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ENTERED

CV110400
ANAD
Answer - Affirmative Defense
36909



FILED
STATE OF OREGON
YAMHILL COUNTY
TRIAL COURT
12 JAN -3 PM 1:11
BY TRIAL COURT ADMINISTRATOR

IN THE CIRCUIT COURT OF OREGON
IN AND FOR THE COUNTY OF YAMHILL

EAGLE INDUSTRIES, INC.,)	Case No. CV 110400
)	
Plaintiffs,)	DEFENDANT HANGSTERFER'S
)	LABORATORIES, INC.'S ANSWER AND
vs.)	DEFENSES
)	
MACPHERSON WESTERN TOOD &)	Amount at Issue: \$1,088,483
SUPPLY CO., INC., a California corporation)	
and HANGSTERFER'S LABORATORIES,)	Not Subject to Mandatory Arbitration
INC., a New Jersey corporation,)	
)	Jury Trial Demanded
Defendants.)	

13 For its Answer to Plaintiff Eagle Industries, Inc.'s ("Plaintiff") Amended Complaint,
14 Defendant Hangsterfer's Laboratories, Inc. ("Defendant Hangsterfer's") admits, denies and
15 alleges as follows:

16 **FIRST DEFENSE**

17 1.

18 Defendant Hangsterfer's admits the allegations contained in Paragraph 1 of Plaintiff's
19 Amended Complaint.

20 2.

21 Defendant Hangsterfer's admits the allegations contained in Paragraph 2 of Plaintiff's
22 Amended Complaint.

23 3.

24 Defendant Hangsterfer's admits the allegations contained in Paragraph 3 of Plaintiff's
25 Amended Complaint.

26 ///

Page 1 - DEFENDANT HANGSTERFER'S LABORATORIES, INC.'S ANSWER AND DEFENSES

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FACTUAL ALLEGATIONS

(Plaintiff's Business)

4.

Defendant Hangsterfer's is without information sufficient to form a belief as to the veracity of the allegations contained in Paragraph 4 of Plaintiff's Amended Complaint and therefore denies the same.

5.

Defendant Hangsterfer's is without information sufficient to form a belief as to the veracity of the allegations contained in Paragraph 5 of Plaintiff's Amended Complaint and therefore denies the same.

(Neosol 400 Coolant)

6.

Defendant Hangsterfer's admits that it manufactured Neosol 400. Defendant Hangsterfer's is without information sufficient to form a belief as to the veracity of the remaining allegations contained in Paragraph 6 of Plaintiff's Amended Complaint and therefore denies the same.

7.

Defendant Hangsterfer's is without information sufficient to form a belief as to the veracity of the allegations contained in Paragraph 7 of Plaintiff's Amended Complaint and therefore denies the same.

(Trouble-shooting Problems Identified with Neosol 400)

8.

Defendant Hangsterfer's admits that Plaintiff notified Hangsterfer's that there was an odor associated with Plaintiff's use of the product. Defendant Hangsterfer's further admits that Plaintiff sent Hangsterfer's samples of the used coolant for testing. Defendant Hangsterfer's denies the remaining allegations contained in Paragraph 8 of Plaintiff's Amended Complaint.

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9.

Defendant Hangsterfer's admits that it sent Plaintiff a sample of a new coolant. Defendant Hangsterfer's is without information sufficient to form a belief as to the veracity of the remaining allegations contained in Paragraph 9 of Plaintiff's Amended Complaint and therefore denies the same.

10.

Defendant Hangsterfer's admits that Plaintiff reported that there was a problem with one of its machines in which Plaintiff was using the Neosol 400 coolant. Defendant denies the remaining allegations contained in Paragraph 10 of Plaintiff's Amended Complaint.

11.

Defendant Hangsterfer's is without information sufficient to form a belief as to the allegations contained in Paragraph 11 of Plaintiff's Amended Complaint and therefore denies the same.

12.

Defendant Hangsterfer's denies the allegations contained in Paragraph 12 of Plaintiff's Amended Complaint.

13.

Defendant Hangsterfer's admits that coolant vaporization occurs at the high temperatures generated by the machining process. Defendant Hangsterfer's denies the remaining allegations contained in Paragraph 13 of Plaintiff's Amended Complaint.

14.

Defendant Hangsterfer's admits that Plaintiff began using a different coolant instead of the Neosol 400. Defendant Hangsterfer's denies the remaining allegations contained in Paragraph 14 of Plaintiff's Amended Complaint.

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(Discovering Extent of Damage Caused by Neosol 400)

15.

Defendant Hangsterfer's denies that Plaintiff's parts and tooling were damaged by the vaporized Neosol 400 coolant. Defendant Hangsterfer's is without information sufficient to form a belief as to the veracity of the remaining allegations contained in Paragraph 15 of Plaintiff's Amended Complaint and therefore denies same.

16.

Defendant Hangsterfer's denies the allegations contained in Paragraph 16 of Plaintiff's Amended Complaint.

17.

Defendant Hangsterfer's denies that Plaintiff's tools and collets were damaged by the Neosol 400 coolant. Defendant Hangsterfer's is without information sufficient to form a belief as to the veracity of the remaining allegations contained in Paragraph 17 of Plaintiff's Amended Complaint and therefore denies same.

18.

Defendant Hangsterfer's denies that Plaintiff's machines were damaged by its coolant. Defendant Hangsterfer's is without information sufficient to form a belief as to the veracity of the remaining allegations contained in Paragraph 18 of Plaintiff's Amended Complaint and therefore denies same.

19.

Defendant Hangsterfer's denies the allegations contained in Paragraph 19 of Plaintiff's Amended Complaint.

FIRST CLAIM FOR RELIEF

(Strict Products Liability, ORS §§ 30.900 and 30.920)

COUNT 1

(Manufacturing Defect)

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20.

In response to Paragraph 20 of Plaintiff's Amended Complaint, Defendant Hangsterfer's re-alleges the above stated responses to paragraphs 1-19 of Plaintiff's Amended Complaint as if fully stated herein.

21.

Defendant Hangsterfer's admits the allegations contained in Paragraph 21 of Plaintiff's Amended Complaint.

22.

Defendant Hangsterfer's is without information sufficient to form a belief as to the veracity of the allegations contained in Paragraph 22 of Plaintiff's Amended Complaint and therefore denies same.

23.

Defendant Hangsterfer's admits that Western is a retail business that sells a variety of machining products. Defendant Hangsterfer's is without information sufficient to form a belief as to the veracity of the remaining allegations contained in Paragraph 23 of Plaintiff's Amended Complaint and therefore denies same.

24.

Defendant Hangsterfer's is without information sufficient to form a belief as to the veracity of the allegations contained in Paragraph 24 of Plaintiff's Amended Complaint and therefore denies same.

25.

Defendant Hangsterfer's is without information sufficient to form a belief as to the veracity of the allegations contained in Paragraph 25 of Plaintiff's Amended Complaint and therefore denies same.

26.

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1 Defendant Hangsterfer's denies the allegations contained in Paragraph 26 of Plaintiff's
2 Amended Complaint.

3 27.

4 Defendant Hangsterfer's denies the allegations contained in Paragraph 27 of Plaintiff's
5 Amended Complaint.

6 28.

7 Defendant Hangsterfer's denies the allegations contained in Paragraph 28 of Plaintiff's
8 Amended Complaint.

9 **Count II**

10 **(Design Defect)**

11 29.

12 In response to Paragraph 29 of Plaintiff's Amended Complaint, Defendant Hangsterfer's
13 re-alleges the above stated responses to paragraphs 1-27 of Plaintiff's Amended Complaint as if
14 fully stated herein.

15 30.

16 Defendant Hangsterfer's denies the allegations contained in Paragraph 30 of Plaintiff's
17 Amended Complaint.

18 31.

19 Defendant Hangsterfer's denies the allegations contained in Paragraph 31 of Plaintiff's
20 Amended Complaint.

21 **Count III**

22 **(Failure to Warn)**

23 32.

24 In response to Paragraph 32 of Plaintiff's Amended Complaint, Defendant Hangsterfer's
25 re-alleges the above stated responses to paragraphs 1-27 of Plaintiff's Amended Complaint as if
26 fully stated herein.

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33.

Defendant Hangsterfer's denies the allegations contained in Paragraph 33 of Plaintiff's Amended Complaint.

SECOND CLAIM FOR RELIEF

(Breach of Implied Warranty of Merchantability, ORS §§ 72.3140)

(Against Western)

34.

In response to Paragraph 34 of Plaintiff's Amended Complaint, Defendant Hangsterfer's re-alleges the above stated responses to paragraphs 1-33 of Plaintiff's Amended Complaint as if fully stated herein.

35-41

Defendant Hangsterfer's neither admits or denies the allegations contained in Paragraphs 35 through 41 of Plaintiff's Amended Complaint, as these allegations concern a party other than Defendant Hangsterfer's. To the extent that a response is required, Defendant Hangsterfer's denies the allegations contained in Paragraphs 35 through 41 of Plaintiff's Amended Complaint.

42.

Except as expressly admitted above, Defendant Hansterfer's denies each and every allegation in Plaintiff's Amended Complaint and the whole thereof.

SECOND DEFENSE

(Failure to State a Claim)

43.

Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

(Statute of Limitations/Ultimate Repose)

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Plaintiff's claims are barred in whole or in part by the applicable statute of limitations and/or ultimate repose.

FOURTH DEFENSE

(Failure to Mitigate)

45.

Plaintiff failed to mitigate or minimize its damages, if any.

FIFTH DEFENSE

(Comparative Fault)

46.

Plaintiff's damages arising from this cause of action, if any, were caused in whole or in part by Plaintiff's own negligence or fault.

SIXTH DEFENSE

(Fault of Others)

47.

Plaintiff's damages arising from this cause of action, if any, were solely or substantially cause by the fault of parties over whom Defendant Hangsterfer's had no control.

SEVENTH DEFENSE

(Betterment)

48.

Plaintiff directed, approved and/or is seeking unnecessary repairs that resulted or will result in a betterment.

EIGHTH DEFENSE

(Misuse)

49.

Plaintiff's damages were caused, in whole or in part, by Plaintiff's misuse of the product.

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NINTH DEFENSE

(Modification/Alteration)

50.

Plaintiff's claims are barred because Plaintiff's injury was actually or proximately caused, in whole or in part, by Plaintiff's modification or alteration of the product.

TENTH DEFENSE

(Causation)

51.

Plaintiff's damages, if any, were not a result of, or caused by, any acts or omissions of Defendant Hangsterfer's.

ELEVENTH DEFENSE

(Applicable Standards)

52.

The product satisfied all applicable standards and codes at the time it left Defendant Hangsterfer's possession.

TWELFTH DEFENSE

(Additional Defenses)

53.

Defendant Hangsterfer's hereby gives notice that it intends to rely upon such other defenses as may become available or apparent during the course of discovery and thus reserves the right to amend its Answer to assert such defenses.

WHEREFORE having fully answered allegations of the Plaintiff's Amended Complaint and by way of further answer, Defendant Hangsterfer's prays for the following relief:

1. That Plaintiff's claims in its Amended Complaint be dismissed in their entirety with prejudice and that Plaintiff takes nothing thereby;

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2. For an award of reasonable attorney fees and costs; and
3. For such other and further relief the Court deems just and equitable.

Dated this 3rd day of January, 2012

LORBER, GREENFIELD & POLITO, LLP

By: Rachel Nies

Rachel C. Nies, OSB #085360

E-Mail: mies@lorberlaw.com

Elizabeth M. Edwards, OSB #113724

E-Mail: eedwards@lorberlaw.com

Of Attorneys for Defendant

Hangsterfer's Laboratories, Inc.

Dated this 3rd day of January, 2012

SMITH FREED & EBERHARD P.C.

By: Rachel Nies for

Jeffrey W. Hansen, OSB #923290

E-mail: jhansen@smithfreed.com

John M. Kreutzer, OSB #973069

E-mail: jkreutzer@smithfreed.com

Of Attorneys for Defendant

Hangsterfer's Laboratories, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **DEFENDANT HANGSTERFER'S LABORATORIES, INC.'S ANSWER AND DEFENSES** on the date indicated below by hand delivery overnight delivery facsimile mailing by depositing with the U.S. mail in Portland, Oregon, enclosed in a sealed envelope with first class postage prepaid. Addressed as follows:

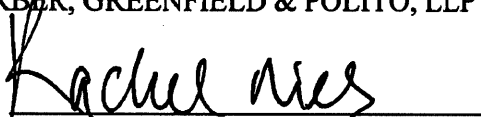
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Of Attorneys for Plaintiff Eagle Industries, Inc.

Paul R. Xochihua
Davis Rothwell Earle & Xochihua, P.C.
111 SW Fifth Avenue
Suite 2700
Portland, OR 97204
Of Attorneys for MacPherson Western Tool & Supply Co., Inc.

Dated this 3rd day of January, 2012.

LORBER, GREENFIELD & POLITO, LLP

By:



Rachel C. Nies, OSB #085360
E-Mail: rnies@lorberlaw.com
Of Attorneys for Defendant
Hangsterfer's Laboratories, Inc.