

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

WILLIAM H. DURHAM, M.D.

PLAINTIFF

VERSUS

CAUSE NO.: 2:20-CV-112-KS-MTP

**ANKURA CONSULTING GROUP, LLC
and JOHN DOES 1-5**

DEFENDANTS

**AMENDED COMPLAINT
(JURY TRIAL REQUESTED)**

COMES NOW, the Plaintiff, WILLIAM H. DURHAM, M.D. by and through undersigned counsel, and files this, his Complaint for Damages against the Defendants, ANKURA CONSULTING GROUP, LLC and presently unidentified defendants listed herein as John Doe Defendants 1-5. In support of said Complaint, Plaintiff would show unto the court the following, to-wit:

A. PARTIES

1. The Plaintiff, William H. Durham, M.D. (hereinafter “Dr. Durham” is a lifelong citizen of Mississippi and an adult resident of Hattiesburg, Forrest County, Mississippi.
2. The Defendant, Ankura Consulting Group, LLC (hereinafter “Ankura”) is a foreign limited liability company formed in the state of Delaware, with its principal place of business being located in the state of New York and may be served with process of this court by serving its attorneys of record herein through the ECF system, or by serving its registered agent for process: The Corporation Trust Company, Corporation Trust Center 1209 Orange St., Wilmington, DE, 19801, or wherever it may be found in the time and manner allowed by law.

B. JURISDICTION AND VENUE

3. The Eastern Division of the Southern District of Mississippi has subject matter jurisdiction over the Defendant(s) and is a proper court of venue, as the tort complained of herein happened in whole or in part in Forrest County, Mississippi.

4. This court in Mississippi has “specific” personal jurisdiction under Mississippi’s Long-Arm Statute MCA §13-3-57 over Defendant Ankura Consulting Group, LLC, a foreign non-resident LLC, that is not licensed to do business in Mississippi; and it may very well have “general” jurisdiction for it doing business generally in Mississippi, but at a minimum, Ankura has done specific business in Mississippi by making sufficient contacts with the state of Mississippi from which the cause of action(s) complained of herein arose or occurred in whole or in part in Mississippi.

5. Defendant Ankura knew or should have known that if it tortuously interfered with Dr. Durham’s contracts with referring attorneys and law firms and/or negligently/gross negligently wrongfully designed and/or conducted the subject chest x-ray B-Reader audit of Dr. Durham, a known Mississippi resident, and undertook business activities and conduct via agents in connection with doing business and/or committing a tort in whole or in part in this forum state, that it should have reasonably anticipated being haled into court here to defend a lawsuit as authorized by the Mississippi Long-Arm Statute. And, given the contacts it had with Mississippi and/or persons from Mississippi mentioned herein below, they created constitutionally sufficient minimum contacts with the forum state of Mississippi to satisfy the Due Process Clause of the Fourteenth Amendment.

C. SUMMARY OF PLAINTIFF’S CAUSE OF ACTION

6. Plaintiff Dr. Durham, as a qualified NIOSH certified B-Reader, worked over 7 years building a successful Mississippi based B-Reader business of reading the chest x-rays of exposed

asbestos workers for attorneys and law firms, who desired to submit claims administered by various asbestos settlement trusts obligated to pay scheduled compensation to otherwise qualified injured workers with sufficient radiographic evidence of asbestos exposure. In particular, Dr. Durham had verbal contracts with multiple Mississippi attorneys and law firms among others representing asbestos exposed workers who regularly hired Dr. Durham for those many years to read their clients' chest x-rays to help them screen potential claimants to bring rightful asbestos claims in compliance with the criteria promulgated by the asbestos trusts. In doing so, Dr. Durham earned the good reputation of being a fulltime, hardworking, knowledgeable, conservative and high volume B-Reader. However, the "high volume" characteristic of Dr. Durham's B-Reader business drew attention to him and caused him to be "targeted" for a chest x-ray B-Reader audit.

7. Based on information and belief the asbestos settlement trust administrators identified Dr. Durham to undergo a B-Reader audit. Defendant Ankura, a consulting firm offering a broad spectrum of services for a variety of clients, including, inter alia, conducting audits for several asbestos settlement trusts, which is headquartered in New York with offices in Washington, D.C., was hired by the Trusts to design and conduct the subject B-Reader audit of Dr. Durham. Incidentally, Defendant Ankura acquired the former consulting firm of ARPC, which had a long standing client/customer relationship with those same asbestos trust customers.

8. The general theory of Plaintiff's case against Ankura is that once hired, Defendant Ankura was "motivated" to intentionally, willfully, and/or negligently/gross negligently wrongfully design and/or conduct an audit process to "fail" Dr. Durham, by cherry picking for review a limited number of very specific chest x-rays of claimants previously read by Dr. Durham as having only subtle low "1/0 profusion" radiographic findings of opacities (dust

particles) in either the bilateral lower zones of the lungs only, or in both the bilateral lower and the middle lung zones, all the time knowing that due to recognized “reader variability” at this low subtle level, Ankura’s purposefully selected sample of chest x-rays, could easily be reread differently in bad faith by its “biased,” employed auditing “B-Reader #2,” and thus, bring about the intended outcome by design, to purposefully “fail” Dr. Durham.

9. Ankura expected that it would likely “please“ its regular paying asbestos trust customers if it made sure that Dr. Durham “failed” the subject audit because that outcome would foreseeably allow its trust customers to save a large sum of money by not accepting any more claims submitted by lawyers representing claimants based in part on B-Reader reports of chest x-rays done by Dr. Durham, thereby disqualifying legitimate new claims using chest x-ray reports by Dr. Durham and/or placing payments on hold of the previously approved claims of hundreds if not thousands of asbestos exposed worker-claimants, whose claims had been supported by reports of chest x-rays read by Dr. Durham over the years. In this manner Ankura’s bad faith sham audit intentionally and willfully, tortiously *interfered* with the verbal *contracts* that Dr. Durham had with various Mississippi and out of state attorneys and law firms to perform screening B-Reader interpretations of the chest x-rays of their potential asbestos claimant clients, and said interference of Dr. Durham’s contracts was all done with malice by Ankura in an utter disregard for the *contractual rights* of Dr. Durham, thereby effectively putting Dr. Durham’s B-Reading business - out of business, while not caring that Dr. Durham would suffer catastrophic financial damages or injuries in Mississippi.

D. CONTACTS WITH MISSISSIPPI BY ANKURA

10. Once Ankura was hired to perform the subject audit, Ankura had to take various steps to perform its audit for compensation, many of which included purposely doing specific business in

Mississippi by purposely making contacts with the state of Mississippi and/or persons known to be located in or from Mississippi by and through Ankura's officers, agents, employees and/or representatives, including the following business activities:

- a. Ankura needed to obtain copies of the plain chest x-rays films from Mississippi of the claimants it selected to be audited based in part on the radiographic findings reported in Mississippi by Dr. Durham on the ILO B-Reader Report Sheets submitted by Mississippi lawyers on behalf of the respective claimants;
- b. To do so, Ankura had someone contact the Mississippi law firm that represented the claimants and owned or otherwise was the physical custodian in Mississippi of the said chest x-rays of its clients involved in the audit to request copies of them;
- c. The Mississippi law firm of Sakalarios, Blackwell and Schock, "SBS" retrieved these specified plain chest x-rays films of their clients from storage in Hattiesburg, Mississippi to have them copied in Mississippi and/or retrieved them digitally and had them downloaded onto discs;
- d. The Mississippi law firm of SBS packaged and shipped copies of the specified plain chest x-ray films and/or discs from Mississippi, as directed;
- e. Upon receipt, Ankura had someone or had a technology company convert the plain chest x-ray films into digital x-ray images;
- f. Ankura then had someone to download the digital version of all of the said chest x-ray films onto a thumb drive;
- g. Ankura had someone to mail or ship the new thumb drive of digital chest x-rays to the SBS law firm in Hattiesburg, MS, with a request that the Mississippi lawyers furnish and/or deliver it to Dr. Durham in Hattiesburg, Mississippi, together with written instructions on Ankura letterhead addressed to Dr. Durham's residence for him to download and install a new software program on his home computer that would allow the said digital chest x-rays on the thumb drive to be viewed and marked upon;
- h. The said letter of transmittal of the thumb drive to the SBS law firm located in Hattiesburg, MS also provided instructions to where (B-Reader #1) Dr. Durham in Hattiesburg, MS was to ship the thumb drive from Hattiesburg, MS, after it had been viewed and had the presence of any opacities circled or otherwise marked; and
- i. Upon its receipt from Mississippi, Ankura had to furnish the thumb drive consisting of 44 selected, now digitally formatted chest x-rays and marked upon to the auditing B-Reader #2, a person who was hired by Ankura to re-read the

selected forty-four (44) chest x-rays previously read by B-Reader #1, Dr. Durham, the target of its audit.

11. At all times pertaining hereto, Defendant Ankura and others associated therewith knew or should have known that its *business activities* were being directed at *evidence and residents located in the forum state of Mississippi* because it knew and was fully aware of the following:

- a. That Dr. Durham was a Mississippi resident;
- b. That the forty-four chest x-rays previously read by Dr. Durham were in connection with the claims of forty-four claimants, some who were Mississippi residents and all were clients of a Mississippi law firm, whose attorneys were all Mississippi residents;
- c. That the subject forty-four x-rays were all possessed, stored and/or maintained in Mississippi and would have to be requested and retrieved from Mississippi;
- d. That all communications conducted by Ankura by and through its agents, employees, and/or representatives with Dr. Durham and the law firm of SBS would be made to persons located in Mississippi;
- e. That Dr. Durham's economic injury or damages arising from Ankura reporting it intended expected audit results to its asbestos trusts customers, that Dr. Durham had "failed" Ankura's B-Reader audit, would foreseeably happen, occur and/or likely result in Mississippi;
- f. That if Dr. Durham was "failed" by Ankura, such failure was calculated to cause damage to Dr. Durham's business because the attorneys and law firms in Mississippi and elsewhere that had previously verbally contracted to hire Dr. Durham to do B-Reads of chest x-rays and other asbestos claim related medical services would no longer hire Dr. Durham to do so.
- g. That the law firms in Mississippi that had contracted with Dr. Durham to read their clients' x-rays would also suffer economic consequences or injury in Mississippi because they would have to pay the added expense for their clients to take another chest x-ray and/or to pay a different B-Reader to read a new chest x-ray of their client-claimants;
- h. That all those client-claimants who lived in Mississippi whom had previously had their claims approved by The Trust, but were still awaiting payment would also be damaged in Mississippi because their settlements would at best be prolonged due to delays involved in having to supplement their claims with the submission of newly obtained chest x-rays or the new report of a re-reading of the original x-ray by another B-Reader.

E. FACTS GIVING RISE TO CAUSES OF ACTION

12. At all times pertaining hereto, Defendant Ankura is a private for-profit company.

13. At all times pertaining hereto, Defendant Ankura, being a limited liability company has acted by and through its agents, employees, members and/or representatives in furtherance of its business objectives and that of its business clients and/or customers.

14. At all times pertaining hereto, Plaintiff William H. Durham, M.D. (hereinafter “Dr. Durham”) is a board certified internal medicine doctor licensed in the state of Mississippi and a B-Reader certified and re-certified since 2011 by NIOSH, the National Institute for Occupational Safety and Health, who is qualified and experienced to read and interpret chest x-rays of the lungs for certain diagnostic purposes, including diagnosing workers with pulmonary asbestosis from asbestos exposure in the workplace.

15. During the years pertaining hereto, Dr. Durham was the only NIOSH Certified B-Reader in the state of Mississippi, who had verbally contracted with law firms to read the chest x-rays of their asbestos work exposed client-claimants.

16. At all times pertaining hereto, Ankura was hired by long standing asbestos trust customers, hereinafter “the Trust,” to design and conduct an audit of Dr. Durham’s ability to read or interpret chest x-rays submitted by attorneys and law firms representing asbestos claimants. In particular, Ankura selected for audit, the chest x-rays of 44 claimants, who had submitted claims for compensation for minimal “1/0 profusion” levels of pulmonary asbestosis or minimal levels of asbestos related lung disease, that had been read or interpreted by Dr. Durham.

17. Some of the said audited chest x-rays initially read by Dr. Durham include asbestos claimants, who were exposed to asbestos while working at Ingalls ship building in Pascagoula, Mississippi.

18. The said 44 claimants are all represented by attorneys, Sakalarios Blackwell and Schock of Hattiesburg, Mississippi, hereinafter ‘SBS,’ though some of them were previously initially represented jointly by SBS and the Saad law firm.

19. The subject 44 chest x-rays were read and interpreted in Hattiesburg, Mississippi by Dr. William H. Durham, as being positive for findings of minimally abnormal amounts of pneumoconiosis (asbestos dust in the lungs) with small irregular shaped opacities (dust particles) at a low subtle level of “1/0 profusion” of opacities either in the Bilateral lower lung zones only, or in both the bilateral lower and middle lung zones of the respective claimants’ lungs, with the former bilateral lower zone only presentation at this low subtle level, being much less common and known in the industry to be more difficult to interpret precisely.

20. However, of the subject 44 chest x-rays, Ankura unreasonably, intentionally selected a sample consisting of 22 of them having a low “1/0 profusion” level that is only in the bilateral lower lung zones. Whereas, a sample of chest x-rays including a 50% ratio of such findings is anything but random, rather it evidences an unrealistic wanton audit sample, that is disproportionately heavily made up of the “most subtle of subtle” findings. That is, one made up of an unreasonably inappropriate high number of chest x-rays depicting only a low “1/0 profusion” level of small irregular shaped opacities, that are only identified in the bilateral lower lung zones, rather than a more realistic sample mix of about 3-9% of them, which would be more representative of the body of radiographic findings of the cohort of chest x-rays of asbestos claimants encountered and read by Dr. Durham over the years.

21. In 2018, Ankura conducted an audit of Dr. Durham’s interpretation of the said 44 chest x-rays of specific asbestos claimants selected by Ankura for inclusion in the audit.

22. At all times pertaining hereto, the specific 44 chest x-rays in question belonged to the Mississippi law firm of SBS, Hattiesburg, MS.

23. The said Mississippi law firm of SBS had retained physical custody and digital access of the subject (44) chest x-rays in Hattiesburg, Mississippi.

24. At all times pertaining hereto, Defendant Ankura knew that Dr. Durham was a resident of Mississippi, that the corresponding ILO B-Reader Report Sheets were filled out in Mississippi by Dr. Durham, that the subject chest x-rays had been read in Mississippi by Dr. Durham, that they were located or stored in Mississippi, that they were owned by Mississippi lawyers, who represented the claimants whose x-rays were being audited, that the Mississippi law firm of SBS had contracted to pay Dr. Durham to B-Read the chest x-rays of its asbestos work exposed client-claimants. More importantly, because of the necessary steps involved to even have an audit, that the subject audit itself could not have been done at all, without Ankura firstly, making numerous “contacts” with persons in Mississippi to obtain all of the x-ray evidence for the audit; then secondly, after all of the images had been obtained and digitally compiled on a thumb drive, Ankura needed to return the said radiographic evidence back to Mississippi, in particular Ankura sent a letter of transmittal addressed to Dr. Durham’s Hattiesburg, MS residence on Ankura letterhead, **EXHIBIT “1”** hereto, with instructions for certain things to be done to mark upon the images on the thumb drive; and thirdly, Ankura needed Dr. Durham, while in Mississippi, to have the images marked as directed and return the thumb drive with marked x-ray images back to Ankura for them to be finally reread by Ankura’s hired “B-Reader.”

25. At all times pertaining hereto, Ankura could only carry out each step necessary to bring about the subject audit by using either direct employees of Ankura, or by using other persons, as its agents or representatives, including some of the attorneys of its asbestos trust customers for

communication purposes only, that had hired Ankura to design and conduct the subject B-Reader audit of Dr. Durham complained of herein and some of the attorneys in Mississippi, who had contracted with Dr. Durham to B-Read the chest x-rays of their asbestos claimant clients..

26. At all times pertaining hereto, Marla R. Eskin, an attorney was acting as an agent, dual agent, tacit agent and/or representative of Ankura, whenever she met with Dr. Durham, a Mississippi resident in New Orleans, sent or received text messages, emails and letters to or from Dr. Durham while he was in Mississippi, wrote persons in Mississippi, including Sara Morris Schock letters and email communications related to the subject audit of these select 44 chest x-rays and/or of Dr. Durham generally.

27. At all times pertaining hereto, Rachael A. Rowe, an attorney was acting as an agent, dual agent, tacit agent and/or representative of Ankura, whenever she met with Dr. Durham, a Mississippi resident in New Orleans, had phone calls, wrote and received letters and had email communications with persons in Mississippi, including Sara Morris Schock related to the subject audit of these specific (44) chest x-rays and/or the audit of Dr. Durham generally.

28. At all times pertaining hereto, John Brophy Jr., a Senior Managing Director of Ankura (formerly with ARPC) was an agent, employee or representative of Ankura, whenever he communicated and/or met with persons of Mississippi, in particular, Dr. Durham in New Orleans on audit related topics, received a letter from Dr. Durham and/or otherwise acted on behalf of Ankura in connection with the subject audit of these specific 44 chest x-rays and/or the audit of Dr. Durham generally.

29. On or about June 22, 2018, after making several “contacts” with Mississippi and with the Plaintiff, a resident of Mississippi, Ankura decided that Dr. Durham had “failed” the subject B-Reader audit of the said 44 chest x-rays, that it designed and conducted.

30. On or about June 22, 2018, Defendant Ankura reported to the Trust, that Dr. Durham had failed its subject chest x-ray B-Reader audit by misreading or misinterpreting a material number of the said selected 44 chest x-rays of those specific asbestos claimants.

31. On or about June 22, 2018, attorney Marla R. Eskin wrote Sara Morris Schock, Esq. and Anthony Sakalarios, Esq. of SBS, Hattiesburg, MS to notify their law firm that after consultation with the Trusts' experts, (i.e., Ankura) we have concluded that a material number of the claims, where Dr. Durham found asbestos related disease do not indicate any disease at all. As such, The Trust can no longer accept reports from Dr. Durham. A copy of said letter was mailed to Dr. Durham in Mississippi. See **EXHIBIT "2,"** the "Notification Letter" dated June 22, 2018.

32. A copy of the said June 22, 2018, "Notification Letter" was sent to at least the following law firms located in Mississippi:

- a. Sakalarios, Blackwell and Schock, Hattiesburg, Mississippi;
- b. Hortman Harlow - Laurel, Mississippi;
- c. Chapman Law Firm – Clarksdale, Mississippi;
- d. Wilson Law Firm – Oxford, Mississippi;
- e. Schilling Law Firm – Starkville, Mississippi; and
- f. Maples Law Firm – Biloxi, Mississippi.

33. The Plaintiff's injury and damages occurred and resulted in Mississippi.

34. As of June 22, 2018, accounts receivables totaling approximately \$215,630.00 for B-Reader interpretations of chest x-rays were owed to Dr. Durham by the law firms of Hortman Harlow, Laurel, MS, Chapman Law Firm, Clarksdale, MS, Wilson Law Firm, Oxford, MS, and the Maples law Firm, Biloxi, Mississippi.

35. As a direct result of them receiving the said notification on or about June 22, 2018, that Dr. Durham's B-Reader reports were no longer being accepted by the Trusts, Dr. Durham has understandably not received any payments from the above mentioned law firms on their respective balances on open account.

36. Also, since receiving notification on June 22, 2018, that Dr. Durham's B-Reader reports were no longer being accepted by the Trusts, Dr. Durham has not been hired as a B-Reader by any of his regular attorneys /law firm customers to read any chest x-rays to screen asbestos claimants, thereby essentially putting Dr. Durham's B-Reader business – out of business.

37. Ankura tortiously interfered with the verbal contracts between Dr. Durham and the various law firms that had regularly hired him as a B-Reader and/or an internal medicine physician by intentionally and willfully designing and conducting the subject B-Reader audit for him to fail, which approximately caused him substantial past and future loss business income or economic damages and caused Dr. Durham's B-Reader business to go out of business.

38. In the alternative, Ankura negligently / gross negligently wrongfully designed and/or conducted the subject B-Reader audit for him to fail, which was a proximate cause of his economic damages in the way of the loss of substantial past and future business income and for Dr. Durham's B-Reader business actually going out of business.

F. CAUSES OF ACTION IN TORT

COUNT I. TORTIOUS INTERFERENCE WITH CONTRACT

39. Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs 1 thru 38, as if fully set forth herein.

40. Since October 2011, when Dr. Durham first became certified by NIOSH as a B-Reader, Dr. Durham has operated a successful asbestos claims screening related business, which

regularly entered into valid verbal contracts with attorneys and law firms, who represent clients that are potential asbestos claimants agreeing to pay him as a certified B-Reader to read asbestos screening chest x-rays, and as a board certified internal medicine physician to perform Causation Medical Examinations of exposed workers and prepare Asbestos - Cancer Link letters, when appropriate.

41. Prior to failing Ankura's designed chest x-ray B-Reader audit herein on or about July 22, 2018, Dr. Durham had substantial annual earnings income and reasonably expected to continue to earn such income derived from verbal contracts with attorneys and law firms that represent asbestos claimants to continue to hire him.

42. On or about July 22, 2018, Ankura intentionally and willfully failed Dr. Durham.

43. On or about June 22, 2018, Defendant Ankura tortiously interfered with the valid existing verbal contracts that Dr. Durham had with those various Mississippi attorneys and law firms who represent asbestos claimants, who had regularly done business with Dr. Durham over the years. For example, Attorney Gene Hortman of Hortman Harlow, Laurel, MS, affirms and declares among other things that per his verbal contract with Dr. Durham, that prior to receiving notification from the Trust in about June 2018, that the Trust would no longer accept reports from Dr. Durham, he regularly used and regularly paid on his open account with Dr. Durham for him to read and interpret the chest x-rays of his asbestos exposed clients. However, after receiving that notice, he has not been able to use Dr. Durham, which has caused a dilemma to his law firm and his clients. It has personally put him in an awkward position of not paying his outstanding balance owed to Dr. Durham, because Dr. Durham's professional B-Reader services are having to be repeated and the same expenses incurred again for the clients with another B-Reader. See **EXHIBIT "3"** hereto, a copy of the Affidavit of Gene Hortman, Esq.

44. That the acts of Ankura in failing Dr. Durham were intentional, willful and were calculated to cause foreseeable damage to Dr. Durham's business, done with the unlawful purpose of causing damage and loss without right or justifiable cause on the part of Ankura, and that substantial actual damages and loss resulted to Dr. Durham by it interfering with the verbal contracts that Dr. Durham had with those various attorneys and law firms to perform asbestos claims screening services, including the B-Reading of chest x-rays that would have continued to be performed by them *but for* the interference of his said contracts by Ankura.

45. At all times pertaining hereto, upon request, B-Readers, including Dr. Durham are expected to cooperate with the Trust and auditing companies designated by it.

46. In 2018, Ankura conducted an audit of Dr. Durham's interpretation of the said 44 chest x-rays of specific asbestos claimants selected by Ankura for inclusion in the audit.

47. Dr. Durham cooperated with Defendant Ankura throughout the process of the subject chest x-ray B-Reader audit that it conducted herein.

48. Ankura intentionally and willfully selected these particular chest x-rays for audit by reviewing the corresponding ILO B-Reader Report Sheets filled in by Dr. Durham on each chest x-ray he read and while purposely looking to select an unrealistic 22 of 44 or 50% of ones reporting out the presence of subtle minimal "1/0 profusion" evidence of opacities in only the two bilateral lower lung zones, because those could more readily be arbitrarily disputed by its biased auditing B-Reader #2, since the more subtle the findings are on x-ray, the more susceptible it is to "reader variability," and Ankura could use that subtle characteristic to its advantage for maliciously bringing about the "failed" outcome it wanted.

49. At all times pertaining hereto Ankura knows that B-Readers must be certified by NIOSH, the National Institute for Occupational Health and Safety to demonstrate competency.

50. At all times pertaining hereto, Ankura knows that the Trust has adopted NIOSH requirements, guidelines and standards for interpretation of workers occupational exposure to dusts and asbestos materials.

51. Ankura is familiar with the literature published by NIOSH informing B-Readers on how to read and interpret the presence of small irregular shaped opacities in the zones of the lungs.

52. In particular, Ankura knows that the published NIOSH literature includes recognition of the acceptance of “reader variability” among B-Readers at subtle levels of “1/0 profusion” of small opacities and states how differences of B-Reader opinions should be addressed and resolved with the use of a tie breaking B-Reader #3.

53. Ankura, also knows of the long standing custom and practice of the Trust in resolving chest x-ray reader variability situations, whenever the opinions of B-Reader #2 differs in the opinion of B-Reader #1 submitted in support of an exposed worker’s claim for compensation. That is, that the attorney for the worker-claimant is notified that he or she must get a new chest x-ray done for that particular claimant and have it re-read by a different B-Reader #3, thereby in essence allowing B-Reader #3 to break the tie.

54. Ankura intentionally and willfully did not apply recognized standards, guidelines and/or long standing customs and practices of NIOSH and/or the Trust respectively in designing and conducting the said B-Reader audit of Dr. Durham.

55. Additionally, Ankura designed the audit in such a manner, so it could use for audit purposes the improperly chosen “select 44 audit sample” of chest x-rays, out of literally thousands of chest x-rays that had been previously read by Dr. Durham to have them re-read by an “unidentified” *biased* “B-Reader #2”, who was chosen and paid by Ankura.

56. On February 2, 2018, when Dr. Durham returned the thumb drive after the digital version of the selected (44) x-rays had been viewed and marked, Dr. Durham also enclosed a comprehensive letter dated February 2, 2018 with Exhibits written by him that was co-addressed to Mr. John Brophy of Ankura. Among other things, Dr. Durham's letter requested the identity of Ankura's hired B-Reader (i.e. B- Reader #2) and requested an opportunity to meet with its B-Reader to discuss respective findings. See **EXHIBIT "4"** hereto, Dr. Durham's letter of February 2, 2018, without its internal Exhibits.

57. On or about February 3, 2018, Defendant Ankura received via FedEx delivery, a copy of the said Durham letter with Exhibits dated February 2, 2018, that was co-addressed to Mr. John Brophy.

58. Nevertheless, Ankura has not been transparent here, in that it did not disclose to Dr. Durham the identity of the B-Reader #2, it hired to reread the selected chest x-rays in the audit, it did not give Dr. Durham an opportunity to discuss anything with its auditing B-Reader, nor did it disclose whether its hired B-Reader had "agreed" with any of Dr. Durham's findings on any of the forty-four chest x-rays involved in the audit and if so, which ones.

59. Likewise, Ankura did not disclose to Dr. Durham the identity of which claimant's chest x-rays that its hired B-Reader #2 had "disagreed" with Dr. Durham's findings.

60. Moreover, Ankura was not transparent about its audit, given the established acceptance by NIOSH of "reader variability" at the 1/0 profusion level among B-Readers and by declining Dr. Durham's letter-request to discuss same with its auditing B-Reader. That is, by its silence, Ankura wrongfully refused to provide the identity and/or allow Dr. Durham to meet or even discuss auditing B-Reader #2's findings and interpretations.

61. Ankura knew that a reported “failure” of an audit by a B-Reader would *foreseeably* likely result in the said B-Reader, i.e., Dr. Durham being banned by its asbestos trust customers.

62. Ankura knew that the banning of B-Reader Dr. Durham from substantially participating in the asbestos claims industry would foreseeably likely result in Dr. Durham’s contracting law firms being notified by The Trust, that none of their clients’ claims would be considered and no payments would be made to them, if the submitted claims had used Dr. Durham to read their clients’ chest x-rays.

63. On or about June 22, 2018, Defendant Ankura intentionally and willfully wrongfully decided that Dr. Durham had “failed” the subject B-Reader audit of the said 44 chest x-rays that it designed and conducted herein.

64. On or about June 22, 2018, Defendant Ankura intentionally and willfully wrongfully reported to its customer, the Trust that Dr. Durham had “failed” the subject chest x-ray B-Reader audit by reporting that he had misread or misinterpreted a material number of the said 44 chest x-rays of those specific asbestos claimants cherry picked for the subject audit.

65. At all times pertaining hereto, Ankura also knew that if banned, the banning of Dr. Durham would likely result in Dr. Durham’s Mississippi based B-Reader business being significantly damaged financially because it was foreseeable that despite their verbal contracts, lawyers and law firms would no longer hire and pay Dr. Durham to read the chest x-rays of their respective clients for the purpose of submitting asbestosis claims and/or to perform other asbestos claim functions for which he was experienced and qualified, such as, Causation Medical Exams and asbestos Cancer Link Letters.

66. As a result of Ankura’s interference with his contracts, Dr. Durham, despite planning on continuing to work as a B-Reader in the asbestos claim industry until 2032, he had multiple

Mississippi law firms and others stop using and paying him, as a B-Reader to read and interpret chest x-rays and as a board certified internal medicine doctor for other asbestos claim functions, including performing Causation Medical Exams of asbestos exposed workers and preparing asbestos Cancer Link Letters, when appropriate.

67. Thus, Dr. Durham has suffered significant past loss economic injuries or damages in Mississippi and he is expected to continue to suffer significant present and future loss economic injuries or damages in Mississippi until 2032, when funding to asbestos claimants is expected to conclude, due to him being banned by the Trust, as a proximate result of Ankura's tortious interference with Dr. Durham's contracts with various attorneys and law firms via Ankura's wrongful auditing process and wrongful reporting, essentially that Dr. Durham had failed the B-Reader audit, that it wrongfully designed and conducted.

COUNT II. NEGLIGENCE / GROSS NEGLIGENCE

68. Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs 1 thru 67, as if fully set forth herein.

69. At all times pertaining hereto, upon request, B-Readers, including Dr. Durham are expected to cooperate with the Trust and auditing companies designated by it.

70. Here, the Trust contracted with Defendant Ankura, an independent consulting company for hire to design and conduct the subject audit of Dr. Durham.

71. In 2018, Ankura conducted an audit of Dr. Durham's interpretation of the said 44 chest x-rays of specific asbestos claimants selected by Ankura for inclusion in the subject audit.

72. Dr. Durham cooperated with Defendant Ankura throughout the process of the subject chest x-ray B-Reader audit that it conducted herein.

73. Ankura negligently/gross negligently selected these particular chest x-rays for audit by reviewing the corresponding ILO B-Reader Report Sheets filled in by Dr. Durham on each chest x-ray he read and while purposely looking to select an unrealistic 22 of 44 or 50% of ones reporting out the presence of subtle minimal “1/0 profusion” evidence of opacities in only the two bilateral lower lung zones, because those could more readily be arbitrarily disputed by its biased auditing B-Reader #2, since the more subtle the findings are on x-ray, and the fewer zones involved, the more susceptible it is to “reader variability,” and Ankura could use that characteristic to its advantage in callously bringing about the “failed” outcome it wanted.

74. In particular, Ankura knows that the published NIOSH literature includes recognition of the acceptance of “reader variability” among B-Readers at subtle levels of “1/0 profusion” of small opacities and states how differences of B-Reader opinions should be addressed and resolved with the use of a tie breaking B-Reader #3.

75. Ankura, also knows of the long standing custom and practice of The Trust in resolving chest x-ray reader variability situations, whenever the opinions of B-Reader #2 differs in the opinion of B-Reader #1 submitted in support of an exposed worker’s claim for compensation. That is, that the attorney for the worker-claimant is notified that he or she must get a new chest x-ray done for that particular claimant and have it re-read by a different B-Reader #3, thereby in essence allowing B-Reader #3 to break the tie.

76. It necessarily follows that when B-Readers, including Plaintiff Dr. Durham are audited by Defendant Ankura, then Ankura owes Dr. Durham, the duty to properly audit him, *albeit* his readings of select chest x-rays by utilizing recognized NIOSH standards, guidelines and/or customary practices in the industry.

77. Ankura owed Durham the duty to apply recognized standards, guidelines and/or long standing customs and practices of NIOSH and/or the Trust respectively in designing and conducting the said B-Reader audit of Dr. Durham.

78. Ankura negligently/gross negligently breached that duty owed to Dr. Durham by not properly using recognized standards, guidelines or long standing customs and practices of NIOSH and/or the Trust respectively, in the manner that it arbitrarily designed and/or conducted the said B-Reader audit of Dr. Durham complained of herein.

79. Additionally, Ankura designed the audit in such a manner, so it could use for audit purposes the improperly chosen “select 44 audit sample” of chest x-rays, out of literally thousands of chest x-rays that had been previously read by Dr. Durham to have them re-read by an “unidentified” biased B-Reader #2, who was chosen and paid by Ankura.

80. On February 2, 2018, when Dr. Durham returned the thumb drive after the digital version of the selected (44) x-rays had been viewed and marked, Dr. Durham also enclosed a comprehensive letter dated February 2, 2018 with Exhibits written by him that was co-addressed to Mr. John Brophy of Ankura. Among other things, Dr. Durham’s letter requested the identity of Ankura’s hired B-Reader (i.e. B- Reader #2) and requested an opportunity to meet with its B-Reader to discuss respective findings. See **EXHIBIT “4”** hereto, Dr. Durham’s letter of February 2, 2018, without its internal Exhibits.

85. Ankura was not transparent about its audit, especially given the established acceptance by NIOSH of “reader variability” at the 1/0 profusion level among B-Readers and by declining Dr. Durham’s letter-request to discuss same with its auditing B-Reader. That is, by its silence, Ankura wrongfully refused to provide the identity and/or allow Dr. Durham to meet or even discuss auditing B-Reader #2’s findings and interpretations.

86. The foregoing acts and omissions of negligence/gross negligence are demonstrated by Ankura's wrongful design of said B-Reader audit process, including that:

- a. Of the subject 44 chest x-rays, it outrageously selected a sample consisting of 22 of them having a low "1/0 profusion" level of small irregular shaped opacities that is only in the bilateral lower lung zone. Whereas, a 50% ratio of such, evidences an unrealistic and wanton audit sample, that is disproportionately heavily made up of the "most subtle of subtle" findings, rather than a more realistic sample mix of about 3-9% with said subtle result findings that is more representative of the body of radiographic findings of the cohort of chest x-rays of asbestos claimants encountered and read by Dr. Durham over the years;
- b. It hired an Ankura-biased auditing B- Reader #2;
- c. It did not adhere to the NIOSH standard and guideline recognizing "reader variability" at this low profusion level of opacities and how to resolve conflicting reads between B-Readers #1 and #2, by using a 3rd B-Reader to break the tie;
- d. Alternatively, it did not follow the Trust's long standing practice and custom of having the claimant's attorney have his client's chest x-ray, whenever questioned re-read by a 3rd B-Reader to break the tie;
- e. It callously wrongfully reported out that Dr. Durham had failed its audit;
- f. It was not transparent; and
- g. In other ways to be learned during discovery herein.

87. Ankura knew that a reported failure of an audit by a B-Reader would foreseeably result in the said B-Reader, i.e., Dr. Durham being banned by its asbestos trust customer.

88. Ankura knew that the banning of B-Reader Dr. Durham from substantially participating in the asbestos claims industry would likely result in Dr. Durham's contracting law firms being notified by The Trust, that none of their clients' claims would be considered and no payments would be made to them, if the submitted claims had used Dr. Durham to read their clients' chest x-rays.

89. On or about June 22, 2018, Defendant Ankura negligently/gross negligently wrongfully decided that Dr. Durham had failed the subject B-Reader audit of the said 44 chest x-rays that it designed and conducted herein.

90. On or about June 22, 2018, Defendant Ankura negligently/gross negligently wrongfully reported to its customer, The Trust that Dr. Durham had failed the subject chest x-ray B-Reader audit by reporting that he had misread or misinterpreted a material number of the said 44 chest x-rays of those specific asbestos claimants cherry picked for the subject audit.

91. At all times pertaining hereto, Ankura also knew that if banned, the banning of Dr. Durham would likely result in Dr. Durham's Mississippi based B-Reader business being significantly damaged financially because it was foreseeable that lawyers and law firms would no longer hire and pay Dr. Durham to read the chest x-rays of their respective clients for the purpose of submitting asbestosis claims and/or to perform other asbestos claim functions for which he was experienced and qualified, such as, Causation Medical Exams and asbestos Cancer Link Letters.

92. As a result of Ankura's negligence / gross negligence herein, Dr. Durham, despite planning on continuing to work as a B-Reader in the asbestos claim industry until 2032, he had multiple Mississippi law firms and others stop using and paying him, as a B-Reader to read and interpret chest x-rays and as a board certified internal medicine doctor for other asbestos claim functions, including performing Causation Medical Exams of asbestos exposed workers and preparing asbestos Cancer Link Letters, when appropriate.

93. Thus, Dr. Durham has suffered significant past loss economic injuries or damages in Mississippi and he is expected to continue to suffer significant present and future loss economic injuries or damages in Mississippi until 2032, when funding to asbestos claimants is expected to

conclude, due to him being banned by the Trust, as a proximate result of Ankura's negligent / gross negligent wrongful auditing process and wrongful reporting, essentially that Dr. Durham had failed the B-Reader audit, that it wrongfully designed and conducted.

G. DAMAGES RESULTING UNDER COUNTS I or II

94. As a proximate result of the acts of tortious interference of contract and/or the acts or omissions of negligence/gross negligence described in the preceding paragraphs, Plaintiff William H. Durham, M.D. has suffered compensatory damages in the form of past loss income or economic damages in the form of uncollectable account receivables in the amount of \$215,630 from various contracting Mississippi attorneys and law firms as of June 22, 2018; past loss income or economic damages for the last two years in the approximate amount of \$2,000,000; and future loss earnings of approximately \$12,000,000 for the next 12 years until 2032, that are catastrophically injurious to his Mississippi based B-Reader business, as well as to his asbestos related internal medicine practice of performing Causation Medical Examinations of exposed workers and preparing asbestos Cancer Link Letters, even though Dr. Durham was never "audited" in those practice areas. As such, Plaintiff is entitled to recover compensatory damages in the approximate amount of \$14,000,000 or such amount as determined by the jury.

95. Also, under Mississippi substantive law, in addition to compensatory damages, the court may allow the jury to consider awarding exemplary and/or punitive damages, where the jury may find, as we have here, that the foregoing negligent acts or omissions by Ankura in the manner that it wrongfully designed and/or conducted the B-Reader audit of Dr. Durham herein is associated with intentional wrongs, abuse, callousness, insult, malice, an utter disregard for the rights of others or gross negligence, such that in addition to the right to recover compensatory damages to make him whole, Plaintiff Durham is also entitled to recover attorney fees and an

amount of punitive damages to be determined by the jury necessary to punish the wrongdoer, Ankura, after having considered the evidence of Ankura's net worth and determines an amount that is sufficient to reward the plaintiff for bringing the defendant to justice and to serve as a deterrent to others similarly situated.

PRAYER FOR RELIEF

WHEREFORE, premises considered, Plaintiff William H. Durham, M.D., prays that this court enters judgment against the Defendant, Ankura Consulting Group, LLC, in an amount in excess of the jurisdictional minimums of this Court to include past loss income or economic damages in the form of outstanding essentially uncollectable account receivables in the amount of \$215,630 from various contracting attorneys and law firms as of June 22, 2018; past loss income or economic damages sustained in the amount of \$2,000,000 for the two year period from June 22, 2018 through the date of the filing of the original Complaint herein on June 22, 2020; and, future loss income or economic damages in the amount of \$12,000,000 arising over the next twelve year period until 2032, or for the amount of \$14,215,630, as compensatory damages; and, in an amount for punitive damages in a sufficient amount to be determined by the jury for which he is entitled to recover, and for attorney fees, for all costs of this litigation, post judgment interest, and for any other relief deemed proper.

THIS, the 27th day of July, 2020.

Respectfully Submitted,
WILLIAM H. DURHAM, M.D., Plaintiff

By: s/ Norman W. Pauli, Jr.
Norman W. Pauli, Jr.
Attorney for Plaintiff

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has this day served the foregoing by having electronically filed the above and foregoing Amended Complaint with the Clerk of the Court using the CM/ECF system which sent notification of such to the following counsel of record:

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This 27th day of July, 2020

s/ Norman W. Pauli, Jr.
NORMAN W. PAULI, JR.