

SUPREME COURT FOR THE STATE OF
NEW YORK, COUNTY OF NEW YORK

GERARD ARTALE, individually and as
Administrator for the Estate of Joan
Pedersen, deceased,

Plaintiff,

-against-

AMERICAN CANCER SOCIETY, INC., a
New York not-for-profit corporation; THE
125 WEST 31ST STREET
CONDOMINIUM, a New York
Condominium; THE 125 West 31ST
STREET CONDOMINIUM BOARD, a
New York Condominium Board of
Managers,

Defendants.

Index No.:

SUMMONS


**The basis of venue is Defendants’
residence**

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance on Plaintiff’s attorneys, O’NEILL, DIMANNO & KELLY and PRITZKER HAGEMEAN, within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment may be taken against you by default for the relief demanded in the complaint, plus interest, together with the costs and disbursements of this action.

The Plaintiff designates New York County as the venue for trial. Venue is based on the Defendants' residence under CPLR 503.

Dated: New York, New York
April 5, 2017

By: 

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(*pro hac vice* application forthcoming)

Attorneys for Plaintiff

Name and address of Defendants to be served:

American Cancer Society, Inc.
CT Corporation System
111 Eighth Avenue
New York, New York, 10011

The 125 West 31st Street Condominium
125 West 31st Street
New York, NY, 10011

The 125 West 31st Street Condominium Board
125 West 31st Street
New York, NY, 10011

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VERIFIED COMPLAINT

Plaintiff Gerard Artale for his Verified Complaint against the Defendants states
and alleges as follow:

INTRODUCTION

1. This wrongful death and survivorship case arises from a Legionnaires’
disease outbreak involving four individuals who contracted the disease while living at
“Hope Lodge,” a temporary housing facility for cancer patients receiving treatment in
New York City which was owned, operated and controlled by Defendant American
Cancer Society, Inc.

2. The Defendants were responsible for the safety of the water system at the Hope Lodge, including responsibility for controlling and eliminating the presence of the *Legionella* bacteria in light of the vulnerable population it serves.

3. Plaintiff Gerard Artale's late wife Joan Pedersen contracted Legionnaires' disease while staying at the Hope Lodge. As a result of her illness, she was forced to suspend cancer treatment that would have prolonged her life and could have triggered remission. Instead of life-extending cancer treatment, she endured weeks of invasive and painful treatment for Legionnaires' disease, including over a week in intensive care and extreme mental anguish knowing that the suspension of her cancer treatment would likely be a death sentence. Without treatment, the cancer expanded and she ultimately died on May 20, 2015.

4. Plaintiff Gerard Artale, individually and as representative of the distributees and Estate of Joan Pedersen, is therefore seeking to hold Defendants responsible for the pain and suffering she endured before her death, the loss of precious time with his wife at the end of her life, the wrongful death of his wife, and other losses and damages set forth below.

PARTIES

5. Plaintiff Gerard Artale is a resident of Lake Luzerne, New York.

6. Plaintiff was married to Joan Pedersen for twenty-one years until her death on May 20, 2015.

7. Plaintiff was appointed Executor of Joan Pedersen's estate with authority to pursue the present wrongful death and survivorship action.

8. Defendant American Cancer Society, Inc. (hereinafter “ACS”) is a registered New York not-for-profit corporation.

9. Defendant ACS’s registered agent for service in New York is CT Corporation System, 111 Eighth Avenue, New York, New York, 10011.

10. Defendant ACS conducted business within the state of New York, including the acquisition and operation of real estate, under the name “American Cancer Society, Eastern Division, Inc.”

11. Upon information and belief, prior to Ms. Pedersen’s illness and death, the entity known as American Cancer Society, Eastern Division, Inc., merged into Defendant’s current organization, ACS.

12. At all relevant times, Defendant ACS owned, operated, maintained, and controlled the premises known as the American Cancer Society Hope Lodge Jerome L. Greene Family Center (hereinafter “Hope Lodge”).

13. Upon information and belief, Hope Lodge is located on floors 2 to 12 of the building located at 132 W. 32nd Street, New York, New York, 10001.

14. Hope Lodge uses floors 2-6 for business offices.

15. Hope Lodge uses floors 7-12 to operate 61 guest rooms used to house cancer patients receiving treatment in New York City.

16. Upon information and belief, ACS, its employees, contractors, agents, or those acting on its behalf, manages and controls the water system servicing its guest rooms and is responsible for ensuring that the water is safe given the vulnerable nature of its guests.

17. The building in which Hope Lodge operates is a condominium subject to the provisions of Article 9-B of the Real Property Law of the State of New York (the "Condominium Act") and is known as "The 125 West 31st Street Condominium" (hereinafter the "Condominium").

18. Defendant Condominium, pursuant to its by-laws, is governed and managed by a "Condominium Board."

19. The Condominium Board is named as a separate Defendant to the extent its responsibilities for the water system serving Hope Lodge differ from the Condominium itself.

20. The common elements of the building, including parts of the water supply and water safety system serving Hope Lodge, were under the control and the responsibility of Defendant Condominium, by and through Defendant Condominium Board.

21. The Condominium has designated the Secretary of State of the State of New York to receive service of process.

22. At all relevant times, each of the Defendants was the agent, servant, partner, aider and abettor, co-conspirator and/or joint venturer of each of the other Defendants for the purpose of providing safe water to Hope Lodge residents and was at all times operating and acting within the purpose and scope of said agency, service, employment, partnership, conspiracy and/or joint venture and rendered substantial assistance and encouragement to the other Defendants, knowing that their collective conduct would or reasonably could lead to harm to Plaintiff, decedent and similarly-situated persons.

23. The harm which has been caused to deceased Joan Pedersen resulted from the conduct of one or both Defendants through no fault of Ms. Pedersen or Plaintiff. There may be uncertainty as to which one or combination of Defendants caused the harm; however, Defendants have superior knowledge and information on the subject of which one or combination of Defendants caused Plaintiffs' injuries.

JURISDICTION AND VENUE

24. Defendants conduct and transact business in the State of New York, have committed tortious acts within the State, has otherwise performed acts within and/or without the state giving rise to injuries and losses within the state, which acts subject them to the jurisdiction of the courts of this state.

25. Defendants have substantial contacts and receive benefits and income from and through the State of New York, including New York County.

26. The amount of damages sought by Plaintiff exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

27. Plaintiff designates New York County as the place of trial under CPLR 503 because Defendant Condominium is located in New York County.

FACTUAL BACKGROUND

Legionella and Water Systems

28. The *Legionella* bacteria can grow and multiply in water systems and poses a significant danger to people using a contaminated water system, particularly if the users are immune-compromised.

29. Contaminated water can easily cause illness when water vapor or mist is inhaled. Once inhaled, the *Legionella* bacteria can cause Legionnaires' disease (Legionellosis) which is a severe form of pneumonia.

30. Legionnaires' disease can be very serious. Approximately one in ten people who contract the disease will die from complications. Symptoms include cough, shortness of breath, fever, muscle aches, and headache. Severe cases can result in lung failure.

31. Individuals with weak or compromised immune systems are at heightened risk for Legionnaires' disease.

32. Many of the residents of Hope Lodge, including decedent Joan Pedersen, had compromised immune systems because of their ongoing cancer treatments.

33. Prior to the outbreak described below, Defendants were well aware that they were housing a population which was particularly vulnerable to infection.

34. In a report released on June 7, 2016, the Centers for Disease Control and Prevention (CDC) stated that Legionnaires' outbreaks generally result from a combination of deficiencies, most frequently classified as process failures and human errors. In the majority of outbreaks, inadequate water disinfectant levels and temperatures in the optimal range of *Legionella* growth were observed.

35. Because of the well-known risks posed by *Legionella* in large-scale water systems, responsible property owners use water management plans that include testing and sanitizing systems designed to prevent the bacteria.

36. The CDC and others set standards for developing a water management program that is appropriate for a particular facility. For example, the CDC publishes a

guide called “Developing a Water Management Program to Reduce *Legionella* Growth and Spread in Buildings” that is widely available.

37. Any management plan, however, must account for the unique aspects of the building’s function and design.

38. For instance, large residential facilities designed for an immune-compromised population should take steps to protect its vulnerable residents from *Legionella*.

39. For these types of facilities, there are a variety of safety measures that are appropriate and effective. For instance, a chlorine dioxide disinfection system can provide an effective means of ensuring safe water.

40. Prior to the Legionnaires’ disease outbreak described below, Hope Lodge and Defendants did not implement a water management plan sufficient to protect the vulnerable population it housed at Hope Lodge.

Hope Lodge Outbreak

41. The New York City Department of Health and Mental Hygiene (DOHMH) actively monitors and investigates Legionnaires’ cases.

42. On February 25, 2015, the NYC DOHMH was notified by an infection control practitioner at Memorial Sloan Kettering Cancer Center (MSKCC) of two cases of Legionnaires’ disease among its patients who were also residents at Hope Lodge.

43. The first case stayed in Hope Lodge Room 801 and began experiencing symptoms on October 1, 2014.

44. Two water samples from room 801 obtained on September 3, 2015, were positive for *Legionella*. One sample was obtained from the shower and one from the sink.

45. The second case reported by MSKCC was that of Plaintiff's late wife Joan Pedersen.

46. Ms. Pedersen and Plaintiff stayed in Hope Lodge Room 809 from January 18, 2015, to February 2, 2015.

47. Ms. Pedersen began experiencing symptoms on about January 30, 2015, and was diagnosed with Legionnaires' disease on February 19, 2015.

48. As with the first case, later sampling revealed the presence of *Legionella* bacteria in the room. A showerhead swab from Room 809 obtained in April of 2015 proved to be positive for the bacteria.

49. After the initial two cases and test results were reported, DOHMH recommended that Hope Lodge install a long-term disinfection system throughout the building.

50. Hope Lodge refused to install a long term disinfection system at that time.

51. Hope Lodge did not notify its residents of the two cases or of the risks posed by its water system.

52. On August 12, 2015, DOHMH contacted Hope Lodge with news that a third resident of Hope Lodge had contracted Legionnaires' disease.

53. Again, DOHMH recommended a long-term disinfection system.

54. Again, Hope Lodge refused to install an effective system.

55. Hope Lodge did not notify its residents of the three cases or of the risks posed by its water system.

56. Within two weeks of the third case, a fourth Hope Lodge resident contracted Legionnaires' disease.

57. Not until April of 2016 did Hope Lodge, in combination with one or more of the remaining defendants, install a chlorine dioxide disinfection system.

58. At no point did Hope Lodge ever warn any of its residents, including Plaintiff and his late wife, of the risks posed by its water or the fact that the building did not have a chlorine dioxide disinfection system.

Joan Pedersen's Legionnaires' Illness

59. Plaintiff and his wife Joan Pedersen stayed at the American Cancer Society Hope Lodge Jerome L. Greene Family Center (HL) between January 18, 2015 and February 2, 2015, during her cancer treatment.

60. Ms. Pedersen stayed in room 809 for her entire stay at the Hope Lodge.

61. During the stay, Ms. Pedersen was exposed to *Legionella* bacteria from the Hope Lodge water system.

62. She began experiencing initial symptoms on January 30, 2015, and was officially diagnosed with Legionnaires' disease on February 19, 2015.

63. Because of her suppressed immune system, Ms. Pedersen's condition was critical.

64. As a result of the Legionnaires' disease, her doctors immediately halted the radiation and chemotherapy that promised to prolong or save her life.

65. Ms. Pedersen was instead admitted to the intensive care unit of the hospital to treat the infection. She remained hospitalized from approximately February 2, 2015, to March 13, 2015.

66. She survived her acute illness but in the interim, without treatment, her cancer worsened and she was too weak to resume treatment.

67. Joan Pedersen died May 20, 2015, as a direct and proximate result of contracting Legionnaires' disease and suspending cancer treatment.

68. As a direct and proximate result of contracting Legionnaires' disease from Hope Lodge, Ms. Pedersen incurred substantial medical expenses; endured unspeakable pain, discomfort, mental anguish, and suffering; and ultimately died.

COUNT I

Negligence

69. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

70. Defendants own, manage, control, operate, maintain, inspect and repair the water system serving Hope Lodge.

71. Cancer patients with weakened and compromised immune systems were foreseeable guests of the Hope Lodge.

72. Defendants owed a duty to all its guests, including Plaintiff and his deceased spouse, to keep the premises in a reasonable safe condition, including keeping the rooms and water system free of harmful pathogens like *Legionella*.

73. Defendants, by and through its employees, contractors, agents and those acting on its behalf, breached this duty by committing the following acts and omissions:

- a. Inadequately treating its water supply;
- b. Failing to adequately analyze and assess the safety of its water supply given the vulnerability of its guest population;
- c. Failing to install a chlorine dioxide disinfection system sufficient to treat the water used by the immune-compromised cancer patients it catered to;
- d. Inadequately performing regular and proper assessments of its water supply, including inadequate testing protocols;
- e. Failing to adequately train, supervise, inform and instruct its employees, agents, contractors or those acting on its behalf regarding the safe operation of its water supply in light of the vulnerable population it serves;
- f. Failing to warn its guests that its water was not treated or designed to be used by immune-compromised cancer patients;
- g. Ignoring and violating relevant portions of ASHRAE and other applicable guidelines and law; and
- h. Other acts and omissions as revealed through discovery.

74. Defendants, by and through its employees, contractors, agents or those acting on its behalf created the dangerous, hazardous, and defective conditions that resulted in the widespread presence of *Legionella* at the Hope Lodge as complained of herein and failed to timely and properly remedy this condition and warn its residents.

75. The dangerous, hazardous, and defective condition complained of here existed for a long period of time prior to Ms. Pedersen's illness such that Defendants, in the exercise of reasonable care, knew or should have known of the dangerous and defective condition and should have warned its residents.

76. Defendants, by and through its employees, contractors, agents or those acting on its behalf had actual notice and knowledge of the dangerous and defective condition complained of here – that is, a water supply at risk for *Legionella* contamination and particularly ill-suited for use by immune-compromised cancer patients – and nonetheless failed to timely and properly remedy it or warn its residents.

77. Defendants, by and through its employees, contractors, agents or those acting on its behalf had constructive notice and knowledge of the dangerous and defective condition complained of here – that is, a water supply at risk for *Legionella* contamination and particularly ill-suited for use by immune-compromised cancer patients – and nonetheless failed to timely and properly remedy it or warn its residents.

78. Defendants, by and through its employees, contractors, agents or those acting on its behalf caused, permitted and/or allowed the premises to be, become, and remain in the above mentioned dangerous and defective condition and failed to warn its residents.

79. The event alleged herein that caused decedent Ms. Pedersen's illness and death does not occur in the absence of negligence.

80. The instrumentality that caused decedent Ms. Pedersen's illness and death was in the exclusive control of Defendants.

81. No negligence on the part of Plaintiff or Ms. Pedersen contributed to the occurrence alleged here in any way whatsoever.

82. Defendants were otherwise negligent.

83. As a direct and proximate result of the fault of Defendants, decedent Joan Pedersen became infected with *Legionella* and suffered great mental anguish and

physical bodily injuries, conscious pain and suffering, diminished capacity for the enjoyment of life, a diminished quality of life, apprehension of impending death, and other losses and damages incurred before her death.

84. As a direct and proximate result of the fault of Defendants, Plaintiff and his deceased wife also incurred substantial medical expenses as well as funeral and burial expenses.

COUNT II

Wrongful Death

85. Plaintiff incorporates the preceding paragraphs by reference as if each paragraph was set forth here.

86. As a direct and proximate result of the fault of Defendants, decedent Joan Pedersen became infected with *Legionella*, was forced to suspend her cancer treatment, and ultimately died.

87. Plaintiff, individually and for the benefit of all wrongful death beneficiaries, brings a claim seeking the full value of his deceased wife's life.

88. Plaintiff seeks damages for the fair monetary value of his deceased wife's life, including, but not limited to, compensation for the loss of consortium, services, protection, care, assistance, society, companionship, comfort, guidance, counsel, and advice of the decedent Joan Pedersen as well as lost income.

JURY DEMAND

89. Plaintiff hereby demands a jury trial.

PRAYER FOR RELIEF

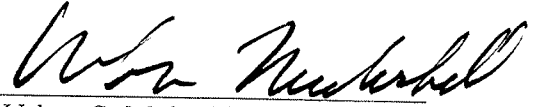
WHEREFORE, the Plaintiff prays for judgment against the Defendants as follows:

- a. Ordering compensation for all general, special, incidental, and consequential damages suffered by decedent, and decedent's distributees as a result of Defendants' conduct;
- b. Awarding Plaintiff his reasonable attorneys' fees and costs to the fullest extent allowed by law; and
- c. Granting all such additional and further relief as this Court deems just and equitable.

Respectfully submitted,

O'Neill, DiManno & Kelly

Dated: 4/4/17

By: 

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-and-

Pritzker Hageman, P.A.

Dated: 4/4/17

By: 

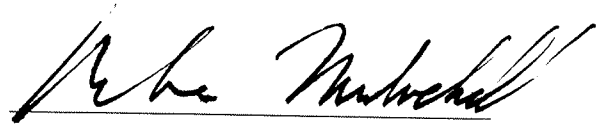
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(*pro hac vice* application forthcoming)

Attorneys for Plaintiff

VERIFICATION

STATE OF NEW YORK }
 }
 COUNTY OF NEW YORK } ss.:

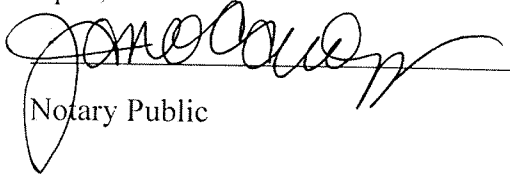
Urban S. Mulvehill, being duly sworn says: I am an attorney for the plaintiff herein. Plaintiff is a person not in the county where I have my office. I have read the annexed complaint and know it to be true to my knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.



Urban S. Mulvehill

Sworn to be for me this 4th day of

April, 2017



Notary Public

JANET CAIOZZO
 Notary Public, State of New York
 No. 01CA4732400
 Qualified in Kings County
 Commission Expires June 30, 2018

CERTIFICATION

The undersigned certifies the complaint pursuant to Rules of the Chief
Administrator 130-1.1-a



Urban S. Mulvehill