

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

In re:)
) Chapter 11
BRIGGS & STRATTON)
CORPORATION, *et al.*,) Case No. 20-43597-399
)
Debtors.) (Jointly Administered)
_____)

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY
AS TO JAMES TROY AND ELAINE TROY**

James Troy and Elaine Troy (the “Troys”), by and through undersigned counsel, request the entry of an order pursuant to section 362(d) of Title 11 of the United States Code (the “Bankruptcy Code”) and Rule 4001(a) of the Federal Rules of Bankruptcy Procedures, modifying the automatic stay imposed under 11 U.S.C. § 362(a) in favor of Briggs & Stratton Corporation and certain of its debtor affiliates (collectively, the “Debtors”) so the Troys may pursue their state court personal injury claims against the Debtor solely to the extent of insurance assets. In support of this motion (the “Motion”), the Troys state as follows:

Introduction

1. This Motion is brought pursuant to 11 U.S.C. § 362(d)(1) and (2) on the grounds that there is ample cause to permit the Troys’ state court action to proceed as to available insurance. If the Motion is denied and the automatic stay remains in effect, the Troys will suffer hardship by being unable to pursue their claims for recovery against the Briggs & Stratton Corporation (“B&S”). Moreover, the Troys will only attempt to satisfy their claims against B&S through insurance assets and/or the insurance assets of its predecessors and successors in interest. Cause

exists to modify the automatic stay to allow the Troys to prosecute their claims against B&S in the tort system. The Motion should be granted.

Jurisdiction

2. The Court has jurisdiction over the Debtors' chapter 11 case pursuant to 28 U.S.C. §§ 157 and 1334. The Motion is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue is proper in this jurisdiction pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

3. On July 20, 2020 (the "Petition Date"), the Debtors each commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

4. On August 5, 2020, the Office of the United States Trustee appointed an official committee of unsecured creditors (the "Committee"). No trustee or examiner has been appointed in this chapter 11 case.

5. The Debtors, combined with their non-Debtor affiliates (collectively, the "Company"), are the world's largest producer of gasoline engines for outdoor power equipment and a leading designer, manufacturer and marketer of power generation, pressure washer, lawn and garden, turf care and job site products. The Company's products are marketed and serviced in more than 100 countries on six continents through 40,000 authorized dealers and service organizations.

6. The Troys have filed a products liability lawsuit (the "State Court Action") against a number of entities, one of which is B&S. The State Court action is pending in the Supreme Court

of the State of New York, County of Albany, Index No. 903405-20. A copy of the complaint is attached hereto as Exhibit A.

7. Mr. Troy worked with, came in contact with, or was exposed to, asbestos-containing products while working in various shipyards, steel mills, refineries, paper mills, chemical plants, industrial site and facilities, construction sites and other facilities or was exposed to asbestos-containing products produced by B&S.

8. During the course of his employment and life, Mr. Troy was unavoidably exposed to, inhaled and ingested asbestos fibers and dust contained within and emanating from B&S's asbestos-containing products.

9. As a result of this exposure, Mr. Troy has developed a progressive, debilitating asbestos-related illness, mesothelioma, for which there is no cure and for which death is a certainty.

Relief Requested

10. The Troys seek to modify the automatic stay pursuant to Bankruptcy Code section 362(d) in order to pursue any available insurance policies that defended and indemnified B&S and during the relevant time periods.

Basis for Relief Requested

11. Bankruptcy Code section 362(d)(1) provides that “[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 second, such as by terminating, annulling, modifying, or conditioning such stay . . . for cause” 11 U.S.C. § 362(a)(1). The automatic stay operates as “a bar to all collection efforts against a debtor or debtor’s property in an effort to determine creditors’ rights and allow the orderly administration of a debtor’s assets, free from creditor’s interference.” *In re ContinentalAFA*

Dispensing Co., 403 B.R. 653, 659 (Bankr. E.D. Mo. 2009). In other words, the purpose of the automatic stay is to preserve and protect the debtor's estate, by giving the debtor "a breathing spell from creditors." *Farley v. Henson*, 2 F.3d 273, 275 (8th Cir. 1993).

12. The Troys submit that there is "cause" to lift the automatic stay and proceed with the State Court Action. "Although Congress did not define cause, it intended that the automatic stay could be lifted to allow litigation involving the debtor to continue in a nonbankruptcy forum under certain circumstance." *Blan v. Nachogdoches County Hosp. (In re Blan)*, 237 B.R. 737, 739 (B.A.P. 8th Cir. 1999) (citing H.R. Rep. No. 95-595, at 341 (1977); S. Rep. 95-989, at 50 (1978)) ("It will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from duties that may be handled elsewhere."); *see also Bergman v. Wintroub (In re Wintroub)*, 283 B.R. 743, 745 (B.A.P. 8th Cir. 2002); *Wiley v. Hartzler (In re Wiley)*, 288 B.R. 818, 822 (B.A.P. 8th Cir. 2003).

13. "In making the determination of whether to grant relief from the stay, the court must balance the potential prejudice to the Debtor, to the bankruptcy estate, and to the other creditors against the hardship to the moving party if it is not allowed to proceed in state court." *In re Blan*, 237 B.R. at 739. Although the Eighth Circuit has not imposed a firm standard for determining whether cause exists to lift the automatic stay to permit an action to proceed in another forum, the Bankruptcy Appellate Panel for the Eighth Circuit and other courts in this Circuit have balanced the following five factors when making this assessment:

- i. judicial economy;
- ii. trial readiness;
- iii. resolution of preliminary bankruptcy issues;

- iv. the movant's chance of success on the merits; and
- v. the cost of defense or other potential burden to the bankruptcy estate and the impact of the litigation on other creditors.

See, In re Blan, 237 B.R. at 739; *In re Wiley*, 288 B.R. at 822; *In re Wintroub*, 283 B.R. at 745; *Bee Jay's Hairstyling Acad., Inc. v. Yarbrough*, 540 B.R. 647, 662 (Bankr. E.D. Ark. 2015).

14. A balancing of the above-referenced factors weighs in favor of granting the Troys relief from the automatic stay to continue the State Court Action.

15. Allowing prosecution of the State Court Action will not place a burden on the B&S estate or on the assets available for distribution to creditors, as the Troys seek only to recover amounts from available insurance coverage. Thus, the Troys' suit, if successful, will not create a liability for the Debtors' estates and will not deplete assets that would be available for distribution to other creditors.

16. Moreover, the interests of judicial economy will be served as the litigation in the State Court Action has been before the New York court since March of 2020, and that court is better suited to deal with the issues surrounding the State Court Action, while not burdening the Court.

17. Finally, the Troys are likely to prevail in the State Court Action. The showing that is required as to the probability of success on the merits is very slight. *See, In re Rexene Products Co.*, 141 B.R. 574, 578 (Bankr. D. Del. 1992), (citing *In re Peterson*, 116 B.R. 247, 249 (D. Colo. 1990). "[A]ll that is required is a 'vague initial showing that]the party seeking relief] can establish a prima facie case.'" *Peterson*, 116 B.R. at 249. The Troys can make such a showing here: Mr. Troy was exposed to asbestos-containing products and materials supplied by B&S during the course of his work and life.

WHEREFORE, The Troys request the entry of an order, pursuant to 11 U.S.C. § 362(d) and Bankruptcy Rule 4001(a)(1): (1) modifying the automatic stay to permit the Troys to prosecute the State Court Action and recovery on any judgment or settlement solely to the extent of any available insurance coverage; (2) waiving the 14-day period imposed by Bankruptcy Rule 4001(a)(3); and (3) granting such other and further relief as this Court deems just and proper.

Dated: October 7, 2020
Wilmington, Delaware

ROBINSON & COLE LLP

/s/ Jamie L. Edmonson
Jamie L. Edmonson (*admitted pro hac vice*)
1201 N. Market Street, Suite 1406
Wilmington, Delaware 19801
Telephone: (302) 516-1700
Facsimile: (302) 516-1699
Email: jedmonson@rc.com

Counsel to James Troy and Elaine Troy

Exhibit A

(State Court Action)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

JAMES TROY and ELAINE TROY,

Index No.:

Plaintiffs,

Date Filed:

v.

Plaintiff designates

ALBANY

AK STEEL CORPORATION, et al.,

County as the place of trial

Defendants.

The basis of the venue is

**DEFENDANTS' PLACE OF
BUSINESS**

See Attached Rider - FULL CAPTION

SUMMONS**TO THE ABOVE NAMED DEFENDANTS:**

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on the Plaintiff's Attorney within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York). In the case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
March 19, 2020

Yours etc.,

BELLUCK & FOX, LLP*Attorneys for Plaintiff*546 Fifth Avenue, 5th Floor
New York, New York 10036
(212) 681-1575By: 

Joseph W. Belluck, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

JAMES TROY and ELAINE TROY,

Index No.:

Plaintiffs,

FULL CAPTION RIDER

- against -

AK STEEL CORPORATION;
ALAN MRO SUPPLY INC. f/k/a Sager Spuck
Statewide Supply Co. Inc.;
AMERICAN HONDA MOTOR CO., INC.;
AMERICAN PREMIER UNDERWRITERS, INC.
f/k/a The Penn Central Corporation;
BIRD INCORPORATED f/k/a Bird & Son, Inc.;
BRIGGS & STRATTON CORPORATION;
CONSOLIDATED RAIL CORPORATION;
CSX CORPORATION;
DAP, INC. k/n/a La Mirada Products Co., Inc.;
FERRO ENGINEERING DIVISION, A Division of
Oglebay Norton Company;
FOSECO, INC.;
GREENE, TWEED & CO., INC., Individually and as
Successor to Palmetto Packings;
HB FULLER;
HONEYWELL INTERNATIONAL, INC.,
Individually and f/k/a Alliedsignal, Inc., and as
Successor-in-interest to the Bendix Corp.;
HOMASOTE COMPANY, INC.;
HUSQVARNA PROFESSIONAL PRODUCTS, INC.;
HUSQVARNA PROFESSIONAL PRODUCTS, INC.,
Individually and as Successor-in-Interest to
McCulloch Motors Corporation;
KAISER GYPSUM COMPANY, INC.;
KOHLER CO.;
KOPPERS COMPANY, INC.;
KOPPERS INDUSTRIES, INC.;
METROPOLITAN LIFE INSURANCE CO.;
MORSE TEC LLC, f/k/a BORGWARNER MORSE
TEC LLC and Successor-by-Merger to Borg-
Warner Corporation;
NORFOLK SOUTHERN CORPORATION;
OGLEBAY NORTON COMPANY, Individually and
as Successor-in-Interest to Ferro Engineering
and Carmeuse Lime, Inc.;
SAGER-SPUCK SUPPLY CO., INC.;

SHERIDAN SUPPLY CORPORATION;
SYRACUSE SUPPLY COMPANY;
TECUMSEH PRODUCTS COMPANY;
TORO COMPANY (THE);
TROY BELTING AND SUPPLY COMPANY;
UNION CARBIDE CORPORATION;
WHITING CORPORATION.

Defendants.

Defendants' addresses:**JAMES TROY'S DEFENDANT ADDRESS LIST****DEFENDANTS****AK STEEL CORPORATION**

703 Curtis Street
Middletown, Ohio 45043

ALAN MRO SUPPLY INC. f/k/a Sager Spuck Statewide Supply Co. Inc.

438 South Pearl Street
Albany, New York 12201-0918

AMERICAN HONDA MOTOR CO., INC.

1919 Torrance Blvd
Ms 100-2w-4b
Torrance, California 90501

AMERICAN PREMIER UNDERWRITERS, INC. f/k/a The Penn Central Corporation

1 East 4th Street, 8th Floor
Cincinnati, Ohio 45202

BIRD INCORPORATED f/k/a Bird & Son, Inc.

Martin Ellis
750 East Swedesford Road
Valley Forge, Pennsylvania 19482

BRIGGS & STRATTON CORPORATION

P.O. Box 702
Milwaukee, Wisconsin 53201

CONSOLIDATED RAIL CORPORATION

2001 Market Street, 16-C
Philadelphia, Pennsylvania 19101

CSX CORPORATION

500 Waters Street, 15th Floor
Jacksonville, Florida 32202

SERVICE

c/o Corporation Service Company
251 Little Falls Drive
Wilmington, Delaware 19808

c/o Secretary of State
Albany, New York 12207

c/o Corporate Trust Systems
28 Liberty Street
New York, New York

c/o Corporate Trust Systems
28 Liberty Street
New York, New York

c/o Corporate Trust Systems
28 Liberty Street
New York, New York

DIRECT

-AND-

12301 West Wirth Street
Wauwatosa, Wisconsin 53222

c/o Corporation Service Co.
80 State Street
Albany, New York 12207

DIRECT

DEFENDANTS

DAP, INC. k/n/a La Mirada Products Co., Inc.
2400 Boston Street, Suite 200
Baltimore, Maryland 21224

SERVICE

DIRECT

**FERRO ENGINEERING DIVISION, A Division of Oglebay
Norton Company**
National Registered Agents, Inc.
4400 Easton Commons Way, Suite 125
Columbus, OH 43219

DIRECT

FOSECO, INC.
321 East Bay Street, Ste 100
Charleston, South Carolina 29401

c/o Corporate Trust Systems
28 Liberty Street
New York, New York

**GREENE, TWEED & CO., INC., Individually and as
Successor to Palmetto Packings**
2075 Detwiler Road
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DIRECT – CERTIFIED MAIL RRR
c/o Greene, Tweed NC, LLC
227 West Trade Street, Suite 2170
Charlotte, NC 28202

HB FULLER
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St. Paul, Minnesota 55110

c/o Corporate Trust Systems
28 Liberty Street
New York, New York

**HONEYWELL INTERNATIONAL, INC., Individually and
f/k/a Alliedsignal, Inc., and as Successor-in-interest to the
Bendix Corp.**
115 Tabor Road
Morris Plains, New Jersey 07950

c/o Corporation Service Company
80 State Street
Albany, New York 12207-2543

HOMASOTE COMPANY, INC.
932 Lower Ferry Road
West Trenton, New Jersey 08628

DIRECT

HUSQVARNA PROFESSIONAL PRODUCTS, INC.
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122 East 42nd Street, 18th Floor
New York, New York 10168

c/o Secretary of State
Albany, New York 12207

**HUSQVARNA PROFESSIONAL PRODUCTS, INC.,
Individually and as Successor-in-Interest to McCulloch
Motors Corporation**
c/o Cogency Global, Inc.
122 East 42nd Street, 18th Floor
New York, New York 10168

c/o Secretary of State
Albany, New York 12207

DEFENDANTS

INGERSOLL-RAND COMPANY
200 Chestnut Ridge Road
Woodcliff Lake, New Jersey 07675

KAISER GYPSUM COMPANY, INC.
Corporation Service Company
2626 Glenwood Avenue, Suite 550
Raleigh, NC 27608

KOHLER CO.
Herbert V. Kohler, Jr.
444 Highland Drive
Kohler, Wisconsin 53044

KOPPERS COMPANY, INC.
c/o Jill M. Blundon – Beazer East, Inc.
Three Rivers Management Inc.
600 River Avenue #200
Pittsburgh, Pennsylvania
Attn: Mary Wright

KOPPERS INDUSTRIES, INC.,
436 Seventh Avenue
Pittsburgh, Pennsylvania 15219

METROPOLITAN LIFE INSURANCE CO.
200 Park Avenue
New York, New York 10166

**MORSE TEC LLC, f/k/a BORGWARNER MORSE TEC
LLC and Successor-by-Merger to Borg-Warner Corporation**
3850 Hamlin Road
Auburn Hills, Michigan 48326

NORFOLK SOUTHERN CORPORATION
Three Commerical Place
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DIRECT

DIRECT
Marc S. Gaffrey, Esq.
Hoagland Longo Moran Dunst & Doukas
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New Brunswick, New Jersey 08903

DIRECT
Three Rivers Management Inc.,
600 River Avenue #200
Pittsburgh, Pennsylvania
Attn: Mary Wright

c/o Corporation Service Company
80 State Street
Albany, New York 12207-2543

DIRECT

c/o The Corporation Trust Company
1209 North Orange Street
Wilmington, Delaware 19801

DIRECT

DEFENDANTS

**OGLEBAY NORTON COMPANY, Individually and as
Successor-in-Interest to Ferro Engineering and Carmeuse
Lime, Inc.**

National Registered Agents, Inc.
145 Baker Street
Marion, Ohio 43302

SAGER-SPUCK SUPPLY CO., INC.

438 South Pearl Street
Albany, New York 12201-0918

SHERIDAN SUPPLY CORPORATION

124-126 Sheridan Avenue
Albany, New York 12210

SYRACUSE SUPPLY COMPANY

5921 Court Street Road
Syracuse, New York 12306

TECUMSEH PRODUCTS COMPANY

100 East Patterson Street
Tecumseh, Michigan 49286

TORO COMPANY (THE)

8111 Lyndale Avenue South
Bloomington, Minnesota 55420

TROY BELTING AND SUPPLY COMPANY

70 Cohoes Road
Watervliet, New York 12189

UNION CARBIDE CORPORATION

WHITING CORPORATION

26000 Whiting Way
Monee, Illinois 60449

SERVICE

DIRECT

c/o Secretary of State
Albany, New York 12207

c/o Secretary of State
Albany, New York 12207

c/o Secretary of State
Albany, New York 12207

DIRECT

DIRECT

c/o Secretary of State
Albany, New York 12207

c/o Corporate Trust Systems
28 Liberty Street
New York, New York

DIRECT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

JAMES TROY and ELAINE TROY,

Index No.:

Plaintiffs,

VERIFIED COMPLAINT

- against -

AK STEEL CORPORATION;
ALAN MRO SUPPLY INC. f/k/a Sager Spuck
Statewide Supply Co. Inc.;
AMERICAN HONDA MOTOR CO., INC.;
AMERICAN PREMIER UNDERWRITERS, INC.
f/k/a The Penn Central Corporation;
BIRD INCORPORATED f/k/a Bird & Son, Inc.;
BRIGGS & STRATTON CORPORATION;
CONSOLIDATED RAIL CORPORATION;
CSX CORPORATION;
DAP, INC. k/n/a La Mirada Products Co., Inc.;
FERRO ENGINEERING DIVISION, A Division of
Oglebay Norton Company;
FOSECO, INC.;
GREENE, TWEED & CO., INC., Individually and as
Successor to Palmetto Packings;
HB FULLER;
HONEYWELL INTERNATIONAL, INC.,
Individually and f/k/a Alliedsignal, Inc., and as
Successor-in-interest to the Bendix Corp.;
HOMASOTE COMPANY, INC.;
HUSQVARNA PROFESSIONAL PRODUCTS, INC.;
HUSQVARNA PROFESSIONAL PRODUCTS, INC.,
Individually and as Successor-in-Interest to
McCulloch Motors Corporation;
KAISER GYPSUM COMPANY, INC.;
KOHLER CO.;
KOPPERS COMPANY, INC.;
KOPPERS INDUSTRIES, INC.;
METROPOLITAN LIFE INSURANCE CO.;
MORSE TEC LLC, f/k/a BORGWARNER MORSE
TEC LLC and Successor-by-Merger to Borg-
Warner Corporation;
NORFOLK SOUTHERN CORPORATION;
OGLEBAY NORTON COMPANY, Individually and
as Successor-in-Interest to Ferro Engineering
and Carmeuse Lime, Inc.;
SAGER-SPUCK SUPPLY CO., INC.;

SHERIDAN SUPPLY CORPORATION;
SYRACUSE SUPPLY COMPANY;
TECUMSEH PRODUCTS COMPANY;
TORO COMPANY (THE);
TROY BELTING AND SUPPLY COMPANY;
UNION CARBIDE CORPORATION;
WHITING CORPORATION.

Defendants.

Plaintiffs by their attorneys, BELLUCK & FOX LLP, upon information and belief, at all times hereinafter mentioned allege as follows:

THE PARTIES

1. Plaintiffs are residents of the State of New York unless otherwise specified in individual complaints.

2. Plaintiffs allege that plaintiff, JAMES TROY has been diagnosed with Mesothelioma as a result of his exposure to asbestos.

3. At this time, Plaintiffs are alleging that there is no Post 1980 exposure.

4. The term "Defendants" shall apply to all corporate and business entities, and/or their predecessors and/or successors in interest as more fully described and enumerated in the captions of individual complaints subsequently filed in the "short form" in accordance with the applicable case management order of this Court.

5. The Defendants have done business in this State, have conducted or transacted business in this State, have committed one or more tortious acts within this state, or have otherwise performed acts within and/or without this State giving rise to injuries and losses within this State, which acts subject each Defendant to the jurisdiction of the Courts of this State.

6. Defendant **AK STEEL CORPORATION** was and is a duly organized foreign and/or domestic corporation doing business and/or transacting business in the State of New York

and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

7. Defendant **ALAN MRO SUPPLY INC. f/k/a Sager Spuck Statewide Supply Co., Inc.** was and is a duly organized domestic corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

8. Defendant **AMERICAN HONDA MOTOR CO., INC.** was and is a duly organized foreign corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

9. Defendant **AMERICAN PREMIER UNDERWRITERS, INC., f/k/a The Penn Central Corporation** was and is a duly organized foreign and/or domestic corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

10. Defendant **BIRD INCORPORATED f/k/a Bird & Son, Inc.** was and is a duly organized foreign corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

11. Defendant **BRIGGS & STRATTION CORPORATION** was and is a duly organized foreign and/or domestic corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

12. Defendant **CONSOLIDATED RAIL CORPORATION** was and is a duly organized foreign and/or domestic corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

13. Defendant **CSX CORPORATION** was and is a duly organized foreign and/or domestic corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

14. Defendant **DAP, INC. k/n/a La Mirada Products Co., Inc.** was and is a duly organized foreign corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

15. Defendant **FERRO ENGINEERING DIVISION, A Division of Oglebay Norton Company** was and is a duly organized foreign and/or domestic corporation doing business and/or transacting business in the State of New York and/or should have expected its

acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

16. Defendant **FOSECO, INC.** was and is a duly organized foreign and/or domestic corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

17. Defendant **GREENE, TWEED & CO., INC., Individually and as Successor to Palmetto Packings** was and is a duly organized foreign corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

18. Defendant **HB FULLER** was and is a duly organized foreign corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

19. Defendant **HONEYWELL INTERNATIONAL, INC., Individually and f/k/a AlliedSignal, Inc., and as Successor-in-Interest to the Bendix Corp.** was and is a duly organized foreign corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

20. Defendant **HOMASOTE COMPANY, INC.** was and is a duly organized foreign and/or domestic corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

21. Defendant **HUSQVARNA PROFESSIONAL PRODUCTS, INC.** was and is a duly organized foreign and/or domestic corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

22. Defendant **HUSQVARNA PROFESSIONAL PRODUCTS, INC., Individually and as Successor-in-Interest to McCulloch Motors Corporation** was and is a duly organized foreign and/or domestic corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

23. Defendant **KAISER GYPSUM COMPANY, INC.** was and is a duly organized foreign corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

24. Defendant **KOHLER CO.** was and is a duly organized foreign corporation doing business and/or transacting business in the State of New York and/or should have expected its

acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

25. Defendant **KOPPERS COMPANY, INC.** was and is a duly organized foreign corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

26. Defendant **KOPPERS INDUSTRIES, INC.** was and is a duly organized foreign corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

27. Defendant **METROPOLITAN LIFE INSURANCE COMPANY** was and is a duly organized foreign and/or domestic corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York.

28. Defendant **MORSE TEC LLC, f/k/a BORGWARNER MORSE TEC LLC and Successor-by-Merger to Borg-Warner Corporation** was and is a duly organized foreign corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

29. Defendant **NORFOLK SOUTHERN CORPORATION** was and is a duly organized foreign and/or domestic corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

30. Defendant **OGLEBAY NORTON COMPANY, Individually and as Successor-in-Interest to Ferro Engineering and Carmeuse Lime, Inc.** was and is a duly organized foreign and/or domestic corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

31. Defendant **SAGER-SPUCK SUPPLY CO., INC.** was and is a duly organized domestic corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

32. Defendant **SHERIDAN SUPPLY CORPORATION** was and is a duly organized domestic corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

33. Defendant **SYRACUSE SUPPLY COMPANY** was and is a duly organized domestic corporation doing business and/or transacting business in the State of New York and/or

should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

34. Defendant **TECUMSEH PRODUCTS COMPANY** was and is a duly organized foreign and/or domestic corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

35. Defendant **TORO COMPANY (THE)** was and is a duly organized foreign and/or domestic corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

36. Defendant **TROY BELTING AND SUPPLY COMPANY** was and is a duly organized domestic corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

37. Defendant **UNION CARBIDE CORPORATION** was and is a duly organized domestic corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

38. Defendant **WHITING CORPORATION** was and is a duly organized foreign and/or domestic corporation doing business and/or transacting business in the State of New York and/or should have expected its acts to have consequences within the State of New York. At all times relevant, it has engaged in the sale and distribution of materials and products containing the substance asbestos.

39. Defendant "JOHN DOE" #1 is a contractor, supplier, distributor and/or manufacturer of asbestos products and machinery and equipment including the installation and/or use of asbestos-containing products each of whom maintained a presence at the work sites and/or other facilities, structures and/or edifices where the Plaintiff was exposed to or used several asbestos products, materials, and equipment and machinery.

40. The Defendants have done business in this State, have conducted or transacted business in this State, have committed one or more tortious acts within this state, or have otherwise performed acts within and/or without this State giving rise to injuries and losses within this State, which acts subject each Defendant to the jurisdiction of the Courts of this State.

41. The actions and conduct of the Defendants as more fully described below were carried out through their respective offices, by authorized agents, servants and employees, who were acting in the course and scope of their employment and authority, and in furtherance of the business and profit of the Defendants.

42. Each Defendant, with the exception of the **METROPOLITAN LIFE INSURANCE COMPANY** has been engaged in the mining, production, processing, design, manufacture, marketing, supply, delivery, distribution, installation, use, purchase, removal and/or sale of raw asbestos fibers of various kinds and grades, asbestos-containing products,

and/or machinery and equipment requiring or calling for the use of asbestos and/or asbestos-containing products (hereinafter collectively referred to as Asbestos products).

43. Plaintiff, worked with, came in contact with, or was exposed to, asbestos products while working in various shipyards, steel mills, refineries, paper mills, chemical plants, industrial sites and facilities, construction sites and other facilities or was exposed to the defendants' products through the normal use of these products.

44. During the course of his employment, the Plaintiff was exposed on numerous occasions to asbestos products which were mined, produced, processed, designed, manufactured, marketed, supplied, delivered, distributed, installed, used, purchased, removed or sold by the Defendants.

45. During the course, and in furtherance of, his employment and life, the Plaintiff was unavoidably exposed to, inhaled and ingested asbestos fibers and dust contained within and emanating from the Defendants' asbestos products.

46. As a direct and proximate result of his unavoidable exposure to, and resultant inhalation and ingestion of, asbestos fibers and dust as contained within and emanating from the Defendants' asbestos products, Plaintiff has/did develop(ed) a progressive, debilitating asbestos-related illness/disease and/or risk of death.

47. Plaintiff alleges that each and every exposure to Defendants' asbestos products caused or contributed to his injuries, such that the Defendants are jointly and severally liable to the Plaintiff for the resultant asbestos-related illness/disease and/or risk of death alleged herein.

AS AND FOR A FIRST CAUSE OF ACTION SOUNDING IN NEGLIGENCE

48. Plaintiff repeats and reiterates the prior allegations of this complaint as if alleged more fully below:

49. Defendants knew, or with reasonable diligence should have known and/or ascertained, that their asbestos products were inherently dangerous and hazardous to the health and well-being of those using, exposed to or coming in contact with Defendants' asbestos products.

50. Defendants knew, or with reasonable diligence should have known and/or ascertained, that the reasonable and anticipated use of, exposure to or contact with their asbestos products would cause the release of asbestos fibers and dust into the ambient air, creating danger and unreasonable risk of injury and harm to those breathing the air contaminated with such asbestos fibers and dust.

51. Defendants knew, or with reasonable diligence should have known and/or ascertained, that the Plaintiff would use or come into contact with Defendants' asbestos products and in so doing, would become exposed to and inhale and ingest the asbestos fibers and dust in the ambient air as they were discharged and released from the Defendants' products in the course of ordinary and foreseeable contact, application and use of those products.

52. Defendants knew, or with reasonable diligence should have known and/or ascertained that the Plaintiff used, came into contact with, and was exposed to Defendants' asbestos products and the fibers and dust emanating from and released by those products without any knowledge of the dangers and potential risk of harm to which he was being exposed.

53. Despite knowledge of the unsafe and dangerous nature and properties of their respective asbestos products, the Defendants willfully, recklessly and negligently:

(a) failed to warn the public at large, and more particularly this Plaintiff, of the dangers and hazards associated with or caused by the use of, exposure to or contact with

Defendants' asbestos products resulting from the ordinary, anticipated and foreseeable use of Defendants' asbestos products;

(b) failed to study, investigate and/or properly test their asbestos products for both potential and actual hazards associated with the use of, exposure to and contact with Defendants' asbestos products, when such products were used in a reasonably foreseeable and anticipated manner;

(c) failed to communicate or convey their suspicions and knowledge with respect to potential or actual dangers and health hazards associated with the use of, exposure to or contact with Defendants' asbestos products resulting in inhalation and ingestion of asbestos fibers and dust to the users and consumers of the Defendants' asbestos products;

(d) failed to design or redesign Defendants' asbestos products to prevent, impede or minimize the release of airborne inhalable and ingestible asbestos fibers and dust;

(e) failed to properly design and manufacture Defendants' asbestos products to insure safe use and handling by users and consumers under conditions that were reasonably anticipated and foreseeable;

(f) failed to advise the public at large, and more particularly this Plaintiff, of the necessity for protective garments, safety equipment and appliances to protect the user/consumer from harm caused by inhalation and ingestion of asbestos fibers and dust released by, and associated with, the ordinary and foreseeable use of, and contact with, Defendants' asbestos products;

(g) failed to institute, adopt or enforce appropriate safety protocols for handling and use of asbestos products to individuals working with, utilizing, handling or otherwise coming into contact with Defendants' asbestos products;

(h) failed to adequately package their respective asbestos products in a manner which would insure safe handling and use by those individuals, including this Plaintiff, who the Defendants' knew or should have reasonably anticipated would be exposed to asbestos fibers and dust released by and associated with the ordinary and foreseeable use of Defendants' asbestos products;

(i) failed to remove their asbestos products from the stream of commerce despite knowledge of the unsafe and dangerous nature of those products;

(j) continued to mine, produce, process, design, manufacture, market, supply, deliver, distribute, install, use, purchase, remove and sell asbestos products for general application and purposes without any alteration or change, despite the potential and known health hazards and dangers posed to the foreseeable and anticipated user and consumer of those products;

(k) failed to timely develop and utilize substitute materials for asbestos in their asbestos products;

(l) failed to design or redesign asbestos-containing products to prevent, impede or minimize the release of airborne inhalable and ingestible asbestos fibers and dust; and,

(m) failed to recall and/or issue a post-sale warning for their asbestos products.

54. The continued mining, production, processing, design, manufacture, marketing, distribution, supply, use, purchase, installation, removal, delivery, and sale by the Defendants' of their respective asbestos products under the circumstances and conditions enumerated above, demonstrates the callous, reckless, willful, depraved and wanton indifference to and disregard of the health, safety and welfare of the public at large, and more particularly, this Plaintiff.

55. As a result of the Defendants' negligence and recklessness, the Plaintiff unwittingly and unavoidably inhaled and ingested asbestos fibers and dust, resulting in the development of his asbestos related disease and illness; Plaintiff has been caused to endure severe physical pain and suffering and mental anguish; has been placed at increased risk for developing other serious bodily injuries; has expended sums of money for medical care, treatment and monitoring related to his asbestos exposure, inhalation and ingestion; will be required to expend additional monies for medical care, treatment and monitoring in the future; has been prevented from pursuing his normal activities and employment; has been deprived of his ordinary pursuits and enjoyment of life; has suffered pecuniary losses; and has otherwise been damaged.

56. The illnesses and disabilities of the Plaintiff are a direct and proximate result of the negligence and carelessness of the Defendants, and their demonstrated wanton and reckless disregard for his safety and well-being.

**AS AND FOR A SECOND CAUSE OF ACTION SOUNDING IN
BREACH OF WARRANTY**

57. Plaintiff repeats and reiterates the prior allegations of this complaint as if alleged more fully below:

58. The Defendants expressly and impliedly warranted that their asbestos products were of good and merchantable quality and fit for their intended uses and purposes.

59. The express and implied warranties made by these Defendants were false, misleading and consequently breached since these products were unreasonably dangerous, defective, hazardous and harmful when used, applied or installed in the manner, and for the purposes, intended.

60. As a direct and proximate result of Defendants' breached warranties the Plaintiff used, came into contact with and was exposed to Defendants' asbestos products, causing him to unknowingly and unwittingly inhale and ingest asbestos fibers and dust resulting from the ordinary and foreseeable use of those products.

61. By virtue of the breach of the express and implied warranties of good and merchantable quality and fitness for particular use, the Plaintiff developed an asbestos-related disease, has suffered great pain and suffering and mental anguish, and has been otherwise damaged.

AS AND FOR A THIRD CAUSE OF ACTION SOUNDING IN STRICT LIABILITY

62. Plaintiff repeats and reiterates the prior allegations of this complaint as if alleged more fully below:

63. The Defendants sold or otherwise placed their asbestos products into the stream of commerce in a defective, unsafe and unreasonably dangerous condition.

64. The Defendants knew or otherwise expected that their asbestos products would reach the ultimate user/consumer of their asbestos products, including this Plaintiff, without substantial change from, or alteration of, the condition in which these products were originally manufactured and sold.

65. The Defendants knew, or in the exercise of reasonable diligence, should have ascertained that the Plaintiffs and others similarly situated would be the ultimate users/consumers of Defendants' asbestos products or would be exposed to their asbestos products.

66. Defendants knew that their asbestos products would be used without inspection for defects and, by placing them in the marketplace, represented to the public at large and more

particularly this Plaintiff that these products could be utilized safely, in the manner, and for the purpose for which they were intended.

67. Defendants knew that their asbestos products were defective and were incapable of being made safe for their ordinary and intended uses and purposes and that these defects were not discoverable by the Plaintiff, or others similarly situated, in the exercise of reasonable care nor were the dangers and hazards of these products perceivable to the Plaintiff and others similarly situated such that he might otherwise have averted his injury by the exercise of reasonable care.

68. In light of the above, the ordinary and foreseeable use of Defendants' asbestos products constituted a dangerous and hazardous activity and placed the ultimate user/consumer, and this Plaintiff more particularly, at an unreasonable risk of harm and injury by contaminating the atmosphere in which the Plaintiff carried out his work related duties.

69. The risks and dangers created by the use of Defendants' products outweighed the utility of these products.

70. As a consequence of the defects of Defendants' products and the Plaintiff's resultant inhalation and/or ingestion of asbestos fibers and dust resulting from the ordinary and foreseeable use of those asbestos products, Plaintiff has sustained serious and permanent injuries as more fully described herein.

71. The Defendants, by virtue of the foregoing, are strictly liable to the Plaintiff for injuries and illnesses resulting from the defects and dangerous propensities of their asbestos products alleged herein.

AS AND FOR A FOURTH CAUSE OF ACTION LABOR LAW VIOLATIONS

72. Plaintiff repeats and reiterates the prior allegations of this complaint as if alleged more fully below:

73. Defendants, their subsidiaries, agents and/or servants were/are owners, possessors, lessors, lessees' operator, controllers, managers, supervisors, general contractors, subcontractors, architects, engineers or were otherwise responsible for the maintenance, control and/or safety at the premises on which plaintiff was lawfully frequenting and exposed to asbestos.

74. Defendants, their subsidiaries, agents and/or servants had a legal duty to maintain and keep those premises in a safe and proper condition.

75. At all times relevant hereto, plaintiff was lawfully frequenting the premises on which plaintiff was exposed to asbestos.

76. At all times relevant hereto, plaintiff's presence on the premises on which plaintiff was exposed to asbestos was known or knowable to the defendants.

77. Defendants, their subsidiaries, agents, and/or servants negligently created, caused and/or permitted to exist, an unsafe, hazardous and/or dangerous condition to exist by specifying, using and/or permitted the presence of asbestos and/or asbestos containing products, equipment and/or fixtures at the premises on which plaintiff was exposed to asbestos.

78. Defendants, their subsidiaries, agents, and/or servants negligently permitted a defective, hazardous and/or dangerous condition to remain uncorrected and/or unchanged at the premises on which the plaintiff was present and exposed to asbestos.

79. Defendants, their subsidiaries, agents, and/or servants knew, or should have known, of the existence of the unsafe, hazardous and/ or dangerous condition and failed to correct this dangerous condition.

80. Defendants, their subsidiaries, agents, and/or servants knew, or should have known of the existence of unsafe, hazardous and/or dangerous condition and failed to warn the plaintiff of the existence of the dangerous condition and/or provide the plaintiff the means to protect himself from the dangerous condition

81. Defendants, their subsidiaries, agents, and/or servants were negligent in that they violated the common law duty to maintain a safe work place for individuals, such as plaintiff, who were working in, lawfully frequenting and exposed to asbestos on premises owned, maintained and/or controlled by them.

82. Defendants, their subsidiaries, agents, and/or servants violated New York Labor law section 200 et seq: including, but not limited to, section 200 and 241(6) and the New York Industrial Code 12NYCR section 12 and 23 by their failure to provide a safe workplace, including, but not limited to, failure to make reasonable inspection to detect dangerous conditions and hidden defects and to warn of dangers of which they knew or should have known, and by their failure to provide reasonable and adequate protection for individuals, such as plaintiff, who was lawfully at a construction site owned, maintained and/or controlled by them.

Inter alia:

- (a) Defendants, their subsidiaries, agents, and/or servants violated the New York State Industrial Code Section 12, and 14, which states that:
 - i) All operators or processes which produce air contaminants shall be so conducted that the generation, release or dissemination of such

contaminants is kept at the lowest practicable level in compliance with this Part (rule). Using proper control of protective procedure and equipment.

- ii) (1) Every employer shall effect compliance with the provision of this Part (rule) relating to the prevention and removal of air contaminants, the storage and use of flammable liquids and the provision, installation, operation and maintenance of control or protective equipment.

(2) Every employer shall instruct his employees as to the hazards of their work, the use of the protective equipment and their responsibility for complying with Provision of this Part (rule).

(3) No employee shall suffer or permit an employee to work in a room in which there exist dangerous air contaminants in a work atmosphere.

(4) No employee shall suffer or permit dangerous air contaminants to accumulate remain in any place or area subject to the provision of this Part (rule) (b).

- (b) Defendants, their subsidiaries, agents, and/or servants violated New York State Industrial Code Section 12, and 15, which states that:

- i) Personal respiratory equipment shall not be used in lieu of other control methods, except for protection of employees' emergencies and in the repair, maintenance or adjustment or equipment or processes, or upon specific approval by the board.

- (c) Defendants, their subsidiaries, agents, and/or servants violated New York States Industrial Code Section 12, subsection 1.9 (formerly section 12.9) which states that:
- i) One or more of the following methods shall be used to prevent, remove or control dangerous air contaminants:
- (1) Substitution of a material of a method which does not produce dangerous air contaminants.
 - (2) Local exhaust ventilation conforming on the requirements of Industrial Code Part (Rule No.) 18.
 - (3) Dilution Ventilation.
 - (4) Application of water or other wetting agent.
 - (5) Other methods approved by the board.
- (d) As evidence of defendants' their subsidiaries', agents' and/or servants violation of the abovementioned section of the New York Stated Industrial Code, defendants, their subsidiaries, agents, and/or servants permitted asbestos dust concentrations above the 5mppcf threshold limit value specified in section 12, subsection 3.1, without providing the requires reasonable and adequate protective measures, thereby rendering the premises unsafe.
- (e) Defendants, their subsidiaries, agents, and/or servants violated section 23 3(d) of the New York Industrial Code which state that:

(f) Provision shall be made at every demolition site control the amount of airborne dust resulting from demolition by wetting the debris and other materials with the appropriate spraying agents or other means.

83. Defendants, their subsidiaries, agents, and/or servants negligently designed and/or specified the use of asbestos containing products, equipment and/ or fixtures at the premises on which plaintiff was lawfully frequenting and exposed to asbestos.

84. Defendants, their subsidiaries, agents, and/or servants negligently breached their contractual duty to the plaintiff, third party beneficiary, to provide for the health, welfare and/ or safety of those, such as plaintiff, lawfully frequenting the premises on which plaintiff was exposed to asbestos.

85. Defendants, their subsidiaries, agents, and/or servants, breached their warranty to provide for the health, welfare, and/or safety of those such as plaintiff, lawfully frequenting the premises on which plaintiff was exposed to asbestos.

86. Defendants, their subsidiaries, agents, and/or servants breached the duty imposed on possessors of land, contractors and subcontractors and codified in the restatement of the law, Second, Torts, including, but not limited to, section 342, 410, 411, 412, 413, 414, 414A, 416, 422 and 427.

87. These acts and/ or omissions of the defendants constitute willful misconduct and conscience disregard of the health of the public, including the plaintiff.

88. As a direct and proximate result of the defendant's conduct plaintiff was exposed to asbestos and asbestos containing products and sustained serious injuries and described above.

89. Plaintiff was seriously injured.

90. Plaintiff further alleges that the defendants, their subsidiaries, agents, and/or servants violated the New York State Industrial Code 23 1.7 (g) and its predecessor, which states:

"Air-contaminated or oxygen deficient work areas. The atmosphere of any unventilated confined area including but not limited to a sewer, pit, tank or chimney where dangerous air contaminants may be present or where there may not be sufficient oxygen to support life shall be tested by the employer, his authorized agent or by a designated person before any person is suffered or permitted to work in such area. Such testing shall be in accordance with the provisions of Industrial Code Part (rule) 12 relating to the "Control of Air Contaminants" and such areas shall be subject to the other pertinent provisions of Industrial Code Part (rule) 12 and of Industrial Code Part (rule) 18 relating to "Exhaust Systems".

**AS AND FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANT
METROPOLITAN LIFE INSURANCE COMPANY**

91. Plaintiff repeats and reiterates the prior allegations of this complaint as if alleged more fully below:

92. Defendant **METROPOLITAN LIFE INSURANCE COMPANY** through its Policyholders Service Bureau undertook duties owed by the Defendants to the Plaintiff by testing asbestos workers and conducting scientific studies related to asbestos exposure.

93. In undertaking these duties, the Defendant **METROPOLITAN LIFE INSURANCE COMPANY** knew, or in the exercise of reasonable diligence should have known, that it was providing testing service for the ultimate protection of third parties, including the Plaintiff.

94. In both conducting said tests and in publishing the alleged results thereof the Defendant **METROPOLITAN LIFE INSURANCE COMPANY** failed to exercise reasonable care to conduct or publish timely complete, adequate and accurate tests concerning health effects of asbestos exposure.

95. The Defendant **METROPOLITAN LIFE INSURANCE COMPANY** also caused to be published intentionally false, misleading, inaccurate and deceptive information about the adverse health effects of asbestos exposure.

96. The Plaintiff unwittingly but justifiably relied upon the purported thoroughness of the tests and information disseminated by the Defendant **METROPOLITAN LIFE INSURANCE COMPANY**, which published these test results and information in a leading medical journal.

97. As a direct and proximate result of the failures on the part of this Defendant in conducting tests and publishing results thereof which were false, misleading, inaccurate, deceptive and untruthful, the Defendant **METROPOLITAN LIFE INSURANCE COMPANY** caused, encouraged and promoted the Plaintiff's asbestos exposure and caused and/or contributed to the injuries sustained by the Plaintiff as more fully described herein.

98. By reason of the foregoing, the Defendant **METROPOLITAN LIFE INSURANCE COMPANY** acted with reckless and wanton disregard for the welfare of the general public, including this Plaintiff.

**AS AND FOR A SIXTH CAUSE OF ACTION SOUNDING IN CONSPIRACY AND
COLLECTIVE LIABILITY/CONCERT OF ACTION**

99. Plaintiff repeats and reiterates the prior allegations of this complaint as if alleged more fully below:

100. The Defendants, and in particular Metropolitan Life Insurance Company, since the early 1900's have been possessed of medical and scientific data which raised questions concerning the safety of asbestos in the workplace and which demonstrated the existence of health hazards to those exposed to, or coming in contact with, asbestos products.

101. Defendants, and in particular Metropolitan Life Insurance Company, collectively and through explicit agreement and consciously parallel behavior, controlled industry standards regarding the testing, manufacture, sale, distribution and use of asbestos products and controlled the level of knowledge on the part of the public regarding the hazards of exposure to fibers and dust emanating from and released by Defendants' asbestos products.

102. The Defendants, and in particular Metropolitan Life Insurance Company, through agreement and consciously parallel behavior intentionally failed to warn potential users and the Plaintiff in particular, of the serious bodily harm which may result from the inhalation of, and exposure to, asbestos fibers and dust emanating from and released by asbestos products.

103. The Defendants, and in particular Metropolitan Life Insurance Company, conspired and/or acted in concert to withhold, conceal and suppress medical and scientific data and literature regarding the risks of exposure to asbestos and asbestos products, and the association of this exposure to the development of asbestosis, cancer, mesothelioma and other illnesses and diseases from the Plaintiff and others similarly situated, who were using, being exposed to, or coming into contact with Defendants' asbestos products and airborne fibers and dust emanating from and released by those products.

104. The Defendants, and in particular Metropolitan Life Insurance Company, through agreement and consciously parallel behavior released, published and disseminated invalid, inaccurate, outdated and misleading medical and scientific data, literature and test reports containing information and statements regarding the risks of asbestosis, cancer, mesothelioma and other illnesses and diseases which Defendants knew were invalid, inaccurate, outdated and misleading.

105. Defendants, and in particular Metropolitan Life Insurance Company, distorted the results of medical examinations conducted upon Plaintiff and/or workers similarly situated who were using asbestos products and being exposed to the inhalation of asbestos fibers and dust by falsely stating and/or concealing the nature and extent of the harm to which Plaintiff and workers such as Plaintiff had suffered.

106. The Defendants, and in particular Metropolitan Life Insurance Company, while cognizant of this data deliberately chose to ignore the health and safety issues raised therein, and embarked upon a plan of deception intended to deprive the public at large of alarming medical and scientific findings which remained in their exclusive possession and under their exclusive control.

107. Defendants, and in particular Metropolitan Life Insurance Company, conspired and/or acted in concert with each other and with other members of the asbestos industry through agreement and consciously parallel behavior:

- i) to withhold from users of their products, and from persons who Defendants knew or should have known would be exposed to their products, information regarding the health risks of inhaling or ingesting asbestos fibers and dust;
- ii) to eliminate or prevent investigation into the health hazards of exposure to asbestos fibers and dust;
- iii) to assure that asbestos products became widely used in industries such as construction, shipbuilding, machine fabrication and similar such industries, irrespective of the potential and actual risk of harm to the user/consumer.

108. Plaintiff reasonably and in good faith relied upon the false and fraudulent representations, omissions and concealments made by the Defendants, and in particular Metropolitan Life Insurance Company, regarding the nature of their asbestos products and was deprived of an opportunity to make an informed decision concerning his use of, exposure to and contact with, Defendants' products.

109. Plaintiff consequently in no respect can be blamed should he be unable to establish which of the asbestos products caused his injuries.

110. Defendants, and in particular Metropolitan Life Insurance Company, whether acting individually or in concert with others, violated their common law duty of care owed to the Plaintiff or otherwise engaged in culpable activity against the Plaintiff.

111. The actions and inactions of Defendants, and in particular Metropolitan Life Insurance Company, independently and/or collectively constitute a pattern or practice of intentional wrongful conduct and/or malice resulting in damage and injury to the Plaintiff.

112. By reason of the above, Defendants, and in particular Metropolitan Life Insurance Company, are jointly and severally liable to the Plaintiff(s) for the injuries and damages sustained by virtue of industry-wide or enterprise liability.

113. Alternatively, Defendants, and in particular Metropolitan Life Insurance Company, are liable to the Plaintiff(s) for the injuries and damages sustained by virtue of their substantial share of the asbestos products market within the area in which Plaintiff was employed.

114. As a direct and proximate result of his wrongful exposure to asbestos at the hands of Defendants, and in particular Metropolitan Life Insurance Company, Plaintiff contracted an

asbestos-related illness with sequela and was caused to suffer severe physical pain, mental anguish, pecuniary losses and loss of enjoyment of life.

**AS AND FOR A SEVENTH CAUSE OF ACTION
AGAINST DEFENDANT CONTRACTORS**

115. Plaintiff repeats and reiterates the prior allegations of this complaint as if alleged more fully below:

116. The term “contractor(s)” refers to any business entity, concern, individual or other engaged, employed or otherwise contracted to perform in whole or any part thereof construction work, renovation, excavation, demolition, installation of equipment and/or such other activities commensurate with the term “contractor” as used in the ordinary course of business.

117. These Defendant contractor(s) individually and by and/or through their subcontractors, agents, servants, assigns and employees developed, authored, devised and/or implemented specifications and plans relating to the construction, renovation, excavation, and/or demolition of buildings and other structures at which the Plaintiff was present and which Defendant contractor(s) knew, or should have reasonably ascertained in the exercise of due care, involved the use, application, installation, and/or removal of asbestos, asbestos-containing materials and/or equipment calling for the use and/or installation of asbestos-containing materials.

118. These Defendant contractor(s), knew, or in the exercise of reasonable diligence should have known, that the above specifications and/or plans were dangerous and/or unsafe and presented a potential and/or actual health hazard to those individuals present at such sites where construction, renovation, excavation and/or demolition as above described was being carried out, including this Plaintiff.

119. These Defendant contractor(s) hired, employed, contracted with or otherwise engaged subcontractors and others to carry out the work required by and in accordance with the above-described specifications and plans.

120. These Defendant contractor(s) supervised, oversaw and directed the activities, conduct and work of the both their own employees as well as the employees, agents and assigns of its subcontractors in the performance and carrying out of the above described specifications and plans at various locations including the Plaintiffs' work site(s).

121. Additionally, Defendant contractor(s) purchased and/or delivered and/or caused to be delivered to Plaintiff's work site(s), and other locations and subsequently inventoried and/or warehoused at Plaintiff's work site(s) various asbestos-containing materials and/or machinery and equipment calling for the use of and/or installation of asbestos-containing materials.

122. Defendant contractor(s) exercised control over the work sites at which their employees, subcontractors, agents and assigns were engaged in carrying out the specifications and plans of construction, renovation, excavation and/or demolition as described above, retained unlimited access to these work sites and directed all related construction, remodeling, excavating and demolition activities concerned therewith.

123. Plaintiff was exposed to asbestos-containing products at various work sites and other locations within the State of New York where construction, renovation, excavation and demolition of buildings and/or other structures was being performed, while Plaintiff was engaged in his occupational duties and responsibilities or while Plaintiff was otherwise lawfully upon at such work sites and locations.

124. Plaintiff sustained asbestos-related personal injuries as a consequence of his exposure to asbestos, asbestos-containing products and machinery at such locations described above.

125. Plaintiff's injuries resulted from Defendant contractor(s)' breach of common law and statutory obligations including, inter alia, violations of The New York State Labor Law Sections 200, 240 and 241 as a consequence of Plaintiff's exposure to and inhalation of dust from asbestos and asbestos-containing products delivered to, installed, used or employed at those work sites owned, operated, directed and controlled by the Defendant contractor(s).

126. The above-described exposures were caused solely and wholly by the acts and /or omissions of the Defendant contractor(s), their agents, servants, employees and assigns as a consequence of their negligent, careless and reckless ownership, management, direction and control of the various premises and work sites where construction, renovation, demolition and excavation activities, as above described, occurred.

127. Defendant contractor(s) were negligent, careless and reckless in inter alia: (1) permitting Plaintiff to work under dangerous and unsafe conditions; (2) requiring the Plaintiff to work in areas in which he was exposed to asbestos products; (3) in permitting and allowing the dangerous conditions to remain in working areas and other locations; (4) in failing to warn the Plaintiff and other members of the work force of the dangerous conditions; (5) in failing to provide a safe place to work; (5) in failing to follow or implement the usual workplace safety customs and procedures; (6) in failing to abide by, inter alia, Sections 200, 240 and 241 of the Labor Law; and (7) in otherwise acting without due regard for, and in reckless disregard of, the safety, well being and health of the Plaintiff and the work force in general.

128. Defendant contractor(s) are strictly liable for the injuries sustained by the Plaintiff.

**AS AND FOR A EIGHTH CAUSE OF ACTION
FOR PREMISES LIABILITY AGAINST CERTAIN DEFENDANTS**

129. Plaintiff repeats and reiterates the prior allegations of this complaint as if alleged more fully below:

130. Plaintiff, was exposed to asbestos-containing products, materials and machines and equipment calling for the use of and/or installation of asbestos-containing products while working at certain facilities owned by certain named Defendants (hereinafter "Premises Owners").

131. Each Premises Owner, at all times relevant to this Complaint, has been either the operator and/or the manager and/or the owner and occupier of various facilities within the State of New York as more fully specified in individual pleadings.

132. Plaintiff was exposed to asbestos and asbestos-containing materials while he was an invitee at such Defendant Premises Owners' New York State facility or facilities during all relevant time periods. Said facilities were defective in that the asbestos and asbestos-containing materials in Defendants' facilities created an unreasonable risk of harm to the Plaintiff and other persons thereupon. The defective conditions of the facilities were a proximate cause of the Plaintiff's asbestos-related injuries and damages.

133. Said Premises Owners are liable to Plaintiff for their respective failure to exercise reasonable care to protect Plaintiff from the foreseeable dangers associated with exposure to asbestos.

134. Defendants Premises Owners as the premises operators and/or managers and/or owners and occupiers and/or custodians of their respective premises, had a non-delegable duty to keep the premises safe for invitees and others such as the Plaintiff herein.

135. Said Defendant Premises Owners knew or should have known of the unreasonable risk of harm inherent in exposure to asbestos and asbestos-containing materials but failed to protect Plaintiff from said risk of harm.

136. Defendant Premises Owners' failure to protect Plaintiff from known and/or foreseeable dangers constitutes negligence which such negligence is/was a proximate cause of Plaintiff's asbestos-related injuries and damages.

137. By reason of the foregoing Plaintiff has sustained grievous personal and physical injuries, physical and emotional pain and suffering, all as more fully described herein and has been damaged as against each Defendant.

138. Plaintiff was employed by or served as a seaman and member of a crew on numerous occasions upon various vessels owned, operated, controlled, navigated or chartered by Shipping Defendants.

139. During all of the times herein mentioned, Shipping Defendants employed Plaintiff or owned, managed, operated, chartered, navigated or controlled said vessels used said vessels in the transportation of freight or passengers upon navigable waters of the United States in interstate and foreign commerce.

140. Plaintiff would show that for a period of many years, and on numerous occasions, Plaintiff worked with or was exposed to asbestos, asbestos-containing products, or machinery requiring or calling for the use of asbestos or asbestos-containing products while working in or on various vessels. Plaintiff would show that Plaintiff was exposed on numerous occasions

during the course and scope of his employment to asbestos, asbestos-containing products, or machinery requiring or calling for the use of asbestos or asbestos-containing products while employed by or working on vessels owned, managed, operated, chartered, navigated or controlled by Shipping Defendants and, in doing so, had inhaled great quantities of asbestos fibers from various asbestos products that were used, stored, manipulated, installed or removed aboard said vessels or appurtenances thereto. Further, Plaintiff alleges, as more specifically set out below, that Plaintiff's injuries were proximately caused by his exposure to asbestos, asbestos-containing products, or machinery requiring or calling for the use of asbestos or asbestos-containing products

141. Each Manufacturer Defendant corporation or its predecessor-in-interest, is, or at times material hereto, has been engaged in the mining, processing and/or manufacturing, sale and distribution of asbestos or asbestos-containing products, or machinery requiring or calling for the use of asbestos or asbestos-containing products.

142. Plaintiff would show that over a period of many years, they worked with and/or were exposed to asbestos-containing products and or machinery requiring or calling for the use of asbestos or asbestos-containing products while working in various shipyards, steel mills, refineries, paper mills, chemical plants and/or other facilities in the United States. Plaintiff will show that they have been exposed, on numerous occasions, to asbestos-containing products and/or machinery requiring or calling for the use of asbestos or asbestos-containing products and/or sold by Manufacturer Defendants and, in so doing, have inhaled great quantities of asbestos fibers. Further Plaintiff alleges, as more specifically set out below, that they have suffered injuries proximately caused by their exposure to asbestos-containing products designed, manufactured and sold by Manufacturer Defendants.

143. Plaintiff alleges that Plaintiff was exposed to asbestos, asbestos-containing products, or machinery requiring or calling for the use of asbestos or asbestos-containing products in his occupation. In that each exposure to such products caused or contributed to Plaintiff's injuries, Plaintiff invokes the doctrine of joint and several liability and states that it should be applied to each Defendant herein.

144. This cause of action is governed by Substantive Law of Admiralty and is, therefore, nonremovable.

AS AND FOR AN NINTH CAUSE OF ACTION JOINT AND SEVERAL LIABILITY

145. Plaintiff repeats and reiterates the prior allegations of this complaint as if alleged more fully below:

146. The limitations on liability set forth in NY Civ. Prac. L. Art. 16 §1601 do not apply because the following exemptions apply:

147. Prior to the accident or occurrence on which the claim is based, plaintiff and defendant entered into a written contract in which the defendant expressly agreed to indemnify the claimant for the type of loss suffered. See NY Civ. Prac. L. Art. 16 §1602(2)(1)(a).

148. Defendant is a public employee, and plaintiff is entitled to full indemnification pursuant to §50-k of the general municipal law or §§17, 18 of the public officers law. See NY Civ. Prac. L. Art. 16 §1602(1)(b).

149. Plaintiff has sustained "grave injury" as defined in §11 of the workers' compensation law. See NY Civ. Prac. L. Art. 16 §1602(4).

150. Plaintiff alleges a cause of action requiring proof of intent. See NY Civ. Prac. L. Art. 16 §1602(5).

151. Defendant is liable by reason of his use, operation, or ownership of a motor vehicle or motorcycle, as those terms are defined respectively in §§ 311, 125 of the vehicle and traffic law. See NY Civ. Prac. L. Art. 16 §1602(6).

152. Defendant acted with reckless disregard for the safety of others. See NY Civ. Prac. L. Art. 16 §1602(7).

153. Plaintiff alleges that defendant is liable for violations of article 10 of the labor law. See NY Civ. Prac. L. Art. 16 §1602(8).

154. Defendant unlawfully released into the environment a substance hazardous to public health, safety or the environment, a substance acutely hazardous to public health, safety or the environment or a hazardous waste, as defined in articles 37 and 27 of the environmental conservation law and in violation of article 71 of such law. See NY Civ. Prac. L. Art. 16 §1602(9).

155. Plaintiff brings a products liability claim, the manufacturer of the product is not a party to the action and jurisdiction over the manufacturer could not with due diligence be obtained and that if the manufacturer were a party to the action, liability for claimant's injury would have been imposed upon said manufacturer by reason of the doctrine of strict liability, to the extent of the equitable share of such manufacturer. See NY Civ. Prac. L. Art. 16 §1602(10).

156. Defendants acted knowingly or intentionally, and in concert, to cause the acts or failures upon which liability is based. See NY Civ. Prac. L. Art. 16 §1602(11).

157. Defendants have construed the article to create or enlarge actions for contribution or indemnity barred because of the applicability of the workers' compensation law of this state, any other state or the federal government, or section 18-201 of the general obligation law.

AS AND FOR AN TENTH CAUSE OF ACTION PUNITIVE DAMAGES

158. Plaintiff repeats and reiterates the prior allegations of this complaint as if alleged more fully below:

159. Defendants acted maliciously, wantonly and recklessly, and demonstrated a conscious indifference and utter disregard of the health, safety and rights of others, by acting with an improper motive or vindictiveness and with outrageous or oppressively intentional misconduct, such actions representing a high degree of immorality and showing wanton dishonesty as to imply a criminal indifference to civil obligations, thereby warranting an award of punitive damages.

**AS AND FOR AN ELEVENTH CAUSE OF ACTION
FELA**

1. Plaintiff repeats and reiterates the prior allegations of this complaint as if alleged more fully below:

2. This cause of action arises under the Federal Employers' Liability Act (45 U.S.C. §51 et. seq.), as hereinafter more fully appears, and is addressed only to those above identified defendants to which said Act applies, hereinafter referred to as the "FELA defendants."

3. Upon information and belief, at all relevant times the FELA defendants, and/or their predecessors in business, have been and still are doing business in the County, City and State of New York.

4. At all times herein mentioned, the FELA defendants were and now are common carriers by rail and/or were otherwise engaged in interstate commerce between and among the defendant states of the United States.

5. At all relevant times, the FELA defendants, employed plaintiff or plaintiffs decedent as employee and/or servant under their direction, supervision and control, and in

furtherance of their business in interstate commerce, and at all relevant times plaintiff or plaintiffs decedent acted within the scope of their employment.

6. At all relevant times, plaintiff or plaintiffs decedent was working on and about commuter and freight lines, railroad yards, and/or other facilities serving interstate commerce, which were own, leased and/or operated by the FELA defendants and/or their predecessor(s) in interest, successively and/or concurrently.

7. The FELA defendants controlled and maintained such property, including but not limited to tracks, rails, switches, sidings, roadbeds and appurtenances thereto, over, through and upon which the FELA defendants operated their engines, trains, cars and/or other equipment and instrumentalities of interstate commerce under its/their direction and control.

8. In the course and scope of his employment with Defendant Railroads, Plaintiff worked with and/or in the vicinity of others who worked with asbestos-containing products, asbestos-containing brake linings and brake shoes, asbestos-containing friction materials, and/or machinery requiring or calling for the use of asbestos or asbestos-containing products on steam generators and railroad cars owned and operated by Defendant Railroads. Plaintiff additionally worked in the vicinity of others installing and removing the asbestos-containing materials described above.

9. Plaintiff was exposed to the asbestos fibers liberated from the asbestos-containing products, asbestos-containing brake linings and brake shoes, asbestos-containing friction materials, and/or machinery requiring or calling for the use of asbestos or asbestos-containing products above, and as a direct and proximate result of said exposure developed the injuries described in this Complaint.

10. At all times material herein, all or part of Plaintiffs duties as an employee of Defendant Railroads were in furtherance of interstate commerce or in work directly, closely and substantially affecting interstate commerce as defined by 45 U.S.C., §51 et seq.

11. The injuries to Plaintiff are due in whole or in part to the negligence of Defendant Railroads, their agents, servants and/or employees in one or more of the following particulars singularly or in combination:

(a) throughout the duration of Plaintiffs employment with Defendant Railroads, Defendant Railroads were negligent in failing to provide Plaintiff with a reasonably safe place in which to work and reasonably safe materials and equipment with which to work;

(b) in failing to provide its employees, including Plaintiff, with information as to what would be reasonably safe and sufficient wearing apparel and proper protective equipment and appliances, if in truth there were any, including but not limited to respirators, to protect Plaintiff from being harmed and disabled by exposure to asbestos, asbestos-containing products, friction products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products and/or friction products;

(c) in failing to utilize air blowers or any other type of ventilation equipment in order to reduce, if possible, or to eliminate asbestos fibers in the atmosphere at Plaintiffs work site;

(d) in failing to take reasonable precautions or exercise reasonable care to adopt, publish, and enforce a safety plan and/or safe method of handling and installing asbestos and/or asbestos-containing products, friction products, or utilizing the machinery

requiring or calling for the use of asbestos and/or asbestos-containing products and/or friction products in a safe manner;

(e) in failing to timely and adequately warn their employees, including Plaintiff, of the dangerous characteristics and serious health hazards associated with exposure to asbestos, asbestos-containing products, friction products, and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products so that Plaintiff could have the opportunity to take precautions to avoid such exposure;

(f) in failing to place timely and adequate warnings on the containers of said asbestos, asbestos-containing products or friction products, or on the asbestos-containing products themselves, and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products and/or to warn of the dangers to health of coming into contact with said asbestos-containing products and/or machinery;

(g) in failing to develop and utilize a substitute material to eliminate asbestos fibers in the asbestos-containing products, friction products, and/or the machinery requiring or calling for the use of asbestos and/or asbestos-containing products and/or friction products;

(h) in failing to comply with all applicable statutory or regulatory standards;

(i) in failing to properly design and manufacture asbestos, asbestos-containing products, friction products, and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products and/or friction products for safe use under-conditions of use that were reasonably anticipated;

(j) in failing to properly test said asbestos-containing products, friction products or machinery before they were released for consumer use; and

(k) in failing to recall and/or remove from the stream of commerce said asbestos- containing products, friction products or machinery requiring or calling for the use of asbestos and/or asbestos-containing products and/or friction products despite knowledge of the unsafe and dangerous nature of such products or machinery.

12. Such negligent acts and omissions, taken separately or together, were a direct and proximate cause of the injuries sustained by Plaintiff and described in this Complaint.

13. As a direct and proximate result of the FELA Defendants' tortious conduct as aforesaid, Plaintiffs have developed asbestos-related lung disease and other related physical conditions, and have been damaged as against the FELA Defendants in the amount of Ten Million Dollars (\$10,000,000.00).

AS AND FOR AN TWELFTH CAUSE OF ACTION
BOILER INSPECTION ACT

14. Plaintiff repeats and reiterates the prior allegations of this complaint as if alleged more fully below:

15. Plaintiff says further that Defendant Railroads violated the Boiler Inspection Act, 49 U.S.C. §20701 et. seq., formerly known as 45 U.S.C. §23, in using and permitting to be used on its line locomotives that were not in proper condition and safe to operate in the service to which same were put. In particular, said locomotives, the boilers on said locomotives, and the brakes of the railway cars were either supplied with, insulated with and/or combined with asbestos-containing products, friction products, and/or machinery requiring or calling for the use of asbestos or asbestos-containing products. The presence of said asbestos-containing products, friction products, and/or machinery requiring or calling for the use of asbestos or asbestos-containing products in, on or around the locomotives, boilers, and brakes created an unnecessary peril of life or limb to Plaintiff. Plaintiff was exposed to and injured by said asbestos-containing

products, friction products, and/or machinery while the locomotives and boilers were in use on Defendant's line. Defendant Railroads thus violated the Boiler Inspection Act, 49 U.S.C. §20701 et. seq., formerly known as 45 U.S.C. §23, and is liable for Plaintiffs damages resulting from said violation.

AS AND FOR AN THIRTEENTH CAUSE OF ACTION
SPOUSAL LOSS OF CONSORTIUM

16. Plaintiff repeats and reiterates the prior allegations of this complaint as if alleged more fully below:

17. Plaintiff spouse is the lawful wife of the injured Plaintiff.

18. As a consequence of injured Plaintiff's injuries, Plaintiff spouse has suffered a loss of consortium, including but not limited to companionship, affection, support, services and society.

WHEREFORE, Plaintiffs pray for relief against defendants, together with interest, costs and disbursements in this action.

Dated: New York, New York
March 19, 2020

Yours etc.,

BELLUCK & FOX, LLP
Attorneys for Plaintiff
546 Fifth Avenue, 5th Floor
New York, New York 10036
(212) 681-1575

By: 

Joseph W. Belluck, Esq.

STATE OF NEW YORK)

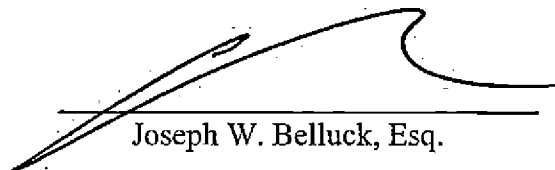
ss.:

COUNTY OF NEW YORK)

The undersigned, an attorney admitted to practice in the Courts of New York State, shows:

Deponent is a member of the firm BELLUCK & FOX LLP, counsel for the plaintiffs in the within action; deponent has read the foregoing Summons and Verified Complaint and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes same to be true. This verification is made by deponent and not by plaintiffs because plaintiffs reside outside of the County of New York where the deponent maintains his office.

Dated: New York, New York
March 19, 2020



Joseph W. Belluck, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

JAMES TROY and ELAINE TROY,

Index No.:

Plaintiffs,

CERTIFICATION

- against -

AK STEEL CORPORATION, et al.,

Defendants.

Joseph W. Belluck, Esq., an attorney duly admitted to practice before the Courts of the State of New York, hereby certifies in accordance with 22 NYCRR Part 130-1.1-a of the Rules of the Chief Administrator that to the best of my knowledge, information and belief, which was formed after a reasonable inquiry under the circumstances, the presentation of the foregoing Summons and Verified Complaint and its contents are not frivolous, as the term is defined in Part 130.

Dated: New York, New York
March 19, 2020

Yours etc.,

BELLUCK & FOX, LLP

Attorneys for Plaintiff

546 Fifth Avenue, 5th Floor

New York, New York 10036

(212) 681-1575

By: 

Joseph W. Belluck, Esq.

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

In re:)	
)	Chapter 11
BRIGGS & STRATTON)	
CORPORATION, <i>et al.</i> ,)	Case No. 20-43597-399
)	
Debtors.)	(Jointly Administered)
)	
)	

**ORDER GRANTING MOTION FOR RELIEF FROM THE AUTOMATIC
STAY AS TO JAMES TROY AND ELAINE TROY**

Upon consideration of the *Motion for Relief from the Automatic Stay as to James Troy and Elaine Troy* (the “Motion”), and upon consideration of any opposition filed in response to the Motion; and after due deliberation, it is hereby ORDERED that:

1. The Motion is Granted.
2. Movant shall have relief from the automatic stay for cause shown pursuant to Bankruptcy Code section 362(d) to join the Debtors as defendants in the State Court Action and proceed with the State Court Action against the Debtors and any other individuals or entities for the purpose of pursuing and/or collecting any judgment from the proceeds of any applicable insurance coverage, including any subsequent appeals.
3. The Movant retains the right to file a proof of claim (the “Proof of Claim”) in this matter should any award exceed the amount of insurance coverage and/or insurance retention.
4. The Bankruptcy Court shall retain exclusive jurisdiction over any issues arising from or relating to this Order and its enforcement and the State Court shall retain jurisdiction over the State Court Action.

5. This Order shall become effective immediately upon entry by the Court and is not subject to the fourteen-day stay provided in Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was filed electronically on October 7, 2020, with the United States Bankruptcy Court and has been served on all counsel of record and the parties in interest via the Court's CM/ECF System as listed on the Court's Electronic Mail Notice List and a copy served via First Class U.S. mail to the party listed below.

Briggs & Stratton Corporation

PO Box 702

Milwaukee, WI 53201

dba Briggs & Stratton Power Products Group, LLC

dba Briggs & Stratton Power Products, LLC

dba Briggs & Stratton Power Products Group

Jamie L. Edmonson DE #4247