

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

DAVID M. ELSEA individually)	
and as class representative,)	
)	
Plaintiffs,)	
)	
v.)	Case No. _____
)	
U.S. ENGINEERING COMPANY)	
a Missouri Corporation)	
(Serve: Registered Agent)	
Stephen B. Sutton)	
Suite 2800)	
2345 Grand Blvd.)	
Kansas City, MO 64108-2684)	
)	
and)	
)	
JACKSON COUNTY, MISSOURI)	
(Serve: County Executive Mike Sanders))	
415 E. 12 th Street)	
2 nd Floor)	
Kansas City, MO 64106))	
)	
Defendants.)	

CLASS ACTION PETITION—MEDICAL MONITORING

COMES NOW Plaintiff David M. Elsea, for his cause of action against

Defendants avers:

INTRODUCTION

1. This is an action to seek redress from the Defendants for injuries, damages and losses suffered by the Plaintiff and members of the Class as a result of the release of asbestos fibers as a result of renovation, repair, replacement and

maintenance projects that took place at the Jackson County Courthouse located at 415 E. 12th Street, Kansas City, Missouri (hereinafter referred to as the “Jackson County Courthouse-Kansas City”.) These damages and losses include but are not limited to the need for medical monitoring services for persons arising out of their exposure to asbestos in the Jackson County Courthouse-Kansas City.

THE PARTIES

2. Plaintiff David M. Elsea is and at all times relevant herein was a resident of Lafayette County, Missouri.

3. Defendant U.S. Engineering Company (hereinafter referred to as “U.S. Engineering”) is a Missouri Corporation which maintains its principal place of business located at 3433 Roanoke Road Kansas City, Jackson County, Missouri and which maintains a registered agent for service of process in the State of Missouri, namely Stephen B. Sutton, Suite 2800, 2345 Grand Blvd., Kansas City, Missouri 64108-2684.

4. Defendant Jackson County, Missouri (hereinafter referred to as “the County”) is a political subdivision of the State of Missouri operating under a charter form of government and which may be served with process by serving County Executive Mike Sanders.

JURISDICTION AND VENUE

5. Jurisdiction and venue are proper in this Court. The acts complained of in this action occurred in this State, by Defendants and Defendants' employees and officers, all acting within the course and scope of their agency and employment in this State. Venue is proper pursuant to §508.010(4).

GENERAL ALLEGATIONS

6. Section 510.265 RSMo. (2005) in limiting punitive damages to five times the amount of the civil damages verdict or \$500,000, but exempting the State of Missouri from such limitation is unconstitutional in violation of the Fourteenth Amendment to the United States Constitution and Article I, § 2 of the Missouri Constitution in that it treats civil damages claims made on behalf of the state differently than those brought by civil plaintiffs and thereby violates equal protection because it lacks a rational basis.

7. Section 510.625 and 508.010 are part of a single legislative act entitled House Bill 393 passed by the General Assembly of Missouri in 2005.

The provisions of the bill violate:

- a. the requirement of one subject, Mo Const. Art. III, § 23;
- b. the requirement of clear title, Mo Const. Art. III, §23;
- c. the privileges and immunities clause, Mo. Const. Art., § 13;
- d. the constitutional directives for amending statutes, Mo. Const. Art. III, § 28;
- e. the prohibition against special laws Mo. Const. Art III, § 40 (28);

- f. separation of powers, Mo. Const. Art. II, § 1; and
- g. the limited to the purpose mandate, Mo. Const. Art. V, §5.

8. Section 537.067 enacted as part of House Bill 393 passed by the General Assembly of Missouri in 2005 in altering the concept of joint and several liability is unconstitutional in violation of Article I, §13 of the Missouri Constitution in that it retroactively applies legislation to acts that accrue prior to August 28, 2005 but are filed after August 28, 2005.

9. The County owns, operates, and maintains the Jackson County Courthouse located at 415 E. 12th Street, Kansas City, Missouri (hereinafter referred to as the “building”).

10. The building was originally constructed in 1933 and 1934. The original construction of the building included the application and installation of numerous asbestos containing materials (hereinafter ACM) that were used for purposes of insulation, sound proofing and/or fire retardation.

11. Defendant U.S. Engineering had no connection with the design, planning or construction (including architectural, engineering or construction services) of the ACM as originally installed or applied to the building.

12. Defendant U.S. Engineering had no connection with the design, planning or construction (including architectural, engineering or construction services) of the building.

13. Since at least 1983 and up to and including the present, dust containing asbestos fibers have been released into the air within the building from the ACM due to:

- a. intentional demolition and removal of the ACM;
- b. accidental and unintentional damage, removal and/or disturbance of the ACM; and
- c. deterioration and degradation of the ACM.

14. The heating, ventilation and air conditioning (HVAC) system at the building uses a system of more than fifty (50) air handling units to provide air flow to occupied spaces in the building.

15. The release of the dust containing asbestos fibers at the building has occurred to such an extent that entire air handling units, including the fans, have been covered in asbestos.

16. The conditions at the building have resulted in dust containing asbestos fibers being blown and/or distributed into occupied spaces throughout the building.

17. The release of the dust containing asbestos fibers at the building created extremely hazardous and dangerous conditions such that the premises were not reasonably safe for people that the County knew would be exposed to asbestos.

18. Dust containing microscopic particles of asbestos fiber can travel through the air and be inhaled, ingested or absorbed by workers or other individuals near the ACM. This dust can enter the body through the airways

(mouth and nose) or cling to the clothing of workers or other individuals and later be inhaled or ingested by those who come in contact with dust containing asbestos fibers.

19. Once these asbestos fibers have entered the body they cannot be destroyed or expelled by the body. They remain embedded in the lung tissue and cause chronic irritation and inflammation and lead to the development of many different types of asbestos-related diseases and conditions. Asbestos exposure has been proven to cause pleural plaque, pleural disease, pleural thickening, lung cancer and mesothelioma (for which asbestos is the only known cause).

a. Pleural plaque develops in exposed individuals within 10 to 40 years of initial asbestos exposure. This development is related to the body's immune system's reaction to asbestos fibers once they become imbedded in the membranes or organs. Pleural plaques develop after many years of exposure even if the exposure was low and intermittent. These plaques are white, smooth, discrete raised areas of fibrosis collagen tissue found on the inner surfaces of the ribcage, diaphragm and pleura. In addition these plaques are usually calcified and can range in size from small to large. As the asbestos fibers work their way into the outer lining of the lung (the pleural lining) they cause chronic inflammation and eventual scarring from that inflammation. The plaques are a direct result of the pleural scarring. Individuals with pleural plaques have an increased risk for developing mesothelioma.

b. Pleural thickening develops over broader areas of the pleural lining as a result of exposure to asbestos fibers. The latency period is the same as for pleural plaque. The increased risk of mesothelioma also exists. The difference between pleural plaque and pleural thickening is the diffusion of the thickening along the pleural lining.

c. Asbestosis is a breathing disorder caused by inhaling asbestos fibers. Prolonged accumulation of these fibers in your lungs can cause scarring of lung tissue and shortness of breath. Asbestosis symptoms can range from mild to severe, and usually do not appear until years after exposure. Symptoms of asbestosis begin to appear when lung function has been damaged by asbestos exposure.

d. Asbestos related lung cancer occurs in two types: small cell lung cancer and non-small cell lung cancer. Eighty percent of the asbestos related lung cancers are of the non-small cell variety. Asbestos related lung cancer symptoms appear from ten to fifty years after initial exposure to asbestos fibers.

e. Mesothelioma is a cancer of the mesothelium, a membrane that protects organs of the body. Most cases of mesothelioma begin in the pleura or peritoneum. The only known cause of mesothelioma is asbestos exposure.

Mesothelioma has a ten to fifty year gestation period from the date of initial exposure to disease diagnosis.

20. Defendant U.S. Engineering is a sophisticated engineering firm that at all relevant times hereto possessed specific knowledge concerning the dangers of asbestos, including, but not limited to the knowledge that people exposed to dust containing asbestos fibers will inevitably be harmed in some manner.

21. For more than thirty (30) years Defendant U.S. Engineering Company has entered into numerous contracts with Defendant County to perform demolition, renovation, repair, replacement and maintenance projects at the building including but not limited to:

- a. plumbing;
- b. electrical; and
- c. heating ventilation and air conditioning (HVAC).

22. While performing the various projects described in paragraph 21, Defendant U.S. Engineering caused the release of dust containing asbestos fibers into the air within the building due to:

- a. intentional demolition and removal of the ACM; and
- b. accidental and unintentional damage, removal and/or disturbance of ACM.

23. While performing the various projects described in paragraph 21, Defendant U.S. Engineering was aware that its actions and omissions resulted in the release of dust containing asbestos fibers into the air within the building.

24. Defendant U.S. Engineering concealed the information regarding the release of dust containing asbestos fibers into the air within the building from:

- a. Jackson County, Missouri;
- b. the individuals who worked at, visited or otherwise occupied the building; and
- c. the general public.

25. Plaintiffs were unaware and had no reasonable way to know or realize that they were exposed to asbestos or the risks of being exposed to asbestos.

26. While present at the Jackson County Courthouse-Kansas City, Plaintiffs were exposed to and inhaled, ingested, or otherwise absorbed dust containing asbestos fibers emanating from the ACM on the premises.

27. Additionally, asbestos fibers adhered to the person and clothing of Plaintiffs and were carried home and otherwise off the premises of the building. While off the premises and outside the course of their employment, Plaintiffs were exposed to and inhaled, ingested, or otherwise absorbed asbestos fibers that had adhered to their person and clothing.

28. Plaintiffs' exposure to and inhalation, ingestion, and/or absorption of said asbestos fibers was completely foreseeable and could or should have been

anticipated by Defendants, including that Plaintiffs would be exposed off the premises and outside the scope of employment.

29. Defendants knew or should have known that exposure to asbestos fibers posed an unreasonable risk of harm to Plaintiffs and others similarly situated.

30. As a direct and proximate result of the activities of the Defendants, Plaintiffs have suffered injuries, damages and losses which include but are not limited to the need for medical monitoring services for persons who worked in, visited or conducted business in the building.

31. The presence of asbestos in the human body and the affects of asbestos on the human body can be determined by medical monitoring, which includes but is not limited to chest x-rays and/or other non-invasive methods of viewing the organs and bodies of the persons so exposed and lung capacity testing as needed.

32. Defendants' generation, use, handling, storage, treatment, demolition, removal and disposal of asbestos during the renovation, repair, maintenance and/or remodeling of the building and their failure to control and contain the same constituted numerous and repeated violations of environmental statutes and regulations, including but not limited to:

(a) Occupational Health and Safety Act (OSHA) Asbestos Regulations (29 CFR 1910.1001); and

(b) USEPA National Emission Standards for Hazardous Air Pollutants (NESHAPS) Asbestos Regulations (40 CFR 61 Subpart M).

33. At all times mentioned herein, the Defendants have acted by and through their duly-authorized officers, managers, agents, servants, and/or employees, all of whom have acted within the course and scope of their employment or other relationship.

CLASS ACTION

34. This action is brought by the Plaintiff individually on his own behalf and as a representative of the class defined herein.

35. Plaintiff brings this case on behalf of all persons (and their family members) who worked in, visited or conducted business in the Jackson County Courthouse for the period of time from 1983 to the present.

36. These persons have been exposed to dust containing asbestos fibers released by the activities of the Defendants. This exposure has created a significantly increased risk of illness or injury, such that there is a reasonable need for early detection and diagnosis. In addition, ongoing exposure creates an increased risk of elevated biological levels of such hazardous substances in the persons exposed.

37. There are hundreds of persons who were exposed to asbestos as a result of the activities of the Defendants.

38. There are numerous questions of law and/or fact common to the Plaintiffs' claims including but not limited to:

- a. Whether one or more releases of dust containing asbestos fibers occurred;

b. Whether the release of dust containing asbestos fibers by the Defendants breached a duty of care owed the Plaintiff and the Class;

c. The degree to which dust containing asbestos fibers were dispersed into the air within the building as a result of the actions and failures to act of Defendants;

d. Whether the release of ACM created a significantly increased risk of personal harm and/or adverse health effect upon the members of the class;

e. Whether a medical monitoring program to be established for the class is appropriate relief for members of the class;

f. Whether Defendants engaged in negligent, or intentional conduct, or violated the provisions of statutes or regulations in connection with the releases of asbestos in the building;

g. Whether Defendants are strictly liable to plaintiffs for the damages caused by Defendants' release of dust containing asbestos fibers; and

h. Whether Defendants' conduct was of the requisite gravity or seriousness to give rise to liability for punitive damages, and the amount of punitive damages to be awarded to the Plaintiffs and the Plaintiff class.

39. The claims of the representative Plaintiff are typical of the claims of the class.

40. The representative Plaintiff will fairly and adequately protect the interests of the class he represents.

41. The claims of the class or any defenses thereto present important common questions of law and/or fact, the disposition of which will materially advance the adjudication of the Plaintiffs' claims and make class certification appropriate in the interests of justice.

42. These common questions of law or fact are the predominate issue in the litigation.

43. Class action treatment of the claims of the class provides a fair and efficient method for the immediate adjudication of the claims herein and is superior to proceeding on an individual case by case adjudication which would increase dramatically the costs and time necessary to dispose of these claims, deny most class members relief as a practical matter, and risk inconsistent and varying adjudications of these claims.

**COUNT I – NEGLIGENCE CLAIMS AGAINST DEFENDANT U.S.
ENGINEERING COMPANY**

COME NOW Plaintiffs and for Count I of their Petition for Damages against Defendant U.S. Engineering Company, state and allege as follows:

44. To the extent they are not inconsistent with the allegations in this Count, Plaintiffs incorporate all other allegations of this Petition as though more fully set forth herein.

45. Defendant had a duty to use ordinary care for the safety of Plaintiff and others in conducting any operations or activities at the building and in reducing or eliminating unreasonable risks that arose from those operations or activities.

46. Defendant was negligent, careless, and reckless in the following respects, among others:

(a) It failed to require and/or provide equipment and engineering controls designed to contain asbestos fibers and reduce the risk of exposure to asbestos;

(b) It failed and omitted to take reasonable precautions or to exercise reasonable care to publish, adopt and enforce a safety plan and a safe method of handling, removing and working around the asbestos in the building;

(c) It failed to replace ACM at the building with non-asbestos substitutes, which Defendant knew or should have known were available.

(d) It failed to adequately train and advise its own employees regarding the proper use of equipment and engineering controls necessary to contain asbestos fibers and reduce the risk of exposure to asbestos;

(e) It failed to recommend appropriate methods to make safe the work environment of Plaintiffs, knowing that they would be exposed to the ACM at the building;

(f) It failed to advise and warn Plaintiffs that the ACM in the building were harmful, dangerous and life-threatening asbestos products;

(g) It failed to warn Plaintiffs that they were working around ACM, including that Plaintiffs were being exposed to dust containing asbestos fibers and the adverse health effects of such exposure;

(h) It failed to advise Plaintiffs of the dangerous characteristics of asbestos;

(i) It failed to provide an adequate warning to Plaintiffs of the dangers to their health in coming in contact with and breathing dust containing asbestos fibers;

(j) It failed to warn and/or advise Plaintiffs regarding hygiene practices designed to reduce and/or prevent carrying asbestos fibers home; and

(k) It failed to provide any measures sufficient to protect Plaintiffs from being poisoned, disabled and harmed by exposure to dust containing asbestos fibers;

47. As a direct and proximate result of the above negligence and fault, for which Defendants are jointly and severally liable, Plaintiffs and the Plaintiff Class have suffered, presently suffer and will continue to suffer in the future injuries, damages and losses. These injuries, damages and losses include but are not limited to the need for medical monitoring services.

WHEREFORE, Plaintiff requests judgment to be entered in their favor against the Defendants jointly and severally, as follows:

- (a) an order certifying the Class for claims for medical monitoring services and punitive damages;
- (b) an amount of damages in such sum as is fair and reasonable to compensate the Plaintiffs in an amount in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000);
- (c) a judgment for punitive damages in an amount sufficient to punish and deter the Defendants from further such conduct;
- (d) an award for pre- and post-judgment interest and for costs and expenses as allowed by statute and law; and
- (e) such other and further relief as the Court deems necessary in the interests of justice.

COUNT II- STRICT LIABILITY/ULTRAHAZARDOUS ACTIVITY
CLAIMS AGAINST DEFENDANT U.S. ENGINEERING

COME NOW Plaintiffs and for Count II of their Petition for Damages against Defendant U.S. Engineering Company, state and allege as follows:

48. To the extent they are not inconsistent with the allegations in this Count, Plaintiffs incorporate all other allegations of this Petition as though more fully set forth herein.

49. Defendant U.S. Engineering's actions and omissions which caused the release of dust containing asbestos fibers into the air at the building while it

was performing the various projects described in paragraph 21 were abnormally dangerous and constitute an ultrahazardous activity.

50. Defendant U.S. Engineering is liable to Plaintiffs regardless of the amount of care exercised.

51. As a direct result of the actions and omissions of Defendant U.S. Engineering, Plaintiffs have been damaged as set forth in paragraphs 36 and 47.

52. The actions, conduct and omissions of Defendant U.S. Engineering Company were committed with complete indifference to or in conscious disregard for the safety and well-being of the Plaintiffs and others. By virtue of the attitude and conduct of Defendant U.S. Engineering Company, Plaintiffs are entitled to exemplary or punitive damages in an amount that will properly punish Defendant U.S. Engineering Company and deter it and others from like conduct in the future.

WHEREFORE, Plaintiffs request judgment to be entered in their favor against the Defendants for:

- (a) an order certifying the Class for claims for medical monitoring services and punitive damages;
- (b) an amount of damages in such sum as is fair and reasonable to compensate the Plaintiffs in an amount in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000);
- (c) a judgment for punitive damages in an amount sufficient to punish and deter the Defendants from further such conduct;

- (d) an award for pre- and post-judgment interest and for costs and expenses as allowed by statute and law; and
- (e) such other and further relief as the Court deems necessary in the interests of justice.

**COUNT III – NEGLIGENCE PER SE CLAIMS AGAINST DEFENDANT
U.S. ENGINEERING**

COME NOW Plaintiffs and for Count III of their Petition for Damages against Defendant U.S. Engineering Company, state and allege as follows:

53 To the extent they are not inconsistent with the allegations in this Count, Plaintiff incorporates all other allegations of this Petition as though more fully set forth herein.

54. At all times material hereto, Defendant was required to operate in compliance with environmental statutes, regulations and standards, including, but not limited to:

(a) Occupational Health and Safety Act (OSHA) Asbestos Regulations (29 CFR 1910.1001); and

(b) USEPA National Emissions Standards for Hazardous Air Pollutants (NESHAPS) Asbestos Regulations (40 CRF 61 Subpart M).

55. Defendant violated these statutes, regulations and standards.

56. Plaintiffs are members of the class of persons intended to be protected by these statutes, regulations and standards.

57. The injuries and damages incurred by Plaintiffs are of the type that these statutes, regulations and standards were designed to prevent.

58. The violation of the statutes, regulations and standards was a proximate cause of the injuries and damages incurred by Plaintiffs.

59. As a direct result of the actions and omissions of Defendant U.S. Engineering, Plaintiffs have been damaged as set forth in paragraphs 36 and 47.

60. The actions, conduct and omissions of Defendant U.S. Engineering Company were committed with complete indifference to or in conscious disregard for the safety and well-being of the Plaintiff and others. By virtue of the attitude and conduct of Defendant U.S. Engineering Company, Plaintiff is entitled to exemplary or punitive damages in an amount that will properly punish Defendant U.S. Engineering Company and deter it and others from like conduct in the future.

WHEREFORE, Plaintiffs request judgment to be entered in their favor against the Defendants for:

- (a) an order certifying the Class for claims for medical monitoring services and punitive damages;
- (b) an amount of damages in such sum as is fair and reasonable to compensate the Plaintiffs in an amount in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000);
- (c) a judgment for punitive damages in an amount sufficient to punish and deter the Defendants from further such conduct;

- (d) an award for pre- and post-judgment interest and for costs and expenses as allowed by statute and law; and
- (e) such other and further relief as the Court deems necessary in the interests of justice.

**COUNT IV – PREMISES LIABILITY CLAIMS AGAINST
DEFENDANT JACKSON COUNTY**

COME NOW Plaintiffs and for Count IV of their Petition for Damages against the Defendant County, state and allege as follows:

61. To the extent they are not inconsistent with the allegations in this Count, Plaintiff incorporates all other allegations of this Petition as though more fully set forth herein.

62. Defendant had a duty to use ordinary care to make the building reasonably safe.

63. While its own employees and others were performing demolition, renovation, repair, replacement and maintenance projects at the building, Defendant County caused the release of dust containing asbestos fibers into the air at the building.

64. The release of the dust containing asbestos fibers at the building into the air created extremely hazardous and dangerous conditions such that the premises were not reasonably safe for people that Defendant Jackson County knew would be exposed to asbestos, including Plaintiffs.

65. Defendant County knew of the extremely hazardous and dangerous conditions at the building and knew that it was not reasonably safe.

66. The dangerous conditions created a reasonably foreseeable risk of harm of the kind that Plaintiff incurred.

67. Defendant County knew or had information from which it should have known, in the exercise of ordinary care, that persons such as Plaintiffs would not discover or realize the risk of harm posed by being exposed to the asbestos.

68. Defendant County knew that it was dangerous to work around and/or attempt to remove any of the ACM from the building without taking appropriate precautions, yet it failed to use ordinary care to or make the conditions of its building reasonably safe for people such as Plaintiffs and/or adequately warn of the extremely hazardous and dangerous conditions of its premises.

69. As a direct result of the actions and omissions of Defendant County, and the dangerous condition of the property, Plaintiffs have been damaged as set forth in paragraphs 36 and 47.

WHEREFORE, Plaintiffs request judgment to be entered in their favor against the Defendants for:

- (a) an order certifying the Class for claims for medical monitoring services and punitive damages;

- (b) an amount of damages in such sum as is fair and reasonable to compensate the Plaintiffs in an amount in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000);
- (c) a judgment for punitive damages in an amount sufficient to punish and deter the Defendants from further such conduct;
- (d) an award for pre- and post-judgment interest and for costs and expenses as allowed by statute and law; and
- (e) such other and further relief as the Court deems necessary in the interests of justice.

COUNT V – NEGLIGENCE CLAIMS AGAINST
DEFENDANT JACKSON COUNTY

COME NOW Plaintiffs and for Count V of their Petition for Damages against the Defendant County, state and allege as follows:

70. To the extent they are not inconsistent with the allegations in this Count, Plaintiff incorporates all other allegations of this Petition as though more fully set forth herein.

71. Defendant had a duty to use ordinary care for the safety of Plaintiffs and others in conducting any operations or activities at the building and in reducing or eliminating unreasonable risks that arose from those operations or activities.

72. Defendant County breached its duties to Plaintiff in one or more of the following respects:

(a) It purchased/provided ACM for purposes of application at the above-named premises;

(b) It failed to replace the ACM at the premises with non-asbestos substitutes, which Defendant knew or should have known were available;

(c) It specified/required the use/application/removal of ACM by others, including its own employees and outside contractors, in the vicinity of Plaintiffs and/or in areas in which Plaintiff performed work;

(d) It failed to require and/or provide equipment and engineering controls designed to contain asbestos fibers and reduce the risks of exposure to asbestos;

(e) It required Plaintiffs to perform work in the vicinity of those removing and/or disturbing the ACM;

(f) It failed to adequately train and advise its own employees regarding the proper use of equipment and engineering controls necessary to contain asbestos fibers and reduce the risk of exposure to asbestos;

(g) It failed to recommend appropriate methods to make safe the work environment of Plaintiffs, knowing that they would be exposed to the ACM at the building;

(h) It failed to advise Plaintiffs of the dangerous characteristics of asbestos;

(i) It failed to provide an adequate warning to persons such as Plaintiffs of the dangers to their health in coming in contact with and

breathing dust containing asbestos fibers;

(j) It failed to warn Plaintiffs that they were working around ACM and of the risks associated therewith, including that Plaintiffs were being exposed to asbestos fibers and of the adverse health effects of such exposure;

(k) It failed to require and/or advise Plaintiffs and others, including its own employees and outside contractors to use equipment and practices designed to reduce the release of asbestos fibers and/or exposure to asbestos;

(l) It failed to require and/or advise Plaintiffs of hygiene practices designed to reduce and/or prevent carrying asbestos fibers home; and

(m) It failed to provide any measures sufficient to protect Plaintiffs from being poisoned, disabled and harmed by exposure to asbestos.

73. As a direct result of the actions and omissions of Defendant County, Plaintiffs have been damaged as set forth in paragraphs 36 and 47.

WHEREFORE, Plaintiff requests judgment to be entered in their favor against the Defendants for:

(a) an order certifying the Class for claims for medical monitoring services and punitive damages;

- (b) an amount of damages in such sum as is fair and reasonable to compensate the Plaintiffs in an amount in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000);
- (c) a judgment for punitive damages in an amount sufficient to punish and deter the Defendants from further such conduct;
- (d) an award for pre- and post-judgment interest and for costs and expenses as allowed by statute and law; and
- (e) such other and further relief as the Court deems necessary in the interests of justice.

COUNT VI – STRICT LIABILITY/ULTRAHAZARDOUS ACTIVITY
CLAIMS AGAINST DEFENDANT JACKSON COUNTY

COME NOW Plaintiffs and for Count VI of their Petition for Damages against Defendant County, state and allege as follows:

74. To the extent they are not inconsistent with the allegations in this Count, Plaintiff incorporates all other allegations of this Petition as though more fully set forth herein.

75. Defendant County's actions which caused the release of dust containing asbestos fibers into the air at the building while it's own employees or others were performing renovation, repair, replacement and maintenance projects was abnormally dangerous and constitutes an ultrahazardous activity.

76. Defendant County is liable to Plaintiffs regardless of the amount of care exercised.

77. As a direct result of the actions and omissions of Defendant County, Plaintiff has been damaged as set forth in paragraphs 36 and 47.

WHEREFORE, Plaintiffs request judgment to be entered in their favor against the Defendants for:

- (a) an order certifying the Class for claims for medical monitoring services and punitive damages;
- (b) an amount of damages in such sum as is fair and reasonable to compensate the Plaintiffs in an amount in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000);
- (c) a judgment for punitive damages in an amount sufficient to punish and deter the Defendants from further such conduct;
- (d) an award for pre- and post-judgment interest and for costs and expenses as allowed by statute and law; and
- (e) such other and further relief as the Court deems necessary in the interests of justice.

**COUNT VII – NEGLIGENCE PER SE CLAIMS AGAINST DEFENDANT
JACKSON COUNTY**

COME NOW Plaintiffs and for Count VII of their Petition for Damages against Defendant County, state and allege as follows:

78. To the extent they are not inconsistent with the allegations in this Count, Plaintiffs incorporate all other allegations of this Petition as though more fully set forth herein.

79. At all times material hereto, Defendant was required to operate in compliance with environmental statutes, regulations and standards, including, but not limited to:

(a) Occupational Health and Safety Act (OSHA) Asbestos Regulations (29 CFR 1910.1001); and

(b) USEPA National Emissions Standards for Hazardous Air Pollutants (NESHAPS) Asbestos Regulations (40 CFR 61 Subpart M).

80. Defendant violated these statutes, regulations and standards.

81. Plaintiffs are members of the class of persons intended to be protected by these statutes, regulations and standards.

82. The injuries and damages incurred by Plaintiffs are of the type that these statutes, regulations and standards were designed to prevent.

83. The violation of the statutes, regulations and standards was a proximate cause of the injuries and damages incurred by Plaintiffs.

84. As a direct result of the actions and omissions of Defendant Jackson County, Plaintiffs have been damaged as set forth in paragraphs 36 and 47.

WHEREFORE, Plaintiff requests judgment to be entered in their favor against the Defendants for:

(a) an order certifying the Class for claims for medical monitoring services and punitive damages;

- (b) an amount of damages in such sum as is fair and reasonable to compensate the Plaintiffs in an amount in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000);
- (c) a judgment for punitive damages in an amount sufficient to punish and deter the Defendants from further such conduct;
- (d) an award for pre- and post-judgment interest and for costs and expenses as allowed by statute and law; and
- (e) such other and further relief as the Court deems necessary in the interests of justice.

Respectfully submitted,

THE ACCURSO LAW FIRM
A Professional Corporation

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