

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

LAUREN ATKINS, ON HER OWN
BEHALF, AND ON BEHALF OF THE
ESTATE OF JOSHUA PAUL ATKINS,
Plaintiffs

v.

RUST-OLEUM CORPORATION,
Defendant

CIVIL DIVISION

GD No.

JURY TRIAL DEMANDED

Code: 004

COMPLAINT

Filed on behalf of Plaintiff:

Lauren Atkins, on her own behalf, and on behalf
of the Estate of Joshua Paul Atkins

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Introduction

1. On February 12, 2018, after returning from work to her home at 1211 McCormick Avenue, South Connellsville, PA, **Plaintiff Lauren Atkins** found her only son, **Joshua Paul**

Atkins, slumped over in the bathtub where he had been stripping paint off a portion of the front fork of his bicycle. Responding EMTs confirmed that Mr. Atkins was dead.

2. Joshua Paul Atkins, then age 31, was in the bathtub so he could complete this small painting project away from the overly friendly family dog.

3. An autopsy and toxicological analysis revealed that inhalation of methylene chloride vapors caused Mr. Atkins' death.

4. At the time of his death, Joshua Paul Atkins was using **Defendant Rust-Oleum Corporation's** ("Rust-Oleum" or "Defendant") "Aircraft Remover" paint stripper; the one-quart container, which Mr. Atkins had recently purchased, is identified as: Rust-Oleum Product Number 248873, Lot 73241.

5. Unbeknownst to Mr. Atkins, but well known to Defendant Rust-Oleum, the active ingredient in Defendant's Aircraft Remover – methylene chloride – emits deadly vapors and has killed dozens of consumers using methylene-chloride-based paint strippers.

6. Defendant also has known for years that methylene chloride is particularly deadly when used within bathtubs because the vapors are heavier than air and concentrate within the tub, making the bathroom's exhaust fans and windows highly ineffective for ventilation.

7. Among the numerous reported deaths resulting from using methylene chloride paint strippers in a bathtub – that are well known to Defendant – was the September 2011 death of a 30-year-old Ohio man, killed as the direct result of his using Defendant's same Aircraft Remover. See Centers for Disease Control and Prevention, *Fatal Exposure to Methylene Chloride Among Bathtub Refinishers – United States, 2000-2011*. Morbidity Mortality Weekly Reporter, February 24, 2012; 61(7): pp. 119-122.

8. After Defendant's Aircraft Remover killed the young man in September 2011, Rust-Oleum was warned that its product labeling and its safety literature violated industry and governmental guidelines and contained false and misleading information and recommendations.

9. Defendant Rust-Oleum has known for years also that its Aircraft Remover is misbranded under the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261 et seq., and that Rust-Oleum's product labeling violates guidelines issued by the Consumer Product Safety Commission ("CPSC").

10. Defendant Rust-Oleum has deliberately refused to improve its product labeling to comply with CPSC guidelines, even after it was informed of Mr. Atkins' death.

11. Rather than improve its products' safety and its products' warnings, Defendant Rust-Oleum has continued to knowingly hide the deadly hazards of its methylene-chloride-based products and refused to change the formulation of its paint strippers so they do not contain methylene chloride.

12. One example of Defendant Rust-Oleum's reckless indifference to the safety of its customers is that right after learning that inhalation of the vapors from its Aircraft Remover had killed the young man in Ohio, Rust-Oleum deleted from its safety data sheet the statement that inhalation of vapors could cause death, changing the potential effect from "death" to "headaches and dizziness."¹

¹ Rust-Oleum Aircraft Remover Material Safety Data Sheet (MSDS), dated January 16, 2009, pp. 1-2: "Potential Acute Health Effects: Inhalation: . . . **Excessive inhalation may produce . . . unconsciousness and death.**" Rust-Oleum Aircraft Remover MSDS, dated May 6, 2012, p. 1: "Effects of Overexposure – Inhalation: **Low hazard** for usual industrial handling or commercial handling by trained personnel." Rust-Oleum Aircraft Remover MSDS, dated October 4, 2012, p. 1: "Effects of Overexposure – Inhalation: Harmful if inhaled. Avoid breathing fumes, spray, vapors, or mist. **May cause headaches and dizziness.** . ." In contrast, when governmental agencies learned about the series of deaths caused by using methylene chloride in bathtubs, the warnings were much clearer: "**Methylene chloride ["MC"]-based strippers are an EXTREME hazard**" and "Stripping with MC can have **deadly consequences.**" (WA State Dept. of Labor and Industry, Methylene Chloride Hazard Alert, August, 2012). CPWR (2016): "Many strippers and solvents contain **methylene chloride (MeCl). Inhaling this chemical can kill you within minutes.**" (Emphasis added in all quotations).

13. In 1993 – twenty-five years before Rust-Oleum’s Aircraft Remover killed Mr. Atkins – the Defendant filed a patent application for an effective paint stripper that did not contain methylene chloride. Rust-Oleum stated that “the object of the present invention is to provide a safe and effective paint stripping composition” that is “relatively non-toxic and environmentally safe.” Rust-Oleum did not identify that its methylene chloride-free formulation was prompted by any concern for its customers’ safety, rather it focused on its need to preserve market share. It wrote: “the use of methylene chloride has become disfavored. Evidence of its toxicity to humans and the environment have caused some to seek alternative formulations.” (U.S. Patent 5,456,853)

14. By 2010, Defendant Rust-Oleum was manufacturing and selling “NR-1 Green Paint Stripper,” which Rust-Oleum described as a “highly effective paint remover for all paint types and glues without methylene chloride.” www.rust-oleum.eu. Rust-Oleum, however, marketed and sold this “highly effective,” methylene chloride-free paint stripper only in Europe and never in the United States. In launching the sale in Europe of its NR-1 Green Paint Stripper, Rust-Oleum noted that after December 2010, the European Parliament was going to ban methylene chloride paint strippers because “studies have confirmed that **exposure to [methylene chloride] released from paint strippers is of concern to human health.**” (Emphasis in original, Rust-Oleum product brochure, V483.GB -02.10.)

15. Despite there being a highly effective alternative paint stripper that did not contain methylene chloride, Defendant Rust-Oleum continued to formulate its paint strippers with this deadly component for American consumers. Rust-Oleum did not follow its own advice, which it gave in Europe to potential customers: “**Our NR 1. GREEN PAINT STRIPPER is the healthier alternative to [methylene chloride] paint strippers so do not wait and switch today!**” (Emphasis in original, Rust-Oleum product brochure, V483.GB -02.10.)

16. In this civil action, Lauren Atkins, on her own behalf and on behalf of the Estate of Joshua Paul Atkins, seeks compensatory and punitive damages against Defendant Rust-Oleum whose reckless and wanton disregard for safety directly resulted in the death of Joshua Paul Atkins.

The Parties

17. **Plaintiff Lauren Atkins** is the mother of **Joshua Paul Atkins, Plaintiffs' Decedent**; Lauren Atkins resides at 1211 McCormick Avenue, South Connellsville, PA, 15425; she is a resident and citizen of Pennsylvania.

18. Joshua Paul Atkins died intestate and Lauren Atkins was appointed the administrator of the Estate of Joshua Paul Atkins by Letters of Administration issued on May 2, 2018.

19. Lauren Atkins is the wrongful death beneficiary of Joshua Paul Atkins.

20. Plaintiffs' decedent Joshua Paul Atkins did not institute any civil action related to this injury prior to his death and there are no other civil actions regarding this incident.

21. **Defendant Rust-Oleum** is a Delaware Corporation, with its principal place of business at 11 Hawthorn Parkway, Vernon Hills, IL, 60061; prior to the filing of this lawsuit, it terminated its registered office in Pennsylvania.

22. Since 1921, Defendant Rust-Oleum has been engaged in the business of formulating, manufacturing, packaging, and selling paint products, including methylene-chloride-based paint strippers. It is a chemical manufacturer of consumer products within the definition of the paint and coating industry.

23. Defendant Rust-Oleum's annual sales exceed one billion dollars (USD) and it employs over 1,000 people. It has a technical support office located at 172 Belmont Drive, Somerset, NJ 08875.

24. Defendant Rust-Oleum is a wholly-owned subsidiary of RPM International, Inc., which has almost five billion dollars in annual sales with over 14,000 employees.

25. Defendant Rust-Oleum is a member of the American Coatings Association ("ACA," formerly known as the National Paint and Coatings Association, "NPCA"). According to ACA guidelines regarding good product stewardship:

- a) "Irrespective of any labeling laws or regulations, when a manufacturer of any hazardous product places it in channels of trade, then – by the very nature of their business – they assume a duty of conveying to those who might use the product, a fair and adequate warning/notice as to the known hazard(s) of the product(s). Thus, their customers (the end-user), by the exercise of reasonable care on his/her part, will be alerted to the possible consequences of use, or even misuse, thereof. It is very important that manufacturers of paint, coatings and other related products bear this thought in mind when preparing labels for their products" (NPCA Industry Labeling Guide, p. xvii);
- b) "Chemical manufacturers and importers must identify and consider the full range of available scientific literature and other evidence concerning the potential hazards" of their product (ACA HMIS Guidelines, pp. 3, 8); and
- c) "The chemical manufacturer, importer or employer preparing the SDS (Safety Data Sheet) must ensure the information provided accurately reflects the scientific evidence used in making the hazard classification. If the chemical manufacturer, importer or employer preparing the SDS becomes newly aware of any significant information regarding the hazards of a chemical, or ways to protect against the hazards, the new information shall be added to the SDS within 3 months." (ACA HMIS Guidelines, p. 18).

26. Defendant Rust-Oleum was aware of its responsibilities with respect to product labeling and good product stewardship; it had the resources to fulfill those responsibilities; and it deliberately chose to violate those responsibilities, placing its own economic gain over the safety of its customers.

27. Because Rust-Oleum is a corporate entity, it acted through its officers, employees, agents, and representatives, for whose conduct it is liable.

28. For all times relevant, Defendant Rust-Oleum regularly engaged in business in Allegheny County, with multiple retail outlets and sales for its products – including its Aircraft Remover – located in Allegheny County; Defendant Rust-Oleum has also been a party to litigation in Allegheny County on several occasions.

Methylene Chloride

29. Methylene Chloride, which is also less commonly referred to as “dichloromethane,” is a colorless liquid used most frequently as an industrial solvent or as a paint stripper.

30. For over forty years, medical case studies have documented that paint stripping with methylene chloride can result in inhalation exposure that has been fatal to humans. *See e.g.*, Agency for Toxic Substance and Disease Registry (“ATSDR”), *Toxicological Profile for Methylene Chloride*, 2000.

31. Methylene chloride, when inhaled, is a central nervous system depressant and is also metabolized into carbon monoxide, thereby resulting in an elevated carboxyhemoglobin level in the blood; both effects suppress the function of the heart and brain, and can lead to death.

32. Unique chemical properties of methylene chloride significantly exacerbate its dangers and place a great responsibility on a manufacturer to provide detailed information to its customers. These properties include:

- a) Methylene chloride vaporizes rapidly: Methylene chloride evaporates into air at a very high rate, thereby releasing a large volume of vapors in the area where the work is being performed;
- b) Methylene chloride vapors are heavier than air, so deadly concentrations can accumulate in low areas;

- c) When inhaled, the body absorbs a high percentage of methylene chloride vapors: When inhaled, over 70% of the methylene chloride vapor enters the bloodstream and quickly spreads throughout body, with most of it going to the liver, kidney, brain, lungs, and fatty tissue;
- d) Inhaling the vapors can impair decision making: Because methylene chloride vapors are a central nervous system depressant, inhalation will impair a person's ability to detect and/or respond to excess exposure;
- e) Methylene chloride may not be detected by odor until it is already ten times above a hazardous level: Unlike many other toxic chemicals which have a strong offensive odor when they are still below hazardous levels, the sweet smell of methylene chloride is not detected until well above the threshold for hazardous levels, and over time, a user will become desensitized to the odor;
- f) Respirators available to the general public will not protect a user from methylene chloride: For more than four decades, chemical suppliers and industrial hygienists have known that respirators generally available to consumers – dual cartridge respirators and dust masks – cannot protect against inhaling methylene chloride; full face, supplied-air respirators are the only form of respirator effective for methylene chloride; and
- g) Most gloves will not protect a user from methylene chloride: Most “rubber” gloves, including latex, nitrile, neoprene, polyethylene and butyl rubber gloves do not protect against absorbing methylene chloride through the skin; only polyvinyl alcohol (PVA) or Silver Shield 4H® gloves provide adequate protection.

33. Studies of consumers' awareness about the hazards of methylene chloride and the necessary protective measures have confirmed that, absent effective warnings, consumers do not understand or appreciate the chemical's deadly hazards.

34. As noted by the CPSC, “the data now available to the staff make it likely that a significant number of consumers are being exposed to high concentrations of methylene chloride by using paint strippers, spray paints, and other products under inadequate conditions of ventilation.” Proposed Rules CPSC, August 20, 1986, 51 FR 29778-01, at p. 10.

Rust-Oleum's Development of Aircraft Remover

35. In the fall of 2008, Rust-Oleum wanted to become the sole paint-related-product supplier to AutoZone, a national retail chain for automotive related products.

36. At the time, AutoZone sold an “Aircraft Remover” paint stripper manufactured by W.M. Barr, which was distinguished in the marketplace by its extremely high concentration of methylene chloride.

37. To secure the AutoZone account, Defendant Rust-Oleum bought containers of the W.M. Barr Aircraft Remover, and “reverse engineered” the formula, mimicking the W.M. Barr product to create its own “Aircraft Remover” with a concentration of methylene chloride higher than any paint stripper previously manufactured by Rust-Oleum.

38. Defendant Rust-Oleum used the term “Aircraft Remover” to describe the new formulation in order to convey that this was the highest strength, highest concentration methylene chloride paint stripper Rust-Oleum marketed.

39. When it formulated the high concentration methylene chloride paint stripper, Rust-Oleum did not evaluate the potential hazards of the product, did not evaluate the amount of vapor that would be released by the highly concentrated product, and did not review its product labeling or safety literature to determine if the information adequately and accurately conveyed the product’s dangers.

Methylene Chloride Paint Strippers Banned in the European Union and Proposed to be Banned in United States

40. After numerous deaths from acute exposure to paint strippers containing methylene chloride – referred to as Dichloromethane or DCM in Europe – the European Parliament voted in 2009 to ban the marketing of DCM-based paint strippers for use by the general public and professionals effective June 6, 2012.

41. In passing the legislation, the European Parliament noted that:

Paint strippers containing DCM are used by members of the general public at home to remove paints, varnishes and lacquers both indoors and outdoors. *The safe use of DCM by them cannot be ensured by training or monitoring.* Therefore, the

only measure effective in eliminating the risks arising for the general public from paint strippers containing DCM is a ban, with respect to the general public, on the marketing, supply and use of such paint strippers.

Decision No 455/2009/EC of the European Parliament and of the Council of 6 May 2009 amending Council Directive 76/79/EEC as regards restriction on the marketing and use of dichloromethane. *Official Journal of the European Union*, 137, 3-6 (emphasis added).

42. Defendant Rust-Oleum markets and sells its products in Europe and was aware in 2009 of both the European ban of methylene chloride paint strippers and the multiple deaths that prompted it.

43. In its February 2010 sales brochure for its methylene chloride-free paint stripper, Rust-Oleum noted that the European Parliament was going to ban methylene chloride paint strippers because “studies have confirmed that **exposure to [methylene chloride] released from paint strippers is of concern to human health.**” (Emphasis in original, Rust-Oleum product brochure, V483.GB -02.10.)

44. In response to the deaths in Europe, Rust-Oleum did nothing in the United States with respect to the product labeling, safety information, or formulation for its paint strippers.

45. On January 19, 2017, the U.S. Environmental Protection Agency (“EPA”) proposed “to prohibit the manufacture (including import), processing, and distribution in commerce of methylene chloride for consumer and most types of commercial paint and coating removal under Section 6 of the Toxic Substances Control Act.” (82 FR 7464-01)

46. On May 18, 2018, the EPA announced that, after receiving comments, it intended to finalize the ban on methylene chloride paint strippers in the United States.

Multiple Deaths Caused By Using Methylene Chloride Paint Strippers in Bathtubs

47. In 2010, the death of a bathtub refinisher – caused by his inhalation of methylene chloride vapors from an “Aircraft Remover” paint stripper (not manufactured by Rust-Oleum) – prompted a review of the fatal accident databases maintained by the Occupational Safety and Health Administration (“OSHA”) and the National Institute of Occupational Health (“NIOSH”).

48. Although these databases under-record fatal accidents, thirteen (13) fatalities during bathtub refinishing were identified as being caused by inhaling methylene chloride vapors from paint strippers.

49. The results were reported in February 2012. *See Centers for Disease Control and Prevention, Fatal Exposure to Methylene Chloride Among Bathtub Refinishers – United States, 2000-2011. Morbidity Mortality Weekly Reporter, February 24, 2012; 61(7): pp. 119-122 (“2012 MMWR Fatality Report”).*

50. Almost all of the paint strippers implicated in the deaths – including Rust-Oleum’s Aircraft Remover which killed the young man in Ohio – had a high concentration of methylene chloride.

51. The investigation found:

- a) “Each death occurred in a residential bathroom with inadequate ventilation. Protective equipment, including a respirator, either was not used or was inadequate to protect against methylene chloride vapor, which has been recognized as potentially fatal to furniture strippers and factory workers (1, 2) but has not been reported previously as a cause of death among bathtub refinishers.”
- b) “Because methylene chloride vapors are heavier than air, in the case described in this report, they likely remained in the bathtub after application.”
- c) “In a small, enclosed bathroom, it is unlikely that a methylene chloride stripping agent can be used safely.
- d) Although this investigation involved workplace exposures, “Methylene chloride also presents a risk to persons among the general public who seek to do their own bathtub refinishing.”

52. The 2012 MMWR Fatality Report concluded that “manufacturers, and trade organizations should clearly communicate the extreme hazard posed by using methylene chloride based stripping products in bathtub refinishing.”

53. As described in Paragraph 12 *supra*, Rust-Oleum’s response was not only to ignore the CDC mandate but actually to remove from its Material Safety Data Sheets the fact that inhaling methylene chloride vapor could prove fatal.

54. In the 2009 label for its “Clear & Base Coat Remover,” another Rust-Oleum methylene-chloride-based paint stripper, Rust-Oleum warned that its product should not be used in bathrooms – a warning which it never included in the label for Aircraft Remover.

55. In August 2012, the Washington State Department of Labor and Industry accurately summarized the lessons to be learned from the 2012 MMWR Fatality Report (methylene chloride is abbreviated as “MC”):

MC based paint strippers are an EXTREME hazard

Stripping with MC can have deadly consequences because:

MC vapor is absorbed quickly by the lungs at low concentrations that you cannot smell.

MC vapor is heavier than air. Vapor can sink and remain low in the bathtub and breathing area during stripping.

Bathrooms are difficult to ventilate *effectively*. Standard ceiling bathroom fans cannot remove MC vapor from low inside the bathtub where you are breathing. Ventilation is needed to both suck contaminated air out of the bathtub and to push fresh air into the space. Small bathrooms with limited windows are difficult to ventilate without air turbulence.

Filter and respirator cartridges don’t protect you from MC vapor. Instead, you need a full-face supplied air respirator. Half-face respirators DO NOT protect the eyes and cannot be used with MC. Cartridge respirators DO NOT protect because MC goes through the filter.

You need: Polyvinyl alcohol (PVA) or Silver Shield 4H® gloves. Latex, nitrile, neoprene, polyethylene and butyl rubber gloves DO NOT protect you.

SHARP Publication #81-8a-2012, emphasis in the original.

56. Unlike Washington State, Defendant Rust-Oleum appears to have taken no lessons from and certainly took no positive actions as the result of the series of deaths being caused by using methylene chloride paint strippers in bathrooms.

57. In January 2013, OSHA and NIOSH published a Hazard Alert because “[i]n February 2012 [at the same time the thirteen (13) other deaths were being analyzed in the 2012 MMWR Fatality Report], a worker using a product containing methylene chloride to refinish a bathtub was found dead, slumped over a bathtub in an unventilated bathroom.”

58. The Hazard Alert highlighted two fatalities: the February 2012 death and the young Ohio man killed by Rust-Oleum’s Aircraft Remover in September 2011.

59. After the report of the fourteenth (14) person being killed by using methylene chloride paint strippers in a bathroom, Rust-Oleum did nothing to improve its product labeling or safety literature and did not reformulate its paint strippers.

60. In May 2014, Defendant Rust-Oleum’s Brand Manager for Aircraft Remover, Melissa Grimm, testified under oath that she knew that “it would be extremely dangerous to use [Aircraft Remover] in a bathroom.”

61. Despite knowing that it would be extremely dangerous to use its Aircraft Remover in a bathroom, and particularly in a bathtub, Rust-Oleum did not warn against that use in the product labels for Aircraft Remover.

62. As is detailed in Count I of the Complaint, the CPSC has directed that the warning label on all containers of methylene chloride paint strippers – which would include Rust-Oleum’s Aircraft Remover – include the following statement:

WARNING Contains Methylene Chloride. INHALATION OF VAPOR CAN KILL YOU. DO NOT USE IN ENCLOSED AREAS, such as bathrooms, basements, or closets. SYMPTOMS MAY NOT BE NOTICEABLE.

63. As is detailed more fully in Count I and Count II of the Complaint, Defendant Rust-Oleum's product labeling has never complied with CPSC guidelines and industry standards.

Joshua Atkins

64. Joshua Paul Atkins had just turned 31 years old in November of 2017. His lifelong passion was BMX biking, for which he was recognized internationally. He was also an avid photographer, musician, and outdoor sports enthusiast. He played the banjo, guitar and mandolin, and had just started learning the violin and flute.

65. Mr. Atkins was the perfect picture of health, eating organic food and exercising regularly. In addition to BMX biking, he went snowboarding, skateboarding, rock climbing, fishing, and did yoga and archery.

66. Mr. Atkins provided tremendous emotional support to his mother, Lauren Atkins, and would help her in any way possible, including providing his affection, love, services, and other societal support.

67. On February 12, 2018, Joshua Paul Atkins wanted to strip the paint from the front fork of his bicycle.

68. To complete this task, he had recently purchased a one-quart container of Rust-Oleum Aircraft Remover, Product Number 248873, Lot 73241.

69. Rust-Oleum did not warn that there was any risk of any significant health effect unless there was "repeated and prolonged exposure" or "intentional misuse by deliberately concentrating and inhaling the contents."

70. Mr. Atkins decided to do this small painting project in the bathtub so he could be safely away from the family dog.

71. He placed the bicycle fork in a small metal pan, so paint stripper would not get onto the bathtub, and then poured some of the Rust-Oleum Aircraft Remover into a small metal cup.

72. After Lauren Atkins came home from her night shift serving as a social worker at a residential treatment program for young women, she found Mr. Atkins, her only son, slumped over in the bathtub.

73. The responding Emergency Medical Services reported: "Arrived on scene found pt [patient] sitting in tub fully clothed with bicycle parts and a form of paint stripper beside the tub. Pt was slouched over in tub with head between legs. Pt had obvious signs of death with lividity and rigor mortis (sic). Pt had blood coming from mouth and nose."

74. As the result of his exposure to Defendant Rust-Oleum's Aircraft Remover, Mr. Atkins suffered pain, anxiety, fear and the realization of his own impending death.

75. As the result of finding her son dead and bleeding, Lauren Atkins has suffered grief and emotional distress.

76. As the result of the death of her only son, Lauren Atkins has lost the society, affection, love, services, and support of her son.

77. Joshua Paul Atkins' autopsy was completed by Dr. Cyril Wecht, M.D., 900 Fifth Avenue, Pittsburgh, PA.

78. Toxicological testing revealed dichloromethane (methylene chloride) in the cardiac blood at 190 mcg/ml, which is twice the level necessary to cause death.

79. The Autopsy and the Death Certificate identified the Cause of Death as: "Toxic Inhalation of Paint Thinner Fumes/Vapors (Dichloromethane)."

80. Mr. Atkins was killed by inhaling methylene chloride vapors released by the use of Defendant Rust-Oleum's Aircraft Remover.

81. If Defendant Rust-Oleum had adequately warned Mr. Atkins of the dangers of inhaling methylene chloride, then he would not have died.

82. If Defendant Rust-Oleum had formulated its paint stripper without methylene chloride, then Mr. Atkins would not have died.

83. As a direct result of the negligence *per se*, carelessness, negligence, gross negligence, wanton misconduct and/or reckless disregard for the safety of others by Defendant Rust-Oleum, its supply and sale of a defective and unsafe product, and/or its breach of implied and express warranties, Plaintiffs' Decedent, Joshua Paul Atkins, suffered fatal injuries and endured pain, suffering, anxiety, fear and the realization of his own impending death.

84. As a direct result of the negligence *per se*, carelessness, negligence, gross negligence, wanton misconduct and/or reckless disregard for the safety of others by Defendant Rust-Oleum, its supply and sale of a defective and unsafe product, and/or its breach of implied and express warranties, the Estate of Joshua Paul Atkins suffered a loss of earnings, finances and savings.

85. As a direct result of the negligence *per se*, carelessness, negligence, gross negligence, wanton misconduct and/or reckless disregard for the safety of others by Defendant Rust-Oleum, its supply and sale of a defective and unsafe product, and/or its breach of implied and express warranties, Plaintiff Lauren Atkins lost the society, affection, love, services and support of her son, has suffered emotional distress, and has incurred funeral expenses and the costs of administration of his estate.

COUNT I – NEGLIGENCE PER SE
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86. Plaintiffs reallege and incorporate by reference each and every preceding paragraph as though set forth fully at length.

87. For more than three decades, paint strippers that contain methylene chloride have been recognized as being hazardous substances under the Federal Hazardous Substances Act (“FHSA”), 15 U.S.C. 1261-1276.

88. The purpose of the FHSA is to help consumers safely use and store hazardous household products.

89. The FHSA, administered by the CPSC, requires that manufacturers place certain cautionary statements on their product’s labels in a prominent and conspicuous manner so that the consumer will be aware of the product’s potential dangers and the necessary protective measures.

90. If a consumer product does not meet the FHSA labeling requirements, then it is classified as a “misbranded hazardous substance” and cannot be sold in the United States, 15 U.S.C. 1263(a).

91. As a hazardous substance intended for household use, Rust-Oleum’s Aircraft Remover must comply with the labeling requirements enumerated under the FHSA, related regulations and guidelines issued by the CPSC.

92. Rust-Oleum’s labeling for its Aircraft Remover violates the FHSA and its product is a misbranded hazardous substance which should never have been sold to the public, including to Joshua Paul Atkins.

93. On September 14, 1987, the CPSC issued a statement of interpretation and enforcement policy, in lieu of continuing with rulemaking, which expressed the Commission’s determination that consumer products containing methylene chloride are capable of exposing consumers to significant amounts of methylene chloride and may pose a cancer risk to humans;

therefore, the products became subject to the hazardous substance labeling requirements of the FHSA.

94. At that time, the CPSC published guidelines for warnings related to the carcinogenic hazard present by chronic exposure to methylene chloride.

95. The CPSC explicitly cautioned that the proposed “chronic hazard” warning did not necessarily address the acute toxicity presented by methylene chloride and that the manufacturer was responsible for developing the additional warnings related to the acute toxicity in order to comply with the FHSA.

96. The CPSC wrote in 1987:

A label such as that stated above would be required by the potential carcinogenic inhalation hazard from paint strippers, although some of the precautions stated also may serve to protect against acute hazards that might be presented. *Of course, the product’s labeling would also have to meet the other requirements of the FHSA and to address other hazards that the product may present. For example, the label may have to address the acute toxicity of methylene chloride [in order to comply with the FHSA].*

52 Fed. Reg. at 34702 (emphasis added).

97. Not only did Rust-Oleum fail – beginning in 1987 and continuing to the present – to warn its customers against the acute toxicity presented by its paint strippers, it also failed to comply with the 1987 CPSC guidelines for the carcinogenic hazard of its product resulting from chronic exposure.

98. As expressed by the CPSC, “it is imperative that warning labels are formatted and contain information so that they are likely to be noticed, read, understood and heeded.”

99. Defendant Rust-Oleum’s “principal display panel” on the front of its Aircraft Remover container is:

DANGER! POISON!
VAPOR HARMFUL. CAUSES EYE BURNS. SKIN IRRITANT. MAY BE
HARMFUL, FATAL OR CAUSE BLINDNESS IF SWALLOWED.
(See Other Cautions On Back Panel)

100. In 2015, Defendant Rust-Oleum was advised that this language violated the CPSC guidelines, including because it did not state that inhaling the methylene chloride vapors could be fatal; Rust-Oleum never corrected the warnings in its principal display panel for Aircraft Remover.

101. By stating only that the product could prove fatal if swallowed and not stating that the product could be fatal if inhaled, Defendant Rust-Oleum chose to hide from its customers the potentially deadly hazard presented by the inhalation of vapors.

102. As explained by the CPSC, clearly conveying the degree of hazard is essential for a warning to be effective:

To increase the likelihood of consumers heeding a warning despite inconveniences imposed by necessary precautions, the phrasing of warning information should be vivid and relatable.

103. The CPSC has mandated that the principal display panel on containers of methylene chloride paint strippers include the following information:

WARNING: INHALATION OF VAPOR VERY HARMFUL
VAPOR CAN KILL YOU IN ENCLOSED AREAS
EYE AND SKIN IRRITANT.
Read All Cautions on Back/Side Panel.

104. The information Rust-Oleum placed in its principal display panel violated the CPSC guidelines and its Aircraft Remover is misbranded.

105. Rust-Oleum placed the following label on the back panel of its Aircraft Remover one-quart container in English and Spanish (actual size):

Carefully read all instructions on the Technical Data Sheet and cautions on the MSDS before use. Protect hands with solvent-resistant gloves and eyes with chemical splash goggles.
DIRECTIONS FOR USE:
1. Mask seams and trim openings as this will prevent bleed-back stripping of new finish. 2. Pour remover into a metal container and apply a thick coat with a chemical resistant brush. If applying to a vertical surface, begin application at the bottom, as vapors are heavier than air and can accumulate near the floor. Apply to one section at a time, up to 9 sq. ft. Brush in one direction only. 3. Allow remover to work until finish is blistered or softened completely, generally within 5-15 minutes. 4. Remove paint with a flexible plastic scraper, and then flush with solvent or water to remove any residue. Allow surface to dry before applying a new finish. Prime metal as soon as possible to prevent flash rust.
Note: This product may not be compatible with all surfaces and all conditions surrounding application. Before applying to any surface, always test product in a small, inconspicuous area to ensure no damage will result. Not recommended for use on fiberglass, plastics or any other synthetic surface. For best results, apply at temperatures between 65° and 90°F (18°C and 32°C), and avoid direct sunlight or strong breezes.

DANGER! CONTAINS METHYLENE CHLORIDE, ETHYL ALCOHOL AND METHANOL. Do not smoke. Keep away from heat, sparks and flame. Contact with flame or hot surface may produce toxic/corrosive gases. Use only with adequate ventilation. Prevent build-up of vapors by opening windows and doors to achieve cross-ventilation. Vapor Harmful. May affect the brain or nervous system causing dizziness, headache or nausea. Methylene chloride has been shown to cause cancer in certain laboratory animal tests. Risk to your health depends on level and duration of exposure. METHYLENE CHLORIDE REDUCES THE BLOODS OXYGEN-CARRYING CAPACITY. NOTICE: Reports have associated repeated and prolonged occupational exposure to solvents with permanent brain and nervous damage. Intentional misuse by deliberately concentrating and inhaling the contents may be harmful or fatal. Do not breathe vapors or spray mist. Ensure fresh air entry during application and drying. If you experience eye watering, headache or dizziness or if air monitoring demonstrators vapor/mist levels are above applicable limits, wear an appropriate, properly fitted respirator (NIOSH approved) during and after application. Follow respirator manufacturer's directions for respirator use. Cannot be made non-poisonous. Causes eye burns and skin, nose and throat irritation. Do not get in eyes, on skin or clothing. May be harmful if absorbed through skin. May cause allergic skin reaction. Wash thoroughly after handling. **WARNING:** This product contains a chemical known to the State of California to cause cancer and birth defects, or other reproductive harm. Wash clothing before reuse. Thoroughly clean contaminated shoes. **KEEP OUT OF REACH OF CHILDREN.**

First Aid: In case of eye contact, immediately flush eyes with plenty of water for at least 15 minutes. Get medical attention immediately. In case of skin contact, wash thoroughly with soap and water for at least 15 minutes. Remove contaminated clothing and shoes. Get medical attention immediately. If you experience difficulty in breathing, leave the area to obtain fresh air. If continued difficulty is experienced, get medical attention immediately. If swallowed, contact a physician or poison control center immediately. DO NOT induce vomiting unless directed to do so by medical personnel.

For a detailed Material Safety Data Sheet, visit our website at www.rustoleum.com or call us at 800-225-8543.

Use this product outdoors, if possible. If you must use it indoors, open all windows and doors or use other means to ensure fresh air movement during application and drying. If workplace exposure monitoring indicates methylene chloride levels cannot be controlled to below the established OSHA exposure limits (29 CFR 1910.1050), then appropriate respiratory protection must be provided. A dust mask does not provide protection against vapors. Do not use in basement or other unventilated area. Spillage: Open containers carefully and close after each use. If spilled, contain spilled material and remove with inert absorbent. Dispose of contaminated absorbent, container and unused contents in accordance with local state and federal regulations. Clean up rags, papers and waste properly. Allow solvent to evaporate then dispose of in metal container.

DO NOT USE ON AIRCRAFT

Disposal: Call your local sanitation department for aid in disposing unwanted product in your area or call the Environmental Protection Agency Solid and Hazardous Waste hotline at 1-800-424-9345. Do not dump on the ground or in local sewer or discharge system.

SATISFACTION GUARANTEED: If you are dissatisfied with this product, contact our Customer Service Department at 1-866-585-8430 for a full refund of the purchase price. Refer to product number and batch code on bottom of can.

106. In its back-panel warning statement, Rust-Oleum warns that a significant health effect can result only from “repeated or prolonged occupational exposure to solvents” or by “intentional misuse by deliberately concentrating and inhaling the contents.”

107. Rust-Oleum, however, knew that a fatal exposure could occur even when its Aircraft Remover was used as expected.

108. Rust-Oleum’s Director of Product Stewardship, Bruce Varner, testified under oath in 2014 that he knew that the unintentional concentration of vapors from Rust-Oleum’s Aircraft Remover is dangerous and could cause death.

109. Rust-Oleum inserted the language into its back panel – “deliberately concentrating and inhaling the contents” – in a conscious attempt to downplay the hazards of its product.

110. The CPSC has directed that all mandated labeling statements must be communicated in a substantively explicit manner, undiluted by purportedly explanatory language that downplays or tempers the seriousness of the hazard.

111. The CPSC has cautioned that, even if required language appears on the label, a product will be considered “misbranded” if the manufacturer includes qualifying language:

A hazardous substance shall not be deemed to have met the requirements of [15 U.S.C. 1261(P)(1) and (2)] of the act . . . if there appears on the label (or in any accompanying literature): words, statements, designs, or other graphic material that in any manner negates or disclaims any of the label statements required by the act.

16 C.F.R. 1500.122.

112. The CPSC has directed that the warning label on all containers of methylene chloride paint strippers intended for household or consumer use – which would include Rust-Oleum’s Aircraft Remover – include the following statement in a prominent location:

WARNING Contains Methylene Chloride. INHALATION OF VAPOR CAN KILL YOU. DO NOT USE IN ENCLOSED AREAS, such as bathrooms, basements, or closets. SYMPTOMS MAY NOT BE NOTICEABLE.

113. Rust-Oleum’s warning label does not comply with the CPSC guidelines.

114. The content, writing, format, length and organization used by Defendant Rust-Oleum for its Aircraft Remover product labeling does not adequately or effectively warn the user as to the potential hazards of the product and the means to protect oneself, and it violated governmental and industry guidelines, including CPSC labeling guidelines.

115. Defendant Rust-Oleum’s warnings and product labeling for its Aircraft Remover do not comply with the FHSA.

116. Rust-Oleum’s violation of the FHSA was a proximate cause of Mr. Atkins’ death.

117. At the time of sale to Mr. Atkins, Defendant Rust-Oleum's Aircraft Remover was misbranded under the FHSA; Rust-Oleum was not legally permitted to sell this misbranded product; and Rust-Oleum is guilty of negligence *per se*.

118. Because Defendant Rust-Oleum consciously decided to label its deadly product in violation of FHSA standards, it demonstrated its reckless indifference to the safety of its customers and should be subject to the assessment of punitive damages in causing the death of Joshua Paul Atkins.

WHEREFORE, Plaintiff Lauren Atkins, on behalf of the Estate of Joshua Paul Atkins, demands of Defendant Rust-Oleum compensatory and punitive damages in excess of Fifty Thousand (\$50,000.00) Dollars, together with delay damages, interest, costs of suit and such other relief that the Court deems just.

COUNT II – NEGLIGENCE
Estate of Joshua Paul Atkins v. Rust-Oleum Corporation

119. Plaintiffs reallege and incorporate by reference each and every preceding paragraph as though set forth fully at length.

120. It is a fundamental principle of law and an axiom of good product stewardship that the degree of care required for manufacturing and selling a product is commensurate with the degree of danger presented by the product.

121. When a business formulates, packages, labels, and sells a potentially deadly chemical, it should exercise the highest degree of care and should uphold the highest standards of good product stewardship.

122. The American Coatings Association (ACA), of which Defendant Rust-Oleum is a member, has stated that:

Irrespective of any labeling laws or regulations, when a manufacturer of any hazardous product places it in channels of trade, then – by the very nature of their business – they assume a duty of conveying to those who might use the product, a fair and adequate warning/notice as to the known hazard(s) of the product(s). Thus, their customers (the end-user), by the exercise of reasonable care on his/her part, will be alerted to the possible consequences of use, or even misuse, thereof. It is very important that manufacturers of paint, coatings and other related products bear this thought in mind when preparing labels for their products.

NPCA Industry Labeling Guide, p. xvii.

123. With respect to the labeling and product information for its Aircraft Remover, Defendant Rust-Oleum violated that responsibility.

124. A responsible manufacturer will study and attempt to improve its products' safety by learning lessons from deaths or injuries caused by the use of its products or its competitors' products that are similar in design and formulation.

125. As expressed by the ACA, "Chemical manufacturers [such as Rust-Oleum] and importers must identify and consider the full range of available scientific literature and other evidence concerning the potential hazards" of their products (ACA HMIS Guidelines, pp. 3, 8).

126. Prior to its sale of the Aircraft Remover purchased by Mr. Atkins, Defendant Rust-Oleum knew that scores of people had died from the inhalation of methylene chloride vapors.

127. Prior to its sale of the Aircraft Remover purchased by Mr. Atkins, Defendant Rust-Oleum knew that the foreseeable use of its Aircraft Remover could cause death as a result of inhaling the product's methylene chloride vapors.

128. Prior to its sale of the Aircraft Remover purchased by Mr. Atkins, Defendant Rust-Oleum knew that more than nineteen (19) people had died while using methylene chloride paint strippers in bathrooms and it was "extremely dangerous" to use its product in a bathroom, information which Defendant Rust-Oleum decided not to provide to its customers.

129. Prior to its sale of the Aircraft Remover purchased by Mr. Atkins, Defendant Rust-Oleum knew that consumers who used methylene-chloride-based paint strippers generally did not adequately appreciate the potential hazards of the product or the precautions necessary to use its product safely.

130. Defendant Rust-Oleum undertook the responsibility to prepare labeling and safety information for its Aircraft Remover, which it knew its customers would justifiably rely upon to learn the potential hazards of the product and the means to protect themselves from these hazards. Defendant Rust-Oleum knew that its consumers were at risk of injury or death if Rust-Oleum did not fulfill its responsibility. Defendant Rust-Oleum breached that responsibility, resulting in Mr. Atkins' death.

131. As outlined in Count I of the Complaint, Defendant Rust-Oleum did not provide adequate warnings and instructions on its product labels and took no steps to ensure that the users of its product had the information necessary to use the product safely.

132. On the rear panel of the container for its Aircraft Remover, Defendant Rust-Oleum directs the user to read its "Technical Data Sheet" and the "MSDS."

133. Based on information and belief, Defendant Rust-Oleum did not at any time prior to Mr. Atkins' death provide to AutoZone – its primary outlet for Aircraft Remover – copies of its Technical Data Sheet or MSDS in sufficient quantity to distribute to all retail purchasers of its Aircraft Remover. Rust-Oleum never asked AutoZone to provide these documents directly to its customers who purchased Aircraft Remover at AutoZone.

134. On its product label, Defendant Rust-Oleum does not advise its customers what information is contained in its Technical Data Sheet or how to obtain it.

135. Rust-Oleum's Technical Data Sheet (revised March 29, 2017) for Automotive Aircraft Remover – which includes the Aircraft Remover that killed Mr. Atkins – does not mention a single health effect from exposure to its product.²

136. Defendant Rust-Oleum on its label for its Aircraft Remover refers also to an “MSDS” or “Material Safety Data Sheet,” which is a long outdated title for a document which contains critical details about the ingredients, hazards, and protective measures of chemical products. As of 2012, the correct term for these documents according to OSHA, which mandates their preparation, is “Safety Data Sheet” or “SDS.”

137. As made clear by the American Coatings Association (“ACA”), the trade association to which Rust-Oleum belongs:

The chemical manufacturer, importer or employer preparing the SDS must ensure the information provided accurately reflects the scientific evidence used in making the hazard classification. If the chemical manufacturer, importer or employer preparing the SDS becomes newly aware of any significant information regarding the hazards of a chemical, or ways to protect against the hazards, the new information shall be added to the SDS within 3 months.

ACA HMIS Guidelines, p. 18.

138. Defendant Rust-Oleum was and is aware of its obligations and expressly promises in every edition of its MSDSs and SDSs:

Rust-Oleum Corporation believes, to the best of its knowledge, information and belief, the information contained herein to be accurate and reliable as of the date of this material safety data sheet.

² The Technical Data Sheet does provide a warning about removing paint which might contain lead. It warns that “LEAD IS TOXIC. EXPOSURE TO LEAD DUST CAN CAUSE SERIOUS ILLNESS, SUCH AS BRAIN DAMAGE.” The same hazard is presented by the methylene chloride vapors released by its product, yet Rust-Oleum completely omits that information. Reflecting its cavalier approach to safety information, it provides incorrect information as to how to contact the EPA for information on lead paint.

139. Reflecting a callous disregard for safety, Defendant Rust-Oleum violated its responsibilities, breached its representation, and provided inadequate, incomplete, and inaccurate information in its MSDSs and SDSs for its methylene chloride paint strippers.

140. One section of an MSDS/SDS outlines the potential health effects of a chemical product. As noted earlier, it is essential to convey the seriousness of a product's hazards in order to increase the likelihood that the product user will comply with the safety recommendations.

141. In its MSDS for Rust-Oleum Aircraft Remover, dated January 16, 2009, Rust-Oleum accurately stated that: "Potential Acute Health Effects: Inhalation: . . . **Excessive inhalation may produce . . . unconsciousness and death**" (emphasis added).

142. After it was publicized in early 2012 that inhalation of methylene chloride vapors emitted by its Aircraft Remover had killed a young man, Rust-Oleum issued a new MSDS and deleted all references that indicated that inhalation of vapors posed any serious risk, let alone could prove fatal:

Effects of Overexposure – Inhalation: **Low hazard** for usual industrial handling or commercial handling by trained personnel." (Rust-Oleum Aircraft Remover MSDS, dated May 6, 2012, p. 1, emphasis added).

Effects of Overexposure – Inhalation: Harmful if inhaled. Avoid breathing fumes, spray, vapors, or mist. **May cause headaches and dizziness.** . . . (Rust-Oleum Aircraft Remover MSDS, dated October 4, 2012, p. 1, emphasis added).

143. Since 2012, a number of additional deaths have been caused by the inhalation of vapors emitted from methylene chloride paint strippers, which have been widely reported in scientific journals and regulatory documents available to Rust-Oleum.

144. Rust-Oleum's most recent SDS, dated March 31, 2016, still does not state that inhalation of high concentrations of vapor may prove fatal.

145. As the number of methylene chloride deaths continued to increase, Defendant Rust-Oleum in 2014 completely removed the term “methylene chloride” from its MSDSs and SDSs; it utilized the term “dichloromethane,” a far less recognized name for the solvent, not as widely associated with the deaths and different from the term it used in its product label.

146. Methylene chloride may be absorbed through skin contact, which will worsen the effects caused by inhalation of vapors.

147. As is widely reported in scientific journals and regulatory documents, most gloves do not protect against absorption of methylene chloride because of the solvent’s chemical properties. For example, the Washington State Department of Labor and Industry warns:

Latex, nitrile, neoprene, polyethylene and butyl rubber gloves **DO NOT** protect you.
(emphasis added)

148. Reflecting its reckless disregard for safety, Rust-Oleum specifically recommends the ineffective gloves:

PERSONAL PROTECTION . . .

SKIN PROTECTION: Use gloves to prevent prolonged skin contact. Nitrile or Neoprene gloves may afford adequate skin protection. (Section 8, SDS for Aircraft Remover, 03/31/2016)(Underlining added).

149. A responsible chemical manufacturer should strive to formulate its products with the least hazardous ingredients.

150. By 2010, Defendant Rust-Oleum was manufacturing and selling “NR-1 Green Paint Stripper,” which Rust-Oleum described as a “highly effective paint remover for all paint types and glues without methylene chloride.” www.rust-oleum.eu. Rust-Oleum, however, marketed and sold this “highly effective” methylene chloride-free paint stripper only in Europe and never in the United States.

151. For at least eight years before it sold the Aircraft Remover that caused the death of Mr. Atkins, Defendant Rust-Oleum could have marketed and sold in the United States an effective paint stripper, without methylene chloride.

152. Defendant Rust-Oleum knew that if it continued to formulate its paint strippers to include methylene chloride, there was a substantial risk that others using its Aircraft Remover could die as the result of inhalation of methylene chloride vapors.

153. Reflecting a callous disregard for safety, Defendant Rust-Oleum determined that it would continue to manufacture its Aircraft Remover – which is 85% methylene chloride – despite a safer alternative; this decision resulted in the death of Mr. Atkins.

154. Defendant Rust-Oleum was negligent, grossly negligent, and demonstrated a wanton and reckless disregard for safety that caused Plaintiffs' decedent to suffer fatal injuries and to cause Plaintiffs' losses as outlined above; its culpable conduct included, inter alia:

- a) When it formulated its Aircraft Remover, it did not properly test or evaluate the hazards of its product and did not identify the settings in which its product presented the greatest risk;
- b) When it manufactured and sold the paint stripper that was used by Mr. Atkins, it chose to formulate its product with a deadly ingredient rather than safer alternative chemicals, reflecting its conscious disregard to the safety of its customers;
- c) It failed to evaluate the effectiveness of its product labeling and safety information to ensure that the information was being understood and followed by its customers;
- d) It drafted and utilized product labeling that it knew violated governmental guidelines and industry standards in conscious disregard for the safety of its customers;
- e) It drafted and utilized product labeling that was inaccurate, inadequate and misleading;
- f) It drafted and utilized product safety literature, including Technical Data Sheets and MSDSs/SDSs that were inaccurate, inadequate and misleading;
- g) When it learned of deaths caused by the use of methylene chloride paint strippers, including its own paint stripper, it refused to correct and improve its product labeling

and safety information and it failed to properly incorporate accident information into its product stewardship;

- h) After it knew that bathrooms were an “extremely dangerous” setting for the use of its Aircraft Remover, it decided not to explicitly warn its customers nor its distributors, including its most significant distributor, AutoZone;
- i) Despite knowing the potentially fatal consequences of its actions, it continued to manufacture Aircraft Remover without changing the formulation or product information;
- j) It decided to not request that its distributors, including AutoZone, provide safety information to their retail customers, including reinforcing the product’s deadly hazard, especially if used in a bathroom;
- k) Failing to exercise due care under the circumstances;
- l) Failing to follow the practices and principles of good product stewardship and act as a reasonable and responsible chemical manufacturer;
- m) Selling a misbranded product in violation of the FHSA;
- n) Failing to implement an effective accident reporting system so it could determine through its own sources if there were injuries or deaths associated from the use of its products;
- o) Providing inadequate, incomplete and incorrect warnings and instructions to their customers;
- p) Such other acts of negligence as discovery will reveal.

155. The fatal injuries sustained by Joshua Paul Atkins on February 12, 2018 and Plaintiffs’ losses were a direct and proximate result of the grossly negligent conduct of and the reckless disregard for safety by Defendant Rust-Oleum.

WHEREFORE, Plaintiff Lauren Atkins, on behalf of the Estate of Joshua Paul Atkins, demands of Defendant Rust-Oleum compensatory and punitive damages in excess of Fifty Thousand (\$50,000.00) Dollars, together with delay damages, interest, costs of suit and such other relief that the Court deems just.

COUNT III -STRICT LIABILITY

Estate of Joshua Paul Atkins v. Defendant Rust-Oleum Corporation

156. Plaintiffs reallege and incorporate by reference each and every preceding paragraph as though set forth fully at length.

157. Defendant Rust-Oleum is a supplier and its Aircraft Remover paint stripper is a product within the meaning of §402(A) of the Restatement (Second) of Torts.

158. At the time Plaintiffs' decedent, Joshua Paul Atkins, sustained his fatal injuries, the Defendant's Aircraft Remover was being used in a foreseeable manner and for a foreseeable and intended use and purpose.

159. At the time he sustained his fatal injuries, Plaintiffs' decedent, Joshua Paul Atkins, was an intended user of the Defendant's Aircraft Remover.

160. The Defendant's Aircraft Remover was expected to and did reach Plaintiffs' decedent Joshua Paul Atkins without substantial change from the condition in which it was supplied.

161. The Defendant's Aircraft Remover was defectively designed and was sold in an unsafe condition because it was formulated with methylene chloride.

162. At the time of sale of the Defendant's Aircraft Remover, it was economically and technically feasible to manufacture an effective paint stripper that did not contain methylene chloride.

163. The Aircraft Remover was sold and supplied in a defective condition, unreasonably dangerous to Joshua Paul Atkins and to others; the Defendant's Aircraft Remover was not capable of being made safe for its intended and ordinary use and purpose; Defendant Rust-Oleum failed to give adequate or sufficient warnings and/or instructions about the risks, dangers, harm and limitations inherent in the use of its Aircraft Remover.

164. The Defendant supplied and sold its defective Aircraft Remover without warnings, cautions, and instructions concerning the potential hazards, limitations and dangers of the Aircraft Remover and the methods necessary to reduce or limit the risk of serious injury or death.

165. The Defendant's Aircraft Remover presented dangers that were unknowable and unacceptable to the average consumer.

166. A reasonable person would conclude that the probability and gravity of the harm caused by the Aircraft Remover outweigh the burden or cost of taking the necessary precautions.

167. The fatal injuries sustained by Plaintiffs' decedent, Joshua Paul Atkins, on February 12, 2018 and Plaintiffs' losses were a direct and proximate result of the defective and unsafe condition of the Defendant's Aircraft Remover as sold by the Defendant, its agents, servants and employees.

WHEREFORE, Plaintiff Lauren Atkins, on behalf of the Estate of Joshua Paul Atkins, demands of Defendant Rust-Oleum compensatory and punitive damages in excess of Fifty Thousand (\$50,000.00) Dollars, together with delay damages, interest, costs of suit and such other relief that the Court deems just.

COUNT IV
BREACH OF EXPRESS AND IMPLIED WARRANTIES
Estate of Joshua Paul Atkins v. Rust-Oleum Corporation

168. Plaintiffs reallege and incorporate by reference each and every preceding paragraph as though set forth fully at length.

169. The Defendant expressly warranted that its product labeling and safety literature, including its MSDSs and SDSs, were accurate and reliable, which was false.

170. The Defendant expressly warranted that its Aircraft Remover was “ideal” for household consumers to use for paint stripping, which was false.

171. By marketing and selling its products to inexperienced consumers, the Defendant impliedly warranted that Aircraft Remover was safe and fit for its intended use.

172. As the result of the Defendant’s breach of its express representations and implied warranties, Joshua Paul Atkins suffered fatal injuries on February 12, 2018.

WHEREFORE, Plaintiff Lauren Atkins, on behalf of the Estate of Joshua Paul Atkins, demands of Defendant Rust-Oleum compensatory and punitive damages in excess of Fifty Thousand (\$50,000.00) Dollars, together with delay damages, interest, costs of suit and such other relief that the Court deems just.

COUNT V -WRONGFUL DEATH
Lauren Atkins on her own behalf v. Rust-Oleum Corporation

173. Plaintiffs reallege and incorporate by reference each and every preceding paragraph as though set forth fully at length.

174. As a result of Defendant Rust-Oleum’s negligence *per se*, negligence, gross negligence, reckless indifference to safety, supply of a defective product and false representations which resulted in the death of her child, Lauren Atkins has been deprived of the society, comfort, affection, services and support of her only son, Joshua Paul Atkins.

175. As a result of Defendant Rust-Oleum’s negligence *per se*, negligence, gross negligence, reckless indifference to safety, supply of a defective product and false representations which resulted in the death of her child, Lauren Atkins suffered a profound emotional and psychological loss

176. As a result of Defendant Rust-Oleum’s negligence *per se*, negligence, gross negligence, reckless indifference to safety, supply of a defective product and false representations

which resulted in the death of her child, Lauren Atkins has incurred expenses for the funeral and cremation of her son and for the administration of his estate.

WHEREFORE, Lauren Atkins, on her own behalf, demands compensatory damages against Defendant Rust-Oleum Corporation in an amount in excess of \$50,000.00, plus costs, damages for delay and such other relief as the Court deems just.

RAYNES LAWN HEHMEYER

BY: Martin K. Brigham, Esquire
Martin K. Brigham, Esquire
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Date: September 17, 2018