



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ANAJAI CALCAÑO PALLANO, Individually, and as)
Parent and Natural Guardian of MAXIMILIANO)
CALCAÑO; MARIBEL MERCEDES, Individually,)
and as personal representative of the Estate of "BABY)
MERCEDES;" MARIBEL ANDUJAR MEDINA,)
Individually, and as Parent and Natural Guardian of)
ISAEAL ALTAGRACIA ANDUJAR; ROSA MARIA)
ANDUJAR Individually, and as personal)
representative of the Estate of "BABY OLMOS;")
MARIA VIRGEN DEOGRACIA, Individually, and as)
Parent and Natural Guardian of ESTANLYN)
GARCIA DEOGRACIA; and AMPARO ANDUJAR,)

C.A. No. _____

Plaintiffs,)

v.)

THE AES CORPORATION, AES ATLANTIS, INC.,)
AES PUERTO RICO, LP, AES PUERTO RICO,)
INC., and AES PUERTO RICO SERVICES, INC.,)

Defendants)

COMPLAINT

COMES NOW Plaintiffs ANAJAI CALCAÑO PALLANO, Individually, and as
Parent and Natural Guardian of MAXIMILIANO CALCAÑO; MARIBEL MERCEDES,
Individually, and as personal representative of the Estate of "BABY MERCEDES;"
MARIBEL ANDUJAR MEDINA, Individually, and as Parent and Natural Guardian of
ISAEAL ALTAGRACIA ANDUJAR; ROSA MARIA ANDUJAR, Individually, and as
personal representative of the Estate of "BABY OLMOS;" MARIA VIRGEN
DEOGRACIA, Individually, and as Parent and Natural Guardian of ESTANLYN
GARCIA DEOGRACIA; and AMPARO ANDUJAR (collectively, the "Plaintiffs"), by and

through their undersigned counsel, and in support of their claims against the above defendants **THE AES CORPORATION, AES ATLANTIS INC., AES PUERTO RICO, LP, AES PUERTO RICO, INC. and AES PUERTO RICO SERVICES, INC.** (collectively, the “**Defendants**”), state as follows:

PRELIMINARY STATEMENT

1. This case concerns Defendants’ unlawful and likely criminal dumping of large quantities of highly toxic industrial waste on a pristine Samaná Bay beach in the Dominican Republic.
2. This case also concerns infants in Samaná born with severe birth defects as a direct consequence of Defendants’ unlawful conduct. These birth defects include: missing limbs, missing organs, cranial and bony malformations, central nervous system injuries and gastrointestinal deformities. One woman gave birth to Siamese twins. One child was born without arms. Two were born with their viscera extruding from their bodies.
3. Additionally, this case concerns fetal death and babies who died shortly after being born, as a direct consequence of Defendants’ unlawful conduct. All of Plaintiffs’ injuries and deaths were the result of their exposure to the toxic waste that Defendants dumped in their home town.
4. The Defendants in this action, **The AES Corporation, AES Atlantis Inc., AES Puerto Rico, LP, AES Puerto Rico, Inc. and AES Puerto Rico Services, Inc.**, are American power companies, incorporated and organized in the State of Delaware, who earn billions of dollars annually from the operation of fossil fuel burning power plants.

5. Defendants' power plants, which burn coal for the purpose of generating energy, produce vast quantities of solid waste known as coal ash and fly ash ("Coal Ash Waste").
6. The constituents of Defendants' Coal Ash Waste include arsenic, cadmium, nickel, beryllium, chromium, lead, mercury and vanadium – substances that are highly hazardous to human health. These toxic substances are well known causes of birth defects and other adverse reproductive outcomes, including cancer of the lung, kidney, bladder and skin, as well as respiratory illnesses and other disorders.
7. Some time prior to October, 2003, Defendants built a coal-fired power facility in Guayama, Puerto Rico (the "Guayama Plant"). By mandate from Puerto Rican authorities, Defendants were required to find safe and lawful means for transporting and disposing of this hazardous Coal Ash Waste outside the Commonwealth of Puerto Rico, or otherwise face substantial financial obligations.
8. Defendants were well aware, or alternatively should have been aware, that this Coal Ash Waste was extremely harmful to human beings, was particularly harmful to children, and was even more harmful to pregnant women and their unborn children.
9. Defendants investigated a variety of options and concluded that lawful and safe methods of disposing of this toxic waste were impractical and/or would cost more than Defendants cared to pay. Accordingly, these Defendants elected to engage in an unlawful and likely criminal course of conduct in disposing of this toxic waste.
10. Specifically, Defendants, individually and collectively, arranged to dump tens of thousands of tons of toxic Coal Ash Waste on pristine beaches in the Dominican Republic, from about October, 2003, through March, 2004.

11. One of the beaches that became a site of this unlawful dumping is located at the port in Arroyo Barril in the Province of Samaná, which lies on the northeastern coast of the Dominican Republic. This location is immediately proximate to the dwelling places and occupational, recreational and fishing sites of many of the residents of Samaná and the Arroyo Barril community where Plaintiffs live.
12. Defendants dumped this poisonous waste in reckless and wanton disregard for the health, welfare and rights of Plaintiffs and other residents of the Dominican Republic living in the vicinity of the dump sites, and did so with the conscious or reckless disregard of the high likelihood that these individuals and their children, alive and unborn, would be grievously injured as a consequence of Defendants' misconduct.
13. Defendants' misconduct was in direct violation of the criminal laws of numerous jurisdictions, and indeed, upon information and belief, in furthering this criminal enterprise, Defendants, through their agents, undertook to bribe local officials for the purpose of facilitating this behavior and enhancing their own profit.
14. In advancing their unlawful purposes, Defendants repeatedly and falsely proclaimed that the tons of toxic waste that they dumped in Samaná were benign and posed no risk to humans. Indeed, Defendants affirmatively promoted their Coal Ash Waste as a beneficial product that might be profitably utilized by the residents of Samaná as construction material.
15. Defendants' knowingly false or reckless misstatements were intended to and did in fact lull the citizens of Samaná and Plaintiffs into the belief that they were not at risk, thereby discouraging them from attempting any preventive measures when in fact, they were and continue to be at grave risk.

16. As a consequence of Defendants' misconduct, Plaintiffs were wrongfully exposed to reproductive, carcinogenic and other toxins in the Coal Ash Waste, either directly or *in utero*, and as a result suffered catastrophic injuries, including grotesque malformations and death.

PARTIES

17. Plaintiff **Anajai Calcaño Pallano** is the mother and natural guardian of the infant Plaintiff, **Maximiliano Calcaño**, both residents of Samaná. **Maximiliano** was born on or about November 24, 2007 with multiple severe birth defects, including missing limbs.

18. Plaintiff **Maribel Mercedes** is the mother and personal representative of the Estate of "**Baby Mercedes**," and is a resident of Samaná province. **Baby Mercedes** was the product of failed Siamese twinning, and died shortly after its birth on May 21, 2009. Maribel Mercedes is empowered to ensure Baby Mercedes' rights and actions pursuant to 10 Del. C. § 3701 *et. seq.* or any other applicable law, and is also a statutorily defined beneficiary pursuant to 10 Del. C. § 3721 *et. seq.*, commonly referred to as the Wrongful Death Act.

19. Plaintiff **Maribel Andujar Medina** is the mother and natural guardian of Plaintiff **Isael Altagracia Andujar**, both residents of Samaná province. **Isael** was born on December 18, 2005 with severe gastrointestinal anomalies, among other injuries.

20. Plaintiff **Rosa Maria Andujar**, a resident of Samaná province, is the mother and personal representative of the Estate of "**Baby Olmos**." **Baby Olmos** was born on or about July 23, 2008 with severe gastrointestinal deformities and other birth defects, and died shortly thereafter. Rosa Maria Andujar is empowered to ensure Baby Olmos' rights and actions pursuant to 10 Del. C. § 3701 *et. seq.* or any other applicable law, and is also

a statutorily defined beneficiary pursuant to 10 Del. C. § 3721 *et. seq.*, commonly referred to as the Wrongful Death Act.

21. Plaintiff **Maria Virgen Deogracia** is the mother and natural guardian of Plaintiff **Estanlyn Garcia Deogracia**, both residents of Samaná province. **Estanlyn** was born on March 8, 2008 with severe birth defects, including bony anomalies and an absent kidney.

22. Plaintiff **Amparo Andujar** is a resident of Samaná province and became pregnant in or about early 2008. In July 2008, in approximately her fourth month of pregnancy, she was advised by her physician that the fetus exhibited severe cranial and/or other anomalies and was no longer viable. She was required to undergo a therapeutic abortion.

23. Defendant **AES Corporation** (“**AES**”) is a publicly-traded corporation formed under the laws of the State of Delaware. **AES** is headquartered at 4300 Wilson Boulevard, 11th Floor, Arlington, Virginia 22203. **AES** is a large global power producer and utility provider that reported revenues over \$16 billion in 2008. **AES** has created an elaborate web of subsidiaries which, upon information and belief, are under the direction and control of **AES**. **AES**’s operations create vast quantities of dangerous Coal Ash Waste, which requires careful disposal.

24. Defendant **AES**’s registered agent for service of process is: Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

25. Defendant **AES Atlantis, Inc.** (“**AES Atlantis**”) is a wholly-owned and operated subsidiary of **AES**. **AES** established **AES Atlantis** as a for-profit corporation formed and incorporated under the laws of the State of Delaware. **AES Atlantis** is also headquartered at 4300 Wilson Boulevard, 11th Floor, Arlington, Virginia 22203.

26. Defendant **AES Atlantis'** registered agent for service of process is: Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.
27. Defendant **AES Puerto Rico L.P.** is a wholly-owned and operated subsidiary of **AES**. **AES** established **AES Puerto Rico L.P.** as a for-profit entity formed under the laws of the State of Delaware. **AES Puerto Rico L.P.** is headquartered in Guayama, Puerto Rico, where it operates the Guayama Plant.
28. **AES Puerto Rico L.P.'s** registered agent for service of process is: The Prentice Hall Corporation System, Inc, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.
29. Defendant **AES Puerto Rico, Inc.** is a wholly-owned and operated subsidiary of **AES**. **AES** established **AES Puerto Rico, Inc.** as a for-profit entity formed under the laws of the State of Delaware. **AES Puerto Rico, Inc.** is headquartered in Puerto Rico.
30. **AES Puerto Rico Inc.'s** registered agent for service of process is: The Prentice Hall Corporation System, Inc, 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808.
31. Defendant **AES Puerto Rico, Services Inc.** is a wholly-owned and operated subsidiary of **AES**. **AES** established **AES Puerto Rico Services, Inc.** as a for-profit entity under the laws of the state of Delaware. **AES Puerto Rico Services, Inc.** is headquartered in Puerto Rico.
32. **AES Puerto Rico Services, Inc.'s** registered agent for service of process is: Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808.
33. **AES Puerto Rico Inc.** is a general partner of Defendant **AES Puerto Rico, L.P.**

34. **AES Puerto Rico Services Inc.** is a general partner of Defendant **AES Puerto Rico, L.P.**

FACTS

35. At all relevant times, Defendant **AES** controlled its subsidiaries, Defendants **AES Atlantis, AES Puerto Rico L.P., AES Puerto Rico, Inc. and AES Puerto Rico Services, Inc.**, by and through **AES** corporate management located in Arlington, Virginia.

36. Upon information and belief, Defendant **AES** created additional entities and/or subsidiaries in order to accomplish its unlawful purposes, and directed its subsidiaries to engage in the reckless, wonton and criminal acts and omissions alleged herein. **AES's** subsidiaries, upon information and belief, were agents or servants of **AES**, or alter egos for **AES**.

37. At all relevant times, Defendants, by their employees, agents, servants and representatives, acted individually, collectively, jointly and in concert to accomplish the unlawful transport and disposal of toxic Coal Ash Waste from the Guayama Plant onto the beaches of Samaná.

38. At all relevant times, **AES Puerto Rico L.P.** was the owner and operator of the Guayama Plant, which produced large quantities of Coal Ash Waste, and was subject to regulations of Puerto Rican authorities with respect to containment and removal of this toxic waste.

39. Upon information and belief, prior to October, 2003, the Commonwealth of Puerto Rico required Defendants, as a condition of building and operating the Guayama Plant, to transport and dispose of the Coal Ash Waste byproducts outside the

Commonwealth of Puerto Rico due to the serious health hazards associated with its presence in that Commonwealth.

40. Upon further information and belief, this off-site disposal mandate was included as a material provision in the Power Purchase Agreement entered into between **AES Puerto Rico, L.P.** and the Puerto Rico Electric Power Authority.

41. In response to the Commonwealth's directive, Defendants investigated lawful options for disposal of the Coal Ash Waste, including shipping the waste to the United States or to other foreign locations where containment and safety requirements would apply. However, complying with lawful regulations for waste disposal would have substantially increased Defendants' costs and sharply limited their profits.

42. Thus, instead of choosing one of the safe and proper disposal options, Defendants chose the cheapest, albeit unlawful, method. Acting in concert with each other and with their agents and others, Defendants dumped tens of thousands of tons of toxic Coal Ash Waste from the Guayama Plant onto two pristine beaches in the Dominican Republic. Defendants did so without regard for the health of innocent persons living in the vicinity of these dumpsites, and with the express goal of maximizing profit and minimizing costs.

43. Upon information and belief, from approximately October, 2003, through March, 2004, Defendants improperly transported approximately ten barge loads of hazardous Coal Ash Waste generated by the Guayama Plant to the Dominican Republic. Each barge load contained many thousands of tons of Coal Ash Waste.

44. Defendants dumped tens of thousands of tons of Coal Ash Waste directly onto a beach in Samaná Bay, near Plaintiffs' homes.

45. In violation of national and international laws, safe industry practice, and common decency, Defendants negligently, recklessly, willfully and wantonly dumped their toxic waste without containment or other precautionary measures, leaving the Coal Ash Waste unsecured and exposed to wind, rain, and water runoff, and causing clouds of toxic dust to permeate the Samaná Bay area.
46. The Coal Ash Waste dumped by Defendants in Samaná Bay contains hazardously high levels of toxins, including arsenic, cadmium, nickel, beryllium, chromium, lead, mercury and vanadium.
47. Defendants knew or should have known that the toxic substances contained in the Coal Ash Waste would be carried by wind and water to the local residential areas inhabited by the Plaintiffs and others, and that the Plaintiffs and other residents of the Samaná province would be exposed to these toxins through inhalation, ingestion, and/or dermal absorption.
48. At all relevant times, Defendants failed and refused to warn or advise the Plaintiffs of the hazardous substances in Coal Ash Waste and of the health risks associated with exposure to these toxins, including risks of birth defects and other adverse reproductive outcomes, as well as risks of lung, bladder and other cancers, and skin and respiratory injuries.
49. Having dumped the toxic Coal Ash Waste without containment or other precautionary measures, Defendants thereafter failed or refused to take necessary and adequate steps to address or remediate the dangerous conditions they created.
50. At all relevant times, Defendants failed to study, investigate, determine, impose, or comply with reasonable standards and regulations for disposal of Coal Ash Waste, and

failed to protect the health and safety of the local residents or to minimize the dangers to those, including Plaintiffs, who would foreseeably be harmed by exposure to this toxic waste.

51. At all relevant times, Defendants failed to fully and properly test, investigate, analyze and study the Coal Ash Waste and its toxic constituents to learn of the true hazards associated with exposure to these toxins.

52. Motivated by a desire for unwarranted economic gain and profit, Defendants willfully, wantonly, and recklessly ignored knowledge, in existence at all relevant times, of the health hazards of the toxic substances contained in the Coal Ash Waste and have thereby exhibited reckless disregard for the health and well being of the Plaintiffs.

53. Defendants knowingly and fraudulently misrepresented the waste as being safe and non-hazardous to the health of the residents in close proximity to the dumpsite in Samaná Bay.

54. Defendants knowingly and fraudulently mischaracterized the waste as manufactured aggregate and shipped it to the Dominican Republic for disposal on beaches, notwithstanding that Defendants knew that the chemical composition of the Coal Ash Waste and the dangerously high levels of toxins made it unsuitable and unsafe for any use.

55. Defendants made the foregoing misrepresentations to induce officials of the government of the Dominican Republic to permit and allow the dumping of the Coal Ash Waste at the Samaná Bay site.

56. Defendants held themselves out to officials of the government of the Dominican Republic and others as being authoritative, knowledgeable, expert and experienced, and

Defendants had reason to believe that the Plaintiffs and others would trust, believe, accept and rely upon and be harmed by their representations.

57. As a direct result of Defendants' misconduct, each of the infant Plaintiffs and their parents were exposed to, and came into bodily contact with, dangerous levels of toxic materials contained in the Coal Ash Waste, including reproductive toxins, carcinogens, and other toxic substances.

58. As a direct result of Defendants' misconduct, the infant Plaintiffs **Maximiliano Calcaño, Isael Altagracia Andujar and Estanlyn Garcia Deogracia** suffered and will continue to suffer permanent physical injury, deformity, disfigurement, and disability, mental, psychological, emotional pain and suffering, pecuniary injury, and were otherwise injured.

59. As a direct result of Defendants' misconduct, Plaintiffs **Baby Olmos and Baby Mercedes** suffered bodily injury, and physical, mental and emotional pain and suffering, which resulted in their deaths.

60. As a direct result of Defendants' misconduct, Plaintiffs **Anajai Calcaño Pallano, Maribel Mercedes, Maribel Andujar Medina, Rosa Maria Andujar, Maria Virgen Deogracia, and Amparo Andujar** suffered and will continue to suffer physical, mental, psychological and emotional pain and suffering, pecuniary loss, and were otherwise injured.

61. As a direct result of the aforesaid wrongful exposures, each of the living Plaintiffs is at a highly elevated risk for development of one or more of the following diseases: lung cancer, bladder cancer, kidney cancer, skin cancer, respiratory ailments and other disorders, which may occur in the future. For each of these conditions there now exist

medical monitoring techniques to identify the onset of the disease at an early stage and materially improve prospects to cure these conditions and/or mitigate their affects. Accordingly, as a consequence of Defendants' misconduct, all living Plaintiffs require a program of periodic medical examinations.

62. Defendants' misconduct in dumping the Coal Ash Waste in Samaná was a proximate cause of, and a substantial causative factor in, Plaintiffs' aforesaid injuries.

63. As a consequence of Defendants' above-described actions and omissions, the infant Plaintiffs, by their Plaintiff parents, demand compensatory damages, and equitable relief where appropriate, for the following damages sustained and to be sustained:

- (a) physical pain and suffering;
- (b) permanent disability and disfigurement;
- (c) mental, psychological and emotional injury;
- (d) fear of contracting cancer or other disease;
- (e) risk of contracting cancer or other disease;
- (f) loss of the enjoyment of life's pleasures;
- (g) inability to participate in usual activities;
- (h) lost income and earning opportunities;
- (i) past, present and future medical expenses;
- (j) other pecuniary loss;
- (k) moral damages;

and other damages as allowed by law.

64. As a consequence of Defendants' above-described actions and omissions, the Plaintiff parents, as personal representatives for the estates of the infant-decedents,

demand compensatory damages, and equitable relief where appropriate, for the following damages sustained and to be sustained:

- (a) physical pain and suffering;
- (b) mental, psychological and emotional injury;
- (c) loss of enjoyment of life's pleasures;
- (d) medical expenses;
- (e) pecuniary loss;
- (f) loss of companionship, services, comfort and society of their decedents;
- (g) wrongful death damages;
- (h) moral damages;

and other damages as allowed by law.

65. As a consequence of Defendants' above-described actions and omissions, the adult Plaintiffs demand compensatory damages, and equitable relief where appropriate, for the following damages sustained and to be sustained:

- (a) physical pain and suffering;
- (b) mental, psychological and emotional injury;
- (c) fear of contracting cancer or other disease;
- (d) risk of contracting cancer or other disease;
- (f) loss of the enjoyment of life's pleasures;
- (g) past, present and future medical expenses;
- (h) other pecuniary loss;
- (i) moral damages;

and other damages as allowed by law.

66. In addition to compensatory damages, an award of punitive damages is appropriate and necessary in order to punish Defendants for their willful, wanton, intentional and/or reckless misconduct and to deter Defendants and others similarly situated from engaging in like misconduct in the future.

COUNT I

NEGLIGENCE

67. The allegations of paragraphs One (1) through Sixty-Six (66) are realleged and incorporated by reference within this Count.

68. Defendants had a duty to exercise reasonable care and caution in the disposal of the Coal Ash Waste from the Guayama Plant.

69. Defendants knew or should have known that the Coal Ash Waste would have a toxic, poisonous, and highly deleterious effect upon the health of persons inhaling, ingesting or otherwise absorbing it, and upon the offspring of such persons.

70. Defendants breached their duty to Plaintiffs by disposing of these toxic materials in waterways and on land in a manner which they knew or should have known would foreseeably cause Plaintiffs and other unsuspecting members of the general population to come into contact with, or otherwise be exposed to, the toxic substances in the Coal Ash Waste.

71. Defendants willfully, wantonly, recklessly, and negligently failed and/or refused to provide accurate and adequate warnings of the health hazards and dangers of exposure to the Coal Ash Waste to those who would reasonably and foreseeably come into contact with or be harmed by these toxins.

72. Defendants willfully, wantonly, recklessly, and negligently failed to study, investigate, ascertain, impose or comply with reasonable standards and regulations for proper disposal of the Coal Ash Waste in a manner that would protect the health and safety of Plaintiffs and others coming into contact with the toxins in the Coal Ash Waste.
73. Defendants willfully, wantonly, recklessly, and negligently failed to fully and properly test, analyze and study the constituents of the Coal Ash Waste so as to fully learn of the health hazards associated with disposing of this material in public places in close proximity to residential areas.
74. Defendants were otherwise negligent.
75. By reason of the foregoing, Defendants are jointly and severally liable to Plaintiffs.
76. As a direct and proximate result of the foregoing acts, omissions, willfulness, recklessness and negligence of Defendants, Plaintiffs sustained the injuries set forth above, and are entitled to compensatory damages, equitable relief, and other damages allowed by law.
77. In addition, an award of punitive damages is appropriate and necessary in order to punish Defendants for their willful, wanton, intentional and/or reckless misconduct and to deter Defendants and others similarly situated from engaging in like misconduct in the future.

COUNT II

NEGLIGENCE PER SE

78. The allegations of paragraphs One (1) through Seventy-Seven (77) are realleged and incorporated by reference within this Count.

79. Dominican Republic Law 218 and Law 64-00 of 2000 prohibit importation of industrial waste, including hazardous Coal Ash Waste.

80. Defendants' dumping of the Coal Ash Waste was also in violation of international law, the laws of the United States and the Dominican Republic, and against CAFTA-DR trade agreement principles.

81. By violating these provisions of law, Defendants' actions were negligent *per se* and in violation of the duty of care established by statute.

82. By reason of the foregoing, Defendants are jointly and severally liable for negligence *per se*.

83. As a direct and proximate result of the foregoing, Plaintiffs sustained the injuries set forth above, and are entitled to compensatory damages, equitable relief, and other damages allowed by law.

84. In addition, an award of punitive damages is appropriate and necessary in order to punish Defendants for their willful, wanton, intentional and/or reckless misconduct and to deter Defendants and others similarly situated from engaging in like misconduct in the future.

COUNT III

NUISANCE

85. The allegations of paragraphs One (1) through Eighty-Four (84) are realleged and incorporated by reference within this Count.

86. Defendants dumped tens of thousands of tons of poisonous Coal Ash Waste, containing reproductive toxins, carcinogens and other highly toxic substances, onto a

pristine Samaná beach, in close proximity to Plaintiffs' residential, occupational and recreational areas.

87. Defendants created this open toxic dumpsite without providing for containment or other protective measures, and in a manner that was virtually certain to, and in fact did, result in exposing Plaintiffs and others to these toxins, and pose serious health hazards to those exposed and to their offspring.

88. The Coal Ash Waste dumpsite created by Defendants constituted a nuisance to Plaintiffs and other residents of Samaná.

89. As a result of the foregoing, Defendants are jointly and severally liable to Plaintiffs for creation of a public nuisance.

90. As a direct and proximate result of the foregoing, Plaintiffs sustained the injuries and damages set forth above, and are entitled to compensatory damages, equitable relief, and other damages allowed by law.

91. In addition, an award of punitive damages is appropriate and necessary in order to punish Defendants for their willful, wanton, intentional and/or reckless misconduct and to deter Defendants and others similarly situated from engaging in like misconduct in the future.

COUNT IV

FRAUD AND FRAUDULENT MISREPRESENTATION

92. The allegations of paragraphs One (1) through Ninety-One (91) are realleged and incorporated by reference within this Count.

93. To further their goal of avoiding the expense of proper toxic waste disposal, Defendants, acting in concert, designed and carried out a fraudulent scheme to

mischaracterize the Coal Ash Waste as “manufactured aggregate” and falsely promote its use for construction projects in the Dominican Republic.

94. At all relevant times, Defendants knew that the hazardous Coal Ash Waste contained dangerously high levels of toxic substances, making it unsuitable for any use.

95. Defendants engaged in a concerted effort, pattern, and practice aimed at inducing the media, the local health care provider community, government agencies and the public at large to believe that their Coal Ash Waste was both useful and safe.

96. Defendants, through their agents, made repeated and knowingly false misrepresentations to the media and to the public that the Coal Ash Waste they dumped in Samaná was not toxic or harmful to life or health and had beneficial uses.

97. Defendants, through their agents, made similar misrepresentations to Dominican Republic officials to encourage or induce these officials to permit the dumping of the Coal Ash Waste at the Samaná Bay site.

98. Defendants’ foregoing misrepresentations were knowingly false and/or made with reckless indifference to the truth, and to the health and well-being of Plaintiffs and other residents of Samaná.

99. Defendants held themselves out to be authoritative, knowledgeable, expert, and experienced, and Defendants had reason to believe that Plaintiffs and others would trust, believe, accept, and rely on their misrepresentations.

100. Defendants engaged in this fraudulent and misleading pattern and practice even though they knew, or should have known, that both the toxic nature of the Coal Ash Waste and the negligent and improper manner in which it was dumped threatened the life and health of the Plaintiffs and other residents of Samaná.

101. By this concerted pattern and practice of fraudulent concealment and deception, and through acts of omission and commission, misrepresentation, concealment, deception and fraud, Defendants willfully and recklessly caused, allowed and permitted for Plaintiffs to be misled.

102. As a direct and proximate result of Defendants' omissions and commissions, misrepresentations, deceptions and fraudulent concealments, Defendants deprived the Plaintiffs of a fair and reasonable opportunity to discover the cause of their injuries.

103. As a result of the foregoing, Defendants are jointly and severally liable to Plaintiffs.

104. As a direct and proximate result of Defendants' acts, omissions, willfulness, recklessness, negligence, deceptions and fraudulent concealments, the Plaintiffs sustained the injuries and damages set forth above, and are entitled to compensatory damages, equitable relief and other damages allowed by law.

105. In addition, an award of punitive damages is appropriate and necessary in order to punish Defendants for their willful, wanton, intentional and/or reckless misconduct and to deter Defendants and others similarly situated from engaging in like misconduct in the future.

COUNT V

ABNORMALLY DANGEROUS AND/OR ULTRA HAZARDOUS ACTIVITIES

106. The allegations of paragraphs One (1) through One Hundred Five (105) are realleged and incorporated by reference within this Count.

107. Defendants intentionally, willfully and with reckless disregard for the safety of the Plaintiffs, transported tens of thousands of tons of highly toxic waste from their

Guayama Plant and dumped it in close proximity to Plaintiffs' homes without containment or protective measures, and in a manner which was virtually certain to result in exposing Plaintiffs and others to these toxins, and pose serious health hazards to those exposed and to their offspring.

108. Defendants' foregoing acts constituted abnormally dangerous and/or ultra hazardous activities, given the extraordinarily high degree of risk associated with these activities, and the extreme gravity and likelihood of profound bodily harm.

109. As a result of the foregoing abnormally dangerous and ultra-hazardous activities, Defendants are jointly and severally liable to Plaintiffs.

110. As a direct and proximate result of the foregoing, Plaintiffs sustained the injuries and damages set forth above, and are entitled to compensatory damages, equitable relief, and other damages allowed by law.

111. In addition, an award of punitive damages is appropriate and necessary in order to punish Defendants for their willful, wanton, intentional and/or reckless misconduct and to deter Defendants and others similarly situated from engaging in like misconduct in the future.

COUNT VI

BATTERY

112. The allegations of paragraphs One (1) through One Hundred Eleven (111) are realleged and incorporated by reference within this Count.

113. As a result of the foregoing, Defendants intentionally and/or recklessly committed a harmful or offensive contact upon the Plaintiffs, by causing Plaintiffs to inhale, ingest,

absorb and/or otherwise come into contact with and/or become exposed to hazardous toxins.

114. Such contact with toxic substances would be offensive to an ordinary person, and was, in fact, offensive to the Plaintiffs.

115. At no time did the Plaintiffs consent to the foregoing harmful, intentional and unpermitted contact and exposure.

116. By reason of the foregoing, Defendants are jointly and severally liable for battery.

117. As a direct and proximate result of the foregoing, Plaintiffs sustained the injuries set forth above and are entitled to compensatory damages, equitable relief, and other damages allowed by law.

118. In addition, an award of punitive damages is appropriate and necessary in order to punish Defendants for their willful, wanton, intentional and/or reckless misconduct and to deter Defendants and others similarly situated from engaging in like misconduct in the future.

COUNT VII

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

119. The allegations of paragraphs One (1) through One Hundred Eighteen (118) are realleged and incorporated by reference within this Count.

120. Defendants intentionally engaged in extreme and outrageous conduct by knowingly exposing thousands of individuals, including Plaintiffs, to dangerously high levels of hazardous toxins, including arsenic, cadmium, nickel, beryllium, chromium, mercury and vanadium.

121. Engaging in such conduct for economic gain at the expense of Plaintiffs' health and well-being is so extreme and outrageous that it clearly exceeds all bounds of decency tolerated by society.
122. As a direct and proximate result of the foregoing, Plaintiffs have suffered extreme emotional distress, in addition to the physical injuries described above.
123. As a result of the foregoing, Defendants are jointly and severally liable to the Plaintiffs for intentional infliction of emotional distress.
124. As a direct and proximate result of the foregoing, Plaintiffs sustained the injuries set forth above, and are entitled to compensatory damages, equitable relief, and other damages allowed by law.
125. In addition, an award of punitive damages is appropriate and necessary in order to punish Defendants for their willful, wanton, intentional and/or reckless misconduct and to deter Defendants and others similarly situated from engaging in like misconduct in the future.

COUNT VIII

VIOLATION OF INTERNATIONAL LAW AND HUMAN RIGHTS

126. The allegations of paragraphs One (1) through One Hundred Twenty-Five (125) are realleged and incorporated by reference within this Count.
127. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal is a comprehensive global environmental agreement on hazardous and other wastes that aims to protect human health and the environment

against the adverse effects resulting from the disposal of hazardous wastes. The Basel Convention came into force in 1992.

128. The Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes were established to provide guidelines and principles for the environmentally sound transport, handling and disposal of toxic and dangerous substances. The Cairo Guidelines were adopted by the United Nations Environment Programme in 1987.
129. At the same time, international law recognizes a generalized human right to the highest attainable standard of physical and mental health.
130. International human rights law recognizes that the illegal disposal of toxic and dangerous substances can result in violations of traditional human rights such as the rights to life, personal security, health and well-being, physical security and integrity, property, freedom from discrimination, inviolability of the home and privacy. Human rights law also recognizes the rights of all persons to meaningful redress and remedy, and equal protection of the law.
131. International human rights law recognizes that transnational corporations and other business enterprises have the obligation to respect, ensure respect of, promote, secure the fulfillment of, and protect human rights. Transnational corporations and other business enterprises also have the obligation to carry out their activities in accordance with relevant international agreements, principles, objectives, responsibilities and standards. For example, the United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights requires that transnational corporations and other business enterprises respect and

contribute to the realization of the right to the highest attainable standard of physical and mental health and to refrain from actions which obstruct or impede the realization of those rights.

132. The actions of Defendants as described above violated and resulted in violations of international law and the human rights of the Plaintiffs.

133. Defendants may be held liable for violations of international law under customary norms of international law. The laws of the State of Delaware and the Dominican Republic, international treaties, conventions, declarations and proclamations, resolutions of international organizations and decisions of regional courts support corporate liability for violations of international law.

134. As a direct and proximate result of Defendants' negligent and intentional misconduct, in violation of international law, the laws of the State of Delaware and the Dominican Republic, Plaintiffs sustained the injuries set forth above, and are entitled to compensatory damages, equitable relief, and other damages allowed by law.

135. In addition, an award of punitive damages is appropriate and necessary in order to punish Defendants and to deter Defendants and others similarly situated from engaging in like misconduct in the future.

COUNT IX

WILLFUL AND WANTON MISCONDUCT

136. The allegations of paragraphs One (1) through One Hundred Thirty-Five (135) are realleged and incorporated by reference within this Count.

137. Defendants intentionally, willfully or with a reckless disregard for the safety of the Plaintiffs, caused the Plaintiffs and thousands of others to be exposed to toxic

constituents in the Coal Ash Waste, including reproductive toxins, carcinogens, and other harmful substances.

138. Defendants intentionally, willfully or with a reckless disregard for the safety of the Plaintiffs, failed to utilize proper measures to prevent the Plaintiffs and thousands of others from being exposed to these harmful substances.

139. Defendants intentionally, willfully or with a reckless disregard for the safety of the Plaintiffs, failed and refused to warn or advise the Plaintiffs and thousands of others of the dangerous characteristics of these toxic substances and of the health threats or adverse consequences to those who might use or be exposed to these toxins.

140. Defendants intentionally, willfully or with a reckless disregard for the safety of the Plaintiffs, failed to fully and properly test and study the aforesaid constituents of Coal Ash Waste to learn of the hazards associated with contact or exposure to these toxins.

141. Defendants intentionally, willfully or with a reckless disregard for the safety of the Plaintiffs, made express and implied representations, incorrectly and untruthfully, that the aforesaid substances were safe and suitable for use.

142. Defendants intentionally, willfully or with a reckless disregard for the safety of the Plaintiffs, ignored and concealed from the Plaintiffs knowledge, in existence at all relevant times, of the health hazards of the aforementioned hazardous substances.

143. Defendants' willful, wanton, and intentional misconduct evinces a total, conscious and/or reckless disregard for the life and well-being of Plaintiffs, as well as for the health, well-being and rights of others who used or otherwise came into contact with the aforesaid hazardous substances.

144. As a direct and proximate result of the willful, wanton and intentional misconduct of Defendants, Plaintiffs sustained the injuries and damages set forth above.

145. As a result of the foregoing, Defendants are jointly and severally liable to Plaintiffs for compensatory damages, equitable relief and other damages allowed by law.

146. In addition to compensatory damages, an award of punitive damages is appropriate and necessary in order to punish Defendants for their willful, wanton, intentional and/or reckless misconduct and to deter Defendants and others similarly situated from engaging in like misconduct in the future.

COUNT X

WRONGFUL DEATH

147. The allegations of paragraphs One (1) through One Hundred Forty-Six (146) are realleged and incorporated by reference within this Count.

148. As a consequence of Defendants' misconduct, the infant Plaintiffs **Baby Olmos** and **Baby Mercedes** sustained profound personal injury that ultimately resulted in their deaths.

149. As a consequence of Defendants' misconduct, the infant Plaintiffs **Baby Olmos** and **Baby Mercedes** suffered physical, mental and emotional pain and suffering prior to their deaths.


150. As a consequence of the foregoing, Plaintiffs **Rosa Maria Andujar** and **Maribel Mercedes** suffered extreme mental pain and suffering and emotional distress, as well as loss of comfort, companionship, services and society of their infant decedents, pecuniary loss and other wrongful death damages as allowed by law.

151. As a direct and proximate result of the foregoing, Plaintiffs sustained the injuries set forth above, and are entitled to compensatory damages, and other damages allowed by law.

152. In addition, an award of punitive damages is appropriate and necessary in order to punish Defendants for their willful, wanton, intentional and/or reckless misconduct and to deter Defendants and others similarly situated from engaging in like misconduct in the future.

WHEREFORE, Plaintiffs pray this Court enter judgment against Defendants and award: compensatory damages in an amount to be proved at trial, punitive damages in an amount sufficient to punish Defendants for their misconduct and to deter similarly situated parties from committing like acts of misconduct in the future; equitable relief; and such other and further relief that this Court deems appropriate.

BIFFERATO LLC



Ian Connor Bifferato (DE Id. No. 3273)
David W. deBruin (DE Id. No. 4846)
Kevin G. Collins (DE Id. No. 5149)
800 N. King Street, Plaza Level
Wilmington, DE 19801
Tel: (302) 225-7600
Fax: (302) 254-5383
Attorneys for Plaintiff

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OF COUNSEL

Steven J. Phillips
Diane Paolicelli
Phillip Monier III
Levy Phillips & Konigsberg, LLP
800 Third Avenue

New York, NY 10020
(212) 605-6200

Robert T. Vance, Jr.
Giovanni O. Campbell
Law Offices of Robert T. Vance, Jr.
100 South Broad Street, Suite # 1530
Philadelphia, PA 19110-1026
(215) 557-9550