PLAINTIFF'S EXHIBIT 4596.0

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FILED

MAY -7 1982

RENE C DAVIDSON, County Clerk
By [signature] Deputy

PLAINTIFF'S EXHIBIT WV-01223

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

HARRY P. HOOPES

Plaintiff,

vs.

JOHNS-MANVILLE CORPORATION, JOHNS-MANVILLE SALES CORPORATION, JOHNS-MANVILLE CANADA INC., EGNEP,LTD., NORTH AMERICAN ASBESTOS, ASBESTOS CORPORATION, LAKE ASBESTOS OF QUEBEC, LTD., ASARCO INC., GENERAL DYNAMICS CORPORATION, CAPE ASBESTOS COMPANY OF SOUTH AFRICA, NICOLET, INC., RUBEROID CORPORATION, CELOTEX CORPORATION, FIBREBOARD CORPORATION sued herein as FIRST DOE, SECOND DOE through TWO HUNDRED TENTH DOE, Inclusive.

Defendants.

NO. 534773-9

FIRST AMENDED COMPLAINT FOR PERSONAL INJURIES; STRICT LIABILITY; NEGLIGENCE; FRAUD AND CONSPIRACY

1. SUMMONS ISSUED

0140 COMPT 0018 WITNESS Hoopes S.D. 5-4

Plaintiff HARRY P. HOOPES alleges:

FIRST CAUSE OF ACTION

1.

Plaintiff HARRY P. HOOPES for and on behalf of himself, brings this action on

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his own behalf. The masculine form as used in this complaint, if applicable as shown by the context hereof, applies to a female person or a corporation.

II.

Plaintiff does not know the true names and capacities, whether corporate, associate or individual of defendants sued herein as SECOND DOE through TWO HUNDRED TENTH DOE, inclusive, and each of them, and for that reason prays leave to insert the true names and capacities of said defendants when the same are ascertained. Plaintiff is informed and believes and therefore alleges that each of the defendants designated herein as a DOE is negligently, intentionally and/or strictly liable or responsible in some manner for the events and happenings herein referred to, and proximately caused injury and damages to plaintiff thereby as herein alleged.

III.

At all times herein mentioned, each of the defendants was the agent and employee of each of the remaining defendants, and was at all times acting within the purpose and scope of said agency and employment, and each defendant has ratified and approved the acts of the remaining defendants.

IV.

Defendant JOHNS-MANVILLE CORPORATION, JOHNS-MANVILLE SALES CORPORATION, JOHNS-MANVILLE CANADA INC., EGNEP, LTD, NORTH AMERICAN ASBESTOS, ASBESTOS CORPORATION, LAKE ASBESTOS OF QUEBEC, LTD., ASARCO, INC., GENERAL DYNAMICS CORPORATION, CAPE ASBESTOS COMPANY OF SOUTH AFRICA, NICOLET, INC., RUBEROID CORPORATION, CELOTEX CORPORATION, FIBREBOARD CORPORATION, sued herein as FIRST DOE, SECOND DOE through TWO HUNDRED TENTH DOE, inclusive, were at

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all times herein and still are corporations authorized to and doing business in the State of California.

V.

At all times herein mentioned defendants, and each of them, were engaged in the business of mining, manufacturing, assembling, supplying, packaging and labelling asbestos, and products produced therefrom, for sale to and use by the members of the general public as well as to other parties for use of the said products to manufacture and supply products therefrom.

VI.

At all times herein mentioned, defendants FIFTY FIRST DOE through TWO HUNDRED TENTH DOE were Officers and Directors of named defendants herein and FIRST DOE through FIFTIETH DOE.

VII.

The defendants, and each of them, acting through their agents, servants and/or employees, cause and have caused in the past, certain asbestos and silica containing products and asbestos and silica related insulation and building materials, to be placed in the stream of interstate commerce with the result that said products and materials came into use by plaintiff.

VIII.

Plaintiff HARRY P. HOOPES was a worker who for the period 1946 through 1972 continually worked with and was exposed to the asbestos and silica products and asbestos and silica related insulation and building materials mined, manufactured, processed, imported, converted, compounded and/or sold by the defendants, and each of them. During the course of his employment, plaintiff was exposed to asbestos and other noxious materials while employed at Fibreboard in Emeryville, California.

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IX.

During the course and scope of his employment, plaintiff was exposed to asbestos and silica products and asbestos and silica related materials of defendants, which exposure directly and proximately caused him to develop an illness known and designated as pneumoconiosis, asbestosis, silicosis and/or lung cancer, and other illnesses and disabilities whose relationship to asbestos and silica is as yet unknown to plaintiff herein, the pathological effect of which was without noticeable trauma and was unknown to plaintiff.

X.

The illness and disability of plaintiff is the direct and proximate result of the negligence of the defendants, and each of them, in that they produced, sold and otherwise put into the stream of interstate commerce, the foregoing materials which the said defendants, and each of them, knew, or in the exercise of ordinary care should have *known, were deleterious, poisonous and highly harmful to plaintiff's body, lungs,* respiratory system, skin and health.

XI.

Plaintiff exercising reasonable diligence, discovered the aforealleged conduct, misconduct and culpability of defendants, and each of them, on or after March, 1980, when plaintiff was diagnosed with mesothelioma. Plaintiff could not have discovered such condition sooner because such condition was brought about without noticeable trauma until it had advanced to such a point that diagnosis could be made; such diagnosis required the services of an expert and plaintiff did not possess such expertise so that he could not know in the exercise of reasonable care of the cause of his injury until such time as he was diagnosed and advised. Plaintiff could not know until such advice of the culpability of the defendants, and each of them.

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XII.

As a direct and proximate result of the conduct of the defendants, and each of them, plaintiff suffered and sustained prolonged pain and suffering, the necessity for additional treatment, injuries including, but not limited to, obstructive and/or restrictive pulmonary disease, asbestosis, silicosis and/or lung cancer, severe shock to his nervous system, and other injuries, the exact extent of which are presently unknown to plaintiff.

XIII.

By reason of the aforesaid premises, it was necessary for plaintiff to engage the services of physicians, surgeons, and hospitals; plaintiff does not know the reasonable value of said services which have been or may be reasonably required in the future and requests leave to amend this complaint to insert said sum when it is ascertained.

XIV.

By reason of the aforesaid premises, plaintiff was impaired in his ability to pursue his normal occupation for certain periods after the date of said events. However, plaintiff has not yet become disabled within the meaning of section 340.2 of the Code of Civil Procedure. Plaintiff does not now know the value of the employment which has been and may be lost to him in the future, and requests leave to amend this complaint to insert the reasonable value thereof when such is ascertainable.

XV.

By reason of the aforesaid negligence of defendants, and each of them, plaintiff has been damaged to his health, strength, and activity in an amount in excess of $15,000.00 in addition to special damages herein alleged.

WHEREFORE, plaintiff prays judgment as is hereinafter set forth.

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SECOND CAUSE OF ACTION

AS AND FOR A SECOND CAUSE OF ACTION, plaintiff complains of defendants, and each of them, and alleges:

I.

Plaintiff by this reference hereby incorporates and makes a part hereof as though fully set forth herein at length all and singular the allegations contained in the First Cause of Action herein, excepting therefrom allegations pertaining to negligence.

II.

The defendants, and each of them, impliedly warranted that the said materials were of good and merchantable quality and fit for their intended use.

III.

The implied warranty made by the defendants, and each of them, that the asbestos, silica and asbestos and silica related materials were of good and merchantable quality for the particular intended use was breached in that certain harmful, poisonous and deleterious matter and particles were given off into the atmosphere wherein plaintiff and others in his position carried out their duties as workers working with such materials and other related materials.

IV.

As a direct and proximate result of the breach of implied warranty of good and merchantable quality and fitness for the particular intended use, plaintiff developed an illness, to wit: obstructive and/or restrictive pulmonary disease, asbestosis, silicosis and/or lung cancer or other asbestos and silica related illness which cause great disability, as previously set forth.

V.

By reason of the premises, plaintiff has been damaged to his health, strength, and

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activity in an amount in excess of $15,000.00 in addition to special damages herein alleged.

WHEREFORE, Plaintiff prays judgment as is hereinafter set forth.

THIRD CAUSE OF ACTION

AS AND FOR A THIRD CAUSE OF ACTION, plaintiff complains of defendants, and each of them, and alleges:

I.

Plaintiff by this reference hereby incorporates and makes a part hereof as though fully set forth herein at length all and singular the allegations contained in the First Cause of Action herein, excepting therefrom allegations pertaining to negligence.

II.

At all times herein mentioned, plaintiff's employer purchased from defendants, and each of them, asbestos, silica and asbestos and silica products hereinafter referred to as the defective and improperly labeled products.

III.

Defendants, and each of them, knew that the aforementioned products would be used without inspection for defects by the user thereof.

IV.

At all times mentioned herein, plaintiff was unaware of the dangerous nature of the aforementioned products.

V.

At all times mentioned herein, defendants, and each of them, were aware of the dangerous and defective nature of the aforementioned products.

VI.

The aforementioned products were used by plaintiff in the manner for which they were intended.

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VII.

As a direct and proximate result of the foregoing conduct, plaintiff developed an illness, to wit: obstructive and/or restrictive pulmonary disease, asbestosis, silicosis, and/or lung cancer or other asbestos and silica related *illnesses which caused great* disability as previously set forth.

VIII.

As a proximate result of defects in these aforementioned materials, plaintiff has been generally damaged as is more fully set forth herein and in addition has sustained special damages hereinabove alleged.

IX.

The foregoing acts of the defendants, and each of them, were done wantonly, willfully, oppressively and in conscious disregard for the safety of plaintiff herein, by the defendants, and each of them, in that the defendants and each of them, prior to and at the time of the sale of the aforementioned products to plaintiff's employer knew that the foregoing materials were dangerous when inhaled, gave either insufficient warning thereof or no warning at all and in no way placed sufficient warning on the said materials or on their packaging warning of the dangerous nature thereof, knowing that the said materials would be used by plaintiff and others who had no knowledge of the dangerous and hazardous nature thereof and plaintiff is entitled to punitive damages hereunder.

WHEREFORE, plaintiff prays judgment as is hereinafter set forth.

FOURTH CAUSE OF ACTION

AS AND FOR A FOURTH CAUSE OF ACTION, plaintiff complains of defendants and each of them, and alleges:

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I.

Plaintiff by this reference hereby incorporates and makes a part hereof as though fully set forth herein at length all and singular the allegations contained in the First Cause of Action herein, excepting therefrom allegations pertaining to negligence.

II.

At all times pertinent hereto, the defendants, and each of them, owed plaintiff a duty, as provided for in Section 1708 through 1710 of the Civil Code of the State of California, to abstain from injuring the person, property or rights of the plaintiff. In violation of that duty, the defendants, and each of them, did do the acts and omissions, when a duty to act was imposed, as set forth herein, thereby proximately causing injury to the plaintiff as is more fully set forth herein. Such acts and omissions consisted of acts falling within Section 1710, and more specifically were suggestions of fact which were not true and which the defendants did not believe to be true, assertions of fact of that which was not true, which the defendants had no reasonable ground for believing it to be true, and the suppression of fact when a duty existed to disclose it, all as are more fully set forth herein, and the violation of which as to any one such item gave rise to a cause of action for violation of the rights of the plaintiff as provided for in the aforementioned code sections.

III.

Since 1924, the defendants, and each of them, have known and have been possessed of the true facts consisting of medical and scientific data and other knowledge which clearly indicated that the materials and products referred to herein were and are hazardous to the health and safety of the plaintiff, and others in plaintiff's position working in close proximity with such materials and have known of the dangerous propensities of other of the aforementioned materials and products since before that time and with intent to deceive plaintiff, and others in his position and with intent that he and

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such others should be and remain ignorant of such facts and with intent to induce plaintiff and such others to alter his and their positions to his and their injury and/or risk and in order to gain advantages did do the following acts:

(a) Defendants, and each of them, did not label any of the aforementioned asbestos-containing materials and products as to the hazards of such materials and products to the health and safety of plaintiff and others in plaintiff's position working in close proximity with such materials until 1964 when certain of such materials were labelled by some, but not all, of the defendants herein when the knowledge of such hazards was existing and known to defendants, and each of them, since 1924. By not labelling such materials as to their said hazards defendants, and each of them, caused to be suggested as a fact to plaintiff and plaintiff's employer that it was safe for plaintiff to work in close proximity to such materials when in fact it was not true and defendants did not believe it to be true;

(b) Defendants, and each of them, suppressed information relating to the danger of use of the aforementioned materials by requesting the suppression of information to the plaintiff and the general public concerning the dangerous nature of the aforementioned materials to workers by not allowing such information to be disseminated in a manner which would give general notice to the public and knowledge of the hazardous nature thereof when defendants were bound to disclose such information;

(c) Defendants, and each of them, sold the aforementioned products and materials to plaintiff's employer and others without advising such

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employers and others of the dangers of use of such materials to persons working in close proximity thereto when defendants knew of such dangers, as set forth herein, and, as set forth above, had a duty to disclose such dangers. Thereby, defendants caused to be positively asserted to plaintiff's employer of that which was not true and which defendants had no reasonable ground for believing it to be true, in a manner not warranted by the information possessed by said defendants, and each of them, of that which was and is not true, to wit, that it was safe for plaintiff to work in close proximity to such materials;

(d) Defendants, and each of them, suppressed from everyone, including plaintiff and plaintiff's employer, and continue to suppress, medical and scientific data and knowledge of the results of studies, including but not limited to the information and knowledge of the contents of the Lanza report by participating in the influencing of A.J. Lanza to change his report, which altered version was published in Public Health Reports, Volume 50 at page 1 in 1935, when they were bound to disclose it, and causing plaintiff to be and remain ignorant thereof and by getting Asbestos Magazine, a widely disseminated trade journal, to omit mention of danger, thereby lessening the probability of notice of danger to the users thereof;

(e) Defendants, and each of them, belonged to, participated in, and financially supported the Asbestos Textile Institute and other industry organizations which actively promoted the suppression of information of danger to users of the aforementioned products and materials for and on behalf of defendants, and each of them, thereby misleading plaintiff and plaintiff's employer to their prejudice through the suggestions and

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deceptions set forth above in this cause of action. The Dust Control Committee, which changed its name to the Air Hygiene Committee, of the Asbestos Textile Institute was specifically enjoined to study the subject of dust control; discussions in such committee were held many times of (i) the dangers inherent in asbestos and the dangers which arise from the lack of control of dust and (ii) the suppression of such information from 1946 to a date unknown to plaintiff at this time;

(f) Commencing in 1930 with the study of Johns-Manville workers at the Thetford Mine in Quebec, Canada, and the study of workers at Raybestos-Manhattan plants in Manheim and Charleston, South Carolina, defendants knew and possessed medical and scientific information of the connection between inhalation of asbestos fibers and asbestosis, which information was which information was disseminated through the Asbestos Textile Institute and other industry organizations to all other defendants, and each of them, herein. Commencing in 1948 to 1950 the defendants, and each of them, knew and possessed medical and scientific information of the connection between inhalation of asbestos fibers and cancer, which information was disseminated through the Asbestos Textile Institute and other industry organizations to all other defendants herein. Thereby, defendants suggested as a fact that which is not true and disseminated other facts likely to mislead plaintiff and plaintiff's employer and which did mislead them for want of communication of true facts which consisted of the aforedescribed medical and scientific data and other knowledge by not giving plaintiff or plaintiff's employer the true facts concerning such knowledge of danger, when defendants were bound to disclose it;

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(g) Fail to warn plaintiff and plaintiff's employer of the nature of the said materials, to wit: dangerous when breathed, causing pathological effects without noticeable trauma, when possessed with knowledge that such material was dangerous and a threat to the health of persons coming into contact therewith and under a duty to disclose it;

(h) Fail to provide plaintiff with information concerning adequate protective masks and devices for use with and application and installation of the products of the defendants, and each of them, when they knew that such protective measures were necessary, when they were under a duty to disclose such information, and if not advised as to use would result in injury to the plaintiff and others applying and installing such materials;

(i) Conceal from plaintiff the true nature of the industrial exposure of plaintiff, the fact that they and each of them, knew that plaintiff and anyone similarly situated, upon inhalation of asbestos would, in time develop irreversible conditions of either pneumoconiosis, asbestosis or cancer, or all, and such person would immediately be in not good health, the fact that he had in fact been exposed to harmful materials and the fact that the materials to which he was exposed would cause pathological effects without noticeable trauma, when under a duty to and bound to disclose it; and

(j) Fail to provide information to the public at large and buyers, users and physicians employed by plaintiff and plaintiff's employer for the purpose of conducting physical examinations of plaintiff and others working in contact with asbestos as to the true nature of the hazards of asbestos, in order for such physicians to diagnose, and treat workers coming into

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contact with asbestos, in that the materials to which plaintiff had been exposed would cause pathological effects without noticeable trauma, when under a duty to supply such information and such failure is likely to mislead for want of communication of such facts.

IV.

Each of the foregoing acts, suggestions, assertions and forebearances to act when a duty existed to act, the said defendants, and each of them, having such knowledge, knowing the plaintiff did not and would breathe such material innocently, was done falsely and fraudulently and with full intent to induce plaintiff to work in a dangerous environment and to cause plaintiff to remain unaware of the true facts, all in violation of Section 1710 of the Civil Code of the State of California.

V.

Plaintiff relied upon the said acts, suggestions, assertions and forebearances; had plaintiff known the true facts, he would not have continued to work in the said environment.

VI.

By reason of the premises, plaintiff was damaged in his health, strength and activity in addition to special damages hereinabove alleged.

VII.

Each of the said acts and forebearances to act were done falsely, fraudulently and maliciously, and plaintiff is entitled to exemplary and punitive damages. The foregoing acts of the defendants, and each of them, were done wantonly, willfully, oppressively and in conscious disregard for the safety of plaintiff herein by the defendants, and each of them, in that the defendants, and each of them, prior to and at the time of the sale of the aforementioned products to plaintiff's employer knew that the foregoing materials were dangerous when inhaled, gave either insufficient warning thereof or no warning at

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all and in no way placed sufficient warnings on the said materials or on their packaging warning of the dangerous nature thereof, knowing that the said materials would be used by plaintiff and others who had no knowledge of the dangerous and hazardous nature thereof and plaintiff is entitled to punitive damages hereunder.

VIII.

Plaintiff had no knowledge of the foregoing acts at the time when they were committed, is not charged with knowledge or inquiry thereof and only learned of such facts in or after March, 1980. Plaintiff could not have discovered such condition sooner because such condition was brought about without noticeable trauma until it had advanced to such a point that diagnosis could be made; such diagnosis required the services of an expert and plaintiff did not possess such expertise so that he could not know in the exercise of reasonable care of the cause of his injury until such time as he was diagnosed and advised. Plaintiff could not know until such advice of the culpability of the defendants, and each of them.

WHEREFORE, plaintiff prays judgement as is hereinafter set forth.

FIFTH CAUSE OF ACTION

AS AND FOR A FIFTH CAUSE OF ACTION, plaintiff complains of defendants and each of them, and alleges:

I.

Plaintiff by this reference hereby incorporates and makes a part hereof as though fully set forth herein at length all and singular the allegations contained in the First Cause of Action herein, excepting therefrom allegations pertaining to negligence and agency and the Fourth Cause of Action herein.

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II.

At all times mentioned, the defendants, and each of them, knowingly and willfully conspired and agreed among themselves to perpetrate upon plaintiff the acts complained of as set forth in the First and Fourth Causes of Action as are incorporated herein in the Fifth Cause of Action.

III.

Defendants, and each of them, did the acts and things herein alleged in Paragraph II of the Fourth Cause of Action, incorporated herein, in furtherance of the conspiracy and agreement as herein alleged and did further conspire to violate State and Federal laws and regulations, the exact nature and extent of which are unknown at this time, but known full well to defendants and each of them.

IV.

Each of the said acts and forebearances to act were done falsely, fraudulently and maliciously, and plaintiff is entitled to exemplary and punitive damages. The foregoing acts of the defendants, and each of them, were done wantonly, willfully, oppressively and in conscious disregard for the safety of plaintiff herein by the defendants, and each of them, in that the defendants, and each of them, prior to and at the time of the sale of the aforementioned products to plaintiff's employer knew that the foregoing materials were dangerous when inhaled, gave either insufficient warning thereof or no warning at all and in no way placed sufficient warnings on the said materials or on their packaging warning of the dangerous nature thereof, knowing that the said materials would be used by plaintiff and others who had no knowledge of the dangerous and hazardous nature thereof and plaintiff is entitled to punitive damages hereunder.

V.

By reason of the aforesaid acts of defendants, and each of them, plaintiff was damaged to his health, strength and activity.

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