

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
OXFORD DIVISION**

**ODESTER ANDREWS, EXCELL VANCE,  
JOSEPHINE MARTIN, EDDIE FOSTER,  
BILLY HARRIS, JOAN BERRYHILL  
PATRICIA CAMP, and CLAYFERS WALTON**

**PLAINTIFFS**

**V.**

**CAUSE NO.:** 3:24cv164-SA-RP

**ENPRO INDUSTRIES, INC.; ENPRO  
HOLDINGS, INC.; DETREX CORPORATION;  
ITALMATCH SC, LLC; ITALMATCH DW, LLC;  
JOHN DOE CORPORATIONS 1-5**

**DEFENDANTS**

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**COMPLAINT  
JURY TRIAL DEMANDED**

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**COME NOW**, Plaintiffs Odester Andrews, Excell Vance, Josephine Martin, Eddie Foster, Billy Harris, Joan Berryhill, Patricia Camp, and Clayfers Walton, by and through their undersigned counsel, and assert the following causes of action against Defendants Enpro Industries, Inc., Enpro Holdings, Inc., Detrex Corporation, Italmatch SC, LLC, Italmatch DW, LLC, and John Doe Corporations 1-5 as follows:

**INTRODUCTION**

1. For more than fifty years, the Defendants in this lawsuit have engaged in continuous acts which have had the result of poisoning the people, environment, and the community of Water Valley, Mississippi, and Yalobusha County. The purpose of this lawsuit is to seek justice on behalf of the victims, and to right the wrongs done to the local community by the Defendants.

**PARTIES**

2. Plaintiff Odester Andrews is an adult resident citizen of the State of Mississippi who resides at 104 Patton Lane, Batesville, Panola County, Mississippi. Ms. Andrews worked in the Facility located at 600 Highway 32 East, Water Valley, Yalobusha County, Mississippi and was exposed to trichloroethylene through drinking water which was contaminated with trichloroethylene at the Facility and/or through the intrusion of trichloroethylene vapors into the Facility's internal atmosphere. Plaintiff Odester Andrews is

a victim of trichloroethylene exposure at the Facility, as she was diagnosed with B-cell lymphoma in 2022 and colon cancer in 2023.

3. Plaintiff Excell Vance is an adult resident citizen of the State of Mississippi who resides at 104 Navajo Circle, Clinton, Hinds County, Mississippi. Mr. Vance worked in the Facility located at 600 Highway 32 East, Water Valley, Yalobusha County, Mississippi from 1977 to 2014 and was exposed to trichloroethylene at the facility through contaminated drinking water, skin contact with the chemical, and/or through the intrusion of trichloroethylene vapors into the Facility's internal atmosphere. Plaintiff Excell Vance is a victim of trichloroethylene exposure at the Facility and was recently diagnosed with multiple myeloma.

4. Plaintiff Josephine Martin is an adult resident citizen of the State of Mississippi who resides at 78 County Road 440, Coffeeville, Yalobusha County, Mississippi. Ms. Martin worked in the Facility located at 600 Highway 32 East, Water Valley, Yalobusha County, Mississippi from 1979 to 2022 and was exposed to trichloroethylene through contaminated drinking water at the Facility, skin contact with the chemical, and/or through the intrusion of trichloroethylene vapors into the Facility's internal atmosphere. Plaintiff Josephine Martin is a victim of trichloroethylene exposure at the Facility, having been diagnosed and treated for left breast cancer and Stage IV kidney disease.

5. Plaintiff Joan Beryhill is an adult resident citizen of the State of Mississippi who resides at 704 Airways Acres, Apt. 35, Water Valley, Mississippi. Ms. Berryhill worked in the Facility located at 600 Highway 32 East, Water Valley, Yalobusha County, Mississippi from 1973 to 2018 and was exposed to trichloroethylene through contaminated drinking water at the Facility, through skin contact with the chemical, and/or through the intrusion of trichloroethylene vapors into the Facility's internal atmosphere. Plaintiff Joan Berryhill is a victim of trichloroethylene exposure at the Facility and was recently diagnosed with multiple myeloma.

6. Plaintiff Eddie Foster is an adult resident citizen of the State of Mississippi who resides at 202 Church Street, Water Valley, Yalobusha County, Mississippi. Mr. Foster worked in the Facility located at 600 Highway 32 East, Water Valley, Yalobusha County, Mississippi from approximately 1972 to 1996

and was exposed to trichloroethylene through contaminated drinking water at the Facility, skin contact with the chemical, and/or through the intrusion of trichloroethylene vapors into the Facility's internal atmosphere. Plaintiff Eddie Foster is a victim of trichloroethylene exposure at the Facility and was recently diagnosed with prostate cancer in 2019 and cancer in his left kidney in 2023.

7. Plaintiff Billy Harris is an adult resident citizen of the State of Mississippi who resides at 424 County Road 167, Coffeerville, Yalobusha County, Mississippi. Mr. Harris worked in the Facility located at 600 Highway 32 East, Water Valley, Yalobusha County, Mississippi from approximately 1976 to 1982 and was exposed to trichloroethylene through contaminated drinking water at the Facility, skin contact with the chemical, and/or through the intrusion of trichloroethylene vapors into the Facility's internal atmosphere. Plaintiff Eddie Foster is a victim of trichloroethylene exposure at the Facility and was recently diagnosed with prostate cancer in 2019 and cancer in his left kidney in 2023.

8. Plaintiff Patricia Camp is an adult resident citizen of the State of Mississippi who resides at 1414 James Street, Water Valley, Yalobusha County, Mississippi. Ms. Camp was exposed to trichloroethylene while working at the Facility located at 600 Highway 32 East, Water Valley, Yalobusha County, Mississippi from 1977 to 1979 at or near the time when the Holley Automotive Division of Colt Industries, Inc. was actively using trichloroethylene as a solvent and degreaser in the production of automotive parts. Plaintiff Patricia Camp is a victim of trichloroethylene exposure, as she was diagnosed with Parkinson's disease 2021 and was diagnosed with cancer in her right breast this year.

9. Plaintiff Clayfers Walton is an adult resident citizen of the State of Mississippi who resides at 12239 Highway 51, Oakland, Yalobusha County, Mississippi. Mr. Walton worked at the Facility located at 600 Highway 32 East, Water Valley, Yalobusha County, Mississippi from 1973 to 2011 and was exposed to raw trichloroethylene during the time that the Holley Automotive Division of Colt Industries, Inc. was actively using the chemical as a solvent and degreaser in the production of automotive parts. He was further exposed to trichloroethylene through contaminated drinking water and indoor air at the Facility. Plaintiff Clayfers Walton is a victim of trichloroethylene exposure and was diagnosed with Parkinson's disease in 2020.

10. Defendant Enpro Industries, Inc. (“**Enpro Industries**”) is a corporation organized and existing under the laws of the state of North Carolina which maintains its principal place of business at 5605 Carnegie Blvd., Suite 500, Charlotte, North Carolina 28209-4674. Enpro Industries may be served with process by service upon its registered agent, C.T. Corporation System, 150 Fayetteville St., Box 1011, Raleigh, North Carolina 27601-2957. Based on information disclosed to the Mississippi Department of Environment Quality, in May 2002, Enpro Industries, either directly or indirectly through one of its subsidiaries, expressly assumed and/or acquired all environmental liabilities for contamination of the premises located at 600 Highway 32 East, Water Valley, Yalobusha County, Mississippi.

11. Defendant Enpro Holdings, Inc. (“**Enpro Holdings**”), is a corporation organized and existing under the laws of the state of North Carolina which maintains its principal place of business at 5605 Carnegie Blvd., Suite 500, Charlotte, North Carolina 28209-4674. Enpro Holdings may be served with process by service upon its registered agent, C.T. Corporation System, 150 Fayetteville St., Box 1011, Raleigh, North Carolina 27601-2957. Upon information possessed by Plaintiffs at this time, Enpro Holdings is a wholly owned subsidiary of Enpro Industries which expressly assumed and/or acquired all environmental liabilities for the premises located at 600 Highway 32 East, Water Valley, Yalobusha County, Mississippi. Upon further information possessed by Plaintiffs at this time, Coltec Industries, Inc. (formerly Colt Industries, Inc.), the former owner of the Facility, directly or indirectly transferred, distributed, or otherwise conveyed all of its non-asbestos liabilities, including any and all environmental liabilities arising from the former operation of the Facility, to the Goodrich Corporation which subsequently transferred, distributed, or otherwise conveyed said liabilities, either directly or indirectly, to Enpro Industries and/or Enpro Holdings.

12. Defendants Italmatch SC, LLC and Italmatch DW, LLC, are two limited liability corporations formed under the laws of the State of Delaware. Upon information possessed by the Plaintiffs at this time, these two companies were formed as part of an expansion process that occurred in 2017 wherein Italian company Italmatch Chemicals entered into an acquisition/merger deal with Detrex Corporation. Its principal corporate headquarters are located at Via Magazzini del Cotone, 17 Modulo 4, 16128 Genova

(GE), Italy. Both Delaware entities list their registered agent as Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808.

13. John Doe Corporations 1-5 are those certain corporations who owned, retained, or acquired any of the liabilities arising out of or related to operation of the Facility located on the subject premises through purchase, sale, transfer, conveyance, or distribution to or from Coltec Industries, Inc., Goodrich Corporation, Old Co, LLC, Enpro Industries, or Enpro Holdings.

#### **JURISDICTION AND VENUE**

14. This Court has jurisdiction over this civil action pursuant to 28 U.S.C. §1332. All Plaintiffs are residents of Yalobusha County, Mississippi who were injured and damaged by exposure to trichloroethylene and/or other volatile organic compounds due to or as a result of Defendants' intentional, negligent, reckless, wanton, and/or grossly negligent use and discharge of Trichloroethylene at or near the premises located at 600 Highway 32 East, Water Valley, Yalobusha County, Mississippi. None of the Defendants maintain their principal place of business in Mississippi and are non-residents of Mississippi. The amount in controversy of each individual Plaintiff, as well as all Plaintiffs collectively, exceeds \$75,000.00.

15. Venue is appropriate in the Oxford Division of the United States District Court for the Northern District of Mississippi because all of the actions of Defendants occurred in whole in or in part in Yalobusha County, Mississippi.

#### **FACTS**

16. On or about November 1972, the Holley Automotive Division of Colt Industries, Inc., which was subsequently renamed Coltec Industries, Inc. in 1990, (hereinafter "Coltec") acquired the former Ram Tool manufacturing facility located at 600 Highway 32 East in Water Valley, Mississippi (hereinafter "the Facility") and began manufacturing automotive parts, including, but not limited to, automobile carburetors and related components.

*History of Coltec's TCE Usage at the Facility*

17. Shortly after acquiring the Facility, Coltec purchased and installed a vapor degreaser manufactured by Detrex Chemical Industries, Inc. (“**Detrex**”) to remove the oils, grease, dirt, metal shavings, and other debris and/or contaminants which had accumulated on the automotive parts during the fabrication process.

18. The Detrex degreaser purchased by Coltec used the chemical trichloroethylene, or TCE, to clean the automotive parts. TCE, a clear, colorless, and non-flammable liquid with a sweet taste and smell, is a volatile organic compound, or “VOC,” which is well known as both a degreasing solvent and human carcinogen. TCE is classified as a dense nonaqueous phase liquid, meaning it is heavier than water and, if discharged into the environment, will tend to sink down into the ground and contaminate the water table. TCE can remain volatile in the soil for decades and has the potential to degrade into other carcinogens, such as vinyl chloride.

19. To clean the automotive parts with the Detrex degreaser, an employee would place them into a wire-basket, lower the wire-basket into the degreasing unit, close the lid on the degreasing unit, and start the machine. The Detrex degreaser would then bathe the parts in TCE liquid and vapor until fully cleaned. Once the cleaning process was complete, the employee would lift the basket out of the degreaser, visually inspect the parts to make sure they were clean, and then send them to another area of the Facility for final inspection, packaging, and shipping.

20. The Detrex degreaser was a large unit that required a substantial amount of TCE to operate. To ensure the degreaser had a steady supply of TCE, Coltec purchased and installed a 4,000 gallon above-ground storage tank to hold unused, or “virgin,” TCE. That tank was installed outside of the facility and connected directly to the degreaser via an underground pipe.

21. As the Detrex degreaser cleaned the automotive parts with virgin TCE from the 4,000 gallon storage tank, it produced two forms of TCE waste, one which was liquid in nature and the other which consisted of a semi-solid sludge (referred to in the industry as “still bottoms”). Thus, Coltec also purchased and installed a 1,000 gallon above-ground storage tank to hold the liquid TCE waste. That tank

was also installed outside, was connected directly to the degreaser via an underground pipe, and was primarily used either to store the liquid TCE waste or store the TCE that was in the degreaser while the unit itself was being cleaned or undergoing periodic maintenance.

22. While the liquid TCE waste could be drained into the 1,000 gallon storage tank, the TCE sludge which accumulated inside the bottom of the degreaser was more difficult to remove. In order to clean the TCE sludge from the degreaser, Coltec directed its employees to first drain as much of the sludge as they could into a fifty-five (55) gallon drum and then manually scoop out the rest. Though Coltec knew or should have known that employees needed to wear personal protective equipment over their skin, eyes, nose, and mouth while cleaning the TCE sludge from the bottom of the degreaser, it did not inform, instruct, or require its employees to wear any of the personal protective equipment identified in the Detrex degreaser manual.

23. That Coltec was not concerned with disposing of its TCE waste responsibly is evident from the fact that it did not have any sort of plan or procedure in place for the responsible disposal of its TCE waste. Instead, Coltec decided it would use Mississippi as its “dumping ground for hazardous waste” and save the expense of hiring a licensed chemical disposal company to dispose of its TCE waste.

24. Echoing that sentiment, Coltec, on at least one occasion, instructed employees to open the bottom valve on the 1,000 gallon tank and drain all of the TCE waste into a ditch behind the Facility. The very next day after that intentional discharge, a Coltec employee noticed approximately twenty (20) dead turtles in the ditch and reported it to his manager and several other co-workers.

25. Coltec was unfazed by the turtles’ deaths and more focused on the problem at hand – getting rid of its TCE waste any way it could without incurring the expenses associated with proper disposal. On numerous occasions, Coltec accomplished its goal by allowing the 1,000 gallon tank to become so full with TCE waste that it would overflow from the tank’s top vent and pour down onto the ground.

26. Instead of increasing the size of its waste tank or actually hiring a licensed company to dispose of its TCE waste, Coltec found new and more creative ways to get rid of it. As a result of its prior discharges of TCE waste, Coltec knew the waste would kill weeds and other vegetation on contact. In an

effort to kill two birds (or turtles) with one stone, Coltec had its employees start spraying the TCE waste in the gravel parking lot and around the buildings at the Facility to control weeds and knock down the gravel dust. Coltec also told employees they could take home as much TCE waste as they wanted to kill the weeds in their own yards. Coltec even gave large quantities of TCE waste to the Yalobusha County Road Department to spray on the county roads and rights-of-way.

27. In addition to its discharge of TCE and TCE waste into the Yalobusha County environment, Coltec also experienced several “spills” of TCE and TCE waste. After one such “spill” occurred, the owner of a neighboring property approached Coltec management and informed them that her cattle were getting sick after drinking water a ditch on Coltec’s property. Additional spills were documented by TIWC Environmental Services, Inc. (“**TIWC**”), an environmental contractor hired by Coltec, which found multiple “spill(s) of pure phase TCE” after 1976 which “contaminated” the “soil” and “groundwater.” TIWC further confirmed that Coltec discharged TCE into the environment on numerous occasions when the 1,000 gallon waste tank would overflow from the top vent and documented a loose fitting on the 4,000 gallon tank which actively leaked TCE into the environment for long periods of time.

28. Despite some knowledge of the dangers that TCE and TCE waste posed to plant, aquatic, and animal life, Coltec was apparently satisfied with its methods for disposing of its TCE waste and, in 1981, ramped up its TCE usage when it bought a new Detrex degreaser to replace the old one and purchased several smaller ultrasonic vapor degreasers which it installed throughout the Facility. Though Coltec purchased, installed, and used more degreasers at that time, it did not take any measures to increase its capacity for storing or disposing of TCE waste and, until approximately 1983, did not retain a licensed chemical disposal company to handle the TCE waste for them.

29. On or about January of 1987, Coltec finally quit using TCE as a degreaser/solvent at the Facility. From 1972 to 1987, Coltec records demonstrate it purchased at least 80,000 gallons of TCE. Those same records also demonstrate that Coltec only responsibly disposed of approximately 5,775 gallons, or seven percent (7%), of all waste TCE it generated.



*Investigation of TCE Contamination Emanating from the Facility*

30. Because TCE is a known carcinogen, the United States Environmental Protection Agency (“USEPA”) deems groundwater to be contaminated when the concentration of TCE therein exceeds 5 parts per billion (“ppb”). The value of 5 ppb is referred to as the maximum contaminant level (“MCL”) for TCE. The USEPA deems indoor air to be contaminated when the TCE concentration exceeds 26  $\mu\text{g}/\text{m}^3$ .

31. In 1988, Coltec tested the municipal well which supplied water to the Facility and learned that it contained concentrations of TCE above the maximum contaminant level of 5ppb. Shortly thereafter, Coltec administration began “designing an action plan” which included disclosing the contamination to the Mississippi Department of Environmental Quality (“MDEQ”), “initiat[ing] drinking water construction” by hiring a plumber to connect the Facility to the City of Water Valley water supply so that employees would have clean drinking water, prepare “an official Company position regarding the water supply, and to communicate to its employees “that we are connecting into the Water Valley city water system.”

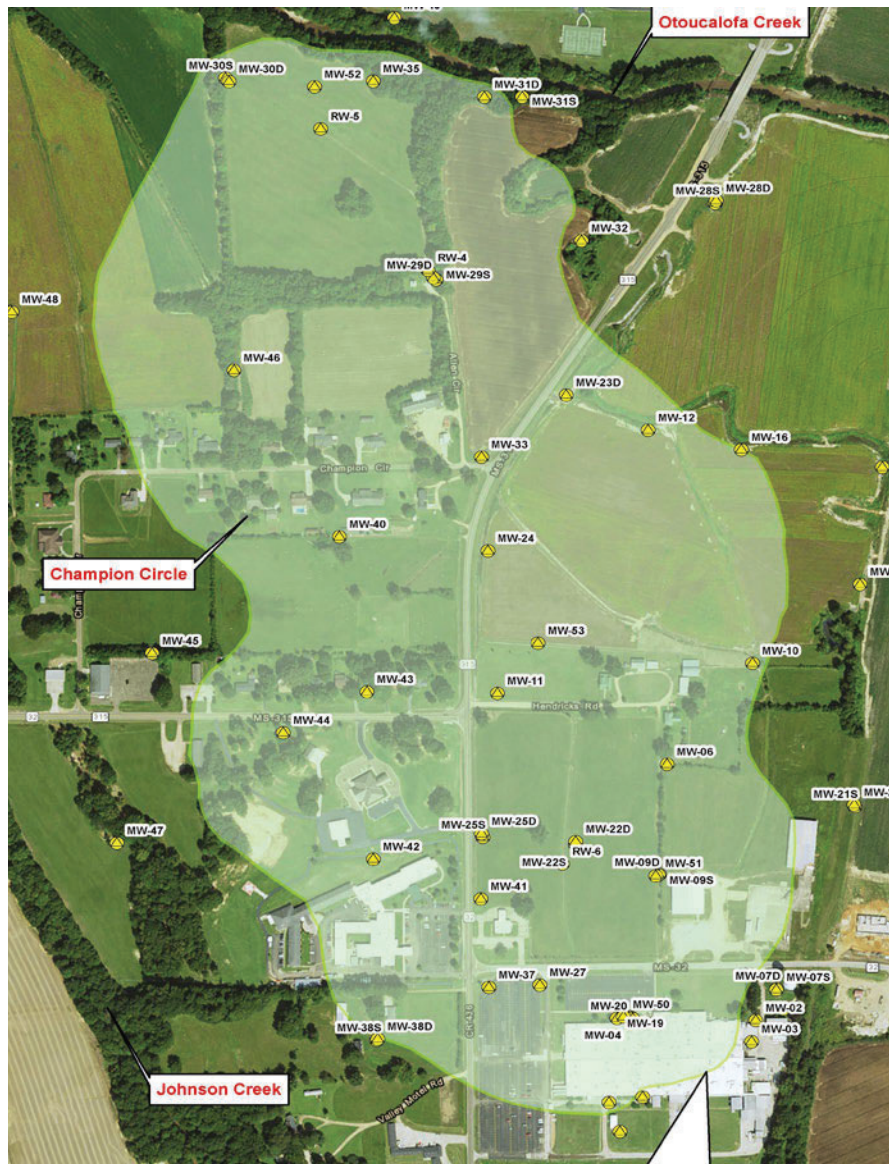
32. Upon information and belief, Coltec did not issue a press release that informed the public about its contamination of the municipal well with TCE and only told its employees that the Facility was being connected to the City of Water Valley water supply, that they should not use or drink water from the water fountain or sinks, and that they would be provided bottled water to use and drink until the new water line was connected.

33. Coltec disclosed the TCE contamination to the MDEQ which then conducted further testing and discovered that, not only was the municipal well supplying water to the Facility contaminated, but another domestic well used by a nearby property owner also contained concentrations of TCE above the maximum contaminant level. To determine whether Coltec had contaminated a “significant aquifer utilized in the site area to provide potable water for municipal, domestic, and industrial purposes,” the MDEQ ordered Coltec to, *inter alia*, develop and implement plans to identify the extent of TCE contamination in the area surrounding the facility and remove it from the environment.

34. At MDEQ’s direction, Coltec began collecting and testing soil and groundwater samples from property located at or near the Facility which, upon information and belief, contained concentrations

of TCE as high as 1,500,000 ppb. It then retained a third-party engineering firm to collect additional samples from borings and monitoring wells to identify the boundaries of the TCE plume and develop a remediation plan.

35. Upon information and belief, the additional sampling revealed that the plume of TCE emanating from the Facility covers approximately 340 acres, measures 3,900 feet long by 2,100 feet wide, and extends from the Facility in a northerly direction toward the Otoucalofa Creek and downtown business district of Water Valley. The following graphical representation depicts the size of the TCE plume and was submitted by Enpro Industries to the MDEQ:

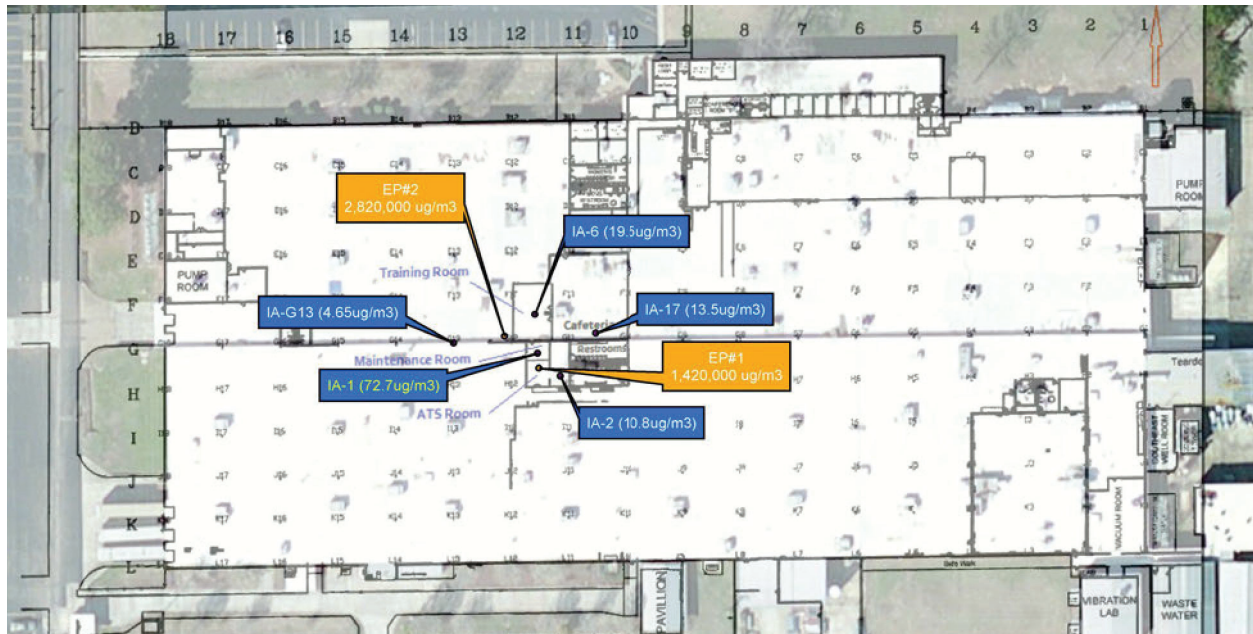


36. To remediate the TCE contamination, Coltec proposed using a process known as “thermal desorption,” which required it to place four pumps along the northern boundary of the TCE plume which would push air through the underground substrate and aquifer towards a pump situated near the Facility. The pump situated near the facility would then draw the air up and through a thermal desorption unit which inactivated the TCE and discharged the inert by-products into the atmosphere.

37. Under the 1990 MDEQ Order, Enpro Industries was required to collect and test samples from monitoring wells located in or near the plume on a monthly basis from 2006 to 2015. However, from June 2008 through June 2013, Enpro Industries did not conduct any of the required sampling and testing required by the MDEQ order. Instead, for approximately six (6) years, Enpro Industries sent a letter to the MDEQ each month wherein it represented that there was “no discharge during the period” because of “equipment malfunctions” or because the system was “down for maintenance.”

38. Enpro Industries started sending the test results from each month sampling of the results the During each round of testing, approximately seventeen (17) monitoring wells contained concentrations of TCE well above the maximum contaminant level of 5 ppb, with several containing concentrations of TCE ranging from 1,000 ppb to 4,300 ppb.

39. Coltec’s irresponsible and negligent discharge of TCE into the surrounding environment not only contaminated the ground and underlying water table, it also contaminated the air inside the facility. Through a process known as vapor intrusion, TCE present in the ground underneath the Facility vaporized and infiltrated the indoor environment through cracks in the Facility’s foundation. When the air inside the Facility was initially tested, it was found to have concentrations of TCE vapor ranging from 4.65 ug/m<sup>3</sup> to 2,820,000 ug/m<sup>3</sup>, well in excess of the generally accepted indoor air concentration of 1 ug/m<sup>3</sup>.



### *Plaintiffs' Mechanism of Exposure to TCE*

38. TCE is a toxic chemical long known in Mississippi to be so dangerous that it was not considered safe to be used in *cattle feed* back in the 1950s due to concerns that the cattle developed hemorrhagic diseases and disorders that caused them to bleed out and die from awful and shocking deaths. *See, generally, Nishida v. E.I. Du Pont De Nemours & Co.*, 245 F.2d 768 (5th Circ. 1957); *E.I. Du Pont De Nemours & Co.*, 221 Miss. 378, 73 So.2d 249 (1954)(chief cases amongst a widespread phenomenon of litigation in Mississippi involving horrible cattle deaths from TCE infected feed).

39. Humans may be exposed to TCE through ingestion, inhalation, and dermal contact. Thus, an individual can be exposed by breathing TCE vapors that are emitted into the air, by physical contact with TCE on their skin, by drinking groundwater contaminated with TCE, or by eating/drinking food and drinks which have been exposed to TCE vapors in the air.

40. TCE is highly volatile and will evaporate into the air at room temperature. Thus, introduction of TCE vapors into room air is as easy as leaving it in an opened container in a room.

41. Plaintiffs are former employees of BorgWarner Inc. who were exposed to drinking water and/or indoor containing TCE, and continued to be exposed to TCE through the groundwater, air, and vapor intrusion from the soil of the toxic plume that the Defendants released upon the local community.



42. TCE is a chlorinated solvent and a toxic chemical that is not found in nature.<sup>1</sup> The chemical product was originally developed as an anesthetic that caused humans to lose consciousness or become insensitive to pain. TCE was used for a long time in common household cleaning products, tool degreasers, paint removers, and aerosol products for years in the United States. However, it was banned for use in humans by the Food and Drug Administration as early as 1977. It can be found in the air, water, and soil at any places where it is produced or used, as it breaks down slowly and remains in the environment for long periods of time, and readily passes through soil and groundwater. Anyone exposed to TCE may absorb it through their skin, through the air, through drinking water, or by eating foods grown or otherwise in contact with TCE.

43. Humans can become exposed to TCE through a variety of methods, the most common of which is inhalation, skin absorption, ingestion, skin contact, or eye contact.<sup>2</sup> Excessive contact with TCE can cause irritation, headaches, visual disturbances, weakness, dizziness, tremors, drowsiness, nausea, vomiting, rashes, cardiac arrhythmias, paresthesia, and liver injuries. It is known to target and damage a wide variety of organs in the human body, most specifically the eyes, skin, respiratory system, heart, liver, kidneys, and the central nervous system in general.

44. TCE is “known to be a human carcinogen based on sufficient evidence of carcinogenicity from studies in humans”.<sup>3</sup> This conclusion is “based on epidemiological studies showing that it causes kidney cancer in humans, together with supporting evidence from toxicological, toxicokinetic, and mechanistic studies demonstrating the biological plausibility of its carcinogenicity in humans.”

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<sup>1</sup> See, generally, “Trichloroethylene,” *Cancer Causing Substances*, National Cancer Institute, located online as of filing at: <https://www.cancer.gov/about-cancer/causes-prevention/risk/substances/trichloroethylene#:~:text=Which%20cancers%20are%20associated%20with,and%2C%20possibly%2C%20liver%20cancer>.

<sup>2</sup> National Institute of Occupational Safety and Health. Trichloroethylene, NIOSH Pocket Guide to Chemical Hazards. Atlanta, GA: Centers for Disease Control and Prevention, 2010. Located online as of filing at: <https://www.cdc.gov/niosh/npg/npgd0629.html>

<sup>3</sup> National Toxicology Program. 2021. Trichloroethylene, Report on Carcinogens, Fifteenth Edition.; Research Triangle Park, NC: U.S. Department of Health and Human Services, Public Health Service.

45. In addition to cancers, TCE exposure is linked to the development of numerous other health related issues.<sup>4</sup> The U.S. Environmental Protection Agency identifies the most dangerous and hazardous toxic waste sites throughout the country, and has identified TCE in at least 1,051 of the 1,854 current of former sites subject to regulation under the National Priorities List.

46. In the largest study of TCE exposure to date, U.S. government has found TCE exposure to be linked to a wide range of physical ailments.<sup>5</sup> The long list of ailments associated with TCE exposure includes:

- Kidney cancer
- Non-Hodgkin lymphoma
- Cardiac defects
- leukemia
- multiple myeloma
- end-stage renal disease
- Parkinson's disease
- Scleroderma
- chonal atresia
- eye defects
- low birth weight
- fetal death
- major malformations
- miscarriage
- neural tube defects
- oral cleft defects including cleft lip
- small for gestational age
- breast cancer
- cervical cancer
- esophageal cancer
- lung cancer
- Hodgkins disease
- ovarian cancer
- prostate cancer
- rectal cancer
- impaired immune system function
- neurological effects (delayed reaction times, problems with short-term memory, visual perception, attentions, and color vision)

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<sup>4</sup> Agency for Toxic Substances and Disease Registry (ATSDR). Toxicological Profile for Trichloroethylene (Update). U.S. Public Health Service, U.S. Department of Health and Human Services, Atlanta, GA. 2014. Located online as of filing at: <https://wwwn.cdc.gov/TSP/ToxProfiles/ToxProfiles.aspx?id=173&tid=30>

<sup>5</sup> Agency for Toxic Substances and Disease Registry (ATSDR). ATSDR Assessment of the Evidence for the Drinking Water Contaminants at Camp Lejeune and Specific Cancers and Other Diseases U.S. Public Health Service, U.S. Department of Health and Human Services, Atlanta, GA. 2017. Located online as of filing at : [https://www.atsdr.cdc.gov/sites/lejeune/tce\\_pce.html](https://www.atsdr.cdc.gov/sites/lejeune/tce_pce.html)

- neurobehavioral performance deficits (i.e., delayed recall and deficits in visual perception), decreased blink reflex, and mood effects (i.e., confusion, depression, and tension)
- severe, generalized hypersensitivity skin disorder (an autoimmune-related disease)

This list is by no manner exhaustive, as scientific study into the toxic effects of TCE continues to evolve every day. All of the Plaintiff(s) attached to this suit suffer from health and/or emotional distress issues stemming directly from the prolonged and continuous poisoning of the air, water, soil, and people within the communities of Water Valley, Mississippi, and the greater Yalobusha County area impacted by the plume created by the conduct of the Defendants.

47. Perhaps what is most terrifying about the dangers of TCE exposure is that it the long-term or routine exposure to it which can lead to the latent appearance of health issues *decades* after the initial exposure to the chemical, in a similar fashion to how long-term exposure to asbestos can lead to hidden health issues that appear years down the line, including various types of cancers along with a wide range of autoimmune related issues.<sup>6</sup>

48. In terms of overall population, Yalobusha County is one of the least populated counties throughout the State of Mississippi. It checks in as the 62<sup>nd</sup> most populated counties in a state that has a total of 82 counties. Only just over 12,000 people reside within the entire county.<sup>7</sup>

49. Despite the relatively small population, Yalobusha County's history of being polluted and poisoned with TCE by the Defendants have led to it being designated as having, by *far*, the highest rate of growth in the new diagnosis of *all cancers* of any county in the State of Mississippi. This information has

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<sup>6</sup> See, generally: Cooper, G.S., Makris, S.L., Nieter, P.J., Jinot, J. *Evidence of autoimmune-related effects of trichloroethylene exposure from studies in mice and humans*. Environ. Health Perspect., 117 (2009), pp. 696-702; Parks, C.G., De Roos, A.J. *Pesticides, chemical industrial exposures in relation to systemic lupus erythematosus*. Lupus, 23 (2014), pp. 527-536; Abbot, S., Bossingham, D., Proudman, S., de Costa, C., Ho-Huynh, A. *Risk factors for the development of systemic sclerosis: a systemic review of the literature*. Rheumatol Adv. Pract., 2 (2018), p. ryk041; Hosgood 3<sup>rd</sup>, H.D., Zhang, L., Tang, X., Vermeulen, R., Qui, C., Shen, M., Smith, M.T., Ge, Y., Ji, Z., Xiong, J., He, B., Reiss, S., Liu, Y., Xie, Y., Guo, W., Galvan, L., Li, L., Hao, Z., Rothman, N., Huang, H., Lan, Q. *Decreased numbers of CD4(+) naïve and effector memory T cells, and CD8(+) Naïve T cells, are associated with trichloroethylene exposure*. Front. Oncol., 1 (2011), p. 53; Iavicoli, I., Marinaccio, A., Carelli, G. *Effects of occupational trichloroethylene exposure on cytokine levels in workers*. J. Occup. Environ. Med., 47 (2005), pp. 453-457.

<sup>7</sup> See Mississippi Demographic information, located as of filing of this Complaint at: [https://www.mississippi-demographics.com/counties\\_by\\_population](https://www.mississippi-demographics.com/counties_by_population)

been compiled and confirmed by the National Institute of Health's National Cancer Institute's State Cancer Profiles.<sup>8</sup> The rapidly increasing "Cancer Cluster" in Yalobusha County is so drastic that despite its tiny population size, it presently ranks 22<sup>nd</sup> in diagnoses of all cancer types out of the 3,143 counties that make up the United States of America.<sup>9</sup>

50. The Plaintiffs allege that the presence of this "Cancer Cluster" and the massively increasing rates of all cancer types throughout the local population is a direct result and the responsibility of the Defendants to this litigation. The conduct and the consequences of the actions of the Defendants constitutes a wrong that justice demands be rectified.

### **CAUSES OF ACTION**

#### **Count 1: Nuisance/Trespass**

51. Trespass in Mississippi is an extremely broad legal theory. *Great Northern Nekoosa Corp. v. Aetna Cas. and Sur. Co.*, 921 F.Supp. 401, 417 (N.D. Miss. 1996). Varying legal theories such as wrongful entry, nuisance, and trespass are often debated in situations involving pollution onto the lands of others, but courts in Mississippi are clear that regardless of the specifics of the theory used, one who causes pollution to accumulate onto the home, land, or property of another is to be held liable for the results of that conduct. *Id. See, additionally, Shutes v. Platte Chemical Co.*, 564 So.2d 1382, 1384 (Miss. 1990)(finding liability and punitive damages appropriate in a case where a chemical company allowed dangerous chemicals to leak onto another property); *American Potash & Chemical Corp. v. Nevins*, 249 Miss. 450, 463, 163 So.2d 224, 230 (1964)(using a nuisance analysis for chemical contamination of another property); *U.S. Fidelity and Guar. Co. v. B & B Oil Well Service, Inc.*, 910 F.Supp. 1172, 1184 (S.D. Miss. 1995)(applying nuisance and trespass in a pollution context).

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<sup>8</sup> See NIH website data, located online as of filing at:

<https://statecancerprofiles.cancer.gov/incidencerates/index.php?stateFIPS=28&areatype=county&cancer=001&race=00&sex=0&age=001&type=incd&sortVariableName=recentaapc&sortOrder=desc#results>

<sup>9</sup> See NIH website data, located online as of filing at:

<https://statecancerprofiles.cancer.gov/incidencerates/index.php?stateFIPS=00&areatype=county&cancer=001&race=00&sex=0&age=001&type=incd&sortVariableName=recentaapc&sortOrder=desc#results>



52. The actions of the Defendants in polluting and creating the TCE plume discussed above constitute both a private and public nuisance that has subjected the Plaintiffs to continued and repeated exposure to TCE.

53. The actions of the Defendants in polluting and creating the TCE plume discussed above additionally are a wrongful entry into and upon the land in a manner that constitutes a trespass.

54. The actions of the Defendants in exposing the Plaintiffs to repeatedly dangerous levels of TCE constitutes a continuing and ongoing nuisance and trespass.

55. The Defendants are directly responsible for causing the Plaintiffs to suffer repeated exposure to TCE.

56. As a result of the repeated exposure, the Plaintiffs have suffered personal injuries known to be commonly caused by and associated with exposure to TCE, along with emotional distress from their continued exposure to toxic pollution that was directly caused by the Defendants.

### **Count 2: Negligence**

57. At all times relevant, the Defendants owed a duty to the Plaintiffs to use reasonable care, and to conduct themselves in the fashion in which a reasonably careful person would under the Defendants' circumstances. In addition, in the State of Mississippi "it is undoubtedly the law that an employer has the absolute duty to furnish its employees with reasonably safe and sufficient appliances with which to work, to warn inexperienced employees of dangers of which they are ignorant, and to enforce rules so as to render dangerous work as safe as reasonably possible." *Gordon v. Niagara Mach. and Tool Works*, 506 F.2d 419, 425 (5th Cir. 1974)(citations omitted).

58. That the Defendants failed to fulfill their duty owed to the Plaintiffs, and acted negligently by acting in ways that no reasonably careful person would do under their circumstances, and by failing to take reasonably prudent precautions to avoid exposing the Plaintiffs to repeated toxic exposure to TCE.

59. That as a direct result of the negligence of the Defendants, the Plaintiffs have suffered harm and damages in the form of continued exposure to TCE, including personal injuries and emotional distress from their continued exposure to TCE.

### **Count 3: Gross Negligence**

60. Beyond acting in negligence towards the Plaintiffs, the course of conduct exhibited by the Defendants in knowingly spending *decades* polluting the soil, air, and groundwater throughout the TCE plume and the factory that they operated goes far beyond the bounds of what society should tolerate.

61. Under the circumstances at issue, the consistent and continued efforts of the Defendants to pollute the local environment, community, and people constitutes conduct which discloses a reckless indifference to the consequences of the Defendants' actions, without the exertion of any substantial effort to avoid exposing the local population to continued and repeated TCE exposure.

62. As a direct result of the gross negligence of the Defendants, the Plaintiffs have suffered personal injuries, damages, and emotional distress because of their repeated and continued exposure to TCE.

63. That the Defendants' continued and repeated behavior constitutes actions performed with actual malice, gross negligence, and a pattern of behavior that evidences a willful, wanton, or reckless disregard for the safety of others.

### **Count 4: Negligent Infliction of Emotional Distress**

64. As alleged in Count 2 and 3, the Defendants at all times relevant to this action owed a duty of reasonable care to the Plaintiff(s), along with the town and communities affected by the Defendants' pollution.

65. The conduct of the Defendants in the past and continuing to this day continue to expose the local community and its populace to dangerous chemical exposure, constituting a breach of the duties owed by the Defendants.

66. The courts of Mississippi recognize claims for negligent infliction of emotional distress, as long as the Plaintiff(s) can plead and prove some sort of injury or demonstrable harm, whether physical

or mental, as long as that harm must have been reasonably foreseeable to the Defendants. *Goode v. Walmart, Inc.*, 372 So.3d 149, 164 (Miss. App. 2023); *Morgan v. Greenwaldt*, 786 So.2d 1037, 1044 (Miss. 2001); *Orr v. Morgan*, 230 So.3d 368, 377 (Miss. App. 2017).

67. At all times, the Defendants were fully aware of the dangerous and toxic nature of the chemical TCE and the toxic nature of its effects upon humans and the environment. Accordingly, by breaching their duties to the Plaintiff(s) and the local community, the Defendants are directly responsible for the physical and mental harms and damages suffered by the many people impacted by the Defendants' spread of TCE throughout the local community.

#### **Count 5: Intentional Infliction of Emotional Distress**

68. Courts within the State of Mississippi recognize claims for intentional infliction of emotional distress, in cases where the Plaintiff(s) can prove that the emotional distress was a reasonably foreseeable result of the Defendants' conduct, in situations where the Defendants' conduct was malicious, intentional, or outrageous. *Morgan v. Greenwaldt*, 786 So.2d 1037, 1044 (Miss. 2001); *Smith v. Malouf*, 722 So.2d 490, 497 (Miss. 1998).

69. The conduct of the Defendants' in intentionally and knowingly exposing the Plaintiff(s), the local populace, and the entire environment, soil, air, and groundwater of the effected community to sustained and continuous exposure to TCE constitutes conduct that is anathema to anything remotely close to considered, reasonable, or civilized conduct. The Defendants' actions in intentionally poisoning the residents, lands, and surrounding environment over the course of nearly half a century is the definition of outrageous, malicious, and intentional conduct.

70. As a result of the conduct of the Defendants, the Plaintiff(s) have suffered physical and emotional damages that continue to the present day, and continue to get worse.

#### **Count 6: Fraudulent Concealment**

71. Throughout the last half-century, the Defendants have engaged in a pernicious, cruel, and shocking attempt to hide and/or conceal the damage that TCE pollution and exposure has caused to the

Plaintiff(s), the people of the surrounding community, and the environment throughout the land impacted by its pollution.

72. Even *decades* after being fully aware of the harmful effects of TCE exposure and its profoundly polluting effects upon the local population, livestock, soil, and groundwater, the Defendants have continued to overly and intentionally lie to the people, local government, and agents of the State of Mississippi about its continued refusal take responsibility for its actions and their wide-reaching effects upon the people and land that surround the plume.

73. The State of Mississippi recognizes the doctrine of fraudulent concealment, which requires a showing of acts or conduct that constitute and affirmative nature designed to prevent, and which does prevent, discovery of potential legal claims. *Stephens v. Equitable Life Assurance Soc'y*, 850 So.2d 78, 83-84 (Miss. 2003)(quoting *Reich v. Jesco, Inc.*, 526 So.2d 550, 552 (Miss. 1988)).

74. To toll the statute of limitations, the Plaintiff(s) must prove that the Defendants engaged in affirmative acts of concealment, and that despite investigating with due diligence, the Plaintiff(s) were unable to discover their claims. *Nygaard v. Getty Oil Co.*, 918 So.2d 1237, 1242 (Miss. 2005).

75. The facts alleged within this pleading set forth with detail the heinous and intentional nature of the Defendants' continued attempts to fraudulently and intentionally lie and conceal the horrors of what it has continued to do by exposing and polluting the local populace and environment with TCE which continues until the present day.

76. Accordingly, any delay in filing by the Plaintiff(s) is excused and protected under the doctrine of fraudulent concealment.

#### **Count 7: Equitable Estoppel**

77. The State of Mississippi recognizes the doctrine of equitable estoppel, which requires a representation by a party, reliance by another, and a change in position by the relying party. *Carr v. Town of Shubata*, 733 So.2d 261, 265 (Miss. 1999)(quoting *Westbrook v. City of Jackson*, 665 So.2d 833, 839 (Miss. 1995)).

78. The conduct of the Defendants in continuing to lie and misrepresent the extent of its pollution and exposure of TCE to the local populace and environment surrounding the plume constitutes evidence of an intent by the Defendants to mislead everyone from the extent of the harms and damage continuing to occur to the community.

79. The misrepresentations and outright lies by the Defendants have caused the Plaintiff(s) to be induced not to file or realize the extent of their legal claims.

80. This conduct by the Defendants resulting in any legal claims belonging to the Plaintiff(s) to potentially be barred by applicable statutes of limitations, and the Defendants knew or had reason to know that such consequences would follow from the actions of the Defendants. *Harrison Enters. v. Trilogy Commc'ns, Inc.*, 818 So.2d 1088, 1095 (Miss. 2002)(citing *PMZ Oil. Co. v. Lucroy*, 449 So.2d 201, 206 Miss. 1984)).

81. To the extent that any potential statutes of limitations may apply to bar legal claims by the Plaintiff(s), the inequitable and/or fraudulent conduct of the Defendants operates to allow the doctrine of equitable estoppel to bar any affirmative defenses based upon any statute of limitations. *Miss. Dep't of Public Safety v. Stringer*, 748 So.2d 662, 665 (Miss. 1999).

#### **Count 8: Continuing Tort Doctrine**

82. The actions of the Defendants constitute a continuing tort, as the Plaintiff(s), community, and local populace surrounding the plume continue to be exposed to TCE in the air, soil, and groundwater surrounding the plume to this very day, as TCE continues to pollute the area.

83. The State of Mississippi recognizes the doctrine of continuing tort.

84. Where a tort involves a continuing or repeated injury, the cause of action accrues at, and limitations begin to run, from the date of the last injury, or when the tortious acts cease. A continuing tort is one that is inflicted over a long period of time, and involves wrongful conduct that is repeated until desisted, with each day creating a separate cause of action. Continual unlawful acts by Defendants are sufficient to avoid any potential statute of limitations. *Stevens v. Lake*, 615 So.2d 1177, 1183 (Miss. 1993)(quoting C.J.S., *Limitations of Actions* § 177 at 230-31 (1987)).

85. As the Plaintiff(s) and population continue to be subjected to repeated and continuous TCE exposure as a result of the Defendants wrongful conduct, each day constitutes a continuing course of conduct for the Defendants, for which no statute of limitations defense may be raised.

#### **Count 9: Latent Injuries**

86. The nature of the injuries caused by exposure to TCE over prolonged periods of time causes latent injuries to occur, similar to how asbestos exposure causes injuries to physically manifest themselves decades following exposure. Latent injuries in the State of Mississippi are subject to the discovery rule. Miss. Code § 15-1-49; *Raddin v. Manchester Educational Foundation, Inc.*, 175 So.3d 1243 (Miss. 2015).

87. Even without Mississippi's own laws allowing for the use of the discovery rule, federal courts have found that in the context of hazardous waste cites and torts brought in relation to the harms caused by such pollution, federal preemption applies to any potential states statute which might limit liability beyond that accorded under the discovery rule contained within federal pollution statutes. *See* 42 U.S.C. § 9613(f); *Steego Corp. v. Ravenal*, 830 F.Supp. 42, 47 (D. Mass. 1993); *U.S. v. Sharon Steel Corp.*, 681 F.Supp. 1492, 1496 (D. Utah 1987); *Freudenberg-NOK Gen. Partnership v. Thomopoulos*, 35 Env't Rep. Cas. (BNA) 1461, (D. N.H. 1991).

88. Accordingly, any state statute of limitations is subject to federal preemption to the extent it may limit causes of action brought by the Plaintiff(s) in a fashion not compliant with federal guidance and authority.

#### **Count 10: Products Liability**

89. Defendant Detrex Corporation was the manufacturer and distributor of the equipment and solvents responsible for the TCE pollution and exposure through the greater Water Valley area.

90. Defendants EnPro Industries and EnPro Holdings served as a user of those products downstream in the stream of commerce.

91. Defendants Italmatch SC, LLC, and Italmatch DW, LLC, were formed for the purposes of the purchase, acquisition, and or merger with Detrex Corporation. The traditional rule is that a corporation

or entity that acquires manufacturing assets does not that the liabilities of the predecessor company from where the assets were acquired, for the purposes of products liability. However, the State of Mississippi recognizes four exceptions to this rule. Those exceptions are: 1) when the successor expressly or impliedly agrees to assume the liabilities of the predecessor; 2) when the transaction may be considered a de facto merger; 3) when the successor may be considered a “mere continuation” of the predecessor; or 4) when the transaction was fraudulent. *Mozingo v. Correct Mfg. Corp.*, 752 F.2d 168 (5th Cir. 1985); *Harris v. New Werner Holding Co., Inc.*, 390 Fed. Appx. 395 (5th Cir. 2010); *Scordino v. Hopeman Bros., Inc.*, 662 So.2d 640 (Miss. 1995); *Lemelle v. Universal Mfg. Corp.*, 752 F.2d 168 (5th Cir. 1994); *De Facto Merger of Two Corporations*, 20 Am.Jur. Proof of Facts 2d 609 (1979). The Plaintiffs have cause to believe that those exceptions apply to the acquisition/merger of Dextrex Corporation by the Italmatch entities formed in Delaware during the purchase of Dextrex Corporation in 2017.

92. The defendants referenced under this count each are subject to product liability claims for failure to warn or inadequacy to warn of the true nature of the hazards of exposure and pollution to humans from contact with TCE from the purchase and use of the products created by Detrex Corporation. While some warnings in relation to exposure to TCE may have been made, they either fully failed or drastically were inadequate in providing any warning about the nature of long-term pollution, the carcinogenic effects of TCE, or the various other horrific health and nervous system issues that are and were known to be associated with exposure to TCE.

93. Accordingly, the defendants are each liable for the damages TCE exposure has caused to the Plaintiffs as a result of the use and exposure to a dangerous and defective product.

#### **Count 11: Medical Monitoring Damages**

94. The State of Mississippi does not have any statutes or common law that expressly allows legal theories sounding in the doctrines of medical monitoring claims for those exposed to chemicals or substances which may increase their potential for future medical harms. However, the Supreme Court has directly addressed this question and authorized the potential for recoveries of damages under these legal theories in limited circumstances. *Paz v. Brush Engineered Materials, Inc.*, 949 So.2d 1(Miss. 2007).

95. In discussing the handling of similar arguments, the Supreme Court made clear that such claims may be allowed to the extent that Plaintiffs may establish willful, wanton, or intentional nature of the injuries, or prove the validity of damages arising from such conduct.

96. To the extent that the claims of the Plaintiffs may prove such conduct, the Plaintiffs seek to request that the Court consider and grant such damages within the confines of the language described by the Supreme Court.<sup>10</sup>

### **PUNITIVE DAMAGES**

97. Because Defendants' above-described acts of discharging trichloroethylene into the environment constitutes willful, wanton, and/or reckless disregard for the safety of others, Defendants are liable to Plaintiffs for punitive and/or exemplary damages.

### **DAMAGES**

98. As a direct and proximate result of Defendants' tortious conduct, the Plaintiffs have suffered and sustained the following injuries and damages for which Plaintiffs seek an award in an amount to proven at trial:

- a. Past, present, and future damages for physical and personal bodily injuries for which they have sought and continue to seek medical treatment, all of which have caused them to endure, and continue to endure, immense physical pain, suffering, and mental anguish;
- b. Past, present, and future pain, mental and emotional distress, anguish, depression, anxiety and loss of enjoyment of life;
- c. Past, present, and future medical expenses;
- d. Past, present, and future lost wages;

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<sup>10</sup> Counsel for the Plaintiffs recognize that this is not a truly independent cause of action, as described by the referenced case's description. However, given the limited nature of the case law on this issue in Mississippi since the issuance of the referenced case, this issue has been fashioned as an independent count for the purposes of pleading simply to properly alert the Court and defendants to this case of the potential availability of arguments for medical monitoring damages.



- e. Past, present, and future loss of earning capacity;
- f. Permanent disability and diminished life expectancy;
- g. Pre-judgment interest;
- h. Punitive and/or exemplary damages; and
- i. All other damages proven at trial and/or allowed by law, rule, or equity.

**JURY DEMAND**

Pursuant to Fed. R. Civ. P. 38, Plaintiffs demand a jury trial as to all issues so triable.

**PRAYER FOR RELIEF**

99. Plaintiffs pray for judgment of and from Defendants, jointly and severally, for monetary damages to make Plaintiffs whole, together with interest, expenses, costs of suit, attorney fees, as appropriate, and all such other relief as the Court deems just and proper, including:

- a. Compensatory damages to Plaintiffs for their past, present, and future (1) physical and personal bodily injuries, (2) medical expenses, (3) immense physical pain, suffering, and mental anguish, (4) lost wages, (5) disability, and (6) diminished life expectancy;
- b. Full compensatory damages to the Plaintiffs for past, present, and future special damages as allowed by law;
- c. Exemplary or punitive damages against Defendants under the law of the State of Mississippi;
- d. All other damages allowed by law, rule, or equity.

**THIS**, the 4<sup>th</sup> day of June, 2024.

**ODESTER ANDREWS, EXCELL VANCE, JOSEPHINE  
MARTIN, EDDIE FOSTER, BILLY HARRIS, JOAN  
BERRYHILL, PATRICIA CAMP, AND CLAYFERS  
WALTON**

/s/ Andrew F. Tominello

**GEORGE F. HOLLOWELL, JR. (MSB # 2559)  
ANDREW F. TOMINELLO (MSB #104183)**

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[aft@hollowelllawfirm.com](mailto:aft@hollowelllawfirm.com)

## 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**

Odester Andrews, et al.

(b) County of Residence of First Listed Plaintiff Yalobusha County, MS  
(EXCEPT IN U.S. PLAINTIFF CASES)

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

(See Attachment)

**DEFENDANTS**

Enpro Industries, Inc., et al.

County of Residence of First Listed Defendant Mecklenburg County, NC  
(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 ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 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 <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>INTELLECTUAL PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <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. § 1332Brief description of cause:  
Torts - Negligence/Gross Negligence/Nuisance/Trespass**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.DEMAND \$  
More than \$75,000.00

CHECK YES only if demanded in complaint:

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

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

Jun 4, 2024

SIGNATURE OF ATTORNEY OF RECORD

/s/ Andrew F. Tominello (MSB # 104183)

**FOR OFFICE USE ONLY**

RECEIPT #2396952

AMOUNT \$405

APPLYING IFP

JUDGE SA

MAG. JUDGE RP

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

**ATTACHMENT**

*Attorneys for Plaintiffs*

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