

NORTH CAROLINA
DURHAM COUNTY

2008 JUN 17

IN THE GENERAL COURT OF
JUSTICE
SUPERIOR COURT DIVISION
08 CVS

DURHAM COUNTY, C.S.C.
BY
Carol Svec, Guy Johnson, Brenda Johnson,
David Kennedy, Dan Notch, Terry Bullock,
George Burke, Angela Clayton, Ann Horne,
David Turner, Rebecca Williams, Michael
Abbott, William Barbour, Bonnie Beckham,
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Evans, Mary Alice Faison, Tricia Faulkner, Dean
Gokel, Major Gray, Tiffany Hale, Hulonda
Hennessee, Cynthia Hiner, Karen Hinton,
Deborah Holden, Charitina Jones, Shereka
Kennedy, John Kimball, Hassell Laster, Ellis
Lewis, Shirley McCaden, Philip McClanahan, a
minor by and through his Guardian ad Litem
Robyn McClanahan, Robyn McClanahan
individually, Lee Ann McCray, Laurie
McTavish, Thomas Mertig, Edna Montford,
Bianca Morris, Mark Mozingo, Cecilio Perez-
Martinez, Dan Price, Carla Ransdell, Linda
Rigda, Ben Robinson, Dietrich Robinson,
Latisha Rochelle, Cheri Saunders, Susan Sharp,
Dana Sherron, Nonie Stone, Donnie Tart, Tracy
Tate, Joan Timberlake, Catherine Tremont,
Marilyn Wagner, Cheryl Whitfield, Paulette
Williamson,

Plaintiffs

vs.

Cardinal Health 200, Inc., Steris Corporation,
Michael Harris, aka Mike Harris, Norma
Locklear, aka Norman Locklear, Wade H.
Winstead, Jr., Richard A. Vandiford, aka Rick
Vandiford, aka Ricky Vandiford, John
Witherspoon, aka John D. Witherspoon, Timothy
Bumgarner, aka Tim Bumgarner, Jerry
Carpenter, Richard Sapienza, aka Rick Sapienza,
Eva Green,

Defendants

COMPLAINT
(JURY TRIAL DEMANDED)

The plaintiffs, complaining of the defendants, allege and say that:

I. PARTIES AND JURISDICTION

1. Plaintiffs are asserting claims jointly and severally against the defendants in this civil action arising from their exposure to surgical instruments washed in dirty waste hydraulic fluid contaminated with petroleum, additives, toxic chemicals, metals, particulates, organic and inorganic toxins, and other materials (hereinafter referred to as “dirty waste hydraulic fluid”) as a result of its use in the decontamination and sterilization of surgical instruments at two hospitals owned and operated by Duke University Health System, Inc.. (Durham Regional and Duke Health Raleigh Hospitals, hereinafter “Durham Hospital” and “Raleigh Hospital,” respectively). The plaintiffs were patients whose surgeries were performed with contaminated surgical instruments at these two hospitals during November and December of 2004.

2. All allegations specific to the plaintiff patients and their plaintiff spouses, if applicable, including averments of residence, surgery, date of surgery, injuries, proximate cause, and claims for general damages and loss of consortium where applicable, are attached as Exhibits # 1 through # 65, each of which are herein incorporated by reference as if fully set forth.

3. Defendant Steris Corporation (“Steris”) is a foreign corporation created in Ohio and conducts business in Durham County, North Carolina. Steris’s registered agent for service of process is CT Corporation System, whose address is 225 Hillsborough Street, Raleigh, NC 27603. Steris is, and was at all times relevant to this lawsuit, responsible for the acts, omissions and conduct of its employees, agents, apparent agents, and representatives.

4. Defendant Cardinal Health 200, Inc. (“Cardinal”) is a foreign corporation created in Delaware and conducts business in Durham County, North Carolina. Cardinal’s registered agent for service of process is Corporation Service Company, 327 Hillsborough Street, Raleigh, North Carolina, 27603. Cardinal is, and was at all times relevant to this lawsuit, responsible for the acts, omissions and conduct of its employees, agents, apparent agents, and representatives.

5. Pursuant to interrogatories submitted under oath in a previous lawsuit, Durham County file #5CV-01923, Cardinal identified and disclosed the names, identities and job descriptions of certain Cardinal employees who had knowledge concerning the facts of this case. The exact legal names are not known to plaintiffs and instead plaintiffs are relying on the accuracy and truthfulness of these previous answers that identified these individuals by name and especially by job descriptions and these persons are incorporated herein as participants and agents who acted on behalf of this defendant.

6. The defendant, Michael Harris (“Harris”), aka Mike Harris, identified as Mike Harris by Cardinal in the interrogatories referenced above, or any other proper and legal name identifying said person, is, upon information and belief, a citizen and resident of South Carolina, and was at all times relevant to this complaint the on-site materials service manager for Cardinal and was an officer, agent, employee or servant, of Cardinal acting within the course and scope of his employment.

7. The defendant, Norma Locklear, (“Locklear”), aka Norman Locklear, identified as Norma Locklear by Cardinal in the interrogatories referenced above, or any other proper and legal name identifying said person, is, upon information and belief, a citizen and resident of North Carolina and was at all times relevant to this complaint the driver for Cardinal and was an

officer, agent, employee or servant, of Cardinal acting within the course and scope of her/his employment.

8. The defendant, Wade H. Winstead, Jr., (“Winstead”), identified as Wade Winstead by Cardinal in the interrogatories referenced above, is, upon information and belief a citizen and resident of Durham County, North Carolina, and was at all times relevant to this Complaint the on-site sales representative for defendant Cardinal and was an officer, agent, employee or servant of Cardinal within the course and scope of his employment.

9. The defendant, Richard A. Vandiford (“Vandiford”), aka Rick Vandiford, aka Ricky Vandiford, identified as Rick Vandifer by Cardinal in the interrogatories referenced above, or any other proper and legal name identifying said person, is, upon information and belief, a citizen and resident of North Carolina, and was at all times relevant to this complaint the inventory services supervisor for defendant Cardinal and was an officer, agent, employee or servant, of Cardinal acting within the course and scope of his employment.

10. The defendant, John Witherspoon (“Witherspoon”), aka John D. Witherspoon, identified as John Witherspoon by Cardinal in the interrogatories referenced above, or any other proper and legal name identifying said person, is, upon information and belief, a citizen and resident of Durham County, North Carolina, and was at all times relevant to this Complaint a returns department employee for Cardinal and was an officer, agent, employee or servant of Cardinal acting within the course and scope of his employment.

11. The defendant, Timothy Bumgarner, (“Bumgarner”), aka Tim Bumgarner, or any other proper and legal name identifying said person, is, upon information and belief, a citizen and resident of North Carolina, and was at all times relevant to this complaint the district sales

manager for Cardinal and was an officer, agent, employee or servant, of Cardinal acting within the course and scope of his employment.

12. The defendant, Jerry Carpenter, (“Carpenter”) is, upon information and belief, currently a citizen and resident of Canal Winchester, Ohio, but at the times relevant to this complaint was the Durham operations manager for Cardinal and was an officer, agent, employee or servant, of Cardinal acting within the course and scope of his employment.

13. The defendant, Richard Sapienza, (“Sapienza”), aka Rick Sapienza, identified as Richard Sapienza by Cardinal in the interrogatories referenced above, or any other proper and legal name identifying said person, is, upon information and belief, a citizen and resident of North Carolina, and was at all times relevant to this complaint in the returns and inventory department for Cardinal and was an officer, agent, employee or servant, of Cardinal acting within the course and scope of his employment.

14. The defendant, Eva Green, (“Green”), identified as Eva Green by Cardinal in the interrogatories referenced above, or any other proper and legal name identifying said person, is, upon information and belief, a citizen and resident of North Carolina, and was at all times relevant to this complaint the Transportation Manager for Cardinal and was an officer, agent, employee or servant, of Cardinal acting within the course and scope of her employment.

15. The defendant Cardinal is liable for the negligence of the Individual defendants Harris, Locklear, Winstead, Vandiford, Witherspoon, Bumgarner, Carpenter, Sapeinza and Green and/or its officers, agents, employees, and servants, all of whom who were acting on behalf of defendant and within the scope of their employment with Cardinal, and pursuant to the authority of Cardinal under the doctrine of respondeat superior and/or corporate negligence

and/or all theories of agency, and the acts of negligence of the individual defendants are imputed to defendant Cardinal.

16. This Court has jurisdiction over this cause of action and personal jurisdiction over the defendants under N.C. Gen. Stat. §§ 1-75, 7A-240, and 7A-243.

17. Venue for this case is proper under N.C. Gen. Stat. Sec. 1-80 and 1-82.

18. The defendants are properly joined in one action because the plaintiffs assert against them rights to relief arising from the same series of events, negligent acts, negligent omissions jointly, severally, and in the alternative, and because many questions of law and fact common to all defendants will arise in the action.

19. The plaintiffs are properly joined in one action because they assert rights to relief jointly, severally, and in the alternative arising out of the same series of events, negligent acts, omissions and transactions and many questions of law and fact common to all the plaintiffs will arise in the action.

II. OVERVIEW

20. Defendant Steris is, and was at all times relevant to this lawsuit, the manufacturer of the decontamination and sterilization washers used at Durham and Raleigh Hospitals to decontaminate and sterilize equipment used in surgeries and invasive procedures, and is also the manufacturer of the detergent (“Mon-Klenz”), the enzyme pre-soak solution (“Klenzyme”) and the lubricant (“Hinge-Free”) recommended for use in Steris washers and washer/disinfectors. Mon-Klenz is an amber-colored liquid. Hinge-Free is a thick liquid with a white, milky color.

21. Upon information and belief, Steris entered into one or more contracts with Duke University Health System, Inc., to provide services for support and maintenance of sterilization equipment and products at Raleigh Hospital and Durham Hospital, which contract(s) were in effect at all times relevant to this lawsuit. This contract or contracts set forth in part the duties and standard of care for their performance adopted by Steris applicable to its work and in supplying services for support and maintenance of sterilization equipment and products at Durham and Raleigh Hospitals.

22. Steris held itself out to the public, regulatory authorities, and its clientele including Duke University Health System, Inc., as being in compliance with all regulations, ordinances, statutes and laws applicable to its work and in supplying services for support and maintenance of sterilization equipment and products under its contract with Duke University Health System, Inc. These regulations, ordinances, statutes and laws set forth in part the duties and standard of care for their performance adopted by Steris applicable to its work and in supplying services for support and maintenance of sterilization equipment and products at Durham and Raleigh Hospitals.

23. Steris held itself out to the public, regulatory authorities and its clientele including Duke University Health System, Inc., as being, while on Durham and/or Raleigh Hospitals' premises and the premises of other hospitals owned and/or operated by Duke University Health System, Inc., in compliance with Duke University Health System, Inc.'s policies, procedures and regulations. These policies, procedures and regulations set forth in part the duties and standard of care for their performance adopted by Steris applicable to its work and in supplying

services for support and maintenance of sterilization equipment and products at Durham and Raleigh Hospitals.

24. Defendant Steris issued operators' manuals setting forth in part the standard of care adopted by Steris for the proper operation and maintenance of its washers and/or washers/disinfectors, including standards concerning the use of proper detergent, troubleshooting, and when the services of a Steris service representative were required.

25. Defendant Steris held itself out to the public and its clientele, including Duke University Health System, Inc., as in compliance with the standard of care, skill and diligence normally provided by a company providing services for support and maintenance of sterilization equipment and products.

26. Defendant Cardinal is, and was at all times relevant to this lawsuit, a distributor of medical and surgical supplies including decontamination, sterilization and lubrication supplies, such as the Steris products Mon-Klenz, Klenzyme and Hinge-Free, and provided the sale and delivery of such products to Duke University Health System, Inc.'s hospitals, including, the main Duke facility, hereinafter called "Duke North", Durham Hospital, and Raleigh Hospitals, pursuant to a contract with Duke University Health System, Inc., which was in effect at all times relevant to this lawsuit.

27. Pursuant to its contractual agreement with Duke University Health System, Inc., Cardinal supplied Mon-Klenz, Klenzyme and Hinge-Free (decontamination, sterilization and lubrication products) to Duke University Health System, Inc., including Duke North, Raleigh Hospital and Durham Hospital, on an ongoing basis for use in their decontamination and sterilization washers.

28. The contract between Cardinal and Duke University Health System, Inc., set forth in part the standard of care adopted by Cardinal for the proper and safe delivery, receipt, and inspection of supplies, including the Steris products Mon-Klenz, Klenzyme and Hinge-Free and other potentially hazardous materials.

29. Cardinal held itself out to the public, regulatory authorities, and its clientele including Duke University Health System, Inc., as being in compliance with all regulations, ordinances, statutes and laws applicable to its work and supplying of goods under its contract with Duke University Health System, Inc. These regulations, ordinances, statutes and laws set forth in part the duties and standard of care for their performance adopted by Cardinal for the proper and safe delivery, receipt, and inspection of supplies, including the Steris products Mon-Klenz, Klenzyme and Hinge-Free and other potentially hazardous materials.

30. Cardinal held itself out to Duke University Health System, Inc., as being, while on Duke University Health System, Inc.'s premises (including Duke North, Durham and Raleigh Hospitals) in compliance with Duke University Health System, Inc.'s policies, procedures, and regulations. These policies, procedures, and regulations set forth in part the duties and standard of care for their performance adopted by Cardinal for the proper and safe delivery, receipt, and inspection of supplies, including the Steris products Mon-Klenz, Klenzyme and Hinge-Free and other potentially hazardous materials.

31. Cardinal held itself out to the public and its clientele, including Duke University Health System, Inc., as in compliance with the standard of care, skill and diligence normally provided by a distributor of medical and surgical supplies in the performance of such services.

III. THE FACTS

A. How the Barrels became contaminated with dirty waste hydraulic fluid

32. Paragraphs 1 through 31 are herein incorporated by reference as if fully set forth.

33. Pursuant to its contract with Duke University Health System, Inc., Cardinal sold and delivered Mon-Klenz, Klenzyme and Hinge-Free to Duke North, Durham Hospital, and Raleigh Hospitals in fifteen gallon barrels. In 2004, all new barrels of Mon-Klenz had obvious and visible tamper-proof safety seals consisting of a plastic cap and metal band, which required a special wrench to remove the seal before the screw bung plug could be removed with the same wrench. Hinge-Free and Klenzyme, upon information and belief, had the same or similar safety seals.

34. In January 2004, Duke University Health System, Inc., entered into a contract with a company by the name of Automatic Elevator Company, Inc., to renovate and modernize two elevators located in an open parking deck at Raleigh Hospital.

35. As part of the renovation and modernization project, Automatic Elevator Company, Inc.'s employees and/or agents drained dirty waste hydraulic fluid from the parking lot elevators into empty fifteen gallon barrels. The empty barrels had previously contained Mon-Klenz, Klenzyme and Hinge-Free.

36. At some time between July 2004 and mid-September 2004 (believed upon information to be in early September of 2004), Automatic Elevator Company, Inc.'s employees and/or agents left the barrels containing dirty waste hydraulic fluid in the Raleigh Hospital parking deck, where they remained until on or about September 15, 2004. The barrels bore shipping labels which indicated they had been shipped to "Duke North," i.e. Duke Hospital. In late September 2004, a Duke University Health System, Inc. employee contacted Cardinal and

asked Cardinal to pick up the barrels with the Mon-Klenz, Hinge-Free, and/or Klenzyme labels from Raleigh Hospital, as returns.

37. Upon information and belief, Raleigh Hospital, in 2004, used approximately one barrel of Mon-Klenz solution a month.

B. How Cardinal acquired the Barrels of Dirty Waste Hydraulic Fluid and then repeatedly delivered them to unsuspecting customers as detergent for use in decontamination and sterilization washers.

38. Paragraphs 1 through 37 are herein incorporated by reference.

39. On or about September 30, 2004, in response to Duke University Health System Inc.'s request, a Cardinal employee, believed upon information to be defendant Locklear, went to the parking garage at Raleigh hospital to pick up the barrels believed to be excess stock. When the Cardinal employee arrived, it is believed upon information that she/he did not have a pallet jack and returned to the warehouse without removing the barrels.

40. On or about October 1 or 2, 2004, defendant Locklear returned to the parking garage at Raleigh Hospital and picked up the barrels. The barrels that Cardinal picked up were the 15-gallon barrels containing dirty waste hydraulic fluid with Mon-Klenz, Klenzyme or Hinge-Free labels, and they bore shipping labels indicating that they had previously been delivered to Duke North, rather than Raleigh Hospital. They were unsealed, dirty and oily and on a pallet with a discarded toilet and air handler. The Cardinal employee left one barrel in the parking garage because it was partially empty.

41. Upon information and belief, Duke University Health System, Inc. employees and/or agents at one of the Duke owned hospitals had removed the safety seals upon initially opening them when they were filled with Mon-Klenz, Klenzyme, and/or Hinge Free prior to

using and depleting them in the sterilization and decontamination process at one of the Duke owned hospitals. The removal of the safety seals occurred before the barrels were filled with dirty, waste hydraulic fluid.

42. No safety seals were on the barrels picked up from Raleigh Hospital by Cardinal's employee and/or agent from Raleigh Hospital's parking deck on or about October 1 or 2, 2004.

43. The contract between Cardinal and Duke University Health System, Inc., contained certain provisions which were designed to ensure the integrity of products received as returns by Cardinal from Duke University Health System, Inc.'s hospitals and to protect the public from contaminated or outdated materials. These terms, which form part of the duties and standard of care applicable to Cardinal, required the following before any products could be returned from Raleigh Hospital to Cardinal:

- a. the products were in salable condition;
- b. the returns were authorized by a Cardinal Customer Service representative or Material Services Manager within 72 hours of receipt;
- c. the products authorized for return were placed in a "pre-determined location" approved by Cardinal and Duke University Health System, Inc.;
- d. "authorized returns paperwork" accompanied the products;
- e. "shortages or overages" were reported to Cardinal by Duke University Health System, Inc., within 72 hours after delivery;
- f. the products were purchased from Cardinal;
- g. the products were purchased within three months of the date Duke University Health System, Inc., requested the return;
- h. the products had not been defaced and were in the original packaging.

44. Upon information and belief, Cardinal's employees and/or agents did not require authorized returns paperwork from Duke University Health System, Inc.'s employees and/or agents at Raleigh Hospital and did not inspect the barrels to determine that they were properly sealed, their content, their date of delivery to Duke North, or otherwise determine their integrity and salable condition, prior to accepting them for return at the Raleigh Hospital parking deck.

45. Rather, in violation of each and every one of the duties and standard of care enunciated in the contract provisions and Cardinal's own policies and without the exercise of ordinary care, its employees and/or agents picked up and accepted the return of approximately eleven barrels containing dirty waste hydraulic fluid, approximately ten of which were labeled Mon-Klenz and/or Klenzyme and one of which was labeled Hinge-Free as Mon-Klenz returns, which Cardinal's agents were required to refuse as returns because:

- a. they were not in salable condition;
- b. had not been authorized as returns within 72 hours after delivery;
- c. could not be shown to have been purchased by Raleigh Hospital from Cardinal within three months or at all;
- d. were unaccompanied by authorized returns paperwork;
- e. were without tamper proof safety seals and were otherwise defaced;
- f. were dirty and oily; and
- g. exceeded the number of barrels which Raleigh Hospital could reasonably be expected to have ordered;
- h. In the case of the barrel labeled as Hinge-Free, contained a liquid which was a substantially different color than Hinge-Free.

46. Cardinal's employees knew or should have known that the barrels contained a substance other than Mon-Klenz for the foregoing reasons, and because Raleigh Hospital did not generally use more than one barrel of Mon-Klenz in a month and eleven dirty, unsealed barrels were being returned, and also because they had not been placed in a pre-determined location appropriate for the storage of excess supplies ("overage") but rather were in a parking deck surrounded by obvious refuse.

47. Despite no authorized returns paperwork, the dirty and oily condition of the barrels, the absence of safety seals and the suspicious location of the barrels, Cardinal's employees and/or agents accepted the barrels for return without checking their contents.

48. The Cardinal employees and/or agents then transported the barrels filled with dirty waste hydraulic fluid from Raleigh Hospital to Cardinal's facilities located in Durham, NC.

49. On or about October 5, 2004 Cardinal's employees and or agents at its warehouse in Durham, NC, 'processed through returns' the barrels containing dirty waste hydraulic fluid, and on or about October 6, 2004 entered them in its inventory records, and stored them with its stock supply of Mon-Klenz, Klenzyme or Hinge-Free for delivery to its hospital customers.

50. Upon information and belief, the Cardinal's employee(s) and/or agent(s) accepting the return of the barrels from its employee and/or agent transporting the barrels from Raleigh Hospital's parking deck also did not inspect the barrels to determine their content, their date of delivery to Duke Hospital, whether they were sealed, whether they were accompanied by authorized returns paperwork, why they were picked up from Raleigh Hospital, or otherwise determine their integrity and salable condition before placing them in its stock supply of Mon-Klenz.

C . Cardinal Sells the Barrels Back to Duke University Health System, Inc.

51. Paragraphs 1 through 50 are herein incorporated by reference as if fully set forth.

52. On or about November 3, 2004, Raleigh Hospital ordered product from Cardinal.

53. In response to Raleigh Hospital's order, Cardinal's agents and/or employees negligently removed one of the defaced, unsealed, dirty, oily barrel containing dirty waste hydraulic fluid from its stock supply and negligently delivered the same to Raleigh Hospital for use in its decontamination and sterilization washers on or about November 4, 2004. Thereafter, Cardinal's employees repeatedly and negligently continued to deliver barrels containing dirty waste hydraulic fluid from its stock supply, falsely representing the same to contain uncontaminated Mon-Klenz and/or Klenzyme and/or Hinge Free (including the barrel labeled as Hinge-Free), as follows:

a. To Raleigh Hospital: an additional barrel on about November 8, 2004, and another on or about December 2, 2004;

b. To Durham Regional Hospital: two barrels on or about November 23, 2004, one barrel on or about December 2, 2004, and three barrels on or about December 23, 2004;

c. To Duke North: one barrel on or about December 2, 2004;

d. To North Carolina Baptist Hospital: two drums on or about December 6, 2004.

e. Any other barrels delivered that may be determined during the investigation or discovery of this litigation.

54. None of Cardinal's employees and agents inspected the barrels to determine that they were unsealed, mislabeled, and contained fluid other than the Steris products indicated on the labels. Moreover, upon information and belief, management level employees at Cardinal were aware long before the incident leading to the return to and resale by Cardinal of the contaminated barrels containing dirty waste hydraulic fluid, that its rank and file employees and agents routinely failed to enforce or abide by the terms of Cardinal's contract with Duke University Health System, Inc., relating to returns and had done so for a number of years. Despite this knowledge, management level employees failed to remedy this problem through supervision, training or discipline of said employees and agents to ensure contract compliance.

55. On or about November 24, 2004, Cardinal, by and through its agents and employees, was aware that the barrels of product returned from Raleigh hospital had not been correctly identified and at that time, defendants, Harris, Locklear, Winstead, Vandiford, Witherspoon, Bumgarner, Carpenter, Sapeinza and Green and/or other of Cardinal's employees failed to inspect or visualize the returned barrels sufficiently to observe that the barrel labeled Hinge-free, which should have contained milky white fluid, contained instead a liquid of a dark maple syrup color, and "reentered" the barrel, as well as the ten other barrels into the Cardinal system. Moreover, these defendants also failed to differentiate between the barrel labeled Hinge-Free from the barrels labeled Mon-Klenz, and accepted that barrel as Mon-Klenz. In addition the defendants failed to notice that the barrels were dirty and oily and were without tamper proof safety seals and were otherwise defaced.

56. Upon information and belief, Cardinal charged Duke University Health System, Inc., for all of the barrels containing dirty waste hydraulic fluid they delivered to its hospitals.

D. Durham and Raleigh Hospitals connect barrels filled with dirty waste hydraulic fluid to their decontamination and sterilization washers

57. Paragraphs 1 through 56 are herein incorporated by reference as if fully set forth.

58. Raleigh Hospital had the practice of ordering Mon-Klenz the day before its use, because the staff had no place to store Mon-Klenz.

59. On or about November 3 or 4, 2004, Raleigh Hospital staff attached barrels containing dirty waste hydraulic fluid to the equipment used to clean, decontaminate, sterilize and lubricate surgical instruments in the Raleigh Hospital Central Sterile Reprocessing area.

60. Upon information and belief, from on or about November 4, 2004 through the remainder of November and most of December, 2004, all equipment and instruments used in surgical and other invasive procedures at Raleigh Hospital were contaminated by dirty waste hydraulic fluid which had been used in lieu of detergent in Raleigh Hospital's decontamination and sterilization washers during the decontamination and sterilization process.

61. Immediately thereafter, and throughout the remainder of November and most of December, staff in the central sterile processing and surgical services departments at Raleigh Hospital, as well as surgeons, operating nurses, and vendors of equipment and instruments repeatedly complained to management concerning greasy, oily instruments coming out of the Steris washers used at Raleigh Hospital. These communications were in turn conveyed to Steris service representatives repeatedly.

62. Upon information and belief, several weeks later, on or about November 24, 2004, Durham Hospital staff attached barrels containing dirty waste hydraulic fluid to the equipment used to clean, decontaminate, sterilize and lubricate surgical instruments in the Durham Hospital Central Sterile Processing area.

63. As at Raleigh Hospital, Durham hospital staff in the central sterile processing and surgical services departments, as well as surgeons, operating nurses, and vendors of equipment and instruments repeatedly complained to management concerning greasy, oily instruments coming out of the Steris washers used at Durham Hospital. These communications were in turn conveyed to Steris service representatives repeatedly.

64. Upon information and belief, Durham Hospital continued to contaminate all surgical instruments with dirty waste hydraulic fluid throughout the remainder of November and through on or about December 22, 2004. Upon information and belief, barrels containing dirty waste hydraulic fluid were finally disconnected from one or more washer(s) at Durham Hospital on or about December 22, 2004, but the tubing used to connect the barrel to the washer(s) was not replaced until on or about December 30, 2004.

65. Upon information and belief, on or about December 22, 2004, Durham Hospital employees informed Cardinal employee defendant Wade H. Winstead, Jr. that there was a barrel of contaminated Mon-Klenz leaving an oily residue on surgical instruments that had been delivered unsealed and the product inside was an oily substance neither the color nor the consistency of the original product.

66. Upon information and belief, defendant Wade H. Winstead, Jr., did not inform Raleigh Hospital of the contamination problem to this incident until on or about December 28, 2004.

E. Steris failed to adequately service the Steris washers, in violation of its duty of care, its own policies, its service agreement with Duke University Health System, Inc., and the instructions in the operator's manuals which accompany its washers.

67. Paragraphs 1 through 66 are herein incorporated by reference as if fully set forth herein.

68. Steris represented to the public and to Duke University Health System, Inc., that it provided fully qualified service personnel to maintain its decontamination and sterilization washers, and warned them that failure to use service personnel approved by Steris as qualified could cause personal injury and invalidate washer warranties.

69. Upon information and belief, Steris' operator's manuals for its decontamination and sterilization washers in use at Durham and Raleigh Hospitals in 2004 warned that if loads of equipment and instruments came out of the washers dirty, this outcome was an indication that the wrong type of detergent was in use and that the Steris service representative should be called to check the washers.

70. Upon information and belief, Steris service representatives were notified by staff at Durham and Raleigh Hospitals that equipment and instruments was coming out of the Steris washers dirty, including but not limited to

- a. By email sent to Rick Snead of Steris by Durham Hospital Central Sterile Reprocessing Manager Georgia Gallagher, R.N., on or about December 14, 2004 which did not result in a service visit from Steris;
- b. By phone call sometime thereafter between Durham Hospital and Steris employees, in lieu of a service visit, in which the problem was misdiagnosed by Steris employees on the phone;
- c. At a service visit to Durham Hospital on December 22, 2004, at which time the Steris Service Representative discovered that the liquid being utilized as detergent in the washers was not Mon-Klenz detergent, and obtained a sample of the same for testing.

71. On or about December 29, 2004, Greg Edwards determined that the liquid purporting to be detergent which was connected to the decontamination and sterilization washers at Raleigh Hospital was not detergent. He did not replace the lines, however, which had conveyed the dirty waste hydraulic fluid from the mislabeled barrel to the washers. Only on December 29, 2004, did the Steris representative Greg Edwards reveal to Raleigh Hospital staff that the same problem had been discovered at Durham Hospital seven days earlier.

72. Steris failed to inform Raleigh Hospital at any time between December 22, 2004 and December 29, 2004, of its determination that the improper fluid was in use as detergent in decontamination and sterilization washers at Durham Hospital and might well also be in use in Durham Hospital's washers, even though it knew or should have known that:

- a. Raleigh Hospital also used its washers;

- b. Raleigh Hospital was also serviced by the same agreement Steris had with Duke University Health System, Inc. which required it to service Durham Hospital;
- c. the same type of detergent was used in Raleigh Hospital as was used in Durham Hospital;
- d. It was likely that Durham and Raleigh Hospitals obtained their detergent from the same supplier;
- e. Both Raleigh and Durham Hospitals were having similar problems of greasy, oily instruments after completing the decontamination and sterilization process.

73. On or about December 30, 2004, Steris informed Raleigh and Durham Hospital management employees that they would not certify the safety or integrity of the Raleigh or Durham Hospitals' decontamination and sterilization washers until the lines on all of them had been replaced. This was done with the assistance of one or more Steris staff members at Raleigh Hospital on or about December 30 or 31, 2004 and at Durham Hospital on or about December 30, 2004.

74. Cardinal failed to inform Raleigh Hospital at any time between December 22, 2004 and December 29, 2004, of its knowledge and determination that the improper fluid was in use as detergent in decontamination and sterilization washers at Durham Hospital and might well also be in use in Durham Hospital's washers, even though it knew or should have known that:

- a. Raleigh Hospital was also serviced by the same agreement Cardinal had with Duke University Health System, Inc.;

- b. the same type of detergent was used in Raleigh Hospital as was used in Durham Hospital;
- c. Durham and Raleigh Hospitals obtained their detergent from the same supplier;
- d. Both Raleigh and Durham Hospitals were having similar problems of greasy, oily instruments after completing the decontamination and sterilization process.

F. Cardinal, Steris and Duke University Health Systems, Inc., engage in a cover-up designed to protect themselves at the expense of patient safety.

75. Paragraphs 1 through 74 are herein incorporated by reference as if fully set forth.

76. Once the defendants, Cardinal and Steris determined that the contents of the barrels labeled Mon-Klenz and Hinge-Free were in fact dirty waste hydraulic fluid, they engaged in a civil conspiracy with each other and with Duke University Health Systems, Inc., which was designed to:

- a. minimize the access of patients whose surgical or invasive procedures at Durham Raleigh Hospital had been performed with instruments and/or equipment contaminated by dirty waste hydraulic fluid to information concerning the nature of the fluid;
- b. prevent the access of patients or their representatives to the dirty waste hydraulic fluid by refusing to preserve the contaminant for testing by plaintiffs' and/or their representatives;

c. hide from public knowledge the identity of the chemical components of the dirty waste hydraulic fluid;

d. mislead regulatory authorities and the public by attempting to suppress or minimize the significance of information regarding the use of contaminated equipment and/or instruments on over three thousand eight hundred patients who had undergone surgical and/or invasive procedures at Durham and Raleigh Hospitals in November and December of 2004;

all for the purpose of limiting their exposure to bad publicity and financial responsibility for injuries sustained by the plaintiffs and others similarly situated, and despite their knowledge that the patients and their physicians needed the suppressed information in order to monitor their own conditions, protect their health and safety, and minimize their mental suffering.

77. Steris and Cardinal by and through their employees and /or agents knew or should have known that dirty waste hydraulic fluid had been provided to Durham Hospital but they elected to keep Raleigh Hospital, also a user of Steris detergents, in the dark as to the potential life-threatening problems, even though they knew or should have known that Raleigh Hospital had been having similar problems with oily, greasy instruments for almost two months, and that one or more of the sterilization and lubrication products were contaminated.

78. Upon information and belief, on or before January 4, 2005, Duke University Health System, Inc., Cardinal and Steris knew the following:

a. That there was a problem with the delivery and use of a contaminated product that would or could lead to litigation;

b. That the real effects of the material introduced into the body cavities of plaintiffs and other similarly situated patients were unknown to them;

c. That the MSDS, or Material Safety Data Sheet, for even the non-contaminated hydraulic fluid, indicated that injection of the fluid constituted a surgical emergency.

79. Armed with the foregoing knowledge, Duke University Health System, Inc., and defendants Cardinal and Steris entered into a joint defense agreement wherein they each were responsible for the sharing the costs of testing, experts, other expenses, ideas and responses to the contamination event. This defense agreement was entered into for the purpose of minimizing the impact of and limiting the value of liability claims that were reasonably expected by them to be filed as lawsuits, and/or to eliminate or reduce the chances of litigation, and to minimize the impact of publicity on sales and the reputation of all of the potential defendants.

80. At some time between December 22 and 24, 2004, Steris and/or Duke University Health System, Inc., arranged for testing of the contents of the detergent barrel which had been removed from the washer at Durham Hospital on or about December 22, 2004. They never made known to the public, or any of the plaintiffs or other patients who had been exposed to the fluid, the results of the testing.

81. Cardinal and Steris did not inform Raleigh Hospital when they discovered that an unknown contaminant was being used in the washers at Durham Hospital, even though they knew or should have known that both hospitals had had numerous complaints regarding greasy, oily, dirty instruments and that both hospitals received their supplies from Cardinal. This resulted in additional patients being exposed to the contaminants during surgeries continued at Raleigh Hospital when a problem had already been identified at Durham Hospital.

82. The contaminants in the dirty waste hydraulic fluid included toxic chemicals, carcinogens, degraded oil, petroleum, metals, other chemical additives, particulates organic and inorganic toxins, and other foreign substances dangerous to humans when placed in or in proximity to their internal organs.

83. The defendants failed to immediately inform patients and staff from the first moment of concern regarding potential contamination of surgical instruments that such contamination had occurred and that they had been exposed to the same.

84. Upon information and belief, the defendants apparently determined that Exxon Mobile originally manufactured the hydraulic fluid which was eventually put into Durham and Raleigh Hospitals' patients as dirty waste hydraulic fluid.

85. Upon information and belief, Duke University Health System, Inc., pursuant to its agreement with defendants Steris and Cardinal, asked Exxon Mobile for the chemical content of its hydraulic fluid, but chose not to inform ExxonMobile that its patients had been exposed internally to ExxonMobile hydraulic fluid during surgeries.

86. ExxonMobile officials have been reported to have said that, had they known the true facts regarding the use of contaminated surgical instruments, ExxonMobile would have immediately authorized the disclosure to patients of what it considered to be proprietary information regarding some of the chemical additives contained in its products. Instead, it is believed upon information that the defendants deliberately misinformed and/or allowed their co-conspirator to misinform ExxonMobile that the request for the chemical composition of the hydraulic fluid was made because an employee's skin had been exposed to the same. This failure is a breach of Steris' and Cardinal's duties to the plaintiffs, other Durham and Raleigh Hospital patients and the public at large.

87. Upon information and belief, Duke University Health System, Inc., pursuant to its agreement with defendants Steris and Cardinal, asked the N.C. Department of Labor to keep its findings regarding the dirty waste hydraulic fluid secret, generating a response from the Department of Labor that this was public information which could not be suppressed.

88. Upon information and belief, in furtherance of their civil conspiracy with Duke University Health System, Inc., Cardinal and Steris directly and indirectly engaged in a course of deceptive corporate conduct, which included participating with Duke University Health System, Inc. in arranging for testing to determine sterility of the instruments. In furtherance of the deceptive conduct on the part of the defendants these test results were mischaracterized to the patients and the public as proving that the instruments were sterile when in fact they were not clean and sterile.

89. Upon information and belief, in furtherance of their civil conspiracy with Duke University Health System, Inc., Cardinal and Steris directly and indirectly engaged in a course of deceptive corporate conduct, which included participating with Duke University Health System, Inc. in arranging for the testing of all of the remaining surgical instruments for the purported purpose of determining the amount of contamination on the instruments and the chemical content. Instead of hiring an unbiased laboratory, the defendants hired a laboratory that had Duke connections and members of Duke University Health System, Inc. and Duke Medicine on its board of directors.

90. Steris and Cardinal, together with Duke University Health System, Inc., had exclusive control of the contaminated instruments but failed to preserve any of the instruments in their contaminated state for testing by neutral parties and/or by the plaintiffs or experts retained

on their behalf, thus destroying and spoiling evidence of the amount, locations, and concentrations of the waste hydraulic fluid or other contaminants on the surgical instruments.

91. Upon information and belief, in furtherance of their civil conspiracy with Duke University Health System, Inc., Cardinal and Steris directly and indirectly engaged in a course of deceptive corporate conduct, which included the undertaking of completely unreliable studies performed by Pharmalink, to substantiate unsupported and untrue statements of patient well being.

92. Upon information and belief, in furtherance of their civil conspiracy with Duke University Health System, Inc., Cardinal and Steris directly and indirectly engaged in a course of deceptive corporate conduct, which included the undertaking of additional testing and studies, which they have failed to disseminate to patients.

93. Upon information and belief, pursuant to the civil conspiracy between Cardinal, Steris and Duke University Health System, Inc., Duke University Health System, Inc., , through James P. Knight, the Chief Executive Officer (hereinafter 'CEO') of Raleigh Hospital and David P. McQuaid, the CEO of Durham Hospital, wrote a form letter which was sent on or about January 4, 2005, to approximately three thousand eight hundred patients they had identified who had been exposed to surgical instruments washed in dirty waste hydraulic fluid.

94. The form letter written to those patients was misleading in that:

a. It failed to inform them that they had been surgically exposed to dirty waste hydraulic fluid;

b. It encouraged them to believe that they may not have been exposed to the fluid;

c. It encouraged them to believe that, if they had been exposed to the fluid, they were at no risk for harm other than the normal post-surgical risk;

d. It misinformed them that there had been no increase in infection even though Cardinal and Steris knew that unused hydraulic fluid, or dirty waste hydraulic fluid, contained toxins and posed many risks including death, as outlined in its Material Safety Data Sheet, and even though Cardinal and Steris did not and could not know what effect the exposures had had on infection rates as of the date of the letters.

95. The plaintiff patients were operated on at Durham and Raleigh Hospitals with surgical instruments and/or equipment contaminated by dirty waste hydraulic fluid.

96. The plaintiff patients have, as a result of exposure to the dirty waste hydraulic fluid, developed various symptoms, symptom complexes and injuries, which were proximately caused by exposure to the dirty waste hydraulic fluid.

97. At no time on or after about January 4, 2005 did defendants Cardinal and Steris publicly repudiate, renounce, or correct the misleading and/or false information contained in the letter described in the foregoing paragraphs, even though they knew that the letter was improperly intended to minimize, eliminate or reduce potential exposure to legal claims by patients who had been exposed to the contaminated surgical instruments by falsely minimizing the potential risks the contamination posed to patients for the improper purpose of protecting their reputation, and that of Duke University Health System, Inc., at the expense of plaintiff patients' safety .

98. Upon information and belief, pursuant to the civil conspiracy between Cardinal, Steris and Duke University Health System, Inc., Duke University Health System, Inc., sent a similar letter to the physicians and surgeons who treated the approximately three thousand eight hundred patients who had been identified as having been exposed to surgical instruments washed in dirty waste hydraulic fluid. These letters also minimized and misrepresented the potential risks to the physicians' and surgeons' patients.

99. At no time on or after about January 5, 2005 did defendants Cardinal and Steris publicly repudiate, renounce, or correct the misleading and/or false information contained in the letter described in the preceding paragraph, even though they knew that the letter was improperly intended to minimize, eliminate or reduce potential exposure to legal claims by patients who had been exposed to the contaminated surgical instruments by falsely minimizing the potential risks the contamination posed to patients for the improper purpose of protecting their reputation, and that of Duke University Health System, Inc., at the expense of plaintiff patients' safety.

100. Between January and April 2005, numerous Durham and Raleigh Hospital patients, their attorneys, and their treating physicians asked Duke University Health System, Inc., about the chemical composition and components of the dirty waste hydraulic fluid and whether or not they had tested the dirty waste fluid or retained samples of the dirty waste hydraulic fluid.

101. Initially, in furtherance of its conspiracy with Cardinal and Steris, Duke University Health System, Inc., refused to respond to these inquiries and questions despite its fiduciary duties to provide any and all known information to patients as expeditiously as possible and to obtain and disseminate complete information regarding the chemical composition and components of the dirty waste hydraulic fluid as soon as possible. In addition, the defendants had

the duty to preserve the contaminated instruments and equipment for patients, so that second opinions could be obtained concerning the contamination of the instruments and equipment. Cardinal and Steris did not repudiate, renounce, correct, or compel the information to be provided to patients and/or the contaminated instruments and equipment to be preserved, instead acquiescing in and benefitting from Duke's actions in furtherance of their civil conspiracy.

102. In furtherance of its conspiracy with Cardinal and Steris, initially, Duke University Health System, Inc., refused to answer questions by and on behalf of its patients and withheld information from patients about whether or not the fluid had been tested or analyzed and failed to inform them of any information about the contents or composition of the fluid, or had retained samples of the fluid. Cardinal and Steris did not repudiate, renounce, correct, or compel the information to be provided to, instead acquiescing in and benefitting from Duke's actions in furtherance of their civil conspiracy.

103. At no time did defendants Cardinal and Steris publicly repudiate, renounce, or correct the misleading and/or false information described in the foregoing paragraphs concerning the testing and analysis of the fluid, even though they knew that the testing results were improperly intended to minimize, eliminate or reduce potential exposure to legal claims by patients who had been exposed to the contaminated surgical instruments by falsely minimizing the potential risks the contamination posed to patients for the improper purpose of protecting their reputation, and that of Duke University Health System, Inc., at the expense of plaintiff patients' safety.

104. Cardinal, Steris and Duke University Health System, Inc.'s collective failure to disclose any of the information that patients, patients' treating physicians, and attorneys for

patients requested regarding the dirty waste hydraulic fluid and contaminated surgical instruments, caused plaintiffs great worry, anxiety, apprehension and emotional distress. Plaintiff patients feared that the dirty waste hydraulic fluid contained substances that were injurious to their health, including the fear that some of the chemicals contained in the fluid might be carcinogens or might have unknown future ailments as a result of the chemical exposure.

105. Cardinal, Steris and Duke University Health System, Inc.'s collective responses to inquiries by and on behalf of patients were evasive, deceptive and misleading.

106. In furtherance of their civil conspiracy with Duke University Health System, Inc., Cardinal and Steris directly and indirectly engaged in a course of deceptive corporate conduct, including their failure to renounce, repudiate, or correct the misleading statements which continued to be made in letters sent to plaintiff patients by Duke University Health System, Inc., sent to patients on June 20, 2005, June 27, 2005, August 3, 2005 and July 26, 2007.

107. To the extent that additional facts are developed by discovery and further investigation, they will be shown at the trial of this matter and are herein incorporated by reference as if fully set forth. Plaintiffs herein move to amend to conform this complaint to additional evidence later developed in this case.

108. The performance of surgeries and invasive procedures with contaminated, dirty and/or non-sterile instruments and equipment proximately caused the injuries described in Exhibits # 1 through # 65, which are herein incorporated by reference and caused plaintiffs great worry, anxiety, apprehension and emotional distress as set out herein. The surgeries occurred

and/or continued despite instrument contamination because the defendants each breached their duties to the plaintiffs, as is more particularly set forth below.

109. Cardinal and Steris had and have a continuing duty to protect the lives and health of the plaintiffs and others similarly situated by providing full, fair and accurate information and statements to the public, to the plaintiffs, and to others similarly situated.

G. The dirty waste hydraulic fluid was transported in commerce

110. Cardinal transported and/ or allowed the transportation of and/or caused hazardous waste to be transported by common, public and private carriers without notice to either the public or the carriers in violation of law and public policy.

111. Cardinal sold contaminated and mislabeled products in interstate commerce in violation of law and public policy.

112. Upon information and belief Cardinal held a hazardous material certificate of registration at all times relevant to this action and was subject to all federal and state rules and regulations regarding handling, storage and transportation and sale of hazardous materials.

IV. FIRST CLAIM FOR RELIEF: CIVIL CONSPIRACY (CARDINAL AND STERIS)

113. Paragraphs 1 through 112 are herein incorporated by reference as if fully set forth.

114. Cardinal, Steris and Duke University Health System, Inc., agreed and conspired to do the unlawful acts and acts done in an unlawful manner described in the foregoing paragraphs and for the unlawful purposes alleged herein.

115. Duke University Health System, Inc., and/or Cardinal and/or Steris engaged in the unlawful acts and acts done in an unlawful manner as alleged herein.

116. As a result of the acts committed in furtherance of the conspiracy between Duke University Health System, Inc., Cardinal and Steris, the plaintiffs suffered the injuries described in Exhibits # 1 through # 65, which are herein incorporated by reference and caused plaintiffs great worry, anxiety, apprehension and emotional distress as set out herein.

117. As a direct and proximate result of Cardinal and Steris' civil conspiracy, the plaintiffs are each entitled to recover damages in excess of \$10,000.00 for injuries proximately resulting to them from acts taken in furtherance of the conspiracy.

V. SECOND CLAIM FOR RELIEF: ORDINARY CORPORATE NEGLIGENCE

(CARDINAL)

118. Paragraphs 1 through 117 are herein incorporated by reference as if fully set forth.

119. The administrators and managers of Cardinal had the duty to ensure that their employees acted in compliance with all regulations, ordinances, statutes and laws applicable to their work and supplying of goods under its contract with Duke University Health System, Inc., and including compliance with regulations regarding the distribution, storage and return of hazardous chemicals.

120. The administrators and managers at Cardinal had the duty to ensure that, while on Duke University Health System, Inc.'s premises, their employees and agents complied with Duke University Health System, Inc.'s policies, procedures, and any regulations as it related to its work and supplying of goods under its contract with Duke University Health System, Inc.

121. The administrators and managers at Cardinal had the duty to ensure that their employees and agents complied with the standard of care, skill and diligence required of a distributor of medical and surgical supplies in the performance of such services.

122. Cardinal, through its managerial and administrative employees and agents, had the specific duty, in the course of supplying and accepting returned supplies, including Mon-Klenz, Klenzyme and Hinge-Free to Duke North, Raleigh Hospital, and Durham Hospital, to comply with its duties under its contract with Duke University Health System, Inc.. Specifically, Cardinal breached its duties to ensure that its employees and agents refused to accept the return of products in violation of the terms of its contract with Duke University Health System, Inc., and to inspect goods as a condition precedent to accepting them in return or delivering them to customers, in each instance to determine their integrity and salability.

123. Cardinal, through its administrative and managerial employees, breached the foregoing duties, in the course of accepting returned decontamination and sterilization products, and in the course of delivering purported decontamination and sterilization products to Duke North, Raleigh Hospital, Durham Hospital and Baptist Hospital in Winston-Salem, by failing to train its employees on its policies, monitor their performance and in particular their compliance with company policies, and enforce its policies and its contractual agreement with Duke University Health System, Inc. and others, which led to the acceptance of dirty waste hydraulic fluid from Raleigh Hospital as decontamination and sterilization products, and the subsequent sale of the same contaminants to four hospitals representing them to be decontamination and sterilization products in violation of the standard of care, and in violation of regulations regarding the distribution, storage, and disposal of hazardous chemicals.

124. Cardinal, through its administrative and managerial employees, was negligent in that it:

- a. Failed to follow industry and trade procedures for providing, handling and supplying medical supplies in the stream of commerce;
- b. Failed to have a protocol or policy or procedure or failed to enforce policies and procedures that were in place or failed to take reasonable steps to ensure that their employees were properly trained on the communication process that would include getting appropriate people involved and capable of recognizing and responding to the impact of the reports to on site materials manager(s) of problems with the surgical instruments;
- c. Failed to have a protocol and/or policy and/or procedure and/or failed to enforce policies and procedures that were in place and/or failed to take reasonable steps to ensure that their employees were properly trained to review all returned goods of certain categories for possible contamination;
- d. Failed to timely involve employees with decision-making ability and authority to investigate, respond to, and notify its customers, including Durham and Raleigh Hospitals of problems with contaminated detergent it had distributed;
- e. Failed to have a protocol and/or policy and/or procedure and/or failed to enforce policies and procedures that were in place and/or failed to take reasonable steps to ensure that its employees were properly trained to ascertain the condition and viability of returned products;

- f. Failed to have a protocol and/or policy and/or procedure and/or failed to enforce policies and procedures that were in place and/or failed to take reasonable steps to ensure that its employees were properly trained to identify products that presented high risks for return after opening and/or addressed the restocking of products that presented high risk for returns after opening and/or a system for blocking returned products that presented high risk for returns after opening;
- g. Failed to have a protocol and/or policy and/or procedure or failed to enforce policies and procedures that were in place and/or failed to take reasonable steps to ensure that their employees were properly trained to identify open or tampered with products and to identify expiration dates, damage and condition of label information;
- h. Failed to have a protocol and/or policy and/or procedure and/or failed to enforce policies and procedures that were in place and/or failed to take reasonable steps to ensure that its employees were properly trained to communicate between users regarding product questions and/or issues;
- i. Failed to have a protocol and/or policy and/or procedure and/or failed to enforce policies and procedures that were in place or failed to take reasonable steps to ensure that its employees were properly trained to ensure quality in the distribution process;
- j. Other wrongful acts and omissions as may be determined during the investigation or discovery of this litigation.

125. As a direct and proximate result of Cardinal's corporate negligence, the plaintiffs suffered injuries as are identified in attached Exhibits # 1 through # 65, which are herein incorporated by reference and caused plaintiffs great worry, anxiety, apprehension and emotional distress as set out herein. The Plaintiffs are each entitled to recover damages in excess of \$10,000.00 for injuries proximately resulting to them from Cardinal's negligence.

VI. THIRD CLAIM FOR RELIEF: ORDINARY NEGLIGENCE

(CARDINAL'S RANK AND FILE EMPLOYEES)

126. Paragraphs 1 through 125 are herein incorporated by reference as if fully set forth.

127. Upon information and belief, defendant Carpenter, Locklear and Green and/or others among Cardinal's delivery and pickup employees and/or agents breached their duties to adhere to the following Cardinal policies and the standard of care when picking up purported returns from Cardinal's customers and were negligent, as follows:

- a. accepted the return of defaced products and/or barrels from Raleigh Hospital when they had a duty to reject them;
- b. They failed to inspect the mislabeled barrels picked up from Raleigh Hospital for visible damage as they were required to do, and they therefore failed to detect signs of damage including dirt, defacement, broken seals, and other visible signs of tampering displayed by the mislabeled barrels;

- c. They accepted the mislabeled barrels picked up from Raleigh Hospital because they failed to inspect, and therefore detect, evidence of tampering, when they had a duty to reject them;
- d. They accepted the mislabeled barrels from Raleigh Hospital even though they were not accompanied by the required authorized returns paperwork, when it was their duty to reject them;
- e. They accepted the barrels even though they were damaged and not resalable and not properly labeled, when it was their duty to reject barrels which were damaged, and/or were not resalable, and/or were not properly labeled in a manner which matched up with the authorized returns paperwork;
- f. They failed to take appropriate measures to ensure that the appropriate fluids were in the barrels sought to be returned, including visually examining the barrels, their labels, and the condition of their tamper-proof safety seals;
- g. They violated warning and labeling regulations regarding the distribution and storage of hazardous chemicals, including those contained in N.C. Gen. Stat Ch 95 and 29 C.F.R. 1910;
- h. They failed to notice that the shipping labels indicating that the original label indicated that the barrels had been previously shipped by Cardinal to Duke North, but were being returned from Raleigh Hospital;

- i. They failed to notice that the barrels were on a pallet with a discarded toilet and air handler indicating they were all waste products;
- j. They failed to make any inquiry as to why the barrels were in a location different from the destination indicated on their shipping labels;
- k. They committed other wrongful acts and omissions as may be determined during the investigation or discovery of this litigation.

128. Upon information and belief, defendants Vandiford, Witherspoon Sapeinza and Carpenter, individually and/or in concert, and/or other of Cardinal's receiving, returns and inventory services and/or materials managers and/or operations managers and/or other employees and agents breached their duties to adhere to Cardinal's policies, and the standard of care, when receiving shipments including returns from Cardinal's customers and were negligent as follows:

- a. They accepted the return of defaced products and/or barrels from Duke University Health System, Inc. when they had a duty to reject them;
- b. They failed to inspect the mislabeled barrels for visible damage, which they had a duty to do, and which would have resulted in the discovery of visible damage requiring rejection;
- c. They accepted returned products from Raleigh Hospital which were not accompanied by authorized returns paperwork, lacked safety seals and were not properly labeled without checking their contents, despite the dirty and oily condition of the barrels;

- d. They failed to notice that the shipping labels indicated that the barrels had been shipped to Duke Hospital, not Raleigh Hospital, and that they were being returned instead from Raleigh Hospital;
- e. They failed to notice that the barrels were on a pallet with a discarded toilet and air handler indicating waste products;
- f. They failed to make any inquiry as to why the barrels were in a location different from that indicated on their shipping labels;
- g. They failed to determine whether appropriate fluids were in the barrels sought to be returned, including visually examining the barrels, their labels, and their tamper-proof safety seals;
- h. They placed the returned barrels which were mislabeled, damaged, dirty, with broken seals, not accompanied by appropriate paperwork, did not contain the liquids identified on their labels, and which had not been visually inspected, into Cardinal's stock of new barrels, all in violation of its duty to reject the barrels for any one or more of the foregoing reasons;
- i. They violated regulations regarding the distribution and storage of hazardous chemicals, including those contained in N.C. Gen. Stat Ch 95 and 29 C.F.R. 1910;
- j. They committed other wrongful acts and omissions as may be determined during the investigation or discovery of this litigation.

129. Upon information and belief, defendants Harris, Locklear, Winstead, Vandiford , Witherspoon, Bumgarner, Carpenter, Sapeinza and Green, individually and/or in concert, and/or others among Cardinal's warehouse and delivery employees and/or materials managers or operations managers and/or other employees and agents breached their duties to adhere to Cardinal's policies and procedures, and the standard of care, when delivering shipments to Cardinal's customers, including when delivering Mon-Klenz, Klenzyme and/or Hinge-Free to Durham and Raleigh Hospitals and were negligent as follows:

- a. They delivered as new decontamination and sterilization detergent the mislabeled used, dirty, unsealed barrels containing dirty waste hydraulic fluid;
- b. They failed to inspect the barrels for visible damage and failed to reject them for delivery because they had visible signs of damage, including dirt, broken tamper-proof safety seals and other signs of tampering;
- c. They failed to take appropriate measures to ensure that the appropriate fluids were in the barrels to be delivered, including visually examining the barrels;
- d. They delivered the mislabeled barrels, to four hospitals misrepresenting their true contents;
- e. They re-introduced back into the stream of commerce the barrels labeled as detergent or lubricant which actually contained dirty waste hydraulic fluid;
- f. They marketed, advertised, sold, distributed, delivered, listed, certified, warranted, labeled, and packaged as detergent and lubricant what was in fact dirty waste

hydraulic fluid; and allowed the dirty waste hydraulic fluid to be introduced into the stream of commerce;

g. They failed to warn Durham and Raleigh Hospitals and their patients that the barrels did not contain detergent or lubricant, as they were labeled, but contained dirty waste hydraulic fluid;

h. They committed other wrongful acts and omissions as may be determined during the investigation or discovery of this litigation.

130. Upon information and belief, defendants Harris, Winstead, Bumgarner and Carpenter, individually and/or in concert, and/or other Cardinal sales representatives and/or other employees and agents breached their duties to adhere to Cardinal's policies and procedures, and the standard of care, when delivering shipments to Cardinal's customers, including when delivering Mon-Klenz, Klenzyme and/or Hinge-Free to Durham and Raleigh Hospitals and were negligent as follows:

a. They failed to use due care in responding to complaints of oily, greasy or "over-lubricated" surgical instruments;

b. They failed to exercise reasonable care in inspecting the barrels and tunnel washers at Durham and Raleigh Hospitals and failed to observe that the barrels hooked up to the tunnel washer were filled with used, dirty hydraulic fluid instead of detergent and/or water-soluble lubricant and failed to notify others about this and remedy the problem;

- c. They failed to inspect the Mon-Klenz, Klenzyme and/or Hinge-Free products for product integrity, including the presence of tamper-proof safety seals, product discoloration, the presence of particulates, and unusually dirty barrels;
- d. They failed to communicate on or about December 22, 2004, the contamination problem discovered at Durham Hospital to employees and managers of Raleigh Hospital and Cardinal;
- e. They failed to comply with the policies of their employer and/or principal, Cardinal, and they failed to comply with the terms of Cardinal's contract with Duke University Health System, Inc.;
- f. They failed to realize the impact of the reports of problems with the surgical instruments on the health and welfare of patients exposed;
- g. They failed to properly diagnose the problem with the greasy surgical instruments;
- h. They failed to properly train subordinate representatives to communicate between users regarding product questions and or issues;
- i. They failed to properly train their employees to ensure quality in the distribution process;
- j. They committed other wrongful acts and omissions as may be determined during the investigation or discovery of this litigation.

131. The plaintiffs were injured as a direct and proximate cause of the defendant's negligence, as is set forth in Exhibits # 1 through # 65, which are herein incorporated by reference and caused plaintiffs great worry, anxiety, apprehension and emotional distress as set out herein.

132. As a direct and proximate result of Cardinal's rank and file negligence, the plaintiffs suffered injuries as are identified in attached Exhibits # 1 through # 65, which are herein incorporated by reference and caused plaintiffs great worry, anxiety, apprehension and emotional distress as set out herein. The plaintiffs are each entitled to recover damages in excess of \$10,000.00 for injuries proximately resulting to them from Cardinal's negligence.

VII. FOURTH CLAIM FOR RELIEF: UNFAIR OR DECEPTIVE TRADE

PRACTICES (CARDINAL)

133. Paragraphs 1 through 132 are herein incorporated by reference as if fully set forth.

134. Cardinal falsely represented to Durham and Raleigh Hospitals that the barrels containing dirty waste hydraulic fluid it sold and delivered to them contained detergent for decontamination and sterilization washers.

135. These acts of sale and delivery were in and affecting commerce in North Carolina and were expressly subject to North Carolina law.

136. Cardinal's actions were unfair, deceptive, offensive to established public policy, and were immoral, unethical, oppressive, unscrupulous, and substantially injurious to consumers, including the plaintiffs as is detailed in the following subparagraphs.

- a. Cardinal picked up unsealed barrels containing used, dirty hydraulic fluid at Raleigh Hospital stored in an outdoor parking deck, with labels showing that Cardinal had not delivered the barrels to Raleigh Hospital, all of which put them on notice that the barrels were not what they purported to be;
- b. Cardinal processed the unsealed barrels containing dirty waste hydraulic fluid and placed them into its stock in October of 2004;
- c. Cardinal delivered the unsealed barrels containing dirty waste hydraulic fluid to Duke University Health System, Inc.'s hospitals, including Raleigh and Durham Hospitals in November and December 2004 representing them to be detergent and lubricant suitable for use in cleaning surgical instruments;
- d. Cardinal through its employees and agents, knowingly or with deliberate indifference to their requirements, violated its returns procedures requiring inspection of the product to ensure that: (1) it is in the original protective packaging; (2) not defaced; (3) meets the expiration dating criteria; (4) meets temperature control standards; and Cardinal knowingly violated its return policy and procedures;
- e. Cardinal, through its employees and agents, knowingly or with deliberate indifference to their requirements, violated its policies in picking up and receiving materials as hospital excess supplies without the appropriate paperwork, and in failing to inspect the barrels for product integrity and tamper-proof safety seals;

- f. Cardinal, knowingly or with deliberate indifference, accepted barrels they were on notice they should have rejected, and knew or should have known that they had the potential to cause great harm if delivered for use in surgical procedures;
- g. Cardinal transported and/or allowed the transportation of and/or caused hazardous waste to be transported by common, public and private carriers without notice to the public or the carriers in violation of law and public policy;
- h. Cardinal sold in interstate commerce contaminated and mislabeled products in violation of law and public policy;
- i. Other wrongful acts and omissions as may be determined during the investigation or discovery of this litigation.

137. All of the unfair and deceptive acts alleged herein, as part of and in furtherance of the civil conspiracy to deceive the public, and more specifically, the plaintiff patients after the exposure, was known to Cardinal and designed to:

- a. minimize the access of patients whose surgical or invasive procedures at Durham Raleigh Hospital had been performed with instruments and/or equipment contaminated by dirty waste hydraulic fluid to information concerning the nature of the fluid;
- b. prevent the access of patients or their representatives to the dirty waste hydraulic fluid by refusing to preserve the contaminant for testing by plaintiffs' and/or their representatives;

c. hide from public knowledge the identity of the chemical components of the dirty waste hydraulic fluid;

d. mislead regulatory authorities and the public by attempting to suppress or minimize the significance of information regarding the use of contaminated equipment and/or instruments on over three thousand eight hundred patients who had undergone surgical and/or invasive procedures at Durham and Raleigh Hospitals in November and December of 2004;

all for the purpose of limiting their exposure to bad publicity and financial responsibility for injuries sustained by the plaintiffs and others similarly situated, and despite their knowledge that the patients and their physicians needed the suppressed information in order to monitor their own conditions, protect their health and safety, and minimize their mental suffering.

138. Cardinal's conduct constitutes unfair or deceptive acts or practices and unfair methods of competition in or affecting commerce in North Carolina in violation of N.C. Gen. Stat. § 75-1.1.

139. As a direct and proximate result of Cardinal's unfair or deceptive trade practices, the plaintiffs suffered injuries as are identified in attached Exhibits # 1 through # 65, which are herein incorporated by reference and caused plaintiffs great worry, anxiety, apprehension and emotional distress as set out herein. The plaintiffs are each entitled to recover treble damages and attorneys' fees, under N.C. Gen.Stat. §§ 75-16 and 16.1, in excess of \$10,000.00 for injuries proximately resulting to them from Cardinal's unfair or deceptive trade practices.

VIII. FIFTH CLAIM FOR RELIEF: PUNITIVE DAMAGES (CARDINAL)

140. Paragraphs 1 through 139 are herein incorporated by reference as if fully set forth.

141. The officers and/or directors and/or managers of Cardinal participated in and/or condoned the conduct of its agents and employees, as set forth elsewhere herein, which constitutes willful or wanton conduct and gives rise to punitive damages.

142. The officers, directors, or managers of Cardinal intentionally failed to safely and adequately inspect, seal, handle, process, stock, deliver, sell, market, label, list, and advertise the containers it sold as detergent and instead sold as detergent dirty hydraulic fluid, breaching duties they had under law and custom and contract, and instead participated in and/or condoned the conduct of their company in selling to Duke University Health System, Inc. dirty fluid in detergent containers and thereby acted with conscious and intentional and/or reckless disregard for the safety and rights of others.

143. The wrongful acts, omissions, and conduct of Cardinal constitutes willful and wanton conduct representing a conscious and intentional disregard of and indifference to the rights and safety of others, and an intentional failure to carry out duties imposed by law or contract which were necessary for the safety of hospital patients, which Cardinal knew or should have known was reasonably likely to result in injury, damage or other harm.144. Cardinal's willful and wanton conduct includes the following managerial monitoring and supervising failures, despite the fact that Cardinal warranted that the products it sold and distributed were fit for the purposes and indications described in the labeling:

a. Cardinal picked up unsealed barrels containing used, dirty hydraulic fluid at Raleigh Hospital stored in an outdoor parking deck, with labels showing that Cardinal had not delivered the barrels to Raleigh Hospital, all of which put them on notice that the barrels were not what they purported to be;

b. Cardinal processed the unsealed barrels containing dirty waste hydraulic fluid and placed them into its stock in October of 2004;

c. Cardinal delivered the unsealed barrels containing dirty waste hydraulic fluid to Duke University Health System, Inc.'s hospitals, including Raleigh and Durham Hospitals in November and December 2004 representing them to be detergent and lubricant suitable for use in cleaning surgical instruments;

d. Cardinal through its employees and agents, knowingly or with deliberate indifference to their requirements and in total disregard of the health and safety of the Plaintiffs specifically, and of the health and safety of the public in general, violated its returns procedures requiring inspection of the product to ensure that: (1) it was in the original protective packaging; (2) not defaced; (3) met the expiration dating criteria; (4) met temperature control standards; and Cardinal knowingly violated its return policy and procedures;

e. Cardinal, through its employees and agents, knowingly or with deliberate indifference to their requirements, and in total disregard of the health and safety of the Plaintiffs specifically, and of the health and safety of the public in general, violated its policies in picking up and receiving materials as hospital excess supplies without the

appropriate paperwork, and in failing to inspect the barrels for product integrity and tamper-proof safety seals;

f. Cardinal, knowingly or with deliberate indifference, and in total disregard of the health and safety of the Plaintiffs specifically, and of the health and safety of the public in general, accepted barrels they were on notice they should have rejected, and knew or should have known that they had the potential to cause great harm if delivered for use in surgical procedures.

145. Cardinal conspired with Steris and Duke University Health System, Inc., to cover-up and minimize its exposure to public scrutiny and financial responsibility to the plaintiffs and those similarly situated for harms Cardinal knew it had likely proximately caused, in willful and wanton disregard and deliberate indifference and/or reckless indifference to the potential for grave harm to the plaintiffs which was likely to inure from the cover-up.

146. The officers and/or managers of Cardinal participated in and/or condoned the willful and wanton conduct, giving rise to plaintiffs' punitive damages claims, by their failure to train, monitor, and supervise their employees to ensure their compliance with the above-referenced policies, notwithstanding their knowledge that its employees had routinely violated said policies and that such violations endangered the health of patients.

147. Cardinal through its employees and agents knew or should have known that its willful and wanton conduct was reasonably likely to cause injury, damage, or other harm to the plaintiff patients and other similarly situated patients.

148. The willful and wanton conduct of Cardinal through its agents and employee

contributed to and/or proximately caused and/or exacerbated and enhanced the injuries suffered by the plaintiff patients and other similarly situated patients.

149. An award of punitive damages is warranted to punish defendant Cardinal's egregious conduct and to deter the defendant and others from engaging in similar conduct.

150. As a direct and proximate result of Cardinal's willful and wanton misconduct, the plaintiffs suffered injuries as are identified in attached Exhibits # 1 through # 65, which are herein incorporated by reference and caused plaintiffs great worry, anxiety, apprehension and emotional distress as set out herein. The plaintiffs are each entitled to recover damages in excess of \$10,000.00 for injuries proximately resulting to them from Cardinal's willful and wanton misconduct.

IX. SIXTH CLAIM FOR RELIEF: ORDINARY CORPORATE NEGLIGENCE (STERIS)

151. Paragraphs 1 through 150 are herein incorporated as if fully set forth.

152. The administrators and managers of Steris breached their duty to monitor and supervise their employees and agents to ensure that their employees acted in compliance with all regulations, ordinances, statutes and laws applicable to their work and providing services for support and maintenance of sterilization equipment and products under its contract with Duke University Health System, Inc., and including compliance with regulations regarding the performance of support and maintenance of sterilization equipment and products.

153. The administrators and managers at Steris breached their duties to monitor and supervise their employees and agents to ensure that, while on Durham and Raleigh Hospitals' premises, their employees and agents complied with Duke University Health System, Inc.'s

policies, procedures, and any regulations as it related to its work and provision of services for support and maintenance of sterilization equipment and products and under its contract with Duke University Health System, Inc.

154. The administrators and managers at Steris breached their duty to monitor and supervise their employees and agents to ensure that their employees and agents complied with the standard of care, skill and diligence required of a company providing services for support and maintenance of sterilization equipment and products, including the standards of care contained in Steris' own policies.

155. Steris, through its managerial and administrative employees and agents, had the specific duty, in the course of providing services for support and maintenance of sterilization equipment and products to Duke University Health System, Inc.'s Raleigh and Durham Hospitals, to comply with its managerial and supervisory duties to ensure that its employees and agents providing services at those hospitals pursuant to its contract with Duke University Health System, Inc. complied with those terms and exercised reasonable care to ensure that surgical instruments were properly sterilized and lubricated.

156. Steris, through its administrative and managerial employees, breached the foregoing duties, in the course of providing services for support and maintenance of sterilization equipment and products to Raleigh and Durham Hospitals, by failing to train, monitor, supervise and enforce compliance by its employees and agents with its policies and contractual agreement with Duke University Health System, Inc. and others. These breaches in managerial duties led to the failed sterilization of surgical instruments at one or both hospitals in violation of the standard

of care, and in violation of regulations regarding the proper sterilization and lubrication of surgical instruments.

157. As a direct and proximate result of Steris' corporate negligence, the plaintiffs suffered injuries as are identified in attached Exhibits # 1 through # 65, which are herein incorporated by reference and caused plaintiffs great worry, anxiety, apprehension and emotional distress as set out herein. The Plaintiffs are each entitled to recover damages in excess of \$10,000.00 for injuries proximately resulting to them from Steris's negligence.

X. SEVENTH CLAIM FOR RELIEF: ORDINARY NEGLIGENCE

(STERIS' RANK AND FILE EMPLOYEES)

158. Paragraphs 1 through 157 are herein incorporated by reference as if fully set forth.

159. Steris's employees and/or agents breached their duties owed to plaintiffs and Duke University Health System, Inc., failed to exercise reasonable care, and were negligent when they:

- a. Allowed the barrels filled with dirty waste hydraulic fluid to be used at Raleigh Hospital and/or Durham Hospital to be used to sterilize and lubricate surgical instruments;
- b. Failed to use due care in responding to complaints of oily, greasy or "over-lubricated" surgical instruments;
- c. Failed to reasonably inspect the barrels and tunnel washers at each hospital and failed to observe that the barrels hooked up to the tunnel washer were filled with used,

dirty hydraulic fluid instead of detergent and/or water-soluble lubricant and failed to notify others about this and remedy the problem;

d. Failed to inspect the Mon-Klenz, Klenzyme, and/or Hinge-Free products for product integrity, including the presence of tamper-proof safety seals, product discoloration, the presence of particulates, and unusually dirty barrels;

e. Failed to communicate on or about December 22, 2004, the contamination problem discovered at Durham Hospital to employees and managers of Raleigh Hospital and Cardinal;

f. Failed to comply with the policies of their employer and/or principal, Steris, and failing to comply with the terms of Steris's contract with Duke University Health System, Inc.;

g. Failed to make service calls in person, as required by its own manual;

h. Committed other wrongful acts and omissions as may be determined during the investigation or discovery of this litigation.

160. The plaintiffs were injured as a direct and proximate cause of Steris's negligence, as is set forth in Exhibits # 1 through # 65, which are herein incorporated by reference and caused plaintiffs great worry, anxiety, apprehension and emotional distress as set out herein.

161. As a direct and proximate result of Steris's rank and file negligence, the plaintiffs suffered injuries as are identified in attached Exhibits # 1 through # 65, which are herein incorporated by reference and caused plaintiffs great worry, anxiety, apprehension and emotional

distress as set out herein. The plaintiffs are each entitled to recover damages in excess of \$10,000.00 for injuries proximately resulting to them from Steris's negligence.

XI. EIGHTH CLAIM FOR RELIEF: PUNITIVE DAMAGES

(STERIS)

162. Paragraphs 1 through 161 are herein incorporated by reference as if fully set forth.

163. The officers and/or directors, and/or managers of Steris participated in and/or condoned the conduct taken of its agents and employees, as set forth elsewhere herein, which constitutes willful or wanton conduct and gives rise to punitive damages.

164. The wrongful acts, omissions, and conduct of Steris constitutes willful and wanton conduct representing a conscious and intentional disregard of and indifference to the rights and safety of others, and an intentional failure to carry out duties imposed by law or contract which were necessary for the safety of hospital patients, which Steris knew or should know was reasonably likely to result in injury, damage or other harm.

165. Steris's willful and wanton conduct includes the following managerial monitoring and supervising failures:

- a. Steris employees failed to make service visits to Durham and Raleigh Hospitals upon receiving complaints of dirty equipment after washing when they knew or should have known their own policies required a service visit by a qualified service technician under such circumstances;

b. Following their discovery of the contamination of the washers at Durham Hospital, Steris employees failed for 7 days to inform Raleigh Hospital staff of the contamination of the washers at Durham Hospital, even though they knew or should have known that similar contamination was likely to be occurring at Raleigh Hospital and that surgeries were ongoing there utilizing equipment and instruments likely to be similarly contaminated;

c. Upon information and belief, Steris employees failed to inform Cardinal employees of the contamination of washers at Durham Hospital.

166. Steris conspired with Cardinal and Duke University Health System, Inc., to cover-up and minimize its exposure to public scrutiny and financial responsibility to the plaintiffs and those similarly situated for harms Steris knew it had likely proximately caused, in willful and wanton disregard and deliberate indifference and/or reckless indifference to the potential for grave harm to the plaintiffs which was likely to inure from the cover-up.

167. Upon information and belief, the officers and managers of Steris participated in and/or condoned, by their failure to train, monitor, and supervise their employees to ensure their compliance with the above-referenced policies, the willful and wanton conduct, giving rise to plaintiffs' punitive damages claims.

168. Steris, through its employees and agents, knew or should have known that their willful and wanton conduct was reasonably likely to cause injury, damage, or other harm to the plaintiff patients and other similarly situated patients;

169. The willful and wanton conduct of Steris through its agents and employees was related to the injuries suffered by the plaintiff patients and other similarly situated patients.

170. An award of punitive damages is warranted to punish defendant Steris' egregious conduct and to deter the defendant and others from engaging in similar conduct.

171. As a direct and proximate result of Steris' willful and wanton misconduct, the plaintiffs suffered injuries as are identified in attached Exhibits # 1 through # 65, which are herein incorporated by reference and caused plaintiffs great worry, anxiety, apprehension and emotional distress as set out herein. The plaintiffs are each entitled to recover damages in excess of \$10,000.00 for injuries proximately resulting to them from Steris' willful and wanton misconduct.

XII. NINTH CLAIM FOR RELIEF: OBSTRUCTION OF JUSTICE

(STERIS AND CARDINAL)

172. Paragraphs 1 through 171 are incorporated herein by reference as if fully set forth.

173. The surgical instruments and equipment washed in used, degraded, hydraulic fluid were in the exclusive possession of the defendants and/or their co-conspirator, Duke University Health System, Inc., at all times relevant to plaintiffs claims for exposure. These corporate defendants were well aware of potential legal claims by patients exposed to the contaminated fluid. Even though the defendants were aware of the plaintiffs' requests that the despoiled evidence be preserved so that they could test it, and of plaintiffs' rights to have the despoiled evidence be preserved for litigation purposes, and even though they knew or reasonably should have known that plaintiffs were at risk for and had potential claims for injury, they deliberately

insured that each and every surgical instrument and equipment was washed, thus destroying the evidence of the extent of and nature of instrument and equipment contamination.

174. Cardinal and Steris failure to preserve and/or have their co-conspirator, Duke University Health System, Inc., preserve the instruments and equipment in their contaminated state despite plaintiffs' requests, and to provide the results of its testing in a timely manner prolonged and enhanced the damages to plaintiffs, and impaired the opportunity for plaintiffs to determine the concentrations of contaminants on various types of equipment and instruments used on them in the surgeries, and impaired their ability to obtain knowledge regarding the extent of their personal contamination. These actions caused the plaintiffs delays in treatment and diagnosis, and significant emotional distress and mental pain and suffering. In addition the, self-serving statements made by Cardinal and/or Steris and/or Duke University Health System, Inc., in furtherance of their civil conspiracy, to the public, to the plaintiff patients and other patients, and to the physicians and surgeons of plaintiff patients, minimized and misrepresented their present and future risk of further harm, enhanced their mental anguish, and was designed to and/or had the effect of discouraging plaintiffs from pursuing legal remedies.

175. Access to the contaminated instruments and equipment would have allowed plaintiffs to perform other and additional tests to those performed by Duke University Health System, Inc.'s retained experts, and would also have allowed plaintiffs to have the instruments tested by independent and neutral experts, rather than the interested parties who did the testing for Duke University Health System, Inc. This deprivation harmed the plaintiff patients not only from a medical perspective but also hindered their abilities to prove their damages in a court of law.

176. The destruction of evidence, misrepresentation regarding the evidence and risks of harm to the plaintiff, and other acts designed to minimize the corporate defendants' exposure to justified litigation and claims, and to discourage litigants from proceeding, described in the foregoing paragraphs were unlawful and obstructed and impeded the plaintiffs' access to public justice, by delaying and obstructing their access to information which would have allowed them to more accurately assess their injuries and predict their future impairments.

177. Plaintiffs are entitled to a spoliation instruction and other relief at the trial of this matter as a result of Cardinal's and Steris' conduct in obstruction of public justice.

178. As a direct and proximate result of the Corporate defendants' spoliation of the contaminant on the surgical instruments and equipment inserted into their bodies in surgery and of their misleading statements described in the foregoing paragraphs, the plaintiffs suffered additional damages as are listed in Exhibits # 1 through # 65, which are herein incorporated by reference and caused plaintiffs great worry, anxiety, apprehension and emotional distress as set out herein

179. As a direct and proximate result of Cardinal's and Steris' obstruction of public justice, the plaintiffs suffered injuries as are identified in attached Exhibits # 1 through # 65, which are herein incorporated by reference and caused plaintiffs great worry, anxiety, apprehension and emotional distress as set out herein.

180. The Plaintiffs are each entitled to recover damages in excess of \$10,000.00 for injuries proximately resulting to them from defendant's obstruction of public justice, as well as other relief.

XIII. TENTH CLAIM FOR RELIEF: CONCURRING AND COMBINED NEGLIGENCE

(ALL DEFENDANTS)

181. Paragraphs 1 through 180 are herein incorporated by reference as if fully set forth.

182. The negligence of each defendant, set forth elsewhere herein in more detail, was a direct, proximate, and independent cause of the plaintiffs' injuries.

183. Additionally, the separate and independent acts or omissions of each defendant concurred and combined to produce the plaintiffs' injuries and the conduct of each defendant is a proximate cause of those injuries.

184. The independent negligent acts or omissions by each defendant concurred to produce the plaintiffs' injuries and the conduct of each is a proximate cause of said injuries.

185. The defendants are jointly and severally liable for the plaintiffs' injuries.

XIV. ELEVENTH CLAIM FOR RELIEF: FORESEEABILITY

(ALL DEFENDANTS)

186. Paragraphs 1 through 185 are herein incorporated by reference as if fully set forth.

187. The negligence of each defendant was a proximate cause of plaintiffs' injuries, which in a natural and continuous sequence produced plaintiffs' injuries and which a reasonable and prudent person could have foreseen would probably produce such injuries or some similar injurious result.

188. The type of negligent acts and omissions of each defendant were entirely foreseeable, even if their specific incarnation was not perfectly predicted. Indeed, the types of negligent acts and omissions by each defendant in this case were entirely foreseeable; and the

defendants were each engaged in health care related industries which required them to make reasonable efforts to prevent just those types of acts and omissions in light of their grave potential impact on large numbers of patients.

189. Each defendant in this case should reasonably have had in place (but did not) prevention, monitoring, tracking, and warning systems to discover, identify, prevent, and minimize these acts and omissions before they caused harm to the plaintiffs.

190. If each defendant had in place such reasonable systems, no injury to the plaintiff would have occurred regardless of negligence by any other defendant and each defendant's failure to have such reasonable systems in place was an independent proximate cause of the plaintiffs' injuries

191. The defendants are jointly and severally liable for Plaintiff's injuries

XV. TWELTH CLAIM FOR RELIEF: LOSS OF CONSORTIUM

192. Paragraphs 1 through 191 are herein incorporated by reference as if fully set forth.

193. The plaintiff spouses of the plaintiff patients, as identified in attached Exhibits are each entitled to damages in excess of \$10,000 from the defendants.

XVI. PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that they each have and recover of the defendants jointly and severally:

1. Judgment for damages in an amount in excess of ten thousand dollars (\$10,000.00) for compensatory damages against all defendants;
2. Judgment for damages in an amount in excess of ten thousand dollars (\$10,000.00) for punitive damages against defendants Cardinal and Steris;
3. Treble damages from Cardinal under the North Carolina Unfair and Deceptive Trade Practice Act, in an amount in excess of ten thousand dollars (\$10,000.00)
4. Interest as provided by law;
5. Costs of this action, including expert witness fees, filing fees and other allowable costs incurred in connection with this claim;
6. Attorneys' fees, where applicable as provided by law;
7. Trial by jury on all issues so triable herein; and
8. Such other and further relief as the Court deems just and proper.

This the 17th day of June, 2008.

HENSON & FUERST, P.A.

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