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Amy J. Hogue

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES -UNLIMITED JURISDICTION**

**MBRLIN JAY OLSEN AND  
SUSAN W. OLSEN,**

Plaintiffs,

vs.

**ASBESTOS COMPANIES;  
BONDEX INTERNATIONAL, INC.;  
CERTAINTEED CORPORATION;  
CERTAINTEED CORPORATION, f/k/a  
Certainteed Corporation, individually and as  
successor-in-interest to Bestwall Gypsum  
Company;  
CRANE CO., individually and as successor in  
interest to Chapman Valves.;  
GARLOCK SEALING TECHNOLOGIES, L.L.C.,  
individually and as successor-in-interest to Garlock,  
Inc.;  
GEORGIA-PACIFIC, LLC;  
GEORGIA-PACIFIC, LLC, f/k/a Georgia-Pacific  
Corporation, individually and as  
successor-in-interest to Bestwall Gypsum  
Company;  
JOHN K. BICE CO., INC.;  
KAISER GYPSUM COMPANY, INC.;  
KELLY-MOORE PAINT COMPANY, INC.;  
KENTILE FLOORS, INC.;  
LENNOX INDUSTRIES, INC.;  
MECHANICAL DRIVES & BELTING (f/k/a L.A.  
Rubber Company);  
MORGRO, INC.;  
NBC UNIVERSAL, INC.;**

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

DEC 31 2009

John A. Clarke, Executive Officer/Clerk  
Deputy

A-7221  
90017

CASE NO. **BC 429145**

**COMPLAINT FOR  
PERSONAL INJURIES**

[COMPLEX ASBESTOS  
LITIGATION-SUBJECT  
TO THE GENERAL  
ORDERS CONTAINED  
IN FILE NO. C700000]

THIS IS A REPRINT OF THE ORIGINAL

1 NBC STUDIOS, INC.;

2 OWENS-ILLINOIS, INC. individually and as

3 successor-in-interest to Owens-Illinois Glass

4 Company and d/b/a O-I;

5 PAX COMPANY;

6 SCHULTZ COMPANY;

7 SPECTRUM BRANDS, INC.;

8 THE SCOTT'S COMPANY, LLC;

9 THE SHERWIN WILLIAMS COMPANY;

10 TWENTIETH CENTURY FOX FILM

11 CORPORATION;

12 SURE-GRO, INC.;

13 UNION CARBIDE CORPORATION;

14 UNITED INDUSTRIES CORP.;

15 UNITED GILSONITE LABORATORIES, INC.;

16 ZURN INDUSTRIES, LLC., f/k/a Zurn Industries,

17 Inc., a/k/a and successor-by-merger to Erie City

18 Iron Works and d/b/a "Keystone" branded products,

19 and DOES 1-300

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Defendants.

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Merlin Jay Olsen and Susan W. Olsen bring this lawsuit against the below Asbestos Companies for the incurable asbestos cancer that Merlin Olsen has been diagnosed with as a result of breathing asbestos dust.

Merlin Olsen is a retired professional football player who has gone on to achieve great success as a film and television actor and sports commentator. He is a member of both the College and Pro Football Halls of Fame. His football career was summarized as follows by the Pro Football Hall of Fame:

Merlin Olsen was a coach's player. Punctual, steady, gifted, a quiet leader, a player you could always count on. He was a standout as a rookie and thereafter stood out in every game he played for the Rams in a 15- year career. Every game. Fifteen years.

As a rookie Olsen was voted into the Pro Bowl. And in the winters that followed they never played a Pro Bowl without him for 14 consecutive years. Ten times he was selected a first- or second-team All-Pro. Merlin came to the Rams as one of their two first round draft choices in 1962.

He had the physical qualifications of the best-ever defensive tackles of the day, as evidenced by the fact that he won the Outland Trophy as a collegian at Utah State. But Merlin's true strength may have been the intelligence he used in each game.

1 During the off-season he earned a master's degree in economics. It was  
2 Olsen's hard luck to perform for many mediocre teams in Los Angeles - he  
3 never won a Super Bowl - but he had as much to do as any other individual  
4 with glamorizing defensive football in the NFL.

4 Following his retirement from professional football, Merlin Olsen went on to a career  
5 in television and the movies. The discovery that he has malignant mesothelioma -- a  
6 terminal asbestos cancer -- was a devastating surprise.

7 Beginning at the age of ten or eleven, Merlin Olsen worked after school and in the  
8 summers doing manual labor that exposed him to asbestos. During the summers of his  
9 high school and college years, Merlin Olsen worked full days in construction and manual  
10 labor jobs where he was exposed to asbestos. His exposures to asbestos continued later in  
11 his life when he was around workers working with asbestos drywall patching compounds.  
12 The investigation continues as to which asbestos products exposed Merlin Olsen to  
13 asbestos dust.

14 Asbestos dust released from construction and industrial products is invisible to the  
15 naked eye. During the time period that Merlin Olsen was exposed to asbestos, the  
16 manufacturers of asbestos products did not warn of the lethal hazards of breathing  
17 asbestos dust, despite the fact that these asbestos companies knew that breathing small  
18 amounts of asbestos dust could be fatal. When asbestos dust is breathed in, it can cause  
19 cancer fifty years later. Asbestos can cause many cancers, including lung cancer, laryngeal  
20 cancer, malignant mesothelioma of the pleura (the lining around the lungs),  
21 gastrointestinal cancers, and malignant mesothelioma of the peritoneum (the lining around  
22 the stomach). The scientific and regulatory agencies around the world are in unanimous  
23 consensus that all types of asbestos released from asbestos products cause cancer, and that  
24 there is no safe level of exposure to asbestos.

25 The dangers of breathing asbestos were first published in the medical literature in the  
26 1890's. By the late 1950's, there were hundreds of medical articles highlighting the  
27 dangers of being around asbestos dust. Confidential corporate documents from many of  
28 the named defendant companies reveal (i) that the dangers of asbestos were well

1 understood by the product manufacturers; (ii) that asbestos was cheaper to use in the  
2 products than replacement substances such as clay, and (iii) that the product  
3 manufacturing industry actively fought government regulation and the banning of  
4 asbestos. To this day industry has been successful in its lobbying efforts to keep asbestos  
5 legal in the United States. One of the few exceptions is asbestos drywall patching  
6 products which were banned in 1977 despite the strong efforts against the ban by some of  
7 the named defendants.

8 Merlin Olson is undergoing chemotherapy and intends to fight the asbestos cancer  
9 with all of his will and strength. In the average case, mesothelioma takes a patient's life  
10 within a year of diagnosis.

#### 11 STATEMENT OF COMPLEX LITIGATION

12 Because this is an asbestos cancer case, it is designated "complex" in Los Angeles  
13 County.

14 In this matter, MERLIN JAY OLSEN was diagnosed with mesothelioma on or about  
15 July 2009. Because of MERLIN JAY OLSEN's varied work history and the numerous  
16 asbestos products to which he is alleged to have been exposed, Plaintiffs have named  
17 numerous manufacturers of asbestos products and other defendants.

#### 18 GENERAL ALLEGATIONS

19 1. The true names and/or capacities, whether individual, corporate, associate,  
20 governmental, or otherwise, of Defendants, DOES 1 through 300, inclusive, are unknown  
21 to Plaintiffs at this time; who, therefore, sue said Defendants by such fictitious names; and  
22 when the true names and capacities of said Defendants have been ascertained, Plaintiffs  
23 will amend this complaint accordingly. Plaintiffs are informed and believe, and thereon  
24 allege that each Defendant designated herein as a DOE is responsible, negligently or in  
25 some other actionable manner, for the events and happenings hereinafter referred to, and  
26 caused injuries and damages proximately thereby to Plaintiffs, as hereinafter alleged,  
27 either through said Defendant's own conduct or through the conduct of its agents, servants  
28

1 or employees, or due to the ownership, lease or sale of the instrumentality causing the  
2 injury, or in some other manner.

3 2. Plaintiffs are informed and believe, and thereon allege that at all times  
4 mentioned herein, Defendants and each of them, were the agents, servants, employees  
5 and/or joint venturers of their co-Defendants and were, as such, acting within the scope,  
6 course, and authority of said agency, employment and/or joint venture, in that each and  
7 every Defendant, as aforesaid, when acting as a principal, was negligent in the selection  
8 and hiring of each and every other Defendant as the agent, servant, employee and/or joint  
9 venturer.

10 3. Plaintiff MERLIN JAY OLSEN and his wife SUSAN W. OLSEN are  
11 California residents.

12 4. Plaintiffs are informed and believe, and thereon allege, that at all times  
13 mentioned herein, Defendants ASBESTOS COMPANIES, BONDEX  
14 INTERNATIONAL, INC.; CERTAINTEEB CORPORATION; CERTAINTEEB  
15 CORPORATION, f/k/a Certainteed Corporation, individually and as successor-in-interest  
16 to Bestwall Gypsum Company; CRANE CO., individually and as successor in interest to  
17 Chapman Valves; GARLOCK SEALING TECHNOLOGIES, L.L.C., individually and as  
18 successor-in-interest to Garlock, Inc.; GEORGIA-PACIFIC, LLC; GEORGIA-PACIFIC,  
19 LLC, f/k/a Georgia-Pacific Corporation, individually and as successor-in-interest to  
20 Bestwall Gypsum Company; JOHN K. BICE CO., INC.; KAISER GYPSUM  
21 COMPANY, INC.; KELLY-MOORE PAINT COMPANY, INC.; KENTILE FLOORS,  
22 INC.; LENNOX INDUSTRIES, INC.; MECHANICAL DRIVES & BELTING (f/k/a L.A.  
23 Rubber Company); MORGRO, INC.; NBC UNIVERSAL, INC.; NBC STUDIOS, INC.;  
24 OWENS-ILLINOIS, INC. individually and as successor-in-interest to Owens-Illinois  
25 Glass Company and d/b/a O-I; PAX COMPANY; SCHULTZ COMPANY; SPECTRUM  
26 BRANDS, INC.; THE SCOTT'S COMPANY, LLC; THE SHERWIN WILLIAMS  
27 COMPANY; SURE-GRO, INC.; TWENTIETH CENTURY FOX FILM  
28 CORPORATION; UNION CARBIDE CORPORATION; UNITED INDUSTRIES

1 CORP.; UNITED GILSONITE LABORATORIES, INC.; ZURN INDUSTRIES, LLC.,  
2 f/k/a Zurn Industries, Inc., a/k/a and successor-by-merger to Erie City Iron Works and  
3 d/b/a "Keystone" branded products; and DOES 1 through 300, inclusive, are corporations  
4 organized and existing under and by virtue of the laws of the State of California, or the  
5 laws of some other state of the United States of America, or some foreign jurisdiction, and  
6 that said Defendants were authorized to do and are doing business in the State of  
7 California, and that said Defendants have regularly conducted business in the State of  
8 California.

9 5. At all times mentioned above, Defendants, and each of them, were engaged  
10 in the business of manufacturing, fabricating, designing, assembling, distributing, leasing,  
11 buying, selling, inspecting, servicing, installing, repairing, marketing, warranting, and  
12 advertising a certain substance, the generic name of which is asbestos, and other products  
13 containing said substance.

14 6. Plaintiff MERLIN JAY OLSEN was exposed to Defendants' asbestos and  
15 asbestos containing products contributing to and causing the development of  
16 mesothelioma. As a result of exposure to Defendants' asbestos and asbestos containing  
17 products, asbestos fibers entered his body. Plaintiff MERLIN JAY OLSEN suffers from  
18 mesothelioma and each of Defendants asbestos and asbestos containing products that  
19 entered his body was a substantial factor in bringing about, prolonging, or aggravating  
20 Plaintiff's mesothelioma. The asbestos and asbestos containing products that Plaintiff was  
21 exposed to were manufactured or supplied by a named defendant.

22 **FIRST CAUSE OF ACTION**

23 (Negligence)

24 (Against all Defendants)

25 7. Plaintiffs hereby incorporate by reference, as though fully set forth herein,  
26 each and every allegation contained in the General Allegations above.

27 8. At all times herein mentioned, each of the named Defendants and DOES 1  
28 through 300 was the successor, successor in business, successor in product line or a



1 portion thereof, assign, predecessor, predecessor in business, predecessor in product line  
 2 or a portion thereof, parent, subsidiary, wholly or partially owned by, or the whole or  
 3 partial owner of or member in an entity researching, studying, manufacturing, fabricating,  
 4 designing, modifying, labeling, assembling, distributing, leasing, buying, offering for sale,  
 5 supplying, selling, inspecting, servicing, installing, contracting for installation, repairing,  
 6 marketing, warranting, re-branding, manufacturing for others, packaging and advertising  
 7 as certain product, namely asbestos, and other products containing asbestos. Said entities  
 8 shall hereinafter collectively be called "Alternate Entities." Each of the herein named  
 9 Defendants is liable for the tortious conduct of each successor, successor in business,  
 10 successor in product line or a portion thereof, assign, predecessor in product line or a  
 11 portion thereof, parent, subsidiary, whole or partial owner, or wholly or partially owned  
 12 entity, or entity that it was a member of, or funded, that researched, studied, manufactured,  
 13 fabricated, designed, modified, labeled, assembled, distributed, leased, bought, offered for  
 14 sale, supplied, sold, inspected, serviced, installed, contracted for installation, repaired,  
 15 marketed, warranted, re-branded, manufactured for others and advertised a certain  
 16 product, namely asbestos, and other products containing asbestos. The following  
 17 Defendants, and each of them, are liable for the acts of each and every "Alternate Entity,"  
 18 and each of them, in that there has been a virtual destruction of Plaintiff's remedy against  
 19 each such "Alternate Entity;" Defendants, and each of them, have acquired the assets,  
 20 product line, or a portion thereof, of each such "Alternate Entity;" such "Alternate Entity;"  
 21 Defendants, and each of them, caused the destruction of Plaintiff's remedy against each  
 22 such "Alternate Entity;" each such Defendant has the ability to assume the risk-spreading  
 23 role of each such "Alternate Entity;" and that each such Defendant enjoys the goodwill  
 24 originally attached to each such "Alternate Entity."

DEFENDANT	ALTERNATE ENTITY
CERTAINTeed CORPORATION	f/k/a Certainteed Corporation, individually and as successor-in-interest to Bestwall Gypsum Company

1	GARLOCK SEALING TECHNOLOGIES, L.L.C.,	individually and as successor-in-interest to Garlock, Inc.
2	GEORGIA-PACIFIC, LLC	f/k/a Georgia-Pacific Corporation, individually and as successor-in-interest to Bestwall Gypsum Company
3	MECHANICAL DRIVES & BELTING	f/k/a L.A. Rubber Company
4	OWENS-ILLINOIS, INC.	(individually and as successor-in-interest to OWENS-ILLINOIS GLASS COMPANY and d/b/a O-I)
5	ZURN INDUSTRIES, LLC.	f/k/a Zurn Industries, Inc., a/k/a and successor-by-merger to Erie City Iron Works and d/b/a "Keystone" branded products;
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8		

9  
10 9. Defendants had a duty to use reasonable care in manufacturing their products  
11 and to warn the customer, user, or bystander that their products were dangerous and  
12 unsafe. At all times mentioned herein, Defendants, and each of them, negligently and  
13 carelessly researched, tested, manufactured, designed, developed, distributed, labeled,  
14 advertised, marketed, warranted, inspected, repaired, fabricated, modified, serviced, and  
15 sold a certain substance, the generic name of which is asbestos, and other products  
16 containing said substance, in that said substance was capable of causing and did, in fact,  
17 proximately cause personal injuries to users and consumers thereof while being used in  
18 manner reasonably foreseeable, thereby rendering said substance unsafe and dangerous for  
19 use by the consumer, users, or bystanders thereof, and others to whom Defendants owe a  
20 duty, including Plaintiff MERLIN JAY OLSEN.

21 10. Plaintiff MERLIN JAY OLSEN is a worker who has been exposed to the  
22 asbestos and asbestos products referred to in Paragraphs 5 and 6 above, in a manner that  
23 was reasonably foreseeable.

24 11. As a direct and proximate result of the above-referenced conduct of the  
25 Defendants, and each of them, as aforesaid, said exposure to said asbestos caused severe  
26 and permanent injury to Plaintiff's lungs and body, including, but not limited to the disease  
27 mesothelioma.  
28



1           12.    On or about July 2009 , Plaintiff MERLIN JAY OLSEN was advised that he  
2 has the asbestos-related disease, mesothelioma. Prior to that date, Plaintiff did not know,  
3 nor did he have reason to know, that he had contracted this disease related to his exposure  
4 to asbestos. Prior to said date, Plaintiff was not aware that exposure to asbestos presented  
5 any risk of injury and/or disease to him, and had not been advised or informed by anyone  
6 that he could contract, nor indeed did contract, any disease, sickness or injury as a result of  
7 working in the vicinity of asbestos.

8           13.    Plaintiff is informed and believes, and thereupon alleges, that mesothelioma  
9 is a vicious, painful and invariably fatal malignancy of the lining of the lung, stomach, or  
10 heart and that said disease results from exposure to asbestos and asbestos products over a  
11 period of time. There is no known cure for any form of malignant mesothelioma.

12           14.    As a direct and proximate result of the aforesaid conduct of the Defendants,  
13 and each of them, Plaintiff has suffered, and continues to suffer, severe and permanent  
14 injuries to his person, body and health, including, but not limited to, the disease  
15 mesothelioma, all to his general damage in a sum within the jurisdictional limits of this  
16 court.

17           15.    As a direct and proximate result of the aforesaid conduct of the Defendants,  
18 and each of them, Plaintiff was compelled to and did employ the services of hospitals,  
19 surgeons, physicians, nurses, and the like, to care for and treat him, and did incur medical,  
20 hospital and professional incidental expenses, and Plaintiff is informed and believes and  
21 thereupon alleges that by reason of said Plaintiff's injuries, he will necessarily incur  
22 additional like expenses for an indefinite period of time in the future, and when said  
23 amounts are ascertained, he will allege said amounts.

24           16.    The above-referenced conduct of said Defendants was and is willful,  
25 malicious, outrageous and/or in conscious disregard and indifference to the safety of users  
26 of said asbestos and asbestos products, including Plaintiff MERLIN JAY OLSEN.  
27 Defendants are guilty of oppression, fraud, or malice and engaged in conduct which was  
28 intended by the defendant to cause injury to the plaintiff or conduct which was carried on

1 by the defendant with a conscious disregard of the rights or safety of others. Defendants  
2 subjected Plaintiff to cruel and unjust hardship in conscious disregard of his rights and  
3 engaged in intentional misrepresentation, deceit, or concealment of a material fact known  
4 to the Defendants with the intention on the part of the Defendants of thereby depriving  
5 Plaintiff of property or legal rights or otherwise causing injury. Plaintiffs therefore, for the  
6 sake of example and by way of punishing Defendants, seek punitive damages, according  
7 to proof.

8 17. Plaintiffs further allege all of the foregoing portions of this cause of action  
9 specifically against those Defendants who supplied asbestos fibers (as pled against those  
10 Defendants who manufactured asbestos products), and any other asbestos fiber supplier or  
11 distributor to manufacturers of the asbestos-containing products to which Plaintiff was  
12 exposed, as well as any DOB Defendants who may be determined at a later date.

13 **SECOND CAUSE OF ACTION**

14 (Strict Liability)

15 (Against all Defendants)

16 18. Plaintiffs hereby incorporate by reference, as though fully set forth herein,  
17 each and every allegation contained in the First Cause of Action.

18 19. At all times mentioned herein, Defendants, and each of them, researched,  
19 manufactured, tested, designed, labeled, distributed, advertised, marketed, warranted,  
20 inspected, repaired, offered for sale, and sold a certain substance, the generic name of  
21 which is asbestos, and other products containing said substance which Defendants knew  
22 were to be used without inspection for defects and which substance contained design and  
23 manufacturing defects, in that same was capable of causing and did, in fact, cause personal  
24 injuries to the users, consumers, and bystanders while being used in a reasonably  
25 foreseeable manner, thereby rendering same unsafe and dangerous for use by the  
26 consumers, users, and bystanders.

1           20.    As a direct and proximate result of the above described conduct by  
2 Defendants and each of them, Plaintiff MERLIN JAY OLSEN suffered severe and  
3 permanent injuries to his person, as alleged hereinabove.

4           21.    At all times mentioned herein, the asbestos and products containing said  
5 substance discussed above failed to perform as safely as an ordinary consumer would  
6 expect when used in an intended or reasonably foreseeable manner, and the risk of danger  
7 inherent in this substance and products outweighs the benefits of said substance and  
8 products.

9           22.    At all times mentioned herein, the foreseeable use of the asbestos and  
10 products containing said substance discussed above involved a substantial danger not  
11 readily recognizable to an ordinary user, consumer, or bystander, but which danger was  
12 known or knowable to Defendants, and Defendants failed to adequately warn of the  
13 substantial danger.

14           23.    As a direct and proximate result of the above described conduct by  
15 Defendants and each of them, Plaintiff suffered severe and permanent injuries to his  
16 person, as alleged hereinabove.

17           24.    The above-referenced conduct of said Defendants was and is willful,  
18 malicious, outrageous and/or in conscious disregard and indifference to the safety of users  
19 of said asbestos and asbestos products, including Plaintiff. Defendants are guilty of  
20 oppression, fraud, or malice and engaged in conduct which was intended by the  
21 Defendants to cause injury to the plaintiff or conduct which was carried on by the  
22 defendant with a conscious disregard of the rights or safety of others. Defendants  
23 subjected Plaintiff to cruel and unjust hardship in conscious disregard of his rights and  
24 engaged in intentional misrepresentation, deceit, or concealment of a material fact known  
25 to the defendant with the intention on the part of the defendant of thereby depriving  
26 Plaintiff of property or legal rights or otherwise causing injury. Plaintiff therefore, for the  
27 sake of example and by way of punishing Defendants, seeks punitive damages, according  
28 to proof.

1       25. Plaintiffs further allege all of the foregoing portions of this cause of action  
2 specifically against those Defendants who supplied asbestos fibers (as pled against those  
3 Defendants who manufactured asbestos products), and any other asbestos fiber supplier or  
4 distributor to manufacturers of the asbestos-containing products to which Plaintiff was  
5 exposed, as well as any DOE Defendants who may be determined at a later date.

6                                   **THIRD CAUSE OF ACTION**

7                   (False Representation Under Restatement of Torts Section 402-B)

8                                   (Against All Defendants)

9       26. Plaintiffs hereby incorporate by reference, as though fully set forth herein,  
10 each and every allegation contained in the First through Second Causes of Action.

11       27. At the aforementioned time when Defendants, their "Alternate Entities," and  
12 each of them, researched, manufactured, fabricated, designed, modified, tested or failed to  
13 test, inadequately warned or failed to warn, labeled, assembled, distributed, leased,  
14 bought, offered for sale, supplied, sold, inspected, serviced, installed, contracted for  
15 installation, repaired, marketed, warranted, rebranded, manufactured for others, packaged  
16 and advertised the said asbestos and asbestos-containing products, as herein above set  
17 forth, the Defendants, their "Alternate Entities," and each of them, expressly and impliedly  
18 represented to members of the general public, including the purchasers and users of said  
19 product, and other "exposed persons," including the Plaintiff herein and his employers,  
20 that asbestos and asbestos-containing products, were of merchantable quality, and safe for  
21 the use for which they were intended.

22       28. The purchasers and users of said asbestos and asbestos-containing products,  
23 and other "exposed persons," including the Plaintiff and his employers, relied upon said  
24 representations of Defendants, their "Alternate Entities," and each of them, in the selection,  
25 purchase and use of asbestos and asbestos-containing products.

26       29. Said representations by Defendants, their "Alternate Entities," and each of  
27 them, were false and untrue, and Defendants knew at the time they were untrue, in that the  
28 asbestos and asbestos-containing products were not safe for their intended use, nor were

1 they of merchantable quality as represented by Defendants, their "Alternate Entities," and  
2 each of them, in that asbestos and asbestos-containing products have very dangerous  
3 properties and defects whereby said products cause asbestosis, other lung damages and  
4 cancer, and have other defects that cause injury and damage to the users of said products  
5 and other "exposed persons," thereby threatening the health and life of said persons  
6 including Plaintiff herein.

7 30. As a direct and proximate result of said false representations by Defendants,  
8 their "Alternate Entities," and each of them, the Plaintiffs sustained the injuries and  
9 damages herein above set forth.

10 31. The above-referenced conduct of said Defendant was and is willful,  
11 malicious, outrageous and/or in conscious disregard and indifference to the safety of users  
12 of said asbestos and asbestos products, including Plaintiff. Defendant is guilty of  
13 oppression, fraud, or malice and engaged in conduct which was intended by the defendant  
14 to cause injury to the plaintiff or conduct which was carried on by the defendant with a  
15 conscious disregard of the rights or safety of others. Defendant subjected Plaintiff to cruel  
16 and unjust hardship in conscious disregard of his rights and engaged in intentional  
17 misrepresentation, deceit, or concealment of a material fact known to the defendant with  
18 the intention on the part of the defendant of thereby depriving Plaintiff of property or legal  
19 rights or otherwise causing injury. Plaintiff therefore, for the sake of example and by way  
20 of punishing Defendant, seeks punitive damages, according to proof.

21 32. Plaintiffs further allege all of the foregoing portions of this cause of action  
22 specifically against those Defendants who supplied asbestos fibers (as pled against those  
23 Defendants who manufactured asbestos products), and any other asbestos fiber supplier or  
24 distributor to manufacturers of the asbestos-containing products to which Plaintiff was  
25 exposed, as well as any DOE Defendants who may be determined at a later date.

1 **FOURTH CAUSE OF ACTION**

2 (Breach of Warranty)

3 (Against all Defendants)

4 33. Plaintiffs hereby incorporate by reference, as though fully set forth herein,  
5 each and every allegation contained in the First through Fourth Causes of Action.

6 34. Defendants, and each of them, expressly and implicitly, warranted that said  
7 substance was reasonably fit for its intended use without endangering human life, and that  
8 such substance was of interchangeable quality.

9 35. Defendants and each of them breached the above described expressed and  
10 implied warranties in that said substance was defective, which defects permitted and/or  
11 caused said substance to seriously and permanently cause injury to Plaintiff MERLIN JAY  
12 OLSEN including, but not limited to, the disease mesothelioma and other lung damage,  
13 while said substance was used in a manner that was reasonably foreseeable.

14 36. As a direct and proximate result of the above described breaches of  
15 warranties by Defendants, and each of them, Plaintiff suffered severe and permanent  
16 injuries to his person, as alleged hereinabove in this complaint.

17 37. The above-referenced conduct of said Defendant was and is willful,  
18 malicious, outrageous and/or in conscious disregard and indifference to the safety of users  
19 of said asbestos and asbestos products, including Plaintiff. Defendant is guilty of  
20 oppression, fraud, or malice and engaged in conduct which was intended by the defendant  
21 to cause injury to the plaintiff or conduct which was carried on by the defendant with a  
22 conscious disregard of the rights or safety of others. Defendant subjected Plaintiff to cruel  
23 and unjust hardship in conscious disregard of his rights and engaged in intentional  
24 misrepresentation, deceit, or concealment of a material fact known to the defendant with  
25 the intention on the part of the defendant of thereby depriving Plaintiff of property or legal  
26 rights or otherwise causing injury. Plaintiff therefore, for the sake of example and by way  
27 of punishing Defendant, seeks punitive damages, according to proof.  
28



1 38. Plaintiffs further allege all of the foregoing portions of this cause of action  
2 specifically against those Defendants who supplied asbestos fibers (as pled against those  
3 Defendants who manufactured asbestos products), and any other asbestos fiber supplier or  
4 distributor to manufacturers of the asbestos-containing products to which Plaintiff was  
5 exposed, as well as any DOE Defendants who may be determined at a later date.  
6

7 **FIFTH CAUSE OF ACTION**

8 (Premises Owner/Contractor Liability)

9 (Against Premises and Contractor Defendants Only Listed on Exhibit "A")

10 39. Plaintiffs, by this reference, incorporate the allegations contained in the First  
11 through Fifth Causes of Action.

12 40. At all times mentioned herein, the Premises Owner/Contractor Liability  
13 Defendants, and each of them, respectively, owned, leased, maintained, managed, and/or  
14 controlled the premises listed on Exhibit "A" where Plaintiff was present. The  
15 information provided on Exhibit "A" is preliminary, based on recall over events covering  
16 many years and further investigation and discovery may produce more reliable  
17 information. Plaintiff was exposed to asbestos at the premises of these Defendants in the  
18 County of Los Angeles. Additionally, Plaintiff might have been present at these or other  
19 Premises Owner/Contractor Liability Defendants' premises at other locations and on other  
20 occasions.

21 41. Prior to and at said times and places, said Premises Owner/Contractor  
22 Liability Defendants, and each of them, respectively, caused certain asbestos-containing  
23 insulation, other building materials, products and toxic substances to be constructed,  
24 installed, maintained, used, supplied, replaced, repaired and/or removed on each of the  
25 aforesaid respective premises, by their own workers and/or by various contractors, and  
26 caused the release of dangerous quantities of toxic asbestos fibers and other toxic  
27 substances into the ambient air and thereby created a hazardous and unsafe condition to  
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1 Plaintiff and other persons exposed to said asbestos fibers and toxic substances while  
2 present at said premises.

3 42. At all times mentioned herein, said Premises Owner/Contractor Liability  
4 Defendants, and each of them, knew or in the exercise of ordinary and reasonable care  
5 should have known, that the foregoing conditions and activities created a dangerous,  
6 hazardous, and unsafe condition and unreasonable risk of harm and personal injury to  
7 Plaintiff and other workers or persons so exposed present on each of the aforesaid  
8 respective premises.

9 43. At all times relevant herein, Plaintiff entered said premises and used or  
10 occupied each of said respective premises as intended and for each of the respective  
11 Premises Owner/Contractor Liability Defendants' request and invitation. In so doing,  
12 Plaintiff was exposed to dangerous quantities of asbestos fibers and other toxic substances  
13 released into the ambient air by the aforesaid hazardous conditions and activities managed,  
14 maintained, initiated, and/or otherwise created, controlled, or caused by said Premises  
15 Owner/Contractor Liability Defendants, and each of them.

16 44. Plaintiff at all times was unaware of the hazardous condition or the risk of  
17 personal injury created by the aforesaid presence and use of asbestos products and  
18 materials and other toxic substances on said premises.

19 45. At all times mentioned herein, said Premises Owner/Contractor Liability  
20 Defendants, and each of them, remained in control of the premises where Plaintiff was  
21 performing his work.

22 46. At all times mentioned herein, the Premises Owner/Contractor Liability  
23 Defendants, owed to Plaintiffs and others similarly situated a duty to exercise ordinary  
24 care in the management of such premises in order to avoid exposing workers such as  
25 Plaintiff to an unreasonable risk of harm and to avoid causing injury to said person.

26 47. At all times mentioned herein, said Premises Owner/Contractor Liability  
27 Defendants, and each of them, negligently failed to maintain, manage, inspect, survey, or  
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1 control said premises or to abate or correct, or to warn Plaintiff of, the existence of the  
2 aforesaid dangerous conditions and hazards on said premises.

3 48. Prior to and at the times and places aforesaid, said Premises  
4 Owner/Contractor Liability Defendants, and each of them, respectively, caused certain  
5 asbestos-containing insulation, other building materials, products and toxic substances to  
6 be constructed, installed, maintained, used, replaced, repaired and/or removed on each of  
7 their aforesaid respective premises, by their own workers and/or by employing various  
8 contractors, and caused the release of dangerous quantities of toxic asbestos fibers and  
9 other toxic substances into the ambient air and thereby injured Plaintiff.

10 49. At all times mentioned herein, said Premises Owner/Contractor Liability  
11 Defendants, and each of them, should have recognized that the work of said contractors  
12 would create during the progress of the work, dangerous, hazardous, and unsafe conditions  
13 which could or would harm Plaintiff and others unless special precautions were taken.

14 50. In part, Plaintiff was exposed to dangerous quantities of asbestos fibers and  
15 other toxic substances by reason of such contractors' failure to take necessary precautions.

16 51. The work of contractors on premises controlled by the Premises  
17 Owner/Contractor Defendants created an unsafe premise and an unsafe work place by  
18 reason of the release of dangerous quantities of toxic substances including but not limited  
19 to asbestos.

20 52. The unsafe premise or work place was created, in part, by the negligent  
21 conduct of the contractors employed by the Premises Owner/Contractor Defendants. Said  
22 negligent conduct includes but is not limited to:

- 23 a. Failure to warn of asbestos and other toxic dusts;
- 24 b. Failure to suppress the asbestos-containing or toxic dusts;
- 25 c. Failure to remove the asbestos-containing and toxic dusts through the use of  
26 ventilation or appropriate means;
- 27 d. Failure to provide adequate breathing protection, i.e., approved respirators or  
28 masks;

1 e. Failure to inspect and/or test the air;

2 f. Failure to provide medical monitoring.

3 53. The Premises Owner/Contractor Defendants' duty to maintain and provide  
4 safe premises, a safe place to work, and to warn of dangerous conditions are non-  
5 delegable; said duties arise out of common law, Civil Code §1708, and Labor Code §6400,  
6 et seq., or Health & Safety Code §40200, et seq., and regulations promulgated thereunder.  
7 Therefore, the Premises Owner/Contractor Defendants are responsible for any breach of  
8 said duties whether by themselves or others.

9 54. Prior to and at said times and places, said Premises Owner/Contractor  
10 Liability Defendants were subject to certain ordinances, statutes, and other government  
11 regulations promulgated by the United States Government, the State of California, and  
12 others, including but not limited to the General Industry Safety Orders promulgated  
13 pursuant to California Labor Code §6400 and the California Administrative Code under  
14 the Division of Industrial Safety, Department of Industrial Relations, including but not  
15 limited to Title VIII, Group 9 (Control of Hazardous Substances), Article 81, §§4105,  
16 4106, 4107 and 4108, and Threshold Limit Values as documented for asbestos and other  
17 toxic substances under Appendix A, Table 1 of said Safety Orders; additionally, California  
18 Health & Safety Code §40200, et seq., which empowers the California Air Quality  
19 Management Districts to promulgate regulations covering emission standards for  
20 hazardous air pollutants. Such state and federal standards required said Premises  
21 Owner/Contractor Liability Defendants to provide specific safeguards or precautions to  
22 prevent or reduce the inhalation of asbestos dust and other toxic fumes or substances; and  
23 said Premises Owner/Contractor Liability Defendants failed to provide the required  
24 safeguards and precautions. Defendants' violations of said codes include but are not  
25 limited to:

26 (a) Failing to comply with statutes and allowing ambient levels of airborne  
27 asbestos fiber to exceed the permissible/allowable levels with regard to the  
28 aforementioned statutes;

- 1 (b) Failing to segregate work involving the release of asbestos or other toxic  
2 dusts;
- 3 (c) Failing to suppress dust using prescribed ventilation techniques;
- 4 (d) Failing to suppress dust using prescribed "wet down" techniques;
- 5 (e) Failing to warn or educate Plaintiff or others regarding asbestos or other toxic  
6 substances on the premises;
- 7 (f) Failing to provide approved respiratory protection devices;
- 8 (g) Failing to ensure "approved" respiratory protection devices were used  
9 properly;
- 10 (h) Failing to provide for an on-going health and screening program for those  
11 exposed to asbestos on the premises;
- 12 (i) Failing to provide adequate housekeeping and clean-up of the work place;
- 13 (j) Failing to properly warn of the hazards associated with asbestos as required  
14 by statute;
- 15 (k) Failing to properly report renovation and disturbance of asbestos-containing  
16 materials;
- 17 (l) Failing to have an asbestos removal supervisor as required by regulation;
- 18 (m) Failing to get approval for renovation as required by statutes; and
- 19 (n) Failing to maintain records as required by statute.

20 55. Premises Owner/Contractor Liability Defendants, and each of them, were the  
21 "statutory employer" of Plaintiff as defined by the California Labor Code and California  
22 case law.

23 56. Plaintiff at all times was unaware of the hazardous condition or the risk of  
24 personal injury created by Defendants' violation of said regulations, ordinances or statutes.

25 57. At all times mentioned herein, Plaintiff was a member of the class of persons  
26 whose safety was intended to be protected by the regulations, statutes or ordinances  
27 described in the foregoing paragraphs.  
28

1           58. At all times mentioned herein, said Premises Owner/Contractor Liability  
2 Defendants, and each of them, knew, or in the exercise of ordinary and reasonable care  
3 should have known, that the premises that were in their control would be used without  
4 knowledge of, or inspection for, defects or dangerous conditions, that the persons present  
5 and using said premises would not be aware of the aforesaid hazardous conditions to  
6 which they were exposed on the premises, and that such persons were unaware of the  
7 aforesaid violations of codes, regulations and statutes.

8           59. As a legal consequence of the foregoing, Plaintiff developed an asbestos-  
9 related illness - mesothelioma, which has caused great injury and disability as previously  
10 set forth, and Plaintiff has suffered damages as herein alleged.

11           60. The above-referenced conduct of said Defendant was and is willful,  
12 malicious, outrageous and/or in conscious disregard and indifference to the safety of users  
13 of said asbestos and asbestos products, including Plaintiff. Defendant is guilty of  
14 oppression, fraud, or malice and engaged in conduct which was intended by the defendant  
15 to cause injury to the plaintiff or conduct which was carried on by the defendant with a  
16 conscious disregard of the rights or safety of others. Defendant subjected Plaintiff to cruel  
17 and unjust hardship in conscious disregard of his rights and engaged in intentional  
18 misrepresentation, deceit, or concealment of a material fact known to the defendant with  
19 the intention on the part of the defendant of thereby depriving Plaintiff of property or legal  
20 rights or otherwise causing injury. Plaintiff therefore, for the sake of example and by way  
21 of punishing Defendant, seeks punitive damages, according to proof.

22  
23                           SIXTH CAUSE OF ACTION

24                                       (Loss of Consortium)

25                                       (Against All Defendants)

26  
27           61. Plaintiff's spouse incorporates by reference each and every paragraph of the  
28 First through Sixth Causes of Action herein.



1           62.    Plaintiffs MERLIN JAY OLSEN and SUSAN W. OLSEN were married at  
2 all times relevant to this action were, and are now, husband and wife.

3           63.    Prior to Plaintiff MERLIN JAY OLSEN's injuries as alleged, Plaintiff  
4 MERLIN JAY OLSEN was able and did perform duties as a spouse. Subsequent to the  
5 injuries and as a proximate result thereof, Plaintiff has been unable to perform the  
6 necessary duties as a spouse and the work and service usually performed in the care,  
7 maintenance and management of the family home, and Plaintiff will be unable to perform  
8 such work, service and duties in the future. As a proximate result thereof, Plaintiff's  
9 spouse SUSAN W. OLSEN has been permanently deprived and will be deprived of the  
10 consortium of her spouse, including the performance of duties, all to her damages, in an  
11 amount presently unknown to Plaintiffs but which will be proved at the time of trial.

12           64.    Further, as a direct and proximate result of the acts of Defendants, and each  
13 of them, and the severe injuries caused thereby to Plaintiff as set forth in this complaint,  
14 Plaintiff's spouse SUSAN W. OLSEN has suffered, and for a long period of time will  
15 continue to suffer loss of consortium, including but not by way of limitation, loss of  
16 services, marital relations, society, comfort, companionship, love and affection of said  
17 spouse, and has suffered severe mental and emotional distress as general nervousness as a  
18 result thereof.

19           65.    Discovery of the cause of Plaintiff's spouse SUSAN W. OLSEN's loss of  
20 consortium, as herein alleged, first occurred within one year of the date this complaint  
21 was filed.

22           WHEREFORE, Plaintiffs pray judgment against Defendants, and each of them in  
23 and amount to be proved at trial in each individual case, as follows:

- 24           1.    General damages according to proof;
- 25           2.    Damages for medical and related expenses, according to proof;
- 26           3.    Damages for loss of earning capacity, according to proof;
- 27           4.    Damages for loss of earnings, according to proof;
- 28           5.    Damages for Plaintiff's other economic losses, according to proof;

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- 6. Exemplary or punitive damages according to proof;
- 7. Plaintiff's spouse's damages for loss of consortium according to proof;
- 8. Prejudgment interest, according to proof;
- 9. Costs of suit incurred herein; and
- 10. Such other and further relief as this Court may deem just and proper, including costs and prejudgment interest as provided in C.C.P. §998, C.C.P. §1032 and related provisions of law.

DATED: December 31, 2009

BARON & BUDD, P.C

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MERLIN JAY OLSEN and  
SUSAN W. OLSEN