

19-CV-2166

CAUSE NO. _____

ANDREW NARVAEZ AND	§	IN THE DISTRICT COURT OF
BEATRIZ NARVAEZ	§	
	§	
V.	§	GALVESTON COUNTY, TEXAS
	§	
BP AMERICA PRODUCTION INC.,	§	
f/k/a Amoco Production Company;	§	
BP AMOCO CHEMICAL COMPANY,	§	
f/k/a as Amoco Chemical Company;	§	
BP CORPORATION NORTH AMERICA	§	
INC., individually and as successor in	§	
interest to or f/k/a as Amoco Corporation	§	
and BP Amoco Corporation;	§	
BP PRODUCTS NORTH AMERICA,	§	
INC., f/k/a BP Amoco Oil Company,	§	
Amoco Texas Refining Company and	§	
American Oil Company;	§	
EXXON MOBIL CORPORATION;	§	
EXXONMOBIL OIL CORPORATION;	§	
MARATHON CORPORATION;	§	
MONSANTO COMPANY;	§	
PHARMACIA CORPORATION,	§	
individually and f/k/a Monsanto	§	
Chemical Company and Monsanto	§	
Company;	§	
RADIATOR SPECIALTY COMPANY;	§	
UNION CARBIDE; and	§	Galveston County - 56th District Court
UNITED STATES STEEL	§	
CORPORATION	§	_____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Plaintiffs, ANDREW NARVAEZ and BEATRIZ NARVAEZ, complaining of and against defendants, BP AMERICA PRODUCTION INC., f/k/a Amoco Production Company; BP AMOCO CHEMICAL COMPANY, f/k/a Amoco Chemical Company; BP CORPORATION NORTH AMERICA INC., individually and as successor in interest to or f/k/a Amoco Corporation and BP Amoco Corporation; BP PRODUCTS

Status Conference Set for 2-13-20

NORTH AMERICA, INC., f/k/a BP Amoco Oil Company, Amoco Texas Refining Company and American Oil Company; EXXON MOBIL CORPORATION; EXXONMOBIL OIL CORPORATION; MARATHON CORPORATION; MONSANTO COMPANY; PHARMACIA CORPORATION, individually and f/k/a Monsanto Chemical Company and Monsanto Company; RADIATOR SPECIALTY COMPANY; UNION CARBIDE; and UNITED STATES STEEL CORPORATION, and for cause of action would show as follows:

I.

Plaintiffs allege that the discovery in this cause of action is intended to be conducted under Level 3 of TEXAS RULES OF CIVIL PROCEDURE 190.1.

II.

PARTIES

Plaintiffs, **ANDREW NARVAEZ and BEATRIZ NARVAEZ**, are residents of Magnolia, Montgomery County, Texas.

Defendant, **BP AMERICA PRODUCTION INC., f/k/a/ Amoco Production Company**, is a Delaware corporation doing business in the State of Texas and having its principal place of business in Indiana, upon which process may be executed by serving its registered agent: **C.T. Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.**

Defendant, **BP AMOCO CHEMICAL COMPANY, f/k/a Amoco Chemical Company**, is a Delaware corporation doing business in the State of Texas and having its principal place of business in Illinois, upon which process may be executed by serving its registered agent: **C.T. Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.**

Defendant, **BP CORPORATION NORTH AMERICA INC., individually and as successor in interest to or f/k/a Amoco Corporation and BP Amoco Corporation**, is an Indiana Corporation doing business in the State of Texas and having its principal place of business in Illinois, upon which process may be executed by serving its registered agent: **C.T. Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.**

Defendant, **BP PRODUCTS NORTH AMERICA, INC.**, formerly known as **BP Amoco Oil Company, Amoco Texas Refining Company and American Oil Company**, is a Maryland Corporation doing business in the State of Texas and having its principal place of business in Texas, upon which process may be executed by serving its registered agent: **C.T. Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.**

Defendant, **EXXON MOBIL CORPORATION**, is a New Jersey corporation doing business in the State of Texas and having its principal place of business in Texas, upon which process may be executed by serving its registered agent: **Corporation Service Company d/b/a Lawyers Incorporating Service Company, 211 East 7th Street, Suite 620, Austin, Texas, 78701.**

Defendant, **EXXONMOBIL OIL CORPORATION**, is a New York corporation doing business in the State of Texas and having its principal place of business in Texas, upon which process may be executed by serving its registered agent: **Prentice-Hall Corporation, 211 East 7th Street, Suite 620, Austin, Texas, 78701.**

Defendant, **MARATHON CORPORATION**, is a Texas Corporation doing business in the State of Texas and having its principal place of business in Texas, upon which process may be executed by serving its registered agent: **Frederick Bowman, 11434 Stemmons Freeway, Dallas, Texas 75229.**

Defendant, **MARATHON CORPORATION**, is a Texas Corporation doing business in the State of Texas and having its principal place of business in Texas, upon which process may be executed by serving its registered agent: **Frederick Bowman, 3841 Stratford, Dallas, Texas 75205.**

Defendant, **MONSANTO COMPANY**, is a Delaware corporation doing business in the State of Texas and having its principal place of business in Missouri, upon which process may be executed by serving its registered agent: **Corporation Service Company dba Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.**

Defendant, **PHARMACIA CORPORATION, individually and f/k/a Monsanto Chemical Company and Monsanto Company**, is a Delaware Corporation doing business in the State of Texas and having its principal place of business in Tennessee, upon which process may be executed by serving its registered agent, **C.T Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.**

Defendant, **RADIATOR SPECIALTY COMPANY**, is a North Carolina Corporation, is a non-resident who engages in business in this state and is required to maintain a resident agent, but has not designated or maintained a resident agent for service of process and has not maintained a regular place of business in this state or a designated agent for service of process. Because the claims herein arise out of business done in this state and to which the non-resident is a party, the Secretary of State is Defendant's agent for service of process. The Secretary of State, upon being served with duplicate copies of

process for this non-resident, is requested to serve Defendant by registered mail, return receipt requested by serving it at its home office: **Radiator Specialty Company, P. O. Box 34689, Charlotte, North Carolina, 28234.**

Defendant, **UNION CARBIDE**, is a New York corporation doing business in the State of Texas and having its principal place of business in Texas, upon which process may be executed by serving its registered agent, **C.T. Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.**

Defendant, **UNITED STATES STEEL CORPORATION**, is a Delaware corporation doing business in the State of Texas and having its principal place of business in Pennsylvania, upon which process may be executed by serving its registered agent, **Corporation Service Company d/b/a Lawyers Incorporating Service Company, 211 East 7th Street, Suite 620, Austin, Texas, 78701.**

III.

VENUE AND JURISDICTION

Plaintiffs will show that at all material times herein, said defendants were doing business within the State of Texas as that term is defined in the Texas Revised Civil Statutes, and are therefore amenable to process because of their substantial business contacts with the State of Texas.

Plaintiff, **ANDREW NARVAEZ**, in his capacity as a carpenter, worked at Amoco in Texas City, Texas; Marathon in Texas City, Texas; Monsanto in Texas City, Texas; and Union Carbide in Texas City, Texas (hereinafter referred to as "Venue Defendants"), during which time he was exposed to benzene and products containing benzene. These facilities are located in Galveston County, Texas. Therefore, a substantial part of the events or omissions giving rise to this claim occurred in Galveston County, Texas. Accordingly, venue is proper in Galveston County, Texas. One or more defendants committed acts and/or omissions in the State of Texas that were a proximate and/or producing cause of **ANDREW NARVAEZ**'s indivisible injury and Plaintiffs' damages. Additionally, venue is proper as to all defendants pursuant to Section 15.005 of the Texas Civil Practice and

Remedies Code because all of Plaintiffs' claims and/or causes of action against all defendants arise out of the same transaction, occurrence or series of transactions or occurrences. More specifically, all of Plaintiffs' claims for ANDREW NARVAEZ's indivisible injury and Plaintiffs' damages against all the defendants arise out of the same transaction, occurrence or series of transactions or occurrences as the claims against the Venue Defendants, all in Galveston County, Texas. Furthermore, all defendants have committed acts and/or omissions which constitute negligence, gross negligence, malice, fraud, intent and/or strict products liability that arise out of the same transaction, occurrence or series of transactions or occurrences as the acts or omissions of the Venue Defendants. Accordingly, venue is proper in Galveston County, Texas, as to all defendants.

This Honorable Court has jurisdiction of this cause and that the causes of action asserted in this petition are based on Texas common law and statutory law, and the damages sought are within the jurisdictional limits of this Court.

The Federal Court lacks subject matter jurisdiction over this action as there is no federal question and removal is banned under 28 U.S.C. §1441(b)(2) due to the presence of local defendants. Removal is improper. Every claim arising under the constitution, treaties, or laws of the United States is expressly disclaimed (including any claim arising from an act or omission on a federal enclave or of any officer of the United States or any agency or person acting under him occurring under color of such office). No claim of admiralty or maritime law is raised. Plaintiffs pursue no foreign state or agency. Venue is proper in Galveston County, Texas.

IV.

BACKGROUND INFORMATION

Plaintiff, ANDREW NARVAEZ, worked as a carpenter at various locations from 1968 to 1978, including at Amoco (sued herein as BP AMERICA PRODUCTION INC., f/k/a Amoco Production Company; BP AMOCO CHEMICAL COMPANY, f/k/a Amoco Chemical Company; BP CORPORATION NORTH AMERICA INC., individually and as successor in interest to or f/k/a Amoco Corporation and BP Amoco Corporation; BP PRODUCTS NORTH AMERICA, INC., f/k/a BP Amoco Oil Company, Amoco Texas Refining Company and American Oil Company) in Texas City, Texas; Marathon (sued herein as MARATHON CORPORATION) in Texas City, Texas; Monsanto (sued herein as MONSANTO COMPANY; PHARMACIA CORPORATION, individually and f/k/a Monsanto Chemical Company and Monsanto Company) in Texas City, Texas; and Union Carbide (sued herein as UNION CARBIDE) in Texas City, Texas (hereafter referred to as “Premise Defendants”). At times during his work, he was exposed to benzene and benzene-containing products.

ANDREW NARVAEZ was exposed to benzene and benzene-containing products which were placed into the stream of commerce by Radiator Specialty Company (sued herein as RADIATOR SPECIALTY COMPANY) and United States Steel Corporation (sued herein as UNITED STATES STEEL CORPORATION) (hereinafter referred to as “Product Defendants”). ANDREW NARVAEZ used Liquid Wrench from 1965 to 1978 to perform numerous tasks during his employment. United States Steel Corporation, through its agents, employees, servants, representatives, subsidiaries and/or predecessors in interest, was engaged in the shipping of a benzene-containing product called drip oil and/or

raffinate to Radiator Specialty Company for its use in the formulation of Liquid Wrench prior to 1979. The drip oil and/or raffinate contained benzene, and Liquid Wrench is a benzene-containing product.

ANDREW NARVAEZ was also exposed to Varsol, a benzene-containing product, which was placed into the stream of commerce by Exxon (sued herein as EXXON MOBIL CORPORATION; EXXONMOBIL OIL CORPORATION) (hereinafter referred to as "Product Defendants").

ANDREW NARVAEZ was needlessly exposed to benzene and products containing benzene. As a result of ANDREW NARVAEZ's exposures to said benzene and products containing benzene, ANDREW NARVAEZ has suffered and continues to suffer personal injuries in that he has developed the disease chronic lymphocytic leukemia.

V.

**STRICT LIABILITY AGAINST
PRODUCT DEFENDANTS**

Plaintiffs would show that this action is maintained pursuant to what is commonly called products liability law. Product Defendants are liable under the theory of strict tort liability as set forth in Section 402A of the Restatement of Torts (Second). Product Defendants were at all material times engaged in the business of manufacturing, distributing, shipping, selling, transporting, purchasing, and/or otherwise placing into the stream of commerce benzene and benzene-containing materials. Said chemicals were expected to reach and in fact did reach ANDREW NARVAEZ without substantial change in their condition. The said chemicals were in a defective condition, unreasonably dangerous when manufactured, distributed, shipped, sold, transported, and/or purchased by

said Product Defendants. Said defective, unreasonably dangerous condition was a producing cause of the injuries made the basis of this suit.

Plaintiffs further say that the Product Defendants are liable to the Plaintiffs because as manufacturers, distributors, sellers, transporters, and purchasers of the products in a defective condition unreasonably dangerous, the Product Defendants owed a strict duty to the Plaintiffs not to harm ANDREW NARVAEZ through the use of the products manufactured, distributed, shipped, sold, transported, purchased, and/or otherwise placed into the stream of commerce by the Product Defendants' products that were in a defective condition, unreasonably dangerous, and not safe for their intended use. Said Product Defendants are liable because they:

- (a) Knew, or with the exercise of reasonable care, should have known that their products contained the hazardous carcinogenic chemical benzene as a product component and/or contaminant which was in a defective, unreasonably dangerous condition, and that use of their products would cause cancer;
- (b) Failed to warn ANDREW NARVAEZ of the known or reasonably foreseeable dangers of contracting cancer from use of Product Defendants' defective and unreasonably dangerous products;
- (c) Knew, or it was reasonably foreseeable, that Product Defendants' products containing the hazardous carcinogenic chemical benzene as a product component and/or contaminant would be used by users or consumers such as ANDREW NARVAEZ, in the manner in which Product Defendants' products were used;
- (d) Failed to provide ANDREW NARVAEZ with the knowledge of what would be reasonably safe and sufficient wearing apparel and proper protective equipment and appliances, if, in truth, there were any way to protect himself from Product Defendants' defective and unreasonably dangerous products;
- (e) Failed to instruct ANDREW NARVAEZ in the proper handling of said Product Defendants' products to protect himself from harm;
- (f) Failed to test Product Defendants' products containing the hazardous carcinogenic chemical benzene as a product component and/or contaminant regarding the adverse health effects upon the human body caused by the defective and unreasonably dangerous condition of Product Defendants' products containing the hazardous carcinogenic chemical benzene as a product component and/or contaminant;

- (g) Failed to place a safer product into the stream of commerce which would have prevented ANDREW NARVAEZ's disease without impairing the product's utility, although a safer product was economically and technologically feasible at the time the product left the control of defendant;
- (h) Breached the warranty of merchantability to ANDREW NARVAEZ as well as others, when Product Defendants warranted, either expressly or impliedly, to be merchantable, when in truth, they were not;
- (i) Included benzene in their products and processes when adequate substitutes for these carcinogenic chemicals were available;
- (j) Placed benzene and benzene-containing products into the stream of commerce when adequate substitutes were available;
- (k) Included benzene in their products and processes, even though it was completely foreseeable and could or should have been anticipated that persons such as ANDREW NARVAEZ working with or around them would inhale, ingest, or otherwise absorb the carcinogens;
- (l) Included benzene in their products and processes while the defendant knew or should have known that said carcinogenic chemicals would have a toxic, poisonous and highly deleterious effect upon the health of persons handling, ingesting, or otherwise absorbing them;
- (m) Failed to recall or cease using benzene and benzene-containing products which defendants had designed, manufactured, sold, distributed, purchased, or were currently using;
- (n) Failed to recommend adequate engineering controls to reduce or eliminate exposure of ANDREW NARVAEZ and other persons working with or around benzene and products and processes containing benzene;
- (o) Provided ANDREW NARVAEZ with products containing benzene which ANDREW NARVAEZ was required to work with and was exposed to while performing his duties; and
- (p) Such other acts and/or omissions as may be shown proper at the time of trial.

Plaintiffs would show that the above acts and/or omissions independently or in combination with one another are a proximate and producing cause of ANDREW NARVAEZ's disease and Plaintiffs' damages as set forth herein.

VI.

PLAINTIFFS' NEGLIGENCE ACTION AGAINST THE PRODUCT DEFENDANTS

Plaintiffs would further show that the Product Defendants set forth above were guilty of certain acts and/or omissions which amount to negligence. Said Product

Defendants knew, or in the exercise of ordinary care, should have known of unreasonable risks of harm posed by exposure to their products. Plaintiffs would show that the Product Defendants are guilty of negligence as follows:

- (a) Knew, or with the exercise of reasonable care, should have known that their products contained the hazardous carcinogenic chemical benzene as a product component and/or contaminant which was in a defective, unreasonably dangerous condition, and that use of their products would cause cancer;
- (b) Failing to warn ANDREW NARVAEZ of the known or reasonably foreseeable dangers of contracting cancer from use of Product Defendants' defective and unreasonably dangerous products;
- (c) Knew, or it was reasonably foreseeable, that Product Defendants' products containing the hazardous carcinogenic chemical benzene as a product component and/or contaminant would be used by users or consumers such as ANDREW NARVAEZ in the manner in which Product Defendants' products were used;
- (d) Failing to instruct ANDREW NARVAEZ in the proper handling of said Product Defendants' products to protect himself from harm;
- (e) Failing to provide an adequate warning and/or instruction with regard to benzene and products containing benzene;
- (f) Failing to perform testing of their benzene and products containing benzene to determine human health effects;
- (g) Failing to recommend the use of adequate personal protective equipment in handling or working with or around their benzene and products containing benzene;
- (h) Failing to conduct monitoring and/or testing of persons who handled and worked with their benzene and products containing benzene;
- (i) Failing to recommend adequate engineering controls to reduce or eliminate exposure of persons working with or around their benzene and products containing benzene;
- (j) Failing to place a safer product into the stream of commerce which would have prevented ANDREW NARVAEZ's disease without impairing the product's utility, although a safer product was economically and technologically feasible at the time the product left the control of defendants;
- (k) Failing to create and maintain data and records regarding health effects of exposure to benzene and products containing benzene;
- (l) Failing to test, monitor and research the human health effects of exposure to benzene and products containing benzene;
- (m) Including benzene in their products and processes when adequate substitutes for these carcinogenic chemicals were available;
- (n) Placing benzene and benzene-containing products into the stream of commerce when adequate substitutes were available;

- (o) Including benzene in their products and processes, even though it was completely foreseeable and could or should have been anticipated that persons such as ANDREW NARVAEZ working with or around them would inhale, ingest, or otherwise absorb the carcinogens;
- (p) Including benzene in their products and processes while the defendant knew or should have known that said carcinogenic chemicals would have a toxic, poisonous and highly deleterious effect upon the health of persons handling, ingesting, or otherwise absorbing them;
- (q) Failing to recall or cease using benzene and benzene-containing products which defendant had designed, manufactured, sold, distributed, purchased, or were currently using;
- (r) Providing ANDREW NARVAEZ with products containing benzene which ANDREW NARVAEZ was required to work with and was exposed to while performing his duties; and
- (s) Such other acts and/or omissions as may be shown proper at the time of trial.

Plaintiffs would show that the above acts and/or omissions, independently or in combination with one another, are a proximate and producing cause of ANDREW NARVAEZ's disease and Plaintiffs' damages as set forth herein.

VII.

PLAINTIFFS' NEGLIGENCE ACTION AGAINST THE PREMISE DEFENDANTS

Plaintiffs assert a claim of negligence against each of the Premise Defendants. Plaintiffs would show that the Premise Defendants knew, or in the exercise of ordinary care, should have known, of unreasonable risks of harm to human health posed by exposure to benzene and products containing benzene. Said negligence claims against the Premise Defendants are separate and distinct from any and all claims against any Product Defendant as the manufacturer, distributor, shipper, seller, purchaser, and/or transporter of benzene and products containing benzene. Specifically, Plaintiffs would show that each Premise Defendants are guilty of negligence as follows:

- (a) Failing to instruct ANDREW NARVAEZ in the proper handling of said Product Defendants' products to protect himself from harm;

- (b) Failing to provide ANDREW NARVAEZ and those similarly situated with a safe work place;
- (c) Failing to provide adequate assistance and adequate equipment to ANDREW NARVAEZ and those similarly situated;
- (d) Failing to provide respirators to ANDREW NARVAEZ and others similarly situated who worked with or around benzene and products containing benzene;
- (e) Failing to provide adequate warning and/or instruction with regard to benzene and products containing benzene;
- (f) Failing to recommend and/or provide adequate information to and training of ANDREW NARVAEZ and those similarly situated;
- (g) Failing to provide adequate supervision of ANDREW NARVAEZ and those similarly situated;
- (h) Failing to conduct monitoring of ANDREW NARVAEZ and others similarly situated to determine exposure to benzene and products containing benzene;
- (i) Failing to test and research benzene and products containing benzene to determine health effects on humans;
- (j) Failing to keep data, information and/or records pertaining to the health effects of exposure to benzene and products containing benzene;
- (k) Failing to provide adequate ventilation and other engineering controls to reduce or eliminate exposure of persons working with or around their benzene and products containing benzene;
- (l) Failing to provide adequate warning devices;
- (m) Failing to instruct ANDREW NARVAEZ in the proper handling of said defendant's products to protect him from harm;
- (n) Including benzene in their products and processes when adequate substitutes for these carcinogenic chemicals were available;
- (o) Placing benzene and benzene-containing products into the stream of commerce when adequate substitutes were available;
- (p) Including benzene in their products and processes, even though it was completely foreseeable and could or should have been anticipated that persons such as ANDREW NARVAEZ working with or around them would inhale, ingest or otherwise absorb the carcinogens;
- (q) Including benzene in their products and processes while the defendants knew or should have known that said carcinogenic chemicals would have a toxic poisonous and highly deleterious effect upon the health of persons handling, ingesting or otherwise absorbing them;
- (r) Failing to recall or cease using benzene and benzene-containing products which defendants had designed, manufactured, sold, distributed, purchased, or were currently using;
- (s) Providing ANDREW NARVAEZ with products containing benzene which ANDREW NARVAEZ was required to work with and was exposed to while performing his duties;

- (t) Such other and further acts and/or omissions as may be shown by the evidence at trial.

Plaintiffs would show that the above acts and/or omissions, independently or in combination with one another, are a proximate cause of ANDREW NARVAEZ's disease and Plaintiffs' damages as set forth herein.

VIII.

PLAINTIFFS' GROSS NEGLIGENCE ACTION AGAINST PREMISE AND PRODUCT DEFENDANTS

Plaintiffs would show that the negligent acts and/or omissions of these defendants as set forth above reflect an actual conscious indifference towards the rights, safety and welfare of others. Plaintiffs would show that the manufacturing, distributing, shipping, transporting, purchasing, designing, constructing, marketing and/or placing into the stream of commerce of said unreasonably dangerous products, as well as the negligent acts and/or omissions on the part of the defendants, posed an extreme degree of risk to persons such as ANDREW NARVAEZ. During ANDREW NARVAEZ's employment, he was needlessly exposed to benzene and products containing benzene. The defendants knew for decades that exposure to the chemical benzene and products containing benzene, and/or their process streams could cause disease of the hematopoietic system and still allowed the workers like ANDREW NARVAEZ to be exposed to and use this toxic and cancerous chemical in the work environment. Accordingly, said defendants are guilty of gross negligence, and therefore, Plaintiffs are entitled to recover exemplary damages for the gross negligence of the defendants.

Plaintiffs would show that said gross negligence is a proximate cause of ANDREW NARVAEZ's disease and Plaintiffs' damages as set forth herein. As a result of said gross

negligence, Plaintiffs assert a claim for punitive damages in an amount deemed fair and just by the jury and allowed by Texas law.

IX.

ANDREW NARVAEZ's chronic lymphocytic leukemia was a natural, direct and/or probable consequence of his benzene exposure. Defendants intentionally, willfully, knowingly and/or recklessly exposed ANDREW NARVAEZ to benzene by the conditions of work it imposed upon him. Defendants actually knew that their conditions of work would cause exposure to benzene. Exposure to benzene is a harmful or offensive bodily contact. Defendants' intentional, willful, knowing and/or reckless conduct caused benzene exposure which lead directly and naturally to the development of chronic lymphocytic leukemia in ANDREW NARVAEZ. Therefore, defendants intentionally, willfully, knowingly and/or recklessly exposed ANDREW NARVAEZ to benzene with the knowledge that such exposure was substantially certain to cause serious injury to ANDREW NARVAEZ and those similarly situated.

X.

The extent of danger from contact with benzene was affirmatively withheld and/or concealed from ANDREW NARVAEZ. As such, his contact and exposure to benzene was without his consent or his informed consent.

XI.

As a direct and natural consequence of his benzene exposure, ANDREW NARVAEZ contracted the deadly disease, chronic lymphocytic leukemia. His exposure was touching a chemical which was both harmful and offensive. As such, benzene exposure in this circumstance constitutes battery and assault.

XII.

RES IPSA LOQUITUR

Plaintiffs will further show that at all times material hereto, over the period of years in which ANDREW NARVAEZ was exposed to benzene and benzene-containing products, the manufacture, marketing, sale, shipping, designing, construction, transportation, distribution, and purchase of benzene and materials containing benzene with which ANDREW NARVAEZ came in contact were under the exclusive control of the defendants, their agents, servants and employees. That had the defendants herein not been guilty of negligence as hereinabove set forth, ANDREW NARVAEZ would not have sustained his injuries and damages as herein set forth, and therefore, Plaintiffs say that they are entitled to recover from the defendants under the doctrine of *res ipsa loquitur*.

XIII.

PLAINTIFFS' DAMAGES

As a direct and proximate result of defendants' tortious conduct, ANDREW NARVAEZ developed chronic lymphocytic leukemia; therefore, Plaintiffs have been damaged in the following particulars:

- (a) ANDREW NARVAEZ has and will continue to endure pain, suffering and mental anguish;
- (b) ANDREW NARVAEZ has and will continue to incur hospital and/or medical and/or pharmaceutical and/or other expenses;
- (c) ANDREW NARVAEZ will require medical monitoring to aid in the early detection and treatment of any other cancers or related illnesses;
- (d) ANDREW NARVAEZ will be prevented from participating in and enjoying the benefits of a full and complete life as a result of contracting chronic lymphocytic leukemia; and
- (e) Plaintiff seeks punitive and exemplary damages.

BEATRIZ NARVAEZ, wife of Plaintiff, ANDREW NARVAEZ, joins in this cause of action as a named Plaintiff and specifically incorporates all of the allegations as

herein set forth and asserts her individual cause of action for loss of consortium. As a direct and proximate result of the aforesaid act of negligence, gross negligence, intentional, reckless and knowing conduct, fraud, and under the doctrine of product liability, BEATRIZ NARVAEZ sustained injuries and damages as both set forth within the jurisdictional limits of this court and for which she requests this Honorable Court to award her as her sole and separate property.

XIV.

DISCOVERY RULE

Plaintiffs hereby plead and invoke the discovery rule.

XV.

JOINT AND SEVERAL LIABILITY

All defendants named herein are liable individually, jointly and severally for damages sustained by Plaintiffs as alleged herein.

XVI.

PREJUDGMENT AND POSTJUDGMENT INTEREST

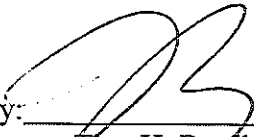
Plaintiffs also assert a claim for prejudgment and postjudgment interest for all elements of damages that such interest is allowed for pursuant to the Texas Statutes.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the defendants be cited to appear and answer herein as the law directs, and that upon final hearing hereof, Plaintiffs recover of and from each of the defendants for their damages as alleged within the minimum jurisdictional requirements of this Court and in such amount as the evidence may show proper at the time of trial, together with costs of court, interest at the legal rate,

and for such other and further relief, special and general, at law and in equity, to which the Plaintiffs may be justly entitled to receive.

Respectfully submitted,

Hobson & Bradley
316 N. 13th Street
Nederland, Texas 77627
Ph. #: (409) 838-6410
Fax #: (409) 853-1620

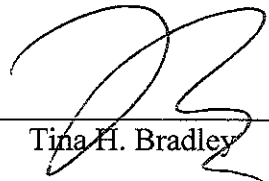
By: 

Tina H. Bradley
TBA #24004561
tbradley@hobsonlaw.com

ATTORNEYS FOR PLAINTIFFS

JURY DEMAND

Plaintiffs hereby respectfully request a trial by jury.

By: 

Tina H. Bradley