

11-C-531

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED

DV

2011 MAR 31 PM 3:10

CAROLY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

Gregory and Patty Ballard, husband and wife, residents of the State of West Virginia; Drema Ballard, an individual and resident of the State of West Virginia; Paul Burke, an individual and resident of the State of West Virginia; James and Sallie Coleman, husband and wife, residents of the State of West Virginia; Roxane Fragate, an individual and resident of the State of West Virginia; Brenda Hill, an individual and resident of the State of West Virginia; Cathy Hopkins, an individual and resident of the State of West Virginia; John and Cathy Jones, husband and wife, residents of the State of West Virginia; Larry and Kathy Kimbro, husband and wife, resident of the State of West Virginia; Thelma McGuire, an individual and resident of the State of West Virginia; Ada Morris, an individual and resident of the State of West Virginia; Carl Moten an individual and resident of the State of West Virginia; Adelle Newbell, an individual and resident of the State of West Virginia; Carrie Peyton, an individual and resident of the State of West Virginia; Dorothy Richmond, an individual and resident of the State of West Virginia; Dorothy Richmond, an individual and resident of the State of West Virginia; Patricia Schulte, an individual and resident of the State of West Virginia; Phillip Schulte, an individual and resident of the State of West Virginia; Naomi Tackett, an individual and resident of the State of West Virginia; David Tamplin, an individual and resident of the State of West Virginia; Carolyn Turner, an individual and resident of the State of West Virginia; Patricia Ward, an individual and resident of the State of West Virginia; Terry White, an individual and resident of the State of West Virginia; Timothy and Nicole Williams, husband and wife, residents of the State of West Virginia; Ray and June Withrow, husband and wife, residents of the State of West Virginia; Brian and Cynthia Wright, husband and wife, residents of the State of West Virginia; Arnold Wright, an individual and resident of the State of West Virginia; and Individuals and residents of West Virginia,

Plaintiffs,

v.

CIVIL ACTION NO.  
CLASS ACTION COMPLAINT (JURY TRIAL  
DEMANDED)

UNION CARBIDE COMPANY, *a Delaware corporation, having its principal place of business in the State of West Virginia*; DOW CHEMICAL CORPORATION, *a Delaware corporation, with its principal place of business in the State of Michigan*; ELKEM METALS CORPORATION, *a Norwegian corporation, having its principal offices in the State of Pennsylvania*; GLOBE SPECIALTY METALS, INC., *a Delaware corporation, having its principal place of business in the State of New York*; GLOBE METALLURGICAL, INC., *a Delaware corporation, having its principal place of business in the State of Ohio*; WEST VIRGINIA ALLOYS, INC., *a Delaware corporation, having its principal place of business in the State of West Virginia*

Defendants

**CLASS ACTION  
COMPLAINT**

**I. PRELIMINARY  
STATEMENT**

1) Plaintiffs bring this action against the Defendants and each of them for causing Plaintiffs' persons and property to become contaminated with various Hazardous Substances. Those Hazardous Substances include antimony, arsenic, chromium, iron, lead, manganese, vanadium, polycyclic aromatic hydrocarbons (PAHs), silica, and both volatile and semi-volatile organic compounds (hereinafter, "Hazardous Substances") which have been produced or used at the Alloy Plant. Upon information and belief, the Hazardous Substances may also include a number of other substances, including, but not necessarily limited to, mercury and dioxin.

2) Plaintiffs are residents and/or former residents of one or more of several communities within five miles of a metals plant located near Alloy, West Virginia (hereinafter, "Alloy Plant"); real estate and personal property owners in one of these communities; or persons who worked or attended school in one of these communities. From 1934 to the present, the Alloy Plant has released substantial Hazardous Substances into the surrounding community, contaminating property and poisoning persons nearby. Recent testing of the houses and soil of residents within five mile of the Alloy Plant reveals that Hazardous Substances are present at a level above that which is considered dangerous to human health in many of the test results.

3) The formerly independent Union Carbide Company (hereafter Union Carbide) owned and operated the Alloy Plant from approximately 1934 to approximately 1981.

4) Elkem Metals owned and operated the Alloy Plant from approximately 1981 to December 15, 2005.

5) Globe Specialty Metals, Inc. and Globe Metallurgical, Inc. have owned the Alloy Plant since December 15, 2005. Upon information and belief, Globe Specialty Metals, Inc.'s wholly owned subsidiary and corporate alter-ego, West Virginia Alloys, Inc., presently operates the Alloy Plant.

6) Plaintiffs bring this action against the above-named Defendants and each of them as successors to the toxic-substances-related legacy liabilities of Union Carbide for causing Plaintiffs' person and real property to become contaminated with the aforesaid Hazardous Substances due to each Defendants' continuing contamination of Plaintiffs' persons and property, each Defendants' failure to clean up this contamination, and each Defendants' failure to warn Plaintiffs about this contamination.

7) As a result of the aforesaid contamination, Plaintiffs seek the following:

(a) Monetary recovery from the Defendants for cleanup of the Plaintiffs' contaminated real and personal property;

(b) Recovery from the Defendants of the costs of future medical examinations and tests for the early detection of serious diseases related to abnormal exposures to these Hazardous Substances;

(c) Punitive Damages to be paid by the Defendants for the Defendants' willful, wanton, or reckless contamination of the Plaintiffs' property and/or for the Defendants' willful failure to warn the Plaintiffs of the adverse effects that have been caused and that are being caused by Defendants' continuing contamination of Plaintiffs' property;

8) The Plaintiffs include persons who:

(a) Currently reside or in the past resided within five miles of the Defendants' Alloy Plant from 1934 through the present;

(b) Currently own or have any leasehold interest in residential or

commercial property and/or personal property that has been damaged within five miles of the Alloy Plant;

(c) Currently work or in the past worked within five miles of the Alloy Plant; and/or,

(d) Currently are students or in the past were students in one or more of the public schools located within five miles of the Alloy Plant.

## **II. IDENTITY OF PARTIES**

### **A. GENERAL DESCRIPTION OF PERSONS MAKING UP THE PUTATIVE CLASS**

9) The Plaintiffs are citizens and residents of the State of West Virginia.

10) Several thousand people who live or have lived within five miles of the Alloy Plant ("the Class Area") were adversely affected and damaged as a consequence of the events and conditions described in this complaint.

11) Specifically, the Alloy Plant is located on a 120-acre site alongside the Kanawha River in a forested rural area with mountains, ridges, and other terrain features. It is bounded on the north by the residential properties and commercial business of Alloy and Boomer, West Virginia. Immediately east and adjacent to the Alloy Plant are: a series of railroad tracks; State Route 60; and, the residential and commercial properties within the town of Alloy. The towns of Falls View and Charlton Heights are directly southeast of the Facility on the same side of the river as the Plant. The communities of Montgomery Heights, Mount Carbon, and Adena Village (a part of Mount Carbon) are located directly across the Kanawha River from the Plant. The town of Deep Water is located across the river and slightly east of the Plant. Also across the river south of the town of Mount Carbon are commercial and residential properties of the town of Kimberly. Further east of the Alloy Plant is the Jarrett Branch Landfill which has been used by Defendants exclusively by Defendants to dispose of various waste by-products.

12) The Kanawha River is a northward flowing river with a general direction of West-Northwest. Prevailing winds tend to blow out of the Southwest, moving "up

stream" relative to the flow of the river. A number of narrow valleys and "hollows" lead away from the river, causing low altitude, prevailing winds to funnel into and along these natural pathways. Residential housing is located all along these natural routes. The communities located in and along these "hollows" have been, like the communities located "downstream" from the Alloy Plant, adversely affected by the herein complained of contamination and resultant conditions.

13) For purposes of identifying the Plaintiffs at risk for contamination, the plant site, due to prevailing winds and natural topography, is located at the center of a wind and topographically defined arc within which the deposition of contaminated dust and fumes escaping at all relevant times from the Alloy Plant property fell upon and otherwise entered and contaminated Plaintiffs' real estate. The putative class members and their communities are located within this arc.

14) The latest Census concerning the communities in the Area shows that the population of Alloy, West Virginia is approximately 62. The community of Boomer has a population of approximately 1,100. The town of Charlton Heights has about 700 residents. The towns of Mount Carbon and Deep Water have a combined population of approximately 750 people. In addition, there are over two thousand additional people residing in the incorporated and unincorporated communities in the area, including in and around the towns of Montgomery and Smithers.

15) In addition to people currently residing in the Class Area, numerous other persons have previously lived or resided in the Class Area since 1934. These people have also been subject to the Hazardous Substances that have been emitted by the Alloy Plant and that have contaminated and continue to contaminate the Class Area. People who have, in the past, resided in the Class Area, as well as those who currently reside in the Class Area and are still citizens of West Virginia are properly part of the aforesaid Class.

16) Certain of the Plaintiffs, hereafter referred to as the "Employed

Plaintiffs," complain that their former or present places of employment located in the Area were contaminated with the aforesaid Hazardous Substances.

17) Certain of the Plaintiffs, hereafter referred to as the "Public School Plaintiffs," complain that the schools in the Class Area were likewise contaminated with the aforesaid Hazardous Substances, causing Plaintiffs who attended these schools in the past and Plaintiffs who attend these schools now to be exposed to the aforesaid substances during the school year.

18) Certain of the Plaintiffs occupied and/or maintained, owned, rented, leased, or otherwise controlled residences and/or commercial property or otherwise had personal property damaged by Defendants' pollution in the Class Area. These Plaintiffs are hereafter referred to as the "Property Plaintiffs."

19) As more fully appears below, the Property Plaintiffs complain that the Defendants caused the inside and outside of their homes and their real property to be contaminated with Hazardous Substances generated by the Defendants' alloy production processes at the Alloy Plant.

20) Several thousand parcels of residential, commercial, governmental, and real property, including improvements thereon, were adversely affected and damaged as a consequence of the events and conditions complained of.

21) Further, many automobiles and other items of personal property have been damaged by contact with the toxic chemicals that have been released by Defendants.

#### **B. IDENTIFICATION OF REPRESENTATIVE PLAINTIFFS**

22) Gregory and Patty Ballard are husband and wife. They reside at 5304 Edgebrook, Cross Lane, Kanawha County, West Virginia.

23) Drema Ballard is an individual. She resides at P.O. Box 303, Boomer, Fayette County, West Virginia.

24) Paul Burke is an individual. He resides at 23 Fern Gully Drive, Hugheston,

Kanawha County, West Virginia.

25) James and Sallie Coleman are husband and wife. They reside at 213 Pine Street, Boomer, Fayette County, West Virginia

26) Roxane Fragate is an individual. She resides at P.O. Box 47, Alloy, Fayette County, West Virginia.

27) Brenda Hill is an individual. She resides at 1022 4<sup>th</sup> Avenue, Montgomery, Kanawha County, West Virginia.

28) Cathy Hopkins is an individual. She resides at 506 Ferry Street, Montgomery, Kanawha County, West Virginia.

29) John and Cathy Jones are husband and wife. They reside at 203 Jackson Street, Montgomery, Kanawha County, West Virginia.

30) Larry and Kathy Kimbro are husband and wife. They reside at P.O. Box 395, Boomer, Fayette County, West Virginia.

31) Thelma McGuire is an individual. She resides at 204 Luke Street, Hugheston, Kanawha County, West Virginia.

32) Ada Morris is an individual. She resides at P.O. Box 97, Hugheston, Kanawha County, West Virginia.

33) Carl Moten is an individual. He resides at P.O. Box 54, Alloy, Fayette County, West Virginia.

34) Adelle Newbell is an individual. She resides at P.O. Box 6, Boomer, Fayette County, West Virginia.

35) Carrie Peyton is an individual. She resides at P.O. Box 266, Boomer, Fayette County, West Virginia.

36) Dorothy Richmond is an individual. She resides at P.O. Box 2, Boomer, Fayette County, West Virginia.



37) Patricia Schulte is an individual. She resides at P.O. Box 101, Boomer, Fayette County, West Virginia.

38) Phillip Schulte is an individual. He resides at P.O. Box 372, Boomer, Fayette County, West Virginia.

39) Naomi Tackett is an individual. She resides at P.O. Box 392, Boomer, Fayette County, West Virginia.

40) David Tamplin is an individual. He resides at P.O. Box 245, Boomer, Fayette County, West Virginia.

41) Carolyn Turner is an individual. She resides at 274 Walnut Street, Boomer, Fayette County, West Virginia.

42) Patricia Ward is an individual. She resides at P.O. Box 29, Boomer, Fayette County, West Virginia.

43) Terry White is an individual. She resides at P.O. Box 185, Mt. Aebo, Nicholas County, West Virginia.

44) Timothy and Nicole Williams are husband and wife. They reside at P.O. Box 25, Boomer, Fayette County, West Virginia.

45) Ray and June Withrow are husband and wife. They reside at P.O. Box 391, Boomer, Fayette County, West Virginia.

46) Arnold Wright is an individual. He resides at P.O. Box 5, Alloy, Fayette County, West Virginia.

47) Brian and Cynthia Wright are husband and wide. They reside at 301 Charlton Heights Road, Charlton Heights, Fayette County, West Virginia.

48) Patricia Moore is an individual. She resides at 98 "A" Street, Boomer, Fayette County, West Virginia.

49) Gary and Brenda Moschino are husband and wide. They reside at P.O.

Box 353, Boomer, Fayette County, West Virginia.

### **C. IDENTIFICATION OF DEFENDANTS**

#### **1. Defendants Union Carbide and Dow Chemical**

50) Union Carbide built and opened the Alloy Plant in 1934. From 1934 until 1981, the Alloy Plant was operated by Union Carbide as part of its Electro Metallurgical Company (later Union Carbide's Metal's Division). Dow Chemical purchased Union Carbide in 2001.

##### **a. Corporate Status of Defendants Union Carbide and Dow Chemical**

51) Defendant Union Carbide is incorporated in Delaware, with its headquarters in Texas, and its principal place of business is, upon information and belief, in West Virginia.

52) Defendant Dow Chemical Company is incorporated in Delaware, with its headquarters in Michigan, and its principal place of business in Michigan.

##### **b. The History of Union Carbide**

53) The Union Carbide Company was founded in 1898 in Virginia to manufacture calcium carbide for acetylene lighting. In 1917, the Union Carbide Company merged with Linde Air Products, National Carbon Company, and Presto-O-Lite to become the Union Carbide and Carbon Corporation, incorporated in New York. The name of the company was changed to Union Carbide Corporation in 1957. For most of its early history, Union Carbide was closely identified with the state of West Virginia and had several major operations along the Kanawha River. The world's first petrochemical plant was constructed by Union Carbide in 1920 at Clendenin, West Virginia. The company still has a significant presence in South Charleston, West Virginia. Union Carbide became a fully owned subsidiary of the Dow Chemical Company on February 6, 2001.

54) During the period that Union Carbide owned the Alloy Plant, it

released substantial amounts of toxic metals, arsenic, mercury, polychlorinated biphenyls (PCBs), polycyclic aromatic hydrocarbons (PAHs), and both volatile and semi-volatile organic compounds into the atmosphere from the stacks and manufacturing processes at Alloy, as well as through its disposal of waste products. As a result, Plaintiffs' homes and property have been contaminated and Plaintiffs have been exposed to and ingested these Hazardous Substances. The Defendants were cited for pollution at the Alloy Plant numerous times by the United States Environmental Protection Agency and the West Virginia Department of Environmental Protection and its predecessor, but such citations were unknown to Plaintiffs. Nor did Defendants notify residents of the Area of such findings.

## **2. Defendant Elkem**

55) Elkem is a Norwegian metals manufacturer and is one of the world's leading producers of aluminum, silicon metal, ferrosilicon for steel and iron foundries, carbon products and microsilica. Elkem owned and operated the Alloy Plant from 1981 until December 15, 2005. Elkem's principal place of business in the United States is in Pennsylvania. Although Elkem made some improvements in reducing contaminants that have been emitted from the Alloy Plant, records from both the United States Environmental Protection Agency and the West Virginia Department of Environmental Protection show that Elkem was responsible for substantial releases of toxic contaminants into the atmosphere from the Alloy Plant. Elkem's disregard for the environment was further illustrated by the fact that in 2004, when the Plant was owned by Elkem, the Plant was found to have 20 Clean Water Act violations and was out of compliance with the Clean Water Act for 3 of 12 quarters, according to the New York Times. Upon information and belief, this disregard for the environment continues.

### **3. Defendants Globe Metallurgical and West Virginia Alloys, Inc.**

57) Defendant Globe Specialty Metals, through its wholly owned subsidiaries and corporate alter egos Globe Metallurgical, Inc. and WV Alloys, Inc., purchased the Alloy Plant on December 15, 2005 and began operating the plant shortly thereafter. Globe Specialty Metals and Globe Metallurgical are both incorporated in Delaware. Globe Metallurgical's principal place of business and headquarters is in Ohio while Globe Specialty Metals' headquarters is in New York. The plant continues to emit various toxic emissions.

58) The defendant West Virginia Alloys, Inc. is a wholly owned subsidiary of Globe Metallurgical. Globe Metallurgical is a wholly owned subsidiary of Globe Specialty Metals. West Virginia Alloys, Inc. is incorporated in Delaware, and its principal place of business in West Virginia. West Virginia Alloys, Inc. has the exact same business address, officers, and directors as Globe Metallurgical. West Virginia Alloys, Inc. is an "alter ego" of Globe Metallurgical. Globe Metallurgical is an "alter ego" of Globe Specialty Metals.

#### **D. CULPABILITY OF DEFENDANTS**

59) At all times relevant, all of the Defendants were, and some currently are, doing business in the State of West Virginia, at, by, and at least through, their ferro-silicon Alloy Plant in Alloy, West Virginia. At the relevant times that each defendant owned and/or operated the Alloy Plant, each Defendant added to the toxic contamination to which the Plaintiffs, and/or their property, are being exposed. Each Defendant failed to take appropriate action to eliminate the Hazardous Substances emitted from the Alloy Plant, to otherwise remedy the contamination, or to warn Plaintiffs of the damage that had been caused by their activities at the Alloy Plant.

60) Defendants WV Alloys, Inc., Globe Specialty Metals, and Globe Metallurgical continue to pollute the plaintiffs and their property by periodically emitting

silica fume from the Alloy Plant.

### **III. JURISDICTION AND VENUE**

61) The Circuit Court of Kanawha County has jurisdiction and venue to decide this lawsuit.

62) Many of the Plaintiffs reside in Kanawha County, West Virginia and a significant number of putative class members reside in Kanawha County, West Virginia. Many of the contaminated communities are located in Kanawha County, West Virginia. Further, significant numbers of the Plaintiffs and putative class members are or were residents of Kanawha County, West Virginia; attended school in Kanawha County, West Virginia; and/or worked in Kanawha County, West Virginia. Furthermore, the much of the contaminated real property is located in Kanawha County, West Virginia and all of it is within the State of West Virginia. Both Defendants Union Carbide and Dow have facilities in Kanawha County, and many of the Defendants have representatives in Kanawha County.

### **IV. CLASS ALLEGATIONS**

#### **A. GENERAL CLASS ALLEGATIONS**

63) As more particularly stated below, Plaintiffs seek class certification under Rule 23 of the West Virginia Rules of Civil Procedure.

64) The representative Plaintiffs, on information and belief, and as more fully pleaded below, allege that class certification is appropriate under the claims of this complaint inasmuch as all four prerequisites contained in Rule 23 (a) - numerosity, commonality, typicality, and adequacy of representation - are present and met by the claims made herein. The representative Plaintiffs further allege that the herein-proposed class action satisfies one or more of the three subdivisions of Rule 23 (b).

#### **B. CLASS DEFINITION**

65) The class is made up of all persons in the Area whose person and/or property have been contaminated with the aforesaid Hazardous Substances including, but not limited to, heavy metals, arsenic, PCBs, PAHs, and both volatile and semi-volatile organic compounds.

66) The putative class of all such persons is divided into two natural sub-classes: (1) The Property Owners Class, which is made up of current real property owners, including leasehold interests, whose property is contaminated with the aforesaid Hazardous Substances; and, (2) The Medical Monitoring Class, which is divided into three sub-classes: (a) all persons presently residing or who in the past resided in the area of contamination (hereinafter "Class Affected Area") for at least one year during the period March 1934 to the present; (b) all persons who currently are employed or who in the past have been employed by employers in the Class Affected Area for two years or more during the period March 1934 to the present ("the Employed Plaintiffs"); and (c) all persons who currently are attending public schools or who have in the past attended public schools in the Class Affected Area at any time during the period March 1934 to the present ("the Public School Plaintiffs").

67) The Class Affected Area is the area within a five-mile radius from the location of the Alloy Plant. Plaintiffs reserve the right to amend this area based upon information adduced during discovery.

68) Excluded from this class are: (1) the Defendants and their respective officers, directors, and managerial employees, if any; (2) all attorneys and their staffs involved in this litigation; and (3) the presiding judicial officer and the presiding judicial officer's staff.

69) The representative Plaintiffs are identified in paragraphs 22 through 32 above.

**C. SPECIFIC WEST VIRGINIA RULE OF CIVIL PROCEDURE RULE 23 CLASS ACTION  
ALLEGATIONS**

**1. Numerosity**

70) The putative class, alleged above in paragraph 8, numbering in excess of 4,000 current and former residents and property owners of the class affected area, is so numerous that joinder of all members is impracticable.

**2. Commonality**

71) Rule 23(a)(2) of the West Virginia Rules of Civil Procedure provides that "commonality" is satisfied upon a showing that there are questions of law or fact common to the class.

72) The claims of the putative class as well as the class representatives, as shown above, all arise from the same set of conditions created by the Defendants from 1934 to present at the Alloy Plant. The mechanism of exposure and contamination is common to all persons in the class affected area. Further, questions concerning the extent of discharge from the Alloy Plant, Defendants' culpability, and the potential effect of these Hazardous Substances are common to all potential members of this class.

73) Each member of the putative class was, or is, being, exposed to the same Hazardous Substances. As a consequence of the exposure of the putative class members to the contamination caused by the Defendants, each of the class members is now at an increased risk of developing one or more of a discernable set of diseases that are epidemiologically, clinically, and observationally linked to the contaminants generated by the Defendants at the Alloy Plant.

74) The Defendants were under a legal duty to use their Alloy Plant in such a way as to not unreasonably interfere with the rights of the putative class members to enjoy their own property. Beginning in 1934, the Defendants breached this duty to the Plaintiffs and caused abnormally dangerous substances to escape the Defendants' Alloy Plant property. As more particularly pleaded below, the class members were all injured as a consequence of

the same breach of duty the Defendants owed to each class member as a matter of law.

75) Each of the putative class members, including any sub-classes thereof, experienced the same threshold wrongful invasion of their property rights and/or personal rights, to-wit: contamination of their property and/or person by Defendants' Hazardous Substances. Importantly, each of the Plaintiffs complains of contamination by the same class of Hazardous Substances as every other Plaintiff.

76) Defendants' operation of the ferroalloy manufacturing process and other related processes from approximately 1934 to the present caused the neighborhoods in the vicinity of the Alloy Plant to become contaminated with the aforesaid Hazardous Substances. Each of the putative property class members had their property contaminated in the same manner by the Defendants.

77) As a consequence of the operation of the Alloy Plant, Defendants were responsible for the following toxic contamination:

(a) Air emissions consisting of smoke, ash, volatile organic compounds (VOCs), acids, semi-volatile organic compounds (SVOCs), polycyclic aromatic hydrocarbons (PAHs), ethylene glycol, chromium, hydrochloric acid, polychlorinated biphenyls (PCBs), mercury, antimony, arsenic, manganese, iron, vanadium, lead, silica, and sulfuric acid. Toxic air emissions of one variety or another have occurred from the time the facility was first constructed in 1934 through today.<sup>1</sup>

(b) Polychlorinated Biphenyls (PCBs). United States Environmental Protection Agency documents and inspection reports indicate that oils containing PCBs were utilized in transformers and capacitors, and stored in tanks and drums at the Facility. Quarterly inspections conducted by Elkem employees document numerous small and moderate leaks of PCB contaminated oils throughout the facility from 1978 to 1989.

---

<sup>1</sup> As one example of the amount of air emissions released into the environment over the Alloy Plant's 70 plus year history, air release of VOCs, acids, metals, and PAHs released from the plant between 1988 and 2002 exceeding 1,131,073 pounds.



78) Environmental contractors have collected indoor dust and soil samples at various residential properties throughout the Alloy area, including residences in Boomer, Kimberly, Alloy, Falls View, Charlton Heights, Mount Carbon, and Deep Water, in order to analyze them for Hazardous Substances contamination.

79) AXYS Analytical Services of Sidney, British Columbia, Canada performed analytical testing of the samples. Review of AXYS's analysis report reveals that Hazardous Substances are present a level above that which is considered dangerous to human health in most of the houses tested.

80) These empirical data indicate that substantial portions of the communities in the vicinity of the Alloy Plant are, in fact, contaminated. Further, reasonable inferences drawn from these data establish that the ground in these communities is also contaminated with Hazardous Substances created as a consequence of the manufacturing process at the Defendants' Alloy Plant.

### **3. Typicality**

81) As shown above, Plaintiffs allege questions of law or fact common to the class and the claims of the representative parties. Further, the claims of the Plaintiffs are typical of the claims of the putative class. The real estate owned by the putative class members is currently being contaminated in a similar way, has been contaminated during the same time period, and this contamination is presenting the same type of property damage to each potential class member. Further, the risk of serious harm, injury, and disease to each of the class members was created in the same way, by the same Defendants, during the same time period, and the risk is typical of each class member. Finally, the same types of Hazardous Substances threaten each of the putative class members and subject each class member to the enhanced risk of the same injuries and disease processes.

82) A representative party's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if

his or her claims are based on the same legal theory. These claims are not required to be identical for the typicality requirement of Rule 23 to be satisfied.<sup>2</sup>

#### **4. Adequacy of Representation**

83) The representative parties and their properties are located, and in the past have been located, within the plume of contamination emanating from the Alloy Plant site, and therefore share the same risk as the putative class members. The representative Plaintiffs must necessarily protect the interests of the class as they seek to protect themselves; the Plaintiffs, because of their shared interests with the putative class, are adequate to represent the interests of the class and any sub-classes.

84) The law firm seeking to represent the putative class possesses the financial resources and the requisite experience to vigorously represent the class and any subclass in this litigation. Lead counsel for the Law Firm of Urban & Falk, PLLC is Thomas F. Urban II, a member of the West Virginia State Bar with over 20 years of litigation experience. Mr. Urban has extensive experience litigating complex cases, including substantial involvement in Bibb, et al v. Monsanto Company, et al, an environmental toxic tort class action presently pending in Putnam County, West Virginia. In addition, Urban & Falk is associated with the national law firm of Woodfill & Pressler, which is led by Jared Woodfill and former Judge H. Paul Pressler, III. Mr. Woodfill is licensed in Texas and New York and has almost 20 years of experience. He has extensive experience in litigating complex cases throughout the country. Mr. Pressler is a former trial and appellate Judge in Texas. Mr. Pressler has over 40 years of legal experience.

#### **5. Rule 23(b)(1)(A) is Satisfied**

85) The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the

---

<sup>2</sup> *In re: West Virginia Rezulin Litigation*, 214 W.Va.52, 585 S.E.2d 52 (2003).

Defendants opposing the class.

86) As shown above, the sheer number of putative class members, should their claims be litigated separately, will with certainty result in inconsistent judgments over time.

87) Inasmuch as this lawsuit addresses over fifty years of misconduct by the Defendants, it is important that the litigation result in clear standards of conduct for other corporations who conduct business or would seek to conduct business within the jurisdiction of Fayette County, West Virginia.

**6. Rule 23(b)(2) is Satisfied**

88) The representative Plaintiffs, on behalf of the putative class members, seek equitable relief in order to stop future contamination of Plaintiffs' property by the Hazardous Substances that migrate from the Defendants' Alloy Plant site. The injunctive relief sought is permanent and final in nature, as appears more fully below.

89) As clearly set forth above, the Defendants engaged in a course of conduct since 1934 which essentially guarantees continued contamination of Plaintiffs' property, as well as the property of the putative class members, with Hazardous Substances due to wind and water erosion from the Alloy Plant site.

90) Further, Plaintiffs are seeking to establish a medical monitoring class pursuant to the holding in *Bower v. Westinghouse Electric Corp.*, 206 W.Va. 133, 522 S.E.2d 424 (1999). The Plaintiffs seek to recover the costs of medical monitoring necessary to determine whether the Plaintiffs have sustained, or will develop in the future, any injuries from their exposure to the aforesaid Hazardous Substances. Plaintiffs seek these costs on behalf of the representative Plaintiffs as well as the putative class members.

91) Under Rule 23(b)(2) of the West Virginia Rules of Civil Procedure (2004), after liability has been established, the court may exercise its equitable powers to establish and administer a court-supervised medical monitoring program to oversee and

direct medical surveillance and to provide for medical examinations and testing of members of a class.

92) As more particularly appears below, the Plaintiffs seek on behalf of themselves and others a court-supervised fund for purposes of medical monitoring.

**7. Rule 23(b)(3) is Satisfied**

93) In the instant case, because of the sheer numbers of putative class members experiencing the same contamination and because the same Defendants are responsible for the contamination of the affected communities, issues of fact and law common to the class members predominate over the individual issues attendant to each class member. No individual class member, given the complexity and expense of proving the necessary elements of this civil action, can express a credible argument in favor of individual prosecution over the device of Rule 23. There is no litigation currently pending with regard to the depositing of wind-borne, toxin-laden dust on the buildings, property and person of the residents of the Class Affected Area. Because the same Defendants acting jointly, severally and in concert during the operative time period are responsible for the environmental disaster and human health tragedy that now is the profile of the affected communities, justice requires that the litigation be concentrated in this civil action to allow for the marshaling of resources necessary to effectively litigate the case on behalf of the affected population. By concentrating the many common issues of scientific and technical proof in showing causation, the common issues of fact regarding the Defendants' conduct in causing substantial portions of the aforesaid communities to be contaminated, and the many common issues of fact regarding the toxicity of the substances in question, in a single Rule 23 action, the court will be afforded an efficient and cost-effective strategy to manage the numerous class members being represented in this civil action.

94) Union Carbide and the other Defendants, over the course of approximately seventy years, indiscriminately contaminated the Plaintiffs' and putative

class members' property, making no allowances for individual differences among the class members in this toxic undertaking. The Defendants injured and contaminated the Plaintiffs and their property as a group. In this conduct, the Defendants' actions meant that the individual putative class members would be injured if they were located under the aforesaid plume of Hazardous Substances. Defendants' misconduct was broad, and it was carried out in a manner heedless of any peculiarities of the individual residents of the affected areas. Having been injured as a group, Plaintiffs should now be permitted to prosecute the Defendants in this single Rule 23 action, as a group and through class representatives. The Plaintiffs, therefore, bring this case on behalf of themselves and others similarly situated.

**WHEREFORE**, Plaintiffs, after a reasonable but expedited class discovery period, pray that this Court certify a class as above plead, name Plaintiffs' counsel herein as class counsel, and proceed to the merits of this important civil action on the basis of Rule 23 of the West Virginia Rules of Civil Procedure.

## **V. ALLEGATIONS AND CAUSES OF ACTION AS TO THE MERITS**

### **A. GENERAL ALLEGATIONS**

95) Since 1934 all of the Defendants, as the operators of the Alloy Plant, released or have been releasing Hazardous Substances into the atmosphere and the Kanawha River. From there, the Hazardous Substances are carried by the wind and water into the surrounding communities, immediately and persistently exposing Plaintiffs to the Hazardous Substances. The Hazardous Substances, carried by the wind, are also deposited in the attics and crawl spaces of Plaintiffs' homes, schools, and buildings. Over the years, the deposited Hazardous Substances have filtered down into the interiors of their homes, schools, businesses, and other buildings.

96) Plaintiffs' independent sampling of selected reveals dangerous levels of Hazardous Substances, including heavy metals, arsenic, mercury, PCBs, PAHs, and

both volatile and semi-volatile organic compounds.

96) The empirical data, to a reasonable probability, support the conclusion that the Alloy town and the surrounding communities are contaminated with Hazardous Substances generated by the Alloy Plant from 1934 to the present.

97) The Alloy Plant site remains contaminated with the aforesaid Hazardous Substances today and continues to present the risk of off site migration of Hazardous Substances via wind and water erosion.

**B. COUNT ONE: PRIVATE NUISANCE - INVASION OF AND DAMAGE  
TO PROPERTY INTERESTS**

98) Private nuisance is solely a matter of tort liability. The interest in the private use and enjoyment of land may be invaded by more than one type of conduct: the invasion may be intentional and unreasonable; it may be unintentional but caused by negligent or reckless conduct; or, it may result from an abnormally dangerous activity for which there is strict liability. On any of these bases a defendant may be liable. On all of these bases the Defendants are liable.

The Propertied Plaintiffs at all relevant times enjoyed a legally protected interest in the private use and enjoyment of their property. Included within this interest of private use and enjoyment is the interest in enjoying their property and its appreciation in economic value without Hazardous Substances and without the risk of developing serious injury or disease as a consequence of being exposed to Hazardous Substances. At all times relevant, the Defendants invaded Propertied Plaintiffs' legally protected property interests by causing Propertied Plaintiffs' property to become contaminated with the aforesaid Hazardous Substances, thus destroying the value of the Propertied Plaintiffs' property and thus exposing the Propertied Plaintiffs to a great risk of injury and disease because of the aforesaid toxic substance exposure.

### **1. Intentional Nuisance - Strict Liability**

100) Plaintiffs incorporate by reference all allegations and preceding paragraphs the same as though fully set forth herein in the first instance.

101) Since 1934, the Defendants, by virtue of the actions of Union Carbide and its successors, jointly and severally, created and maintained a nuisance on the property known as the "Alloy Plant," to-wit: the Defendants through their manufacturing processes caused to be created the aforesaid Hazardous Substances.

102) The aforesaid Hazardous Substances escaped from the Defendants' property to the lands and property of the Propertied Plaintiffs. Propertied Plaintiffs allege that the Defendants intended to cause the formation of these Hazardous Substances and, further, Propertied Plaintiffs allege that the Defendants intended the Hazardous Substances to escape to the lands of the Propertied Plaintiffs and to the lands of the Propertied Plaintiffs.

103) Because the Defendants knew or should have known that their conduct in producing the aforesaid Hazardous Substances and causing them to escape the Alloy Plant site was causing a substantial and unreasonable interference with the Propertied Plaintiffs' interests in the use and safe enjoyment of their respective real estate, Defendants' conduct in so doing constitutes an intentional and actionable nuisance.

104) Upon information and belief, Defendants WV Alloys, Inc., Globe Specialty Metals, and Globe Metallurgical continue today to emit silica fume into the environment, in violation of current air pollution permits and ambient air quality standards established under West Virginia law.

105) Because the gravity of the harm to the Propertied Plaintiffs presented by the aforesaid Hazardous Substances outweighs the social value of the Defendants' activity in their production of products, the Defendants' contamination of Plaintiffs'

property with Hazardous Substances is unreasonable.

106) Because the Defendants' conduct in interfering with Plaintiffs' property interests was and is intentional and unreasonable, the Defendants and each of them are strictly liable to the Propertied Plaintiffs, for the harm and damages proximately caused thereby.

107) As a direct and proximate cause of the Defendants' invasion of the Plaintiffs' property with Hazardous Substances, the Plaintiffs' interests in their respective real estate and personal health has been injured include, but are not limited to, the following ways:

(a) The Propertied Plaintiffs have incurred and will incur cleanup costs associated with the decontamination of their respective properties; and,

(b) The Plaintiffs, as a consequence of the toxic substance contamination of their property, are at a substantially increased risk over that of the general population for the development of a number of serious adverse health conditions which are more particularly set forth below.

**WHEREFORE**, the Propertied Plaintiffs on behalf of themselves and others similarly situated, demand judgment of and from the Defendants and each of them in an amount and manner hereinafter prayed for to compensate them for cleanup of their real and personal property.

## **2. Unintentional and Otherwise Actionable Nuisance**

108) Plaintiffs incorporate all allegations and preceding paragraphs the same as though fully set forth herein in the first instance.

109) IN THE ALTERNATIVE, Defendants' conduct in producing the aforesaid Hazardous Substances and causing them to contaminate the property of the



Propertied Plaintiffs was **unintentional** and otherwise actionable under the rules controlling liability for negligent or reckless conduct, or for abnormally dangerous conditions or activities.

110) Defendants' conduct in invading the property interests of the Propertied Plaintiffs with the aforesaid Hazardous Substances was negligent and reckless and as such constituted an actionable nuisance, subjecting Defendants to liability for any harm proximately caused by Defendants' unlawful invasion of Plaintiffs' property and the property of the putative class members the Propertied Plaintiffs represent.

111) Additionally, and in the alternative to Plaintiffs' allegations that Defendants' were negligent and reckless, Plaintiffs allege that these Hazardous Substances are an abnormally dangerous instrumentality and the production of these Hazardous Substances is an abnormally dangerous activity.<sup>3</sup>

112) Plaintiffs further allege that the aforesaid toxic substance contamination of the Alloy Plant site is an abnormally dangerous condition.

113) The Defendants, for their own purposes and economic profit, chose to create, handle, and maintain the aforesaid Hazardous Substances on their Alloy Plant site premises. In so doing, the Defendants released into the air "poisonous Hazardous Substances" which, as a matter of law, constitutes an abnormally dangerous activity.

114) Defendants WV Alloys, Inc., Globe Specialty Metals, and Globe Metallurgical continue to emit Hazardous Substances into the environment, and in doing so,

---

<sup>3</sup> Elements of abnormally dangerous instrumentality or condition:

- a. existence of high degree of risk of some harm to the person, land, or chattels of another;
- b. likelihood that the harm that results will be great;
- c. inability to eliminate the risk by exercise of reasonable care;
- d. extent to which activity is not a matter of common usage;
- e. inappropriateness of the activity to the place where it is carried out;
- f. extent to which its value to the community is outweighed by its dangerous attributes.

Restatement of Torts 2<sup>nd</sup> (1976) (Adopted by the West Virginia Supreme Court of Appeals in Foster v. City of Kevser, 202 W.Va. 1, 501 S.E.2d 165 (1997)).

are continuing to engage in an abnormally dangerous activity.

115) Because the Defendants created, and/or are creating, an abnormally dangerous condition and because the Defendants engaged, or are engaging, in an abnormally dangerous activity, the Defendants are strictly liable to the Propertied Plaintiffs for any harm and injury proximately caused by the abnormally dangerous Hazardous Substances.

116) As a direct and proximate consequence of the Defendants maintaining and creating an abnormally dangerous condition and instrumentality on the aforesaid Alloy Plant site, the Propertied Plaintiffs have been injured and damaged, suffering loss of property and the Plaintiffs have further been subjected to a great increase in the risk of developing serious diseases as more fully appears in Plaintiffs' medical monitoring claims in Count Three below.

**WHEREFORE**, Plaintiffs demand judgment against the Defendants and each of them for the injury and damages hereinafter set forth caused by the Defendants' aforesaid abnormally dangerous activities in an amount and manner more particularly set forth below.

**C. COUNT TWO: ACTIONABLE TRESPASS**

117) Plaintiffs incorporate all allegations and preceding paragraphs the same as though fully set forth herein in the first instance.

118) At common law, any act which directly brought foreign matter, whether a human being, an animate or inanimate chattel, or a structure, upon land in the possession of another was redressable in an action of trespass *quare clausumfregit*. The direct causal relation between the conduct of the actor and the intrusion of the foreign matter upon the possessor's land was sufficient to create a trespass.

119) One who recklessly or negligently, or as a result of an abnormally

dangerous activity, enters land in the possession of another or causes a thing or third person so to enter is subject to liability to the possessor if, but only if, his presence or the presence of the thing or the third person upon the land causes harm to the land, to the possessor, or to a thing or a third person in whose security the possessor has a legally protected interest.

120) In furtherance of their business interests, Union Carbide and its successors, the other Defendants, caused and are causing the aforesaid Hazardous Substances to be produced as by-products of the manufacturing process at the aforesaid Alloy Plant.

121) The Defendants at relevant times recklessly or negligently, or as a result of the abnormally dangerous activity of producing Hazardous Substances at the Alloy Plant site, have been causing the property of the Propertied Plaintiffs to be invaded by aforesaid Hazardous Substances, causing great and substantial harms to persons, land and chattels of the Propertied Plaintiffs.

122) As a direct and proximate result of the Defendants' trespass, as aforesaid, the Plaintiffs have been harmed and injured as aforesaid in their person and property.

**WHEREFORE**, the Plaintiffs pray for damages in an amount hereinafter set forth and further, Plaintiffs pray for equitable relief from the continued migration of Hazardous Substances from the Alloy Plant site to the lands and properties of the Plaintiffs all as aforesaid.

**RYLANDS V. FLETCHER<sup>4</sup> – STRICT LIABILITY**

123) Plaintiffs incorporate all allegations and preceding paragraphs the same

---

<sup>4</sup> Rylands v. Fletcher (1868) LR 3 HL 330 is a landmark English legal case in which the Court of the Exchequer Chamber first applied the doctrine of strict liability for inherently dangerous activities. Rylands was adopted into the common law of West Virginia by the West Virginia Supreme Court in Peneschi v. National Steel Corp., 170 W. Va. 511, 295 S.E.2d 1 (1982), for the proposition that “where a person chooses to use an abnormally dangerous instrumentality he is strictly liable without a showing of negligence for any injury proximately caused by that instrumentality.”

as though fully set forth herein in the first instance.

124) Although the Propertied Plaintiffs' *Rylands* style strict liability claims may be subsumed within the nuisance allegations, all Plaintiffs allege that irrespective of nuisance, the Defendants' operations at the Alloy Plant site were, and are, abnormally dangerous.

125) Heavy metals and other Hazardous Substances are abnormally dangerous.

126) The production of heavy metals and other Hazardous Substances is an abnormally dangerous activity.

127) Maintaining property contaminated with Hazardous Substances is an abnormally dangerous activity.

128) The Defendants in choosing to use, produce, maintain, and otherwise create Hazardous Substances at the Alloy Plant site chose to create an abnormally dangerous instrumentality and are strictly liable without a showing of negligence for any injury proximately caused the Plaintiffs and the members of the putative class by that instrumentality.

129) As a direct and proximate result of the Defendants' activities as aforesaid, but not limited thereto, poisonous and toxic dust has invaded the property and person of the Plaintiffs and each of the Plaintiffs have therefore been damaged and injured in their person and property as set forth above and more particularly stated below.

**WHEREFORE**, the Plaintiffs demand judgment of and from the Defendants and each of them in an amount hereinafter prayed for.

#### **D. COUNT THREE: MEDICAL MONITORING**

130) Plaintiffs incorporate all allegations and preceding paragraphs the same as though fully set forth herein in the first instance.

131) Sampling data establishes that the communities surrounding the Alloy

Plant site are highly contaminated with Hazardous Substances.

132) Heavy metals and PCBs are known human carcinogens and are hazardous to human health.

133) The Defendants' activities, as aforesaid, caused the Plaintiffs to be exposed to toxic substance contamination in the air, soil, and in the homes, places of employment, governmental buildings, schools, businesses, and public places occasioned by the Plaintiffs.

134) Because of the extraordinarily high toxic substance levels in the environments of the affected communities, the Plaintiffs are at an increased risk of contracting one or more serious and life threatening and life ending diseases.

135) Early detection of the diseases to which Plaintiffs are at an increased risk increases the chances for successful treatment and management of the aforesaid adverse health conditions. It is reasonably necessary for the Plaintiffs to undergo periodic health monitoring and medical examinations different than ordinary medical care, examinations, and treatment Plaintiffs and members of the putative class would undergo in the normal course of their lives had the complained of exposures not occurred.

136) Medical monitoring procedures exist that make early detection of the adverse medical conditions herein complained of possible and desirable.

**WHEREFORE**, Plaintiffs, on behalf of themselves and the putative class members, demand judgment of and from the Defendants and each of them in an amount and manner which will assure the costs of medical monitoring will be paid.

#### **E. COUNT FOUR: UNJUST ENRICHMENT**

137) Plaintiffs incorporate all allegations and preceding paragraphs the same as though fully set forth herein in the first instance.

138) Defendants have been enriched by their acts and omissions, including, but not to, by their failure to properly control, remove, and dispose of the Hazardous Substances they deposited on Plaintiffs' properties. Defendants have benefitted and continue to benefit from their wrongful conduct by using the Plaintiffs' properties as depositories for their Hazardous Substances, and by failing to reasonably abate these substances when they in all justice and fairness should do so.

139) Defendants lack any legal justification for allowing the Hazardous Substances to continue to be deposited on the Plaintiffs' properties.

140) Under the circumstances described herein, it would be inequitable for Defendants to retain the benefits of their actions and inactions without paying the value thereof to Plaintiffs and others similarly situated.

141) No other remedy at law can adequately compensate Plaintiffs and others similarly situated for the damages occasioned by the conscious choice of Defendant to release and maintain Hazardous Substances on the Plaintiffs' properties in order to save the expenses of properly preventing the release, removing and disposing of such materials, and repairing the properties of Plaintiffs and others similarly situated.

142) By reason of the unjust conduct of Defendants, Plaintiffs and others similarly situated are entitled to recover damages against Defendants, including, but not limited to, for the disgorgement of profits realized and unjust enrichment and all appropriate medical monitoring.

## **VI. STATUTE OF LIMITATIONS**

143) Due to the fact that Defendants continue to contaminate the Plaintiffs property and persons with various substances used and/or manufactured at the Alloy facility, statutes of limitation which otherwise might be applicable to this matter have been tolled. *See State ex rel. Smith v. Kermit Lumber and Treating Co.*, 200 W.Va. 221, 488

S.E.2d 901 (1997); Taylor v. Culloden Public Service, 214 W.Va. 639, 591 S.E.2d 197 (2003).

144) **IN THE ALTERNATIVE**, To the extent that the contamination from the Alloy Plant is not continuing in nature, Plaintiffs assert that the first time that they became aware that their property was contaminated with heavy metals was in late 2010 early 2011.

145) Plaintiffs further assert that any and all applicable statutes of limitations have been tolled by Defendants' acts of fraudulent concealment, misrepresentation, and non-disclosure regarding the degree that the Defendants' activities have exposed Plaintiffs and their property to Hazardous Substances and the extent that Plaintiffs have been injured by those Hazardous Substances. Defendants have engaged in a concerted effort to keep information regarding their release of Hazardous Substances into the communities surrounding the Alloy Plant from being disseminated to the public. Plaintiffs were not aware of and could not reasonably have afforded testing to determine the fact of or the amount of contamination that Defendants have caused to them and their property and their resultant injury, and thus Plaintiffs acted in a timely fashion by bringing this action within two years of learning of the testing results.

## **VII. DEMAND FOR JUDGMENT**

146) The Plaintiffs demand as follows:

(a) For the Propertied Plaintiffs, an amount adequate to clean up Propertied Plaintiffs' contaminated real and personal property. If such cleanup is impractical, an amount adequate to replace the value of Plaintiffs' contaminated real and personal property. The Propertied Plaintiffs further demand an amount sufficient to test their homes, buildings, and other property to determine the levels of Hazardous Substances that are contaminating those properties;

(b) For all Plaintiffs who have resided, worked, or attended school within five miles of the Alloy Plant for at least one year since 1934 (the "Medical Monitoring Plaintiffs"), an amount sufficient to provide for testing of their persons to determine the body burden of Hazardous Substances and an amount sufficient to insure ongoing examinations and tests to provide for early detection of certain diseases associated with exposure to the Hazardous Substances disseminated by the Defendants;

(c) For the entire class of persons, an order directing that the Defendants be permanently enjoined from further releases of Hazardous Substances, in excess of permitted limits, from the Alloy Plant site;

(d) Inasmuch as the conduct of the Defendants has been characterized by willful, wanton, or reckless conduct in causing the toxic substance contamination and because the Defendants have over the years engaged in fraudulent cover-ups of the risks and presence in the community of the Hazardous Substances they have produced, this case is appropriate for an award of punitive damages;<sup>5</sup>

(e) Plaintiffs' costs and expenses spent in bringing this action, including Plaintiffs' attorneys' fees;

(f) Pre-Judgment interest;

(g) Post-Judgment interest;

(h) For all other relief this court deems proper.

**WHEREFORE** as to all counts Plaintiffs demand judgment of and from the Defendants and each of them, jointly and severally, in an amount sufficient to compensate Plaintiffs for their provable losses.

Plaintiffs further demand as and for punitive damages an amount equal to ten times

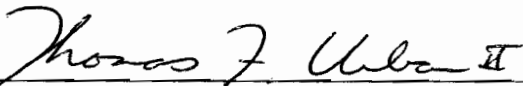
<sup>5</sup> Syl. Pt. 4, Alkire v. First National Bank, 197 W. Va. 122, 475 S.E. 2d 122 (1996); Syl. Pt. 1, Goodwin v. Thomas 184 W. Va. 611, 403 S.E. 2d 13 (1991); Syl. Pt. 1, Wells v. Smith, 171 W. Va. 97, 297 S.E.2d 872 (1982).



the provable compensatory damages to deter the Defendants from future conduct and protect other communities from similar conduct by these Defendants in the future.

**PLAINTIFFS DEMAND A TRIAL BY JURY AS TO ALL COUNTS.**

**GREGORY AND PATTY BALLARD, et al.**



Thomas F. Urban II (WV State Bar #10617)  
URBAN & FALK, PLLC  
2867 S. Abingdon St.  
Arlington, Virginia 22206  
703-861-5235 – Telephone  
703-340-1450 – Facsimile

Jared R. Woodfill (TSBN 00788715) (to be admitted *pro hac vice*)  
Wallace T. Ward III (TSBN 20848700) (to be admitted *pro hac vice*)  
Robert Summerlin (TSBN 45006540) (to be admitted *pro hac vice*)  
WOODFILL & PRESSLER, LLP  
909 Fannin, Suite 1470  
Houston, Texas 77010  
713-751-3080 – Telephone  
713-751-3058 – Facsimile

Date: March 31, 2011