

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE: 50-2016-CA-011771-XXXX-MB-AI

PAUL WILKIS, a married man; and,
JUDITH WILKIS, a married woman,

Plaintiffs,

vs.

RAMBOLL ENVIRON US
CORPORATION f/k/a ENVIRON
INTERNATIONAL CORPORATION, a
Virginia corporation; LENDLEASE (US)
CONSTRUCTION INC. f/k/a BOVIS LEND
LEASE, INC., a Florida corporation;
USO NORGE WHITNEY, LLC, a
Delaware limited liability company; THE
WHITNEY CONDOMINIUM
ASSOCIATION, INC., a Florida
corporation; PAUL ELLIOTT, an
individual; A2L TECHNOLOGIES, INC.,
a Florida corporation; and APEX
COMPANIES, LLC, a Delaware limited
liability company,

Defendants.

**AMENDED COMPLAINT
AND DEMAND FOR JURY TRIAL**

Plaintiffs PAUL WILKIS and JUDITH WILKIS, through the undersigned counsel,
sue Defendants RAMBOLL ENVIRON US CORPORATION f/k/a ENVIRON
INTERNATIONAL CORPORATION, a Virginia corporation; LENDLEASE (US)
CONSTRUCTION INC. f/k/a BOVIS LEND LEASE, INC., a Florida corporation; USO

NORGE WHITNEY, LLC, a Delaware limited liability company; THE WHITNEY CONDOMINIUM ASSOCIATION, INC., a Florida corporation; PAUL ELLIOTT, an individual; A2L TECHNOLOGIES, INC., a Florida corporation; and APEX COMPANIES, LLC, a Delaware limited liability company, for damages, and in support thereof allege as follows:

JURISDICTION AND VENUE

1. This is an action for damages in excess of \$15,000.00, exclusive of interest, costs, and attorneys' fees.

2. This Court has jurisdiction under Article V, section 5 of the Florida Constitution and Fla. Stat. § 26.012.

3. Venue is proper because of events giving rise to this action that occurred in Palm Beach County, Florida, as well as the domicile of at least one Defendant in this action.

4. All conditions precedent to bringing this action, if any, have occurred, have been waived, or would be a useless act and are accordingly waived.

PARTIES

5. Plaintiff **PAUL WILKIS** is an adult man. PAUL WILKIS was the licensed Community Association Manager at The Whitney Condominium ("The Whitney") in West Palm Beach, Florida from 2008 through 2013. As the licensed Community Association Manager for The Whitney, PAUL WILKIS had a right to be, and in fact was required to be, in and at The Whitney for the performance of his job duties. Subsequent to working at The Whitney, PAUL WILKIS was diagnosed with lung cancer. As a result of having

lung cancer, his marriage has been adversely affected, he was forced to sell his and his wife's marital home, and he was forced to drain funds. His life has been negatively impacted as a result of having lung cancer, to an extreme degree. In addition to his physical ailments, he is also suffering mental hardships as a result of having cancer. As a result of his lung cancer, PAUL WILKIS is no longer able to work, even though he was his family's primary earner.

6. Plaintiff **JUDITH WILKIS** is an adult woman. JUDITH WILKIS is the spouse of PAUL WILKIS. As in the case of her husband, JUDITH WILKIS's life has been negatively impacted, to an extreme degree, as a result of PAUL WILKIS having lung cancer. Their marriage lacks the fullness it once had, which is attributable to PAUL WILKIS's cancer.

7. Defendant LENDLEASE (US) CONSTRUCTION INC. f/k/a BOVIS LEND LEASE, INC. ("**LENDLEASE**") is a Florida corporation, and is *sui juris*. LENDLEASE built The Whitney.

8. Defendant THE WHITNEY CONDOMINIUM ASSOCIATION, INC. (the "**ASSOCIATION**") is a Florida non-profit corporation located 410 Evernia Street, West Palm Beach, FL 33401 and is *sui juris*. Defendant ASSOCIATION is the condominium association for The Whitney.

9. Defendant USO NORGE WHITNEY, LLC ("**USO**") is a foreign limited liability company incorporated in Delaware and doing business in the State of Florida, and is *sui juris*. Upon information and belief, as a result of financial difficulties of the initial developer of The Whitney, USO came to manage and control The Whitney, and

as such had an obligation to develop, sell, and maintain the property in a lawful manner so as not to harm residents, owners, and people that worked in The Whitney.

10. Defendant **PAUL ELLIOTT** is an adult man and is *sui juris*. PAUL ELLIOTT has been President of the ASSOCIATION from 2009 through the present. Since its inception in 2009 through the present, PAUL ELLIOTT has also been President of USO.

11. Defendant RAMBOLL ENVIRON US CORPORATION ("**ENVIRON**") is a foreign corporation incorporated in Virginia and doing business in the State of Florida, and is *sui juris*. ENVIRON formerly went by the name Environ International Corporation. ENVIRON performed environmental testing services at The Whitney with regard to the presence of contaminated Chinese Drywall at the condominium, and colluded with others to conceal the reality that Chinese Drywall can cause adverse health effects.

12. Defendant A2L TECHNOLOGIES, INC. ("**A2L**") is a Florida corporation and is *sui juris*. A2L performed environmental testing services at The Whitney with regard to the presence of contaminated Chinese Drywall at the condominium, and colluded with others to conceal the reality that Chinese Drywall can cause adverse health effects. A2L wrongfully informed PAUL WILKIS that the contaminated Chinese Drywall was safe. Since approximately late 2012, A2L has held out to the public that it now operates under the name of APEX COMPANIES, LLC.

13. Defendant APEX COMPANIES, LLC ("**APEX**") is a foreign corporation incorporated in Delaware and doing business in the State of Florida, and is *sui juris*. Upon information and belief, APEX is the successor-in-interest to A2L, as APEX

expressly or impliedly assumed the relevant obligations of A2L, there was an actual or de facto merger between A2L and APEX, APEX is a mere continuation or reincarnation of A2L, and/or APEX and A2L improperly intended that A2L would continue under the name APEX in order to avoid A2L's liabilities.

GENERAL ALLEGATIONS

Chinese Drywall is a public health concern

14. During the 2000s, large amounts of foreign-produced drywall – much of it from China – were imported into the United States for use in construction. “Chinese Drywall” thereafter became a term widely used to describe defective, contaminated foreign-produced drywall. Chinese Drywall is known to off-gas volatile chemicals and compounds, giving off a rotten odor and corroding metal surfaces.

15. Chinese Drywall is sometimes also referred to as “Corrosive Drywall” and/or “CDW.”

16. The Agency for Toxic Substances and Disease Registry (“ATSDR”), an agency of the U.S. Department of Health and Human Services has stated that people who were exposed to compounds emitted by Chinese Drywall may have experienced health effects and concentrations of compounds in indoor air emitted from Chinese Drywall samples were a public health concern.

17. Exposure to Chinese Drywall and its constituents is a causative agent in the development of upper respiratory tract damage, disease, and lung cancer.

18. Environmental experts have known for many years that drywall (not just Chinese Drywall) and its constituents and compounds can cause adverse health effects,

such as respiratory conditions.

19. In fact, environmental experts and health professionals have known since the earliest days of the Chinese Drywall epidemic in the late 2000s that, at a minimum, residents of homes with Chinese Drywall should open windows as much as possible to let in fresh air, keep the temperature inside homes at the lowest comfortable setting, run the air conditioner or dehumidifier, and spend as much time outdoors in fresh air as possible, in order to reduce the risk of adverse health effects.

20. Additionally, environmental experts and health professionals have known, at all times relevant to this lawsuit, that exposure to Chinese Drywall's constituents can cause symptoms including eye irritation, sore throat, stuffy nose/rhinitis, cough, shortness of breath/chest pain, nausea, headaches, fatigue, loss of appetite, irritability, poor memory, dizziness, and insomnia.

21. Environmental experts have known, at all times relevant to this lawsuit, that Chinese Drywall's constituents cause burning or stinging sensations, or even gagging or extreme pain.

**The Whitney is constructed with contaminated
Chinese Drywall, and thereafter acquired by USO**

22. The Whitney was built by LENDLEASE in the 2000s.

23. LENDLEASE was responsible for Chinese Drywall being installed throughout The Whitney.

24. In 2009, Chinese Drywall was discovered in The Whitney.

25. In early 2009, USO closed an acquisition of approximately 141 units in The Whitney, thereby making USO the largest owner at The Whitney.

26. As a result, USO came to manage and control The Whitney, and USO's president, PAUL ELLIOTT, became the president of the ASSOCIATION's Board of Directors.

27. As a result of USO's acquisition of 141 units at The Whitney that closed in 2009, PAUL WILKIS (who began as The Whitney's licensed Community Association Manager in 2008) was subsequently compelled to take direction from the ASSOCIATION, USO, and PAUL ELLIOTT in performing his duties.

28. Chinese Drywall was present in units and areas of The Whitney owned and/or controlled by USO and the ASSOCIATION, or both, in addition to other units and areas in The Whitney.

29. Subsequent to USO's acquisition of 141 units at The Whitney, the ASSOCIATION, USO, and PAUL ELLIOTT required PAUL WILKIS to serve as the "mouthpiece" for The Whitney.

30. Accordingly, and with the support of LENDLEASE, the ASSOCIATION, USO, and PAUL ELLIOTT required PAUL WILKIS to inform The Whitney's residents that the conditions in The Whitney were not harmful to human health. LENDLEASE, the ASSOCIATION, USO, and PAUL ELLIOTT did so with at least reckless disregard for the truth or falsity of the statements, as each of them was in a better position to know the truth than PAUL WILKIS was. LENDLEASE, the ASSOCIATION, USO, and PAUL ELLIOTT required PAUL WILKIS to do this because they each had pecuniary, reputational, and other motivations for convincing the public that The Whitney was safe, because each of them were substantially invested in The Whitney being a successful

business venture, and not being labeled as a public health concern.

**The Whitney, which contains contaminated,
hazardous Chinese Drywall, is not safe**

31. LENDLEASE knew or should have known that The Whitney was not safe, and that exposure to the constituents and compounds present in the air and environment because of the drywall in The Whitney, which contained Chinese Drywall, can cause adverse health effects.

32. The ASSOCIATION knew or should have known that The Whitney was not safe, and that exposure to the constituents and compounds present in the air and environment because of the drywall in The Whitney, which contained Chinese Drywall, can cause adverse health effects.

33. USO knew or should have known that The Whitney was not safe, and that exposure to the constituents and compounds present in the air and environment because of the drywall in The Whitney, which contained Chinese Drywall, can cause adverse health effects.

34. PAUL ELLIOTT knew or should have known that The Whitney was not safe, and that exposure to the constituents and compounds present in the air and environment because of the drywall in The Whitney, which contained Chinese Drywall, can cause adverse health effects.

35. Subsequent to the discovery of Chinese Drywall in The Whitney, purported environmental experts A2L and ENVIRON performed environmental testing in The Whitney, and thereafter stated, with reckless disregard of the truth or falsity of the statements, that The Whitney was safe. Upon information and belief, A2L and

ENVIRON both were paid large sums of money by the other Defendants in this case, or by agents or co-conspirators of the other Defendants, in order to make positive statements about The Whitney being safe, with reckless disregard of the truth or falsity of the statements.

36. A2L knew or should have known that The Whitney was not safe, and that exposure to the constituents and compounds present in the air and environment because of the drywall in The Whitney, which contained Chinese Drywall, can cause adverse health effects.

37. ENVIRON knew or should have known that The Whitney was not safe, and that exposure to the constituents and compounds present in the air and environment because of the drywall in The Whitney, which contained Chinese Drywall, can cause adverse health effects.

38. Each of LENDLEASE, the ASSOCIATION, USO, PAUL ELLIOTT, A2L, and ENVIRON had a financial incentive to mislead the public about The Whitney being unsafe, and about exposure to the constituents and compounds present in the air and environment because of the drywall in The Whitney, which contained Chinese Drywall, causing adverse health effects.

39. None of LENDLEASE, the ASSOCIATION, USO, PAUL ELLIOTT, A2L, or ENVIRON ever informed PAUL WILKIS that The Whitney was unsafe, and that exposure to the constituents and compounds present in the air and environment because of the drywall in The Whitney, which contained Chinese Drywall, can cause adverse health effects.

40. LENDLEASE, the ASSOCIATION, USO, PAUL ELLIOTT, A2L, and ENVIRON conspired and colluded to conceal from PAUL WILKIS and others that The Whitney was not safe, and that exposure to the constituents and compounds present in the air and environment because of the drywall in The Whitney, which contained Chinese Drywall, can cause adverse health effects.

41. PAUL WILKIS's health was adversely affected due to his being in the Whitney, which was unsafe, and because of exposure to the constituents and compounds present in the air and environment because of the drywall in The Whitney, which contained Chinese Drywall.

**Carcinogenic particulate matter
is released into the environment**

42. Tests performed by the environmental testing companies in The Whitney included air quality tests and destructive testing, among other things.

43. As a result of tests being performed on drywall in The Whitney, particulate matter was released into the atmosphere, including in units and areas of The Whitney owned and/or controlled by USO and the ASSOCIATION, or both, in addition to other units and areas in The Whitney.

44. Particulate matter is a carcinogen.

45. Particulate matter is a causative agent in the development of respiratory tract damage, disease, and lung cancer.

46. A2L knew or should have known that the particulate matter was not safe and can cause adverse health effects.

47. ENVIRON knew or should have known that the particulate matter was not

safe and can cause adverse health effects.

48. LENDLEASE knew or should have known that the particulate matter was not safe and can cause adverse health effects.

49. The ASSOCIATION knew or should have known that the particulate matter was not safe and can cause adverse health effects.

50. USO knew or should have known that the particulate matter was not safe and can cause adverse health effects.

51. PAUL ELLIOTT knew or should have known that the particulate matter was not safe and can cause adverse health effects.

52. Each of LENDLEASE, the ASSOCIATION, USO, PAUL ELLIOTT, A2L, and ENVIRON had a financial incentive to mislead the public about the particulate matter being unsafe and that it can cause adverse health effects.

53. None of LENDLEASE, the ASSOCIATION, USO, PAUL ELLIOTT, A2L, or ENVIRON ever informed PAUL WILKIS that the particulate matter was unsafe and can cause adverse health effects.

54. LENDLEASE, the ASSOCIATION, USO, PAUL ELLIOTT, A2L, and ENVIRON conspired and colluded to conceal from PAUL WILKIS and others that the particulate matter was unsafe and can cause adverse health effects.

55. PAUL WILKIS's health was adversely affected due to his being in The Whitney, which was not safe due to, among other things, the particulate matter.

**Defendants wrongfully lead PAUL WILKIS to believe
that the conditions at The Whitney were safe for humans**

56. PAUL ELLIOTT, the ASSOCIATION, USO, A2L, ENVIRON, and LENDLEASE all agreed that it was in their own respective interests (financial and otherwise) to pacify people at The Whitney, and the general public so that others would believe that The Whitney was safe; drywall, including Chinese Drywall was safe; the effects of drywall tests and procedures, like particulate matter, was safe; and that there was no cause for concern among any interested parties.

57. LENDLEASE, the ASSOCIATION, USO, PAUL ELLIOTT, A2L, and ENVIRON conspired and colluded to conceal from PAUL WILKIS and others that the conditions in The Whitney were not harmful to human health.

58. PAUL ELLIOTT, the ASSOCIATION, USO, A2L, ENVIRON, and LENDLEASE required PAUL WILKIS to shadow the environmental testers around The Whitney as the tests were performed, including units and areas of The Whitney owned and/or controlled by USO and the ASSOCIATION, or both, in addition to other units and areas in The Whitney.

59. None of PAUL ELLIOTT, the ASSOCIATION, USO, A2L, ENVIRON, or LENDLEASE ever warned PAUL WILKIS that the drywall at The Whitney, which included Chinese Drywall, was a risk to his health.

60. None of PAUL ELLIOTT, the ASSOCIATION, USO, A2L, ENVIRON, or LENDLEASE ever warned PAUL WILKIS that the particulate matter was a risk to his health.

61. None of PAUL ELLIOTT, the ASSOCIATION, USO, A2L, ENVIRON, or

LENDLEASE ever provided PAUL WILKIS any safety or protective gear during his time at The Whitney, including when he was present for drywall testing or otherwise in the presence of hazardous compounds in the air and environment, or even when he was in the presence of particulate matter.

62. The Defendants made false statements to PAUL WILKIS that the conditions in the The Whitney caused by the drywall, including the presence of Chinese Drywall, did not pose a health risk.

63. The presence of particulate matter was a condition in the The Whitney caused by the drywall.

64. One reason the Defendants made false statements to PAUL WILKIS that the conditions in the The Whitney caused by the drywall, including the presence of Chinese Drywall, did not pose a health risk, was so that PAUL WILKIS would disseminate the misinformation to The Whitney's owners and residents.

65. Unbeknownst to PAUL WILKIS, when the Defendants required PAUL WILKIS to inform The Whitney's residents that the conditions in The Whitney were not harmful to human health, they did so with reckless disregard for the truth.

66. PAUL WILKIS was not aware that the Defendants' statements about the drywall, including that the drywall in The Whitney did not pose a health risk, were false.

67. PAUL WILKIS reasonably and justifiably relied upon the Defendants' false statements about the drywall, both in doing his job as the licensed Community Association Manager at The Whitney, and in his own personal life, as he never thought there were possible adverse health effects from human exposure, including his own

personal exposure, to the drywall or anything in the air or environment because of the drywall or the work being performed on the drywall, including the particulate matter, at The Whitney. PAUL WILKIS would not have undertaken any actions that would have put him (or others) in danger had he known that the Defendants' statements were false, and that the conditions were unsafe.

**PAUL WILKIS is diagnosed
with lung cancer**

68. Had PAUL WILKIS known that the conditions at the Whitney were unsafe, for any of the reasons discussed in this Complaint, he would have never continued to work in The Whitney.

69. As a result of the Defendants' conduct, PAUL WILKIS was exposed to the compounds in the air and environment that were there as a result of the drywall in the Whitney, which included Chinese Drywall and its constituents.

70. As a result of the Defendants' conduct, PAUL WILKIS was exposed to hazardous particulate matter.

71. As a result of these exposures and the unsafe conditions at The Whitney, PAUL WILKIS developed and was diagnosed with lung cancer.

72. PAUL WILKIS's and JUDITH WILKIS's lives have each been negatively impacted as a result of PAUL WILKIS having lung cancer, to an extreme degree.

73. Due to his lung cancer, PAUL WILKIS has gone through numerous painful and life altering procedures including, but not limited to, chemotherapy, lobectomy, and lung biopsies.

74. In addition to his physical ailments, PAUL WILKIS has suffered mental

hardships as a result of having cancer.

75. As a result of his lung cancer, PAUL WILKIS is no longer able to work, even though he was his family's primary earner.

76. As a result of his lung cancer, PAUL WILKIS and JUDITH WILKIS were forced to sell their marital home, and were forced to drain funds.

77. PAUL WILKIS's and JUDITH WILKIS's marriage has been negatively impacted by PAUL WILKIS having lung cancer. Their marriage lacks the fullness it once had.

78. Plaintiff JUDITH WILKIS has lost companionship, comfort, care, assistance, protection, affection, and moral and financial support of her husband, and has also lost enjoyment of her marital relations.

79. Plaintiffs PAUL WILKIS and JUDITH WILKIS retained the undersigned law firm and agreed to pay reasonable attorneys' fees.

COUNT I

**NEGLIGENCE OR GROSS NEGLIGENCE FOR
DAMAGES EMANATING FROM THE
INHERENTLY UNSAFE CONDITIONS CAUSED
BY THE DRYWALL AT THE WHITNEY**

AGAINST ASSOCIATION, USO, AND LENDLEASE

80. Plaintiffs repeat and re-allege the allegations of Paragraphs 1 through 79 as if fully set forth herein.

81. The Defendants named in this count owed a legal duty to PAUL WILKIS to not install or otherwise have hazardous materials at The Whitney, to wit, the drywall including Chinese Drywall, and the hazardous compounds in the air and environment as

a result of the drywall, that can cause adverse health effects.

82. The Defendants named in this count breached their duty to PAUL WILKIS by installing or otherwise having hazardous materials at The Whitney, to wit, the drywall including Chinese Drywall, and the hazardous compounds in the air and environment as a result of the drywall, that can cause adverse health effects.

83. Damages to PAUL WILKIS are a direct and proximate result of the Defendants' negligence in installing or otherwise having hazardous materials at The Whitney, to wit, the drywall including Chinese Drywall, and the hazardous compounds in the air and environment as a result of the drywall, which contributed to adverse health effects in PAUL WILKIS, including the development of lung cancer, as well as other damages flowing therefrom.

84. The Defendants named in this count engaged in conduct with such gross negligence as to indicate a wanton disregard for the rights of others.

85. The fact that hazardous materials, to wit, the drywall including Chinese Drywall, and the hazardous compounds in the air and environment as a result of the drywall, that can cause adverse health effects, were installed or otherwise were at The Whitney was in the exclusive control of the Defendants named in this count.

WHEREFORE, Plaintiff PAUL WILKIS prays that this Court enter a judgment in his favor and against each of the Defendants named in this count, jointly and severally, awarding all permissible compensatory and other damages allowable under the law, including special damages, costs, appropriate interest, and attorneys' fees, as well as any such other relief this Court deems just and proper.

COUNT II

**NEGLIGENCE OR GROSS NEGLIGENCE FOR
DAMAGES EMANATING FROM THE
INHERENTLY UNSAFE CONDITIONS CAUSED
BY PROCEDURES PERFORMED ON THE DRYWALL**

**AGAINST ASSOCIATION, USO, PAUL ELLIOTT, LENDLEASE,
ENVIRON, A2L, AND APEX AS SUCCESSOR-IN-INTEREST TO A2L**

86. Plaintiffs repeat and re-allege the allegations of Paragraphs 1 through 79 as if fully set forth herein.

87. The Defendants named in this count owed a legal duty to PAUL WILKIS to perform any and all procedures upon the drywall, including all manner of tests, in a safe manner that did not adversely affect his health.

88. The Defendants named in this count breached their duty to PAUL WILKIS by performing procedures upon the drywall, including tests, in an unsafe manner that adversely affected his health, including by undertaking actions that resulted in the release of harmful, carcinogenic particulate matter into the air and environment.

89. Damages to PAUL WILKIS are a direct and proximate result of the Defendants' negligence in performing procedures upon the drywall, including tests, in an unsafe manner, which, among other things, caused the release of harmful, carcinogenic particulate matter into the air and environment, and which contributed, among other things, to adverse health effects in PAUL WILKIS, including but not limited the development of lung cancer, and other damages flowing therefrom.

90. The Defendants named in this count engaged in conduct with such gross negligence as to indicate a wanton disregard for the rights of others.

WHEREFORE, Plaintiff PAUL WILKIS prays that this Court enter a judgment in his favor and against each of the Defendants named in this count, jointly and severally, awarding all permissible compensatory and other damages allowable under the law, including special damages, costs, appropriate interest, and attorneys' fees, as well as any such other relief this Court deems just and proper.

COUNT III

**NEGLIGENCE OR GROSS NEGLIGENCE FOR
DAMAGES EMANATING FROM THE INHERENTLY
UNSAFE CONDITIONS AT THE WHITNEY, COLLECTIVELY**

**AGAINST ASSOCIATION, USO, PAUL ELLIOTT, LENDLEASE,
ENVIRON, A2L, AND APEX AS SUCCESSOR-IN-INTEREST TO A2L**

91. Plaintiffs repeat and re-allege the allegations of Paragraphs 1 through 79 as if fully set forth herein.

92. The Defendants named in this count owed a legal duty to PAUL WILKIS not to create or maintain hazardous and unsafe conditions at The Whitney that can cause adverse health effects, whether because of the drywall, particulate matter, or otherwise.

93. The Defendants named in this count breached their duty to PAUL WILKIS by creating or maintaining hazardous and unsafe conditions at The Whitney that can cause adverse health effects, whether because of the drywall, particulate matter, or otherwise.

94. Damages to PAUL WILKIS are a direct and proximate result of the Defendants' negligence, including, among other damages, adverse health effects as a result of the Defendants' breach of duty, including but not limited to the development of

lung cancer and other damages flowing therefrom.

95. The Defendants named in this count engaged in conduct with such gross negligence as to indicate a wanton disregard for the rights of others.

WHEREFORE, Plaintiff PAUL WILKIS prays that this Court enter a judgment in his favor and against each of the Defendants named in this count, jointly and severally, awarding all permissible compensatory and other damages allowable under the law, including special damages, costs, appropriate interest, and attorneys' fees, as well as any such other relief this Court deems just and proper.

COUNT IV

**NEGLIGENCE OR GROSS NEGLIGENCE FOR
SUBJECTING HIM TO HAZARDOUS PROCEDURES
AND ENVIRONMENTS WITHOUT PROTECTION**

**AGAINST ASSOCIATION, USO, PAUL ELLIOTT, LENDLEASE,
ENVIRON, A2L, AND APEX AS SUCCESSOR-IN-INTEREST TO A2L**

96. Plaintiffs repeat and re-allege the allegations of Paragraphs 1 through 79 as if fully set forth herein.

97. The Defendants named in this count owed a legal duty to PAUL WILKIS not to subject him to hazardous procedures, and especially not to do so without the benefit of protective or safety gear. Individuals performing tests or in the presence of tests involving potentially hazardous compounds in the air and environment, destructive tests upon drywall, and other procedures that would tend to release particulate matter or other compounds into the air and environment, or that would otherwise cause persons to become exposed to such compounds or particulate matter, should wear protective and safety gear. Whether or not testers themselves wore safety and protective gear at

The Whitney, all the Defendants named in this count certainly owed a duty to PAUL WILKIS to ensure he was protected, as he was not in a position to know of the potential dangers, as each of these Defendants had greater access to information about the dangers of such exposures without safety and protective gear.

98. The Defendants named in this count breached their duty to PAUL WILKIS by subjecting him to hazardous procedures, and especially to do so without the benefit of protective or safety gear, including when he was present for drywall testing or otherwise in the presence of hazardous compounds in the air and environment, or even when he was in the presence of particulate matter, all without safety gear.

99. Damages to PAUL WILKIS are a direct and proximate result of the Defendants' negligence, including, among other damages, adverse health effects as a result of the Defendants' breach of duty, including but not limited to the development of lung cancer and other damages flowing therefrom.

100. The Defendants named in this count engaged in conduct with such gross negligence as to indicate a wanton disregard for the rights of others.

WHEREFORE, Plaintiff PAUL WILKIS prays that this Court enter a judgment in his favor and against each of the Defendants named in this count, jointly and severally, awarding all permissible compensatory and other damages allowable under the law, including special damages, costs, appropriate interest, and attorneys' fees, as well as any such other relief this Court deems just and proper.

COUNT V

PREMISES LIABILITY

AGAINST ASSOCIATION AND USO

101. Plaintiffs repeat and re-allege the allegations of Paragraphs 1 through 79 as if fully set forth herein.

102. As the licensed Community Association Manager for The Whitney, PAUL WILKIS had a right to be, and in fact was required to be, in units and/or areas that were owned and/or controlled by USO and the ASSOCIATION, or both. Being in various locations such as those owned and/or controlled by USO or the ASSOCIATION, or both, was a part of PAUL WILKIS's general duties. This included, among other things, times when PAUL WILKIS was required by USO, the ASSOCIATION, and/or PAUL ELLIOTT to be present for Chinese Drywall testing and procedures throughout The Whitney.

103. The Defendants named in this count owed a legal duty to PAUL WILKIS to maintain the premises owned and/or controlled by each of them in a reasonably safe condition, and/or to correct a dangerous condition about which each of them knew or should have known, by the use of reasonable care, or at least to warn PAUL WILKIS of a dangerous condition about which that given Defendant had, or should have had, knowledge greater than that of PAUL WILKIS.

104. The Defendants named in this count breached their duty to PAUL WILKIS by failing to maintain the premises owned and/or controlled by each of them in a reasonably safe condition, to wit, the unsafe and non-obvious conditions caused by the

drywall in The Whitney, including, for example, the hazardous compounds released into the air and environment from the drywall as well as particulate matter released into the air and environment from procedures performed upon the drywall, and/or to correct these dangerous conditions about which each of them knew or should have known, by the use of reasonable care, or at least to warn PAUL WILKIS of these dangerous condition about which that given Defendant had, or should have had, knowledge greater than that of PAUL WILKIS.

105. Damages to PAUL WILKIS are a direct and proximate result of the Defendants' negligence, including, among other damages, adverse health effects as a result of the Defendants' breach of duty, including but not limited to the development of lung cancer and other damages flowing therefrom.

106. The Defendants named in this count engaged in conduct with such gross negligence as to indicate a wanton disregard for the rights of others.

WHEREFORE, Plaintiff PAUL WILKIS prays that this Court enter a judgment in his favor and against each of the Defendants named in this count, jointly and severally, awarding all permissible compensatory and other damages allowable under the law, including special damages, costs, appropriate interest, and attorneys' fees, as well as any such other relief this Court deems just and proper.

COUNT VI

**NEGLIGENT MISREPRESENTATION
OR GROSSLY NEGLIGENT MISREPRESENTATION**

**AGAINST ASSOCIATION, USO, PAUL ELLIOTT, LENDLEASE,
ENVIRON, A2L, AND APEX AS SUCCESSOR-IN-INTEREST TO A2L**

107. Plaintiffs repeat and re-allege the allegations of Paragraphs 1 through 79 as if fully set forth herein.

108. The Defendants named in this count, through their legal agent(s), misrepresented and/or omitted material information pertaining, among other things, to the conditions at The Whitney being hazardous, unsafe, and being able to cause adverse health effects, whether because of the drywall, particulate matter, among other things,

109. The Defendants named in this count either knew of the misrepresentation(s) and/or omission(s), made the misrepresentation(s) and/or omission(s) without knowledge of their truth or falsity, or should have known the misrepresentation(s) and/or omission(s) were false and/or would leave a materially false impression.

110. The Defendants named in this count intended to induce PAUL WILKIS to act on the misrepresentation(s) and/or omission(s), by, among other things, having him continue to work in the hazardous conditions at The Whitney, and spread the Defendants' statements and positions about The Whitney being safe to The Whitney's unit owners and residents, among other things.

111. To the extent the Defendants misrepresented and/or omitted material

information, the Defendants thereafter had a duty to correct such material misrepresentation(s) and omission(s), including a duty to warn PAUL WILKIS about dangerous conditions at The Whitney about which PAUL WILKIS had been misled.

112. However, Defendants also failed to correct their misrepresentation(s) and/or omission(s), causing PAUL WILKIS additional harm. In other words, Defendants never took sufficient curative action to undo or least minimize the damage caused by their misrepresentation(s) and/or omission(s).

113. Damages to PAUL WILKIS are a direct and proximate result of the Defendants' misrepresentation(s) and/or omission(s), including, among other damages, adverse health effects as a result of the Defendants' breach of duty, including but not limited to the development of lung cancer and other damages flowing therefrom.

WHEREFORE, Plaintiff PAUL WILKIS prays that this Court enter a judgment in his favor and against each of the Defendants named in this count, jointly and severally, awarding all permissible compensatory and other damages allowable under the law, including special damages, costs, appropriate interest, and attorneys' fees, as well as any such other relief this Court deems just and proper.

COUNT VII

FRAUDULENT CONCEALMENT

**AGAINST ASSOCIATION, USO, PAUL ELLIOTT, LENDLEASE,
ENVIRON, A2L, AND APEX AS SUCCESSOR-IN-INTEREST TO A2L**

114. Plaintiffs repeat and re-allege the allegations of Paragraphs 1 through 79 as if fully set forth herein.

115. The Defendants named in this count, through their legal agent(s),

intentionally withheld and omitted material information pertaining, among other things, to the conditions at The Whitney being unsafe for humans.

116. The Defendants named in this count knew that the information withheld was material and that the omission of this information would leave others with the wrongful belief that conditions at The Whitney were safe for humans, when in fact they were not.

117. The Defendants named in this count intended to induce others, including PAUL WILKIS, to act on the intentional withholding and omission of material information.

118. Injury resulted to PAUL WILKIS acting in justifiable reliance upon the intentional withholding and omission of material information.

WHEREFORE, Plaintiff PAUL WILKIS prays that this Court enter a judgment in his favor and against each of the Defendants named in this count, jointly and severally, awarding all permissible compensatory and other damages allowable under the law, including special damages, costs, appropriate interest, and attorneys' fees, as well as any such other relief this Court deems just and proper.

COUNT VIII

**CONSPIRACY TO CONCEAL THE UNSAFE
CONDITIONS AT THE WHITNEY**

**AGAINST ASSOCIATION, USO, PAUL ELLIOTT, LENDLEASE,
ENVIRON, A2L, AND APEX AS SUCCESSOR-IN-INTEREST TO A2L**

119. Plaintiffs repeat and re-allege the allegations of Paragraphs 1 through 79 and Paragraphs 114 through 118, as if fully set forth herein.

120. There was at least one conspiracy perpetrated by the Defendants named in this count, to conceal the unsafe conditions at The Whitney.

121. The conspiracy or conspiracies were to do an unlawful act or to do a lawful act by unlawful means.

122. Each Defendant named in this count did some overt act in pursuance of the conspiracy.

123. The Defendants named in this count participated in agreement to conceal or omit information concerning the unsafe conditions at The Whitney, including, among other things, the possible effects of exposure to the drywall or anything in the air or environment because of the drywall or the work being performed on the drywall, including the particulate matter.

124. Injury resulted to PAUL WILKIS as a result of the acts done under the conspiracy.

WHEREFORE, Plaintiff PAUL WILKIS prays that this Court enter a judgment in his favor and against each of the Defendants named in this count, jointly and severally, awarding all permissible compensatory and other damages allowable under the law, including special damages, costs, appropriate interest, and attorneys' fees, as well as any such other relief this Court deems just and proper.

COUNT IX

LOSS OF CONSORTIUM

**AGAINST ASSOCIATION, USO, PAUL ELLIOTT, LENDLEASE,
ENVIRON, A2L, AND APEX AS SUCCESSOR-IN-INTEREST TO A2L**

125. Plaintiffs repeat and re-allege the allegations of Paragraphs 1 through 79

as if fully set forth herein.

126. As a result of the actions of the Defendant(s) named in this count, Plaintiff JUDITH WILKIS has lost companionship, comfort, care, assistance, protection, affection, moral support, and financial support from her husband, and has also lost enjoyment of marital relations.

WHEREFORE, Plaintiff JUDITH WILKIS prays that this Court enter a judgment in her favor and against each of the Defendants named in this count, jointly and severally, awarding all permissible compensatory and other damages allowable under the law, including special damages, costs, appropriate interest, and attorneys' fees, as well as any such other relief this Court deems just and proper.

DEMAND FOR JURY TRIAL

127. Plaintiff demands a trial by jury for all issues so triable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on March 24, 2017, I furnished a true and correct copy of this document via email to:

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