

NO ARBITRATION
JURY TRIAL DEMANDED

ASSESSMENT OF DAMAGES
HEARING IS NOT REQUIRED

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Attorney for Plaintiffs

ROBERT MC CULLOUGH and
PRECILLA MC CULLOUGH
6534 N. 18th Street
Philadelphia, PA 19126

v.

ASSOCIATED LEAD, INC.
2545 Aramingo Avenue
Philadelphia, PA 19125
and
NATIONAL LEAD INDUSTRIES, INC.
2545 Aramingo Avenue
Philadelphia, PA 19125
also
Wychoff Mills Road
Hightstown, NJ 08520
also
P.O. Box 700
Hightstown, NJ 08520
and
NATIONAL LEAD INDUSTRIES, INC.
PIGMENTS AND CHEMICALS DIVISION
2545 Aramingo Avenue
Philadelphia, PA 19125
also
Wychoff Mills Road
Hightstown, NJ 08520
also
P.O. Box 700
Hightstown, NJ 08520
and

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

AUGUST TERM, 1985
NO. 3253

ARTHUR STIFFEL, M.D.
1107 E. Erie Avenue
Philadelphia, PA 19124
and
A.M. ABERICO, M.D.
900 E. Howell Street
Philadelphia, PA 19149
and
CLAUDE P. BROWN, M.D.
1930 Chestnut Street
Aldine Professional Bldg.
Philadelphia, PA 19107
and
FRANCIS J.A. RENZULLI, M.D.
c/o National Lead Company
2545 Aramingo Avenue
Philadelphia, PA 19125
and
SIDNEY LERNER, M.D.
University of Cincinnati
3233 Eden
Cincinnati, OH 45267
and

NL 000039539

N.L. INDUSTRIES, INC.
2545 Aramingo Avenue
Philadelphia, PA 19125
also
Wychoff Mills Road
Hightstown, NJ 08520
also
P.O. Box 700
Hightstown, NJ 08520

and
NATIONAL LEAD COMPANY
2607 East Cumberland Street
Philadelphia, PA 19125
also
Wychoff Mills Road
Hightstown, NJ 08520
also
P.O. Box 700
Hightstown, NJ 08520

MINE SAFETY APPLIANCE COMPANY
609 Penn Center Boulevard
Pittsburgh, PA 15235

Certain unnamed Health
Testing Centers

COMPLAINT

Plaintiffs, through undersigned counsel, sues defendants, Associated Lead, ("Associated Lead") Inc.; National Lead Industries, Inc., ("National Lead Industries"); National Lead Industries, Inc., Pigments and Chemicals Division ("Pigments and Chemical Divisions"); National Lead Company, ("National Lead") N.L. Industries, Inc. ("N.L."); Arthur Stiffel, M.D.; H. M. Aberico, M.D.; Claude P. Brown, M.D.; Francis J. H. Renzulli, M.D.; Sidney Lerner, M.D.; and Mine Safety Appliance Company and for their causes of action, plaintiffs respectfully state:

1. Plaintiffs herein are:

Robert McCullough and Precilla McCullough, husband and wife, who live at 6534 N. 18th Street, Philadelphia, Pennsylvania 19126.

2. Defendants herein are:

NL 000039540

a. Associated Lead, Inc., is a Delaware corporation with its principal place of business at 2545 Aramingo Avenue, Philadelphia, Pennsylvania 19125.

b. National Lead Industries, Inc., is a New Jersey corporation with its principal place of business at 2545 Aramingo Avenue, Philadelphia, Pennsylvania 19125.

c. National Lead Industries, Inc., Pigments and Chemical Division, is a division and/or affiliated corporation of National Lead Industries, and it has its principal place of business at 2545 Aramingo Avenue, Philadelphia, Pennsylvania 19125.

d. National Lead Company is a New Jersey corporation, with its principal place of business at 2607 East Cumberland Street, Philadelphia, Pennsylvania 19125.

e. N.L. Industries, Inc. is a New Jersey corporation with its principal place of business at 2545 Aramingo Avenue, Philadelphia, PA, 19125.

f. Arthur Stiffel, M.D., is an individual residing or having an office at 1107 E. Erie Avenue, Philadelphia, Pennsylvania 19124.

g. H. M. Aberico, M.D., is an individual, residing at or having offices at 900 E. Howell Street, Philadelphia, Pennsylvania 19149.

h. Claude P. Brown, M.D., is an individual, residing at or having offices at 1930 Chestnut Street, Aldine Professional Building, Philadelphia, Pennsylvania 19107.

i. Francis J. A. Renzulli, M.D. is an individual who has offices at 2545 Aramingo Avenue, Philadelphia, Pennsylvania 19125.

j. Sidney Lerner, M.D., is an individual who has offices at the University of Cincinnati, 3233 Eden Street, Cincinnati, Ohio, 45267. At all times herein, Dr. Lerner did business in Pennsylvania, County of Philadelphia.

k. Mine Safety Appliance Company, is a Pennsylvania corporation with its principal place of business at 609 Penn Center Boulevard, Pittsburgh, Pennsylvania 15235.

1. Unknown medical offices who performed certain medical services, health tests or other tests on Mr. McCullough.

3. The amount in controversy is in excess of \$20,000 exclusive of interest and costs.

4. This Court has jurisdiction of this matter pursuant to 42 Pa.C.S.A. §931.

5. This Court has venue of this matter pursuant to Pa. R. Civil Procedure, under 1006, 1042.

6. In or around 1960, defendant, National Lead Industries, owned and operated a lead smelting and/or refining plant at 2545 Aramingo Avenue, Philadelphia, Pennsylvania 19125. National Lead Company and National Lead Industries, Pigments and Chemicals Division, were and remain subsidiaries to National Lead Industries and N.L. Industries.

7. Upon information and belief, the operations of the plant at 2545 Aramingo Avenue included, but were not limited to the manufacture, refinement and/or use of white lead, red lead, litharge, sugar of lead, arsenate of lead, lead chromate, lead sulphate, lead nitrate, fluo-silicate.

8. In or around 1967, National Lead changed their name to N. L. Industries. In all other respects, the plant at 2545 Aramingo Avenue remained the same.

9. In or around 1980, Associated Lead purchased and/or otherwise acquired the plant at 2545 Aramingo Avenue from National Lead Industries.

10. Upon information and belief, the operation of the plant included, but was not limited to the manufacture, refinement and/or use of white lead, red lead, litharge, sugar of lead, arsenate of lead, lead chromate, lead sulphate, lead nitrate, fluo-silicate.

11. At all times material hereto, the aforementioned defendants provided services and products either directly to plaintiff or through his employer which they represented were for the purposes of protecting and keeping safe the plaintiff from injury and illness caused by lead and other chemicals, harmful vapors, dust, noise and any other damaging exposure by reason of his employment in the metals smelting and refining plant.

12. Plaintiff was employed by Associated Lead, Inc., and its predecessors in interest for a period commencing on or about the year 1960, to on or about the year 1980.

13. At all times material hereto, Associated Lead Inc., and its predecessors in interest, were engaged in the business of smelting and refining secondary lead based scrap materials and other heavy metals.

14. At all times material hereto, the plaintiff was exposed to heavy metals, including without limitation lead scrap, lead

dross, molten and hot lead, cadmium, arsenic, chemicals, harmful dusts and vapors and excessive noise, among other noxious substances produced at the secondary lead smelting facility.

15. At all times material hereto, plaintiff made use of any and all clothing and devices provided to him at the work place for the purpose of preventing the plaintiff from contracting injury and illness by reason of exposure to heavy metals, chemicals, vapors, dust, noise, lead, cadmium and arsenic, among other toxic substances within the lead plant.

16. At all times material hereto, plaintiff relied upon the representations made by his superiors that the clothing and devices would protect and keep him safe from toxic lead poisoning, arsenic poisoning, cadmium poisoning, kidney disease, renal failure and other injuries and impairments related to toxic heavy metal exposure, chemical exposure, and exposure to other toxic substances and noises within the lead facility.

17. As a direct result of his reasonable reliance upon those products, devices and services, plaintiff has contracted toxic heavy metal poisoning, lead poisoning, renal dysfunction, deafness and all other injuries and impairments, psychological and physiological, precipitated and enhanced by plaintiff's exposure to his toxic work environment. Plaintiff has been permanently injured and disabled therefrom.

18. At all times material hereto, all of the defendants had actual and/or constructive knowledge of the medical and health risks to the plaintiff created and enhanced by plaintiff's exposure to lead, arsenic, cadmium, heavy metals and chemicals,

loud noises and the toxic vapors, dusts, fumes and noise given off or produced by the same in the workplace.

19. Notwithstanding the knowledge of all defendants, each of them wilfully, wantonly and in reckless disregard of the consequences, or negligently, failed to notify the plaintiff of the degree and severity of this risk and assured plaintiff of the safety of the procedures followed and safety precautions taken.

20. Defendants failed to provide and/or they provided improper or inadequate notices or warnings to plaintiff of the risks of his work environment, misrepresented the safety of the workplace, concealed the harm they knew or should have known was being caused plaintiff by his work exposure and otherwise breached their respective duties to the plaintiff.

21. As a direct result of his reliance upon the products and devices aforementioned, plaintiff has in the past and will in the future be unable to attend to his usual duties and responsibilities, be unable to work or be employed, be unable to enjoy life's joys and pleasures and advocations to his great loss as follows:

- a. Loss of employment which may continue indefinitely into the future at a loss of earnings in excess of \$20,000.00 per year;
- b. Reduced earning capacity as a result of his impairment;
- c. Loss of general health, strength, welfare and vitality;
- d. Loss of consortium;

e. He has been required to apply for public assistance to his great embarrassment and humiliation;

f. He has suffered great pain, inconvenience, embarrassment, mental anguish and humiliation, including emotional and psychogenic overlays which may and will continue into the future;

g. He now suffers, or may in the future suffer, the following medical conditions:

toxic lead poisoning, adverse hematological effects, anemia, gastrointestinal ailments, anorexia, nausea, vomiting, diarrhea, constipation, colic, neurological effects, headache, insomnia, lead encephalopathy, personality changes, bad dreams, hyperirritability, tremors, sensory and motor dysfunction, renal dysfunction, chronic interstitial nephritis, chronic hypertension, gout, cardiovascular abnormalities, cerebrovascular abnormalities, impaired adrenal and pituitary function, pulmonary dysfunction, impaired hearing, lassitude, severe muscle and joint involvement, psychological and psychiatric problems, impotence, loss of sexual drive, deafness and such other medical and emotional conditions as treating and examining specialists find to be caused, precipitated, aggravated or enhanced by the work exposure.

22. As a direct result of his reliance upon the products and devices aforementioned, and ineffective health screening and medical care, negligence, carelessness, intentional misconduct, concealment, breach of duty, and violation of law by the defendants, plaintiff has in the past and will in the future be required to expend large sums in the care and treatment of his injury, and may require future hospitalization.

23. The aforesaid injuries were caused, aggravated and enhanced by the negligence, carelessness, intentional conduct and concealment of the defendants, their agents, servants, workers and employees acting in the course and scope of their employment or agency, all to the injury and damage to the plaintiff.

24. Plaintiff was at all times up until February of 1985 unaware of the nature and cause of his injuries or the causal relationship of those injuries to his overexposure to lead arsenic, cadmium, loud noises and other noxious substances within his work place.

25. Neither plaintiff employee nor plaintiff-wife could reasonably have discovered the nature and cause of plaintiff-employee's injuries or the relationship between these injuries and his overexposure to toxins within the work place due to defendants' misrepresentations and their intentional, wilful, wanton, reckless, or negligent, concealment of such information from plaintiff-employee and from plaintiff-wife and from appropriate state agencies.

26. The nature and cause of plaintiff's injuries and the relationship between those injuries and his overexposure to toxins within his work place was unknowable to plaintiff-employee and plaintiff-wife prior to February, 1985.

27. Plaintiffs could not have brought this action earlier than February 1, 1985, due to defendants' misrepresentations and concealment. This action is timely filed in view of the applicability of the "discovery rule" to this case.

28. The negligence, carelessness and intentional conduct of defendants, their agents, employees and servants causing damage to plaintiff is as follows:

NL 000039547

COUNT ONE

(vs. Associated Lead, Inc.)

29. Plaintiff repeats and realleges each and every allegation contained in paragraph 1 to 28 inclusive of this Complaint, with the same force and effect as if fully set forth and repeated herein.

30. On or about the year 1979, defendant Associated Lead, Inc., purchased the aforementioned secondary lead smelting and refining facility located at 2545 Aramingo Avenue from defendant NL Industries, Inc., its predecessor in interest.

31. At all times material hereto, from the first date of his employment to the date of his termination, plaintiff was employed at the 2545 Aramingo Avenue lead facility.

32. From the time of its purchase in 1979 through 1980, and subsequent thereto, defendant Associated was notified by state and federal authorities, management personnel and defendant medical physicians that its employees in the lead facility were being overexposed to lead, arsenic, cadmium, loud noises and other toxic substances and were manifesting symptoms of lead, heavy metals poisoning and other chemical poisoning and their related forms of illness and injury.

33. Prior to Associated's purchase of the facility, its predecessor in interest, NL Industries, had instituted a program whereby a medical health practitioner would conduct periodic medical examinations for lead toxicity of each employee.

34. Upon information and belief, after Associated's purchase of the facility, defendant Associated entered into a con-

tractual relationship with defendant physicians for the purpose of continuing the periodic medical examinations to prevent lead arsenic, cadmium, loud noises and other toxicity in plaintiff. Knowledge of the nature and format of this contract is within the exclusive possession of Associated Lead.

35. The intentional and/or reckless misconduct of defendant Associated Lead consisted of the following:

a. Failure to make the workplace safe from lead, heavy metals, dust, dirt, chemicals, noise and other toxic substances;

b. Failure to warn the plaintiff of the danger of lead, arsenic, cadmium, dust, dirt, chemicals, noise and heavy metal toxicity from long-term exposure;

c. Failure to inform the plaintiff of the symptoms of toxic long-term exposure to lead, arsenic, cadmium, dust, dirt, chemicals, noise and other toxic substances;

d. Failure to warn the plaintiff of the danger of lead, arsenic, cadmium, and heavy metal toxicity being transferred to the employee's immediate family;

e. Failure to inform the plaintiff of the long-term effects of lead, arsenic, cadmium and chemical poisoning once contracted;

f. Failure to inform the plaintiff that the safety measures being implemented and adhered to were not protecting the employees from lead poisoning, arsenic and cadmium poisoning or overexposure to other toxic elements;

g. Failure to inform the plaintiff that the medical health services being provided were not remedial and were not

protecting the plaintiff from lead poisoning, arsenic and cadmium poisoning or overexposure to other toxic elements;

h. Failure to warn the plaintiff that the safety gear and products being utilized were not protecting the plaintiff from lead poisoning, arsenic and cadmium poisoning or exposure to other toxic elements;

i. Representing to the plaintiff that strict adherence to the safety program and directives given with respect to the use of safety gear and medical health services would protect the plaintiff from lead, arsenic, cadmium and exposure to other toxic elements;

j. Failure to inform the plaintiff that his high blood lead levels would result in lead poisoning, kidney disease, renal failure, heart failure and related injuries;

k. Failure to inform plaintiff that remedial medical treatment was required to prevent or correct the ill effects being caused by his high blood lead levels;

l. Failure to remove plaintiff from the highly toxic lead, arsenic, cadmium and heavy metal infested environment prior to the date when plaintiff was terminated;

m. Failure to render proper health screening, medical care and treatment to the plaintiff;

n. Failing and/or refusing to act upon results of tests administered to employees and failing to follow prudent medical and safety procedures;

o. Intentionally failing to inform plaintiff of his health condition;

p. Such other intentional acts and omissions as revealed by discovery in this case.

36. Plaintiff's injuries have been directly and/or proximately caused by defendants' intentional, wilful and wanton acts and omissions. Defendants' knowing concealment of plaintiff's illness has caused plaintiff to suffer severe injuries and/or have caused plaintiff to suffer enhanced injury and disability.

WHEREFORE, plaintiff demands judgment against defendants on this Count in excess of Twenty Thousand Dollars (\$20,000.00) in addition to interest and costs, an amount in excess of that required for compulsory arbitration.

COUNT TWO

(vs. Associated Lead)

37. Plaintiff repeats and realleges each and every allegation contained in paragraph 1 to 36 inclusive of this Complaint, with the same force and effect as if fully set forth and repeated herein.

38. Defendant Associated Lead deviated from accepted standards of operation for an industrial facility by intentionally, wilfully, wantonly and, with reckless indifference, causing injury to plaintiff by their:

a. Failure to make the workplace safe from lead, arsenic, cadmium, heavy metals, dust, dirt, chemicals, noise and other toxic elements and vapors;

b. Failure to warn the plaintiff of the danger of lead, arsenic, cadmium, dust, dirt, chemicals, noise and heavy metal toxicity from long-term exposure;

c. Failure to inform the plaintiff of the symptoms of lead poisoning, arsenic and cadmium poisoning and other toxic poisoning caused by long-term exposure;

d. Failure to warn the plaintiff of the danger of lead, arsenic, cadmium and other chemical toxicity being transferred to the employee's immediate family;

e. Failure to inform the plaintiff of the long-term effects of lead, arsenic, cadmium and other chemical poisoning once contracted;

f. Failure to inform the plaintiff that the safety measures being implemented and adhered to were not protecting the employees from lead poisoning, arsenic and cadmium poisoning or overexposure to other toxic elements;

g. Failure to inform the plaintiff that the medical health services were not remedial and were not protecting the plaintiff from lead poisoning, or overexposure to other toxic elements;

h. Failure to warn the plaintiff that the safety gear and products being utilized were not protecting the plaintiff from lead poisoning, arsenic and cadmium or overexposure to other toxic elements;

i. Failure to train plaintiff in the proper use and maintenance of the safety devices being provided;

j. Representing to the plaintiff that strict adherence to the safety program and directives given with respect to the use of safety gear and medical health services would protect the plaintiff from lead poisoning, arsenic and cadmium poisoning and exposure to other toxic elements;

k. Intentionally concealing from plaintiff that his high blood lead would result in lead poisoning, heavy metals poisoning, toxic effects of arsenic, kidney disease, renal failure and related injuries;

l. Failure to inform plaintiff that remedial medical treatment was required to prevent or correct the ill effects being caused by his high blood lead, and other chemical levels;

m. Failure to remove plaintiff from the highly toxic lead, arsenic, cadmium and heavy metal infested environment prior to the date when plaintiff was rendered injured;

n. Failure to render proper medical care and treatment to the plaintiff;

o. Failure to provide plaintiff with adequate respiratory protection, medical screening and treatment and appropriate engineering controls to prevent plaintiff's daily overexposure to workplace toxins;

p. Failure to adequately supervise the performance of defendant-physicians in the implementation of the medical regime and administration of treatment to plaintiff;

q. Intentional concealment of the injuries and disabilities being incurred by plaintiff due to his overexposure to toxins within the work environment;

r. Such other intentional, wilful, wanton and reckless acts and omissions as are revealed by discovery.

38. Defendant, Associated Lead, knew or should have known of injury to plaintiff that would be caused by their refusal and/or failure to act in correcting the dangerous work environ-

ment and by refusing and/or failing to adequately warn plaintiff, yet recklessly disregarded the consequences of such failure.

39. Plaintiff's injuries have been directly and proximately caused by defendants' intentional, wilful and wanton acts and omissions. Defendants' knowing concealment of plaintiff's illness has caused plaintiff's severe injuries and/or have caused plaintiff to suffer enhanced injury and disability.

WHEREFORE, plaintiff demands punitive damages on this Count in excess of Twenty Thousand Dollars (\$20,000.00) in addition to interest and costs, an amount in excess of that required for compulsory arbitration.

COUNT THREE

(vs. Associated Lead)

40. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 to 39 inclusive of this Complaint, with the same force and effect as if fully set forth and repeated herein.

41. Defendant Associated Lead had an implied contractual obligation to plaintiff to assure that plaintiff's health would not be adversely affected by virtue of plaintiff's work with, and exposure to, lead, arsenic, cadmium, loud noises and other toxic elements.

42. Defendant Associated represented to plaintiff that a proper and adequate medical regime would be maintained pursuant to defendant's implied contractual obligation.

43. Associated Lead knew that if they did not properly perform its implied contract plaintiff would incur injuries includ-

ing but not limited to those set forth in Paragraph 21 of this Complaint.

44. Defendant Associated Lead has breached this contractual obligation, causing plaintiff to be harmed by such breach.

45. Plaintiff's injuries have been directly and proximately caused by defendant, Associated Lead's breach of contract.

WHEREFORE, plaintiff demands judgment against defendants on this Count in excess of Twenty Thousand Dollars (\$20,000.00) in addition to interest and costs, an amount in excess of that required for compulsory arbitration.

COUNT FOUR

(vs. Mine Safety Appliances Co.)

46. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 to 45 inclusive of this Complaint, with the same force and effect as if fully set forth and repeated herein.

47. At all times relevant hereto, defendant Mine Safety Appliances Company was in the business of designing, producing, manufacturing, vending and distributing industrial safety gear and devices for use in the workplace and for the stated purpose of eliminating or reducing to safe working levels employee exposure to air pollution caused by toxic substances.

48. At all times relevant hereto, defendant Mine Safety Appliances Company produced and distributed to defendant, Associated Lead, and their predecessors in interest, safety gear, products and devices, for use at the subject facility at 2545 Aramingo Avenue, Philadelphia, PA.

49. The intended purpose for the purchase and sale of the safety gear, products and devices aforementioned was to eliminate or reduce the exposure to lead, arsenic, cadmium dusts and other toxic substances to a safe working level.

50. Among the subject gear, products and devices sold for use at the 2545 Aramingo Avenue were respirators, safety glasses, face shields, helmets, exhaust hoods, movable ventilating ducts, and emission control devices for the receival and reclamation of heavy metal dust in said gear, their attachments and accessories.

51. During the course of his use and reliance on the aforementioned gear, products and devices as intended, plaintiff contracted lead, arsenic, cadmium and other chemical poisoning, kidney disease, renal failure, heart failure and related injuries by reason of the breach of warranty, negligence and other tortious conduct of defendant Mine Safety Appliances Company.

52. The breach of warranty, negligence and other tortious conduct consisted in and of the gear, products and devices when sold, each being dangerous and defective; being not merchantable; being unfit for its intended ordinary use; being unfit for its special and specific use; and in other ways being dangerous and defective and each product, gear object, and device did not conform to its description and did not perform in the manner described nor was it designed properly to protect the plaintiff from overexposure to lead, and other toxic elements within the work environment.

53. Defendant, with knowledge of the actual or probable use of the equipment as aforesaid, failed to give adequate or proper

warning of the limitations in the use of its products and was otherwise negligent and careless in providing information and instructions in the use thereof, and misrepresented the effectiveness of the use of its products thereby rendering the same dangerous and defective when used in a manner within the reasonable product use expectations.

54. Defendant Mine Safety knew or should have known that its breach of warranty, negligence and other tortious conduct, and that such acts, omissions and breaches would cause those injuries to plaintiff outlined in Paragraph 21 of this Complaint.

WHEREFORE, plaintiff demands judgment against defendant Mine Safety Appliances Company on this Count for an amount in excess of Twenty Thousand Dollars (\$20,000.00) in addition to interest and costs, an amount in excess of that required for compulsory arbitration.

COUNT FIVE

(vs. Mine Safety Appliances Company)

55. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 to 54 inclusive of this Complaint, with the same force and effect as if fully set forth and repeated herein.

56. Defendant Mine Safety Appliances Company by its agents, servants, workmen, and employees were negligent and careless in the design, construction, manufacture and sale of each of the aforementioned gear, products and devices, thus placing into commerce an industrial safety device that was dangerous and defective as averred herein.

NL 000039557

57. Each product, piece of safety gear and device was dangerous and defective and negligently and carelessly designed and manufactured in that:

a. It was not provided with proper and adequate warnings in its use, the contraindications to its use, and the effective limitations of its use;

b. It was not fit for its intended use or purpose;

c. It was not provided with proper guards and protective devices;

d. It was defective in that it malfunctioned or functioned improperly;

e. It was unreasonably dangerous for its intended use;

f. It was not equipped or provided with minimal safety devices and appliances;

g. It did not conform to laws, rules and regulations of the United States, the Commonwealth of Pennsylvania, the City of Philadelphia or the agencies or departments thereof;

h. It was otherwise dangerous and defective and defendant was otherwise careless and negligent.

58. Defendant Mine Safety Appliances Company is strictly liable to plaintiff and is liable to plaintiff pursuant to §402A of the Restatement of Torts 2nd in that each product, piece of safety gear and device was defective when sold and created the unreasonable risk of injury or harm to the foreseeable users thereof, and was negligently and carelessly designed and manufactured.

WHEREFORE, plaintiff demands judgment from defendant, Mine Safety Appliances Company, on this Count for an amount in excess of Twenty Thousand Dollars (\$20,000.00) in addition to interest and costs, an amount in excess of that required for compulsory arbitration.

COUNT SIX

(vs. Arthur Stiffel, M.D., A.M. Aberico, M.D.,
Claude P. Brown, M.D., Francis J.A. Renzulli, M.D.)

59. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 to 58 inclusive of this Complaint, with the same force and effect as if fully set forth and repeated herein.

59. At all times material hereto, the defendants were to initiate, implement and supervise a medical management program whereby plaintiff would be protected from and educated to the potential dangers inherent in a lead smelting and refinery facility.

60. Pursuant to their duties, defendant-physicians examined and tested plaintiff to determine if he was ill by reason of his exposure to the toxic elements within the workplace.

61. In furtherance of their duties as medical health practitioners, defendants undertook to treat the plaintiff for lead, arsenic, cadmium, loud noises and other chemical and other heavy metal toxicity.

62. The aforementioned treatments consisted of chelation therapy, either intravenously or more often intramuscularly or orally, whenever lead levels were noted to be elevated.

63. At all times material hereto, the negligent and/or

reckless performance of defendants' medical activities fell far below the acceptable standards of practice as defined by the medical community at large and, specifically, by the occupational medicine specialists within the medical community.

64. Defendants breached their duty to provide proper and adequate care, medical services, health screening and management and was negligent and careless in the following manner:

a. Failure to warn the plaintiff of the danger of lead, arsenic, cadmium, heavy metal, loud noises and other chemical toxicity from long-term exposure;

b. Failure to inform the plaintiff of the symptoms of lead, arsenic, cadmium and other chemical poisoning caused by long-term exposure;

c. Failure to warn the plaintiff of the danger of lead, arsenic, cadmium and other chemical toxicity being transferred to the plaintiff's immediate family;

d. Failure to inform the plaintiff of the long-term effects of lead, arsenic, cadmium and other chemical poisoning once contracted;

e. Failure to inform the plaintiff that the safety measures being implemented and adhered to were not protecting the plaintiff from lead, arsenic, cadmium and other chemical poisoning;

f. Failure to inform the plaintiff that the medical health services being provided were not remedial and were not protecting the plaintiff from lead, arsenic, cadmium and other chemical poisoning;

g. Failure to warn the plaintiff that the safety gear and products being utilized were not protecting the plaintiff from lead, arsenic, cadmium and other chemical poisoning or over-exposure to other toxic substances;

h. Representing to the plaintiff that strict adherence to the safety program and directives given with respect to the use of safety gear and medical health services would protect the plaintiff from lead, arsenic, cadmium and other chemical poisoning;

i. Failure to inform the plaintiff that his consistently high blood lead and other chemical levels would result in lead poisoning, kidney disease, renal failure, heart failure and related injuries;

j. Failure to inform plaintiff that remedial medical treatment was required to prevent or correct the ill effects being caused by his high blood lead and other chemical levels;

k. Failure to remove plaintiff from the highly toxic lead, arsenic, cadmium, heavy metal and other chemical infested environment prior to the date when plaintiff was terminated;

l. Prescribing, controlling and administration of medications was improper and/or inadequate, resulting in toxic lead concentrations;

m. Failure and/or refusal to prescribe and administer the proper medications to plaintiff;

n. Administering medication contraindicated by plaintiff's condition;

o. Improper and inadequate medical care and treatment;

NL 000039561

- p. Improper and inadequate record keeping;
- q. Failure to advise of the risks of the limited procedure, denying to plaintiff an informed consent;
- r. Failure and/or refusal to exercise due care under the circumstances in the care and treatment of plaintiff;
- s. Failure and/or refusal to render proper and adequate care and treatment;
- t. Failure and/or refusal to properly evaluate the seriousness of plaintiff's condition and failing to take timely remedial action;
- u. Improper administration of medication, causing an increase of toxic lead, arsenic, cadmium concentration beyond that which would have occurred had the medication not been administered;
- v. Improper and incorrect diagnosis of plaintiff's condition;
- w. Failure to obtain an additional independent medical opinion for a period of years prior to obtaining additional medical evaluations;
- x. Failure to report the high lead levels being found in plaintiff to the proper authorities including, but not limited to, the Philadelphia Health Department, the Department of Health and Welfare for the Commonwealth of Pennsylvania, Department of Labor and Industries for the Commonwealth of Pennsylvania, the U.S. Department of Health, Education and Welfare, the U.S. Public Health Service and the U.S. Occupational Safety and Health Administration;

NL 000039562

y. Such other negligent and/or reckless acts and omissions as revealed by discovery in this case.

65. Defendants knew that failure to comply with standards in the medical profession, and in particular, the occupational medicine industry would result in plaintiff acquiring the diseases and conditions set forth in Paragraph 21 of this Complaint.

WHEREFORE, plaintiff demands judgment against medical health practitioner defendants on this Count in excess of Twenty Thousand Dollars (\$20,000.00) in addition to interest and costs, an amount in excess of that required for compulsory arbitration.

COUNT SEVEN

(vs. Arthur Stiffel, M.D., A.M. Aberico, M.D.,
Claude P. Brown, M.D., Francis J.A. Renzulli, M.D.) †

66. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 to 65 inclusive of this Complaint, with the same force and effect as if fully set forth and repeated herein.

67. At all times material hereto, the examinations, testing and treatment performed by defendant were accomplished without an informed consent from the plaintiff.

68. At all times material hereto, the defendant failed to disclose to plaintiff his need for medical care and treatment and the risks of exposure to a toxic lead, arsenic and cadmium environment when plaintiff was already exhibiting the symptoms of injury and disease due to lead, cadmium, arsenic and loud noise exposure, and exposure to other toxic substances.

WHEREFORE, plaintiff demands judgment against medical health practitioner defendants on this Count in excess of Twenty Thousand Dollars (\$20,000.00) in addition to interest and costs, an amount in excess of that required for compulsory arbitration.

COUNT EIGHT

(vs. Arthur Stiffel, M.D., A.M. Aberico, M.D.,
Claude P. Brown, M.D., Francis J.A. Renzulli, M.D.)

69. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 to 68 inclusive of this Complaint, with the same force and effect as if fully set forth and repeated herein:

70. Defendants medical health practitioners knowingly, wilfully, wantonly and recklessly inflicted injury upon plaintiff by their:

a. Failure to warn the plaintiff of the danger of lead, arsenic, cadmium, heavy metal, loud noises and other chemical toxicity from long-term exposure;

b. Failure to inform the plaintiff of the symptoms of lead, arsenic, cadmium and other chemical poisoning caused by long-term exposure;

c. Failure to warn the plaintiff of the danger of lead, arsenic, cadmium and other chemical toxicity being transferred to the plaintiff's immediate family;

d. Failure to inform the plaintiff of the long-term effects of lead, arsenic, cadmium and other chemical poisoning once contracted;

e. Failure to inform the plaintiff that the safety measures being implemented and adhered to were not protecting the

plaintiff from lead, arsenic, cadmium and other chemical poisoning and overexposure to other toxic elements;

f. Failure to inform the plaintiff that the medical health services being provided were not remedial and were not protecting the plaintiff from lead, arsenic and cadmium poisoning and overexposure to other toxic elements;

g. Failure to warn the plaintiff that the safety gear and products being utilized were not protecting the plaintiff from lead, arsenic and cadmium poisoning and overexposure to other toxic elements;

h. Representing to the plaintiff that strict adherence to the safety program and directives given with respect to the use of safety gear and medical health services would protect the plaintiff from lead, arsenic and cadmium poisoning and over-exposure to other toxic elements;

i. Intentionally concealing from plaintiff that his consistently high blood lead, arsenic, cadmium and other chemical levels would result in lead poisoning, kidney disease, renal failure, heart failure and related injuries;

j. Failure to inform plaintiff that remedial medical treatment was required to prevent or correct the ill effects being caused by consistently high blood lead and other chemical levels;

k. Failure to remove plaintiff from the highly toxic lead, arsenic, cadmium, heavy metal and other chemical infested environment prior to the date when plaintiff was terminated;

l. Failing to prescribe and administer the proper medications to plaintiff;

m. Failure to exercise due care under the circumstances in the care and treatment of plaintiff;

n. Failure to report the high lead and other chemical levels being found in plaintiff to the proper authorities including, but not limited to, the Philadelphia Health Department, the Department of Health and Welfare for the Commonwealth of Pennsylvania, the Department of Labor and Industries for the Commonwealth of Pennsylvania, the U.S. Department of Health, Education and Welfare, the U.S. Public Health Service and the U.S. Occupational Safety and Health Administration.

71. Defendants knew or should have known of the injury to plaintiff that would be caused by their failure to properly administer to and adequately inform plaintiff of plaintiff's injuries, yet recklessly disregarded the consequences of such failure.

72. Defendants intentionally, wilfully, and wantonly abandoned plaintiff and his co-workers after knowingly concealing plaintiff's injuries from him. Plaintiff's injuries have been directly and proximately caused, aggravated and seriously enhanced by defendants' concealment.

WHEREFORE, plaintiff demands punitive damages against medical health practitioners on this Count in excess of Twenty Thousand Dollars (\$20,000.00) in addition to interests and costs, an amount in excess of that required for compulsory arbitration.

COUNT NINE

(vs. Arthur Stiffel, M.D., A.M. Aberico, M.D.,
Claude P. Brown, M.D., Francis J.A. Renzulli, M.D.)

73. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 to 72 inclusive of this Complaint, with the same force and effect as if fully set forth and repeated herein.

74. Defendants were the promisors of a contract with plaintiff's employer to provide medical supervision and treatment for plaintiff to assure that plaintiff's health was maintained in view of his proximity to lead, arsenic, cadmium and other toxic substances within the workplace. Knowledge of the nature and format of this contract is within the exclusive possession of defendants.

75. Defendants intended, by this contract, that plaintiff benefit from the medical supervision and treatment provided by virtue of this contract.

76. Plaintiff's employer intended, as the promisee of this contract, that plaintiff benefit from the medical supervision and treatment provided by virtue of this contract.

77. Defendants in their capacity as independent contractors and promisors to this contract, breached their duty to properly and adequately perform the contracted for medical supervision and treatment.

78. Plaintiff, as third-party intended beneficiary, has been injured by defendants' breach of contract.

WHEREFORE, plaintiff demands judgment against medical health practitioner defendants on this Count in excess of Twenty Thous-

and Dollars (\$20,000.00) in addition to interest and costs, an amount in excess of that required for compulsory arbitration.

COUNT TEN

(vs. Unknown Blood Testing and Other Health Testing Facilities)

79. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 to 78 inclusive of this complaint, with the same force and effect as if fully set forth and repeated herein.

80. Upon information and belief, defendant medical doctors used a blood testing facility to determine blood lead levels and other chemical levels, of plaintiff and his co-workers, and in providing other health testing facilities for plaintiff and his co-workers.

81. Plaintiff is unaware of the identity of these facilities, and their identities should be revealed during discovery.

82. Upon information and belief, at relevant times material hereto, defendant medical doctors utilized the facilities of the unnamed testing facilities to perform the medical health services aforementioned in the preceding paragraphs.

83. During the time aforesaid, the employees, agents and servants of the unnamed testing facilities defendants, acting within the scope of their duties to attend to plaintiff and render assistance in the analysis, diagnosis, care and treatment of the industrial diseases and injuries aforementioned carelessly, wrongfully and negligently:

a. Failed to supervise the conduct and activities of its agents, employees and servants in their handling of blood,

urine and tissue samples, laboratory specimens, utensils and instruments with respect to plaintiff and his co-workers;

b. Failed to supervise the conduct of its professional medical staff in their providing services to defendant medical doctors under the circumstances mentioned in the preceding paragraphs of this Complaint;

c. Failed to conduct proper and adequate tests to determine the etiology and severity of plaintiff's condition of toxicity;

d. Failed to consult with qualified specialists in the management and analysis of plaintiff's case;

e. Failed to act with reasonable care in the selection of its employees and staff members, and failed to screen the defendant medical doctors before permitting them to make use of its laboratory facilities;

f. Failed to warn the plaintiff of the danger of lead, arsenic, cadmium, heavy metal, loud noises and other chemical toxicity from long-term exposure;

g. Failed to inform the plaintiff of the symptoms of lead, arsenic, cadmium and other chemical poisoning caused by long-term exposure;

h. Failed to warn plaintiff of the danger of lead, arsenic, cadmium and other chemical toxicity being transferred to the employee's immediate family;

i. Failed to inform plaintiff of the long-term effects of lead, arsenic, cadmium and chemical poisoning once contracted;

j. Failed to inform the plaintiff that the safety measures being implemented and adhered to at the smelting facility were not protecting the plaintiff from lead, arsenic, cadmium poisoning and overexposure to other toxic substances;

k. Failed to inform plaintiff that the medical health services being provided were not remedial and were not protecting the plaintiff from lead, arsenic, cadmium poisoning and overexposure to other toxic elements;

l. Failed to warn plaintiff that the safety gear and products being utilized at the smelting facility were not protecting the employees from lead, arsenic, cadmium poisoning and overexposure to other toxic elements;

m. Failed to inform plaintiff that his consistently high blood lead and other chemical levels would result in lead and other chemical poisoning, kidney disease, renal failure, heart failure and related injuries;

n. Failed to inform plaintiff that remedial medical treatment was required to prevent or correct the ill effects being caused by high blood lead and chemical levels;

o. Failed to advise removal of plaintiff from the highly toxic lead, heavy metal and other chemical infested environment prior to the date when plaintiff was terminated;

p. Failed to prescribe, control and administer proper medications resulting in toxic lead concentrations;

q. Failed to prescribe and administer the proper medications to plaintiff;

r. Provided medication contraindicated to plaintiff's condition;

s. Improper and inadequate medical care and treatment;

t. Improper and inadequate record keeping;

u. Failed to advise of the risks of the limited procedure, denying to plaintiff an informed consent;

v. Failed to exercise due care under the circumstances in the care and treatment of plaintiff;

w. Failed to properly evaluate the seriousness of plaintiff's condition and failed to take timely remedial action;

x. Improper administration of medication causing an increase of toxic lead concentration beyond that which would have occurred had the medication not been administered;

y. Improper and incorrect diagnosis of plaintiff's condition;

z. Failure to report the high lead and other chemical levels being found in plaintiff and his co-workers to the proper authorities including, but not limited to, the Philadelphia Health Department; the Department of Health and Welfare for the Commonwealth of Pennsylvania; the Department of Labor and Industry for the Commonwealth of Pennsylvania; the U.S. Department of Health, Education and Welfare; the U.S. Public Health Service; the U.S. Occupational Safety and Health Administration;

aa. Such other tortious acts and omissions as are revealed by discovery in this case.

84. Defendant laboratory knew or should have known of the inadequate health screening, medical services and treatments

being administered by defendant medical doctors yet negligently failed to correct the situation and to advise the proper public authorities and plaintiff of the injuries and illnesses he was incurring within the workplace.

WHEREFORE, plaintiff demands judgment against the unnamed health testing facilities on this Count in excess of Twenty Thousand Dollars (\$20,000.00) in addition to interest and costs, an amount in excess of that required for compulsory arbitration.

COUNT ELEVEN

(vs. Sidney Lerner, M.D.)

85. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 to 84 inclusive of this Complaint, with the same force and effect as if fully set forth and repeated herein.

86. At all times material hereto, defendant Sidney Lerner, M.D., examined and tested the plaintiff to determine if he was toxic to lead and/or other chemical or heavy metals.

87. The defendant Sidney Lerner, M.D., was to monitor and safeguard the health and welfare of the plaintiff who was being subjected to toxic lead, arsenic, cadmium, heavy metal and chemical exposure.

88. Defendant Sidney Lerner, M.D., supervised and conducted medical hygiene studies of plaintiff and others at the subject facility specifically for lead, arsenic, cadmium, other chemical and other heavy metal intoxication.

89. Defendant's functions included the initiation and supervision of medical management programs by which plaintiff was

to be protected from and educated to the potential dangers inherent in a lead smelting and refining facility.

90. Defendant Sidney Lerner, M.D., breached his duty to provide proper and adequate care, medical service, health screening and management and was negligent and careless in the following manner:

a. Failure to warn the plaintiff of the danger of lead, arsenic, cadmium, heavy metal, loud noises and other chemical toxicity from long-term exposure;

b. Failure to inform the plaintiff of the symptoms of lead, arsenic, cadmium and other chemical poisoning caused by long-term exposure;

c. Failure to warn the plaintiff of the danger of lead, arsenic, cadmium and other chemical toxicity being transferred to the plaintiff's immediate family;

d. Failure to inform the plaintiff of the long-term effects of lead, arsenic, cadmium and other chemical poisoning once contracted;

e. Failure to inform the plaintiff that the safety measures being implemented and adhered to were not protecting the plaintiff from lead, arsenic, cadmium poisoning or overexposure to other toxic substances;

f. Failure to inform the plaintiff that the medical health services being provided were not remedial and were not protecting the plaintiff from lead, arsenic, cadmium poisoning or overexposure to other toxic substances;

g. Failure to warn the plaintiff that the safety gear and products being utilized were not protecting the plaintiff from lead, arsenic, cadmium poisoning or overexposure to other toxic substances;

h. Representing to the plaintiff that strict adherence to the safety program and directives given with respect to the use of safety gear and medical health services would protect the plaintiff from lead, arsenic, cadmium poisoning or overexposure to other toxic substances;

i. Failure to inform the plaintiff that his consistently high blood lead or other chemical levels would result in lead poisoning, kidney disease, renal failure, heart failure and related injuries;

j. Failure to inform plaintiff that remedial medical treatment was required to prevent or correct the ill effects being caused by consistently high blood lead and other chemical levels;

k. Failure to remove plaintiff from the highly toxic lead, arsenic, cadmium, heavy metal and other chemical infested environment prior to the date when plaintiff was terminated;

l. Prescribing, controlling and administration of medications was inadequate and improper, resulting in toxic lead, arsenic, cadmium and other chemical concentrations;

m. Failure to prescribe and administer the proper medications to plaintiff;

n. Administering medication contraindicated by plaintiff's condition;

- o. Improper and inadequate medical care and treatment;
- p. Improper and inadequate record keeping;
- q. Failure to advise of the risks of the limited procedure, denying to plaintiff an informed consent;
- r. Failure to exercise due care under the circumstances in the care and treatment of plaintiff;
- s. Failure to render proper and adequate care and treatment;
- t. Failure to properly evaluate the seriousness of plaintiff's condition and failing to take timely remedial action;
- u. Improper administration of medication causing an increase of toxic lead, arsenic, cadmium and other chemical concentrations beyond that which would have occurred had the medication not been administered;
- v. Improper and incorrect diagnosis of plaintiff's condition;
- w. Failure to obtain an additional, independent medical opinion for a period of years prior to obtaining additional medical evaluations;
- x. Failure to report the high lead and other chemical levels being found in plaintiff to the proper authorities including, but not limited to, the Philadelphia Health Department, the Department of Health and Welfare for the Commonwealth of Pennsylvania, the Department of Labor and Industry for the Commonwealth of Pennsylvania, the U.S. Department of Health, Education and Welfare, the U.S. Public Health Service and the U.S. Occupational Safety and Health Administration;

y. Such other tortious and/or negligent acts and omissions as revealed by discovery in this case.

91. At all times material hereto, the negligent performance of defendant's medical activities fell far below the acceptable standards of practice as defined by the medical community at large and, specifically, by the occupational medicine specialists within the medical community.

WHEREFORE, plaintiff demands judgment against defendant Sidney Lerner, M.D., on this Count in excess of Twenty Thousand Dollars (\$20,000.00) in addition to interest and costs, an amount in excess of that required for compulsory arbitration.

COUNT TWELVE

(vs. Sidney Lerner, M.D.)

92. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 to 91 inclusive of this Complaint, with the same force and effect as if fully set forth and repeated herein.

93. At all times material hereto, the examinations, testing and treatment performed and/or ordered by defendant were accomplished without an informed consent from the plaintiff.

94. At all times material hereto, the defendant failed to disclose to plaintiff his need for medical care and treatment, and the risks of exposure to a toxic environment when plaintiff was already exhibiting the symptoms of injury and disease due to his exposure to lead, arsenic, cadmium, loud noises and other toxic elements.

WHEREFORE, plaintiff demands judgment against Sidney Lerner, M.D., on this Count in excess of Twenty Thousand Dollars (\$20,000.00), in addition to interest and costs, an amount in excess of that required for compulsory arbitration.

COUNT THIRTEEN

(vs. Sidney Lerner, M.D.)

95. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 to 94 inclusive of this Complaint, with the same force and effect as if fully set forth and repeated herein.

96. Defendant Sidney Lerner, M.D., knowingly, wilfully, wantonly and recklessly inflicted injury upon plaintiff by his:

a. Failure to advise, instruct and inform that the workplace be made safe from lead, arsenic, cadmium, loud noises, other heavy metal and chemical toxicity;

b. Failure to warn plaintiff of the danger of lead, arsenic, cadmium and other chemical poisoning caused by long-term exposure;

c. Failure to inform plaintiff of the symptoms of lead, arsenic, cadmium and other chemical poisoning caused by long-term exposure;

d. Failure to warn plaintiff of the danger of lead, arsenic, cadmium and other chemical toxicity being transferred to his immediate family;

e. Failure to inform plaintiff of the long-term effects of lead, arsenic, cadmium and other chemical poisoning once contracted;

f. Failure to inform plaintiff that the safety measures being implemented and adhered to were not protecting the employees from lead, arsenic, cadmium poisoning and overexposure to other toxic elements;

g. Failure to inform plaintiff that the medical health services being provided were not remedial and were not protecting the employees from lead, arsenic, cadmium poisoning and overexposure to other toxic elements;

h. Failure to warn plaintiff that the safety gear and products being utilized were not protecting the plaintiff from lead, arsenic, cadmium poisoning, loud noises and overexposure to other toxic elements;

i. Intentionally concealing from plaintiff that his high blood lead levels would result in lead, arsenic, cadmium poisoning, kidney disease, renal failure, heart failure and related injuries;

j. Failure to inform plaintiff that remedial medical treatment was required to prevent or correct the ill effects being caused by high blood lead, and other chemical levels;

k. Failure to remove plaintiff from the highly toxic lead, arsenic, cadmium heavy metal and other chemical infested environment prior to the date when plaintiff was terminated;

l. Failure to advise of the risks of the limited medical procedures being employed, denying to plaintiff an informed consent;

m. Acquiescing to the improper administration of medication causing an increase of toxic lead, arsenic, cadmium and

other chemical concentration beyond that which would have occurred had the medication not been administered;

n. Failure to report the high lead, arsenic, cadmium and other chemical levels being found in plaintiff and his co-workers to the proper authorities including, but not limited to, the Philadelphia Health Department; the Department of Health and Welfare for the Commonwealth of Pennsylvania; the Department of Labor and Industry for the Commonwealth of Pennsylvania; the U.S. Department of Health, Education and Welfare, the U.S. Public Health Service and the U.S. Occupational Safety and Health Administration.

97. Defendant Sidney Lerner, M.D., knew or should have known of the injury to plaintiff that would be caused by his failure to properly administer to and adequately inform plaintiff of plaintiff's injuries, yet recklessly disregarded the consequences of such failure.

98. Defendant intentionally, wilfully and wantonly abandoned plaintiff and his co-workers after knowingly concealing plaintiff's injuries from him.

99. Defendant's intentional, wilful, wanton and reckless conduct is the direct and proximate cause of plaintiff's injuries and disabilities. Defendant's knowing concealment of plaintiff's illness has caused plaintiff to suffer enhanced injury and disability.

WHEREFORE, plaintiff demands punitive damages on this Count in excess of Twenty Thousand Dollars (\$20,000.00) in addition to interest and costs, an amount in excess of that required for compulsory arbitration.

COUNT FOURTEEN

(vs. Sidney Lerner, M.D.)

100. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 to 99 inclusive of this Complaint, with the same force and effect as if fully set forth and repeated herein.

101. Defendant Sidney Lerner, M.D., was the promisor of a contract to provide medical testing and treatment for plaintiff to assure that plaintiff's health was maintained in view of his proximity to lead, arsenic, cadmium, loud noises and other toxic elements within the workplace. Knowledge of the nature and format of this contract is within the exclusive possession of defendant.

102. Defendant Sidney Lerner, M.D., intended, by this contract, that plaintiff benefit from medical tests and treatment provided by virtue of this contract.

103. Plaintiff's employer intended, as the promisee of this contract, that plaintiff benefit from the medical supervision and treatment provided by virtue of this contract.

104. Defendant Sidney Lerner, M.D., in his capacity as independent contractor and promisor to this contract, breached his duty to properly and adequately perform the contracted for medical testing and treatment.

105. Defendant Sidney Lerner, M.D. knew or should have known of the consequences of his failure to properly perform his contract, namely that plaintiff would contract the conditions and diseases set forth at Paragraph 21 of this Complaint.

106. Plaintiff, as third-party intended beneficiary, has been injured by defendant's breach of contract.

WHEREFORE, plaintiff demands judgment against defendant Sidney Lerner, M.D., on this Count in excess of Twenty Thousand Dollars (\$20,000.00) in addition to interest and costs, an amount in excess of that required for compulsory arbitration.

COUNT FIFTEEN

(vs. N.L. Industries, National Lead Industries,
National Lead Industries, Pigment & Lead Division
National Lead Company)

107. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 to 106 inclusive of this Complaint, with the same force and effect as if fully set forth and repeated herein.

108. N.L. Industries, National Lead Industries, National Lead Industries, Pigment and Lead Division, National Lead Company owned and operated the aforementioned secondary lead smelting and refining facility located at 2545 Aramingo Avenue until on or about the year 1979, when its successor in interest, defendant Associated Lead purchased the facility.

109. At all times material hereto, from the first date of his employment until his termination, plaintiff was employed at the 2545 Aramingo Avenue facility.

110. From the time of its purchase of the subject facility on or about the year 1963, and continuing thereafter through 1979, and afterward, defendants N.L. Industries, National Lead Industries, National Lead Industries, Pigment and Chemical Division, National Lead Company were notified by its management

personnel and physicians that its employees in the lead facility were being overexposed to lead, arsenic, cadmium, loud noises and other toxic substances and were manifesting symptoms of lead, heavy metals and chemical poisoning and their related illnesses and injuries.

111. Defendant N.L. Industries, National Lead Industries, National Lead Industries, Pigment and Chemical Division, National Lead Company on or about the year 1963, had instituted a program whereby a medical health practitioner would conduct periodic medical examinations for lead, arsenic, cadmium heavy metal, loud noises and other chemical toxicity for each employee.

112. The reckless and/or intentional conduct of defendant N.L. Industries, National Lead Industries, National Lead Industries, Pigment and Chemical Division, National Lead Company consisted of the following:

a. Failure to make the workplace safe from arsenic, lead, heavy metal and chemical toxicity;

b. Failure to warn the plaintiff of the danger of lead, arsenic, cadmium heavy metal and chemical toxicity from long-term exposure;

c. Failure to inform the plaintiff of the symptoms of lead, arsenic, cadmium and other chemical poisoning caused by long-term exposure;

d. Failure to warn the plaintiff of the danger of lead, arsenic, cadmium, loud noises and other chemical toxicity being transferred to his immediate family;

e. Failure to inform the plaintiff of the long-term effects of lead, arsenic, cadmium and other chemical poisoning once contracted;

f. Failure to inform the plaintiff that the safety measures being implemented and adhered to were not protecting him from lead, arsenic, cadmium poisoning and overexposure to other toxic elements;

g. Failure to inform the plaintiff that the medical health services were not remedial and were not protecting the plaintiff from lead, arsenic, cadmium poisoning and overexposure to other toxic elements;

h. Failure to warn the plaintiff that the safety gear and products being utilized were not protecting the plaintiff from lead, arsenic, cadmium poisoning and overexposure to other toxic elements;

i. Representing to the plaintiff that strict adherence to the safety program and directives given with respect to the use of safety gear and medical health services would protect the plaintiff from lead, arsenic, cadmium poisoning and overexposure to other toxic elements;

j. Failure to inform the plaintiff that his high blood lead levels would result in lead, arsenic, cadmium and other chemical poisoning, kidney disease, renal failure, heart failure and related injuries;

k. Failure to inform plaintiff that remedial medical treatment was required to prevent or correct the ill effects being caused by high blood lead and other chemical levels;

1. Failure to remove plaintiff from the highly toxic lead, arsenic, cadmium heavy metal and other chemical infested environment prior to the date when plaintiff was terminated;

m. Failure to render proper medical care and treatment to the plaintiffs;

n. Such other intentional acts and omissions as revealed by discovery in this case.

WHEREFORE, plaintiff demands judgment against defendants on this Count in excess of Twenty Thousand Dollars (\$20,000.00) in addition to interest and costs, an amount in excess of that required for compulsory arbitration.

COUNT SIXTEEN

(vs. N.L. Industries, National Lead Industries,
National Lead Industries, Pigment and
Chemical Division, National Lead Company)

113. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 to 112 of this Complaint, with the same force and effect as if fully set forth and repeated herein.

114. Defendant N.L. Industries, National Lead Industries, National Lead Industries, Pigment and Chemical Division, National Lead Company deviated from accepted standards of operation for an industrial facility by intentionally, wilfully, wantonly and, with reckless indifference, causing injury to plaintiff by its:

a. Failure to make the workplace safe from lead, other chemical and other heavy metal toxicity;

b. Failure to warn the plaintiff of the danger of lead, arsenic, cadmium, loud noises, other chemical and heavy metal toxicity from long-term exposure;

c. Failure to inform the plaintiff of the symptoms of lead, arsenic, cadmium and other chemical poisoning caused by long-term exposure;

d. Failure to warn the plaintiff of the danger of lead, arsenic, cadmium and other chemical toxicity being transferred to his immediate family;

e. Failure to inform the plaintiff of the long-term effects of lead, arsenic, cadmium and other chemical poisoning once contracted;

f. Failure to inform the plaintiff that the safety measures being implemented and adhered to were not protecting him from lead, arsenic, cadmium poisoning and overexposure to other toxic elements;

g. Failure to inform the plaintiff that the medical health services were not remedial and were not protecting the plaintiff from lead, arsenic, cadmium poisoning and overexposure to other toxic elements;

h. Failure to warn the plaintiff that the safety gear and products being utilized were not protecting the plaintiff from lead, arsenic, cadmium poisoning and overexposure to other toxic elements;

i. Failure to train plaintiff in the proper use and maintenance of the safety devices being provided;

j. Representing to the plaintiff that strict adherence to the safety program and directives given with respect to the use of safety gear and medical health services would protect the plaintiff from lead, arsenic, cadmium poisoning and overexposure to other toxic elements;

k. Intentionally concealing from plaintiff that his high blood lead and other chemical levels would result in lead, arsenic, cadmium poisoning, kidney disease, renal failure, heart failure and related injuries;

l. Failure to inform plaintiff that remedial medical treatment was required to prevent or correct the ill effects being caused by high blood lead and other chemical levels;

m. Failure to remove plaintiff from the highly toxic lead, arsenic, cadmium other chemical and heavy metal infested environment prior to the date when plaintiff was terminated;

n. Failure to render proper medical care and treatment to the plaintiff;

o. Failure to provide plaintiff with adequate respiratory protection, medical screening and treatment and appropriate engineering controls to prevent plaintiff's daily over-exposure to workplace toxins;

p. Failure to adequately supervise the performance of its management personnel and physicians in the implementation of the medical regime and administration of treatment to plaintiff;

q. Intentional concealment of the injuries and disabilities being incurred by plaintiff due to his overexposure to toxins within the work environment;

r. Such other intentional, wilful, wanton and reckless acts and omissions as are revealed by discovery.

114. Defendant N.L. Industries, National Lead Industries, National Lead Industries, Pigment and Chemical Division, National Lead Company knew or should have known of the injury to plaintiff

that would be caused by its failure to act in correcting the dangerous work environment and by failing to adequately warn plaintiff, yet recklessly disregarded the consequences of such failure.

115. Defendant's intentional, wilful, wanton and reckless conduct is the direct and proximate cause of plaintiff's injuries and disabilities. Defendant's knowing concealment of plaintiff's illness has caused plaintiff to suffer enhanced injury and disability.

WHEREFORE, plaintiff demands punitive damages on this Count in excess of Twenty Thousand Dollars (\$20,000.00) in addition to interest and costs, an amount in excess of that required for compulsory arbitration.

COUNT SEVENTEEN

(vs. N.L. Industries, National Lead Industries,
National Lead Industries, Pigment and
Chemical Division, National Lead Company)

116. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 to 115 of this Complaint, with the same force and effect as if fully set forth and repeated herein.

117. Defendant N.L. Industries, National Lead Industries, National Lead Industries, Pigment and Chemical Division, National Lead Company had an implied contractual obligation to plaintiff to assure that plaintiff's health would not be adversely affected by virtue of plaintiff's work with lead and other noxious substances.

118. Defendant N.L. Industries, National Lead Industries, National Lead Industries, Pigment and Chemical Division, National

Lead Company represented to plaintiff that a proper and adequate medical regime would be maintained pursuant to defendant's implied contractual obligation.

119. Defendant N.L. Industries, National Lead Industries, National Lead Industries, Pigment and Chemical Division, National Lead Company have breached its contractual obligation, causing plaintiff to be harmed by such breach.

120. Defendants knew that the breach of their implied contract with plaintiff would result in injuries to plaintiff, namely those diseases and conditions set forth in Paragraph 21 of this Complaint.

WHEREFORE, plaintiff demands judgment against defendant Bers and Company, Inc., on this Count in excess of Twenty Thousand Dollars (\$20,000.00) in addition to interest and costs, an amount in excess of that required for compulsory arbitration.

COUNT EIGHTEEN

(vs. All Defendants)

121. The plaintiff repeats and realleges each and every allegation contained in this Complaint with the same force and effect against the defendants and their subsidiaries, jointly and severally, as if fully set forth here at length.

122. The defendants' acts and omissions were intentional, wanton, wilful and with reckless indifference of the consequences as is more fully set forth in the above counts.

WHEREFORE, plaintiff demands judgment against these defendants, jointly and severally, for compensatory and punitive damages in an amount in excess of Twenty Thousand Dollars

(\$20,000.00), in addition to interest and costs, an amount in excess of that required for compulsory arbitration.

COUNT NINETEEN

(vs. All Defendants)

123. All of the allegations of Counts One through and including Eighteen are incorporated herein by reference as though recited here at length.

124. At all times material hereto, the plaintiff was the wife of plaintiff-employee and as such, was and is entitled to his love, affection, society, and companionship all of which she was deprived of and will be deprived of in the future, to her great detriment and damage.

125. As a result of the negligence and intentional, wilful and wanton actions and omissions of defendants, plaintiff has in the past and will in the future be required to expend large sums of money in the care and treatment of her husband.

WHEREFORE, plaintiff demands judgment against each defendant on this Count in an amount in excess of Twenty Thousand Dollars (\$20,000.00) in addition to interest and costs, an amount in excess of that required for compulsory arbitration.

COUNT TWENTY

(vs. All Defendants)

126. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 to 125 inclusive of this Complaint, with the same force and effect as if fully set forth and repeated herein.

127. Defendants conspired, combined or agreed to cause

injury to plaintiff by their:

a. Failure to make the workplace safe from lead, arsenic, cadmium, heavy metals, dust, dirt, chemicals, noise and other noxious elements and vapors;

b. Failure to warn the plaintiff of the danger of arsenic, lead, cadmium, dust, dirt, chemicals, noise and heavy metal toxicity from long-term exposure;

c. Failure to inform the plaintiff of the symptoms of arsenic, cadmium and lead poisoning caused by long-term exposure;

d. Failure to warn the plaintiff of the danger of arsenic, cadmium and lead toxicity being transferred to the employee's immediate family;

e. Failure to inform the plaintiff of the long-term effects of arsenic, cadmium, lead, and chemical poisoning once contracted;

f. Failure to inform the plaintiff that the safety measures being implemented and adhered to were not protecting the employees from lead poisoning, arsenic poisoning or overexposure to other toxic elements;

g. Failure to inform the plaintiff that the medical health services were not remedial and were not protecting the plaintiff from lead poisoning, arsenic poisoning or overexposure to other noxious elements;

h. Failure to warn the plaintiff that the safety gear and products being utilized were not protecting the plaintiff from lead poisoning, arsenic poisoning or overexposure to other toxic elements;

i. Failure to train plaintiff in the proper use and maintenance of the safety devices being provided;

j. Representing to the plaintiff that strict adherence to the safety program and directives given with respect to the use of safety gear and medical health services would protect the plaintiff from arsenic, cadmium and lead poisoning and exposure to other noxious elements;

k. Intentionally concealing from plaintiff that his high blood lead, cadmium and arsenic levels would result in lead poisoning, kidney disease, renal failure and related injuries;

l. Failure to inform plaintiff that remedial medical treatment was required to prevent or correct the ill effects being caused by his high blood lead, cadmium and arsenic levels;

m. Failure to remove plaintiff from the highly toxic lead and heavy metal infested environment prior to the date when plaintiff was terminated;

n. Failure to render proper medical care and treatment to the plaintiff;

o. Failure to provide plaintiff with adequate respiratory protection, medical screening and treatment and appropriate engineering controls to prevent plaintiff's daily overexposure to workplace toxins;

p. Failure to adequately supervise the performance of defendant-physicians in the implementation of the medical regime and administration of treatment to plaintiff;

q. Intentional concealment of the injuries and disabilities being incurred by plaintiff due to his overexposure to toxins within the work environment;

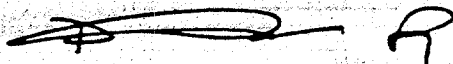
r. Such other acts and omissions in furtherance of the conspiracy as are revealed by discovery.

128. Defendants intended to injure plaintiff by their failure to act in correcting the dangerous work environment and by their failure to adequately warn plaintiff.

129. Plaintiff's injuries have been directly and proximately caused by defendants' acts and omissions in furtherance of the conspiracy. Defendants' knowing concealment of plaintiff's illness has caused plaintiff's severe injuries and/or have caused plaintiff to suffer enhanced injury and disability.

WHEREFORE, plaintiff respectfully demands judgment against each defendant named in Counts One through Nineteen of this Complaint, and request that damages be assessed against each defendant in an amount in excess of Twenty Thousand Dollars (\$20,000.00) in addition to interest and costs, an amount in excess of that required for compulsory arbitration. Plaintiffs further respectfully request that it be awarded attorney's fees and costs, prejudgment interest, punitive damages, and such other relief the Court deems appropriate under the circumstances.

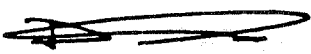
MATTIONI, MATTIONI & MATTIONI, LTD.

BY: 

EUGENE MATTIONI, ESQUIRE
Attorney for Plaintiffs

OF COUNSEL:

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DANTE MATTIONI, ESQUIRE

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