

Bernard Daskal  
Scott A. Harford  
LYNCH DASKAL EMERY LLP  
264 West 40th Street  
New York, New York 10018  
(212) 302-2400

Attorneys for Plaintiff Rhonda Rivera

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X  
RHONDA RIVERA,

Plaintiff,

-against-

THE RINZLER FAMILY LIMITED  
PARTNERSHIP, BTR GP LLC, THE GENLYTE  
GROUP INCORPORATED d/b/a PHILIPS  
LIGHTING BUSINESS UNIT PROFESSIONAL  
LUMINAIRES NORTH AMERICA, and  
COLDSTREAM GROUP, INC. d/b/a NESSEN  
LIGHTING,

Defendants.  
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Index No.: 310 960 / 2011

SUMMONS

Plaintiff designates Bronx County  
as the venue for trial. Venue is based  
upon plaintiff's residence under CPLR  
503(a).

11 DEC - 9 PM 1:18  
COUNTY CLERK  
BRONX COUNTY

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**TO THE ABOVE NAMED DEFENDANTS:**

**YOU ARE HEREBY SUMMONED** to appear in this action by serving a notice of appearance on plaintiff's attorneys, Lynch Daskal Emery LLP, 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, judgment may be taken against you by default for

the relief demanded in the notice set forth below, plus interest, together with the costs and disbursements of this action.

Dated: New York, New York  
December 9, 2011

LYNCH DASKAL EMERY LLP  
Attorneys for  
Plaintiff Rhonda Rivera

By: 

Bernard Daskal  
Scott A. Harford  
264 West 40th Street  
New York, New York 10018  
(212) 302-2400

Names and addresses of defendants to be served:

THE RINZLER FAMILY LIMITED PARTNERSHIP  
200 Madison Avenue, 24th Floor  
New York, NY 10016

THE GENLYTE GROUP INCORPORATED  
d/b/a PHILIPS LIGHTING BUSINESS UNIT  
PROFESSIONAL LUMINAIRES NORTH AMERICA  
3 Burlington Woods  
Burlington, MA 01803

BTR GP LLC  
200 Madison Avenue, 24th Floor  
New York, NY 10016

COLDSTREAM GROUP, INC. d/b/a NESSEN LIGHTING  
420 Railroad Way  
Mamaroneck, NY 10543

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264 West 40th Street  
New York, New York 10018  
(212) 302-2400

Attorneys for Plaintiff Rhonda Rivera

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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RHONDA RIVERA, :  
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 : Index No.:  
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 Plaintiff, :  
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 -against- :  
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 THE RINZLER FAMILY LIMITED :  
 PARTNERSHIP, BTR GP LLC, THE GENLYTE :  
 GROUP INCORPORATED d/b/a PHILIPS :  
 LIGHTING BUSINESS UNIT PROFESSIONAL :  
 LUMINAIRES NORTH AMERICA, and :  
 COLDSTREAM GROUP, INC. d/b/a NESSEN :  
 LIGHTING, :  
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 Defendants. :  
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**VERIFIED COMPLAINT**

COUNTY CLERK  
BRONX COUNTY

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RECEIVED

Plaintiff Rhonda Rivera, through her attorneys, Lynch Daskal Emery LLP, as and for her  
Verified Complaint against defendants, alleges as follows:

1. The defendants—present and prior owners/lessors and/or occupiers of the  
property located at 3200 Jerome Avenue, Bronx, New York (the “Property”), which had until  
recently been used to house New York City Public School 51 (“P.S. 51”)—are responsible for  
negligently and recklessly exposing students, school administrators, and teachers, including Ms.  
Rivera, to hazardous, carcinogenic chemicals and waste. In this action, Ms. Rivera seeks  
compensatory and punitive damages as against the defendants for the serious and potentially

fatal illness from which she suffers as a result of exposure to toxic contamination at the Property, where she worked for 19 years as a P.S. 51 Teacher's Aide.

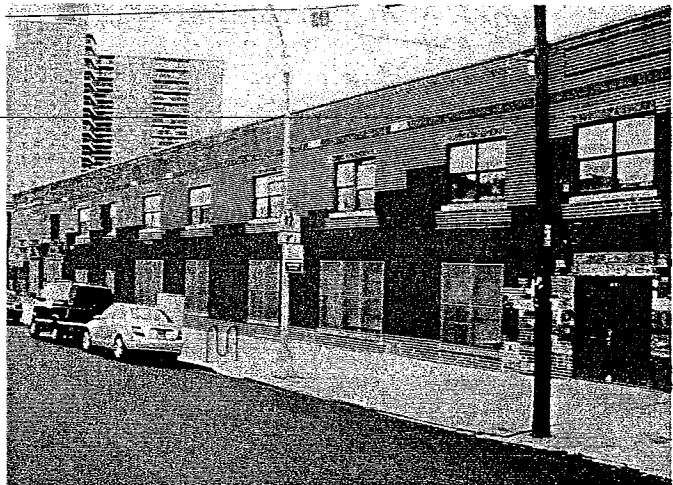
### THE PARTIES

2. Ms. Rivera is 50-years-old. She resides at 1704 Seddon Street, Bronx, New York 10461. Ms. Rivera has been employed as a Teacher's Aide at P.S. 51 from 1993 to the present.

3. Defendant The Rinzler Family Limited Partnership ("Rinzler") is a New York limited partnership located at 200 Madison Avenue, New York, New York 10016.

4. Upon information and belief, since approximately January 2000, Rinzler has been the owner, operator, and manager of the Property, and the two-story, 18,500 square foot building constructed upon it (the "Building").

5. The photograph to the right of this paragraph is a true and accurate depiction of the front of the Building as it appeared in or about October 2011.



6. Defendant BTR GP LLC ("BTR GP") is a New York limited liability company which also maintains an address at 200 Madison Avenue, New York, New York 10016. BTR GP was elected and designated as a successor General Partner of Rinzler on or about June 8, 2010. Upon information and belief, Rinzler's prior General Partner, Milton Rinzler, died on October 31, 2009.

7. Through a lease with the New York City Department of Education (“DOE”), the Property/Building served as New York City Public School 51, also known as the Bronx New School elementary school, from approximately 1993 through 2011.

8. Defendant Coldstream Group, Inc. d/b/a Nessen Lighting (“Coldstream”) is a New York corporation with its principal place of business located at 420 Railroad Way, Mamaroneck, New York 10543.

9. Nessen Lighting, Inc. (“Nessen”) was an industrial lighting and furniture design company originally formed in 1927 under the name Nessen Studio, Inc.

10. Upon information and belief, on or about December 31, 2002, Nessen Lighting, Inc. was purchased by defendant The Genlyte Group Incorporated (“Genlyte”), a manufacturer of commercial, industrial, and residential lighting fixtures, controls, and related products. Genlyte was, at that time, a publicly traded company on NASDAQ with a principal place of business in Louisville, Kentucky.

11. On or about January 28, 2008, Golf Merger Sub, Inc., a wholly-owned subsidiary of Royal Philips Electronics (“Philips”), purchased and acquired through a tender offer all of the outstanding shares of common stock of Genlyte.

12. Upon information and belief, after the acquisition of Genlyte, Philip’s individual lighting companies were reorganized into defendant The Genlyte Group Incorporated d/b/a Philips Lighting Business Unit Professional Luminaires North America (“Genlyte Group”). Genlyte Group is a Delaware corporation with its principle place of business in Burlington, Massachusetts. Upon information and belief, Genlyte Group designs and manufactures indoor and outdoor commercial and industrial lighting products in 35 facilities throughout North America.

13. Upon information and belief, Genlyte Group expressly and impliedly assumed Nessen's tort liabilities and acted as a mere continuation of Nessen's business.

14. Upon information and belief, the consolidation and/or merger between Nessen and Genlyte Group was entered into fraudulently to escape Nessen's financial obligations and/or tort liabilities.

15. On or about September 14, 2010, Coldstream purchased Genlyte Group's interest in Nessen.

16. Upon information and belief, Coldstream expressly and impliedly assumed Nessen's tort liability.

17. Upon information and belief, the purchase by Coldstream also resulted in the mere continuation of Nessen's business through Coldstream. In fact, the management and Chief Executive Officer of Coldstream were previously involved with Nessen for more than 20 years.

18. Upon information and belief, the consolidation and/or merger between Nessen and Coldstream was entered into fraudulently to escape Nessen's financial obligations and/or tort liabilities.

19. As the corporate successors to Nessen, Genlyte Group and Coldstream are liable for Nessen's negligent, careless, and reckless acts which have caused and continue to cause harm.

20. Upon information and belief, Nessen was the owner, operator, possessor, and/or tenant of the Property and Building from approximately June 1971 through May 1988, during which time it utilized the Property and Building as an industrial manufacturing facility.

## JURISDICTION AND VENUE

21. Defendants conduct and transact business in the State of New York, have committed tortious acts within the state, have 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.

22. All defendants have substantial contacts with and receive benefits and income from and through the State of New York, including Bronx County.

23. The amount of damages sought by plaintiff for each cause of action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

24. Plaintiff designates Bronx County as the place of trial based on her residence under CPLR 503(a).

## FACTS

### **A. Trichloroethylene**

25. Trichloroethylene (“TCE”) is a toxic, industrial solvent used mainly as a metal degreaser. It is a potent central nervous system depressant which can cause severe neurological symptoms such as dizziness, loss of appetite and loss of motor coordination. It produces liver damage at certain exposure levels and causes cell mutations and a variety of cancers, including pancreatic cancer. Exposure to TCE has also been linked to significant increase in the risk of Parkinson’s disease.

26. TCE has been designated as a hazardous waste and a hazardous waste constituent under regulations published by the U.S. Environmental Protection Agency (“EPA”). *See* 40 C.F.R. §§ 261.11, 261.33, and Appendix VIII. The International Agency for Research on Cancer (“IARC”) also concluded that TCE is a probable human carcinogen.

**B. Tetrachloroethylene**

27. Tetrachloroethylene (“PCE”) is a toxic, colorless industrial solvent used mainly as a metal degreaser, paint stripper, and for the dry cleaning of fabrics. It exhibits adverse effects on the central nervous system and is a carcinogen. Its effects include depression, nausea, liver dysfunction, and an increased risk for a variety of cancers, including pancreatic cancer.

28. PCE has been designated a hazardous waste and a hazardous waste constituent under regulations published by the EPA. *See* 40 C.F.R. §§ 261.11, 261.33, and Appendix VII. The IARC also concluded that PCE is a probable human carcinogen.

**C. P.S. 51 and Its Environmental Assessment and Testing For Toxic Chemicals**

29. Starting in approximately 2000, the New York City Department of Education leased the Property and/or Building from defendant Rinzler for the purposes of housing Public School 51 (“P.S. 51”), otherwise known as the Bronx New School, within the Building.

30. P.S. 51 is an elementary school for kindergarten through fifth grade school children.

31. At the request of the New York City School Construction Authority (“NYCSCA”), AKRF Engineering, P.C. (“AKRF”) conducted a Phase I Environmental Site Assessment (“ESA”) of the Building and its surrounding grounds in approximately December 2010. The Phase I ESA identified on-site Recognized Environmental Conditions, which included generation of hazardous waste by Nessen, the predecessor of defendants Coldstream and Genlyte Group.

32. In approximately March 2011, the AKRF conducted an Indoor Air Quality (“IAQ”) and Vapor Intrusion Survey (“VI”) within the Building. This included an inspection



and chemical inventory of the Building, and the collection and laboratory analysis of ambient and indoor air and the underlying soil.

33. The sample results revealed contamination of TCE and PCE in the indoor air and soil vapor throughout the Building which vastly exceeded the New York State Department of Health Air Guidance Value. Samples collected by the AKRF indicated the highest TCE and PCE concentration in the first floor cafeteria and partial basement of the Building. The testing also revealed the presence of 1,2 dichloroethylene, 1,3,5 trimethylbenzene, and other toxic chemicals and wastes.

34. Vapor soil samples of TCE taken on March 27, 2011 revealed 53,300 micrograms per cubic meter in the first floor cafeteria and 34,900 micrograms per cubic meter in the partial basement. Vapor soil samples of PCE taken on March 27, 2011 revealed 291 micrograms per cubic meter in the first floor cafeteria and 112 micrograms per cubic meter in the partial basement of the Building. The New York State Department of Health Air Guideline Value (“AGV”) for acceptable TCE and PCE levels are 5 micrograms per cubic meter and 100 micrograms per cubic meter, respectively.

35. The TCE levels found in the first floor cafeteria of the Building were over 10,000 times greater than the acceptable AGV.

36. Upon releasing its June 28, 2011 report relating to its IAQ and VI tests, the AKRF recommended nightly ventilation, isolating the basement to prevent vapor migration, and retrofitting the Building with an active mitigation system prior to the school re-opening in September 2011.

37. On or about August 5, 2011, the DOE confirmed that unacceptable levels of toxic chemicals and waste were inside of the Building and announced plans to move P.S. 51 to a new

location at St. Martin of Tours, a Catholic school approximately two miles away in the Crotona Park neighborhood of the Bronx.

38. Before August 2011, Ms. Rivera did not know and could not have known that the Building in which she had been working for the past 19 years was contaminated with toxic chemicals that are linked to an increase risk of developing cancer.

**D. Plaintiff Rhonda Rivera**

39. Ms. Rivera has been employed by the DOE as a Teacher's Aide at P.S. 51 from approximately September 1993 to the present.

40. Her job duties include organizing school materials and books, cleaning the classroom, decorating bulletin boards, monitoring lunch, and supervising recess.

41. As part of her daily job-duties from 1993 to 2011, Ms. Rivera spent a significant amount of time in the areas of the Building in which the AKRF later confirmed the highest levels of TCE and PCE—the first floor cafeteria and partial basement.

42. During the above mentioned time period from September 1993, and for a long and considerable period of time subsequent thereto while Ms. Rivera worked inside the Building, she ingested, inhaled, absorbed, and was otherwise exposed to toxic chemicals and waste throughout the Building, thereby causing her to suffer grievous personal injury, cancer, and attendant damages by reason of the dangerous and defective conditions therein.

43. Ms. Rivera never knew nor had reason to know of the dangerous conditions resulting from the presence of toxic chemicals or wastes during the time she was employed by the DOE in the Building.

44. On or about January 22, 2009, Ms. Rivera underwent an upper GI and small bowel series, which revealed two large intramural or extrinsic masses involving the lesser

curvature/posterior wall of the upper gastric body, and a CT of the abdomen was recommended for further evaluation.

45. On or about February 17, 2009, Ms. Rivera underwent a CT of her abdomen, which revealed a large irregular pancreatic mass, measuring 11 x 8.4 cm with a necrotic center. A fine needle aspirate then taken on March 9, 2009 confirmed a neuroendocrine pancreatic neoplasm.

46. The surgical pathology revealed a 15x10.5x6 cm mass.

47. On or about February 23, 2009, she was diagnosed with pancreatic and liver cancer.

48. Ms. Rivera underwent a pancreatectomy on April 3, 2009 to remove portions of her pancreas and spleen.

49. Ms. Rivera undergoes chemotherapy treatment at Montefiore Hospital on a monthly basis.

50. As a consequence of Ms. Rivera's exposure to hazardous chemicals and waste at P.S. 51, including but not limited to TCE and PCE, she has suffered serious and permanent injuries, including pancreatic cancer, liver cancer, mental and emotional injuries and distress, and loss of quality and enjoyment of life.

**E. Nessen Lighting and its Successor Companies**

51. Nessen was the owner, operator, possessor, and/or tenant of the Property and Building from approximately June 1971 to May 1988.

52. Upon information and belief, during the time period that Nessen owned, occupied and/or possessed the Property, the Property was listed as a Resource Conservation and Recovery

Act site, meaning hazardous chemicals and wastes were used, handled, managed, and/or disposed of at the site.

53. Upon information and belief, during the 1970s and 1980s, Nessen, its agents, servants, and/or employees used, handled, managed, and/or disposed of hundreds of gallons of halogenated solvents, including TCE, PCE, and other toxic chemicals and waste in connection with its business upon the Property and in the Building.

54. Upon information and belief, in or around 1971, and for a long and considerable period of time after, and indefinitely into the future, or until such time as all of the hazardous conditions have been, or will be, abated, the toxic chemicals and waste used, handled, managed, and/or disposed by Nessen, its agents, servants and/or employees contaminated the soil and ambient air on the Property and in the Building.

55. Upon information and belief, in or around 1971, and for a long and considerable period of time after, and indefinitely into the future, or until such time as all of the hazardous conditions have been, or will be, abated, Nessen, its agents, servants, and/or employees, negligently, recklessly and carelessly created an unreasonable risk of harm to the public and to those, including Ms. Rivera and the students, teachers, and school administration of P.S. 51, who would enter upon the Property and into the Building.

56. The toxic chemical and waste concentration created in the soil, ambient air, and throughout the Property and Building by Nessen, its agents, servants, and/or employees was great enough to make it hazardous, dangerous, and otherwise highly harmful to persons exposed to it.

57. Nessen, its agents, servants, and/or employees, were negligent, careless, and reckless in the ownership, operation, maintenance, care and control of the Property and Building

by failing to adequately repair, restore, renovate, disclose, and/or clean up and abate the dangerous, defective, and toxic conditions present upon the Property and within the Building.

58. Nessen, its agents, servants, and/or employees knew or had reason to know that they caused an unreasonable risk of danger to toxic chemicals and wastes, including TCE, PCE, and other toxic chemicals and waste.

59. Nessen is no longer an active company.

60. Nessen's assets and liabilities have been assumed by successor corporations and the business of Nessen continues through its successor corporations; namely, defendants Genlyte Group and Coldstream.

61. Coldstream is the current successor of Nessen. Coldstream maintains a website for the sale of Nessen lamp products under the domain name [www.nessenlighting.com](http://www.nessenlighting.com). The specialty Nessen lamp products are designed for tables, walls, and ceilings.

**F. Defendants The Rinzler Family  
Limited Partnership and BTR GP LLC**

62. Upon information and belief, Rinzler, its agents, servants, partners, general partners, and employees owned and/or acquired the Property and Building in or about January 2000 to the present.

63. Defendant BTR GP LLC was the General Partner of Rinzler during relevant times in this lawsuit while it leased the Property and/or Building to the DOE.

64. Rinzler, its agents, servants, partners, general partners, and employees were responsible for the care, custody, charge, and control of the Property and Building and were responsible for maintaining and operating the Property and Building in a good and safe order.

65. Rinzler leased the Property and/or Building to the DOE in approximately January 2000 for it to be used as a public elementary school.

66. At the time that Rinzler leased the Property and/or Building to the DOE and throughout the duration of that lease, Rinzler, its agents, servants, partners, general partners, and employees knew or should have known that the Property and Building presented an unreasonable risk of danger of exposure to toxic chemicals, particularly when used as a public elementary school that would house a substantial number of teachers, administrators, students, and other school workers/personnel employed by the DOE.

67. Rinzler, its agents, servants, partners, and general partners, and employees had a duty to inspect and repair any defective conditions present upon the Property and within the Building before giving possession of the Property and Building to the DOE, and to remedy any such conditions existing during the period of the DOE lease.

68. Upon information and belief, on or about January 2000, and for a long and considerable period of time subsequent thereto, and indefinitely into the future, Rinzler, its agents, servants, partners, general partners, and employees, negligently, recklessly and carelessly allowed and permitted the Property upon which and the Building in which plaintiff Rhonda Rivera was lawfully employed as a Teacher's Aide, to be, become and remain in a dangerous and defective condition in that the Property and Building presented an unreasonable risk of danger from exposure to toxic chemicals and wastes, including but not limited to TCE and PCE.

69. Rinzler, its agents, servants, partners, general partners, and employees, were negligent, careless, and reckless in the ownership, operation, maintenance, care and control of the Property and Building by failing to adequately repair, restore, renovate, disclose, and/or clean up and abate the dangerous, defective, and toxic conditions present on the Property and in the Building.

70. All defendants knew or should have known of the dangers of the hazardous chemicals present at the Property/Building, but through their negligent and reckless conduct, concealed and failed to advise the public, the DOE, or anyone associated with P.S. 51, including Ms. Rivera, of the existence of, and the dangers and health risks associated with exposure to, these hazardous chemicals and waste.

71. One or more of the exceptions under CPLR 1602 apply to defendants.

**FIRST CAUSE OF ACTION**

(Negligence/Premises Liability—Rinzler and BTR GP)

72. Plaintiff repeats and realleges each and every allegation set forth above with the same force and effect as if set forth fully herein.

73. Rinzler has owned the Property and Building since approximately January 2000.

74. BTR GP is the general partner of Rinzler.

75. Rinzler and BTR GP leased the Property and Building to the DOE in approximately January 2000 for purposes of housing Public School 51, an elementary school for kindergarten through fifth grade.

76. Rinzler and BTR GP retained control of the Property and Building, including the right to enter all portions of the Property and Building, to make repairs.

77. The operation of P.S. 51 as a public elementary school invited the admission of the public, as well as employees of the DOE, upon the Property and into the Building, making it reasonably foreseeable that Ms. Rivera, who is a P.S. 51 Teacher's Aide, would be present upon the Property and within the Building.

78. At the time that Rinzler and BTR GP first took ownership of the Property and Building and in the years that followed, Rinzler and BTR GP knew or had reason to know that

the Property and Building were contaminated with TCE, PCE and other toxic chemicals and wastes.

79. Rinzler and BTR GP had a duty to disclose to the DOE, as a leasee of the Property and Building, all of the dangerous conditions in the Property and Building that Rinzler and/or BTR GP knew or had reason to know and which were not discoverable by the leasee upon reasonable inspection.

80. The presence of TCE, PCE and other toxic chemicals and wastes upon the Property and within the Building were not known or reasonably discoverable upon reasonable inspection by the DOE when it was given possession of the Property and/or Building by Rinzler.

81. Rinzler and BTR GP have a duty to exercise ordinary care to keep the Property and Building safe for those who it is reasonably foreseeable will enter upon the Property and into the Building.

82. Rinzler and BTR GP have a duty to use reasonable care to inspect and/or remediate the Property and Building from the presence of TCE, PCE and other toxic chemicals and wastes to prevent any unreasonable risk of harm to those who may enter lawfully upon the Property and into the Building.

83. Rinzler and BTR GP were negligent, careless, and reckless in that they never took any steps to abate the TCE, PCE and other toxic chemical and waste contamination that permeated the Property and Building.

84. Rinzler and BTR GP were negligent, careless, and reckless in that they never took any steps to warn the DOE or anyone else who entered upon the Property and into the Building lawfully, including Ms. Rivera, that the Property and Building were contaminated with TCE, PCE and other toxic chemicals and wastes.



85. Rinzler was otherwise negligent.

86. Ms. Rivera ingested, inhaled, absorbed, and was otherwise exposed to TCE, PCE and other toxic chemicals and wastes upon the Property and within the Building, thereby causing her to suffer grievous personal injury, mental and emotional injuries and distress, cancer, and attendant damages by reason of the dangerous and defective conditions therein.

87. Rinzler and its general partner BTR GP are liable for all harm caused to Ms. Rivera due to the exposure of hazardous waste and hazardous waste constituents, including but not limited to TCE, PCE and other toxic chemicals and wastes, upon the Property and within the Building.

88. As a direct and proximate consequence of Rinzler's and BTR GP's failures to disclose, inspect, and/or remediate the Property and Building with respect to the presence of TCE, PCE, and other toxic chemicals and wastes upon the Property and within the Building, Ms. Rivera suffered injuries and damages, including pancreatic cancer, liver cancer, and a dramatic degradation in the quality of her life.

89. Ms. Rivera is entitled to punitive damages because Rinzler's and BTR GP's conduct was wanton, grossly reckless, and/or in conscious disregard of Ms. Rivera's rights and the rights of any other person that was exposed to hazardous substances upon the Property and within the Building.

**WHEREFORE**, plaintiff Rhonda Rivera demands judgment for compensatory and punitive damages, in amounts to be proved at trial, and that she be awarded reasonable attorneys' fees, costs, and such other and further relief as may be deemed just and proper.

**SECOND CAUSE OF ACTION**  
(Successor Liability—Genlyte Group and Coldstream)  
(Negligence—Nessen)

90. Plaintiff repeats and realleges each and every allegation set forth above with the same force and effect as if set forth fully herein.

91. Defendant Genlyte Group is a successor corporation of Nessen.

92. Defendant Genlyte Group expressly and/or impliedly assumed the assets and liabilities of Nessen.

93. Defendant Genlyte Group was created from a consolidation and/or merger with Nessen.

94. Defendant Genlyte Group was created and acted as a mere continuation of Nessen's business.

95. The consolidation and/or merger between Nessen and Genlyte Group was entered into fraudulently to escape Nessen's financial obligations and/or tort liabilities.

96. Defendant Coldstream is a successor corporation of Nessen.

97. Defendant Coldstream expressly and/or impliedly assumed the assets and liabilities of Nessen.

98. Defendant Coldstream was created from a consolidation and/or merger with Nessen.

99. Defendant Coldstream was created and acted as a mere continuation of Nessen's business.

100. The consolidation and/or merger between Nessen and Coldstream was entered into fraudulently to escape Nessen's financial obligations and/or tort liabilities.

101. Nessen, its agents, servants, and/or employees owed a duty to refrain from action that would cause members of the public who lawfully enter upon the Property and in the Building to be unreasonably exposed to TCE, PCE and other toxic chemicals and wastes which cause personal injury, illness, or increased risk of contracting other illnesses, and cancer.

102. Nessen, its agents, servants, and employees used, controlled, and/or disposed TCE, PCE and other toxic chemicals and wastes upon the Property and within the Building from approximately 1971 to 1988.

103. Nessen, its agents, servants, and employees knew or should have known of the dangerous nature of TCE, PCE and other toxic chemicals and wastes upon the Property and within the Building.

104. Nessen, its agents, servants, and/or employees failed to exercise due care in the use, control, and/or disposal of TCE, PCE and other toxic chemicals and wastes upon the Property and within the Building.

105. Nessen negligently, recklessly, and wantonly contaminated the Property and Building with TCE, PCE and other toxic chemicals and wastes, which Nessen knew or should have known would pose a threat for generations to come to anyone who would regularly enter upon the Property or into the Building.

106. Nessen negligently, recklessly, and wantonly failed to prevent the contamination of the Property and Building with TCE, PCE, and other toxic chemicals and wastes.

107. Nessen negligently, recklessly, and wantonly failed to properly abate the contamination of the Property and Building with TCE, PCE, and other toxic chemicals and wastes.

108. Nessen negligently, recklessly, and wantonly failed to warn those who would reasonably be expected to enter upon the Property and into the Building that it created a condition that is hazardous to the health of anyone who would regularly enter upon the Property or into the Building.

109. Nessen was otherwise negligent, reckless and wanton.

110. Ms. Rivera lawfully regularly entered upon the Property and into the Building.

111. Ms. Rivera ingested, inhaled, absorbed, and was otherwise exposed to TCE, PCE and other toxic chemicals and wastes upon the Property and within the Building, thereby causing her to suffer grievous personal injury, cancer, mental and emotional injuries and distress, and attendant damages by reason of the dangerous and defective conditions therein.

112. As a direct and proximate consequence of Nessen's acts, omissions, negligence and/or recklessness, Ms. Rivera suffered injuries and damages, including pancreatic cancer, liver cancer, and a dramatic degradation in the quality of her life.

113. Nessen and its successor corporations are liable for all harm caused to Ms. Rivera and members of the public by the release and exposure of any hazardous waste and hazardous waste constituents, including but limited to TCE, PCE and other toxic chemicals and wastes upon the Property and within the Building.

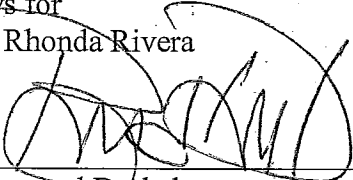
114. Ms. Rivera is entitled to punitive damages because Nessen's conduct was wanton, grossly reckless, and/or in conscious disregard of Ms. Rivera's rights and the rights of any other person that was exposed to hazardous substances upon the Property and within the Building.

**WHEREFORE**, plaintiff Rhonda Rivera demands judgment for compensatory and punitive damages, in amounts to be proved at trial, and that she be awarded attorneys' fees, costs, and such other and further relief as may be deemed just and proper.

Dated: New York, New York  
December 9, 2011

LYNCH DASKAL EMERY LLP  
Attorneys for  
Plaintiff Rhonda Rivera

By: \_\_\_\_\_

  
Bernard Daskal  
Scott A. Harford


264 West 40th Street  
New York, New York 10018  
(212) 302-2400

**VERIFICATION**

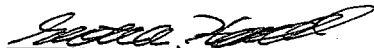
STATE OF NEW YORK            )  
  ) ss.:  
COUNTY OF BRONX            )

Rhonda Rivera, being duly sworn, deposes and says:

I am the plaintiff in this action. I have read and know the contents of the facts and circumstances of the Verified Complaint. The claims of the Verified Complaint are true to my own knowledge, except as to matters alleged upon information and belief, and as to those matters, I believe them to be true.

  
\_\_\_\_\_  
Rhonda Rivera

Sworn and subscribed to  
before me on this 9th  
day of December 2011

  
\_\_\_\_\_  
Notary Public

**SCOTT A. HARFORD**  
Notary Public, State of New York  
No. 02HA6104281  
Qualified in New York County  
Commission Expires Jan. 20, 2012