

of neighboring subdivisions. Many Plaintiffs are property owners in the affected areas; others are family members. The Plaintiffs seek damages for wrongful death, personal injuries, property damage, pain and suffering, and attorneys' fees based on state common law.

Venue

2. Venue is proper in Harris County by virtue of § 15.001, *et seq.* of the Tex. Prac. & Rem. Code.

3. The claims arose out of acts or omissions by the Defendants occurring on property located in Harris County, Texas.

Parties

Plaintiffs

4. Plaintiffs are current or former owners, lessees, tenants, residents and/or occupants of certain real property in Harris County, Texas located in and around the MDI site, including school children who are attending or have attended Bruce Elementary School, which is across the street from the MDI site.

Defendants

5. Defendant MANY DIVERSIFIED INTERESTS, INC. is a Texas corporation having its principal office and principal place of business in Houston, Harris County, Texas, and may be served with process by serving its registered agent, Roy Davis, III, at 1501 Harvey, Suite 639, College Station, Texas 77840, by certified mail, return receipt requested.

6. Defendant TEXAS ELECTRIC STEEL CASTING COMPANY was a Texas corporation authorized to do business in Harris County, engaged in business in Harris County, Texas through its successors or assigns and/or which did business in Harris County, Texas but was forfeited

on February 18, 1998 for nonpayment of franchise taxes. Defendant may be served with process through its registered agent, Roy B. Davis, Jr., at 3617 Baer Street, Houston, Texas 77001, by certified mail return receipt requested.

7. Defendant CANAM RESOURCES GROUP, INC. was a Texas corporation authorized to do business in Harris County, engaged in business in Harris County, Texas through its successors or assigns and/or which did business in Harris County, Texas but was forfeited on December 10, 1990 for nonpayment of franchise taxes. Defendant may be served with process through its registered agent, Robert Howard, at 6251 Corporate Drive, Houston, Texas 77036, by certified mail return receipt requested.

8. Defendant SAN JACINTO FOUNDRY, INC. was a Texas corporation authorized to do business in Harris County, engaged in business in Harris County, Texas through its successors or assigns and/or which did business in Harris County, Texas but underwent an administrative forfeiture on October 20, 1993 for not maintaining a registered agent. Defendant may be served with process through its last known registered agent, W. Arthur Lindsey, at 3555 Timmons Lane, Suite 700, Houston, Texas 77027, by certified mail return receipt requested.

9. Defendant LARPEN OF TEXAS, INC. was a Texas corporation authorized to do business in Harris County, engaged in business in Harris County, Texas through its successors or assigns and/or which did business in Harris County, Texas but was forfeited on December 10, 1990 for nonpayment of franchise taxes. Defendant may be served with process through its registered agent, A. B. Keckley, at 3617 Baer Street, Houston, Texas 77001, by certified mail return receipt requested.

10. Defendant ROBBYE R. WALDRON is the duly appointed trustee in bankruptcy for Many Diversified Interests, Inc. Mr. Waldron may be served by certified mail return receipt requested at his place of business located at Suite 101, 1212 Bay Area Blvd., Houston, Texas 77058.

Background

11. The MDI site is an inactive steel-casting foundry located at 3617 Baer, Houston, Harris County, Texas (the "MDI site"). The MDI site occupies approximately thirty-six acres and is surrounded by residential and commercial properties.

12. The MDI site was operated as a steel-casting facility by Defendant, Texas Electric Steel Casting Company ("Tesco"), from 1926 until February, 1991 when Tesco ceased operations.

13. In 1987 and 1988, Tesco leased a portion of the MDI site to Defendant, Canam Resources Group, Inc. ("Canam"). Canam conducted spent catalyst recycling operations using an experimental process. Canam reportedly purchased between two thousand and four thousand drums of spent catalyst material from refineries and chemical plants along the Houston Ship Channel and stored and, subsequently abandoned, the drums on the MDI site. Many of the drums contain toxic substances which sit corroding and leaking on the MDI site.

14. Defendant, Larpen of Texas, Inc. ("Larpen") also used a portion of the MDI site to store radioactive material and equipment.

15. Defendant, Many Diversified Interests, Inc. ("MDI"), foreclosed on TESCO and took over the MDI site on or about February, 1991; and on March 1, 1991, the MDI site reopened under the name of Defendant, San Jacinto Foundry, Inc. ("SJF"). SJF operated the site until approximately June 1, 1992, when SJF ceased operations and the MDI site became inactive.

16. On May 20, 1994, Defendant MDI filed Chapter 7 bankruptcy In the United States Bankruptcy Court of the Southern District of Texas, Houston Division. Defendant, Robbye R. Waldron ("Waldron"), was appointed Chapter 7 Trustee on May 20, 1994 .

17. From approximately March, 1995 through the middle of January, 1996, salvage operations were conducted at the MDI site pursuant to court order secured by Defendant Waldron. These salvage operations included the dismantling of steel buildings and scraping, transporting and the sale of all surface assets at the MDI site.

18. On April 3, 1995, the Office of the Attorney General of the State of Texas, on behalf of the Texas Natural Resource Conservation Commission ("TNRCC"), sent a letter to Defendant Waldron expressing the TNRCC's concern over potential health and safety and environmental concerns related to the then ongoing demolition and salvage activities at the MDI site.

19. Since the Spring of 1994, the TNRCC has been investigating the MDI site's threat to human health and the environment. The TNRCC has conducted investigations that have documented releases of metals to off-site soils. Random sampling conducted by the TNRCC has documented residential properties of the Plaintiffs with significantly elevated levels of lead up to 25,660 parts per million ("ppm"). Subsequently, the TNRCC determined the MDI site to be an "imminent and substantial endangerment to human health and the environment."

20. The TNRCC has documented groundwater contamination at the MDI site as well as releases of toxic substance to surface waters surrounding the MDI site. The TNRCC has identified the following hazards to human health and the environment on the MDI site: (i) a landfill containing slag, ash and other foundry waste debris; (ii) waste piles of foundry sand, inorganic slag, asbestos, and other debris; (iii) corroding abandoned drums containing toxic substances; (iv) contaminated soils

on the MDI site and in the residential properties around the MDI site; (v) transformers contaminated with polychlorinated biphenyls (“PCBs”); (vi) on-site ponds containing oily wastes; (vii) buildings used to store radioactive wastes; and (viii) underground storage tanks.

21. The TNRCC has documented elevated levels of contaminants, including iron, cadmium, zinc, copper, manganese, chromium, nickel, mercury, molybdenum and arsenic in the soils on the MDI site and off-site in the residential areas around the MDI site.

22. Toxic substances have been released to the residential areas surrounding the MDI site by releases to the air and groundwater and by surface water runoff. Further, the MDI site, during portions of its history, has had unfettered access to the residents of the surrounding residential areas, including school children attending Blanche Kelso Bruce Elementary School, which is immediately adjacent to the MDI site across Bringhurst Street.

Respondeat Superior

23. Plaintiffs incorporate paragraphs 11 through 22 as if fully set forth in this section.

24. At all times relevant to this action, all agents, partners, officers, servants, representatives, predecessors in title, and employees of the Defendants involved in the acts and omissions complained of in this petition were acting within the course and scope of their employment for the respective Defendants. These Defendants have ratified, expressly or impliedly, all such conduct and omissions of their agents, partners, officers, servants, representatives or predecessors in title and have obtained and retained the benefits from the transaction and are liable for such conduct and omissions pursuant to the doctrine of *respondeat superior*.

Successor Liability

25. Plaintiffs incorporate paragraphs 11 through 24 as if fully set forth in this section.

26. Plaintiffs allege that Defendant MANY DIVERSIFIED INTERESTS, INC. is a successor corporation to Defendant TEXAS ELECTRIC STEEL CASTING COMPANY and Defendant SAN JACINTO FOUNDRY, INC., succeeding to all liabilities and obligations of such companies. Further, Plaintiffs allege that Defendant ROBBYE R. WALDRON is the duly appointed representative of such companies.

Discovery Rule

27. Plaintiffs incorporate paragraphs 11 through 26 by reference as if fully set forth in this section.

28. Plaintiffs affirmatively plead the discovery rule and the doctrine of fraudulent concealment as those legal principles are applied and understood under the laws of the State of Texas. Defendants, by their misstatements and failures to disclose, fraudulently concealed from the Plaintiffs information necessary for the Plaintiffs to know of their causes of action. The causes of actions asserted by the Plaintiffs did not accrue until their injuries became discoverable and the injuries were, by their very nature, inherently undiscoverable at the time of their inception. Furthermore, the evidence of those injuries is objectively verifiable. As such, the discovery rule and doctrine of fraudulent concealment are applicable. Plaintiffs plead, in addition, the discovery rule as it applies to the laws of the State of Texas in toxic exposure cases. All causes of action are timely pled because the Plaintiffs brought suit within two years of the commencement date, which is when the Plaintiffs knew (or reasonably should have known) that the personal injury or property damages were caused or contributed to by the hazardous substances or pollutant or contaminant at issue.

29. Plaintiffs cannot be denied the right to assert well-established common law causes of action pursuant to the TEX. CONST., art. I, § 13 which provides that all courts shall be open to

every person for an injury done to him in his lands, goods, person or reputation. In response to any claim by any of the Defendants that any of the Plaintiffs' causes of action are barred by limitations, the Plaintiffs hereby invoke the "open courts" provision of the Texas Constitution.

COUNT ONE

NEGLIGENCE, GROSS NEGLIGENCE, AND NEGLIGENCE PER SE

30. Plaintiffs incorporate paragraphs 11 through 30 by reference as if fully set forth in this section.

31. Defendants had a duty to use reasonable care in the use of their property, a duty not to create a dangerous condition, and a duty to keep this property in a safe condition in order to avoid injury to persons and property. Defendants also had a duty to act as reasonably prudent corporations and operators under the same or similar circumstances considering the reasonably foreseeable risk or probability of injury to persons situated as the Plaintiffs. Defendants breached that duty by the acts and omissions that the Plaintiffs have summarized in this and the preceding sections. Additionally, Defendants breached their duty to the Plaintiffs by numerous acts and omissions including the following:

- a. Transporting, storing, abandoning and/or releasing hazardous substances;
- b. Improperly constructing and maintaining the property;
- c. Discharging noxious, dangerous and toxic substances into the environment on a regular basis;
- d. Permitting these substances to remain and to escape from the MDI site;
- e. Failing to provide adequate security at and near the site and failing to control access to the MDI site;
- f. Failing to warn of the dangers associated with the MDI site;

- g. Failing to employ the best available processing, storage, disposal and closure techniques or technologies;
- h. Failing to remediate the MDI site;
- i. Failing to adequately investigate and inspect the MDI site;
- j. Allowing the development of property in and around the site including, but not limited to, construction of residential communities and water lines on, in, and around the soil which they knew, or should have known, was contaminated;
- k. Failing to make a safe, effective and full cleanup of the toxic substances and wastes at the MDI site;
- l. Failing to contain hazardous substances and wastes within the boundaries of the MDI site and allowing them to invade the surrounding subdivisions;
- m. Failing to timely and correctly respond to prevent the further existence and/or escape of hazardous substances and wastes;
- n. Failing to effectuate and fully communicate and/or disclose the risks and associated hazards of the contamination, hazardous substances, and/or wastes in a timely manner; and
- o. failing to conduct all the necessary tests needed to assess the site and/or risks associated with the contamination, hazardous substances, and/or wastes.

32. Defendants have repeatedly and knowingly violated the United States Constitution, federal law, state statutory or regulatory provisions and local codes which were fashioned to protect the Plaintiffs. In so doing the Defendants have breached their duty to the Plaintiffs under applicable law designed to prevent the type of injuries sustained. The Plaintiffs are within the class of person these laws were designed to protect. Defendants' acts or omissions in violation of these statutes, rules and codes, constitute negligence and negligence per se and are the proximate cause of the Plaintiffs' injuries and damages.

33. Specifically, the statutes, rules and codes violated by Defendants, acting alone or in conjunction with others include, but are not limited to:

- a. The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*
- b. The Solid Waste Disposal Act § 6901 *et seq.*, as it relates to the discharge of toxic substances and maintenance of underground storage tanks.
- c. Clean Water Act, 33 U.S.C. § 1251, *et seq.*, which makes it unlawful to discharge any pollutant by any person except as in compliance with the Act.
- d. Stormwater pollution prevention. 40 CFR § 122.26, which requires a stormwater pollution prevention plan.
- e. Solid Waste Disposal Act, TEX. HEALTH & SAFETY CODE ANN. Section 36 1.001 , *et seq.* (Vernon 1987) which makes it unlawful to place, store or dispose of industrial waste and dangerous, hazardous and toxic substances and wastes without a permit or other legal authorization and in a manner which fails to protect the public health, welfare and the environment. Defendants, without legal authorization, were and are responsible for the introduction of hazardous substances and wastes into the environment in and around the MDI site to the detriment of Plaintiffs.
- f. Section 26.121 of the Texas WATER CODE which prohibits anyone from causing or permitting the discharge of any waste which causes pollution of the water in the state. The hazardous substances deposited in the soil by Defendants continue, to this day, to infiltrate the drinking water of the inhabitants of the area.
- g. Section 341.013(c) of the TEX. HEALTH & SAFETY CODE which prohibits the storage or disposal of waste products, polluting materials, spent chemicals, brines, garbage, rubbish, used tires or waste of any kind that may cause pollution of the surrounding land or the contamination of groundwater or surface water. Defendant's acts and omissions allowed pollution from the various and sundry substances and wastes to contaminate the water at the site.
- h. Section 341.013(e) of the TEX. HEALTH & SAFETY CODE which provides that a person may not permit vacant or abandoned property owned or controlled by the person to be in a condition that will create a public health nuisance or other condition prejudicial to public health. Defendants' failure to maintain security at and around the site created conditions prejudicial to public health.

- i. 30 TEX. ADMIN. CODE § 334.482 which prohibits anyone from causing or allowing the storage or disposal of petroleum-substance waste so as to cause discharge into the waters in the state, the creation and maintenance of a nuisance, unauthorized releases of contaminant to the air or the endangerment of the public health and welfare. The presence of contaminants and waste from the MDI site caused discharge of contaminants into the waters in the state and endangered the public health and welfare.
- j. Houston City Ordinance 28-12, September 3, 1963 which makes it unlawful to abandon the use, maintenance and control of an excavation without constructing a chain-link fence or masonry fence at least six feet in height completely enclosing the excavation. Defendants abandoned the site without adequately fencing the MDI site and failed to construct a chain-link or masonry fence to enclose the excavation.
- k. Building Code City of Houston, § 5719 (2)(b) (March 25, 1963) which provides that permanent excavations be protected by permanent means to prevent the movement of the earth of adjoining properties.
- l. Building Code City of Houston, § 5719 (March 25, 1963) forbids the maintenance of an excavation or pit which may accumulate and retain surface water.
- m. Houston Code, § 47-194(c)(6)(1968) makes it unlawful to discharge or cause to be discharged into the sewer system any noxious or malodorous substance which can form a gas which singly or by interaction with other wastes is capable of causing objectionable odors or hazard to life and property.
- n. Houston Code, § 28-11 (1968) makes it unlawful for an owner or occupier of property to permit any excavation to remain open or uncovered to the danger of others.

34. The actions and inaction by Defendants allowed pollutants and hazardous substances to enter surface and subsurface soils and groundwater in direct violation of federal and state statutes and municipal codes designed to prevent pollution and injury to persons and property, all of which amount to negligence per se.

35. Hazardous substances do not permeate the soil and subsurface water as a result of ordinary and prudent activities associated with either the operations of the Defendants or underground storage tanks, nor would such pollution ordinarily occur, absent negligence, and would not have occurred but for Defendants'

negligence. The pollution of the soil and water in and around the MDI site by heavy metals, asbestos, radioactive substances, toxic waste and/or hydrocarbons at the site raises an inference and creates a prima facie case of Defendants' negligence under the doctrine of *res ipsa loquitur*.

36. Defendants, at all times relevant to this suit, were and are responsible for the creation, maintenance, and concealment of the MDI site and dangerous conditions, and the damage which occurred because of their negligence in the creation, maintenance, and concealment of the MDI site would not have occurred absent Defendants' negligence. Defendants' statutory and regulatory violations further constitute common law negligence, negligence per se, and gross negligence, and are a proximate cause of the injuries and damages alleged herein, including actual damages, punitive damages, and all other relief to which the Plaintiffs are entitled and for which the Plaintiffs sue.

37. Plaintiffs have sustained and will sustain damages as a direct and proximate result of these negligent acts. Further, Defendants' conduct, given the magnitude and the probability of the potential injury to the affected community, created an extreme degree of risk and high likelihood of serious injury to the Plaintiffs and Plaintiffs' properties. Moreover, given their access to superior data, internal information, and technological expertise, Defendants had actual, subjective awareness of the risks involved and chose to proceed with their activities and campaign of concealment. This conduct is indicative of Defendants' conscious indifference to the rights, safety, and welfare of the people residing near the MDI site. Plaintiffs are entitled to punitive as well as actual damages.

COUNT TWO

PUBLIC NUISANCE

38. Plaintiffs incorporate paragraphs 11 through 38 by reference as if fully set forth in this section.

39. Defendants are liable to the Plaintiffs for the creation of a public nuisance because Defendants' actions have significantly interfered with public rights, involve actions forbidden by law, and are continuing in effect.

40. The conduct of the Defendants in creating a dangerous condition, in storing and disposing of hazardous substances and wastes at the MDI site, and in failing to make a safe, effective, and complete cleanup has created a source of continuing pollution of the soil, water, and air, constituting an unreasonable interference with, and threat to, the health, safety, and welfare of the community of the citizens who live at or near the MDI site and their properties. Such conduct has had a substantial injurious effect on the Plaintiffs' properties, health, welfare, and comfort and is the proximate cause of their special damages. The Defendants are, therefore, accountable in law for the creation of a present and continuing public nuisance.

41. Additionally, the conduct of the Defendants described in this and the previous sections constitutes nuisance within the meaning of § 334.482 of the Texas Administrative Code which prohibits anyone from causing or allowing the storage or disposal of waste so as to cause discharge into the waters in the state, the creation and maintenance of a nuisance, and unauthorized releases of contaminants to the air, or the endangerment of the public health and welfare.

42. Defendants' acts and omissions in the maintenance of the MDI site have caused the site to remain a continuing source of pollution for which Defendants have refused to accept responsibility. Defendants have created, maintained and refused to abate a public nuisance, contrary to the laws of the State of Texas. Defendants willfully and intentionally have damaged and continue to damage the Plaintiffs and their property.

43. Defendants' conduct as described in this section was not lawful but was instead in violation of federal, state and local statutory, regulatory and common law. Consequently, Defendants' conduct and operations constitute a nuisance per se, that is a nuisance at all times, under any circumstances and in any location.

44. Alternatively, Defendants' conduct as described in this petition constitutes a nuisance in fact by reason of its circumstances and surroundings, specifically the seepage, leakage, and migration of the hazardous substances into the soil, air and water of the surrounding communities.

45. As the direct and proximate result of the contamination of the Plaintiffs' property and the pollution of the water of the State of Texas, the Plaintiffs have endured a continuing nuisance. The nature and extent of the contamination of the Plaintiffs' property is such that the nuisance must and can be abated by the Defendants at a reasonable cost and by the technology currently available to them. Plaintiffs request that the nuisance be removed, remediated and abated. The Plaintiffs further request damages for injuries and losses sustained, including, but not limited to, discomfort, annoyance, inconvenience, impairment of health and harm to property.

COUNT THREE

PRIVATE NUISANCE

46. Plaintiffs incorporate paragraphs 11 through 46 by reference as if fully set forth in this section.

47. The Defendants voluntarily, intentionally, or negligently invaded the private use and enjoyment of the Plaintiffs' property on and contiguous to the MDI site. The Defendants knew with a reasonable degree of certainty, or in the exercise of ordinary care should have known, that the discharge of toxic substances at the MDI site would cause significant health problems, material personal discomfort, and substantial annoyance to persons of ordinary sensibilities residing in the vicinity, as well as the depreciation in the market value of the surrounding property.

48. The Defendants owed the Plaintiffs a duty to prevent contamination and to warn of the presence and residual effects of the hazardous substances on and beneath surface at the MDI site in order not to obstruct, impair, and destroy the peace and comfortable use of the property in and around the site and its environment for the Plaintiffs and for the community at large. Defendants breached this duty to the Plaintiffs and, as a result, proximately caused the interference with the use and enjoyment of the Plaintiffs' property and the injuries and damages for which they now sue. The pollution of the soil, air, and water causes invasive harm and constitutes a present and continuing nuisance.

49. The conduct of the Defendants has created a source of continuing pollution of the soil, water and air constituting an unreasonable interference with and threat to the health, safety and welfare of the community of the citizens who live at or near the MDI site and their properties. Such conduct has had a substantial injurious effect on the Plaintiffs' properties, health, welfare, and comfort and is the proximate cause of their special damage. The Defendants are, therefore, accountable in law for the creation of a present and continuing private nuisance.

50. Additionally, the conduct of the Defendants described in this and the previous sections constitutes nuisance within the meaning of §334.482 TEX. ADMIN. CODE which prohibits anyone from causing or allowing the storage or disposal of waste so as to cause discharge into the waters in the state, the creation and maintenance of a nuisance, and unauthorized releases of contaminants to the air, or the endangerment of the public health and welfare.

51. Defendants' acts and omissions in the maintenance of the site remain a continuing source of pollution for which Defendants refused to accept responsibility. Defendants have created, maintained and refused to abate a private nuisance, contrary to the laws of the State of Texas. Defendants willfully and intentionally have damaged and continue to damage the Plaintiffs and their property. Defendants' actions were not lawful but were instead a violation of federal, state and local statutory, regulatory and common law. Consequently, Defendants' conduct and operations constitute a nuisance per se, that is a nuisance at all times, under any circumstances and in any location.

52. Alternatively, Defendants' conduct constitutes a nuisance in fact by reason of its circumstances and surroundings, specifically the seepage, leakage, and migration of the hazardous substances into the soil, air and water of the surrounding property.

53. As the direct and proximate result of the contamination of the Plaintiffs' property and the pollution of the water of the State of Texas, the Plaintiffs have endured a continuing nuisance. The nature and extent of the contamination of the Plaintiffs' property is such that the nuisance must and can be abated by the

Defendants at a reasonable cost and by the technology currently available to them. Plaintiffs request that the nuisance be removed, remediated, and abated. The Plaintiffs further request damages for injuries and losses sustained, including, but not limited to, discomfort, annoyance, inconvenience, impairment of health, and harm to property.

COUNT FOUR

TRESPASS

54. Plaintiffs incorporate paragraphs 11 through 54 by reference as if fully set forth in this section.

55. The Plaintiffs' interests in the exclusive possession of their properties have been interfered with by the continuing presence and migration of offensive chemical pollution upon their properties without their permission. This chemical pollution entered and remains upon the Plaintiffs' properties as a result of the Defendants' intentional acts of storing and disposing of hazardous substances or wastes, and in failing to make a safe, effective, and complete cleanup of the hazardous substances. The Defendants' acts have created a source of continuing pollution of the soil, water, and air.

56. The Defendants' failure to remove the chemical pollution it has tortiously placed upon the land constitutes trespass and continuing trespass for which Defendants are liable. Such trespasses are a proximate cause of the injuries and damages alleged in this petition and for which the Plaintiffs sue. The Defendants' conduct entitles the Plaintiffs to actual and exemplary damages.

57. Alternatively, Defendants recklessly, negligently, or as a result of an abnormally dangerous activity, entered the property and allowed hazardous substances and contaminants to enter and remain on the property and have failed and refused to remove them at any time since the Plaintiffs acquired the property. This continued presence on the land of the Defendants' chattel or things constitutes a trespass as that term is understood under Texas law.

58. The Defendants are liable to all of the Plaintiffs on the stated claims, and the Plaintiffs are entitled to actual and exemplary damages.

COUNT FIVE

STRICT LIABILITY

59. Plaintiffs incorporate paragraphs 11 through 59 by reference as if fully set forth in this section.

60. As residents of surrounding neighborhoods, Plaintiffs have property rights and privileges in respect to the use and enjoyment of the water, air and land that have been invaded or interfered with by the Defendants. The acts and omissions of the Defendants endanger the lives or health of the Plaintiffs or give offense to persons of ordinary sensibilities, or obstruct reasonable and comfortable use and enjoyment of the property, or create an unreasonable risk of danger to a person, land or chattels, or constitute the alteration of the physical thermal, chemical or biological quality of, or the contamination of, any water in this state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety, or welfare, or impair the usefulness or enjoyment of the water for any lawful or reasonable purpose. The acts and omissions of the Defendants are the legal or producing cause of the pollution and contamination, invasion, injuries or damages. The acts and omissions of the Defendants were intentional; that is, the Defendants perpetrated the invasion or interference, or the Defendants knew that pollution was resulting or was substantially certain to result from their conduct. This conduct was a producing cause of the injuries suffered by the Plaintiffs for which the Defendants should be held strictly liable pursuant to the common law and statutes of the State of Texas. The conduct of the Defendants entitles the Plaintiffs to recovery of actual and punitive damages.

COUNT SIX

ASSAULT AND BATTERY

61. Plaintiffs incorporate paragraphs 11 through 61 by reference as if fully set forth in this section.

62. The Defendants intentionally intruded upon the solitude, private affairs and concerns of the Plaintiffs by their discharge of hazardous substances and chemicals throughout the MDI site and surrounding neighborhoods. As a natural, direct and probable result of the forces set in motion by the Defendants and the

culminating contamination of the environment and surrounding neighborhoods, Plaintiffs have come into contact with toxic chemicals and live daily with the immediate apprehension of the harmful and offensive contact with their persons and of the effects of their exposure to these chemicals.

63. Due to the wrongful and intentional acts of the Defendants the Plaintiffs have continued to be adversely and knowingly touched and harmed without their consent. This invasive intrusion by these hazardous substances is well beyond acceptable limits of exposure and constitutes an intrusion which is highly offensive to the ordinary and reasonable people who make up the Plaintiffs in this case.

64. The poisoning of the Plaintiffs' environment and the deliberate concealment of the fact and extent of the Plaintiffs' exposure made the Plaintiffs unwitting inhabitants of a toxic waste site. The acts and omissions alleged were done with reckless disregard of the fact that they will and have caused harmful contact with the Plaintiffs' persons. At no time did the Plaintiffs consent to this contact and, as such, these actions and the results of these actions constitute an assault and battery which is a proximate cause of the injuries and damages sustained by the Plaintiffs. The conduct of the Defendants entitles the Plaintiffs to actual and exemplary damages.

DAMAGES

A. Physical and Mental

65. Plaintiffs incorporate paragraphs 11 through 65 by reference as if fully set forth in this section.

66. Plaintiffs sue for themselves individually and as a class. Plaintiffs have experienced mental anguish and emotional injury because of the release into their community of dangerous, carcinogenic, tumorigenic, autotoxic, immunotoxic, and/or generally, toxic substances and wastes from the MDI site. Plaintiffs have suffered loss of use and enjoyment of their property and diminution in the value of their real property. Furthermore, as the proximate result of the Defendants' acts and/or omissions, the Plaintiffs have suffered physical injury, including, without limitation, respiratory problems, rashes, cancers, tumors, birth defects, developmental problems, immune and/or autoimmune disorders, gastrointestinal problems, anemias,

kidney problems, and headaches. These injuries were caused by direct exposure to the toxic substances and wastes emanating from the MDI site. These injuries are permanent in nature. In all reasonable probability, Plaintiffs will continue to suffer from such injuries for the remainder of their natural lives. The specific injuries and their ill effects have, in turn, caused Plaintiffs' physical and mental conditions to deteriorate generally so that the specific injuries and ill effects alleged have caused and/or will, in all reasonable probability, cause the Plaintiffs to suffer the consequences and ill effects of such deterioration throughout the balance of their natural lives. The facts alleged herein have occurred over many years and continue to the present.

67. Plaintiffs have suffered exposure to toxic elements or compounds as a result of Defendants' acts and omissions as alleged herein. Plaintiffs have suffered and continue to suffer severe emotional distress and fear of adverse health consequences that such exposure may cause in the future. Plaintiffs suffer from health effects which have been caused from exposure to the toxic substances. Furthermore, during the relevant time period, the Defendants assaulted the Plaintiffs and caused them bodily injury by causing toxic elements and compounds to be inhaled and/or ingested and/or absorbed into the Plaintiffs' bodies. Defendants acts and omissions were reckless and knowing and constitute negligence and gross negligence. As a direct result of each of the Defendants' conduct, the Plaintiffs have suffered physical injury and mental anguish for which the Plaintiffs sue.

68. As a further result of the Defendants' acts and omissions, the Plaintiffs have incurred past expenses for medical care and attention in the form of physicians' fees and medical supplies. These expenses were incurred for necessary care and treatment of the injuries resulting from the incidents of which the Plaintiffs complain. The charges are reasonable, and they were the customary charges made for such services in Harris County, Texas. Furthermore, the Plaintiffs will necessarily incur expenses for reasonable and necessary future medical treatment which they will require in reasonable medical probability, and future expenses for the usual, customary, reasonable and necessary medical monitoring for the onset of disease as a

result of exposure to the substances in question and in light of the potential for injury which exists and the need for early detection and treatment.

69. Plaintiffs sue for past and future medical expenses, including damages for the enhanced risk of future illness attributable to the Plaintiffs' exposure to chemicals which encompasses the cost of presymptom medical surveillance. Plaintiffs additionally sue for mental anguish in the past and which they will in reasonable medical probability suffer in the future.

B. Property Damages

70. Plaintiffs incorporate paragraphs 11 through 70 by reference as if fully set forth herein.

71. The placement and release of the substances in question into the community in and about the MDI site has adversely affected the value of the Plaintiffs' homes and property. Plaintiffs have sustained temporary damage, or in the alternative, permanent damage. The close proximity of the contaminated soil and subsurface water to the Plaintiffs' homes and property has reduced not only the extrinsic value of certain of the Plaintiffs' homes and property, but also their rental value. Plaintiffs have each incurred damages to their property, including, without limitation, diminution and complete loss of sale or retail value, investigation and remediation costs, attorneys' fees, costs of court, and mental anguish, for which such Plaintiffs sue. The names and addresses of the Plaintiffs who have an interest in the real property at the site and who assert property damage claims are attached to this Complaint as Exhibit "A" and incorporated in this pleading as a part thereof for all purposes.

C. Exemplary Damages

72. Plaintiffs incorporate paragraphs 11 through 72 by reference as if fully set forth herein.

73. Defendants' gross negligence and intentional conduct, including fraud, assault and the other causes of action set out in this petition, in creating and maintaining the toxic contamination of the environment at and around the MDI site, shows an entire want of care which raises the belief that the acts and omissions of Defendants were the result of conscious indifference to the rights or welfare of the persons who are and were

affected by it. Despite their actual and subjective awareness of the risk that the contamination posed, Defendants nevertheless proceeded with a course of conduct which endangered the lives and property of the Plaintiffs.

74. Furthermore, the Defendants' conduct toward these Plaintiffs and this community exemplifies the kind of ill-will, spite, evil motive and purposeful injury which constitutes actual malice. Defendants' deliberate decision to forego remediation of the contamination and conceal the dangers posed by the contamination exemplifies discriminatory and/or malicious intent.

75. Defendants believed that they could operate with impunity and without regard for the laws and regulations of the State of Texas and the rights and welfare of the people of this state. Defendants can only be deterred from this wrongful conduct in the future by imposing punitive damages in an amount sufficient to convince Defendants that such disregard for people and for the environment of Texas will and cannot be tolerated.

76. Plaintiffs, therefore, are entitled to recover punitive or exemplary damages, attorneys' fees and costs because Defendants' conduct was malicious and/or intentional, thus rendering the cap on exemplary damages inapplicable pursuant to § 41.008 TEX. CIV. PRAC. & REM. CODE.

D. Wrongful Death and Survival

77. Plaintiffs incorporate paragraphs 11 through 77 by reference as if fully set forth in this section.

78. Plaintiffs bring suit on behalf of decedents and statutory beneficiaries named in Exhibit "A" attached to this petition and incorporated in this pleading for all purposes. This action is brought pursuant to the Wrongful Death and Survival Acts, TEX. CIV. PRAC. & REM. CODE § 71.001 *et seq.* which provide a statutory cause of action on behalf of the estate of the decedent and the surviving spouse, children, and parents of the decedents.

79. This action is maintained to recover all damages recoverable because of the matters made the basis of this suit, including the injuries and death of the decedents. Such damages include, but are not limited

to, past and future pecuniary loss, medical expenses, loss of services, lost earning capacity, loss of care, advice, counsel, support, companionship, loss of consortium, guidance, love and affection, comfort, termination of the parent/child relationship, grief, mental anguish, bereavement, loss of inheritance, and the mental and emotional injuries suffered as a result of the injuries and death of the decedents.

80. As a result of the acts and omissions of the Defendants, the decedents experienced conscious physical pain and suffering, as well as mental anguish, prior to death; and their designated beneficiaries are entitled to receive a portion of any award, pursuant to TEX. CIV. PRAC. & REM. CODE ANN. § 71.02.

81. This action is also maintained to recover punitive or exemplary damages as those terms are understood in law because of the Defendants' gross negligence, conscious indifference, and blatant disregard of the rights, welfare, and safety of the Plaintiffs.

82. The actions brought under the Texas Wrongful Death Survival Act are governed by the federally required commencement date pursuant to 42 U.S.C. § 9658, in the Superfund Amendments and Reauthorization Act of 1986 ("SARA") amendment to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), which preempts all state law statutes of limitations.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs demand a jury trial and pray that the Defendants be required to appear and to answer and that the Plaintiffs have judgment against the Defendants, jointly and severally, for recovery of all damages to which the Plaintiffs are entitled, including punitive damages, Plaintiffs' reasonable and necessary attorneys' fees, expert fees, costs and disbursements incurred in this suit, prejudgment interest and postjudgment interest at the legal rate, and for such other and further relief as the Court may deem just and proper.

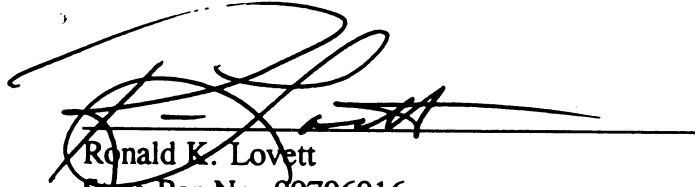
Respectfully submitted,

LAW OFFICE OF STEVEN E. THOMPSON, P.C.

A handwritten signature in cursive script, reading "Steven E. Thompson", written over a horizontal line. The signature is written in black ink.

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LOVETT & ASSOCIATES, P.C.

A handwritten signature in cursive script, reading "Ronald K. Lovett", written over a horizontal line. The signature is written in black ink.

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