

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

|   |   |                     |
|---|---|---------------------|
| (1) <b>SHARON CRAIN,</b>                  | § |                     |
|   | § |                     |
| <i>Plaintiff,</i>                         | § |                     |
| vs.                                       | § |                     |
|   | § | CIVIL ACTION NO.    |
| (1) <b>CYPRUS MINES CORPORATION;</b>      | § | CIV-19-438-SLP      |
| (2) <b>JOHNSON &amp; JOHNSON; and</b>     | § | _____               |
| (3) <b>JOHNSON &amp; JOHNSON CONSUMER</b> | § |                     |
| <b>INC.,</b> a subsidiary of JOHNSON &    | § | JURY TRIAL DEMANDED |
| JOHNSON,                                  | § |                     |
|   | § |                     |
| <i>Defendants.</i>                        | § |                     |

**PLAINTIFF’S ORIGINAL COMPLAINT AND JURY DEMAND**

**THE PARTIES**

1. Plaintiff SHARON CRAIN is a citizen and resident of the County of Oklahoma, State of Oklahoma.

2. Plaintiff SHARON CRAIN was diagnosed with mesothelioma, an asbestos-related cancer, on or about March 6, 2019.

3. Upon information and belief, and at all times hereinafter, each of the Defendants was the agent, servant, employee and/or joint venture of its Co-Defendants and each of them, and at all said times each Defendant was acting in the full course and scope of said agency, service, employee and/or joint venture. For purposes of this Complaint, each Defendant hereinafter mentioned shall include the present business entity, as well as all of its predecessor corporations and entities as applicable. Upon information and belief, each Defendant inclusive: (a) was and is an individual, corporation, partnership and/or

unincorporated association organized and existing under and by virtue of the laws of some other state or foreign jurisdiction to do business in the State of Oklahoma; (b) in person or through an agent, transacts business in the State of Oklahoma; (c) regularly does and/or solicits business within the State of Oklahoma; (d) derives substantial revenue from goods used or consumed in the State of Oklahoma; and (e) expected or should have expected its acts to have consequences within the state of Oklahoma and derive substantial revenue from interstate and/or international commerce. At all relevant times, Defendants designed, marketed, manufactured, distributed, supplied and/or sold asbestos-containing products, and/or asbestos-containing talc and/or other finished and unfinished asbestos-containing talcum powder products, and/or raw asbestos-containing talc of various kinds and grades (hereinafter collectively referred to as “Defendants’ Products”).

4. Defendant **CYPRUS MINES CORPORATION** is a Delaware corporation doing business in the State of Oklahoma whose registered agent for service of process is: Registered Agent Solutions, Inc.; 9 E. Loockerman Street, Suite 311, Dover, Delaware 19901. Defendant **CYPRUS MINES CORPORATION** is being sued as a supplier of asbestos-containing talc.

5. Defendant **JOHNSON & JOHNSON** is a New Jersey corporation doing business in the State of Oklahoma whose registered agent for service of process is at its principal place of business: One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933. Defendant **JOHNSON & JOHNSON** is being sued as a manufacturer of asbestos-containing Johnson’s Baby Powder.

6. Defendant **JOHNSON & JOHNSON CONSUMER INC.**, a subsidiary of JOHNSON & JOHNSON is a New Jersey corporation doing business in the State of Oklahoma whose registered agent for service of process is at its principal place of business: One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933. Defendant **JOHNSON & JOHNSON CONSUMER INC.**, a subsidiary of JOHNSON & JOHNSON is being sued as a manufacturer of asbestos-containing Johnson's Baby Powder.

### **JURISDICTION AND VENUE**

7. This Court has original jurisdiction over these federal claims pursuant to 28 U.S.C. §1332 because: (a) the matter in controversy exceeds \$75,000.00, exclusive of interest and costs, and (b) because the parties to the suit are completely diverse in that Defendants are not citizens of the same state as Plaintiff.

8. Venue is proper under 28 U.S.C. §1391 because a substantial part of the events or omissions giving rise to this case occurred within Oklahoma.

9. Defendants listed on the caption are foreign corporations which are amenable to jurisdiction in the courts of the Western District of Oklahoma by virtue of their respective conduct of substantial and/or systematic business in the Western District of Oklahoma which subjects Defendants to the jurisdiction of the Western District of Oklahoma Courts pursuant to the State of Oklahoma Long-Arm Statute. Defendant corporations do or in the past mined, manufactured, processed, imported, converted, compounded, supplied, and/or retailed substantial amounts of Defendants' Products which are or in the past were sold, distributed, and used in the Western District of Oklahoma. As

mentioned above, Plaintiff SHARON CRAIN was exposed to asbestos while using Defendant's Products purchased in the States of Oklahoma and California.

### **NATURE OF ACTION**

10. As a result of Defendants' wrongful conduct, Plaintiff SHARON CRAIN has suffered from mesothelioma, a type of cancer caused by exposure to asbestos. As a result of her diagnosis, she has suffered and continues to suffer substantial physical pain, mental anguish, emotional distress, loss of enjoyment of life, disabilities, and loss of bodily functions. She has also incurred and continues to incur substantial medical expenses and other damages associated with the diagnosis, treatment, and medical course of her cancer. Further, as a result of Defendants' wrongful conduct, Plaintiff SHARON CRAIN has incurred a loss of income.

### **FACTUAL BACKGROUND**

11. Plaintiff SHARON CRAIN alleges she was wrongfully exposed to and inhaled, ingested or otherwise absorbed asbestos fibers from Defendants' Products, an inherently dangerous toxic substance, from approximately 1963 to 1969, and again from approximately 1971 to 2010, through her personal daily use of Johnson's Baby Powder while residing in Oklahoma, and from approximately 1969 to 1971 while residing in California. Additionally, from approximately 1971 to 1978, Plaintiff was exposed to asbestos through her use of Johnson's Baby Powder on her infant children and a niece. During these time periods, she was also exposed to asbestos-containing talc supplied by Cyprus Mines Corporation. Plaintiff's regular and frequent personal use of Johnson's Baby Powder, and Plaintiff's regular and frequent use of Johnson's Baby Powder on her infant

children and niece generated asbestos-containing dust and exposed Plaintiff to respirable asbestos fibers.

12. Plaintiff SHARON CRAIN was exposed to Defendants' Products which were manufactured, sold, distributed, or installed by the Defendants.

13. At all times herein set forth, Defendants' Products were being employed in the manner and for the purposes for which they were intended.

14. Plaintiff SHARON CRAIN'S exposure to and inhalation, ingestion or absorption of asbestos fibers emanating from the use of Defendants' Products was completely foreseeable and could or should have been anticipated by the Defendants.

15. Defendants knew or should have known that the asbestos fibers contained in Defendants' Products had a toxic, poisonous, and highly deleterious effect upon the health of persons inhaling, ingesting or otherwise absorbing them.

### **FIRST CAUSE OF ACTION**

#### **NEGLIGENCE**

16. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

17. At all times herein relevant, Defendants had a duty to exercise reasonable care and caution for the safety of Plaintiff SHARON CRAIN and others personally using and around Defendants' Products.

18. At all times herein relevant, Defendants are or were miners, manufacturers, distributors, processors, importers, converters, compounders, and/or retailers of Defendants' Products.

19. Defendants, acting through their agents, servants, and/or employees caused, and have caused in the past, Defendants' Products to be placed in the stream of interstate commerce with the result that said Products came into use by Plaintiff SHARON CRAIN.

20. Plaintiff SHARON CRAIN personally used and was exposed to Defendants' Products which were mined, manufactured, processed, imported, converted, compounded, and/or sold by Defendants, most of the exposure being within the State of Oklahoma, and some exposure being within the State of California.

21. Plaintiff SHARON CRAIN was exposed to Defendant's Products which directly and proximately caused Plaintiff to develop an illness known and designated as mesothelioma.

22. Defendants knew or should have known that the asbestos fibers contained in Defendants' Products had a toxic, poisonous, and highly deleterious effect upon the health of persons inhaling, ingesting or otherwise absorbing them.

23. Defendants, acting by and through their servants, agents and employees, duly authorized and acting within the scope and authority of their employment, had a duty to design, develop, manufacture, distribute, supply, and sell Defendants' Products that were not unreasonably dangerous or defective, and/or a duty to warn Plaintiff SHARON CRAIN and other foreseeable users of Defendants' Products of the dangers and defects which the Defendants created, knew, or, within the exercise of reasonable care should have known, to render them safe for their intended and foreseeable uses.

24. Plaintiff SHARON CRAIN has sustained injuries, illnesses, disabilities, and damages caused by no fault of her own and which could not be avoided through the use of

reasonable care. Plaintiff's development of asbestos-related mesothelioma was directly and proximately caused by the negligence and carelessness of Defendants in that they manufactured, processed, sold, supplied or otherwise put Defendants' Products into the market and into the stream of interstate commerce, while they knew, or in the exercise of ordinary care should have known, that said Products were deleterious, poisonous, cancer-causing and/or inherently dangerous and harmful to Plaintiff SHARON CRAIN's body, lungs, respiratory system, skin, health, and general well-being. Further, Defendants knew, or in the exercise of reasonable care should have known, that Plaintiff SHARON CRAIN would not know of such dangers to her health.

25. Defendants were negligent in that they failed to exercise ordinary care and caution for the safety of Plaintiff SHARON CRAIN in one or more of the following respects:

- (a). Including asbestos in Defendants' Products, and using asbestos even though it was foreseeable that persons such as Plaintiff, who was personally using and around said Products would inhale, ingest or otherwise absorb asbestos;
- (b). Including asbestos in Defendants' Products, and using asbestos when the Defendants knew or should have known that asbestos would have a toxic, poisonous and highly deleterious effect upon the health of persons inhaling, ingesting or otherwise absorbing them;
- (c.) Including asbestos in Defendants' Products, and using asbestos when adequate substitutes for the asbestos in them were available;

- (d.) Failing to provide any or adequate warnings to persons personally using and around Defendants' Products of the dangers of inhaling, ingesting or otherwise absorbing the asbestos fibers contained in said Products;
- (e.) Failing to provide any or adequate instructions concerning the safe methods of personally using and in close proximity to Defendants' Products, including specific instructions on how to avoid inhaling, ingesting or otherwise absorbing the asbestos fibers in said Products;
- (f.) Failing to conduct tests on Defendants' Products manufactured, sold, delivered or installed by the Defendants in order to determine the hazards to which persons such as Plaintiff might be exposed while personally using or in close proximity to said Products;
- (g.) Designing, manufacturing and selling Defendants' Products that included asbestos-containing components and required and/or specified the use of asbestos-containing replacement components.

26. Defendants' actions, as stated herein, also constituted a conscious and flagrant disregard of the rights and safety of Plaintiff SHARON CRAIN, and by engaging in such actions, Defendants acted with the necessary malice, fraud, and oppression that justifies holding them liable for punitive damages.

27. Specifically, Defendants are guilty of one or more of the following acts or omissions amounting to fraudulent misconduct, malice, and gross negligence:

- (a.) Intentionally or with gross negligence disregarded the safety of



Plaintiff SHARON CRAIN by including asbestos in Defendants' Products, or using asbestos, even though it was completely foreseeable and could or should have been anticipated that persons such as Plaintiff SHARON CRAIN, who was personally using or around Defendants' Products, would inhale, ingest or otherwise absorb asbestos;

- (b.) Intentionally or with gross negligence disregarded the safety of Plaintiff SHARON CRAIN by including asbestos in Defendants' Products, or using asbestos, when the Defendants knew or should have known that said asbestos fibers would have a toxic, poisonous and highly deleterious effect upon the health of persons inhaling, ingesting or otherwise absorbing them;
- (c.) Intentionally or with gross negligence disregarded the safety of Plaintiff SHARON CRAIN by including asbestos in Defendants' Products, or using asbestos, when adequate substitutes for the asbestos in them were available;
- (d.) Intentionally or with gross negligence disregarded the safety of Plaintiff SHARON CRAIN by removing any warnings regarding the dangers of asbestos from the packing of Defendants' Products or on Defendants' Products themselves supplied to persons personally using and around said Products in their intended and/or reasonably foreseeable manner;

- (e.) Intentionally or with gross negligence disregarded the safety of Plaintiff SHARON CRAIN by failing to provide any or adequate warnings to persons personally using and around Defendants' Products of the dangers of inhaling, ingesting or otherwise absorbing asbestos fibers in them;
- (f.) Intentionally or with gross negligence disregarded the safety of Plaintiff SHARON CRAIN by failing to provide any or adequate instructions concerning the safe methods of personally using and being around Defendants' Products, including specific instructions on how to avoid inhaling, ingesting or otherwise absorbing the asbestos fibers said Products;
- (g.) Intentionally or with gross negligence disregarded the safety of Plaintiff SHARON CRAIN by failing to conduct tests on Defendants' Products manufactured, sold, delivered or installed by the Defendants in order to determine the hazards to which persons such as Plaintiff SHARON CRAIN might be exposed while personally using and around said Products;
- (h.) Intentionally or with gross negligence disregarded the safety of Plaintiff SHARON CRAIN by failing to adequately label, warn, package, market, distribute, install, remove, or use asbestos in a reasonable manner which would minimize or eliminate the escape of asbestos dust fibers, therefore adding to the exposure of Plaintiff

SHARON CRAIN;

- (i.) Intentionally or with gross negligence disregarded the safety of Plaintiff SHARON CRAIN by failing to take adequate steps to remedy the above failures including, but not limited to: (1) failure to recall or require removal of Defendants' Products, coupled with; (2) ongoing failure to conduct research as to how to cure or minimize asbestos injuries and how to use, install, or distribute asbestos so as to render it safe; and, (3) failure to promptly and safely remove asbestos in place;
- (j.) Intentionally or with gross negligence disregarded the safety of Plaintiff SHARON CRAIN by failing to require and/or advise persons such as Plaintiff of hygiene practices designed to reduce and/or prevent the escape of asbestos dust fibers and to avoid inhaling, ingesting or otherwise absorbing the asbestos dust fibers in said Products.

28. Defendants, at the time of designing, manufacturing, distributing, selling, or otherwise placing Defendants' Products into the stream of commerce knew, or in the exercise of reasonable care should have known, about the risks associated with said Products. Defendants' Products were defective at the time they left the control of the Defendants.

29. Defendants were negligent and breached their duty of due care to Plaintiff SHARON CRAIN by taking or failing to take the actions as previously alleged to avoid harm to Plaintiff and other foreseeable users, in light of the reasonably foreseeable dangers

caused by the design, manufacture, sale, and/or distribution of Defendants' Products at issue in the stream of commerce.

30. The hazards posed by exposure to Defendants' Products and the resulting injuries and damages to Plaintiff SHARON CRAIN were reasonably foreseeable, or should have been reasonably foreseen by Defendants.

31. Subsequent to the initial sale of Defendants' Products to Plaintiff SHARON CRAIN, Defendants continued to accumulate additional knowledge regarding the hazards of Defendants' Products.

32. Defendants had a continuing duty to provide post-sale warnings of dangers associated with Defendants' Products to users.

33. At the time Defendants' Products left Defendants' control without adequate warnings or instructions, Defendants created an unreasonably dangerous condition that they knew or should have known would pose a substantial risk of harm to reasonably foreseeable claimants such as Plaintiff SHARON CRAIN. In the alternative, after Defendants' Products left Defendants' control, Defendants became aware of or in the exercise of ordinary care should have known that their Products posed a substantial risk of harm to reasonably foreseeable users, such as Plaintiff, and failed to take reasonable steps to give adequate warning or instruction or to take any other reasonable action under the circumstances.

34. As a direct and proximate result of one or more of the foregoing acts and/or omissions on the part of the Defendants, Plaintiff SHARON CRAIN was exposed to and inhaled, ingested or otherwise absorbed asbestos fibers causing Plaintiff to develop

mesothelioma. Plaintiff has been compelled to expend and become liable for large sums of monies for hospital, medical and other health care services necessary for the treatment of her asbestos-induced mesothelioma and condition. Plaintiff has also experienced great physical pain and mental anguish as a result of her asbestos-induced mesothelioma, as well as a substantial loss of income.

35. As a result of the above, Plaintiff seeks damages as hereinafter demanded.

## **SECOND CAUSE OF ACTION**

### **STRICT LIABILITY**

36. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

37. At all material times, Defendants were engaged in the manufacture, distribution, supply, sale, assembly, production, construction, and/or specification of Defendants' Products.

38. Defendants, acting through their agents, servants, and/or employees, placed in the stream of commerce Defendants' Products which were designed, manufactured, distributed, marketed, and/or sold by Defendants and that were defective, unsafe and unreasonably dangerous for their intended and/or foreseeable use with the result that said Products came into use by Plaintiff SHARON CRAIN.

39. Defendants placed Defendants' Products on the market and knew or should have known they would be used without inspection for defects.

40. Defendants failed to design, manufacture, market, distribute, supply, and sell Defendants' Products in such a manner as to render them safe for their intended and foreseeable uses. By way of example, and not limitation, Defendants:

- (a.) Failed to design, develop, manufacture and test Defendants' Products in such a manner as to render them safe for their intended and foreseeable use, when Defendants knew or should have known that the foreseeable use of and intended purpose of Defendants' Products was by persons, specifically Plaintiff SHARON CRAIN, who personally used and was around said Products;
- (b.) Marketed and sold Defendants' Products that were in an unreasonably dangerous and defective condition, presenting a hazardous risk to Plaintiff SHARON CRAIN's well-being;
- (c.) Failed to recall or attempt to repair the defective Defendants' Products when Defendants are and have been aware of the propensity of said Products to injure Plaintiff SHARON CRAIN;
- (d.) Failed to properly test Defendants' Products to ensure that they were reasonably safe for use throughout their lifetime.

41. Moreover, when Defendants' Products left Defendants' possession and were placed on the market, they were defective in that:

- (a.) When used in the intended or reasonably foreseeable manner, Defendants' Products were not reasonably safe for their intended use;

- (b.) When used in the intended or reasonably foreseeable manner, Defendants' Products failed to perform as safely as would be expected by an ordinary user or consumer;
- (c.) When used in the intended or reasonably foreseeable manner, Defendants' Products caused a risk of harm beyond that which would be contemplated by the ordinary user or consumer;
- (d.) Defendants' Products were defectively designed because they were more dangerous than would be contemplated by an ordinary user, and also because the risks of the products outweighed their benefits;
- (e.) Defendants' Products were defectively manufactured as they failed to comply with their own specifications.

42. Defendants violated the requirements of Section 402A of the Restatement of Torts 2d, all of which proximately resulted in Plaintiff SHARON CRAIN's asbestos-related mesothelioma.

43. Additionally, although Defendants knew, or in the exercise of ordinary care should have known, that Defendants' Products were deleterious and highly harmful to Plaintiff SHARON CRAIN's health, Defendants nonetheless:

- (a.) Failed to advise or warn Plaintiff SHARON CRAIN of the dangerous characteristics of Defendants' Products;
- (b.) Failed to provide Plaintiff SHARON CRAIN with the knowledge as to what would be reasonably safe and sufficient wearing apparel and proper protective equipment and appliances, if any, to protect Plaintiff

SHARON CRAIN from being harmed by exposure to Defendants' Products;

- (c.) Failed to place any or contain adequate warnings on containers of Defendants' Products alerting Plaintiff SHARON CRAIN of the dangers to her health caused by contact with Defendants' Products;
- (d.) Failed to take reasonable precautions or to exercise reasonable care to publish, adopt and enforce a safety plan and/or a safe method of handling Defendants' Products in a safe manner.

44. Defendants' Products were also defective due to any and inadequate warnings or instructions during and after the time of marketing in that Defendants knew, or in the exercise of reasonable care should have known, about the risks associated with Defendants' Products and failed to provide any, reasonable and/or adequate warnings or instructions in light of the likelihood that said Products would cause serious physical harm to Plaintiff SHARON CRAIN.

45. As a direct and proximate result of using Defendants' Products for the general purposes for which they were designed and intended, Plaintiff SHARON CRAIN was exposed to asbestos and has been injured as described herein.

46. Accordingly, Defendants are strictly liable to Plaintiff SHARON CRAIN for their failure to warn and for the defective design and manufacture and/or marketing, distributing, supplying and selling defective Defendants' Products.

47. As a result of the above, Plaintiff seeks damages as are hereinafter demanded.



**THIRD CAUSE OF ACTION**

**INADEQUATE DESIGN, FORMULATION AND MANUFACTURE**

48. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

49. At all material times, Defendants were engaged in the manufacture, distribution, supply, sale, assembly, production, construction, and/or specification of Defendants' Products.

50. Defendants, acting through their agents, servants, and/or employees placed in the stream of commerce Defendants' Products designed, manufactured, distributed, marketed, and/or sold by Defendants that were defective, unsafe and unreasonably dangerous for their intended and/or foreseeable uses with the result that Defendants' Products came into use by Plaintiff SHARON CRAIN, and fibers from Defendants' Products were frequently inhaled and ingested by Plaintiff.

51. Defendants, acting by and through their servants, agents and employees, duly authorized and acting within the scope and authority of their employment, had a duty to design, manufacture and sell Defendants' Products that were not unreasonably dangerous or defective and/or a duty to warn Plaintiff SHARON CRAIN and foreseeable users and bystanders to Defendants' Products of the dangers and defects which the Defendants created, knew, or within the exercise of reasonable care, should have known.

52. Defendants acted unreasonably in designing and/or formulating Defendants' Products which were harmful to Plaintiff SHARON CRAIN's body, lungs, respiratory system, skin and health. Defendants acted unreasonably in the following acts and/or

omissions:

- (a.) Failing to adopt a practical, feasible, and otherwise reasonably alternative design that was safer, that could have been reasonably adopted, and that would have prevented or substantially reduced the risk of harm to individuals such as Plaintiff SHARON CRAIN without substantially impairing the usefulness, practicality or desirability of Defendants' Products; and
- (b.) Using a design that was so unreasonable that reasonable person, aware of the relevant facts, would not use or consume Defendants' Products of this design.
- (c.) Allowing the use of talc that contains asbestos to be used in the manufacture of Defendants' Products when said Products were supposed to be asbestos free.

53. Defendants, at the time of designing, manufacturing, distributing, selling, or otherwise placing Defendants' Products into the stream of commerce knew, or in the exercise of reasonable care should have known, about the risks associated with Defendants' Products. Defendants' Products in question were defective at the time they left the control of the Defendants.

54. Defendant's unreasonable acts in designing Defendants' Products manufactured, distributed, sold and specified by Defendants were a proximate cause of Plaintiff SHARON CRAIN's development of mesothelioma, and as a consequence of which through no fault of her own, she was severely injured, disabled and damaged.

55. As a result of the above, Plaintiff seeks damages as are hereinafter demanded.

**FOURTH CAUSE OF ACTION**

**BREACH OF IMPLIED WARRANTY**

56. Plaintiff realleges the preceding paragraphs as if fully set forth herein, and to the extent necessary, pleads this cause of action in the alternative.

57. Defendants impliedly warranted that Defendants' Products were of good and merchantable quality and fit for their intended purpose.

58. The implied warranty made by Defendants that Defendants' Products were of good and merchantable quality and fit for their particular intended use was breached in that certain harmful, poisonous, and deleterious matter was given off into the atmosphere wherein Plaintiff SHARON CRAIN was personally using and in close proximity to Defendants' Products.

59. Defendants caused Plaintiff SHARON CRAIN's injuries, illnesses, disabilities, and damages as stated above by manufacturing, selling, installing, and distributing Defendants' Products which failed to meet express and implied warranties of merchantability and fitness for intended purposes upon which Plaintiff SHARON CRAIN had a right to rely and did rely.

60. As a direct and proximate result of the breaches of these warranties, Plaintiff SHARON CRAIN was exposed to and inhaled, ingested or otherwise absorbed asbestos fibers causing Plaintiff to develop the aforesaid mesothelioma, which has disabled and disfigured Plaintiff; Plaintiff has been compelled to expend and become liable for large sums of monies for hospital, medical, and other health care services necessary for the

treatment of her asbestos-induced mesothelioma; and, Plaintiff has experienced great physical pain and mental anguish as a result of her asbestos-induced mesothelioma and conditions. Plaintiff has incurred substantial loss of income.

61. As a result of the above, Plaintiff seeks damages as are hereinafter demanded.

### **FIFTH CAUSE OF ACTION**

#### **WILLFUL AND WANTON CONDUCT**

62. Plaintiff realleges the preceding paragraphs as if fully set forth herein, and to the extent necessary, pleads this cause of action in the alternative.

63. Plaintiff SHARON CRAIN and others in her position personally using and/or in close proximity to Defendants' Products, and the exposure and hazard to each of them, in Plaintiff SHARON CRAIN's presence as well as others, was known or in the exercise of reasonable care should have been anticipated by the Defendants and each of them.

64. The Defendants have known or should have known since at least 1929 of medical and scientific data which clearly indicated that Defendants' Products were hazardous to the health and safety of Plaintiff SHARON CRAIN and others in Plaintiff's position, and prompted by pecuniary motives the Defendants, individually and collectively ignored and failed to act upon said medical and scientific data and conspired to deprive the public and particularly the users of said medical and scientific data, therefore depriving them of the opportunity of free choice as to whether or not to expose themselves to Defendants' Products. As a result, Plaintiff SHARON CRAIN was severely damaged as is set forth below.

65. The Defendants intentionally continued to conceal the dangers of asbestos exposure from 1929 through 1970's, thus denying Plaintiff SHARON CRAIN the knowledge with which to take necessary safety precautions, such as periodic x-rays and medical examinations, cessation of smoking, and avoidance of further dust exposure. Specifically, Defendants' intentional, willful and wanton conduct included the following acts and omissions:

- (a.) failure to warn prior users when the Defendants had knowledge of the need for monitoring due to prior exposure;
- (b.) failure to issue recall type letters to prior users;
- (c.) frustrating the publication of articles and literature from the 1930's through at least 1976;
- (d.) rejection by top management of advice of corporate officials to warn of the hazards of Defendants' Products, such rejection being motivated by the possibility of adverse effects on profits; and
- (e.) delaying the use of and/or providing intentionally inadequate warnings on Defendants' Products.

66. The acts and omissions of each of the Defendants as hereinabove set forth were intentional, willful and wanton, and done with willful disregard of the safety of Plaintiff SHARON CRAIN and others similarly situated at a time when each of the Defendants had knowledge, or should have had knowledge of, the dangerous effect of Defendants' Products upon the body of human beings, including Plaintiff SHARON CRAIN and others similarly situated, and even though forewarned by tests, standards,

promulgations of rules and regulations, statutes, and ordinances recognized by the Defendants and subscribed to by them, nevertheless placed into the stream of commerce for their own profit dangerous Defendants' Products with full knowledge that Defendants' Products were being used and would be used in the future to the detriment of the health of Plaintiff SHARON CRAIN and others similarly situated, and Plaintiff is thereby entitled to punitive damages.

67. Accordingly, as a result of the Defendants' conduct which was conducted willfully, wantonly and with malice, and was grossly negligent and in total disregard for the health and safety of users and bystanders such as Plaintiff SHARON CRAIN, Plaintiff therefore seeks exemplary and punitive damages against Defendants to punish the Defendants for their actions, which were willful, wanton, gross, with malice, and in total disregard of the health and safety of the users and consumers of Defendants' Products.

### **SIXTH CAUSE OF ACTION**

#### **FAILURE TO WARN**

68. Plaintiff realleges the preceding paragraphs as if fully set forth herein, and to the extent necessary, pleads this cause of action in the alternative.

69. At all times material hereto, the Defendants knew or should have known of the harmful effects and/or dangers of working with Defendants' Products and of exposure to inhalable asbestos.

70. Defendants had a pre- and post-sale duty to warn Plaintiff SHARON CRAIN individually, and individuals such as Plaintiff SHARON CRAIN, of the dangers associated with the use and/or inhalation of asbestos dust and fibers.

71. Despite Defendants' knowledge of the harm and/or potential harm associated with the use and/or inhalation of dust and fibers from Defendants' Products, the Defendants failed to warn and/or inadequately warn Plaintiff SHARON CRAIN of the dangers including, but not limited to:

- (a.) Failing to provide adequate cautions, warnings, hazard statements and/or explanations with Defendants' Products which should have been designed to provide Plaintiff SHARON CRAIN knowledge about the hazards caused by exposure to and/or dust from Defendants' Products and how to eliminate such hazards;
- (b.) Failing to provide adequate product inserts, informative brochures, employee training literature, posters, and/or other written materials with Defendants' Products which should have been designed to provide Plaintiff SHARON CRAIN knowledge about the hazards caused by exposure to and/or dust from Defendants' Products and how to eliminate such hazards;
- (c.) Failing to conduct on-site personnel training sessions with exposed individuals which should have been designed to provide to those individuals knowledge about the hazards to them caused by exposure to and dust from Defendants' Products, and how to eliminate the hazards;
- (d.) Failing to adequately test and research Defendants' Products as to the hazards created during their use and failed thereafter to provide the

results of such tests and research to exposed persons such as Plaintiff SHARON CRAIN;

- (e.) Failing to inspect Defendants' Products to determine if the Defendants' Products being used were deleterious to the health of exposed individuals;
- (f.) Failing to design and process Defendants' Products in a manner intended to minimize exposure during normal use;
- (g.) Failing to specify and market Defendants' Products on the express agreement that necessary controls, work practices, and other industrial hygiene controls would be implemented in conjunction with use of Defendants' Products after it was known or should have been known that adequate protective measures were not being implemented;
- (h.) Failing to recall their defective Defendants' Products or manufacture a reasonably safer alternative;
- (i.) Failing to take adequate precautions and industrial hygiene measures to protect exposed individuals such as Plaintiff SHARON CRAIN when personally using and being in close proximity to Defendants' Products including, but not limited to, providing protection from dust and fibers emanating from the personal use; failing to provide warnings to Plaintiff SHARON CRAIN and other users that exposure to dust and fibers from Defendants' Products was hazardous and carcinogenic;



(j.) Otherwise failing to act reasonably under the totality of the circumstances.

72. Defendants manufactured, processed and/or sold Defendants' Products used by Plaintiff SHARON CRAIN during her personal use. Thus, Defendants had a pre- and post-sale duty to warn individuals personally using Defendants' Products including, but not limited to, Plaintiff SHARON CRAIN, of the dangers associated with the use and/or inhalation of dust and fibers from Defendants' Products.

73. Despite Defendants' knowledge of the harm and/or potential harm associated with the use and/or inhalation of dust and fibers from Defendants' Products, Defendants acted unreasonably in failing to provide adequate warnings and/or instructions as to the hazards associated with exposure to Defendants' Products. Defendants had a continuing duty to provide post-sale warnings of dangers associated with Defendants' Products to users and bystanders.

74. At the time Defendants' Products left Defendants' control without adequate warning or instruction, Defendants created an unreasonably dangerous condition that they knew or should have known would pose a substantial risk of harm to a reasonably foreseeable claimant, such as Plaintiff SHARON CRAIN. In the alternative, after Defendants' Products left Defendants' control, Defendants became aware of or in the exercise of ordinary care should have known that Defendants' Products posed a substantial risk of harm to a reasonably foreseeable user such as Plaintiff SHARON CRAIN, and failed to take reasonable steps to give adequate warning or instruction or to take any other reasonable action under the circumstances.

75. Defendants' failure to provide adequate warnings as to the hazards associated with exposure to Defendants' Products or to provide proper instructions on the use, handling, and storage of Defendants' Products caused Plaintiff SHARON CRAIN to develop mesothelioma and as a consequence of which she was injured, disabled and damaged, therefore Plaintiff hereby makes a claim for damages from the Defendants jointly and severally.

76. As a result of the Defendants' failure to warn, Plaintiff SHARON CRAIN suffered the injuries, illnesses, disabilities and/or damages hereinafter alleged.

### **SEVENTH CAUSE OF ACTION**

#### **PUNITIVE DAMAGES**

77. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein, and to the extent necessary, pleads this cause of action in the alternative.

78. Defendants have known or should have known since at least 1929 of medical and scientific data which clearly indicates that Defendants' Products were hazardous to the health and safety of Plaintiff SHARON CRAIN and others in Plaintiff's position, and prompted by pecuniary motives, Defendants ignored and failed to act upon said medical and scientific data and deprived the public, and particularly the users of said medical and scientific data, depriving them therefore of the opportunity of free choice as to whether or not to expose themselves to the asbestos-containing products of Defendants. As a result, Plaintiff has been severely damaged as is set forth below.

79. The acts and omissions of Defendants as hereinabove set forth were willful, wanton and reckless, and evinced a conscious disregard for the safety of Plaintiff SHARON

CRAIN and others similarly situated at a time when Defendants had knowledge, or should have had knowledge, of the dangerous effects of Defendants' Products upon the body of human beings, including Plaintiff and others similarly situated, and even though forewarned by tests, standards, promulgations of rules and regulations, statutes, and ordinances recognized by the Defendants and subscribed to by them, nevertheless placed into the stream of commerce, for their own profit, dangerous Defendants' Products with full knowledge that said Products were being used by and would be used to the detriment of the health of Plaintiff and others similarly situated, and Plaintiff is thereby entitled to punitive damages.

80. Accordingly, as a result of the Defendant's conduct which was willful, wanton and reckless and in total disregard for the health and safety of the user or consumer such as Plaintiff SHARON CRAIN, Plaintiff therefore seeks punitive damages against Defendants.

### **DAMAGES**

81. The conduct of Defendants, as alleged hereinabove, was a direct, proximate and producing cause of the damages resulting from the asbestos-related disease of Plaintiff SHARON CRAIN, and of the following general and special damages including:

- (a.) Damages to punish Defendants for proximately causing Plaintiff SHARON CRAIN's untimely injuries, illnesses, and disabilities;
- (b.) Physical pain and mental anguish sustained by Plaintiff SHARON CRAIN in the past;

- (c.) Physical pain and mental anguish that Plaintiff SHARON CRAIN, in reasonable probability, will sustain in the future;
- (d.) The past disfigurement suffered by Plaintiff SHARON CRAIN;
- (e.) The future disfigurement that Plaintiff SHARON CRAIN, in reasonable probability, will sustain in the future;
- (f.) The physical impairment sustained by Plaintiff SHARON CRAIN in the past.
- (g.) The physical impairment that Plaintiff SHARON CRAIN, in reasonable probability, will sustain in the future;
- (h.) Medical expenses incurred by Plaintiff SHARON CRAIN in the past;
- (i.) Medical expenses that Plaintiff SHARON CRAIN, in reasonable probability, will sustain in the future;
- (j.) Plaintiff SHARON CRAIN's lost earning capacity sustained in the past;
- (k.) Plaintiff SHARON CRAIN seeks punitive and exemplary damages.
- (l.) Any and all other recoverable personal injury, survival, and/or wrongful death damages for Plaintiff and Plaintiffs' heirs.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual and punitive damages, lost wages and special damages in an amount to be determined by the trier of fact, in excess of \$75,000.00, plus interest, as provided by law and the costs of this action.

**PLAINTIFF REQUESTS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.**

This 13<sup>th</sup> day of May, 2019.

Respectfully submitted,

/s/ Henry A. Meyer, III

Henry A. Meyer, III, OBA No. 6163  
MULINIX GOERKE & MEYER, PLLC  
210 Park Avenue, Suite 3030  
Oklahoma City, Oklahoma 73102  
405-232-3800 Telephone  
405-232-8999 Facsimile  
[hank@lawokc.com](mailto:hank@lawokc.com)

**ATTORNEYS FOR PLAINTIFF**

**ATTORNEYS' LIEN CLAIMED  
JURY TRIAL DEMANDED**

**James A. Robb, MD  
11613 Kensington Court  
Boca Raton, FL 33428-2415**

**NAME: CRAIN, SHARON K.**

**JAR #: SKC-19**

\*\*\*\*\*

**EVALUATION SUMMARY PREPARED FOR SIMON, ET AL.: 5/8/19**

\*\*\*\*\*

I am an American Board of Pathology diplomat in Anatomic Pathology, Clinical Pathology, Dermatopathology, and Cytopathology with recertification in Anatomic and Clinical Pathology. I have active, unrestricted medical licenses in good standing in Colorado and Florida.

The diagnosis of early or diffuse malignant mesothelioma is a very important diagnosis for both prognostic and legal reasons. The diagnosis should be made with the maximum confidence using the pertinent clinical information and the appropriate histological techniques, when necessary, on the available tissue.

**I am making the diagnosis of diffuse malignant mesothelioma of epithelioid type of the peritoneal cavity at greater than the 99% medical certainty level based upon the analyses and supporting references to the pathology literature listed below. The malignant neoplasm is reported to be, within biological variation and sampling limitations, similar in all submitted sections where the neoplasm is present.**

TISSUE EXAMINED: Record analyses were performed on case SP19-01904 (peritoneal tissue biopsy) from the Department of Pathology, Chesapeake Regional Medical Center (attachment #1). The immunohistochemical (CEA, TAG72, CD15, TTF-1, PAX8, keratins, calretinin) stains were reported.

**I. CLINICAL PRESENTATION**

Ms. Crain, age 73 at time of biopsy on 2/26/19 and final diagnosis on 3/6/19, had developed diffuse peritoneal and pelvic nodules and masses with recurrent abdominal fluid (attachments #1,2). Peritoneal mass biopsy was positive for an epithelioid malignancy, which was diagnosed as an epithelioid malignant mesothelioma by the diagnosing pathologists (attachment #1). Radiological studies of the lower chest, abdomen, and pelvis, as well as clinical evaluation, failed to reveal any primary or metastatic malignant process in the examined organs other than the primary malignancy in the peritoneal cavity (attachments #1,2). The attending physicians concurred with the diagnosis of malignant mesothelioma. This is a classic clinical presentation of a malignant mesothelioma arising in the peritoneal cavity.

**References:**

- 1) McCaughey, Kannerstein, and Churg. Tumors and Pseudotumors of the Serous Membranes. Atlas of Tumor Pathology, Second Series, Fascicle 20. Armed Forces Institute of Pathology, 1985.
- 2) Battifora and McCaughey. Tumors of the Serosal Membranes. Atlas of Tumor Pathology, Third Series, Fascicle 15. Armed Forces Institute of Pathology, 1995.
- 3) Husain, Colby, Ordenez, et. al. Guidelines for Pathologic Diagnosis of Malignant Mesothelioma. A Consensus Statement from the International Mesothelioma Interest Group, Arch Pathol Lab Med. 2012;137:647-667.

## **II. GROSS AND LIGHT MICROSCOPIC MORPHOLOGY**

The peritoneal malignancy, which invades the connective tissue of the parietal pleura and chest wall, was reported to have an epithelioid mesothelial pattern. A spindle cell (sarcomatous) component (biphasic) was not reported. This pattern is strongly consistent with malignant epithelioid mesothelioma of the peritoneal cavity.

**Reference:** 1) See AFIP references #I.1,2 (rim vacuoles, 1: pp. 62-63) above.  
2) Dail & Hammar, Pulmonary Pathology, 2<sup>nd</sup> Ed., pp. 1503 & 1534, 1994.

## **III. IMMUNOHISTOCHEMISTRY (IHC)**

- A. Carcinoembryonic antigen (CEA)** Mesotheliomas very rarely make this antigen. Pseudomesotheliomatous adenocarcinomas are positive. This malignancy is reported to be negative for CEA.
- B. TAG72** This antibody stains most pseudomesotheliomatous adenocarcinomas in a strong predominately membrane pattern. Mesotheliomas are usually negative, but some may have a focal cytoplasmic and/or membrane staining pattern. This malignancy is reported to be negative for TAG72.
- C. CD15** This antibody stains a majority of pseudomesotheliomatous adenocarcinomas and is negative or occasionally focally weakly positive in mesotheliomas. Phagocytosed leukocytic debris in regions where necrosis occurs may produce a granular cytoplasmic staining reaction. This malignancy is reported to be negative for CD15.
- D. TTF-1** This antibody stains adenocarcinomas with a cytoplasmic/nuclear pattern and is negative in mesotheliomas, although occasional although weak focal cytoplasmic staining may occur. This malignancy is reported to be negative for TTF-1.
- E. PAX8** This antibody stains a majority of pseudomesotheliomatous ovarian adenocarcinomas and is negative or occasionally focally weakly positive in mesotheliomas. This malignancy is reported to be negative for PAX8.
- F. Keratin 7/20** Malignant mesotheliomas are mostly positive and pseudomesotheliomatous adenocarcinomas are mostly negative for keratin 7 staining with the opposite profile for keratin 20, but malignant mesotheliomas may be negative for both keratins, as reported in this case.
- G. Keratin 5/6** Malignant mesotheliomas are almost all positive and pseudomesotheliomatous adenocarcinomas are almost all negative for keratin 5/6 staining. This malignancy is reported to be positive for keratin 5/6 and typical for malignant mesothelioma.
- H. Calretinin** This antibody stains mesotheliomas with a cytoplasmic/nuclear pattern and is negative in non-mesothelial pseudomesotheliomatous carcinomas, although occasional weak focal cytoplasmic staining may occur. This malignancy is reported to be positive for calretinin.

**EVALUATION SUMMARY (CONTINUED): CRAIN, SHARON K.****PAGE 3****References:**

- 1) McCaughey, WTE, Colby, TV, Battifora, H, Churg, A, Corson, JM, Greenberg, SD, Grimes, MM, Hammar, S, Roggli, VL, and Unni, KK, Diagnosis of Diffuse Malignant Mesothelioma: Experience of a US/Canadian Mesothelioma Panel, Mod Pathol 1991;4:342-353.
- 2) JA Robb, personal observations.
- 3) See AFIP reference #1.2 above.
- 4) Ordonez, NG, Immunohistochemical Diagnosis of Epithelioid Mesothelioma: An Update, Arch Pathol Lab Med. 2005;129:1407-14.
- 5) Dabbs, DJ, Diagnostic Immunohistochemistry, Churchill-Livingstone, New York, 2002.
- 6) Lyons-Boudreaux, V, Mody, DR, et. al., Cytologic Malignancy Versus Benignity: How Useful Are the "Newer" Markers in Body Fluid Cytology?, Arch Pathol Lab Med, 2008;132:23-28.
- 7) Husain, AN, Colby, TV, Ordonez, NG, et al., Guidelines for Pathologic Diagnosis of Malignant Mesothelioma: 2017 Update of the Consensus Statement from the International Mesothelioma Interest Group, Arch Pathol Lab Med, 2018;142:89-108.

**IV. FINAL DIAGNOSTIC SUMMARY TABLE SUPPORTING DIAGNOSIS OF  
MESOTHELIOMA IN THE PERITONEAL CAVITY**

| <b>FINDING/RESULT</b>         | <b>EXPECTED</b>                 |                              | <b>CRAIN</b>          |
|-------------------------------|---------------------------------|------------------------------|-----------------------|
|                               | <b>PSEUDOMESO ADCA</b>          | <b>MESOTHELIOMA</b>          |                       |
| <b>1. INCIDENCE</b>           | <b>APPROX. 1/YR **</b>          | <b>1000/YR **</b>            |                       |
| <b>2. MORPHOLOGY</b>          | <b>GLANDULAR</b>                | <b>MESOTHELIAL</b>           | <b>MESOTHELIAL</b>    |
| <b>3. CEA</b>                 | <b>POSITIVE</b>                 | <b>NEGATIVE</b>              | <b>NEGATIVE</b>       |
| <b>4. TAG72</b>               | <b>POSITIVE</b>                 | <b>NEGATIVE</b>              | <b>NEGATIVE</b>       |
| <b>5. CD15</b>                | <b>POSITIVE</b>                 | <b>NEGATIVE</b>              | <b>NEGATIVE</b>       |
| <b>6. TTF-1</b>               | <b>POSITIVE</b>                 | <b>NEGATIVE</b>              | <b>NEGATIVE</b>       |
| <b>7. PAX</b>                 | <b>OVARIAN POSITIVE</b>         | <b>NEGATIVE</b>              | <b>NEGATIVE</b>       |
| <b>8. KERATIN 5/6</b>         | <b>NEGATIVE</b>                 | <b>POSITIVE</b>              | <b>POSITIVE</b>       |
| <b>9. KERATINS 7 &amp; 20</b> | <b>7-NEGATIVE / 20-POSITIVE</b> | <b>7-POS occ neg/ 20-NEG</b> | <b>7-NEG / 20-NEG</b> |
| <b>10. CALRETININ</b>         | <b>NEGATIVE</b>                 | <b>POSITIVE</b>              | <b>POSITIVE</b>       |

\*\* 1/1000 = < 0.10% chance of being a pseudomesotheliomatous carcinoma/sarcoma

\*\*\*\*\*

**CONCLUSION: THE ABOVE TOTAL PROFILE SUPPORTS THE DIAGNOSIS OF  
MALIGNANT MESOTHELIOMA. THE PROBABILITY OF A  
PSEUDOMESOTHELIOMATOUS ADENOCARCINOMA HAVING  
THIS PROFILE IS LESS THAN 1% \*\*.**

James A. Robb, M.D.

Date Completed: 5/8/19





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**Clinical Laboratory Services**  
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Chesapeake, Virginia 23320  
Phone: 757-312-6118  
Fax: 757-312-6489

**PATIENT: CRAIN, SHARON KAY.**  
D.O.B: [REDACTED] AGE: 73 yrs. SEX: F  
MEDICAL RECORD NUMBER: 784410  
PATIENT ENCOUNTER: 700146538601

**CASE NUMBER: SP19-01904**  
DATE COLLECTED: 02/26/2019  
DATE RECEIVED: 02/26/2019 15:15  
PATIENT LOCATION: CRMC

ATTENDING PHYSICIAN: ROGERS, STACEY J.

**CLINICAL HISTORY:**

Acidic fluid, cancer

**FROZEN INTERPRETATION:**

A. MALIGNANT CELLS PRESENT, FAVOR METASTATIC ADENOCARCINOMA, DSA.

**FINAL DIAGNOSIS:**

- A. PERITONEAL TISSUE, BIOPSIES:  
- CONSISTENT WITH MALIGNANT EPITHELIOID MESOTHELIOMA.
- B. PERITONEAL TISSUE, BIOPSY:  
- CONSISTENT WITH MALIGNANT EPITHELIOID MESOTHELIOMA (SEE COMMENT).

COMMENT: Immunoperoxidase stains were performed. Positive reactions were obtained with keratin cocktail, high molecular weight keratin, CK5/6, CAM5.2 and calretinin. Negative reactions were obtained with S100, MOC31, vimentin, SOX10, melanoma cocktail, PAX8, CK7, CK20, estrogen receptor, TaG72, CEA poly, CD15, p40, GCDFF, TTF1 and GATA3. These results support the above interpretation.

**COMMENTS:**

Dr. Rogers was notified of the diagnoses on 03/06/2019 at 1131 hrs.

This case has been reviewed by a second pathologist (Dr. Albrecht), who is in essential agreement with the final diagnosis.

**GROSS DESCRIPTION:**

- A. Received fresh for frozen section microscopy labeled with the patient's name, Sharon Kay Crain, peritoneal biopsies for frozen section are four yellow, predominantly fatty tissue nodules ranging from 0.4 to 1.0 cm in greatest dimension. Each nodule is bisected with approximately half of each of the nodules submitted for frozen section microscopy with the remaining tissue submitted as follows:  
A1 - Half of tissue, frozen section removal;  
A2 - remaining half of tissue
- B. Received in formalin labeled with the patient's name, Sharon Kay Crain, peritoneal biopsy is a 1.2x1.2x0.6 cm tan gray portion of soft tissue. The specimen is bisected and entirely submitted in B1.

18

03/21/19, 06:50AM, VITIGIT & VITIGIT ASSOCIATES

7/3/2019/01

# 197 20



**CHESAPEAKE REGIONAL  
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**PATIENT NAME: CRAIN, SHARON  
KAY.**

**CASE NUMBER: SP19-01904**

**CPT CODES: 88305x2, 88331, 88342x21**

---

**Electronically Signed: Scott J. Graham, MD  
03/06/2019 15:57**

05-21-19, 06:40AM, V 19118 &amp; ONCOLOGY ASSOCIATES

, 10/21/2019

+ 19, 20

Crain, Sharon K (MR # 64399629) DOB: 10/10/1945



SENTARA

Auth Prov: Payman, Gary H  
CC Prov:

Sentara Healthcare  
ADVANCE IMAGING CENTER GREENBRIER MRI  
713 Volvo Parkway Suite 105  
Chesapeake VA 23320  
757-262-4025

## Imaging Result

Name:  
Crain Sharon K (64399629)  
Sex: Female

DOB:  
[REDACTED]  
73 year old

Patient Class:  
Outpatient Private

Diagnosis:  
Abnormal findings on  
diagnostic imaging of  
other parts of digestive  
tract [R83.3 (ICD-10-CM)]

Procedures Performed:  
MR ABDOMEN W/WO CONTRAST  
MR190117002899

Exam Date/Time:  
01/17/2019 10:45  
AM

Reason for Exam:  
None Specified

EXAM: MRI ABDOMEN WITH AND WITHOUT CONTRAST

CLINICAL INDICATION/HISTORY: Ascites. Complex cystic liver lesion.

COMPARISON: Multiple outside CTs. Prior MRI dated July 2, 2018

TECHNIQUE: MRI abdomen with and without IV contrast performed. General  
multiphase abdominal protocol.  
Contrast: 19 mL dotarem

## FINDINGS:

Liver: No significant hepatic steatosis. In the left hepatic lobe, there is a 1.3 x 1.1 cm  
T2 hyperintense lesion which is mildly septated but stable in size. This demonstrates  
no suspicious postcontrast enhancement. There is no suspicious liver lesion.  
Biliary: Mild gallbladder distention without definite gallstones.  
Spleen: Negative.  
Pancreas: Negative.  
Kidneys: There is a left renal cyst measuring approximately 3.0 cm.  
Adrenal glands: Negative.

Stomach/bowel: No bowel obstruction. Limited assessment of the luminal GI tract, but  
no definite bowel wall thickening is appreciated.

Printed

Crail, Sharon K (MR # 64399629) DCE: 10/10/1945

Lymph nodes: No lymphadenopathy.

Vessels: Atherosclerosis.

Peritoneal spaces: Large volume of ascites with extensive peritoneal carcinomatosis consistent with malignancy.

Abdominal wall: Unremarkable.

Bones: Unremarkable for age.

Additional findings: Partially visualized breast prostheses.

#### IMPRESSION

Large volume of ascites with nodular peritoneal thickening and omental caking consistent with severe peritoneal carcinomatosis and malignant ascites.

No significant morphologic changes in the liver. There is a stable mildly septated cyst in the left hepatic lobe. There is no suspicious liver lesion.

Left renal cyst.

The site of primary malignancy is not definitively identified. The luminal GI tract is not well assessed but no definite focal bowel lesion is appreciated. Luminal GI tract could be further assessed with endoscopy as appropriate. There are bilateral breast prostheses and review of an outside CT demonstrates some nodular soft tissue in the left breast outside of the breast implant. This could be due to leaking silicone from the implant, but breast malignancy should be excluded with diagnostic mammogram.

Dr. Payman was notified of the results at 1416 hours.

Thank you for enabling us to participate in the care of this patient.

Signed By: Christopher A O'Neill, MD on 1/17/2019 2:17 PM

Dictated by: O'NEILL, CHRISTOPHER A on Thu Jan 17, 2019 1:44:47 PM EST

Signed By: O'Neill, Christopher A, MD  
1/17/2019 2:17 PM

Medical Center Radiologist [221]

Printed

JS 44 (Rev. 06/17)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

SHARON CRAIN

(b) County of Residence of First Listed Plaintiff Oklahoma

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Henry A. Meyer, III, OBA #6163, Mulnix Goerke & Meyer, PLLC,  
210 Park Avenue, Suite 3030, Oklahoma City, OK 73102  
Office: 405/232-3800

**DEFENDANTS**

CYPRUS MINES CORPORATION, et al.,

County of Residence of First Listed Defendant Delaware

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions](#)

| CONTRACT  | TORTS  | FORFEITURE/PENALTY  | BANKRUPTCY  | OTHER STATUTES  |   |
|---|--|---|---|---|---|
| <input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability<br><input checked="" type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><b>PERSONAL PROPERTY</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 690 Other<br><b>LABOR</b><br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Management Relations<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 751 Family and Medical Leave Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Employee Retirement Income Security Act<br><b>IMMIGRATION</b><br><input type="checkbox"/> 462 Naturalization Application<br><input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><b>PROPERTY RIGHTS</b><br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 835 Patent - Abbreviated New Drug Application<br><input type="checkbox"/> 840 Trademark<br><b>SOCIAL SECURITY</b><br><input type="checkbox"/> 861 HIA (1395ff)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))<br><b>FEDERAL TAX SUITS</b><br><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act<br><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))<br><input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 850 Securities/Commodities/Exchange<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 896 Arbitration<br><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision<br><input type="checkbox"/> 950 Constitutionality of State Statutes |
| <b>REAL PROPERTY</b><br><input type="checkbox"/> 210 Land Condemnation<br><input type="checkbox"/> 220 Foreclosure<br><input type="checkbox"/> 230 Rent Lease & Ejectment<br><input type="checkbox"/> 240 Torts to Land<br><input type="checkbox"/> 245 Tort Product Liability<br><input type="checkbox"/> 290 All Other Real Property  | <b>CIVIL RIGHTS</b><br><input type="checkbox"/> 440 Other Civil Rights<br><input type="checkbox"/> 441 Voting<br><input type="checkbox"/> 442 Employment<br><input type="checkbox"/> 443 Housing/Accommodations<br><input type="checkbox"/> 445 Amer. w/Disabilities - Employment<br><input type="checkbox"/> 446 Amer. w/Disabilities - Other<br><input type="checkbox"/> 448 Education   | <b>PRISONER PETITIONS</b><br><b>Habeas Corpus:</b><br><input type="checkbox"/> 463 Alien Detainee<br><input type="checkbox"/> 510 Motions to Vacate Sentence<br><input type="checkbox"/> 530 General<br><input type="checkbox"/> 535 Death Penalty<br><b>Other:</b><br><input type="checkbox"/> 540 Mandamus & Other<br><input type="checkbox"/> 550 Civil Rights<br><input type="checkbox"/> 555 Prison Condition<br><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement   |   |   |   |

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §1332 and 28 U.S.C. §1391

Brief description of cause:

Personal injury and products liability for asbestos-related mesothelioma**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

05/13/2019

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE