CAUSE NO. D-0157746

DARLENE COKER AND SPOUSE, ROY COKER	§	IN THE DISTRICT COURT OF
	§	
VS.	§	
	§	
BILL THAMES PHARMACY, INC.; CORRIGAN ENTERPRISES, INC. f/k/a Johnson-Johnson Baby f/k/a S.W.S. Pharmacy, Inc.; FERTITTAS FINER FOODS, INC.; GIANT FOOD DISCOUNT CITY, INC., HENKE & PILLOT, INC. HSTN., INC. f/k/a J&J Baby Products; JOHNSON & JOHNSON PROFESSIONAL; LOVOI AND SONS PHARMACIES, INC.; McNEIL PPC, INC. Products; THE KROGER COMPANY	§	'97 OCT 20 A8:32 JEFFERSON COUNTY, TEXAS
	§	
	§	136TH JUDICIAL DISTRICT

DEFENDANT'S ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now the entity sued under the name McNEIL PPC, INC. f/k/a Johnson-Johnson Baby Products, one of the defendants in the above entitled and numbered cause, and in response to Plaintiffs' Original Petition, makes and files this, its Original Answer, and as grounds therefor would respectfully show the Court the following:

1.

This defendant objects and specially excepts to paragraph 3 of Plaintiffs' Original Petition wherein plaintiffs allege the following:

> "Plaintiffs sue for the personal injury of Darlene Coker inflicted by the negligent, gross negligent, fraud, deceit, misrepresentations and defective products of the defendants."

This defendant would show that the allegations of negligence, gross negligence, fraud, deceit, misrepresentations and defective products are all vague, general and indefinite, and plaintiffs have failed to allege any act or omission complained of that would give rise to a claim for negligence, or gross negligence, or any act that would constitute fraud, deceit or any alleged misrepresentation or the particular type of defect being complained of, and therefore this defendant does not have fair notice of the allegations being asserted against him and cannot properly prepare its defenses. Defendant moves the Court to strike the allegation from plaintiffs' pleading and of this exception, prays judgment of the Court.

2.

This defendant objects and specially excepts to paragraph 4 of Plaintiffs' Original Petition wherein plaintiffs allege the following:

> "Defendants negligently and intentionally caused Darlene Coker to be fatally exposed to talc, proximately causing her to contract peritoneal mesothelioma."

This defendant would show that the allegation that this defendant "negligently and intentionally caused Darlene Coker to be fatally exposed to talc," is vague, general and indefinite, and plaintiffs have failed to specify any act or omission complained of that would give rise to a claim of negligence, or to specify in any manner how this defendant is alleged to have "intentionally" caused plaintiff to be fatally exposed to talc, and therefore this defendant does

not have fair notice of the allegations being asserted against it and cannot properly prepare its defenses. Defendant moves the Court to strike the allegation from plaintiffs' pleading and of this exception, prays judgment of the Court.

3.

This defendant objects and specially excepts to paragraph 5 of Plaintiffs' Original Petition wherein plaintiffs allege the following:

> "Defendants made, sold, or specified, talc products which were defective and unreasonably dangerous as designed, manufactured and marketed. These products, used as intended and foreseen, necessarily released poisonous talc, which was a producing cause of the mesothelioma."

This defendant would show that plaintiffs have failed to specify which product it allegedly made, sold, or specified ... designed, manufactured [or] marketed" which was allegedly defective and unreasonably dangerous, and therefore this defendant does not have fair notice of the allegations being asserted against it and cannot properly prepare its defenses. Defendant moves the Court to strike the allegation from plaintiffs' pleading and of this exception, prays judgment of the Court.

4.

This defendant objects and specially excepts to paragraph 6 of Plaintiffs' Original Petition wherein the plaintiffs allege the following:

> "Defendants had an actual, subjective awareness of the capacity of airborne talc components in susceptible individuals, and defendants knew they could not with confidence predict precisely who would become sickened,

> yet they intentionally failed to protect, warn, instruct or otherwise prevent the inevitable exposures and totally preventable disease, which conduct evidenced such an entire want of care as to be grossly negligent and battery."

Defendant objects to paragraph 6 for the reason that plaintiffs have failed to specify which product this defendant allegedly "made, sold, or specified, ... designed, manufactured [or] marketed" which allegedly had the capacity to "sicken" susceptible individuals, and of which defendant was subjectively aware, or which product defendant allegedly manufactured from which defendant "intentionally failed to protect, warn, instruct or otherwise prevent the inevitable exposures and totally preventable disease," and therefore defendant does not have fair notice of the allegations being asserted against it and cannot properly prepare its defenses. Defendant moves the Court to strike the allegation from plaintiffs' pleading and of this exception, prays judgment of the Court.

5.

This defendant objects and specially excepts to that portion of paragraph 6 wherein plaintiffs allege "battery," for the reason that the allegation is vague, general and indefinite and plaintiffs have failed to specify any acts which would constitute legal battery, and therefore defendant does not have fair notice of the allegations being asserted against it and cannot properly prepare its defenses. Defendant moves the Court to strike the allegation

from plaintiffs' pleading and of this exception, prays judgment of the Court.

6.

This defendant objects and specially excepts to that portion of paragraph 7-d wherein plaintiffs allege damages for "loss of inheritance," for the reason that inheritance damages are not recoverable absent a wrongful death claim, which has not been asserted in this cause of action. Plaintiffs are therefore attempting to place a greater burden on this defendant than is allowed or permitted by law. Defendant moves the Court to strike the allegation from plaintiffs' pleading and of this exception, prays judgment of the Court.

7.

This defendant objects and specially excepts to paragraph 7-f of Plaintiffs' Original Petition wherein plaintiffs allege "hedonic damages for lifetime lost," for the reason that there is no such compensable item of damages permitted by common law or statute in the state of Texas, and plaintiffs are therefore attempting to place a greater burden on this defendant than is allowed or permitted by law. Defendant moves the Court to strike the allegation from plaintiffs' pleading and of this exception, prays judgment of the Court.

8.

This defendant objects and specially excepts to that portion of paragraph 7-h wherein plaintiffs seek damages for "prejudgment

interest from the first date of injurious exposure," for the reason that there is no statutory or common law basis for recovery of prejudgment interest from "the date of injurious exposure," the same being specified, if at all, by statute. Plaintiffs are attempting to place a greater burden on this defendant than is allowed or permitted by law and defendant moves the Court to strike the allegation from plaintiffs' pleading and of this exception, prays judgment of the Court.

9.

This defendant objects and specially excepts to that portion of paragraph 1 wherein plaintiffs claim damages "in excess of the minimum jurisdictional limits of the Court," for the reason that the allegation is vague, general and indefinite and open-ended, and plaintiffs have failed to specify the total amount of damages sought from this defendant and therefore defendant does not have fair notice of all of the allegations being asserted against it and cannot properly prepare its defenses. Defendant moves the Court to require plaintiffs to amend and allege a total amount of damages being claimed in this lawsuit and of this exception, prays judgment of the Court.

10.

This defendant denies that he is liable to plaintiff for any amount of money whatsoever, and says that in any event, the damages which plaintiff could seek herein are limited by law pursuant to §11.01-11.04 of Art. 4590i, TEX. REV. CIV. STAT. ANN.

11.

This defendant would show that plaintiffs' cause of action is barred by the statute of limitations.

TO THE COURT ONLY

12.

Defendant denies that it is liable to plaintiffs for any amount of damages or money whatsoever, but states that inasmuch as plaintiffs have alleged exemplary and punitive damages, defendant hereby invokes **all** of the provisions of Chapter 41, TEX. CIV. PRAC. & REM. CODE, including but not limited to §§41.007 and 41.008.

13.

With respect to the allegations asserted by plaintiffs against this defendant and others, defendant hereby invokes **all** of the rights, remedies, elections and provisions of Chapters 32 and 33 of the TEX. CIV. PRAC. & REM. CODE, including but not limited to §§33.013 - 33.017.

WHEREFORE, PREMISES CONSIDERED, defendant prays that its special exceptions be sustained, and that upon final trial and hearing hereof plaintiffs take nothing from it, but that it go hence without day and recover its costs in this behalf expended, and for such other and further relief, both at law and in equity, to which defendant may show itself to be justly entitled.

Respectfully submitted,

FOWLER, WILES & KEITH, L.L.P.

By: William Dixon Wiles

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing answer was forwarded to plaintiffs' counsel this 17th day of October, 1997.

William Dixon Wiles
William Dixon Wiles