

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In The Matter Of:)	
)	
Briggs & Stratton Corporation	)	Case Number: 20-43597-399
)	
Debtor	)	Chapter 11
)	
Troy Craig, Diana Craig, and Amy Craig	)	Motion to Lift Stay filed by
	)	Troy Craig, Diana Craig, and Amy Craig
Movant,)	
)	
vs.	)	Millsap & Singer, LLC
	)	612 Spirit Drive
Briggs & Stratton Corporation	)	St. Louis, MO 63005
	)	(636) 537-0110
)	
Respondent)	
)	

MOTION FOR RELIEF FROM AUTOMATIC STAY,

COMES NOW, Troy Craig, Diana and Amy Craig ("Movants") and for its Motion for Relief from Automatic Stay, and respectfully states to the Court as follows:

1. On July 20, 2020, Debtor filed a Petition under Chapter 11 of the Bankruptcy Code. The Official Unsecured Creditors Committee is composed of: Andrew W. Carty, Alexander L Moen, James W. Stoll, and Gregory D Willard.

2. Movants have filed a product liability lawsuit ("Lawsuit") against a number of entities which includes the Debtor. The suit is filed in the state of Wisconsin, Milwaukee County, case number 2020CV003953. A copy of the complaint is attached as Exhibit A. Wisconsin Statute 893.54 provides that an action such as the one pleaded in Movants' Lawsuit must be brought within three years. The incident subject to the Lawsuit occurred on July 21, 2018.

3. Debtor Briggs & Stratton Corporation designs, manufactures, and markets a small engine that was sold and delivered to another Defendant, Wood Industries, in Mississippi. The engine was used to manufacture a compressor. Another Defendant in the Lawsuit, Spray Foam Solutions, sold the product to Movant and provided training to Movant.

4. Movant Troy Craig was injured while using the subject compressor assembly when gasoline sprayed over him and then subsequently ignited. Movants Diana and Amy Craig suffered severe emotional distress from witnessing their husband/father being lit on fire.

5. Defendant ABC Insurance Company provides liability insurance to the Debtors. For purposes of transparency, this is a fictitious name as the Movants have not yet uncovered the true name of the insurance company and Wisconsin statute § 807.12 allows an amendment, upon order, to insert a real name at a later date.

6. Defendant DEF Insurance Company provides liability insurance to the Defendants of the suit. For purposes of transparency, this is a fictitious name as the Movants have not yet uncovered the true name of the insurance company and Wisconsin statute § 807.12 allows an amendment, upon order, to insert a real name at a later date.

7. Defendant GHI Insurance Company provides liability insurance to the Defendants of the suit. For purposes of transparency, this is a fictitious name as the Movants have not yet uncovered the true name of the insurance company and Wisconsin statute § 807.12 allows an amendment, upon order, to insert a real name at a later date.

8. This Court previously entered its Order pursuant to 11 U.S.C. Section 362(a) prohibiting, among other things, any act to enforce any lien against the property of the estate and any act to obtain possession of property of the estate.



9. Movants wish to continue litigating their Lawsuit. Any monetary component of a judgment would not be pursued directly against the Debtor, but instead against the insurers. Any monetary judgment that is rendered and due directly from Debtor will only be recovered as a formal claim within the instant Bankruptcy proceedings.

10. Pursuant to 11 U.S.C. § 362(d)(1), “[o]n request of a party in interest and after notice and a hearing, the Court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay (1) for cause” Cause can be demonstrated by a number of different factors, depending on the particular circumstances of the case: “[t]he lack of adequate protection of an interest in property of the party requesting relief from the stay is one cause for relief, but is not the only cause [A] desire to permit an action to proceed to completion in another tribunal may provide another cause **The facts of each request will determine whether relief is appropriate under the circumstances.**” *In re Fowler*, 259 B.R. 856, 858 (Bankr. E.D. Tex. 2001) (citations omitted) (emphasis in original). Bankruptcy courts routinely lift automatic stays to allow tort suits to go forward in state court to determine the liability, if any, of debtors. *Id.* at 861.

11. In order to determine whether lifting of the automatic stay is appropriate, the Court must balance prejudice to the debtor or the estate from the continuation of the civil action against the hardship that the creditor will suffer if the automatic stay continues. *In re Winterland*, 101 B.R. 547, 548 (Bankr. C.D. Ill. 1988) (citing *In re Holtkamp*, 669 F.2d 505, 508 (7th Cir. 1982.)). This balancing test considers whether or not (i) any great prejudice to the bankruptcy estate or the debtor will result from continuation of the civil action, (ii) the hardship to the plaintiff if the stay is not lifted considerably outweighs the hardship to the debtor, and (iii) the creditor-plaintiff has a probability of prevailing on the merits of the civil action. *Id.* (Citations omitted.)



12. There is no great prejudice to the bankruptcy estate or Debtor in continuing with the civil action. As Movant proceeds, it will be able to determine the true identity of insurance companies which represent Debtor, pursue discovery, and determine whether settlement is plausible. Mere participation in litigation does not constitute great prejudice. *Id.* at 549. Furthermore, Debtor will not be prejudiced if the stay is lifted, and there will be minimal interference with these bankruptcy proceedings as the amount of any judgment that Movant obtains will likely be covered by Debtor's insurance companies. See *In re R.J. Groover Const., L.L.C.*, 411 B.R. 460, 465 (Bankr. S.D. Ga. 2008) (lifting automatic stay because debtors' estate was not prejudiced where cost of defending underlying litigation would be borne by debtors' insurance group).

13. Wisconsin's direct action statute (Wis. Stat. § 632.24) subjects an insurance company to direct liability in Wisconsin for the negligence of its insured. *Finder v. Am. Heartland Ins. Co.*, No. 2006AP918, 2007 Wisc. App. LEXIS 1150 (Ct. App. Aug. 23, 2007). Movant is yet unable to identify Debtor's liability insurance companies, but once it acquires that information, the Lawsuit can continue directly against the insurers.

14. There is a litany of factors that demonstrate the hardships Movant would suffer in the event that the automatic stay is not lifted. Over the past two years and apart from the plethora of medical care that Movant has undergone and is on-going, Movant continues to suffer from mental anguish, disfigurement, physical impairment, lost earning capacity and property damage. Movant will be substantially prejudiced if it is unable to litigate its Lawsuit against Debtor, as there is no other remedy to recover for the negligence and strict products liability claims against Debtor.

15. Movant is obligated under Wisconsin Statute 801.02 to complete service on all defendants in its Lawsuit within ninety (90) days after filing.



16. Pursuant to the facts provided in Movant's Lawsuit complaint, there is a probability of Movant prevailing on the merits of same, as illustrated in paragraphs 27 through 80 of the attached Exhibit A. It is of great importance that the factors set out by prior courts do not require "*success*" in the civil action, but rather a *probability* of prevailing.

17. Good and sufficient cause exists in this case to modify the automatic stay of Section 362 for the reason that:

(a) Movant Troy Craig has been seriously harmed by this incident as he was sprayed with gasoline which then ignited and caused severe burns over most of his body. Movants Diana Craig and Amy Craig were emotionally harmed by observing the incident.

(b) To bar Movants from proceeding with state court litigation would cause them irreparable injury, loss and damage, and also prejudice them greatly.

(c) Allowing Movants to recover from the other defendants and Debtor's insurance company should not negatively impact the Debtor or their chances at a successful reorganization.

(d) In order to determine who is fully liable for the damage caused to Movants, Debtor is a necessary party in the state court litigation.

(e) The hardship to Movant if the stay is not lifted vastly outweighs any potential prejudice to Debtor.

18. Movant specifically requests permission from this Honorable Court to communicate with Debtor and Counsel for Debtor to the extent provided for under applicable nonbankruptcy law in matters regarding the state court litigation.

WHEREFORE, Movants pray that this Court terminate the automatic stay in order to permit Movants, or their successors and assigns, to proceed with the state court litigation filed in Milwaukee County, Case Number 2020CV003953; that Movants seek to serve all defendants and are entitled to do so, to pursue their remedies under



state law against all Defendants, to assess a monetary value to their potential judgment and to recover their judgment against all defendants who are not the Debtor, and for an order that the relief from the automatic stay is not stayed pursuant to Rule 4001 for fourteen (14) days and for such other relief as is appropriate and just.

Dated August 31, 2020

Respectfully Submitted:
Millsap & Singer, LLC

/s/ Cynthia M. Kern Woolverton

Cynthia M. Kern Woolverton, #47698, #47698MO

Stewart C. Bogart, #67956, #67956MO

Muhammad Esa Ahmed, #70619, #70619MO

Christopher D. Lee, #63024, #63024MO

612 Spirit Drive

St. Louis, MO

Telephone: (636) 537-0110

Facsimile: (636) 537-0067

bkty@msfirm.com

Attorneys for Troy Craig, Diana and Amy Craig



CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was filed electronically on August 31, 2020, with the United States Bankruptcy Court, and has been served on the parties in interest via e-mail by the Court pursuant to CM/ECF as set out on the Notice of Electronic filing as issued by the Court or in the alternative has been served by depositing a true and correct copy of same enclosed in a postage prepaid, properly addressed envelope, in a post office official depository under the exclusive care and custody of the United States Postal Service within the state of Missouri on those parties directed by the Court on the Notice of Electronic Filing issued by the Court as required by the Federal Rules of Bankruptcy Procedure and the Local Rules of the United States Bankruptcy Court.

/s/ Cynthia M. Kern Woolverton

Electronic Mail Notice List

The following is the list of attorneys who are currently on the list to receive e-mail notices for this case.

Lauren Z. Alexander
Lauren.Alexander@weil.com

Ronit J. Berkovich
Ronit.Berkovich@weil.com

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Alexander L Moen
amoen@dubllc.com

James W. Stoll
jstoll@brownrudnick.com

Gregory D Willard
gwillard@dubllc.com

Andrew M. Carty
acarty@brownrudnick.com

Alexander L Moen
Amoen@dubllc.com

James W. Stoll
jstoll@brownrudnick.com

Gregory D Willard
gwillard@dubllc.com

Office of the United States Trustee



Manual Notice List

The following is a list of parties who are not on the list to receive e-mail notices for this case (who therefore require manual noticing).

Briggs & Stratton Corporation
PO Box 702
Milwaukee, WI 53201

All Creditors on the Master Service List



Wilmington Trust N.A. 50 South
Sixth Street, Suite 1290
Minneapolis, Minnesota 55402

Zhejiang Zhouli Industrial Co
Jinyanshan Industrial Zone
Wuyi 130, CN 321210

American Honda Motor Company
Inc
1919 Torrance Blvd
Torrance, CA Us 90501-2746

Starting Usa Corporation
1676 Rowe Pkwy
Poplar Bluff, MO US 63901-7014

Anthem Blue Cross Blue Shield
1671 W Streetsboro Rd
Peninsula, OH 44264

Mazak Optonics Corporation
39003 Treasury Ctr
Chicago, IL US 60694-9000

Trend Technologies LLC
4626 Eucalyptus Ave
Chino, CA 91710

Plastocon Inc
1200 W 2nd St
Oconomowoc, WI 53066-3403

MuniStrategies, LLC Muni
Strategies Sub- CDE#24, LLC
2819 North State Street (39216-
4306) P.O. Box 2170
Jackson, MS 39225-2170

Sears, Roebuck & Co. Bankruptcy
2600 Eagan Woods Drive,
Suite 400
St. Paul, MN 55121

Jiangsu Jianghuai Engine Co Ltd
No 58 South Xiwang Road
Yancheng 100 CN 224007

Leslie and Daniel Fassett
re: Matter #454
c/o Ross Feller Casey, LLP 1650
Market Street Suite 3450
Philadelphia, PA 19103

Changzhou globe co ltd no.
65 (3-4) Xinggang Road
Zhonglou Zone,
Changzhou 100 CN 213023

Accurate Fabrication Llc
2050 Constitution Ave
Hartford, WI US 53027-8915

Hoffer Plastics Corporation
Lock Box
6617 131 S. Dearborn
Chicago, IL 60678-6617

Wright Metal Products Crates LLC
111 Franklin St
Lavonia, GA US 30553-4403

DV Community Investment, LLC
DVCi CDE XXXIV, LLC c/o
Dudley Ventures
22 E. Jackson Street
Phoenix, AZ 85004

SunTrust Community Capital,
LLC BS Statesboro Investment
Fund, LLC ST CDE XXXVIII
1155 Peachtree Street, Suite 300
Atlanta, GA 30309

Hydro-Gear Lp 120 South Lasalle
St Chicago, IL US 60603-3403

Zhejiang Constant Engine
Yueying Road Paojiang Ind Com
Park
Shaoxing 130 Cn 312000

Metal Technologies
2260 Reliable Pkwy
Chicago, IL US 60686-0022

Green Bay Packaging Inc
Bin 53139
Milwaukee, WI US 53288-0001

R R Donnelley & Sons Company
7810 Solution Ctr
Chicago, IL US 60677-0001

Dantherm S.P.A.
Via Gardesana 11
37010 Pastrengo (vr), Italy



Dutchland Plastics Llc
54 Enterprise Ct
Oostburg, WI UU 53070-1656

G H Tool & Mold Inc
28 Chamber Dr
Washington, MO US 63090-5279

Pro Unlimited, Inc.
7777 Glades Road Suite 208
Boca Raton, FL 33434

A R North America
140 81st Ave Ne
Minneapolis, MN US 55432-1770

CDW Limited
200 N Milwaukee Avenue
Vernon Hills, IL 43785

Leland Powell
Fasteners LLC 2
88 Holbrook Drive
Wheeling, IL 60090



**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In The Matter Of:)	
)	
Briggs & Stratton Corporation	)	Case Number: 20-43597-399
)	
Debtor)	
	)	Chapter 11
Troy Craig, Diana Craig and Amy Craig)	
	)	Motion to Lift Stay filed by
Movant,	)	Troy Craig, Diana and Amy Craig
)	
vs.)	
	)	Millsap & Singer, LLC
Briggs & Stratton Corporation	)	612 Spirit Drive
	)	St. Louis, MO 63005
	)	(636) 537-0110
Respondent)	
)	

SUMMARY OF EXHIBITS AND CERTIFICATE OF SERVICE

The following exhibits in reference to the Motion for Relief have been electronically attached as Exhibits and are available upon request in their entirety.

A. Copy of Movants' Complaint in State Court

Respectfully Submitted:
Millsap & Singer, LLC

/s/ Cynthia M. Kern Woolverton

Cynthia M. Kern Woolverton, #47698, #47698MO
Stewart C. Bogart, #67956, #67956MO
Muhammad Esa Ahmed, #70619, #70619MO
Christopher D. Lee, #63024, #63024MO
612 Spirit Drive
St. Louis, MO
Telephone: (636) 537-0110
Facsimile: (636) 537-0067
bkty@msfirm.com

Attorneys for Troy Craig, Diana and Amy Craig



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of all documents supporting my Motion for Relief referenced above have been served on Counsel for the Debtor on August 31, 2020. Copies of the above documents are available to other parties in interest upon request.

/s/ Cynthia M. Kern Woolverton



**EXHIBIT
A**

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

TROY CRAIG

1148 County Road 4764
Boyd, Texas 76023-5206,

DIANA CRAIG

1148 County Road 4764
Boyd, Texas 76023-5206,

and

AMY CRAIG

1148 County Road 4764
Boyd, Texas 76023-5206,

Plaintiffs,

and

PARKLAND HEALTH AND HOSPITAL SYSTEM

5200 Harry Hines Boulevard
Dallas, Texas 75235

and

**THE UNIVERSITY OF TEXAS SOUTHWESTERN
MEDICAL CENTER AT DALLAS,**

5323 Harry Hines Blvd, LB200
Dallas, Texas 75390-9087,

Involuntary Plaintiffs,

v.

BRIGGS & STRATTON CORPORATION

c/o Registered Agent for Service of Process
Corporation Service Company
8040 Excelsior Drive, Suite 400
Madison, Wisconsin 53717-2915,

Case No. _____

Case Code: 30100 Products Liability

SUMMONS

ABC INSURANCE COMPANY

Current Name Unknown
Current Address Unknown,

WOOD INDUSTRIES, INC.

c/o Registered Agent for Service of Process
Jeff Wood
Wood Industries, Inc.
21 Front Street
Belmont, Mississippi, 38827-7765,

DEF INSURANCE COMPANY

Current Name Unknown
Current Address Unknown,

SPRAY FOAM SOLUTIONS LLC

c/o Registered Agent for Service of Process
Adam Lojkutz
3140 Blossom Glen Drive
Henderson, Nevada 89014-3163,

and

GHI INSURANCE COMPANY

Current Name Unknown
Current Address Unknown,

Defendants

To The Above-Named Parties:

You are hereby notified that the Plaintiffs named above have filed a lawsuit against you. The complaint, which is attached, states the nature and basis of the legal action.

Within forty-five (45) days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Clerk of Circuit

Court, whose address is Milwaukee County Courthouse, 901 N. 9th Street, Milwaukee, Wisconsin 53233, and to DiCello Levitt Gutzler LLC, Plaintiff's attorneys, whose address is 7556 Mentor Ave, Mentor, Ohio 44060.

You may have an attorney help or represent you. If you do not provide a proper answer within forty-five (45) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 4th day of July, 2020.

DICELLO LEVITT GUTZLER

By: /s/ Christopher D. Stombaugh
Christopher D. Stombaugh
State Bar No: 1022065

P.O. Addresses:
DICELLO LEVITT GUTZLER
P.O. Box 437
Platteville, WI 53818
Telephone: (440)-953-8888
E-Mail: cstombaugh@dicellolevitt.com

ADDITIONAL ATTORNEYS FOR THE
PLAINTIFFS, WITH PRO HAC VICE
APPLICATIONS PENDING
ASSIGNMENT OF A CASE NUMBER:

David G. Hart
Texas State Bar No. 09136430
HART LAW FIRM, PLLC
6630 Colleyville Blvd., Suite 100
Colleyville, Texas 76034
817-329-7020
817-329-7021 fax
David@TheHartLawFirm.com

Steven R. Samples
Texas State Bar No. 24086348
James R. Ames, III
Texas State Bar No. 24091111
SAMPLES AMES PLLC
2727 LBJ Freeway, Suite 922
Dallas, Texas 75234
469-466-2600
855-605-1505 fax
docket@texaslit.com

Exhibit
FILED
07-06-2020
John Barrett
Clerk of Circuit Court
2020CV003953
Honorable Laura Gramling
Perez-32
Branch 32

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

TROY CRAIG

1148 County Road 4764
Boyd, Texas 76023-5206,

Case No. _____

Case Code: 30100 Products Liability

DIANA CRAIG

1148 County Road 4764
Boyd, Texas 76023-5206,

COMPLAINT

and

AMY CRAIG

1148 County Road 4764
Boyd, Texas 76023-5206,

Plaintiffs,

and

PARKLAND HEALTH AND HOSPITAL SYSTEM

5200 Harry Hines Boulevard
Dallas, Texas 75235

and

**THE UNIVERSITY OF TEXAS SOUTHWESTERN
MEDICAL CENTER AT DALLAS,**

5323 Harry Hines Blvd, LB200
Dallas, Texas 75390-9087,

Involuntary Plaintiffs,

v.

BRIGGS & STRATTON CORPORATION

c/o Registered Agent for Service of Process
Corporation Service Company
8040 Excelsior Drive, Suite 400
Madison, Wisconsin 53717-2915,

ABC INSURANCE COMPANY

Current Name Unknown
Current Address Unknown,

WOOD INDUSTRIES, INC.

c/o Registered Agent for Service of Process
Jeff Wood
Wood Industries, Inc.
21 Front Street
Belmont, Mississippi, 38827-7765,

DEF INSURANCE COMPANY

Current Name Unknown
Current Address Unknown,

SPRAY FOAM SOLUTIONS LLC

c/o Registered Agent for Service of Process
Adam Lojkutz
3140 Blossom Glen Drive
Henderson, Nevada 89014-3163,

and

GHI INSURANCE COMPANY

Current Name Unknown
Current Address Unknown,

Defendants

Plaintiffs, Troy Craig, Diana Craig, and Amy Craig, by their attorneys, DiCello
Levitt Gutzler LLC as a complaint against the Defendants, Briggs & Stratton Corporation,
ABC Insurance Company, Wood Industries, Inc., DEF Insurance Company, Spray Foam
Solutions LLC, and GHI Insurance Company, allege as follows:

A. Parties, Jurisdiction, and Venue

1. Plaintiff Troy Craig is an adult individual who resides at the above stated address and who at all times material hereto has been married to Plaintiff Diana Craig.

2. Plaintiff Diana Craig is an adult individual who resides at the above stated address and who at all times material hereto has been married to Plaintiff Troy Craig.

3. Plaintiff Amy Craig is an adult individual who resides at the above stated address and who is the daughter of Plaintiff Troy Craig and Plaintiff Diana Craig.

4. Involuntary Plaintiff Parkland Health and Hospital System, whose principal place of business is 5200 Harry Hines Boulevard in Dallas, Texas 75235 and whose registered agent is Mr. Paul Leslie, Executive Vice President & General Counsel, Parkland Health and Hospital System, 5201 Harry Hines Boulevard in Dallas, Texas 75235, may have provided medical treatment to Plaintiff Troy Craig for which this Involuntary Plaintiff has yet to be paid. By reason of these unpaid medical bills, Parkland Health and Hospital System is a proper party hereto. If Parkland Health and Hospital System fails to timely and properly answer and enter an appearance on this action, then the court should find that Parkland Health and Hospital System has waived any right to participate in this matter and has waived any right to pursue or collect any outstanding bills and any rights it may have shall be extinguished.

5. Involuntary Plaintiff The University Of Texas Southwestern Medical Center at Dallas, whose principal place of business is 5200 Harry Hines Boulevard in Dallas, Texas 75235 and whose registered agent is The University of Texas System,

General Counsel's Office, 210 West 7th Street, Austin, Texas 78701, may have provided medical treatment to Plaintiff Troy Craig for which this Involuntary Plaintiff has yet to be paid. By reason of these unpaid medical bills, The University of Texas Southwestern Medical Center at Dallas, is a proper party hereto. If The University Of Texas Southwestern Medical Center at Dallas, fails to timely and properly answer and enter an appearance on this action, then the court should find that The University Of Texas Southwestern Medical Center at Dallas has waived any right to participate in this matter and has waived any right to pursue or collect any outstanding bills and any rights it may have shall be extinguished.

6. Defendant Briggs & Stratton Corporation is a business licensed to do and is doing substantial business in the State of Wisconsin, with offices of its registered agent, Corporation Service Company, located at 8040 Excelsior Drive, Suite 400, Madison, Wisconsin 53717-2915, and its principal place of business at 12301 W. Wirth Street in Wauwatosa, Wisconsin. At all times material, Briggs & Stratton designed, manufactured, and marketed a small engine that was sold and delivered to Defendant Wood Industries in Mississippi. That engine found its way to Texas, where defects in the engine caused severe and permanent injuries to Troy Craig and damages to all Plaintiffs.

7. Defendant ABC Insurance Company is a foreign or domestic corporation whose name, address, registered agent, registered offices and state of incorporation of which are presently unknown to the Plaintiffs, and that in place of the actual name of the Defendant Insurance Company, a fictitious name is being used for the Defendant pursuant to § 807.12, Wis. Stats. That upon information and belief, Defendant ABC Insurance

Company provided liability insurance to Defendant Briggs & Stratton and that by reason of said insurance policy and the alleged negligence of Briggs & Stratton, and the provisions of § 803.04(2), Wis. Stats., Defendant ABC Insurance Company is a proper Defendant.

8. Defendant Wood Industries, Inc. is a business doing substantial business with Briggs & Stratton in the State of Wisconsin, with offices of its registered agent, Jeff Wood, located at Wood Industries, Inc., 21 Front Street, Belmont, Mississippi, 38827-7765., and its principal place of business at 21 Front Street, Belmont, Mississippi, 38827-7765. At all times material, Wood Industries, Inc. designed, manufactured, and marketed a compressor that incorporated the Briggs & Stratton engine and that was sold to Defendant Spray Foam Solutions in Texas. Defects in the compressor and its engine caused severe and permanent injuries to Troy Craig and damages to all Plaintiffs.

9. Defendant DEF Insurance Company is a foreign or domestic corporation whose name, address, registered agent, registered offices and state of incorporation of which are presently unknown to the Plaintiffs, and that in place of the actual name of the Defendant Insurance Company, a fictitious name is being used for the Defendant pursuant to § 807.12, Wis. Stats. That upon information and belief, Defendant DEF Insurance Company provided liability insurance to Defendant Wood Industries and that by reason of said insurance policy and the alleged negligence of Wood Industries, and the provisions of § 803.04(2), Wis. Stats., Defendant DEF Insurance Company is a proper Defendant.

10. Defendant Spray Foam Solutions, LLC is a business that installed the products of Briggs & Stratton and Wood Industries into a mobile spray foam application trailer that was ultimately sold to Plaintiff Troy Craig. This defendant's registered agent,

Adam Lojkutz, is located at 595 S. Green Valley Parkway Bldg. 9 #922, Henderson, Nevada 89012, and the business's principal place of business is at 17598 N. Interstate 35, West, Texas 76691.

11. Defendant GHI Insurance Company is a foreign or domestic corporation whose name, address, registered agent, registered offices and state of incorporation of which are presently unknown to the Plaintiffs, and that in place of the actual name of the Defendant Insurance Company, a fictitious name is being used for the Defendant pursuant to § 807.12, Wis. Stats. That upon information and belief, Defendant GHI Insurance Company provided liability insurance to Defendant Spray Foam Solutions and that by reason of said insurance policy and the alleged negligence of Spray Foam Solutions, and the provisions of § 803.04(2), Wis. Stats., Defendant GHI Insurance Company is a proper Defendant.

12. This Court has jurisdiction over the subject matter of this Complaint and over the parties hereto.

B. Definitions

13. “**SUBJECT TRAILER**” shall mean and refer to the Lark United Manufacturing, LLC trailer with a manufacture date of February 2018 and bearing VIN No. 571BE202JM028163.

14. “**SUBJECT PURCHASE**” shall mean the **SUBJECT TRAILER**, along with all goods and services delivered to Mr. Craig by Defendant Spray Foam Solutions LLC pursuant to a February 14, 2018 estimate bearing number 20180214-02 and prepared by Defendant Spray Foam Solutions LLC.

15. “**SUBJECT COMPRESSOR**” shall mean the Eagle compressor, Model No: 18G55TRKE-H-Map, Serial No: BCZ1307, sold by Wood Industries, Inc.

16. “**SUBJECT COMPRESSOR MODEL**” shall mean the **SUBJECT COMPRESSOR** and all other model year Wood Industries compressors with substantially similar design.

17. “**SUBJECT ENGINE**” shall mean the Briggs & Stratton 18 HP Vanguard engine, Model No: 356 447 1213-F8, Serial No: 16 102011916 12, manufactured in October 2016.

18. “**SUBJECT ENGINE MODEL**” refers to the **SUBJECT ENGINE** and all other model year Briggs & Stratton engines with substantially similar safety devices, fuel systems, and componentry.

19. “**FUEL SYSTEM**” means the fuel tank, fuel tank mounts, fuel take cap, fuel tank vents, lines and/or hoses designed to carry fuel from the tank to another part of the **SUBJECT ENGINE MODEL** or the **SUBJECT ENGINE**, as the context requires.

20. “**SUBJECT COMPRESSOR ASSEMBLY**” shall mean the combination of the **SUBJECT COMPRESSOR** and the **SUBJECT ENGINE**.

C. General Allegations

21. Plaintiffs hereby incorporate by reference as though fully set forth herein all the preceding paragraphs of this Complaint.

22. Defendant Spray Foam Solutions LLC was formed in 2014 to build custom spray foam trailers in Texas, such as the **SUBJECT TRAILER**, for insulation contractors. Spray Foam Solutions was hired by Troy Craig on February 14, 2018 to source, assemble

and provide a “Spray Foam Solutions Mobile Contractor Turnkey Spray Foam Rig Package” —the **SUBJECT PURCHASE**—for a price of \$35,000.00, along with a New Contractor Starter Package, training, and spray-foam materials, bringing the total price to \$39,074.00. Mr. Craig formed his company, Speed Insulation LLC, two days later.

23. Spray Foam Solutions LLC eventually delivered the **SUBJECT TRAILER**, along with the **SUBJECT COMPRESSOR** and the **SUBJECT ENGINE**, and provided a full day of training.

24. On July 21, 2018, Mr. Craig was using the **SUBJECT COMPRESSOR ASSEMBLY** to apply spray-foam insulation on a job site. Upon removal of the fuel cap on the **SUBJECT ENGINE**, a fuel-geysering event sprayed Mr. Craig with gasoline that ignited and caused full-thickness burns to Mr. Craig.

25. Diana Craig was located near the scene of the fire as contrasted with one who was a distance away from it. She sustained a shock that resulted from a direct emotional impact upon her from the sensory and contemporaneous observation of the fire, as contrasted with learning of the fire from others after its occurrence. Diana Craig and Troy Craig were closely related by marriage, as contrasted with an absence of any relationship or the presence of only a distant relationship.

26. Amy Craig was located near the scene of the fire as contrasted with one who was a distance away from it. She sustained a shock that resulted from a direct emotional impact upon her from the sensory and contemporaneous observation of the fire, as contrasted with learning of the fire from others after its occurrence. Amy Craig and Troy

Craig were closely related as father and daughter, in contrast to an absence of any relationship or the presence of only a distant relationship.

D. Legal Claims

Negligence of Briggs & Stratton Corporation

27. At the time and place in question, Briggs & Stratton, by and through its employees, was guilty of the following separate acts of negligence, each of which, singularly or in combination, were a proximate cause of the injuries and damages alleged herein.

Briggs & Stratton's negligence, includes, but is not limited to the following:

- a. Failing to exercise ordinary care;
- b. Failing to warn of a defective product;
- c. Failure to design, manufacture, produce, and sell a product that would not unreasonably increase the risk of harm to the product's users;
- d. Failure to correct dangerous and hazardous conditions which were known to Briggs & Stratton or should have been known had Briggs & Stratton exercised ordinary care and complied with applicable safety standards, which were unknown to Mr. Craig, and of which Briggs & Stratton had long standing notice and actual constructive knowledge;
- e. Negligent acts and/or omissions described above along with any other negligent acts and/or omissions disclosed during discovery or trial.

28. Plaintiffs would show that each of the foregoing acts and/or omissions constituted negligence and that one, more than one, or all of such acts and/or omissions and various combinations thereof were a proximate cause of the incident in question, and the serious injuries and damages sustained by Plaintiffs.

Negligence of Wood Industries, Inc.

29. At the time and place in question, Wood Industries, by and through its employees, was guilty of the following separate acts of negligence, each of which, singularly or in combination were a proximate cause of the injuries and damages alleged herein. Wood Industries' negligence, includes, but is not limited to the following:

- a. Failing to exercise ordinary care;
- b. Failing to warn of a defective product;
- c. Failure to design, manufacture, produce, and sell a product that would not unreasonably increase the risk of harm to the product's users;
- d. Failure to correct dangerous and hazardous conditions which were known to Wood Industries or should have been known had Wood Industries exercised ordinary care and complied with applicable safety laws, which were unknown to Mr. Craig, and of which Wood Industries had long standing notice and actual constructive knowledge;
- e. Negligent acts and/or omissions described above and any other negligent acts and/or omissions disclosed during discovery or trial.

30. Plaintiffs would show that each of the foregoing acts and/or omissions constituted negligence and that one, more than one, or all of such acts and/or omissions and various combinations thereof were a proximate cause of the incident in question, and the serious injuries and damages sustained by Plaintiffs.

Negligence of Spray Foam Solutions LLC

31. Defendant Spray Foam Solutions owed a duty to select suitable equipment, tools, and safety accessories for sale to Mr. Craig for his use. Defendant Spray Foam Solutions owed a duty to Mr. Craig to properly and adequately train him in the safe and effective use of the equipment it sold him. Spray Foam Solutions did not use proper and ordinary care as would a reasonable and prudent seller of such equipment under the circumstances; in particular, in choosing, recommending, and selling to Mr. Craig the **SUBJECT TRAILER** and the **SUBJECT COMPRESSOR ASSEMBLY** for use in his newly-launched spray foam insulation business and in not using proper and ordinary care in training Mr. Craig in the safe and proper use of the equipment it selected for Mr. Craig, specifically relating to training Mr. Craig on the unique risks of the equipment, even after charging Mr. Craig for such training.

32. Further, Spray Foam Solutions failed to correct and/or warn of dangerous and hazardous conditions which were known to Spray Foam Solutions or should have been known had Spray Foam Solutions exercised ordinary care and complied with applicable safety standards, which were unknown to Mr. Craig, and of which Spray Foam Solutions had long standing notice and actual constructive knowledge.

Strict Products Liability as to Briggs & Stratton Corporation

33. Plaintiffs re-allege and incorporate in this count each and every preceding allegation as if fully pled herein.

34. Plaintiffs invoke the doctrine of strict liability as provided by § 402A, RESTATEMENT (SECOND) OF TORTS as adopted by the Supreme Court of Wisconsin in *Dippel v. Sciano*, 37 Wis. 2d 443, 155 N.W.2d 55 (1967).

35. The **SUBJECT ENGINE** at issue in this suit was designed, manufactured, constructed, marketed and/or distributed by and through the agents and/or representatives of Briggs & Stratton.

36. Briggs & Stratton was regularly engaged in the business of supplying or placing products, like the product in question, in the stream of commerce for use by the consuming public, including Mr. Craig. Such conduct by Briggs & Stratton was solely for commercial purposes.

37. The **SUBJECT ENGINE** remained unchanged from the time it was originally manufactured, distributed and sold by Briggs & Stratton until it reached Mr. Craig and ultimately led to his serious injuries and damages. Stated another way, the product in question was defective and in an unreasonably dangerous condition when it left the hands of Briggs & Stratton and remained defective and unreasonably dangerous at all times thereafter until it ultimately caused Mr. Craig's serious injuries and damages.

38. At the time the product in question was placed into the stream of commerce, it was, or should have been, reasonably expected and foreseeable that the

product would be used by persons in the manner and application in which it was being used at the time Mr. Craig sustained serious injuries and damages.

39. With respect to the design of the product in question, at the time it left the control of Briggs & Stratton, there were safer alternative designs. Specifically, there were alternative designs that, in reasonable probability, would have prevented or significantly reduced the risk of injury to Mr. Craig. Furthermore, such safer alternative designs were economically and technologically feasible at the time the product left the control of Briggs & Stratton by the application of existing or reasonably achievable scientific knowledge.

40. At the time the product in question left the control of Briggs & Stratton, it was defective and unreasonably dangerous in that it was not adequately designed, manufactured or marketed to minimize the risk of injury. The **SUBJECT ENGINE MODEL** and its **FUEL SYSTEM** were defectively designed and unreasonably and inherently dangerous for their anticipated, intended, and foreseeable uses as they did not safely contain and deliver fuel. The **SUBJECT ENGINE** did not perform as safely as an ordinary consumer would expect when used in a reasonably-foreseeable manner, and the foreseeable risk associated with the use of the **SUBJECT ENGINE MODEL** and its **FUEL SYSTEM** far exceeded any utility associated with its design.

41. The **SUBJECT ENGINE** was defective in that Briggs & Stratton failed to provide adequate warnings of the potential dangers associated with the uses and misuses of the **SUBJECT ENGINE** as designed, specifically the potential for failure to safely contain and deliver fuel, which would not be apparent to the ordinary consumer and/or user. Briggs & Stratton exercised substantial control over the content of the warning or instruction that

accompanied the **SUBJECT ENGINE** and its **FUEL SYSTEM**, the warning or instruction was inadequate, and the Plaintiffs' harm resulted from the inadequacy of the warning or instruction.

42. Foreseeable users, such as Mr. Craig, were not, and still are not, likely to possess knowledge of the extent of the risks associated with using the **SUBJECT ENGINE** as designed or the severity and mechanism of injuries that are likely to occur. Without such knowledge, users would not be in a position to avoid the product's inherent dangers through the exercise of ordinary and reasonable care. Conversely, Briggs & Stratton knew, and was certainly in the best position to know, that the **SUBJECT ENGINE MODEL** and its **FUEL SYSTEM**, as designed, posed a tremendous risk of severe injury and death to users.

43. Briggs & Stratton's acts and/or omissions in the design of the **SUBJECT ENGINE MODEL** and its **FUEL SYSTEM** were the proximate cause, producing cause, and/or a substantial factor in causing Plaintiffs' injuries and harms.

44. Briggs & Stratton had actual knowledge of the defects alleged herein, and in putting the **SUBJECT ENGINE MODEL** and its **FUEL SYSTEM** into the stream of commerce, acted with complete indifference to and conscious disregard for the safety of Mr. Craig and other foreseeable plaintiffs.

Strict Products Liability as to Wood Industries, Inc.

45. Plaintiffs re-allege and incorporate in this count each and every preceding allegation as if fully pled herein.

46. Plaintiffs invoke the doctrine of strict liability as provided by § 402A, RESTATEMENT (SECOND) OF TORTS as adopted by the Supreme Court of Wisconsin in *Dippel v. Sciano*, 37 Wis. 2d 443, 155 N.W.2d 55 (1967).

47. The **SUBJECT COMPRESSOR** and **SUBJECT COMPRESSOR ASSEMBLY** were designed, sourced, manufactured, assembled, constructed, marketed and/or distributed by and through the agents and/or representatives of Wood Industries.

48. Wood Industries was regularly engaged in the business of supplying or placing products, like the product in question, in the stream of commerce for use by the consuming public, including Mr. Craig. Further, such conduct by Wood Industries was solely for commercial purposes.

49. The product in question remained unchanged from the time it was originally manufactured, distributed and sold by Wood Industries until it reached Mr. Craig and ultimately led to his serious injuries and damages. Stated another way, the product in question was defective and in an unreasonably dangerous condition when it left the hands of Wood Industries and remained defective and unreasonably dangerous at all times thereafter until it ultimately caused Mr. Craig's serious injuries and damages.

50. At the time the product in question was placed into the stream of commerce, it was, or should have been, reasonably expected and foreseeable that the product would be used by persons in the manner and application in which it was being used at the time Mr. Craig sustained serious injuries and damages.

51. With respect to the design of the product in question, at the time it left the control of Wood Industries, there were safer alternative designs. Specifically, there were

alternative designs that, in reasonable probability, would have prevented or significantly reduced the risk of injury to Mr. Craig. Furthermore, such safer alternative designs were economically and technologically feasible at the time the product left the control of Wood Industries by the application of existing or reasonably achievable scientific knowledge.

52. At the time the product in question left the control of Wood Industries, it was defective and unreasonably dangerous in that it was not adequately designed, manufactured or marketed to minimize the risk of injury. The **SUBJECT ENGINE** and its **FUEL SYSTEM** placed into the **SUBJECT COMPRESSOR ASSEMBLY** by Wood Industries, and the **SUBJECT COMPRESSOR ASSEMBLY** itself, were defectively designed and unreasonably and inherently dangerous for their anticipated, intended, and foreseeable use as they did not safely contain and deliver fuel. The **SUBJECT COMPRESSOR ASSEMBLY** did not perform as safely as an ordinary consumer would expect when used in a reasonably-foreseeable manner and the foreseeable risk associated with the use of the **SUBJECT COMPRESSOR ASSEMBLY** far exceeded any utility associated with its design.

53. The **SUBJECT COMPRESSOR ASSEMBLY** was defective in that Wood Industries failed to provide adequate warnings of the potential dangers associated with the uses and misuses of the **SUBJECT COMPRESSOR ASSEMBLY** as designed, specifically the potential for failure to safely contain and deliver fuel, which would not be apparent to the ordinary consumer and/or user. Wood Industries exercised substantial control over the content of the warning or instruction that accompanied the **SUBJECT COMPRESSOR ASSEMBLY**, the warning or instruction was inadequate, and the Plaintiffs' harm resulted from the inadequacy of the warning or instruction.

54. Foreseeable users, such as Mr. Craig, were not, and still are not, likely to possess knowledge of the extent of the risks associated with using the **SUBJECT COMPRESSOR ASSEMBLY** as designed or the severity and mechanism of injuries that are likely to occur. Without such knowledge, users would not be in a position to avoid the product's inherent dangers through the exercise of ordinary and reasonable care. Conversely, Wood Industries knew, and was certainly in the best position to know, that the **SUBJECT COMPRESSOR ASSEMBLY**, as designed, posed a tremendous risk of severe injury and death to users.

55. Wood Industries' acts and/or omissions in the design of the **SUBJECT COMPRESSOR ASSEMBLY** were the proximate cause, producing cause, and/or a substantial factor in causing Plaintiffs' injuries and harms.

56. Wood Industries had actual knowledge of the defects alleged herein, and in putting the **SUBJECT COMPRESSOR ASSEMBLY** into the stream of commerce, acted with complete indifference to and conscious disregard for the safety of Mr. Craig and other foreseeable plaintiffs.

Strict Products Liability as to Spray Foam Solutions LLC

57. Plaintiffs re-allege and incorporate in this count each and every preceding allegation as if fully pled herein.

58. Plaintiffs invoke the doctrine of strict liability as provided by § 402A, RESTATEMENT (SECOND) OF TORTS as adopted by the Supreme Court of Wisconsin in *Dippel v. Sciano*, 37 Wis. 2d 443, 155 N.W.2d 55 (1967).

59. The **SUBJECT PURCHASE** was designed, sourced, manufactured, assembled, constructed, marketed and/or distributed by and through the agents and/or representatives of Spray Foam Solutions LLC.

60. Spray Foam Solutions LLC installed the **SUBJECT COMPRESSOR ASSEMBLY**, or had the product installed, on the **SUBJECT PURCHASE** and the Plaintiff's harm resulted from the **SUBJECT COMPRESSOR ASSEMBLY'S** installation onto the **SUBJECT PURCHASE**.

61. Spray Foam Solutions LLC was regularly engaged in the business of supplying or placing products, like the product in question, in the stream of commerce for use by the consuming public, including Mr. Craig. Further, such conduct by Spray Foam Solutions LLC was solely for commercial purposes.

62. The product in question remained unchanged from the time it was originally manufactured, distributed and sold by Spray Foam Solutions LLC until it reached Mr. Craig and ultimately led to his serious injuries and damages. Stated another way, the product in question was defective and in an unreasonably dangerous condition when it left the hands of Spray Foam Solutions LLC and remained defective and unreasonably dangerous at all times thereafter until it ultimately caused Mr. Craig's serious injuries and damages.

63. At the time the product in question was placed into the stream of commerce, it was, or should have been, reasonably expected and foreseeable that the product would be used by persons in the manner and application in which it was being used at the time Mr. Craig sustained serious injuries and damages.

64. With respect to the design of the product in question, at the time it left the control of Spray Foam Solutions LLC, there were safer alternative designs. Specifically, there were alternative designs that, in reasonable probability, would have prevented or significantly reduced the risk of injury to Mr. Craig. Furthermore, such safer alternative designs were economically and technologically feasible at the time the product left the control of Spray Foam Solutions LLC by the application of existing or reasonably achievable scientific knowledge.

65. At the time the product in question left the control of Spray Foam Solutions LLC, it was defective and unreasonably dangerous in that it was not adequately designed, manufactured or marketed to minimize the risk of injury. The **SUBJECT COMPRESSOR ASSEMBLY** placed into the **SUBJECT PURCHASE** by Spray Foam Solutions LLC was defectively designed and unreasonably and inherently dangerous for its anticipated, intended, and foreseeable use as it did not safely contain and deliver fuel. The **SUBJECT PURCHASE** did not perform as safely as an ordinary consumer would expect when used in a reasonably-foreseeable manner and the foreseeable risk associated with the use of the **SUBJECT PURCHASE** far exceeded any utility associated with its design.

66. The **SUBJECT PURCHASE** was defective in that Spray Foam Solutions LLC failed to provide adequate warnings of the potential dangers associated with the uses and misuses of the **SUBJECT PURCHASE** as designed, specifically the potential for failure to safely contain and deliver fuel, which would not be apparent to the ordinary consumer and/or user. Spray Foam Solutions LLC exercised substantial control over the content of the warning or instruction that accompanied the **SUBJECT PURCHASE**, the warning or

instruction was inadequate, and the Plaintiffs' harm resulted from the inadequacy of the warning or instruction.

67. Foreseeable users, such as Mr. Craig, were not, and still are not, likely to possess knowledge of the extent of the risks associated with using the **SUBJECT PURCHASE** as designed or the severity and mechanism of injuries that are likely to occur. Without such knowledge, users would not be in a position to avoid the product's inherent dangers through the exercise of ordinary and reasonable care. Conversely, Spray Foam Solutions LLC actually knew of a defect to the **SUBJECT COMPRESSOR ASSEMBLY**, and was certainly in the best position to know, that the **SUBJECT PURCHASE**, as designed, posed a tremendous risk of severe injury and death to users. The Plaintiff's harm resulted from this defect.

68. Spray Foam Solutions LLC's acts and/or omissions in the design of the **SUBJECT PURCHASE** were the proximate cause, producing cause, and/or substantial factor in causing Plaintiffs' injuries and harms.

69. Spray Foam Solutions LLC had actual knowledge of the defects alleged herein, and in putting the **SUBJECT PURCHASE** into the stream of commerce, acted with complete indifference to and conscious disregard for the safety of Mr. Craig and other foreseeable plaintiffs.

Breach of Warranty

70. Plaintiffs re-allege and incorporate in this count each and every preceding allegation as if fully pled herein.

71. Defendants Briggs & Stratton Corporation, Wood Industries, Inc., and

Spray Foam Solutions LLC, (the “Selling Defendants”) by and through their design, manufacture, assembly, and/or sale of the **SUBJECT COMPRESSOR ASSEMBLY**, expressly and impliedly warranted to consumers and/or foreseeable users, such as Mr. Craig, that the **SUBJECT COMPRESSOR ASSEMBLY** was reasonably safe and fit for its ordinary and foreseeable purposes.

72. The warranties described in ¶ 71 include warranties:

- a. that the **SUBJECT COMPRESSOR ASSEMBLY**, including its accompanying literature and materials, was designed, constructed and assembled in a good and workmanlike manner;
- b. that the **SUBJECT COMPRESSOR ASSEMBLY** was reasonably fit for the ordinary purposes for which such products are used; and
- c. that the **SUBJECT COMPRESSOR ASSEMBLY** was reasonably fit for its particular and intended purpose, of which the Selling Defendants were aware.

73. The Selling Defendants knew, or should have known, that consumers and/or users, including Mr. Craig, intended to use the **SUBJECT COMPRESSOR ASSEMBLY** for ordinary and foreseeable purposes and that consumers and/or users, including Mr. Craig, were relying on the Selling Defendants’ skill and judgment in selling **SUBJECT COMPRESSOR ASSEMBLIES** and **SUBJECT TRAILERS** suitable for those purposes.

74. Mr. Craig made ordinary and foreseeable use of the **SUBJECT COMPRESSOR ASSEMBLY** in reliance on said warranties.

75. Mr. Craig made use of the **SUBJECT COMPRESSOR ASSEMBLY** for its particular and intended purpose, in reliance on said warranties.

76. Contrary to said warranties, the **SUBJECT COMPRESSOR ASSEMBLY** was not designed, constructed and assembled in a good and workmanlike manner; was not reasonably fit for the ordinary purposes for which such **SUBJECT COMPRESSOR ASSEMBLIES** are used; and was not reasonably fit for its particular and intended purpose, of which the Selling Defendants was aware. The Selling Defendants breached their express and implied warranties by the failure of the **SUBJECT COMPRESSOR ASSEMBLY** itself and by improper failure to warn of the risks associated with the use of the **SUBJECT COMPRESSOR ASSEMBLY** and failure to provide proper instructions for safe operation.

77. As an actual and proximate result of the Selling Defendants' breach of said warranties, the **SUBJECT COMPRESSOR ASSEMBLY** was placed into the stream of commerce in a defective and unreasonably dangerous condition and Mr. Craig suffered serious injuries when the **SUBJECT COMPRESSOR ASSEMBLY** failed to perform as promised.

78. Mr. Craig's injuries and the manner in which they occurred were reasonably foreseeable to the Selling Defendants who had actual and/or constructive knowledge—from within the industry, from national publications, and from prior fire or fuel geysering events—that consumers, users, and bystanders were being injured through exposure to the dangers of the **SUBJECT COMPRESSOR MODEL** and the **SUBJECT ENGINE MODEL**.

Voluntary Undertaking

79. Plaintiffs rely on the theory of negligence set forth in the **RESTATEMENT**

(SECOND) OF TORTS § 324A, Liability to Third Person for Negligent Performance of Undertaking as adopted by the Supreme Court of Wisconsin in *American Mut. Liab. Ins. Co. v. St. Paul Fire and Marine Ins. Co.*, 48 Wis. 2d 305, 313, 179 N.W.2d 864 (1970).

80. The Selling Defendants undertook the duty to ensure that a reasonably safe **FUEL SYSTEM** was used in the **SUBJECT ENGINE** and **THE SUBJECT COMPRESSOR ASSEMBLY**. The Selling Defendants knew or should have known that a reasonably safe **FUEL SYSTEM** was necessary for the protection of users of the **SUBJECT COMPRESSOR ASSEMBLY**. The Selling Defendants failed to exercise ordinary care in performing their duty to ensure that a reasonably safe **FUEL SYSTEM** was used in the **SUBJECT COMPRESSOR ASSEMBLY**. This failure increased the risk of harm to members of the public, including Plaintiffs. To the extent necessary, Plaintiffs invoke the doctrine of voluntary undertaking as set forth in Restatement (Second) of Torts section 323.

E. Damages from All Legal Claims

81. Plaintiffs should be fairly and reasonably compensated for their injuries considering the following elements of damage:

- a. Physical pain suffered in the past;
- b. Physical pain that Troy Craig will, in reasonable probability, sustain in the future;
- c. Mental anguish that Troy Craig, Diana Craig, and Amy Craig suffered in the past;
- d. Mental anguish that Troy Craig, Diana Craig, and Amy Craig will, in reasonable probability, sustain in the future;
- e. Loss of earning capacity sustained in the past;

- f. Loss of earning capacity which, in reasonable probability, Plaintiff will suffer in the future;
- g. Disfigurement suffered in the past;
- h. Disfigurement which Troy Craig will, in reasonable probability suffer in the future;
- i. Physical impairment suffered in the past;
- j. Physical impairment which Troy Craig will, in reasonable probability, sustain in the future;
- k. The reasonable expenses for necessary medical and hospital care which Troy Craig has received for treatment of his injuries;
- l. The reasonable expenses for necessary medical and hospital care which Troy Craig will, in reasonable probability, require for the future treatment of his injuries;
- m. Diana Craig's loss of spousal consortium in the past, and
- n. Diana Craig's loss of spousal consortium in the future.

PLAINTIFFS HEREBY DEMAND TRIAL BY JURY

Dated this 4th day of July, 2020.

DICELLO LEVITT GUTZLER

By: /s/ Christopher D. Stombaugh
Christopher D. Stombaugh
State Bar No: 1022065

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