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**STELLA H. PIDGEON, Individually  
and as Administratrix of the Estate  
of JOHN F. PIDGEON, Deceased  
47 E. Vine Street  
Gibbstown, NJ 08027**

**Plaintiff**

vs.

**BAYER CORPORATION  
c/o CT Corporation Systems  
1635 Market Street  
Philadelphia, PA 19103**

and

**BAYER AG  
c/o CT CORPORATION SYSTEMS  
1635 Market Street  
Philadelphia, PA 19103**

**Defendants**

**COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY**

**DECEMBER TERM, 2006**

**NO.: 00628**

**JURY TRIAL DEMANDED**

**CIVIL ACTION COMPLAINT**

Plaintiff, Stella H. Pidgeon, Individually and Administratrix of the Estate of her husband, John F. Pidgeon, deceased, residing at 47 East Vine Street, Gibbstown, NJ 08027, by way of this Complaint against Defendants, states:

**PARTIES**

1. Plaintiff, Stella H. Pidgeon (hereinafter "Plaintiff"), is an adult individual residing at 47 East Vine Street, Gibbstown, NJ 08027.

2. Plaintiff's husband and decedent, John F. Pidgeon, died on August 5, 2007 as a result of the factual events that form the basis of this Complaint.

3. Stella H. Pidgeon was appointed Administratrix of the Estate of John F. Pidgeon by the Surrogate's Court of Gloucester County, State of New Jersey, on October 3, 2007.

4. Defendant **Bayer Corporation** is an Indiana Corporation that has its principal place of business and United States Headquarters in Pittsburgh, Pennsylvania. Bayer Corporation was at all times responsible for the research, testing, development, manufacturing, sales, distribution, promotion, labeling and marketing of Trasylol which it placed into the stream of commerce in the United States. At all times relevant hereto, Defendant Bayer Corporation regularly conducted business in the State of Pennsylvania and the in Philadelphia County.

5. Defendant **Bayer AG** is a German Corporation that has its corporate headquarters at Leverkusen, Germany. Bayer AG was at all times responsible for the research, testing, development, manufacturing, sales, distribution, promotion, labeling and marketing of Trasylol which it placed into the stream of commerce in the United States. At all times relevant hereto, Defendant Bayer AG regularly conducted business in the State of Pennsylvania and the in Philadelphia County.

6. Defendant Bayer Corporation in its own right and through subsidiaries and predecessors manufactured, sold, distributed, developed, labeled, packaged, and marketed Trasylol [also known as aprotinin, bovine pancreatic trypsin inhibitor, and BPTI] and continues to manufacture, sell, distribute, develop, label, package, and market Trasylol, aprotinin, bovine pancreatic trypsin inhibitor, and BPTI.

7. Defendant Bayer Corporation in its own right and through subsidiaries and predecessors manufactured, sold, distributed, developed, labeled, packaged, and marketed Trasylol [also known as aprotinin, bovine pancreatic trypsin inhibitor, and BPTI] and continues to manufacture, sell, distribute, develop, label, package, and market Trasylol, aprotinin, bovine pancreatic trypsin inhibitor, and BPTI.

#### **Facts Relative to Mr. Pidgeon's Injury and Death**

8. In December of 2004, John F. Pidgeon suffered renal failure following a coronary artery bypass graft [CAGB] surgery at Our Lady of Lourdes Medical Center in Camden, NJ in which he was administered the drug Trasylol.

9. Prior to the CAGB surgery, the Mr. Pidgeon's creatinine level was at 1.2 mg/dl and his blood urea nitrogen (BUN) test revealed a level of 21 mg/dl. In the days following the surgery, Mr. Pidgeon's creatinine rose to 9.7 mg/dl and his BUN rose to a level of 98 mg/dl. The normal creatinine level ranges from 0.7-1.4 mg/dl while the BUN level ranges between 7-20 mg/dl. As was indicated by the elevated creatinine and BUN levels, Mr. Pidgeon was in a state of acute renal failure following the surgery.

10. As a result of Mr. Pidgeon's acute renal failure caused by Trasylol, Mr. Pidgeon's health care providers placed him on kidney dialysis for a period of time. Mr. Pidgeon continues to suffer from severe and debilitating medical problems caused by the damage to his kidneys after suffering from acute renal failure.

11. This action involves the decedent, John F. Pidgeon, identified above, who developed acute renal failure as well as other diseases that led to his death from the use of the drug Trasylol.

**FACTUAL ALLEGATIONS**  
**DEVELOPMENT OF TRASYLOL**

12. Bayer AG received Food and Drug Administration (“FDA”) approval for the marketing of Trasylol [generic: aprotinin] in 1993. Original approval was for use in coronary artery bypass graft patient who are at an increased risk for blood loss. The original label contained no warning about increased risk of renal dysfunction associated with use of Trasylol.

13. In 1996, Defendants sought to increase the population of patients to whom Trasylol could be administered and, as of August 28, 1998, the Trasylol label contained the following information under the heading “INDICATIONS AND USAGE:”

Trasylol is indicated for prophylactic use to reduce perioperative blood loss and need for blood transfusion in patients undergoing cardiopulmonary bypass in the course of coronary artery bypass graft surgery.

14. As of August 28, 1998, the Trasylol label contained no information in the warnings section about an increased risk of renal disfunction following the administration of the drug during coronary artery bypass graft (CABG) surgeries.

15. In January of 2006, an article was published by Dr. D.T. Mangano in the *New England Journal of Medicine* calling into the question the safety of Trasylol. Studies referenced in the article have indicated that the use of Trasylol doubles the risk of renal failure requiring dialysis in patients undergoing primary, repeat, and complex coronary artery surgery. At the time of the article, it was estimated that 10,000 patients were unnecessarily on dialysis due to their exposure to Trasylol. The increased risk of kidney failure related to Trasylol, however, was NOT discovered in patients taking less

expensive generic alternatives: aminocaproic acid and tranexamic acid. The study reports that if generic drugs are given instead of Trasylol, more than 11,050 kidney dialysis complications could be avoided, \$1 billion in healthcare costs would be saved, and the cost of medication decrease by \$250 million. On February 8, 2006, the FDA issued a Public Health Advisory regarding these findings.

16. On September 21, 2006, the FDA held a public meeting of the Cardiovascular and Renal Drugs Advisory Committee to discuss the safety and overall risk-benefit profile for Trasylol. At that meeting, the committee discussed the findings from the two published observational studies, the Bayer worldwide safety review, and the FDA review of its own post-marketing database.

17. On September 27, 2006, Defendants told the FDA that it had conducted an additional safety study of Trasylol. The preliminary findings from this new observational study of patients from a hospital database reported that use of Trasylol may increase the chance for death, serious kidney damage, congestive heart failure and strokes. FDA was not aware of these new data when it held the September 21, 2006, Advisory Committee meeting on Trasylol safety.

18. On September 29, 2006, the FDA issued another Public Health Advisory concerning Trasylol. The Advisory recommended the following to healthcare providers:

- Physicians who use Trasylol should carefully monitor patients for the occurrence of toxicity, particularly to the kidneys, heart, or brain, and promptly report observed adverse event information to Bayer Pharmaceuticals, the drug manufacturer, or to the FDA MedWatch program, by phone (1-800-FDA-1088), by fax (1-800-FDA-0178), or by the Internet at <http://www.fda.gov/medwatch/index.html>.

- Physicians should consider limiting Trasylol use to those situations where the clinical benefit of reduced blood loss is essential to medical management of the patient and outweighs the potential risks.

19. The aforementioned warnings and indications were inadequate and misleading in several ways including, but not limited to, the following:

a. At the time, Defendants knew or should have known that the use of Trasylol could cause an increased risk for renal dysfunction;

b. At the time, Defendants knew or should have know that Trasylol usage should be limited to CABG patients who are at an increased risk of blood loss or blood transfusion;

c. At the time, Defendants knew or should have known that patients should not be administered Trasylol more than once during a twelve month period;

d. At the time, Defendants represented that adequate follow-up studies would be, when, in fact, the Defendants never intended to fund or complete such studies on a timely basis, nor were such studies performed on a timely basis;

e. Since 1993, the Defendants knew that Trasylol use should be limited to CABG patients with an increased risk of blood loss, but sought to change the indications for Trasylol use to encompass all patients undergoing CABG surgery in 1996;

f. The warning given by the Defendants was not updated with respect to renal dysfunction until December 15, 2006, despite increasing knowledge of the Defendants of the dangers associated with their product;

g. The indications in the label were not updated to their pre-1998 form (limiting usage of Trasylol to patients with an increased risk of blood loss) until December 15, 2006, despite increasing knowledge of the Defendants of the dangers associated with their product.

20. Defendants actively marketed and promoted the sale of Trasylol through the use of sales representatives and sales tactics directed to physician prescribers including advertisements in medical journals and other industry publications. The active

marketing strategy ramped up sales leading to increases in total revenue from the sale of Trasylol. For example, during the 2005 fiscal year, Trasylol sales increased 87% during the second quarter and 31% in the third quarter.

21. Despite their knowledge of the risk of renal dysfunction in the users of Trasylol, the Defendants did not adequately warn of the risk of renal dysfunction, kidney failure, dialysis, and other kidney problems until December of 2006.

22. Similarly, despite having the knowledge that Trasylol use can only benefit CABG patients at high risk for blood loss, the Defendants continued to market the product for use in all CABG surgeries until December of 2006.

23. Defendants issued a new label for its Trasylol product on December 15, 2006. The label carried with it the following warning concerning the potential of renal dysfunction post exposure to the drug:

**Renal Dysfunction:** Trasylol<sup>®</sup> administration increases the risk for renal dysfunction and may increase the need for dialysis in the perioperative period. This risk may be especially increased for patients with pre-existing renal impairment or those who receive aminoglycoside antibiotics or drugs that alter renal function. Data from Bayer's global pool of placebo-controlled studies in patients undergoing coronary artery bypass graft (CABG) surgery showed that the incidence of serum creatinine elevations >0.5 mg/dL above pre-treatment levels was statistically higher at 9.0% (185/2047) in the high-dose aprotinin (Regimen A) group compared with 6.6% (129/1957) in the placebo group. In the majority of instances, post-operative renal dysfunction was not severe and was reversible. However, renal dysfunction may progress to renal failure and the incidence of serum creatinine elevations >2.0 mg/dL above baseline was slightly higher in the high-dose aprotinin group (1.1% vs. 0.8%). Careful consideration of the balance of benefits versus potential risks is advised before administering Trasylol<sup>®</sup> to patients with impaired renal function (creatinine clearance < 60 mL/min)

or those with other risk factors for renal dysfunction (such as perioperative administration of aminoglycoside or products that alter renal function). (See **PRECAUTIONS** and **ADVERSE REACTIONS: Laboratory Findings: Serum Creatinine.**)

### **Definition of Renal Dysfunction Requiring Dialysis and its Effect**

24. Decedent, John F. Pidgeon, suffered from acute renal failure following CABG surgery in 2004. Acute renal failure is a rapid loss of renal function due to

damage to the kidneys, resulting in retention of nitrogenous (urea and creatinine) and non-nitrogenous waste products that are normally excreted by the kidney. Depending on the severity and duration of the renal dysfunction, this accumulation is accompanied by metabolic disturbances, such as metabolic acidosis and hyperkalaemia, changes in body fluid balance, and effects on many other organ systems. It can be characterised by oliguria or anuria (decrease or cessation of urine production), although nonoliguric acute renal failure may occur.

25. Renal failure is generally diagnosed when when creatinine or blood urea nitrogen tests are markedly elevated in an ill patient, especially when oliguria is present. Previous measurements of renal function may offer comparison, which is especially important if a patient is known to have chronic renal failure as well. If the cause is not apparent, blood tests and examination of a urine specimen is typically performed to a diagnosis of acute renal failure. Increased levels of BUN and creatinine are the hallmarks of a diagnosis of acute renal failure.

26. For some patients suffering from acute renal failure, dialysis becomes necessary. Dialysis is a type of renal replacement therapy which is used to provide an artificial replacement for lost kidney function due to renal failure. It is a life support treatment. When healthy, the kidneys remove waste products from the blood and also remove excess fluid in the form of urine. Dialysis treatments have to duplicate both of these functions as dialysis (waste removal) and ultrafiltration (fluid removal).

27. Trasyolol use can cause renal dysfunction, including, but not limited to, acute renal failure requiring a patient to undergo dialysis, and acute renal failure resulting in death.

## NEGLIGENCE

### **A. DUTIES AND OBLIGATIONS OF THE DEFENDANTS**

28. The Defendants owed to the decedent, John F. Pidgeon, or his health care providers a duty of care:

(a) to ensure that Trasylol was appropriately tested to determine whether there were any potentially adverse effects due to the use of Trasylol;

(b) to ensure that Trasylol was fit for its intended and/or reasonably foreseeable use;

(c) to warn that use of Trasylol carried a significant risk of renal dysfunction, including acute renal failure requiring dialysis;

(d) to conduct adequate tests and clinical trials to determine the degree of risk associated with the use of Trasylol;

(e) to conduct ongoing tests and clinical trial with long-term follow-up to determine the long-term effects and risks of continued use of Trasylol;

(f) to ensure that prescribing physicians were kept fully and completely informed of all risks associated with Trasylol;

(g) to monitor, investigate, evaluate and follow up on adverse reactions to the use of Trasylol;

(h) to properly inform the FDA and other regulatory agencies of the risk of renal dysfunction, including acute renal failure requiring dialysis, associated with the use of Trasylol.

29. Although renal dysfunction may improve for some patients after they are given Trasylol, the Defendants knew or should have known that recovery may not be complete and that all patients may not recover.

### **B. THE RISKS OF USING TRASYLOL – INFORMATION TO PATIENTS**

30. The risks associated with the use of Trasylol were in the exclusive knowledge and control of Defendants. The extent of the risks was not known and could not have been known to the decedent, John F. Pidgeon. The injuries of the Mr. Pidgeon

would not have occurred but for the negligence of the Defendants in failing to ensure that Trasylol was safe for use or, in the alternative, for failing to provide an adequate warning of the risks associated with Trasylol to Mr. Pidgeon and his physicians. In the 1998 and 2003 Trasylol labels, there is no warning that exposure to the drug could result in renal dysfunction such as acute renal failure. Furthermore, from August 28, 1998 to December 15, 2006, the indications for use of Trasylol suggested that the drug should be administered to all CABG patients as opposed to only those patients with high risk of blood loss during surgery. These warning and indications were inadequate.

**C. DEFENDANTS NEGLIGENTLY BREACHED THEIR DUTY OF CARE**

31. The Defendants breached their duty of care to Mr. Pidgeon as described above in the following respects:

- (a) the Defendants failed to conduct adequate tests and clinical trials initially and on an ongoing basis to determine the risks associated with the use of Trasylol;
- (b) the Defendants failed to conduct ongoing studies on the risks and efficacy of Trasylol;
- (c) the Defendants failed to provide an or any adequate warnings of the inherent risks associated with the use of Trasylol;
- (d) the Defendants failed to warn Mr. Pidgeon and his physicians about the potential for acute renal failure associated with use of Trasylol;
- (e) the Defendants failed, after notice of dangers with Trasylol, to issue adequate warnings, recall the drug, publicize their problem and/or otherwise act properly and in a timely manner to alert the public, Mr. Pidgeon, and his physicians of the inherent dangers;
- (f) the Defendants manufactured, marketed, distributed and sold Trasylol without adequately disclosing the significantly increased risk of renal dysfunction;
- (g) the Defendants failed to give the FDA complete and accurate information concerning Trasylol by failing to disclose the risks on a timely basis;

- (h) the Defendants failed to adequately warn Mr. Pidgeon and his physicians of the risks then known or which were reasonable foreseeable with the use of Trasylol;
- (i) the Defendants, with full knowledge that Trasylol posed a significant increased risk of renal dysfunction, failed to warn Mr. Pidgeon of same and instead continued to sell, market, and distribute Trasylol throughout the United States and elsewhere;
- (j) the Defendants failed to establish adequate procedures to educate their sales representatives and prescribing physicians with respect to the correct use of Trasylol and the risks associated therewith;
- (k) the Defendants failed to provide proper long term investigations of the effects and risks of Trasylol;
- (l) the Defendants failed to provide proper long term studies and investigations of the risks and benefits of Trasylol as compared to its less expensive competitors;
- (m) the Defendants failed to adequately monitor, evaluate and act upon adverse reactions to Trasylol;
- (n) the Defendants falsely stated that Trasylol was safe and fit for its intended purpose and of merchantability quality when they knew or ought to have know that these representations were false;
- (o) the Defendants misstated the state of research, opinion, and medical literature pertaining to the purported benefits of Trasylol and its associated risks;
- (p) the Defendants failed to accurately, candidly, promptly, and truthfully disclose all consumer complaints and adverse effects of Trasylol to the FDA;
- (q) the Defendants failed to conform with applicable disclosure and reporting requirements pursuant to the *Food and Drug Act* and the regulations contained therein; and
- (r) the Defendants encouraged their employees to increase sales volumes while neglecting to inform consumers, retailers, hospitals and physicians of the side effects of Trasylol.

32. As a direct result of Defendants' acts and omissions as described herein, John F. Pidgeon was caused to suffer severe personal injuries, pain and suffering, severe emotional distress and harm, financial or economic loss, and death.

## **PRODUCTS LIABILITY**

33. At all times herein relevant, the Defendants were engaged in some manner in the business of designing, testing, manufacturing, selling, marketing, labeling, advertising, and/or supplying Trasylol.

34. Defendants knew that Trasylol would reach the ultimate users or consumers such as the decedent in the same condition it was at the time of supply or sale.

35. At the time of supply or sale, Trasylol was not merchantable or reasonably suited to the use intended, and its condition when sold was the proximate cause of the death of Mr. Pidgeon.

36. At the time of supply or sale, Trasylol was unreasonably dangerous, defective, or not reasonably fit, suitable, or safe for its intended use, and failed to perform in a manner reasonably expected in light of its nature and intended function, and the defects subjected Mr. Pidgeon to an unreasonable risk of harm as set forth in this Complaint and including but not limited to the following:

- (a) failing to supply adequate warnings with the product;
- (b) selling a product defective in its design, in that the risks inherent in its design outweighed the utility of the product;
- (c) failing to provide accurate and truthful instructions with regard to the prescribing of this product;
- (d) selling a product which was not safe for its intended use;
- (e) selling a product which was lacking one or more elements necessary to make it safe for its intended use;
- (f) manufacturing a product which was defective and which could cause injury to the user;
- (g) designing a product which was defective and which could cause injury to the user;

- (h) distributing a product which was defective and could cause injuries to a user;
- (i) failing to assure that ultimate users were advised of the dangers of said product;
- (j) failing to exercise reasonable care in the design of this product;
- (k) failing to exercise reasonable care in the marketing of this product;
- (l) failing to adequately and properly test said product;
- (m) delivering a product which was defective and could cause injury to the user;
- (o) producing a product which was defective and could cause injury to the user;
- (p) producing a product with component parts that Defendant knew or should have known increased the risk of harm to the user;
- (q) supplying a product which was defective and could cause injury to the user;
- (r) engaging in other acts regarding the manufacturing, designing, preparing, testing, producing, distributing, advising and selling of Trasylol as will be learned in discovery;

37. Defendants made representations regarding the safety, efficacy, and usefulness of their product without reasonable grounds for believing the representations to be true. At all times relevant, Defendants' representations were made with the intent to induce the decedent, decedent's health care providers, and the general public to rely on them. At all times, Mr. Pidgeon and his health care providers were unaware of the falsity or misleading nature of Defendants' representations, acted in reliance on the truth of the representations, and were justified in doing so.

38. Defendants' acts and omissions breached implied warranties of fitness and merchantability of the product supplied to and implanted in the decedent.

39. As a direct result of Defendants actions and omissions, the decedent, John F. Pidgeon, suffered the injuries as described herein that resulted in his death.

40. As the direct result of the Defendants' acts and omissions as described herein, John F. Pidgeon was caused severe personal injuries, pain and suffering, severe emotional distress and harm, and death

### **NEGLIGENT MISREPRESENTATION**

41. Defendants made the misrepresentations described above regarding the safety of Trasylol without sufficiently reasonable grounds for believing the representations to be true.

42. At all times relevant, Defendants' representations were made with the intent to induce Mr. Pidgeon, Mr. Pidgeon's health care providers, and the general public to rely on them.

43. At all times relevant, John F. Pidgeon and his health care providers were unaware of the falsity or misleading nature of Defendants' representations, acted in reliance on the truth of the representations, and were justified in doing so.

44. As the direct result of the Defendants' acts and omissions as described herein, the decedent, John F. Pidgeon, suffered severe personal injuries, pain and suffering, severe emotional distress and harm, and death.

### **INTENTIONAL MISREPRESENTATION**

45. Defendants, all or certain of them, made numerous false, misleading, and fraudulent representations to the general public and to Mr. Pidgeon's health care providers, leading Mr. Pidgeon's health care providers, among others, to believe that Defendants' product was safe.

46. These representations by Defendants, all or certain of them, were false. Defendants' product was not safe and had dangerous effects and consequences.

47. These representations by Defendants were material, in that if the decedent and his health care providers had known the truth, decedent may not have accepted the product into his body.

48. Defendants, all or certain of them, made these representations knowing them to be false and misleading, and with the intent to defraud, mislead, and deceive Mr. Pidgeon and Mr. Pidgeon's health care providers, and with the intent to induce Mr. Pidgeon's health care providers, Mr. Pidgeon, and the general public, to use Defendants' product.

49. Decedent, decedent's health care providers, and the general public, used Defendants' products. If the decedent and the decedent's health care providers had known the truth about the facts and dangers posed by Defendants' product, they would not have used Defendants' product in the same manner as they were used.

50. Mr. Pidgeon and his health care providers acted in reliance on Defendants' misrepresentation.

51. As a direct and proximate result of the fraudulent and misleading conduct described herein, Mr. Pidgeon suffered severe personal injuries, pain and suffering, severe emotional stress and harm, and death.

52. In performing the described acts or omissions, Defendants, all or certain of them, acted fraudulently, maliciously, or oppressively toward Mr. Pidgeon and others by compromising their safety for the benefit of profit. Defendants, all or certain of them, had actual knowledge, or should have had actual knowledge, of the serious dangers posed

to Mr. Pidgeon and others. Defendants, all or certain of them, intentionally or in a willful or conscious disregard for the safety of Mr. Pidgeon and others using its products, misled Mr. Pidgeon and health care professionals, including doctors, and hospitals, regarding the danger posed to Mr. Pidgeon and other patients from Trasylol so that Defendants, all or certain of them, could increase their financial profit.

53. As a direct and proximate result of Defendants' misrepresentations, Mr. Pidgeon was suffered severe personal injuries, pain and suffering, severe emotional distress and harm, and death.

### **BREACH OF EXPRESS WARRANTY**

54. Defendants placed Trasylol into the stream of commerce for sale and recommended its use to physicians and consumers without adequately warning physicians, the FDA, and consumers including the decedent, of the risks associated with its use.

55. Defendants had a duty to exercise reasonable care in selling, promoting, marketing, labeling, testing, designing, manufacturing, or distributing Trasylol including a duty to:

- a. ensure that the product did not cause the user unreasonably dangerous consequences;
- b. warn of risks; and
- c. disclose adverse material facts when making representations to physicians, the FDA, and the public at large, including decedent.

56. The decedent and his physicians reasonably relied on the Defendants and their agents to disclose known defects, risks, and dangers of Trasylol.

57. The decedent's physicians, the FDA, and the decedent had no knowledge of the falsity or incompleteness of the Defendants' statements and representations concerning the product at issue. Decedent justifiably and detrimentally relied on the warranties and representations of Defendants regarding the product at issue.

58. Defendants were under a duty to disclose the defective and unsafe nature of the product at issue to physicians, the FDA, consumers, and users, such as the decedent, Mr. Pidgeon. Defendants had sole access to material facts concerning the defects, and Defendants knew that physicians, the FDA, and users, such as Mr. Pidgeon, could not reasonably have discovered such defects.

59. By their acts and omissions, Defendants, their agents and employees expressly warranted to Mr. Pidgeon and his physicians that the products were merchantable and fit for the purpose intended.

60. This warranty was breached because the product at issue was not safe and effective as Defendants presented, and Mr. Pidgeon was injured.

61. As a direct result of Defendants' acts and omissions, as described herein, Mr. Pidgeon suffered severe personal injuries, pain and suffering, severe emotional distress and harm, and death.

#### **BREACH OF IMPLIED WARRANTY**

62. Trasylol carried with it an implied warranty of merchantability. Plaintiff alleges that such implied warranties include that Trasylol is safe and non-defective for its intended use. As averred above, Trasylol was not safe for its intended use and was not safe at all for certain individuals at risk.

63. None of the above referenced warranties have been effectively disclaimed by any Defendant in this action.

64. Defendants are liable for breach of implied warranty of merchantability as set forth above.

### **COUNT I – SURVIVAL ACTION**

65. Paragraphs 1-64 are incorporated herein by reference as if set forth in full.

66. Plaintiff, Stella Pidgeon, has the right to bring the following survival action on behalf of the Estate of Decedent under the Pennsylvania Survival Statute, 42 Pa.C.S.A. § 8302, and pursuant to 20 Pa.C.S.A. § 3373.

67. Due to the aforementioned conduct of the Defendants, John F. Pidgeon, during his life, suffered severe injuries resulting in renal failure and ultimately death.

68. As a result of aforementioned conduct of the Defendants, John F. Pidgeon has suffered a substantial increase in the risk of early death and a substantial shortening of his life expectancy.

69. As a result of the aforementioned conduct of the Defendants, John F. Pidgeon was not able to perform any activities of daily living and was permanently impaired in his ability to earn a living.

70. As a result of the aforementioned conduct of the Defendants, the Plaintiff and the Estate have incurred substantial medical expenses for John F. Pidgeon's medical treatment.

71. As a result of the aforementioned conduct of the Defendants which caused the above impairments and increased risk of death, John F. Pidgeon had a substantial loss

of earnings and earning capacity during his life and his Estate continues to suffer a loss of earnings and earning capacity.

72. As a direct and proximate result of the negligence of the Defendants, John F. Pidgeon suffered a permanent diminution of his ability to enjoy life and life's pleasures, and suffered severe pain and emotional distress.

73. The untimely death of John F. Pidgeon on August 5, 2007 was caused by the intentional and negligent conduct of the Defendants.

74. Plaintiff claims damages for the additional medical expenses incurred for the treatment of the Decedent prior to his death along with the loss of Decedent's net earnings from the date of death until the respective remainder of his work life and further claims all damages recoverable under the Pennsylvania Survival Statute.

75. Plaintiff claims on behalf of the Estate of John F. Pidgeon all damages suffered by the Estate by reason of the death of the Decedent, as well as for pain and suffering and fear of impending death the Decedent experienced prior to his death.

76. In addition, Plaintiff claims all other damages recoverable under the Pennsylvania Survival Statute.

#### **COUNT TWO - WRONGFUL DEATH ACTION**

77. Paragraphs 1 – 76 are incorporated herein by reference as if set forth in full.

78. Plaintiff, Stella Pidgeon, has the right to bring the following Wrongful Death Action on behalf of the wrongful death beneficiaries under the Pennsylvania Wrongful Death Statute, 42 Pa.C.S.A. § 8301, and pursuant to Pa.R.C.P. 2202(a).

79. The persons entitled by law to recover wrongful death damages as a result of the death of Decedent, are:

- a. Stella F. Pidgeon
- b. Wendy Mayes
- c. Jean Pidgeon
- d. Michael Pidgeon
- e. Angelina Pidgeon

80. Plaintiff claims damages of Defendants under and by virtue of the Pennsylvania Wrongful Death Statute for the pecuniary value of future services, support, society, comfort, and contribution of the Decedent that would have been rendered to the wrongful death beneficiaries for the expected remainder of their lives.

81. Plaintiff further demands payment for funeral and burial expenses.

82. In addition, Plaintiff demands payment for all economic losses suffered by the Decedent's survivors including costs of administration and other expenses reasonably associated with the Decedent's death.

WHEREFORE, the Plaintiff, Stella Pidgeon, Administratrix of the Estate of John F. Pidgeon, Deceased, demands compensatory damages against Defendants in an amount in excess of the statutory limit for arbitration together with attorneys' fees and costs.

Respectfully submitted,

ANAPOL, SCHWARTZ, WEISS, COHAN,  
FELDMAN & SMALLEY

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