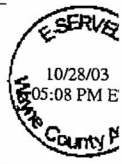




Answer to Master Complaint No. 22



ASBESTOS DOCKET

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

*, Personal Representative
of the Estate of *, Deceased,

Plaintiffs,

Case No. -NP

-vs-

HON. ROBERT J. COLOMBO, JR.

*

Defendants.

*Plaintiff Attorney

*Defendant Attorney

DEFENDANTS' STANDARD ANSWER TO PLAINTIFFS'
MASTER COMPLAINT — DECEASED PLAINTIFF

STANDARD ANSWER NO. 22

NOW COMES Defendant(s) by and through their respective counsel, pursuant to Order No. 14 (Case Management Order) of November 21, 2003, state for their Standard Answer to Plaintiffs' Master Complaint (Deceased Plaintiff) as follows:

VENUE

1. Defendants neither admit nor deny the allegations contained in Paragraph 1 because they lack knowledge or information sufficient to form a belief regarding the truth thereof.

2. Defendants neither admit nor deny the allegations and legal conclusions contained in Paragraph 2 because they lack knowledge or information sufficient to form a belief regarding the truth thereof.



JURISDICTION

3. Defendants deny as untrue the allegations and legal conclusions contained in Paragraph 3.

4. Defendants neither admit nor deny the allegations contained in Paragraph 4 because they lack knowledge or information sufficient to form a belief regarding the truth thereof.

5. Defendants neither admit nor deny the allegation contained in Paragraph 5, stating in support thereof that no response is required.

COUNT I

NEGLIGENCE

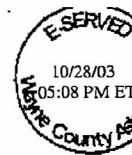
6. Defendants hereby incorporate and adopt by reference their responses to the allegations of all Counts of the Master Complaint as if fully set forth herein.

7. Defendants deny as untrue the allegations contained in Paragraph 7, in the form and manner stated therein.

8. Defendants neither admit nor deny the allegations contained in Paragraph 8 because they lack knowledge or information sufficient to form a belief regarding the truth thereof.

9. Defendants deny as untrue the allegations contained in Paragraph 9.

10. Defendants admit only those duties imposed by law and deny as untrue any allegations contained in Paragraph 10 that are inconsistent with the foregoing.



11. Defendants deny as untrue the allegations and legal conclusions contained in Paragraph 11, including subparagraphs (a) through (o), inclusive.

12. Defendants deny as untrue the allegations and legal conclusions contained in Paragraph 12.

13. Defendants neither admit nor deny the allegations contained in Paragraph 13 because they lack knowledge or information sufficient to form a belief regarding the truth thereof.

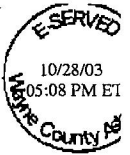
14. Defendants neither admit nor deny the allegations contained in Paragraph 14 because they lack knowledge or information sufficient to form a belief regarding the truth thereof.

15. Defendants neither admit nor deny the allegations contained in Paragraph 15 because they lack knowledge or information sufficient to form a belief regarding the truth thereof.

16. Defendants neither admit nor deny the allegations contained in Paragraph 16 because they lack knowledge or information sufficient to form a belief regarding the truth thereof.

17. Defendants neither admit nor deny the allegations contained in Paragraph 17 because they lack knowledge or information sufficient to form a belief regarding the truth thereof.

18. Defendants neither admit nor deny the allegations contained in Paragraph 18 because they lack knowledge or



information sufficient to form a belief regarding the truth thereof.

19. Defendants deny as untrue the allegations contained in Paragraph 19.

20. Defendants deny as untrue the allegations and legal conclusions contained in Paragraph 20.

COUNT II

CONCERT OF ACTION

21. Defendants hereby incorporate and adopt by reference their responses to the allegations of all Counts of the Master Complaint as if fully set forth herein.

22. Defendants deny as untrue the allegations contained in Paragraph 22.

23. Defendants neither admit nor deny the allegations contained in Paragraph 23 because they lack knowledge or information sufficient to form a belief regarding the truth thereof.

24. Defendants deny as untrue the allegations contained in Paragraph 24.

25. Defendants deny as untrue the allegations and legal conclusions contained in Paragraph 25.

26. Defendants deny as untrue the allegations and legal conclusions contained in Paragraph 26.

27. Defendants deny as untrue the allegations and legal conclusions contained in Paragraph 27.

COUNT III

CONSPIRACY

28. Defendants hereby incorporate and adopt by reference their responses to the allegations of all Counts of the Master Complaint as if fully set forth herein.

29. Defendants deny as untrue the allegations contained in Paragraph 29.

30. Defendants deny as untrue the allegations contained in Paragraph 30.

31. Defendants deny as untrue the allegations contained in Paragraph 31.

32. Defendants deny as untrue the allegations contained in Paragraph 32.

33. Defendants deny as untrue the allegations contained in Paragraph 33.

34. Defendants deny as untrue the allegations contained in Paragraph 34.

35. Defendants deny as untrue the allegations and legal conclusions contained in Paragraph 35.

36. Defendants deny as untrue the allegations and legal conclusions contained in Paragraph 36.

COUNT IV

ALTERNATIVE LIABILITY

37. Defendants hereby incorporate and adopt by reference their responses to the allegations of all Counts of the Master Complaint as if fully set forth herein.

38. Defendants deny as untrue the allegations contained in Paragraph 38.

39. Defendants deny as untrue the allegations contained in Paragraph 39.

40. Defendants neither admit nor deny the allegations contained in Paragraph 40 because they lack knowledge or information sufficient to form a belief regarding the truth thereof.

41. Defendants deny as untrue the allegations contained in Paragraph 41.

42. Defendants deny as untrue the allegations and legal conclusions contained in Paragraph 42.

43. Defendants deny as untrue the allegations and legal conclusions contained in Paragraph 43.

COUNT V

ENTERPRISE LIABILITY

44. Defendants hereby incorporate and adopt by reference their responses to the allegations of all Counts of the Master Complaint as if fully set forth herein.

45. Defendants deny as untrue the allegations contained in Paragraph 45.

46. Defendants neither admit nor deny the allegations contained in Paragraph 46 because they lack knowledge or information sufficient to form a belief regarding the truth thereof.



47. Defendants deny as untrue the allegations and legal conclusions contained in Paragraph 47.

48. Defendants deny as untrue the allegations contained in Paragraph 48, in the form and manner stated therein.

49. Defendants deny as untrue the allegations and legal conclusions contained in Paragraph 49.

50. Defendants deny as untrue the allegations and legal conclusions contained in Paragraph 50.

COUNT VI

STRICT LIABILITY

51. Defendants hereby incorporate and adopt by reference their responses to the allegations of all Counts of the Master Complaint as if fully set forth herein.

52. Defendants deny as untrue the allegations contained in Paragraph 52, in the form and manner stated therein.

53. Defendants deny as untrue the allegations contained in Paragraph 53.

54. Defendants deny as untrue the allegations and legal conclusions contained in Paragraph 54.

55. Defendants deny as untrue the allegations and legal conclusions contained in Paragraph 55.

56. Defendants deny as untrue the allegations and legal conclusions contained in Paragraph 56.

57. Defendants deny as untrue the allegations and legal conclusions contained in Paragraph 57.



COUNT VII

WARRANTY

58. Defendants hereby incorporate and adopt by reference their responses to the allegations of all Counts of the Master Complaint as if fully set forth herein.

59. Defendants admit only those duties imposed by law and deny as untrue any allegations contained in Paragraph 59, including sub-paragraphs (a) through (h), inclusive, that are inconsistent with the foregoing.

60. Defendants deny as untrue the allegations contained in Paragraph 60, including sub-paragraphs (a) through (o), inclusive.

61. Defendants deny as untrue the allegations and legal conclusions contained in Paragraph 61.

62. Defendants deny as untrue the allegations contained in Paragraph 62.

COUNT VIII

WILLFUL AND WANTON MISCONDUCT/INTENTIONAL TORT

63. Defendants hereby incorporate and adopt by reference their responses to the allegations of all Counts of the Master Complaint as if fully set forth herein.

64. Defendants neither admit nor deny the allegations contained in Paragraph 64 because they lack knowledge or information sufficient to form a belief regarding the truth thereof.

65. Defendants deny the allegations as untrue.



66. Defendants deny the allegations as untrue.

67. Defendants deny the allegations as untrue.

68. Defendants aver that it was guided by and strictly observed all of its legal duties and obligations imposed by operation of law and otherwise and that all of the actions of any of its agents, servants and employees were careful, prudent, proper and lawful.

69. Defendants deny the allegations as untrue.

70. Defendants deny the allegations as untrue.

71. Defendants deny the allegations as untrue.

72. Defendants neither admit nor deny the allegations contained in Paragraph 72 because they lack knowledge or information sufficient to form a belief regarding the truth thereof.

73. Defendants neither admit nor deny the allegations contained in Paragraph 73 because they lack knowledge or information sufficient to form a belief regarding the truth thereof.

74. Defendants neither admit nor deny the allegations contained in Paragraph 74 because they lack knowledge or information sufficient to form a belief regarding the truth thereof.

75. Defendants deny the allegations as untrue.

WHEREFORE, Defendants request a judgment of no cause of action, together with their respective costs, disbursements and attorneys' fees.



**DEFENDANTS STANDARD AFFIRMATIVE
AND SEPARATE DEFENSES**

Defendants, by their respective counsel, submit the following standard affirmative and separate defenses to Plaintiffs' Master Complaint, and state as follows:

1. Plaintiffs' Complaint fails to state a claim upon which relief can be granted, and Defendants are entitled to a dismissal as a matter of law.

2. Plaintiffs' alleged claims are barred, in whole or in part, by the applicable statute of limitations.

3. If Plaintiffs sustained injuries or incurred expenses, the same were caused, in whole or in part, by the acts or omissions of another or others, whose conduct Defendants had no reason to anticipate and for whose conduct Defendants were and are not responsible.

4. Plaintiffs' alleged injuries and/or damages were caused or contributed to, in whole or in part, by Plaintiffs' own negligence and/or misuse of the materials and products described in Plaintiffs' Complaint, thus barring, in whole or in part, Plaintiffs' attempted recovery.

5. Defendants, either individually or collectively, may file a motion to dismiss based on the doctrine of forum non conveniens or a deferred motion for change of venue promptly after completing the discovery necessary for the Court to consider such a motion.

6. Pursuant to the Order No. 1 (Case Management Order) of September 24, 1993, Defendants hereby give notice of their intent to rely on such other and further affirmative and



separate defenses identified in a "Notice of Answer" or similar document filed by each Defendant.

7. Defendants hereby give notice of their intent to rely on such other and further affirmative and separate defenses as may appear applicable through discovery proceedings in this cause and hereby reserve the right to amend their pleadings to reflect any such defenses.

8. All claims of the Plaintiffs are barred by legal and equitable estoppel.

9. The Plaintiffs have waived, released and forfeited any and all claims they might have had against these Defendants.

10. Any damages allegedly suffered by the Plaintiffs were caused by supervening and/or intervening causes for which this Defendant is not responsible.

11. Plaintiffs are barred from maintaining this lawsuit because this Defendant will not be able to obtain a fair trial due to untrue adverse publicity generated in the community at large.

12. Any damages allegedly suffered by Plaintiffs were caused by their own negligence or the negligence of their employees, representatives or agents in whole or in part, or were contributed to by the culpable conduct, contributory negligence and want of care on the part of the Plaintiffs and without any negligence; fault, or want of care on the part of this Defendant.

13. Plaintiffs' claims based upon allegations express or implied warranty are barred because the Plaintiffs were never



in privity with the Defendant.

14. Plaintiffs' claims based upon allegations of expense or implied warranty are barred for failure of the Plaintiffs to give this Defendant timely notice.

15. Plaintiffs' claims are based upon allegations of express or implied warranty because no sale of goods to the Plaintiffs occurred.

16. This Defendant is not liable for punitive damages in that:

- (a) Punitive damages require willfulness and are therefore akin to a personal tort; accordingly, they cannot be assessed against an alleged successor in interest on the basis of the actions or inactions of the alleged predecessor;
- (b) Punitive damages are in the nature of a criminal fine and there can be no double jeopardy; the punitive damages issue has been raised against this Defendant in several jurisdictions and has failed;
- (c) Punitive damages are unconstitutional;
- (d) Plaintiffs' claims for punitive damages violate the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States of America and the constitution of the various States;
- (e) It is a violation of Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and the constitutions of the various States to impose punitive damages, which are penal in nature, against a civil defendant upon the plaintiffs' satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden which is required in criminal cases;

- (f) It is a violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States and the constitution of the various States to award punitive damages which may result in joint and several judgments against multiple defendants for different alleged acts of wrongdoing;
- (g) It is a violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution and the constitutions of the various States to award punitive damages which are devoid of a procedure or specific standards to provide a reasonable limit on the amount of the award;
- (h) It is a violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and the constitutions of the various States to allow and award punitive damages which result in the imposition of different penalties for the same and similar acts; and
- (i) It is a violation of the Due Process Clause of the Fifth, Eighth and Fourteenth Amendment and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution to permit the imposition of punitive damages in excess of the maximum criminal fine.

17. At all times pertinent hereto, the state of medical, scientific and industrial knowledge were such that this Defendant neither knew, nor had reason to know, that any products for which it is responsible presented a foreseeable risk of harm to the occupants of Plaintiffs' premises in the normal and expected use of said products.

18. Plaintiffs had knowledge of the purported health risk associated with asbestos exposure but had not undertaken to

present any claim against this Defendant and therefore are barred and estopped from asserting any claim.

19. Plaintiffs have failed to mitigate damages.

20. Plaintiffs have failed to take adequate steps and precautions for the safe use of the asbestos-containing products and thereby have abused and misused the products. Such abuse and misuse constitute the sole proximate cause or intervening or superseding cause of the Plaintiffs' alleged damages.

21. The Plaintiffs have failed to allege the physical harm required under the applicable law for recovery in tort.

22. There is no case or controversy because Plaintiffs' claims for damages have not accrued and are purely speculative, uncertain and contingent. Plaintiffs seek an advisory opinion as to hypothetical damage.

23. At all times pertinent, asbestos-containing products allegedly attributable to this Defendant were in compliance with all health and safety statutes and regulations applicable to the manufacture, sale and use of said products.

24. The Plaintiffs' claims are barred as a matter of public policy inasmuch as the social utility and public benefit of the asbestos-containing products outweigh any alleged risks of those products.

25. Plaintiffs are not entitled to recover any damages for any economic loss.

26. Plaintiffs have failed to join as Defendants one or more persons or entities needed for just adjudication of



matters in controversy.

27. Plaintiffs have failed to join indispensable and/or necessary parties to this lawsuit and have failed to plead a reason for such nonjoinder.

28. Plaintiffs assumed the risk of damages.

29. This Court lacks venue over the parties in this matter.

30. Plaintiffs and their agents were the proximate cause of all the harm that is described in Plaintiffs' Complaint.

31. The Plaintiffs' allegations of misrepresentation and/or fraud are not adequately pled with sufficient particularity, pursuant to applicable statutes.

WHEREFORE, Defendants request a judgment of no cause of action, together with their respective costs, disbursements and attorneys' fees.

DEMAND FOR JURY TRIAL

Defendants hereby demand trial by jury of all issues so triable as contained in Plaintiffs' Master Complaint.

*Defendants Attorney

Dated: _____