containing products purchased by or utilized by [**NAMED EMPLOYERS**], at the location

where the plaintiffs were employed prior to and through the time that they were so employed;

f. The quantity of each asbestos product used by [**NAMED EMPLOYERS**], at the locations where plaintiffs were employed during the course of his employment;

g. A description of how each asbestos containing product was utilized;

h. All records in the medical file of plaintiffs;

i. A copy of any and all workmens' compensation records in reference to plaintiffs;

j. Such further information as may be warranted under the fact of this case.

WILENTZ, GOLDMAN & SPITZER, P.A.
Attorneys for Plaintiffs

By: _____
PHILIP A. PAHIGIAN
For the Firm

Dated: January 14, 1993

DEMAND FOR TRIAL BY JURY

Plaintiffs demand a trial by jury on all issues.

PHILIP A. PAHIGIAN

DEMAND FOR ANSWERS TO INTERROGATORIES

Plaintiffs demand answers to the Standard Interrogatories pursuant to the Court's January 25, 1982 General Order annexed hereto. Said Standard Interrogatory forms may be obtained from the Court upon request.

PHILIP A. PAHIGIAN

CERTIFICATION

The undersigned certifies that to the best of my knowledge this matter is not the subject of any other legal or arbitration proceeding in the Courts of New Jersey other than a workers compensation matter. The undersigned further certifies that to my knowledge no other persons should be party to this matter other than those named in this complaint.

PHILIP A. PAHIGIAN

Dated: January 14, 1993