

EXHIBIT A

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

FILED

JUN 16 2017

CLERK OF CIRCUIT COURT #11
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

DUANE SHIRLEY)
Individually and as Independent)
Administrator of the Estate of)
Theresa Shirley, deceased,)
)
Plaintiff,)

Case No. 17-L-693

vs.)
)
)

RUST-OLEUM CORPORATION,)

Serve:)
Prentice Hall Corporation)
801 Adlai Stevenson Drive)
Springfield, IL 62703)

JURY TRIAL DEMANDED

TURTLE WAX, INC.,)

Serve:)
National Registered Agents, Inc.)
208 S. LaSalle St., Ste. 814)
Chicago, IL 60606)

SHELL OIL COMPANY, a/k/a SHELL OIL)
PRODUCTS US, SHELL CHEMICAL LP,)
f/k/a Shell Chemical Company,)

Serve:)
CT Corporation System)
208 So. LaSalle St., Ste. 814)
Chicago, IL 60604)

BP PRODUCTS NORTH AMERICA, INC.)

Serve: Prentice Hall Corporation)
33 North LaSalle St.)
Chicago, IL 60602)

CONOCOPHILLIPS COMPANY,)
)
Serve:)
)
United States Corporation Co.)
801 Adlai Stevenson Drive)
Springfield, Illinois 62703)
)
WRB REFINING, LLC)
)
Serve:)
)
Illinois Corp. Service Co.)
801 Adlai Stevenson Drive)
Springfield, Illinois 62703)
)
)
URS CORPORATION)
)
Serve:)
)
)
CT Corporation System)
208 S. LaSalle Street, Suite 814)
Chicago, Illinois 60604)
)
)
DAVOL, INC.)
)
Serve:)
)
)
CT Corporation System)
10 Weybosset Street)
Providence, Rhode Island 02903)
)
)
C.R. BARD)
)
Serve:)
)
Jean F. Holloway)
730 Central Avenue,)
Murray Hill, New Jersey 07974)
)
)
Defendants/Respondents in Discovery.)
)

FIRST AMENDED COMPLAINT

COMES NOW Plaintiff Duane Shirley (hereinafter "Mr. Shirley"), Individually and as Independent Administrator of the Estate of Teresa Shirley, by and through the undersigned counsel, and for his Complaint against defendants Rust-Oleum Corporation (hereinafter "Rust-Oleum"), Turtle Wax, Inc. (hereinafter "Turtlewax"), Shell Oil Company a/k/a Shell Oil Products US, Shell Chemical LP, f/k/a Shell Chemical Company (hereinafter "Shell"), BP Products North America, Inc. (hereinafter "BP"), ConocoPhillips Company (hereinafter "ConocoPhillips"), WRB REFINING, LLC (hereinafter "WRB"), URS Corporation (hereinafter "URS"), John Does 1-50 (hereinafter "DOES"), (Shell, BP, ConocoPhillips, Turtle Wax and Rust-Oleum are referred to collectively as the "Benzene Defendants"), C.R. BARD (hereinafter "BARD"), and DAVOL INC. (hereinafter "DAVOL") and states as follows:

ALLEGATIONS COMMON TO ALL COUNTS

1. The Plaintiff, Mr. Shirley is a resident of East Alton, located in Madison County, State of Illinois and a citizen of the State of Illinois.
2. The Plaintiff is the duly appointed Special Administrator of the Estate of Theresa Shirley, Deceased, pursuant to an Order of the Circuit Court of the Third Judicial Circuit, Madison County, Illinois.
3. The Plaintiff, Mr. Shirley, is the surviving spouse of the Decedent, Theresa Shirley.
4. Plaintiff brings this action pursuant to 740 ILCS 180 and 755 ILCS 5/27-6,
5. Defendant, Rust-Oleum is an Illinois corporation, organized and existing pursuant to Illinois law and doing business in Madison County, Illinois.

6. Defendant, Turtle Wax, is an Illinois corporation, organized and existing pursuant to Illinois law and doing business in Madison County, Illinois.

7. Defendant, Shell is a Delaware corporation, in good standing, and doing business in the State of Illinois. Defendant Shell (and/or its corporate predecessors and/or subsidiaries) owned and/or operated the Wood River Refinery located at 900 S. Central Avenue in Roxana, Illinois, from approximately 1917 through 2000.

8. BP is a Texas corporation, in good standing, with its headquarters and principal place of business in the State of Illinois; defendant BP is the successor in interest to Standard Oil Company, Amoco Corporation, BP Amoco Corporation, BP Amoco Chemical Company, and Atlantic Richfield Company. Defendant BP (and/or its corporate predecessors and/or subsidiaries) owned and/or operated a refinery located at S. Old St. Louis Road in Wood River, Illinois, from approximately 1917 through 1981. Prior to 1970 and through the present day, defendant BP operates a marketing terminal and storage facility at the same location.

9. ConocoPhillips is a corporation organized and existing under Delaware law that is authorized to do business in Illinois, which at relevant times has operated an oil refinery and associated facilities and pipelines in Madison County, Illinois. Starting in and around July 2000, ConocoPhillips acquired the Wood River Refinery from Shell and operated it as managing member of WRB Refining, LLC for a substantial period of time.

10. WRB is a limited liability company organized and existing under Delaware law that is authorized to do business in Illinois, which at relevant times has operated an oil refinery and associated facilities and pipelines in Madison County, Illinois. WRB is, at this time, named as a respondent in discovery only under 735 ILCS 5/2-402 because on information and belief Plaintiffs believe that WRB is an entity created by Shell that has owned and/or operated the Shell

refinery since ConocoPhillips' acquisition of it, and that likely possesses information and/or documents relevant to Plaintiffs' claims against the defendants named herein.

11. URS is a corporation organized and existing under Nevada law that is authorized to do business in Illinois, which has at relevant times conducted its business as an engineering and environmental testing and remediation firm in Madison County, Illinois. URS is, at this time, named as a Respondent in Discovery only under 735 ILCS 5/2-402 because on information and belief Plaintiffs are informed that URS has and is conducting testing and various other environmental, engineering and/or other services related to Shell's remediation and other investigation of the Benzene Plume, and possibly other hydrocarbon leaks or spills affecting Roxana and Plaintiff more particularly.

12. Shell, BP, ConocoPhillips, DOES, Turtle Wax and Rust-Oleum herein collectively referred to as "Benzene Defendants".

13. The respective refineries and terminals owned and/or operated by Shell, BP and ConocoPhillips are hereinafter collectively referred to as the "Wood River Facilities."

14. C.R. BARD, INC., (hereinafter "BARD") is a corporation based out of New Jersey that conducts business in Illinois. Defendant conducts substantial business and is subject to personal jurisdiction in Madison County, Illinois. BARD is the corporate parent/stockholder of DAVOL and participates in the manufacture and distribution of the Ventralex Hernia Patch. It also manufactures and supplies DAVOL with materials that forms parts of the Ventralex Hernia Patch.

15. Defendant DAVOL, Inc. (hereinafter "DAVOL") is a corporation that is incorporated under the laws of the State of Rhode Island. DAVOL manufactures the Ventralex

Hernia Patch. DAVOL focuses its business on products in key surgical specialties, including hernia repair, hemostasis, orthopedics and laparoscopy.

16. The Defendant DOES are individuals or entities who, on information and belief, were or are other entities that may have caused, or contributed to cause, decedent, Theresa Shirley's (hereinafter "Mrs. Shirley") contraction of Multiple Myeloma from benzene exposure through their products or operations within the State of Illinois or are parent companies, affiliates, subsidiaries, successors in interest, employees, contractors, sub-contractors or other agents of the named Benzene Defendants, or their respective predecessors in interest.

17. This Court has personal jurisdiction over all defendants pursuant to 735 ILCS 5/2-209(a)(1-3), in that each cause of action arises from the transaction of business in the State of Illinois, the commission of tortious acts in the State of Illinois, and/or the ownership, use or possession of real estate situated in the State of Illinois. Additionally, Defendant DAVOL marketed and sold its Ventralex Hernia Patch product in the State of Illinois. BARD owns and operates DAVOL, and exercises control over the DAVOL division that designed and manufactured the Ventralex Hernia Patch and that marketed and sold the product in the State of Illinois.

18. Venue is proper in Madison County, Illinois because one or more Defendants have done and are doing business in Madison County, and because part of the acts and omissions underlying Plaintiff's claims occurred in Madison County.

A. Facts Relevant to Benzene Exposure

19. Theresa Shirley lived at 1306 Main Street, South Roxana, Illinois 62087 from approximately 1963 through 1971. Theresa Shirley attended Roxana Public Schools from Grade

6 through 12 at 401 Chaffer Ave., Roxana, Illinois 62084. Both of these locations are in close proximity to the Wood River Facilities.

20. While Mrs. Shirley resided, stayed, and/or went to school near the Wood River Facilities, defendants processed, handled, stored, and/or otherwise utilized benzene and other benzene-containing pollutants at the Wood River Facilities. Benzene is a highly toxic chemical and is classified as a human carcinogen. Benzene exposure has been linked to certain blood cancers, including Multiple Myeloma.

21. At all relevant times, the Benzene Defendants knew or should have known that:
- a. Benzene and benzene-containing pollutants are highly toxic;
 - b. Benzene and benzene-containing pollutants should not be emitted, leaked, spilled, dumped, and otherwise discharged into the air and surface/ground water; and
 - c. If benzene and benzene-containing pollutants are released into the environment, sufficient warnings must be provided and effective remedial measures must be taken.

22. Despite having the knowledge referenced above, Shell, BP and ConocoPhillips negligently constructed, maintained, managed, and/or operated the Wood River Facilities, causing thousands of pounds of benzene and other benzene-containing pollutants to be negligently and intentionally emitted, leaked, spilled, dumped, and otherwise discharged into the air and surface/ground water. The release of benzene from the Wood River Facilities occurred throughout the time of their operation, causing a plume of benzene-containing pollutants to extend beyond the boundaries of the Wood River Facilities and into the adjoining neighborhoods and community.

23. While decedent resided, stayed, and/or went near the Wood River Facilities, and while she used products manufactured by Defendants containing benzene, she was exposed to and inhaled, ingested, or otherwise absorbed benzene which was emitted, leaked, spilled, dumped, and otherwise discharged into the air and surface/ground water, by Shell, BP and ConocoPhillips.

24. Later in her life, the Decedent, Mrs. Shirley, worked for various employers, at various locations throughout Illinois including, but not limited to, working as a school recess monitor and bus driver for the East Alton Public Schools in Illinois.

25. During the course of Mrs. Shirley's work, including her work as a school bus driver, decedent was exposed to and inhaled, ingested or otherwise absorbed benzene and/or benzene fumes emanating from benzene and certain benzene-containing and/or benzene-related materials and products she was working with and around, which were processed, produced, manufactured, sold, distributed, marketed, and/or otherwise used by Benzene Defendants.

26. In approximately 2009, The Decedent, Mrs. Shirley, was first diagnosed with Multiple Myeloma.

27. On or about November 20, 2016, Mrs. Shirley died and her death was caused in whole or in part by Multiple Myeloma which was caused, or contributed to be caused by benzene exposure from products processed, manufactured, marketed, distributed, processed, handled, stored, and/or otherwise utilized by the Benzene Defendants.

B. Facts Relevant to Ventralex Hernia Patch

28. Decedent suffered from complications following the use of a Bard Ventralex Hernia Patch.

29. On or about May 26, 2010, the Decedent, THERESA SHIRLEY, underwent surgery at Alton Memorial Hospital in Madison County, Illinois, to insert a Bard Ventralex Hernia Patch for the repair of an incisional ventral hernia.

30. The Bard Ventralex Hernia Patch was designed, manufactured, packaged, labeled, marketed, sold and distributed by Defendants BARD and DAVOL.

31. On or about May 19, 2015, Mrs. Shirley had abdominal pain, nausea and vomiting and she was admitted to Alton Memorial hospital the next day. Over the next few months, the abdominal pain continued.

32. On or about August 28, 2015, the Decedent, THERESA SHIRLEY was diagnosed with infected hernia mesh and doctors determined that the Ventralex Hernia Patch needed to be removed.

33. On or about September 10, 2015, THERESA SHIRLEY underwent surgery to remove an infected hernia mesh, including a transverse colon resection and a small bowel resection because the hernia mesh was densely adhered to plaintiff's colon and small intestine.

34. On or about November 20, 2016, Decedent, THERESA SHIRLEY, died and her death was caused in whole or in part by complications from the infected hernia mesh which was caused, or contributed to be caused, by the Ventralex Hernia Patch manufactured and distributed by Defendants BARD and DAVOL.

35. As The Decedent, Mrs. Shirley's surviving spouse and next of kin, the beneficiaries of this cause of action are as follows: Duane Shirley, Chris Shirley, Kyle Shirley and Craig Shirley.

36. Plaintiff disclaims any claim for relief or any portion of the injuries sustained upon a federal enclave or as a result of the malfeasance of any persons acting as a federal

officer. Plaintiff alleges no claim arising under the maritime law of the United States or arising under any other law of the United States of America or its Constitution. One or more Defendants are citizens of the State of Illinois and this action is not properly removable on any theory or jurisdictional basis.

COUNT I
WRONGFUL DEATH
AGAINST BENZENE DEFENDANTS

COMES NOW the Plaintiff, Mr. Shirley, Individually, and as Special Administrator of the Estate of Theresa Shirley, by his attorneys, The Dysart Law Firm, P.C., and for his cause of action against the Benzene Defendants, states:

37. Plaintiff incorporates by reference all paragraphs of this complaint as if fully referenced herein.

38. At all relevant times in Illinois there existed a Wrongful Death Act, statutorily set forth at 740 ILCS 180/0.01, *et seq.*

39. At all times herein set forth, the Benzene Defendants' benzene, materials and/or products were being employed in the manner and for the purposes for which they were intended and/or in a manner reasonably foreseeable and anticipated by the Benzene Defendants.

40. The Decedent's exposure to and inhalation, ingestion or absorption of the benzene and benzene fumes emanating from benzene and certain benzene-containing and/or benzene-related materials and products were completely foreseeable and could or should have been anticipated by the Benzene Defendants.

41. The Benzene Defendants knew or should have known that the benzene contained in their materials, and/or products had a toxic, poisonous, and highly deleterious effect upon the health of persons inhaling, ingesting or otherwise absorbing it.

42. At all relevant times the Benzene Defendants owed a duty to the public, including Mrs. Shirley, to exercise reasonable care and caution for the safety of those working with and around benzene and/or benzene-containing materials and/or products of the Benzene Defendants.

43. The Benzene Defendants breached the duty they owed to the Decedent by including benzene in their products, failing to provide adequate warnings to persons working with or around their benzene materials and/or products, failing to provide adequate instructions concerning safe methods of working with and around benzene materials and/or products, and failing to conduct tests on said benzene materials and/or products in order to determine the hazards to persons such as decedent.

44. As a direct and proximate result of the Benzene Defendants' breach, Mrs. Shirley was exposed to, inhaled, ingested and/or absorbed benzene and developed multiple myeloma resulting in her death.

45. As a further result, the next of kin of the decedent have suffered great losses of a personal and pecuniary nature, including loss of companionship and society of the decedent, as well as grief, sorrow, and mental suffering subjecting the Benzene Defendants to liability.

WHEREFORE, Plaintiff, Mr. Shirley as Special Administrator of the Estate of Mrs. Shirley prays this Court to enter judgment in his favor and against these Defendants, jointly and severally, to award compensatory damages in excess of \$50,000 and costs incurred prosecuting this matter, and to grant such other and further relief as this Court deems appropriate.

COUNT II
WRONGFUL DEATH – ENVIRONMENTAL EXPOSURE
AGAINST SHELL, BP AND CONOCOPHILLIPS

COMES NOW the Plaintiff, Mr. Shirley, Individually, and as Special Administrator of the Estate of Theresa Shirley, by his attorneys, The Dysart Law Firm, P.C., and for his cause of action against Shell, BP and ConocoPhillips, states:

46. Plaintiff incorporates by reference all paragraphs of this complaint as if fully referenced herein.

47. At all relevant times in Illinois there existed a Wrongful Death Act, statutorily set forth at 740 ILCS 180/0.01, *et seq.*

48. While Defendants Shell, BP and ConocoPhillips owned and/or operated the Wood River Facilities, and during the time the Decedent resided, stayed, and/or went to school near the Wood River Facilities, thousands of pounds of benzene and other benzene-containing pollutants were emitted, leaked, spilled, dumped, and otherwise discharged into the air and surface/ground water.

49. Defendants Shell, BP and ConocoPhillips knew or should have known that benzene had a toxic, poisonous, and highly deleterious effect upon the health of the persons inhaling, ingesting, or otherwise absorbing the benzene, such as Mrs. Shirley.

50. At all relevant times, defendants Shell, BP and ConocoPhillips had a duty to exercise reasonable care and caution for the safety, health and welfare of Mrs. Shirley and others living in close proximity to the Wood River Facilities where benzene was being used, processed, stored and transported.

51. Defendants Shell, BP and ConocoPhillips breached their duty and failed to exercise ordinary care in one or more of the following respects:

- a. Defendants Shell, BP and ConocoPhillips included benzene in their products and processes, even though it was reasonably foreseeable that persons such as Mrs. Shirley living in close proximity to the Wood River Facilities would inhale, ingest, or otherwise absorb the carcinogen;
- b. Defendants Shell, BP and ConocoPhillips included benzene in their products and processes at the Wood River Facilities while defendants knew or should have known that the benzene would have a toxic, poisonous, and highly deleterious effect upon the health of persons ingesting or otherwise absorbing the carcinogen;
- c. Defendants Shell, BP and ConocoPhillips included benzene in their products and processes when adequate substitutes for the carcinogen were available;
- d. Defendants Shell, BP and ConocoPhillips failed to sufficiently test, monitor, and research the human health effects of benzene and benzene-containing products or processes on residents living in close proximity to where benzene was being used; when defendants knew or should have known that benzene would have a toxic, poisonous and highly deleterious effect upon the health of persons inhaling, ingesting, or otherwise absorbing the carcinogen;
- e. Defendants Shell, BP and ConocoPhillips failed to sufficiently test, monitor, research, and maintain data and records concerning residents and

- those in close proximity to the Wood River Facilities regarding the human health effects of benzene and benzene-containing products or processes, to determine and better understand the hazards to which such residents would be exposed while living and going near said products and processes;
- f. Defendants Shell, BP and ConocoPhillips failed to alert or warn Mrs. Shirley and other persons living in close proximity to the Wood River Facilities of the likelihood of benzene contamination in the air and water;
 - g. Defendants Shell, BP and ConocoPhillips failed to provide sufficient warnings to Mrs. Shirley and other persons living and going in close proximity to the Wood River Facilities concerning the dangers of inhaling, ingesting, or otherwise absorbing benzene;
 - h. Defendants Shell, BP and ConocoPhillips failed to recommend sufficient engineering controls or safeguards to reduce and/or eliminate benzene exposure to Mrs. Shirley and other persons living or going in close proximity to the Wood River Facilities;
 - i. Defendants Shell, BP and ConocoPhillips failed to recall and/or cease using benzene and benzene-containing products and processes which they had designed, manufactured, sold, distributed, or were currently using at the Wood River Facilities. Defendants failed to take reasonable and prompt action to contain and/or clean up benzene and benzene-containing pollutants that had been released into the environment; and
 - j. Defendants Shell, BP and ConocoPhillips failed to comply with state and federal regulations regarding the handling, storage, and/or removal of

benzene and benzene-containing pollutants, including being cited numerous times for violating Illinois and United States environmental protection laws for releases of benzene and other dangerous chemicals.

- k. Defendants Shell, BP and ConocoPhillips knew or should have known about the presence of pollutants such as benzene that were released into the air, and spilled, leaked, or dumped into the ground, and discharged into the surface/ground water, and they failed to take necessary steps to prevent such carcinogenic pollutants from leaving the borders of their premises;
- l. Defendants Shell, BP and ConocoPhillips failed to properly maintain their benzene storage facilities, petroleum storage facilities, benzene pipelines, and petrochemical pipelines so as to prevent the leaking or release of benzene into the ground, ground water and air in and around the Wood River Facilities.
- m. Defendants Shell, BP and ConocoPhillips failed to properly clean up or otherwise address any spills or leaks of benzene or petrochemicals and petroleum containing benzene to prevent these substances from moving through the air, ground, and ground water in and around the Wood River Facilities.

52. As a direct and proximate result of the carelessness and negligence of defendants Shell, BP and ConocoPhillips, Mrs. Shirley was cumulatively exposed to benzene and developed Multiple Myeloma.

53. As a further result, the next of kin of the decedent have suffered great losses of a personal and pecuniary nature, including loss of companionship and society of the decedent, as well as grief, sorrow, and mental suffering subjecting the Benzene Defendants to liability.

WHEREFORE, Plaintiff, Mr. Shirley as Special Administrator of the Estate of Mrs. Shirley prays this Court to enter judgment in his favor and against Defendants Shell, BP and ConocoPhillips, jointly and severally, to award compensatory damages in excess of \$50,000 and costs incurred prosecuting this matter, and to grant such other and further relief as this Court deems appropriate.

COUNT III
SURVIVAL ACTION
AGAINST BENZENE DEFENDANTS

COMES NOW the Plaintiff, Mr. Shirley, Individually, and as Special Administrator of the Estate of Mrs. Shirley, by his attorneys, The Dysart Law Firm, P.C., and for his cause of action against the Benzene Defendants, states:

54. Plaintiff incorporates by reference all paragraphs of this complaint as if fully referenced herein.

55. In addition to the recovery for wrongful death explained above, according to the survival statute, Mr. Shirley may recover for any claim that Mrs. Shirley may have had against the Benzene Defendants had death not ensued. Accordingly, plaintiff brings this survival action claim.

56. As a direct and proximate result of the aforementioned acts of the Benzene Defendants, the Plaintiff's decedent, Mrs. Shirley, suffered serious injuries of a personal nature, including but not limited to, was compelled to expend and became liable for monies for hospital, medical and other health care services necessary for the treatment of her benzene

related disease and conditions and to alleviate the pain, suffering, mental anguish and physical disability caused by her injury; she experienced great physical pain and mental anguish as a result of said exposure, inhalation, ingestion and absorption. Mrs. Shirley was hindered and prevented from pursuing her normal course of employment, thereby losing large sums of money which otherwise would have accrued to her, subjecting the Benzene Defendants to liability pursuant to 755 ILCS 5/27-6, commonly referred to as the Survival Statute.

WHEREFORE, Plaintiff, Mr. Shirley as Special Administrator of the Estate of Mrs. Shirley prays this Court to enter judgment in his favor and against these Benzene Defendants, jointly and severally, to award compensatory damages in excess of \$50,000 and costs incurred prosecuting this matter, and to grant such other and further relief as this Court deems appropriate.

COUNT IV
STRICT LIABILITY
AGAINST BENZENE DEFENDANTS

COMES NOW the Plaintiff, Mr. Shirley, Individually, and as Special Administrator of the Estate of Mrs. Shirley, by his attorneys, The Dysart Law Firm, P.C., and for his cause of action against the Benzene Defendants, states:

57. Plaintiff incorporates by reference all paragraphs of this complaint as if fully referenced herein.

58. The Benzene Defendants processed, produced, manufactured, sold, distributed, and marketed certain benzene-containing and benzene-related products with which Plaintiff Mrs. Shirley came into contact.

59. At the time the Benzene Defendants processed, produced, manufactured, sold, distributed, marketed, and/or otherwise used benzene and certain benzene-containing and/or benzene-related materials and products to which Decedent Mrs. Shirley was exposed, said products were in a defective condition and were unreasonably dangerous in that:

- a. They contained benzene, a toxin and human carcinogen, although suitable alternatives were available;
- b. They were not accompanied by any adequate warnings to persons working with and around said benzene, materials and/or products of the dangers of inhaling, ingesting or otherwise absorbing benzene;
- c. They were not accompanied by any adequate instructions concerning proper methods for working with and around said benzene, materials and/or products, including specific instructions on how to avoid inhaling, ingesting or otherwise absorbing benzene.

60. Said benzene and certain benzene-containing and/or benzene-related materials and products reached the point of Decedent's exposure in substantially the same condition as when processed, produced, manufactured, sold, distributed, marketed, and/or otherwise used by the Benzene Defendants. In other words, the unreasonably dangerous condition of the materials and products existed when the materials and products left the Benzene Defendants' control.

61. During the course of Decedent's employment at the locations mentioned above and elsewhere, during non-occupational work projects (including, but not limited to, home and automotive repairs, maintenance and remodeling) and/or in other ways, the Decedent was exposed to and inhaled, ingested or otherwise absorbed benzene fumes emanating from benzene and certain benzene-containing materials and products the Decedent was working with and

around, which were processed, produced, manufactured, sold, distributed, marketed and/or otherwise used by the Benzene Defendants.

62. At all times relevant hereto, said benzene and certain benzene-containing and/or benzene-related materials and products were used in the manner and environment intended, and in a manner reasonably foreseeable and anticipated by Benzene Defendants.

63. The Decedent, Mrs. Shirley, as an ordinary user of said benzene, materials and/or products was not aware of the hazards of benzene.

64. That as a direct and proximate result of the unreasonably dangerous condition of the Benzene Defendants' benzene, materials and/or products, The Decedent was exposed to and inhaled, ingested or otherwise absorbed benzene in sufficient amounts to cause disease and/or other harm.

65. As a direct and proximate result of said exposure, inhalation, ingestion and/or absorption, the Decedent developed multiple myeloma. The Decedent was compelled to expend and became liable for large sums of monies for hospital, medical and other health care services necessary for the treatment of her benzene related disease and conditions and to alleviate the pain, suffering, mental anguish and physical pain and mental anguish as a result of said exposure, inhalation, ingestion and absorption; that as a further result of her benzene-induced disease and conditions, that Decedent experienced a shortened life span and ultimately death. The Decedent was hindered and prevented from pursuing her normal course of employment, thereby losing large sums of money which otherwise would have accrued to her.

WHEREFORE, Plaintiff, Mr. Shirley, as Special Administrator of the Estate of Mrs. Shirley prays this Court to enter judgment in his favor and against these Defendants, jointly

and severally, to award compensatory damages in excess of \$50,000 and costs incurred prosecuting this matter, and to grant such other and further relief as this Court deems appropriate.

COUNT V
NEGLIGENCE
AGAINST BENZENE DEFENDANTS

COMES NOW the Plaintiff, Mr. Shirley, Individually, and as Special Administrator of the Estate of Mrs. Shirley, by his attorneys, the Dysart Law Firm, P.C. and for his cause of action against the Benzene Defendants, states:

66. Plaintiff incorporates by reference all paragraphs of this complaint as if fully referenced herein.

67. At all times relevant, the Benzene Defendants had a duty to exercise reasonable care and caution for the safety of Decedent Mrs. Shirley and others working with and around benzene and/or benzene-containing materials and/or products of the Benzene Defendants.

68. At all times herein set forth, the Benzene Defendants' benzene, materials and/or products were being employed in the manner and for the purposes for which they were intended and/or in a manner reasonably foreseeable and anticipated by Benzene Defendants.

69. The Decedent's exposure to and inhalation, ingestion or absorption of the benzene and benzene fumes emanating from the same were completely foreseeable and could or should have been anticipated by the Benzene Defendants.

70. The Benzene Defendants knew or should have known that the benzene contained in their benzene, materials, and/or products had a toxic, poisonous, and highly

deleterious effect upon the health of persons inhaling, ingesting or otherwise absorbing it.

71. The Benzene Defendants breached their duty to Plaintiff in that they failed to exercise ordinary care and caution for the safety of the Plaintiff in one or more of the following respects:

- a. Included benzene in their materials and/or products, even though it was completely foreseeable and could or should have been anticipated that persons such as the Decedent working with or around them would inhale, ingest or otherwise absorb benzene;
- b. Included benzene in their materials and/or products when the Benzene Defendants knew or should have known that said benzene would have a toxic, poisonous and highly deleterious effect upon the health of persons inhaling, ingesting or otherwise absorbing it;
- c. Included benzene in their materials and/or products when adequate substitutes were available;
- d. Failed to provide any or adequate warnings to persons working with and around their benzene, materials and/or products of the dangers of inhaling, ingesting or otherwise absorbing benzene;
- e. Failed to provide any or adequate instructions concerning the safe methods of working with and around the benzene, materials and/or products, including specific instructions on how to avoid inhaling, ingesting or otherwise absorbing benzene; and
- f. Failed to conduct tests on said benzene, materials and/or products in

order to determine the hazards to which persons such as the Decedent might be exposed while working with and around the same.

72. That as a direct and proximate result of the unreasonably dangerous condition of Benzene Defendants' benzene, materials and/or products, the Decedent was exposed to and inhaled, ingested or otherwise absorbed benzene in sufficient amounts to cause disease and/or other harm.

73. As a direct and proximate result of said exposure, inhalation, ingestion and/or absorption, the Decedent developed multiple myeloma. The Decedent was compelled to expend and become liable for large sums of monies for hospital, medical and other health care services necessary for the treatment of her benzene related disease and conditions and to alleviate the pain, suffering, mental anguish and physical disability caused by his injury; the Decedent experienced great physical pain and mental anguish as a result of said exposure, inhalation, ingestion and absorption; that as a further result of her benzene-induced disease and conditions, the Decedent was hindered and prevented from pursuing her normal course of employment, thereby losing large sums of money which otherwise would have accrued to her.

WHEREFORE, Plaintiff, Mr. Shirley, as Special Administrator of the Estate of Mrs. Shirley, deceased, prays this Court to enter judgment in his favor and against these Benzene Defendants, jointly and severally, to award compensatory damages in excess of \$50,000 and costs incurred prosecuting this matter, and to grant such other and further relief as this Court deems appropriate.

COUNT VI
NEGLIGENCE
AGAINST SHELL, BP AND CONOCOPHILLIPS

COMES NOW the Plaintiff, Mr. Shirley, Individually, and as Special Administrator of the Estate of Theresa Shirley, by his attorneys, The Dysart Law Firm, P.C., and for his cause of action against Shell, BP and ConocoPhillips states:

74. Plaintiff incorporates by reference all paragraphs of this complaint as if fully referenced herein.

75. While Defendants Shell, BP and ConocoPhillips owned and/or operated the Wood River Facilities, and during the time the Decedent resided, stayed, and/or went near the Wood River Facilities, thousands of pounds of benzene and other benzene-containing pollutants were emitted, leaked, spilled, dumped, and otherwise discharged into the air and surface/ground water.

76. Defendants Shell, BP and ConocoPhillips knew or should have known that benzene had a toxic, poisonous, and highly deleterious effect upon the health of the persons inhaling, ingesting, or otherwise absorbing the benzene, such as Mrs. Shirley.

77. At all relevant times, defendants Shell, BP and ConocoPhillips had a duty to exercise reasonable care and caution for the safety, health and welfare of Mrs. Shirley and others living in close proximity to the Wood River Facilities where benzene was being used, processed, stored and transported.

78. Defendants Shell, BP and ConocoPhillips breached their duty and failed to exercise ordinary care in one or more of the following respects:

- a. Defendants Shell, BP and ConocoPhillips included benzene in their products and processes, even though it was reasonably foreseeable that persons such as Mrs. Shirley living in close proximity to the Wood River Facilities would inhale, ingest, or otherwise absorb the carcinogen;

- b. Defendants Shell, BP and ConocoPhillips included benzene in their products and processes at the Wood River Facilities while defendants knew or should have known that the benzene would have a toxic, poisonous, and highly deleterious effect upon the health of persons ingesting or otherwise absorbing the carcinogen;
- c. Defendants Shell, BP and ConocoPhillips included benzene in their products and processes when adequate substitutes for the carcinogen were available;
- d. Defendants Shell, BP and ConocoPhillips failed to sufficiently test, monitor, and research the human health effects of benzene and benzene-containing products or processes on residents living in close proximity to where benzene was being used; when defendants knew or should have known that benzene would have a toxic, poisonous and highly deleterious effect upon the health of persons inhaling, ingesting, or otherwise absorbing the carcinogen;
- e. Defendants Shell, BP and ConocoPhillips failed to sufficiently test, monitor, research, and maintain data and records concerning residents and those in close proximity to the Wood River Facilities regarding the human health effects of benzene and benzene-containing products or processes, to determine and better understand the hazards to which such residents would be exposed while living and going near said products and processes;

- f. Defendants Shell, BP and ConocoPhillips failed to alert or warn Mrs. Shirley and other persons living in close proximity to the Wood River Facilities of the likelihood of benzene contamination in the air and water;
- g. Defendants Shell, BP and ConocoPhillips failed to provide sufficient warnings to Mrs. Shirley and other persons living and going in close proximity to the Wood River Facilities concerning the dangers of inhaling, ingesting, or otherwise absorbing benzene;
- h. Defendants Shell, BP and ConocoPhillips failed to recommend sufficient engineering controls or safeguards to reduce and/or eliminate benzene exposure to Mrs. Shirley and other persons living or going in close proximity to the Wood River Facilities;
- i. Defendants Shell, BP and ConocoPhillips failed to recall and/or cease using benzene and benzene-containing products and processes which they had designed, manufactured, sold, distributed, or were currently using at the Wood River Facilities. Defendants Shell, BP and ConocoPhillips failed to take reasonable and prompt action to contain and/or clean up benzene and benzene-containing pollutants that had been released into the environment; and
- j. Defendants Shell, BP and ConocoPhillips failed to comply with state and federal regulations regarding the handling, storage, and/or removal of benzene and benzene-containing pollutants, including being cited numerous times for violating Illinois and United States environmental protection laws for releases of benzene and other dangerous chemicals.

- k. Defendants Shell, BP and ConocoPhillips knew or should have known about the presence of pollutants such as benzene that were released into the air, and spilled, leaked, or dumped into the ground, and discharged into the surface/ground water, and they failed to take necessary steps to prevent such carcinogenic pollutants from leaving the borders of their premises;
- l. Defendants Shell, BP and ConocoPhillips failed to properly maintain their benzene storage facilities, petroleum storage facilities, benzene pipelines, and petrochemical pipelines so as to prevent the leaking or release of benzene into the ground, ground water and air in and around the Wood River Facilities.
- m. Defendants Shell, BP and ConocoPhillips failed to properly clean up or otherwise address any spills or leaks of benzene or petrochemicals and petroleum containing benzene to prevent these substances from moving through the air, ground, and ground water in and around the Wood River Facilities.

79. As a direct and proximate result of the carelessness and negligence of defendants, Mrs. Shirley was cumulatively exposed to benzene and developed Multiple Myeloma.

80. As a further result, the next of kin of the decedent have suffered great losses of a personal and pecuniary nature, including loss of companionship and society of the decedent, as well as grief, sorrow, and mental suffering subjecting the Benzene Defendants to liability.

WHEREFORE, Plaintiff, Mr. Shirley as Special Administrator of the Estate of Mrs. Shirley, prays this Court to enter judgment in his favor and against Defendants Shell, BP and ConocoPhillips, jointly and severally, to award compensatory damages in excess of \$50,000

and costs incurred prosecuting this matter, and to grant such other and further relief as this Court deems appropriate.

COUNT VII
WILFUL AND WANTON MISCONDUCT
AGAINST BENZENE DEFENDANTS

COMES NOW the Plaintiff, Mr. Shirley, Individually, and as Special Administrator of the Estate of Mrs. Shirley, by his attorneys, The Dysart Law Firm, P.C., and for his cause of action against the Benzene Defendants, states:

81. Plaintiff incorporates by reference all paragraphs of this complaint as if fully referenced herein.

82. The Benzene Defendants had a duty to Decedent to refrain from willful and wanton acts or omissions that would harm the Decedent.

83. The Benzene Defendants' conduct described in the counts above show complete indifference to or conscious disregard for the safety of others amounting to willful and wanton misconduct in that Benzene Defendants failed to exercise ordinary care when a known and extraordinary danger, namely benzene, was imminent or, Benzene Defendants through recklessness, regardless to the danger of another, carelessly failed to discover the extraordinary and impending danger of benzene and would have discovered it through the exercise of ordinary care.

84. The Benzene Defendants breached their respective duties to Decedent and engaged in one or more of the following acts or omissions amounting to willful and wanton misconduct:

- a. Intentionally or with reckless disregard for the safety of Decedent, included benzene in their materials and/or products, even though

- they knew that persons such as the Decedent working with or around the same would inhale, ingest or otherwise absorb benzene;
- b. Intentionally or with reckless disregard for the safety of Decedent, included benzene in their materials and/or products when they knew that the benzene would have a toxic, poisonous and highly deleterious effect upon the health of persons inhaling, ingesting or otherwise absorbing them;
 - c. Intentionally or with reckless disregard for the safety of Decedent, included benzene in their materials and/or products when they knew adequate substitutes were available;
 - d. Intentionally or with reckless disregard for the safety of Decedent, failed to provide any or adequate warnings to persons working with and around the benzene, materials and/or products of the dangers of inhaling, ingesting or otherwise absorbing benzene;
 - e. Intentionally or with reckless disregard for the safety of Decedent, failed to provide any or adequate instructions concerning the safe methods of working with and around benzene and benzene-containing materials and/or products, including specific instructions on how to avoid inhaling, ingesting or otherwise absorbing the benzene in them;
 - f. Intentionally or with reckless disregard for the safety of the Decedent, failed to conduct tests on their benzene and benzene containing materials and/or products in order to determine the

hazards to which persons such as the Decedent might be exposed while working with and around the same; and,

- g. Intentionally or with reckless disregard for the safety of Decedent, suppressed knowledge and information of the hazards of benzene.

85. The Benzene Defendants knew that their acts and omissions created a substantial risk that persons such as the Decedent would suffer illness as a result and, therefore, carried out the same with complete indifference to, and/or conscious disregard for, the life, health and welfare of Plaintiff.

86. That as a direct and proximate result of the foregoing willful and/or wanton acts or omissions on the part of the Benzene Defendants mentioned above, Decedent was exposed to and inhaled, ingested or otherwise absorbed benzene in sufficient amounts to cause disease and/or other harm.

87. As a direct and proximate result of said exposure, inhalation, ingestion and/or absorption, Decedent developed multiple myeloma; she was compelled to expend and become liable for large sums of monies for hospital, medical and other health care services necessary for the treatment of her benzene related disease and conditions and to alleviate the pain, suffering, mental anguish and physical disability caused by her injury; she experienced great physical pain and mental anguish as a result of said exposure, inhalation, ingestion and absorption; that as a further result of her benzene-induced disease and conditions, she was hindered and prevented from pursuing her normal course of employment, thereby losing large sums of money which otherwise would have accrued to her.

WHEREFORE, Plaintiff, Mr. Shirley, as Special Administrator of the Estate of Mrs. Shirley, deceased, prays this Court to enter judgment in his favor and against these

Defendants, jointly and severally, to award compensatory damages in excess of \$50,000 and costs incurred prosecuting this matter, and to grant such other and further relief as this Court deems appropriate.

COUNT VIII
WILLFUL AND WANTON CONDUCT
AGAINST SHELL, BP AND CONOCOPHILLIPS

88. Plaintiff alleges and incorporates herein each and every allegation set forth above.

89. While defendants Shell, BP and ConocoPhillips owned and/or operated the Wood River Facilities, and during the time Mrs. Shirley resided, stayed, or went near the Wood River Facilities, thousands of pounds of benzene and other benzene-containing pollutants were emitted, leaked, spilled, dumped, and otherwise discharged into the air and surface/ground water.

90. Defendants Shell, BP and ConocoPhillips knew or should have known that benzene had a toxic, poisonous, and highly deleterious effect upon the health of the persons inhaling, ingesting, or otherwise absorbing the benzene, such as Mrs Shirley. Defendants Shell, BP and ConocoPhillips acted in wanton or reckless disregard for Mrs. Shirley when they allowed their dangerous products to contaminate the people and property in and around the Wood River Facilities.

91. Defendants Shell, BP and ConocoPhillips acted in wanton and reckless disregard because each exhibited a conscious disregard of a known risk – i.e. that their conduct resulted in the spilling and leaking of an enormous amount of benzene and petroleum products into the air, ground, and ground water of a populated area. Moreover, defendants each had actual knowledge that such conduct posed a high probability of a known risk to the people living in and around their Wood River Facilities.

92. Defendants Shell, BP and ConocoPhillips acted in a willful and wanton manner with reckless disregard for the health and safety of Mrs. Shirley in one or more of the following respects:

- a. Defendants released toxic chemicals into the air, ground, and ground water in and around the Wood River Facilities and did nothing to clean up the toxic chemicals, including benzene.
- b. Among the toxic chemicals released by defendants, the Illinois EPA documented the release of 8,400 gallons of pure Benzene in 1986 from an underground pipeline that extended from the Wood River Refinery in Roxana, Illinois to a barge loading facility on the Mississippi River. Another Illinois EPA documented release of pure benzene occurred in February 1986. These documented benzene releases occurred near the intersection of Rand Avenue and Central Street in Roxana.
- c. In addition to the documented benzene releases, the Illinois EPA has also discovered hydrocarbon contamination that has been leaking from the Wood River Facilities into the subsurface soils along the boundaries of the refinery and into the surrounding residential neighborhood and community.
- d. Defendants Shell, BP and Conoco Phillips have known about the dangers of benzene for decades. Scientists began raising concerns about the toxic effects of benzene exposure in the early 1900s. In 1948, the American Petroleum Institute published a toxicological review for its members on

benzene stating that it is generally considered that the only absolutely safe concentration for benzene is zero.

- e. Defendant Shell also became aware of the dangers of benzene because of an excess rate of leukemia discovered at its Wood River Refinery. In and around 1979 Shell compiled a list of leukemia cases of its past employees at all of its U.S. refineries. Shell's Wood River Refinery was the site of the largest number of leukemia deaths. In 1980, Shell calculated it had a statistically significant number of leukemia deaths at its Wood River Refinery. Despite Shell's knowledge of the dangers posed by benzene exposure, it publicly minimized and hid the dangers. For instance, in 1983 Shell issued an employee communication stating that its own studies indicated statistically significant numbers of leukemia cases at the Wood River Refinery. The letter went on to state, however, that Shell saw no reason to conclude that a leukemia risk currently exists at any of its refinery locations including its Wood River Refinery. In September of 1983, the Director of the National Institute for Occupational Safety and Health criticized this letter, stating that studies show that even low levels of benzene exposure cause leukemia and that the letter to Shell's employees is misleading.
- f. Most recently, in May 2010, the Illinois Department of Health ("IDPH") sent a letter to the Illinois EPA, which states that a report dated February 2010, prepared for Shell by its contractor URS and posted on the Roxana Investigation website for the citizens of Roxana to read, set forth

misleading conclusions and recommendations regarding the dangers posed by benzene and other toxic chemicals in the ground water under Roxana. Specifically, the IEPA “strongly disagreed” with the Shell URS posting on the Website, which stated the soil vapors do not pose a risk to the residents of Roxana. Instead, the IEPA stated “[i]n the shallow vapor samples (5 to 10 feet deep) the elevated benzene and hexane concentrations at this site are of great concern when considering potential residential exposure at this site.” The letter goes on to state “[t]here is good reason to expect benzene and hexane vapors may be entering homes in Roxana based on the levels detected in the shallow soil gas (5 to 10 feet deep), the vapor monitoring points being located in a residential area, and the shallow depth of the more permeable sand unit.”

- g. Defendant Shell has known, or should have known, about the dangers posed by benzene vapors entering homes, schools, and other property since it and its affiliate corporations and subsidiaries performed studies concerning vapor intrusion in the 1980s. Since the 1980s, Shell has known or should have known, that vapor contaminants can migrate up through the soil and eventually come into contact with the substructure of homes, schools, and workplaces, exposing the occupants to known cancer causing chemicals for extended periods of time.
- h. Despite Shell’s knowledge of the cancer causing nature of benzene, and despite its knowledge that vapor intrusion poses a significant danger of exposing individuals in and around Wood River Facilities to benzene

vapors, Shell did nothing to clean up the benzene and other hydrocarbons in the Roxana ground water for decades.

- i. The Illinois EPA and the U.S. EPA have cited defendant Shell for numerous environmental violations for its operations at the Wood River Refinery in Roxana, Illinois. Most recently, in May 2008, Shell is known to have violated the Illinois Environmental Protection Act 41 times by exceeding the standards for the release of benzene, ethylbenzene, toluene, and xylene into the ground water of Roxana, Illinois.
- j. Defendant Shell's history of environmental violation at its Wood River Refinery in Roxana, Illinois previously led to the Illinois Attorney General's office filing suit against Shell in the late 1980s over repeated spills of gasoline and benzene, including a 290,000 gallon spill of unleaded gasoline in the late 1980s from a ruptured pipeline.
- k. Shell's Wood River Refinery is also responsible for the largest spill of crude oil in Missouri history when, on Christmas Eve 1988, 840,000 gallons of crude oil escaped into the Gasconade River near Vienna, Missouri when a pipeline running from the Wood River Refinery in Roxana, Illinois to Cushing, Oklahoma ruptured.
- l. In September of 1998 Shell agreed to pay the U.S. Government \$11.5 million for committing more than 100 environmental violations at its Wood River Refinery including numerous violations of the airborne emissions standards for benzene.

93. As a direct and proximate result of the willful, wanton, and reckless conduct of defendants Shell, BP and Conoco Phillips, Mrs. Shirley was cumulatively exposed to benzene and developed Multiple Myeloma.

94. As a direct and proximate result of defendant Shell, BP and Conoco Phillips's willful, wanton, and reckless conduct, Mrs. Shirley will incur future medical bills, life-long medication, pain and suffering, a shortened life expectancy, and mental anguish.

WHEREFORE, Plaintiff prays for judgment against each defendant in a fair and reasonable amount in excess of FIFTY THOUSAND DOLLARS (\$50,000), together with costs herein expended, and for any further relief this Court deems just and proper.

COUNT IX
CONSPIRACY
AGAINST BENZENE DEFENDANTS

COMES NOW the Plaintiff, Mr. Shirley, Individually, and as Special Administrator of the Estate of Mrs. Shirley, by his attorneys, The Dysart Law Firm, P.C., and for his cause of action against the Benzene Defendants states:

95. Plaintiff incorporates by reference all paragraphs of this complaint as if fully referenced herein.

96. Benzene Defendants agreed to suppress knowledge of the hazards of benzene and benzene- containing materials and products. Said Defendants acted together for the purpose of accomplishing by concerted action an unlawful purpose by an unlawful means, a lawful purpose by unlawful means or an unlawful purpose by lawful means. Pursuant to said agreement, Benzene Defendants committed overt unlawful acts in furtherance of the conspiracy, knowingly and voluntarily participated in their common scheme to commit unlawful acts in an unlawful manner. Benzene Defendants understood the general objectives of the conspiratorial

scheme, accepted the general objectives and agreed to do their part to further those objectives.

97. The Benzene Defendants knowingly and voluntarily agreed to suppress or minimize knowledge of the hazards of benzene and benzene containing products, to market benzene and benzene containing products they knew to be dangerous to persons exposed thereto, to mislead downstream handlers, government officials and the public as to the hazards of benzene and benzene containing products and to refrain from warning downstream handlers, government officials and the public as to the hazards of benzene and benzene containing products.

98. The Benzene Defendants committed an overt act in furtherance of the conspiracy by knowingly and voluntarily engaging in uniform modes of operation, including, but not limited to, the following: marketing benzene and benzene-containing materials and products they knew to be dangerous to persons exposed thereto; failing and refusing to warn downstream handlers, government officials, and the public of the threat caused by benzene and benzene-containing materials and products; suppressing and understating information regarding the hazards of benzene and benzene-containing materials and products; systematically understating the risk of benzene exposure to individuals by excluding at-risk contract workers from cohort studies; and, ceasing chromosome analysis of potentially exposed workers,

99. The Benzene Defendants committed an overt act in furtherance of the conspiracy by, knowingly and voluntarily engaging, individually, collectively and under the auspices of industry and trade organizations, including, but not limited to, the American Petroleum Institute ("API") and the Manufacturing Chemists Association ("MCA"), in various acts in furtherance of the Agreement, including, but not limited to, the following: forming joint task-forces and committees, including but not limited to the API's Benzene Task Force and the

MCA's Benzene Panel for the purpose of misleading government decision-makers, industry laborers and the public of the hazards of benzene and benzene containing products, restricting the flow of information regarding the hazards of benzene and benzene-containing materials and products; requiring each Defendant to inform the MCA of all inter-Defendant communications regarding the hazards of benzene; directing the activities of the API and MCA for the specific purpose of marketing benzene and benzene-containing materials and products they knew to be dangerous to persons exposed thereto; submitting false, misleading or incomplete information to the Occupational Safety and Health Administration ("OSHA") in order to suppress knowledge of the hazards of benzene; withholding from OSHA information showing the hazards of benzene; suppressing the activities of, harassing and terminating the employment of persons who provided opinions regarding the hazards of benzene contrary to the goals of their agreement.

100. The Benzene Defendants committed an overt act in furtherance of the conspiracy by knowingly and voluntarily manipulating and misstating the results of studies to conceal and suppress information concerning the hazards of benzene including, but not limited to, studies involving residents of Madison County, Illinois performed at Shell's Wood River Refinery in Madison County, Illinois.

101. As a direct and proximate result of their agreement and the wrongful acts in furtherance thereof, Decedent was exposed to and inhaled, ingested or otherwise absorbed benzene in sufficient amounts to cause disease and/or other harm.

102. As a direct and proximate result of said exposure, inhalation, ingestion and/or absorption, Decedent developed multiple myeloma; she is compelled to expend and become liable for large sums of monies for hospital, medical and other health care services necessary for the treatment of her benzene related disease and conditions and to alleviate the pain, suffering,

mental anguish and physical disability caused by her injury; she experienced great physical pain and mental anguish as a result of said exposure, inhalation, ingestion and absorption; that as a further result of her benzene-induced disease and conditions, she was hindered and prevented from pursuing her normal course of employment, thereby losing large sums of money which otherwise would have accrued to her.

WHEREFORE, Plaintiff prays for judgment against each defendant in a fair and reasonable amount in excess of FIFTY THOUSAND DOLLARS (\$50,000), together with costs herein expended, and for any further relief this Court deems just and proper.

COUNT X
CONSPIRACY
AGAINST BENZENE DEFENDANTS

COMES NOW the Plaintiff, Mr. Shirley, Individually, and as Special Administrator of the Estate of Mrs. Shirley, by his attorneys, The Dysart Law Firm, P.C., and for his cause of action against the Benzene Defendants states:

103. Plaintiff incorporates by reference all paragraphs of this complaint as if fully referenced herein.

104. As a direct and proximate result of the Benzene Defendants' conduct as set forth above and the injury suffered by his wife, Mrs. Shirley, Plaintiff suffered interference with and impairment of their marital relationship and all those elements of married life Plaintiff was accustomed to receiving, including, but not limited to, support, devotion, care, society and consortium, and that upon the death of Decedent, Plaintiff lost all of the elements of a marital relationship as described in the Illinois Wrongful Death Act. 740 ILCS 180.

WHEREFORE, Plaintiff, Mr. Shirley, as Special Administrator of the Estate of Mrs. Shirley, deceased, prays this Court to enter judgment in his favor and against these Defendants, jointly and severally, to award compensatory damages in excess of \$50,000 and costs incurred prosecuting this matter, and to grant such other and further relief as this Court deems appropriate.

COUNT XI
WRONGFUL DEATH AGAINST
DAVOL AND BARD

COMES NOW the Plaintiff, DUANE SHIRLEY, Individually, and as Special Administrator of the Estate of THERSA SHIRLEY, by his attorneys, The Dysart Law Firm, P.C., and for his cause of action against the Davol Inc. and C.R. Bard, Inc. and, states:

105. Plaintiff incorporates by reference all paragraphs of this complaint as if fully referenced herein.

106. At all relevant times in Illinois there existed a Wrongful Death Act, statutorily set forth at 740 ILCS 180/0.01, *et seq.*

107. The Ventralex Hernia Patch was designed and is manufactured and distributed by BARD and their subsidiary, DAVOL (*hereinafter* collectively “Defendants”), who owns the patent on the device that was inserted into Plaintiff’s body.

108. Defendants designed, manufactured and distributed the Ventralex Hernia Patch (*hereinafter* “Ventralex”) that was inserted into Plaintiff’s body.

109. Defendants, through its agents, servants, and employees, participated in the manufacture and delivery of the Ventralex that was inserted into Plaintiff’s body.

110. Defendants submitted a 510(k) Application to the Federal Drug Administration (*hereinafter* “FDA”) in May 2002. Following this 510(k) Application, on July 16, 2002,

Ventralex was authorized by the FDA as a Class II medical device and found to be “substantially equivalent” to the Bard Composix Kugel Mesh Patch.

111. Ventralex is a multi-layer polypropylene and expanded polytetrafluoroethylene patch marketed by Defendants, as a mesh to be used in repairing hernias and to provide extra reinforcement to the hernia defect.

112. Defendants’ Ventralex product contains two layers of polypropylene mesh. Despite claims that this material is inert, a substantial body of scientific evidence shows that this mesh material is biologically incompatible with human tissue and promotes an immune response in a large subset of the population receiving these products. This immune response promotes degradation of the polypropylene mesh, as well as the surrounding tissue, and can contribute to the formation of severe adverse reactions to the mesh.

113. Defendants’ statements made to the FDA regarding these devices inadequately relied on predicate devices and not clinical testing or other design verification testing. These statements induced Plaintiff’s implanting surgeon and Plaintiff into relying upon Defendants’ judgment.

114. Ventralex is designed, indicated, and utilized for permanent implantation in the human body, in the intraabdominal space between the subcutaneous tissue and intestines.

115. Upon information and belief, Defendants’ numerous suppliers, of various forms of polypropylene, cautioned all users in their United States Material Safety Data Sheet (*hereinafter* “MSDS”) that the polypropylene was not to be used for medical applications involving permanent implantation in the human body or permanent contact with internal body fluids or tissues.

116. Defendants failed to warn or notify doctors, regulatory agencies, and consumers of the severe and life-threatening risks associated with polypropylene.

117. Ventralex contains the following components: 1) a “memory recoil ring” component, 2) a layer of expanded polytetrafluoroethylene, and 3) two layers of polypropylene mesh.

118. Ventralex has two layers of polypropylene mesh on one side, and an expanded polytetrafluoroethylene (*hereinafter* “ePTFE”) on the other side. The ePTFE is intended to face the intestines in the intra-abdominal space. The layers of polypropylene are stitched to the ePTFE with polytetrafluoroethylene (*hereinafter* “PTFE”) monofilament. The design also contains a polytetrafluoroethylene (*hereinafter* “PET”) “memory recoil ring” at its periphery. The stated purpose of this ring is only to facilitate initial placement of the mesh by the surgeon, yet, by design, it is left implanted along with the mesh components. The presence of the ring can directly lead to deformation and buckling of the patch as a result of mesh and/or mesh/wound shrinkage, tissue ingrowth, other mechanical forces acting on the ring, or of plane positioning and repositioning of the patch (noting that the surface to which it is attached is not actually flat even initially), and initial lack of flatness of the ring plane. Additionally, the above-noted forces on the ring can cause the ring to break, causing an array of problems including, but not limited to, bowel perforation.

119. The polypropylene mesh and ePTFE used in the manufacture the Ventralex, which was implanted into THERESA SHIRLEY, is not suited for implantation into the human body due to its small pore size and weave, high volume of material utilized, selection of polypropylene resin, and other design features. These design aspects lead to adverse tissue reactions in the body, which directly lead to complications.

120. The Ventralex implanted in Plaintiff was designed, manufactured, sold and distributed by Defendants to be used by surgeons for hernia repair surgeries and was further represented by Defendants to be an appropriate, cost-effective and suitable product for such purpose.

121. The polypropylene mesh used in the manufacture of the Ventralex, which was implanted into THERESA SHIRLEY, is unreasonably dangerous, defective, and negligently designed in the following ways:

- a. The weave of the mesh produces very small interstices which allow bacteria to enter and hide from the host defenses designed to eliminate them. The bacteria can secrete an encasing slime (biofilm) which further serves to protect them from destruction by white blood cells and macrophages.
- b. Polypropylene is impure: there is no such thing as pure polypropylene (PP). PP contains about 15 additional compounds which are leached from the PP and are toxic to tissue which enhances the inflammatory reaction and the intensity of fibrosis.
- c. Mesh was shown to be not inert in 2003 with flaking and fissuring demonstrated by scanning electron microscopy which leads to degradation and release of toxic compounds. This enhances the inflammatory and fibrotic reactions.
- d. With loss of PP due to degradation, the surface area is greatly increased, thus providing greater areas for bacterial adherence and more elution of toxic compounds from the PP, and also the freed toxic PP itself, all of which increases the inflammatory reaction and intensity of fibrosis.

- e. By 1998 polypropylene mesh was known to shrink 30-50%.
- f. Heat begins the process of degradation.
- g. Predominate infection/inflammation was noted at least in 2007 in explanted samples.
- h. Allergic reactions occur with polypropylene after implantation.
- i. Polypropylene is subject to oxidation by acids produced during the inflammatory reaction which caused degradation and loss of compliance.
- j. Mesh porosity is important for tissue ingrowth, with low porosity decreasing tissue incorporation. Porosity also affects the inflammatory and fibrotic reaction. With mechanical stress the porosity of the pores is decreased.
- k. Pore size should be at least 3mm. The Ventralex pore size is much less than this; it has an effective porosity of 1mm.
- l. Observation of mesh under the scanning electron microscope reveals that very small interstices exist between the mesh fibrils, which are too small for a macrophage to enter to destroy incubating bacteria. Some bacteria are capable of degrading polypropylene.
- m. Polypropylene is known to depolymerize, cross-link, undergo oxidative degradation by free radicals, and stress crack after implantation in the human body.
- n. Polypropylene migrates to lymph nodes when there is a foreign body giant cell reaction.

- o. The large surface area promotes wicking of fluids and bacteria and is a "bacterial super highway" which provides a safe haven for bacteria.
- p. Common complications associated with PP include restriction of abdominal wall mobility and local wound disturbances. Often failures of PP include persistent and active inflammatory processes, irregular or low formation of scar tissue and unsatisfying integration of the mesh in the regenerative tissue area.
- q. Klosterhalfen published a series of 623 explanted mesh samples removed for pain, infection and recurrence. There are also reports of mesh migration and erosion into the sigmoid colon. Reduced mobility of the abdominal wall has also been found. Moreover, the rate of chronic pain after mesh hernia repair ranges from 4-40%. Thus, Defendants should have been aware of these issues with polypropylene.
- r. Fibrotic bridging is often observed in mesh variants with pore sizes of 1mm or less, which is the typical pore size of heavyweight, small pore PP mesh, like the Ventralex.
- s. The ePTFE patch shrinkage rates are the largest as a microporous mesh. Due to the microporous design, the ePTFE is embedded entirely in a fibrous capsule, wherein its collagen fibers are arranged parallel to the surface of the ePTFE patches. During wound healing, collagen fibers parallel to the ePTFE surface cause a maximum wound contraction with a reduction of the patch size up to 50%.

122. A malfunction of this device can lead to bowel perforations and/or chronic intestinal fistulae (abdominal connections or passageways between the intestines and other organs), as well as other chronic and debilitating conditions.

123. The Ventralex implanted into THERESA SHIRLEY was manufactured in the same or in a similar manner as recalled Composix Kugel patches. Plaintiff's Ventralex contained the same or similar "memory recoil ring," the same or similar polypropylene mesh, and the same or similar ePTFE layer. THERESA SHIRLEY suffered symptoms and injuries consistent with the symptoms and injuries described by the recall information as suffered by the other individuals affected by the defective Composix Kugel Patches.

124. Upon information and belief Defendants DAVOL and BARD failed to comply with the FDA application and reporting requirements.

125. Upon information and belief Defendants DAVOL and BARD were aware of the high degree of complication and failure rate associated with Ventralex.

126. Upon information and belief Defendants DAVOL and BARD were aware of the defects in the manufacture and design of Ventralex.

127. Upon information and belief, Defendants DAVOL and BARD were and are aware of the defects in the manufacture and design of Ventralex and chose, and continue to choose, not to issue a recall of these products, including the Ventralex that was implanted in THERESA SHIRLEY, in the face of a high degree of complication and failure rates.

128. Upon information and belief, Defendants DAVOL and BARD manipulated, altered, skewed, slanted, misrepresented, and/or falsified pre-clinical and/or clinical studies to bolster the perceived performance of Ventralex.

129. Upon information and belief, Defendants DAVOL and BARD paid doctors, surgeons, physicians, and/or clinicians to promote Ventralex, but did not readily disclose this information.

130. Defendants DAVOL and BARD failed to properly investigate and disclose adverse event reports to the FDA and other regulatory agencies worldwide.

131. Defendants DAVOL and BARD failed to implement adequate procedures and systems to report, track, and evaluate complaints and adverse events.

132. Defendants DAVOL and BARD marketed Ventralex to the medical community and to patients as safe, effective, reliable, medical devices for the treatment of hernia repair, and as safer and more effective as compared to the traditional products and procedures for treatment, and other competing mesh products. Defendants DAVOL and BARD did not undergo pre-market approval for Ventralex and are, therefore, prohibited by the FDA from asserting superiority claims.

133. Defendants DAVOL and BARD failed to perform or rely on proper and adequate testing and research in order to determine and evaluate the risks and benefits of Ventralex.

134. Defendants DAVOL and BARD failed to design and establish a safe, effective procedure for removal of Ventralex; therefore, in the event of a failure, injury, or complications it is difficult to safely remove Ventralex.

135. Defendants DAVOL and BARD provided incomplete, insufficient, and misleading information to physicians in order to increase the number of physicians using Ventralex for the purpose of increasing their sales. By so doing, Defendants DAVOL and BARD caused the dissemination of inadequate and misleading information to patients, including THERESA SHIRLEY.

136. The Ventralex was utilized and implanted in a manner foreseeable to Defendants DAVOL and BARD.

137. The Ventralex implanted into Plaintiff was in the same or substantially similar condition as when it left the possession of the Defendants, and in the condition directed by the Defendants.

138. On or about May 26, 2010, Plaintiff underwent surgery for repair of an incarcerated incisional ventral hernia. A Ventralex Hernia Patch Mesh, Reference number 0010302 and Lot number HUUD1542 was implanted to repair the hernia defect.

139. At the time of her operation, Plaintiff was not informed of, and had no knowledge of the complaints, known complications and risks associated with Ventralex.

140. THERESA SHIRLEY was never informed by Defendants DAVOL and BARD of the defective and dangerous nature of Ventralex.

141. At the time of her implant, neither THERESA SHIRLEY nor THERESA SHIRLEY'S physicians were aware of the defective and dangerous condition of Ventralex.

142. On or about September 10, 2015, THERESA SHIRLEY underwent an additional surgery to repair the hernia defect and remove it. Plaintiff was injured severely and permanently.

143. As a direct and proximate result of defendant DAVOL and BARD'S breach, THERESA SHIRLEY experienced significant mental and physical pain and suffering and mental anguish, sustained permanent injury that contributed to her death, underwent medical treatment, suffered financial or economic loss.

144. As a further result, the next of kin of the decedent have suffered great losses of a personal and pecuniary nature, including loss of companionship and society of the decedent, as well as grief, sorrow, and mental suffering subjecting the Benzene Defendants

to liability.

WHEREFORE, Plaintiff, DUANE SHIRLEY as Special Administrator of the Estate of THERESA SHIRLEY prays this Court to enter judgment in his favor and against these Defendants, jointly and severally, to award compensatory damages in excess of \$50,000 and costs incurred prosecuting this matter, and to grant such other and further relief as this Court deems appropriate.

COUNT XII
SURVIVAL ACTION
AGAINST DAVOL AND BARD

COMES NOW the Plaintiff, DUANE SHIRLEY, Individually, and as Special Administrator of the Estate of THERESA SHIRLEY, by his attorneys, The Dysart Law Firm, P.C., and for his cause of action against Defendant BARD, states:

145. Plaintiff incorporates by reference all paragraphs of this complaint as if fully referenced herein.

146. In accordance with the Illinois survival statute, Mr. Shirley may recover for any claim that Mrs. Shirley may have had against Defendants DAVOL and BARD had death not ensued. Accordingly, plaintiff brings this survival action claim.

147. As a direct and proximate result of the aforementioned acts of Defendants DAVOL and BARD, the Plaintiff's decedent, THERESA SHIRLEY, suffered serious injuries of a personal nature, including but not limited to, was compelled to expend and became liable for large sums of monies for hospital, medical and other health care services necessary for the treatment of her benzene related disease and conditions and to alleviate the pain, suffering, mental anguish and physical disability caused by her injury; she experienced great physical pain and mental anguish as a result of said exposure,

inhalation, ingestion and absorption. Mrs. Shirley was hindered and prevented from pursuing her normal course of employment, thereby losing large sums of money which otherwise would have accrued to her, subjecting Defendant BARD to liability pursuant to 755 ILCS 5/27-6, commonly referred to as the Survival Statute.

WHEREFORE, Plaintiff, DUANE SHIRLEY as Special Administrator of the Estate of THERESA SHIRLEY prays this Court to enter judgment in his favor and against these Defendants, jointly and severally, to award compensatory damages in excess of \$50,000 and costs incurred prosecuting this matter, and to grant such other and further relief as this Court deems appropriate.

COUNT XIII
STRICT LIABILITY
AGAINST DAVOL AND BARD

COMES NOW the Plaintiff, DUANE SHIRLEY, Individually, and as Special Administrator of the Estate of THERESA SHIRLEY, by his attorneys, The Dysart Law Firm, P.C., and for his cause of action against Defendants DAVOL and BARD states:

148. Plaintiff incorporates by reference all paragraphs of this complaint as if fully referenced herein.

149. Defendants DAVOL and BARD processed, produced, manufactured, sold, distributed, and marketed products with which Plaintiff THERESA SHIRLEY came into contact.

150. At the time Defendants DAVOL and BARD processed, produced, manufactured, sold, distributed, marketed, and/or otherwise used The Ventralex Hernia Patch which Decedent THERESA SHIRLEY had implanted, said product was in a defective condition and was unreasonably dangerous in that the product was made of materials which

are biologically incompatible with human tissue and react negatively and sometimes dangerously with a large number of those on whom it is used. Moreover, the product lacked of appropriate and necessary warnings. Specifically, Defendants DAVOL and BARD did not provide sufficient or adequate warnings regarding, among other things, the serious risk of bodily harm posed by the incompatibility of the material used to make the mesh and human blood and tissue or the serious risk of infection or serious scarring.

151. The Ventralex Hernia Patch was implanted in the decedent in the same or substantially similar Condition as when it left Defendants' DAVOL and BARD possession. In other words, the unreasonably dangerous condition of the product existed when the product left DAVOL and BARD'S control.

152. On or about May 26, 2010, the Decedent, THERESA SHIRLEY, underwent surgery at Alton Memorial Hospital in Madison County, Illinois, to insert a Bard Ventralex Hernia Patch for the repair of an incisional ventral hernia.

153. At all times herein set forth, Defendants' DAVOL and BARD product was being employed in the manner and for the purposes for which it was intended and/or in a manner reasonably foreseeable and anticipated by Defendant DAVOL and BARD.

154. The Decedent, THERESA SHIRLEY, as an ordinary user of said product, was not aware of the hazards of the Bard Ventralex Hernia Patch.

155. That as a direct and proximate result of the unreasonably dangerous condition of the DAVOL and BARD Ventralex Hernia Patch, The Decedent suffered harm.

156. As a direct and proximate result of the aforementioned acts of Defendants DAVOL and BARD, the Plaintiff's decedent, THERESA SHIRLEY, suffered serious

injuries of a personal nature, including but not limited to, was compelled to expend and became liable for large sums of monies for hospital, medical and other health care services necessary for the treatment of her benzene related disease and conditions and to alleviate the pain, suffering, mental anguish and physical disability caused by her injury; she experienced great physical pain and mental anguish as a result of said exposure, inhalation, ingestion and absorption. Mrs. Shirley was hindered and prevented from pursuing her normal course of employment, thereby losing large sums of money which otherwise would have accrued to her.

WHEREFORE, Plaintiff, DUANE SHIRLEY as Special Administrator of the Estate of THERESA SHIRLEY prays this Court to enter judgment in his favor and against these Defendants, jointly and severally, to award compensatory damages in excess of \$50,000 and costs incurred prosecuting this matter, and to grant such other and further relief as this Court deems appropriate.

COUNT XIV
NEGLIGENCE
AGAINST DAVOL AND BARD

COMES NOW the plaintiff, DUANE SHIRLEY, Individually, and as Special Administrator of the Estate of Theresa Shirley, by his attorneys, The Dysart Law Firm, P.C., and for his cause of action against Defendants DAVOL and BARD, states:

157. Plaintiff re-alleges and incorporates by reference all paragraphs of this complaint as though fully set forth herein.

158. Defendants DAVOL and BARD were negligent to Plaintiff in the following respects:

159. DAVOL and BARD at all times mentioned had a duty to properly

manufacture, test, inspect, package, label, distribute, market, examine, maintain, supply, provide proper warnings and prepare for use the Ventralex Hernia Patch.

160. DAVOL and BARD at all times mentioned knew or in the exercise of reasonable care should have known, that the Ventralex Hernia Patches were of such a nature that they were not properly manufactured, tested, inspected, packaged, labeled, distributed, marketed, examined, sold, supplied, prepared and/or provided with the proper warnings, and were unreasonably likely to injure Ventralex Hernia Patch users.

161. DAVOL and BARD so negligently and carelessly designed, manufactured, tested, failed to test, inspected, failed to inspect, packaged, labeled, distributed, recommended, displayed, sold, examined, failed to examine and supplied the Ventralex Hernia Patch, that they were unreasonably dangerous and unsafe for the use and purpose for which it was intended.

162. DAVOL and BARD were aware of the probable consequences of the Ventralex Hernia Patch. DAVOL and BARD knew or should have known the Ventralex Hernia Patch would cause serious injury and they failed to disclose the known or knowable risks associated with the Ventralex Hernia Patch. Furthermore, DAVOL and BARD willfully and deliberately failed to avoid those consequences, and in doing so, DAVOL and BARD acted in conscious disregard of the safety of THERESA SHIRLEY.

163. Defendants DAVOL and BARD owed a duty to THERESA SHIRLEY to adequately warn her and her treating physicians of the risks of degradation, infection, contracture, shrinkage, breakage, separation, tearing and splitting associated with the Ventralex Hernia Patch and the resulting harm and risk it could cause patients.

164. Defendants DAVOL and BARD breached their duty by failing to comply with state and federal regulations concerning the study, testing, design, development, manufacture,

inspection, production, advertisement, marketing, promotion, distribution, and/or sale of the Ventralex Hernia Patch.

165. As a direct and proximate result of the duties breached, the Ventralex Hernia Patch used in THERESA SHIRLEY'S hernia repair surgery failed, resulting in much pain and suffering, mental anguish, doctor visits, subsequent procedures, significant medical bills and death.

166. As a direct and proximate result of DAVOL's and BARD's negligence, Plaintiff suffered severe pain, injuries, damages and death.

167. As a direct and proximate result of DAVOL's and BARD's conduct, Plaintiff has suffered great pain, mental anguish and eventual death.

168. DAVOL's and BARD's conduct in continuing to market, sell and distribute the Ventralex Hernia Patch after obtaining knowledge that the products were failing and not performing as represented and intended, showed complete indifference to or a conscious disregard for the safety of others, justifying an award of additional damages for aggravating circumstances in such a sum which will serve to deter DAVOL, BARD and others from similar conduct in the future.

WHEREFORE, Plaintiff, DUANE SHIRLEY, as Special Administrator of the Estate of Theresa Shirley, deceased, prays this Court to enter judgment in his favor against Defendants DAVOL and BARD, jointly and severely, to award compensatory damages in excess of \$50,000 and cost incurred prosecuting this matter and to grant such other and further relief as this Court deems appropriate.

COUNT XV
STRICT PRODUCT LIABILITY
AGAINST DAVOL AND BARD

COMES NOW the plaintiff, DUANE SHIRLEY, Individually, and as Special Administrator of the Estate of Theresa Shirley, by his attorneys, The Dysart Law Firm, P.C., and for his cause of action against Defendants DAVOL and BARD, states:

169. Plaintiff re-alleges and incorporates by reference each and every allegation contained in this complaint as though fully set forth herein.

170. Defendants DAVOL and BARD are strictly liable to Plaintiff in the following respects:

171. DAVOL and BARD designed, manufactured, assembled, distributed, conveyed and/or sold the Ventralex Hernia Patch for hernia repair surgery.

172. The Composix Kugel Patches subject to the Class I recall were defective because they failed to perform safely and effectively for the purpose they were originally designed. While the Plaintiff's Ventralex Hernia Patch was not included in the Class I recall, it is included in the same product line, in that it also contains the "memory recoil ring" and polypropylene mesh as in the recalled products.

173. At all times mentioned, the Ventralex Hernia Patch was substantially in the same condition as when it left the possession of DAVOL.

174. The Ventralex Hernia Patch implanted into Plaintiff was being used in a manner reasonably anticipated at the time it was implanted in her by her surgeon.

175. The Ventralex Hernia Patch, like the one found in Plaintiff, at the time they left the possession of DAVOL and BARD were inherently dangerous for their intended use and were

unreasonably dangerous products which presented and constituted an unreasonable risk of danger and injury to Plaintiff as follows:

- a. The Ventralex Hernia Patch was sold in a defective condition by design and manufacture;
- b. The Ventralex Hernia Patch as designed and manufactured was unsafe to Decedent;
- c. The Ventralex Hernia Patch as designed and manufactured was unreasonably dangerous to Decedent;
- d. The Ventralex Hernia Patch did not perform safely as an ordinary consumer/patient, like THERESA SHIRLEY, would expect;
- e. The Ventralex Hernia Patch as designed and manufactured was unsafe for its intended use;
- f. DAVOL and BARD failed to warn the end user about the dangers and risks of the product;
- g. DAVOL and BARD knew the component parts of the Ventralex Hernia Patch as implemented through design and/or manufacture could cause injury to the end user;
- h. Failing to implement an adequate, safe and effective “memory recoil ring” and/or its interaction with the mesh of the Ventralex Hernia Patch to withstand the foreseeable stresses they would be subject to within the intra-abdominal space;
- i. Failing to avoid migration of the Ventralex Hernia Patch and/or its components from the initial site of the hernia repair surgery.

- j. Any other acts or failures to act by DAVOL or BARD regarding the studying, testing, designing, developing, manufacturing, inspecting, producing, advertising, marketing, promoting, distributing, and/or sale of Ventralex Hernia Patches for hernia repair surgery as will be learned during discovery.

176. DAVOL's and BARD's conduct in continuing to market, sell and distribute the Ventralex Hernia Patch after obtaining knowledge that the products were failing and not performing as represented and intended, showed complete indifference to or a conscious disregard for the safety of others justifying an award of additional damages for aggravating circumstances in such a sum which will serve to deter DAVOL, BARD and others from similar conduct in the future.

WHEREFORE, Plaintiff, DUANE SHIRLEY, as Special Administrator of the Estate of Theresa Shirley, deceased, prays this Court to enter judgment in his favor and against Defendants DAVOL and BARD, jointly and severally, to award compensatory damages in excess of \$50,000 and costs incurred prosecuting this matter, and to grant such other and further relief as this Court deems appropriate.

COUNT XVI
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
AGAINST DAVOL AND BARD

COMES NOW the plaintiff, DUANE SHIRLEY, Individually, and as Special Administrator of the Estate of Theresa Shirley, by his attorneys, the Dysart Law Firm, P.C., and for his cause of action against Defendants DAVOL and BARD, states:

177. Plaintiff re-alleges and incorporates by reference each and every allegation contained in this complaint as though fully set forth herein.

178. Defendants DAVOL and BARD are liable to Plaintiff for the intentional infliction of emotional distress in the following respect:

179. THERESA SHIRLEY suffered severe emotional distress, which was a result of DAVOL's and BARD's extreme outrageous, intentional, willful, and reckless conduct in studying, designing, developing, testing, inspecting, manufacturing, producing, advertising, marketing, promoting, distributing, and/or sale of the Ventralex Hernia Patch for hernia repair surgery.

180. THERESA SHIRLEY suffered severe emotional distress, which was a result of DAVOL's and BARD's extreme outrageous, intentional, willful, and reckless conduct in failing to adequately and safely design and construct an effective and safe Ventralex Hernia Patch for hernia repair surgery, in complete and reckless disregard of safety to Plaintiff.

181. Therefore, DAVOL and BARD are liable to Plaintiff.

182. DAVOL's and BARD's conduct in continuing to market, sell and distribute the Ventralex Hernia Patch after obtaining knowledge that the products were failing and not performing as represented and intended, showed complete indifference to or a conscious disregard for the safety of others justifying an award of additional damages for aggravating circumstances in such a sum which will serve to deter DAVOL, BARD and others from similar conduct in the future.

WHEREFORE, Plaintiff, DUANE SHIRLEY, as Special Administrator of the Estate of Theresa Shirley, deceased, prays this Court to enter judgment in his favor and against Defendants DAVOL and BARD, jointly and severally, to award compensatory damages in excess of \$50,000 and costs incurred prosecuting this matter, and to grant such other and further relief as this Court deems appropriate.

COUNT XVII
BRREACH OF IMPLIED WARRANTY
AGAINST DAVOL AND BARD

COMES NOW the plaintiff, DUANE SHIRLEY, Individually, and as Special Administrator for the Estate of Theresa Shirley, by his attorneys, The Dysart Law Firm, P.C., and for his cause of action against DAVOL and BARD, states:

183. Plaintiff re-alleges and incorporates by reference each and every allegation contained in this complaint as though fully set forth herein.

184. Defendants DAVOL and BARD are liable to Plaintiff for their breach of implied warranty in the following respect:

185. DAVOL and BARD sold the Ventralex Hernia Patch that was implanted in Plaintiff. DAVOL and BARD impliedly warranted to Plaintiff, her physicians and health care providers that the Ventralex Hernia Patch was of merchantable quality and safe for the use for which it was intended.

186. DAVOL and BARD knew or reasonably should have known that the Ventralex Hernia Patch at the time of sale was intended to be used for the purpose of surgically implantation into the human body for hernia repair.

187. Plaintiff, her physicians, and her health care providers reasonably relied on DAVOL's and BARD's judgment, indications and statements that the Ventralex Hernia Patch was fit for such use.

188. When the Ventralex Hernia Patches were distributed into the stream of commerce and sold by DAVOL and BARD, they were unsafe for their intended use, and not of merchantable quality, as warranted by DAVOL and BARD, in that they had very dangerous

propensities when used as intended and implanted into a patient's body and, as a result, could cause serious injury of harm or death to the end user.

189. As a result of DAVOL and BARD's conduct and actions, THERESA SHIRLEY suffered injuries, damages and eventual death.

190. As such, Defendants DAVOL and BARD breached the implied warranty of merchantability are liable to Plaintiff for her injuries and the costs she incurred as a result from using the defective Ventralex Hernia Patch.

WHEREFORE, Plaintiff, DUANE SHIRLEY, as Special Administrator of the Estate of Theresa Shirley, deceased, prays this Court to enter judgment in his favor and against Defendants DAVOL and BARD, jointly and severally, to award compensatory damages in excess of \$50,000 and costs incurred prosecuting this matter, and to grant such other and further relief as this Court deems appropriate.

COUNT XVIII
FAILURE TO WARN
AGAINST DAVOL AND BARD

COMES NOW the plaintiff, DUANE SHIRLEY, Individually and as Special Administrator of the Estate of Theresa Shirley, by his attorneys, The Dysart Law Firm, P.C., and for his cause of action against Defendants DAVOL and BARD, states:

191. Plaintiff re-alleges and incorporates by reference each and every allegation contained in this complaint as though fully set forth herein.

192. In the course of business, DAVOL and BARD designed, manufactured and sold the Ventralex Hernia Patch to hospitals for hernia repair surgeries.

193. In performing Plaintiff's hernia repair surgery, the operating physician used and inserted into Plaintiff one of the Ventralex Hernia Patch that Plaintiff's hospital purchased from Defendants DAVOL and BARD.

194. At the time of the design, manufacture and sale of the Ventralex Hernia Patch, and more specifically at the time THERESA SHIRLEY received the Ventralex Hernia Patch, they were defective and unreasonably dangerous when put to their intended and reasonably anticipated use. Further, the Ventralex Hernia Patches were not accompanied by proper warnings regarding significant adverse consequences associated with the Ventralex Hernia Patch.

195. BARD and DAVOL failed to provide any warnings, labels or instructions of its dangerous propensities that were known or reasonably scientifically knowable at the time of distribution. The reasonably foreseeable use of the products involved significant dangers not readily obvious to the ordinary user of the Ventralex Hernia Patch devices. BARD and DAVOL failed to warn of the known or knowable injuries associated with malfunction of the Ventralex Hernia Patch, including but not limited to rupture of the patch and severe peritonitis and infection which would require subsequent surgical procedures and could result in severe injuries and death.

196. The dangerous and defective conditions in the Ventralex Hernia Patches existed at the time they were delivered by the manufacturer to the distributor. At the time Plaintiff had her hernia repair surgery, the Ventralex Hernia Patch was in the same condition as when manufactured, distributed and sold.

197. THERESA SHIRLEY did not know at the time of surgery that the Ventralex Hernia Patch placed during Plaintiff's surgery or at any time prior thereto, of the existence of the defects or dangerous propensities in the Ventralex Hernia Patches.

198. THERESA SHIRLEY suffered the aforementioned injuries and damages as a direct result of DAVOL and BARD's failure to warn.

199. As a direct and proximate result of BARD's and DAVOL's failure to warn, THERESA SHIRLEY has suffered great pain, mental anguish and eventual death.

200. As such, Defendants DAVOL and BARD breached their duty to warn about known defects and are liable to Plaintiff for decedent's injuries, death and the costs incurred as a result of using the Ventralex Hernia Patch.

201. The conduct of BARD and DAVOL in continuing to market, promote, sell and distribute the Ventralex Hernia Patch after obtaining knowledge that the products were failing and not performing as represented and intended, showed a complete indifference to or conscious disregard for the safety of others justifying an award in such sum which will serve to deter BARD, DAVOL and others from similar conduct.

WHEREFORE, Plaintiff, DUANE SHIRLEY, as Special Administrator of the Estate of Theresa Shirley, deceased, prays this Court to enter judgment in his favor and against Defendants DAVOL and BARD, jointly and severally, to award compensatory damages in excess of \$50,000 and costs incurred prosecuting this matter, and to grant such other and further relief as this Court deems appropriate.

COUNT XIX
FRAUD
AGAINST DAVOL AND BARD

COMES NOW the plaintiff, DUANE SHIRLEY, Individually and as Special Administrator of the Estate of Theresa Shirley, by his attorneys, The Dysart Law Firm, P.C., and for his cause of action against Defendants DAVOL and BARD, states

202. Plaintiff re-alleges and incorporates by reference each and every allegation contained in this complaint as though fully set forth herein.

203. In the course of business, DAVOL and BARD designed, manufactured and sold the Ventralex Hernia Patch for hernia repair surgeries.

204. At the time of the design, manufacture and sale of the Ventralex Hernia Patch, and, more specifically, at the time Plaintiff received the Ventralex Hernia Patch, they were defective and unreasonably dangerous when put to their intended and reasonably anticipated use. Further the Ventralex Hernia Patch was not accompanied by proper warnings regarding significant adverse consequences associated with the Ventralex Hernia Patch.

205. Defendants BARD and DAVOL were aware of the dangerous and defective condition of the products and intentionally withheld this information from THERESA SHIRELY, her physicians, the FDA, and the general public even though these significant dangers were not readily obvious to the ordinary user of the products, even after a post-surgical complication had arisen.

206. BARD and DAVOL fraudulently represented to THERESA SHIRELY, her physicians, and the general public that the Ventralex Hernia Patch was a safe and effective product even though they were fully aware of the dangerous and defective nature of the Ventralex Hernia Patch which likely could, and would, cause injuries such as those suffered by THERESA SHIRLEY.

207. THERESA SHIRLEY and her physicians relied upon the fraudulent misrepresentations and concealments of Defendants DAVOL and BARD and allowed for the defective Ventralex Hernia Patch to be implanted.

208. As a direct and proximate result of THERESA SHIRLEY'S reliance on BARD's and DAVOL's fraudulent misrepresentations and concealments, THERESA SHIRLEY was seriously and permanently injured.

209. As a direct and proximate result of THERESA SHIRLEY'S reliance on BARD's and DAVOL's fraudulent misrepresentations and concealments, THERESA SHIRLEY suffered great pain, mental anguish and eventual death.

210. The conduct of BARD and DAVOL in continuing to fraudulently market, promote, sell and distribute the Ventralex Hernia Patch while fraudulently concealing knowledge that the products were failing and not performing as represented and intended, showed a complete indifference to or conscious disregard for the safety of others justifying an award in such sum which will serve to deter BARD, DAVOL and others from similar conduct.

WHEREFORE, Plaintiff, DUANE SHIRLEY, as Special Administrator of the Estate of Theresa Shirley, deceased, prays this Court to enter judgment in his favor and against Defendants DAVOL and BARD, jointly and severally, to award compensatory damages in excess of \$50,000 and costs incurred prosecuting this matter, and to grant such other and further relief as this Court deems appropriate.

COUNT XX
WILFUL AND WANTON MISCONDUCT
AGAINST DEFENDANTS DAVOL AND BARD

COMES NOW the plaintiff, DUANE SHIRLEY, Individually and as Special Administrator of the Estate of Theresa Shirley, by his attorneys, The Dysart Law Firm, P.C., and for his cause of action against Defendants DAVOL and BARD, states

211. Plaintiff incorporates by reference all paragraphs of this complaint as if fully referenced herein.

212. Defendants DAVOL and BARD had a duty to Decedent to refrain from willful and wanton acts or omissions that would harm the Decedent.

213. Defendants DAVOL and BARD'S conduct described in the counts above show complete indifference to or conscious disregard for the safety of others amounting to willful and wanton misconduct in that Defendants DAVOL and BARD failed to exercise ordinary care when a known and extraordinary danger with their product, was imminent or, Defendants DAVOL and BARD through recklessness, regardless to the danger of another, carelessly failed to discover the extraordinary and impending danger of their product and would have discovered it through the exercise of ordinary care.

214. Defendants DAVOL and BARD breached its duty to its customers, including Plaintiff, by failing to design, manufacture, market, label, package and/or sell its Product in such a manner as the exercise of reasonable care would dictate.

215. Defendants DAVOL and BARD negligently failed to warn or instruct the Plaintiff and/or his health care providers of the full extent of the risks and hazards known to exist with use of the mesh in a manner commensurate with the exercise of reasonable care.

216. Defendants DAVOL and BARD knew that their acts and omissions created a substantial risk that persons such as the Decedent would suffer illness as a result and, therefore, carried out the same with complete indifference to, and/or conscious disregard for, the life, health and welfare of Decedent.

217. That as a direct and proximate result of the unreasonably dangerous condition of the Bard Ventralex Hernia Patch, Decedent suffered harm.

218. Defendants sold their products to healthcare providers throughout the United States without doing adequate testing to ensure that the products were reasonably

safe for implantation.

219. Defendants ignored reports from patients and healthcare providers throughout the United States and elsewhere of the products' failures to perform as intended, which lead to the sever debilitating injuries suffered by THERESA SHIRLEY. Rather than doing adequate testing to determine the cause of these injuries, or to rule out the products' designs or the processes by which the products are manufactured as the cause of these injuries, Defendants DAVOL and BARD chose instead to continue to market and see the products as safe and effective.

220. Defendants DAVOL and BARD knew the products were unreasonably dangerous in light of their risks of failure resulting in pain and suffering, loss of life's enjoyment, remedial surgeries and treatments in an effort to cure the conditions proximately related to the use of the products, as well as other severe injuries which are permanent and lasting in nature.

221. Defendants DAVOL and BARD withheld material information from the medical community and the public in general, including the Plaintiff, regarding the safety and efficacy of the product.

222. Defendants DAVOL and BARD knew and recklessly disregarded the fact that the products caused debilitating and potentially life-altering complications with greater frequency than feasible alternative methods and/or products.

223. Defendants DAVOL and BARD misstated and misrepresented data, and continue to misrepresent data, so as to minimize the perceived risk of injuries caused by the products.

224. Notwithstanding the foregoing, Defendants DAVOL and BARD continue to

aggressively market the products to consumers, without disclosing the true risks associated with the products.

225. Defendants DAVOL and BARD knew of the products' defective and unreasonably dangerous nature, but continued to manufacture, market, distribute, and sell the products so as to maximize sales and profits at the expense of the health and safety of the public, including the Plaintiff.

226. Defendants DAVOL and BARD continue to conceal and/or fail to disclose to the public, including the Plaintiff, the serious complications associated with the use of the products, to ensure continued and increased sales.

227. Defendants' DAVOL and BARD conduct as described herein shows willful misconduct, malice, fraud, wantonness, oppression or that entire want of care which raises the presumption of conscious indifference to consequences, thereby justifying an award of punitive damages.

228. As a direct and proximate result of the aforementioned acts of Defendant BARD, the Plaintiff's decedent, THERESA SHIRLEY, suffered serious injuries of a personal nature, including but not limited to, revision surgery including take down of an enterocutaneous fistula, removal of infected hernia mesh, transverse colon resection and small bowel resection for infected hernia mesh and enterocutaneous fistula, post-surgical chronic abdominal fistula and cachexia and chronic peritonitis and abdominal abscesses. was compelled to expend and became liable for large sums of monies for hospital, medical and other health care services necessary for the treatment of her benzene related disease and conditions and to alleviate the pain, suffering, mental anguish and physical disability caused by her injury; she experienced great physical pain and mental anguish

as a result of said exposure, inhalation, ingestion and absorption. Mrs. Shirley was hindered and prevented from pursuing her normal course of employment, thereby losing large sums of money which otherwise would have accrued to her.

WHEREFORE, Plaintiff, DUANE SHIRLEY, as Special Administrator of the Estate of THERESA SHIRLEY, deceased, prays this Court to enter judgment in his favor and against these Defendants, jointly and severally, to award compensatory damages in excess of \$50,000 and costs incurred prosecuting this matter, and to grant such other and further relief as this Court deems appropriate.

COUNT XXI
LOSS OF CONSORTIUM AGAINST
BENZENE DEFENDANTS AND DAVOL AND BARD

COMES NOW the plaintiff, DUANE SHIRLEY, Individually and as Special Administrator of the Estate of Theresa Shirley, by his attorneys, The Dysart Law Firm, P.C., and for his cause of action against Defendants DAVOL and BARD, states

229. Plaintiff incorporates by reference all paragraphs of this complaint as if fully referenced herein.

230. As a direct and proximate result of Defendant BARD'S conduct as set forth above and the injury suffered by his wife, THERESA SHIRLEY, Plaintiff suffered interference with and impairment of their marital relationship and all those elements of married life Plaintiff was accustomed to receiving, including, but not limited to, support, devotion, care, society and consortium, and that upon the death of Decedent, Plaintiff lost all of the elements of a marital relationship as described in the Illinois Wrongful Death Act. 740 ILCS 180.

WHEREFORE, Plaintiff, DUANE SHIRLEY, as Special Administrator of the Estate of THERESA SHIRLEY, deceased, prays this Court to enter judgment in his favor and against these Defendants, jointly and severally, to award compensatory damages in excess of \$50,000 and costs incurred prosecuting this matter, and to grant such other and further relief as this Court deems appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully demands judgment against Defendants, and each of them, individually, jointly and severally and requests compensatory damages, together with interest, cost of suit, attorneys' fees, and all such other relief as the Court deems just and proper as well as:

- A. Compensatory damages to Plaintiff for past, present and future damages, and all damages allowed under the Illinois Wrongful Death Act and the Illinois Survival Statute, together with interest and costs as provided by law;
- B. For all ascertainable economic and non-economic damages in an amount as provided by law and to be supported by evidence at trial;
- C. For specific damages according to proof;
- D. For Punitive and Exemplary damages according to proof;
- E. For pre-judgment interest and post-judgment interest as allowed by law;
- F. For reasonable attorneys' fees;
- G. For the costs of these proceedings; and

H. For such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial.

Respectfully submitted,

THE DYSART LAW FIRM, P.C.

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ATTORNEY FOR PLAINTIFF

6/11/20