

**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 DEBRA LACK,  
INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF BRUCE L. LACK**

Debra Lack, individually and as representative of the Estate of Bruce L. Lack, deceased (the “Lacks”), 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 Lacks 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 Lacks 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 Lacks’ state court action to proceed as to available insurance. If the Motion is denied and the automatic stay remains in effect, the Lacks will suffer hardship by being unable to pursue their claims for recovery against the Briggs & Stratton Corporation (“B&S”). Moreover, the Lacks 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, if adequate insurance coverage exists. Cause exists to modify the automatic stay to allow the Lacks 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 Lacks have filed a lawsuit under the theory of products liability and other related tort claims (the “State Court Action”) against a number of entities, one of which is B&S. The State Court action is pending in the District Court of Cleveland County in the State of Oklahoma, Case No. CJ-2020-423. A copy of the complaint is attached hereto as Exhibit A.

7. Mr. Lack worked with, came in contact with, or was exposed to asbestos-containing products produced by B&S in his various labor jobs while working at mechanic shops, auto shops, and other facilities. During the course of his employment, Mr. Lack was unavoidably exposed to, inhaled and ingested asbestos fibers and dust contained within and emanating from B&S’s asbestos-containing products.

8. As a result of this exposure, Mr. Lack was diagnosed on June 25, 2019 with progressive, asbestos-related illness malignant mesothelioma, for which there is no cure. Mr. Lack passed away shortly after his diagnosis.

### **Relief Requested**

9. The Lacks 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**

10. 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 (8<sup>th</sup> Cir. 1993).

11. The Lacks 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. 8<sup>th</sup> 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. 8<sup>th</sup> Cir. 2002); *Wiley v. Hartzler (In re Wiley)*, 288 B.R. 818, 822 (B.A.P. 8<sup>th</sup> Cir. 2003).

12. "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).

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

14. 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 Lacks seek only to recover amounts from available insurance coverage, if adequate insurance coverage exists. Thus, the Lacks' suit, if successful and adequate insurance coverage exists, will not create a liability for the Debtors' estates and will not deplete assets that would be available for distribution to other creditors.

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

16. Finally, the Lacks 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 Lacks can make such a showing here: Mr. Lack was exposed to asbestos-containing products and materials supplied by B&S during the course of his work and life.

WHEREFORE, the Lacks 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 Lacks 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 22, 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 Debra Lack, individually and as  
representative of the Estate of Bruce L. Lack,  
deceased*

**Exhibit A**

(State Court Action)

**Exhibit A**

(State Court Action)



**IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA**

DEBRA LACK, individually and as )  
representative of the Estate of BRUCE L. )  
LACK, Deceased, )

Plaintiff, )

v. )

ARVINMERITOR INC. (Individually and as )  
the Successor in Interest to the Automotive )  
Segment of Rockwell International); )

BRIGGS & STRATTON CORPORATION; )

CATERPILLAR INC.; )

CHEVRON PHILLIPS CHEMICAL )  
COMPANY LP; )

CNH INDUSTRIAL AMERICA LLC; )

CRANE CO.; )

CUMMINS INC.; )

DANA COMPANIES LLC (Individually and )  
as Successor-in-Interest to Wichita Clutch )  
Company, Inc.); )

DAP, INC.; )

DETROIT DIESEL CORPORATION; )

EATON CORPORATION (Individually and )  
as Successor in Interest to Cutler Hammer )  
Inc.); )

Case No. CJ-2020-423  
JURY TRIAL DEMANDED

STATE OF OKLAHOMA } S.S.  
CLEVELAND COUNTY }  
**FILED**

**APR 08 2020**

In the office of the  
Court Clerk MARILYN WILLIAMS

FMC CORPORATION (on behalf of its )  
former Chicago Pumps and Peerless pumps )  
businesses); )  
)  
FMC CORPORATION (on behalf of its )  
former Stearns businesses); )  
)  
)  
FORD MOTOR COMPANY; )  
)  
GENERAL MOTORS COMPANY; )  
)  
)  
GENUINE PARTS COMPANY (a/k/a )  
NAPA AUTO PARTS); )  
)  
)  
GOULDS PUMPS, INC.; )  
)  
)  
HONEYWELL INTERNATIONAL, INC. )  
(f/k/a ALLIEDSIGNAL, INC., Successor in )  
Interest to THE BENDIX CORPORATION); )  
)  
)  
LIPE ROLLWAY CORP.; )  
)  
)  
MACK TRUCKS, INC.; )  
)  
)  
MONTELLO, INC.; )  
)  
)  
MORSE TEC LLC f/k/a BORG-WARNER )  
MORSE TEC, INC. (as Successor by Merger )  
to BORG-WARNER CORPORATION); )  
)  
)  
NATIONAL AUTOMOTIVE PARTS )  
ASSOCIATION (NAPA); )  
)  
)  
NATIONAL OILWELL VARCO; )  
)  
)  
NAVISTAR, INC.; )  
)  
)  
PACCAR INC. (Individually and as Parent )  
Company to Kenworth Truck Company and )  
Peterbilt); )

PNEUMO ABEX CORPORATION;

STANDCO INDUSTRIES INC.

(Individually and as Successor in Interest to  
Sterling Packing and Gasket Company Inc.);

TECUMSEH PRODUCTS COMPANY;

TEREX CORPORATION;

THE LAWN-BOY COMPANY;

THE SHERWIN WILLIAMS COMPANY;

and

UNION CARBIDE CORPORATION.

Defendants.

### **PETITION**

COMES NOW the Plaintiff, Debra Lack, individually and as representative of the Estate of Bruce L. Lack, Deceased (“Plaintiff Decedent”), and for her Petition against the Defendants, alleges and states as follows:

### **PARTIES, JURISDICTION, & VENUE**

1. Plaintiff is, and at all times herein mentioned has been, a resident of the City of Enid, Garfield County, Oklahoma.

2. The damages sought by the Plaintiff, exclusive of interest and costs, exceeds \$75,000.00, the minimum jurisdictional limits of the Court.

3. Defendant ArvinMeritor Inc. (Individually and as the Successor in Interest to the Automotive Segment of Rockwell International) is an Indiana corporation with its principal place

of business at 2135 W Maple Rd, Troy, MI, 48084, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, The Corporation Company, 40600 Ann Arbor Rd E, Ste 201, Plymouth, MI, 48170.

4. Defendant Briggs & Stratton Corporation is a Wisconsin corporation with its principal place of business at 12301 W. Wirth Street, Wauwatosa, WI, 53222, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, Corporation Service Company, 10300 Greenbriar Place, Oklahoma City, OK, 73159.

5. Defendant Caterpillar Inc. is a Delaware corporation with its principal place of business at 510 Lake Cook Road, Ste 100, Deerfield, IL, 60015, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, The Corporation Company, 40600 Ann Arbor Rd E, Ste 201, Plymouth, MI, 48170.

6. Defendant Chevron Phillips Chemical Company LP is a Delaware corporation with its principal place of business at 10001 Six Pines Drive, The Woodlands, TX, 77380, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, CT Corporation, 1833 S Morgan Rd, Oklahoma City, OK, 73128.

7. Defendant CNH Industrial America LLC is a Delaware corporation with its principal place of business at 6900 Veterans Blvd, Burr Ridge, IL, 60527, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the



Summons and Petition to its registered agent, CT Corporation, 1833 S Morgan Rd, Oklahoma City, OK, 73128.

8. Defendant Crane Co. is a Delaware corporation with its principal place of business at 100 First Stamford Place, Stamford, CT, 06902, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, CT Corporation System, 67 Burnside Ave, East Hartford, CT, 06108.

9. Defendant Cummins Inc. is an Indiana corporation with its principal place of business at 500 Jackson St., Columbus, IN, 47201, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, Corporation Service Company, 135 North Pennsylvania Street, Ste 1610, Indianapolis, IN, 46204.

10. Defendant Dana Companies LLC (Individually and as Successor-in-Interest to Wichita Clutch Company, Inc.) is a Virginia corporation that is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, CT Corporation System, 4400 Easton Commons Way, Ste 125, Columbus, OH, 43219.

11. Defendant DAP, Inc., is a Delaware corporation with its principal place of business at 2400 Boston Street, Suite 200, Baltimore, MD 21224, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, The Prentice Hall Corporation System, Inc., 2711 Centerville Road, Suite 400, Wilmington, DE, 19808.

12. Defendant Detroit Diesel Corporation, is a Delaware corporation with its principal place of business at 13400 Outer Drive West, Detroit, MI 48239, and is subject to the jurisdiction

of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, The Corporation Company, 40600 Ann Arbor Rd E, Ste 201, Plymouth, MI, 48170.

13. Defendant Eaton Corporation (Individually and as Successor in Interest to Cutler Hammer Inc.), is an Ohio corporation with its principal place of business at 1000 Eaton Blvd, Cleveland, OH, 44122, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, The Corporation Company, 40600 Ann Arbor Rd E, Ste 201, Plymouth, MI, 48170.

14. Defendant FMC Corporation (on behalf of its former Chicago Pumps and Peerless pumps businesses), is a Delaware corporation with its principal place of business at 2929 Walnut St, Philadelphia, PA, 19104, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, The Corporation Trust Company, 1209 Orange Street, Wilmington, DE, 19801.

15. Defendant FMC Corporation (on behalf of its former Stearns businesses), is a Delaware corporation with its principal place of business at 2929 Walnut St, Philadelphia, PA, 19104, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, The Corporation Trust Company, 1209 Orange Street, Wilmington, DE, 19801.

16. Defendant Ford Motor Company is a Delaware corporation with its principal place of business at One American Road, Room 612, Ford World Headquarters, Dearborn, MI, 48126, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, The Corporation Company, 1833 S. Morgan Road, Oklahoma City, OK, 73128.

17. Defendant General Motors Company is a Delaware corporation with its principal place of business at 300 Renaissance Ctr, Detroit, MI, 48243, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, Corporation Service Company, 251 Little Falls Dr., Wilmington, DE, 19808.

18. Defendant Genuine Parts Company d/b/a National Automotive Parts Association (a/k/a Napa) is a Georgia corporation with its principal place of business at 2999 Wildwood Pkwy, Atlanta, GA, 30339, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, The Corporation Company, 1833 S. Morgan Road, Oklahoma City, OK, 73128.

19. Defendant Goulds Pumps, Inc. is a Delaware corporation with its principal place of business at 240 Fall Street, Seneca Falls, NY, 13148, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, CT Corporation System, 28 Liberty St., New York, NY, 10005.

20. Defendant Honeywell International, Inc. (f/k/a AlliedSignal, Inc., Successor in Interest to The Bendix Corporation) is a Delaware corporation with its principal place of business at 115 Tabor Road, Morris Plains, NJ 07950, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, CSC-Lawyers Incorporating Service (Company), 601 Abbot Road, East Lansing, MI, 48823.

21. Defendant Lipe Rollway Corp. is a New York corporation and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the



Summons and Petition to its registered agent, Lipe-Rollway Corp, c/o Emerson Electric Co., 8000 West Florissant Ave., St. Louis, MO, 63136.

22. Defendant Mack Trucks, Inc. is a Pennsylvania corporation with its principal place of business at 7900 National Service Road, Greensboro, NC 27409, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, The Corporation Company, 1833 S. Morgan Road, Oklahoma City, OK, 73128.

23. Defendant Montello, Inc. is an Oklahoma corporation with its principal place of business at 6106 E. 32nd Place, Ste 100, Tulsa, OK, 74135, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its principal place of business at, 6106 E. 32nd Place, Ste 100, Tulsa, OK, 74135.

24. Defendant Morse TEC LLC f/k/a Borg-Warner Morse TEC, INC. (as Successor by Merger to Borg-Warner Corporation) is a Delaware corporation with its principal place of business at 3850 Hamlin Rd, Auburn Hills, MI, 48326, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, The Corporation Company, 40600 Ann Arbor Rd E, Ste 201, Plymouth, MI, 48170.

25. Defendant National Automotive Parts Association (NAPA) is a Georgia corporation with its principal place of business at 2999 Wildwood Pkwy, Atlanta, GA, 30339, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, The Corporation Company, 40600 Ann Arbor Rd E, Ste 201, Plymouth, MI, 48170.



26. Defendant National Oilwell Varco is a Delaware corporation with its principal place of business at 7909 Parkwood Circles Dr., Houston, TX, 77036, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, The Corporation Company, 1833 S. Morgan Road, Oklahoma City, OK, 73128.

27. Defendant Navistar, Inc. is a Delaware corporation with its principal place of business at 2701 Navistar Drive, Lisle, IL, 60532, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, Corporation Service Company, 10300 Greenbriar Place, Oklahoma City, OK, 73159.

28. Defendant PACCAR Inc. (Individually and as Parent Company to Kenworth Truck Company and Peterbilt) is a Delaware corporation with its principal place of business at 777 106th Ave NE, Bellevue, WA, 98004, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, Corporation Service Company, 10300 Greenbriar Place, Oklahoma City, OK, 73159.

29. Defendant Pneumo Abex Corporation is a Delaware corporation with its principal place of business at 3rd Street & Jefferson Ave, Camden, NJ, 08104, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, Corporation Service Company, 251 Little Falls, Wilmington, DE, 19808.

30. Defendant Standco Industries Inc. (Individually and as Successor in Interest to Sterling Packing and Gasket Company Inc.) is a Delaware corporation that is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the

Summons and Petition to its registered agent, CT Corporation System, 1999 Bryan St #900, Dallas, TX, 75201.

31. Defendant Tecumseh Products Company is a Michigan corporation with its principal place of business at 5683 Hines Drive, Ann Arbor, MI, 48108, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, The Corporation Company, 40600 Ann Arbor Rd E, Ste 201, Plymouth, MI, 48170.

32. Defendant Terex Corporation is a Delaware corporation with its principal place of business at 200 Nyala Farm Rd, Westport, CT 06880, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, Corporation Service Company, 10300 Greenbriar Place, Oklahoma City, OK, 73159.

33. Defendant The Lawn-Boy Company is a Delaware corporation with its principal place of business at 8111 Lyndale Avenue S, Bloomington, MN, 55420, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its principal place of business at, c/o Timothy P. Dordell, 8111 Lyndale Avenue S, Bloomington, MN, 55420.

34. Defendant The Sherwin Williams Company is an Ohio corporation with its principal place of business at 101 W Prospect Ave, Ste 1020, Cleveland, OH, 44115, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, Corporation Service Company, 10300 Greenbriar Place, Oklahoma City, OK, 73159.

35. Defendant Union Carbide Corporation is a New York corporation with its principal place of business at 7501 State Highway 185 N, North Seadrift, TX, 77983, and is subject to the jurisdiction of this Court. Defendant may be served with process by sending a copy of the Summons and Petition to its registered agent, The Corporation Company, 40600 Ann Arbor Rd E, Ste 201, Plymouth, MI, 48170.

36. Each of the Defendants, at all times pertinent hereto, were and/or are doing business in the State of Oklahoma.

37. From 1969 to the early 1980's, Plaintiff Decedent Bruce L. Lack worked as an oilfield diesel mechanic at various drilling sites and oil rigs across northern and central Oklahoma, including in Cleveland County. From approximately 1980 to 1986, Plaintiff Decedent owned a small engine mechanic shop, largely working with lawn and garden equipment. From approximately 1986 to 2012, Plaintiff Decedent worked as a salesman of electrical and oil field supply equipment at various companies in Enid, Oklahoma, and Oklahoma City, Oklahoma. From the late 1960's to the early 1980's, Plaintiff Decedent worked as a laborer on various home renovation projects in Enid, Oklahoma. From the early 1960's to the late 2000's, Plaintiff Decedent worked as a shadetree automotive mechanic performing maintenance and repairs to vehicles, including but not limited to, replacing brakes and clutches at various locations in and around Enid, Oklahoma. During the above-mentioned years, Plaintiff Decedent Bruce L. Lack worked with and/or was exposed to asbestos and/or asbestos-containing products, machinery and/or equipment requiring or calling for the use of asbestos and/or asbestos-containing products. Plaintiff Decedent will show that he was exposed, on numerous occasions, to asbestos- containing products, machinery and/or equipment manufactured and/or sold by Defendants.



38. Plaintiff Decedent Bruce L. Lack alleges that he was regularly and repeatedly exposed to asbestos and/or asbestos-containing products, machinery and/or equipment requiring or calling for the use of asbestos and/or asbestos-containing products as both a by-stander and a contractor and laborer in the oil industry, as a self-employed automotive mechanic, and as a home construction laborer. Each and every exposure to such products caused, or contributed to, Plaintiff Decedent Bruce L. Lack's asbestos-related malignant mesothelioma, which he was diagnosed with on or about June 25, 2019.

39. Plaintiff Decedent Bruce L. Lack contracted asbestos-related malignant mesothelioma through the inhalation of the asbestos fibers contained in the products manufactured, sold, and/or distributed by each of the Defendants.

40. Venue is proper in Cleveland County, Oklahoma pursuant to 12 O.S. § 137.

#### **FIRST CLAIM FOR RELIEF**

41. The preceding allegations are incorporated by reference. This claim is made both cumulatively and in the alternative to each other claim made.

42. Plaintiff Decedent Bruce L. Lack's asbestos-related malignant mesothelioma is a direct and proximate result of the negligence and gross negligence of each Defendant and/or its predecessor-in-interest in that said entities produced, sold, distributed and/or otherwise put into the stream of commerce, asbestos, asbestos-containing products, machinery and/or equipment requiring or calling for the use of asbestos and/or asbestos-containing products, which the Defendants knew, or in the exercise of ordinary care, should have known were deleterious and highly harmful to Plaintiff Decedent Bruce L. Lack's health and well-being. The Defendants were negligent in one, some, and/or all of the following respects, among others, same being the proximate cause of Plaintiff Decedent Bruce L. Lack's asbestos-related malignant mesothelioma:

- a. in failing to timely and adequately warn Plaintiff Decedent Bruce L. Lack of the dangerous characteristics and serious health hazards associated with exposure to asbestos, asbestos-containing products, and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products;
- b. in failing to provide Plaintiff Decedent Bruce L. Lack 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, to protect Plaintiff Decedent Bruce L. Lack from being harmed and disabled by exposure to asbestos, asbestos-containing products, and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products;
- c. in failing to place timely and adequate warnings on the containers of said asbestos, or asbestos-containing products, or on the asbestos-containing products themselves, and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products to warn of the dangers to health of coming into contact with said asbestos, asbestos-containing products, machinery and/or equipment;
- d. in failing to take reasonable precautions or exercise reasonable care to publish, adopt and enforce a safety plan and/or safe method of handling and installing asbestos and/or asbestos-containing products, or utilizing the machinery requiring or calling for the use of asbestos and/or asbestos-containing products in a safe manner;
- e. in failing to develop and utilize a substitute material to eliminate asbestos fibers in the asbestos-containing products, and/or the machinery requiring or calling for the use of asbestos and/or asbestos-containing products;
- f. in failing to properly design and manufacture asbestos, asbestos-containing products, and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products for safe use under conditions of use that were reasonably anticipated;
- g. in failing to properly test said asbestos or asbestos-containing products or machinery before they were released for consumer use; and
- h. in failing to recall and/or remove from the stream of commerce said asbestos or asbestos-containing products or machinery or machinery requiring or calling for the use of asbestos and/or asbestos-containing products despite knowledge of the unsafe and dangerous nature of such products or machinery.

## **SECOND CLAIM FOR RELIEF**

43. The preceding allegations are incorporated by reference. This claim is made both cumulatively and in the alternative to each other claim made.

44. Plaintiff Decedent Bruce L. Lack was exposed to asbestos, asbestos-containing products, machinery and/or equipment requiring or calling for the use of asbestos and/or asbestos-containing products that were manufactured, sold and/or distributed by the Defendants and/or their predecessors-in-interest for use in commercial, residential and industrial operations. Plaintiff would show that the defective condition of the products rendered such products unreasonably dangerous, and that the asbestos, asbestos-containing products, machinery and/or equipment were in this defective condition at the time they left the hands of Defendants. Such condition also resulted in a breach of warranty owed to Plaintiff Decedent Bruce L. Lack, for which the claim is being made.

45. These Defendants were engaged in the business of manufacturing, selling and/or distributing asbestos, asbestos-containing products, machinery and/or equipment requiring or calling for asbestos or asbestos-containing products, and these asbestos-containing products, machinery and/or equipment, without substantial change in the condition in which they were sold, were a proximate cause of Plaintiff Decedent Bruce L. Lack asbestos-related malignant mesothelioma.

46. Defendants knew that the asbestos, asbestos-containing products, machinery and/or equipment would be used without inspection for defects and, by placing them on the market, represented that they would safely do the job for which they were intended, which must necessarily include safe manipulation and/or installation of the asbestos-containing products and/or operation,



maintenance and/or repair of the machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

47. Plaintiff Decedent Bruce L. Lack was unaware of the hazards and defects in the asbestos and asbestos-containing products of the Defendants which made them unsafe for purposes of manipulation and/or installation. Similarly, Plaintiff Decedent Bruce L. Lack was unaware of the hazards and defects in the machinery requiring or calling for the use of asbestos and/or asbestos-containing materials.

48. During the periods that Plaintiff Decedent Bruce L. Lack was exposed to the asbestos, asbestos-containing products, machinery and/or equipment of the Defendants, the asbestos, asbestos-containing products, machinery and/or equipment were being utilized in a manner which was intended by Defendants.

### **THIRD CLAIM FOR RELIEF**

49. The preceding allegations are incorporated by reference. This claim is made both cumulatively and in the alternative to each other claim made.

50. The actions and inactions of Defendants and their predecessors-in-interest, as specifically alleged herein above, whether taken separately or together, were of such a character as to constitute a pattern or practice of intentional wrongful conduct and/or malice resulting in damages and Plaintiff Decedent Bruce L. Lack's asbestos-related illness. More specifically, these Defendants and their predecessors-in-interest, consciously and/or deliberately engaged in oppression, willfulness, wantonness and/or malice with regard to Plaintiff Decedent Bruce L. Lack and should be held liable in punitive and exemplary damages to Plaintiff.

#### **FOURTH CLAIM FOR RELIEF**

51. The preceding allegations are incorporated by reference. This claim is made both cumulatively and in the alternative to each other claim made.

52. The actions and inactions of Defendants and their predecessors-in-interest, as specifically alleged herein above, whether taken separately or together, were of such a character as to constitute a pattern or practice of intentional wrongful conduct and/or malice resulting in damages and Plaintiff Decedent Bruce L. Lack's asbestos-related malignant mesothelioma. Defendants' conduct was specifically intended by Defendants to cause substantial injury to Plaintiff Decedent Bruce L. Lack, or was carried out by Defendants with a flagrant disregard for the rights of others and with actual awareness on the part of Defendants that the conduct would, in reasonable probability, result in human deaths and/or great bodily harm. More specifically, these Defendants and their predecessors-in-interest, consciously and/or deliberately engaged in oppression, willfulness, wantonness and/or malice with regard to Plaintiff Decedent Bruce L. Lack and should be held liable in punitive and exemplary damages to Plaintiff.

#### **FIFTH CLAIM FOR RELIEF**

53. The preceding allegations are incorporated by reference. This claim is made both cumulatively and in the alternative to each other claim made.

54. The actions of all Defendants aided, abetted, encouraged, induced or directed the negligent and/or intentional acts of each and every other Defendant.

55. Each of these Defendants knew or should have known that their individual actions would combine to cause the asbestos-related malignant mesothelioma of Plaintiff Decedent Bruce L. Lack.



56. The actions of each of the Defendants are a proximate cause of Plaintiff Decedent Bruce L. Lack's asbestos-related mesothelioma. As a result, all Defendants are jointly liable for the damage caused by their combined actions.

### **DAMAGES**

57. The conduct of Defendants, as alleged hereinabove, was a direct, proximate and producing cause of the damages resulting from the asbestos-related lung disease of Plaintiff Decedent Bruce L. Lack, and of the following general and special damages, including, but not limited to:

- a. Plaintiff Decedent suffered great physical pain and mental anguish;
- b. Plaintiff is incurring hospital and/or medical and/or pharmaceutical and/or other expenses due to the progressively disabling character of his asbestos-related malignant mesothelioma;

Plaintiff suffered physical impairment due to the disabling character of asbestos-related malignant mesothelioma;

- c. Plaintiff Debra Lack has suffered loss of consortium since the passing of her husband, Plaintiff Decedent Bruce L. Lack;
- d. Prior to the onset of his symptoms, Plaintiff Decedent was extremely active and participated in numerous hobbies and activities, and as a result of his asbestos-related malignant mesothelioma, Plaintiff Decedent was prevented from engaging in some of the said activities, which were normal to him prior to developing symptoms from asbestos-related mesothelioma;
- e. Plaintiff seeks punitive and exemplary damages.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Decedent Bruce L. Lack demands judgment against the Defendants, and each of them, jointly and severally, for general and special damages in excess of Seventy-Five Thousand Dollars (\$75,000.00), for punitive and exemplary damages in excess of Seventy-Five Thousand Dollars (\$75,000.00), for his costs expended herein, for prejudgment interest, and post-judgment interest on the judgment at the rate allowed by law,

and for such other and further relief, both at law and in equity, to which Plaintiff may show himself to be justly entitled.

Respectfully Submitted,



THE LANIER LAW FIRM, P.C.  
REAGAN E. BRADFORD, OBA BAR NO. 22072  
RYAN K. WILSON, OBA BAR NO. 33306  
431 W. Main Street, Suite D  
Oklahoma City, OK 73102  
(405) 698-2770  
(405) 234-5506 fax  
reagan.bradford@lanierlawfirm.com  
ryan.wilson@lanierlawfirm.com

*-and-*

W. MARK LANIER, TX BAR NO. 11934600\*  
SAM E. TAYLOR, II, TX BAR NO. 19722550\*  
R. AUSTIN TAYLOR, TX BAR NO. 24099467\*  
*\*pro hac vice forthcoming*  
10940 West Sam Houston Pkwy North, Ste. 100  
Houston, Texas 77064  
Tel. (713) 659 5200  
Fax (713) 659 2204  
wml@lanierlawfirm.com  
sam.taylor@lanierlawfirm.com  
austin.taylor@lanierlawfirm.com

*-and-*

ALLEN LAW FIRM, PLLC  
REAGAN D. ALLEN, OBA #19739  
3401 Goldfinch Lane  
Enid, Oklahoma 73703  
Tel. (214) 587-3810  
reagan.d.allen@gmail.com

**ATTORNEYS FOR PLAINTIFF**