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(2/28/11) CCG N001

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 COUNTY DEPARTMENT, _____ LAW _____ DIVISION

No. _____

154093904

ERIC REJDAK and DARIUSZ KLIMEK,

(Name all parties)

v.

WORTHINGTON CYLINDERS WISCONSIN, LLC, WORTHINGTON
 CYLINDER CORP., WORTHINGTON INDUSTRIES, INC., NEWELL
 RUBBERMAID, INC., IRWIN INDUSTRIAL TOOL CO., NEWELL
 OPERATING CO., HOME DEPOT U.S.A., INC. and WESTERN
 INDUSTRIES, INC.,

PLEASE SERVE:

WESTERN INDUSTRIES, INC.
 c/o Robert A. Schnieder, Registered Agent
 1141 South 10th Street
 P.O. Box 28
 Watertown, Wisconsin 53094

☒ SUMMONS ☐ ALIAS SUMMONS

To each Defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, and pay the required fee, in the Office of the Clerk of this Court at the following location:

- ☒ Richard J. Daley Center, 50 W. Washington, Room 801, Chicago, Illinois 60602
- | | | |
|---|--|--|
| <input type="radio"/> District 2 - Skokie
5600 Old Orchard Rd.
Skokie, IL 60077 | <input type="radio"/> District 3 - Rolling Meadows
2121 Euclid
Rolling Meadows, IL 60008 | <input type="radio"/> District 4 - Maywood
1500 Maybrook Ave.
Maywood, IL 60153 |
| <input type="radio"/> District 5 - Bridgeview
10220 S. 76th Ave.
Bridgeview, IL 60455 | <input type="radio"/> District 6 - Markham
16501 S. Kedzie Pkwy.
Markham, IL 60428 | <input type="radio"/> Child Support
28 North Clark St., Room 200
Chicago, Illinois 60602 |

You must file within 30 days after service of this Summons, not counting the day of service.

IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF REQUESTED IN THE COMPLAINT.

To the officer:

This Summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this Summons shall be returned so endorsed. This Summons may not be served later than 30 days after its date.

Atty. No.: 47333

Name: W. Joseph Hetherington/Hetherington, Karpel, Bobber & Miller, LLC

Atty. for: Plaintiff

Address: 120 North LaSalle Street, Suite 2810

City/State/Zip: Chicago, Illinois 60602

Telephone: (312) 878-6680

WITNESS

DOROTHY BROWN SEP 14 2015

Clerk of Court

Date of service: _____
 (To be inserted by officer on copy left with defendant or other person)

Service by Facsimile Transmission will be accepted at: _____

(Area Code) (Facsimile Telephone Number)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

#47333

STATE OF ILLINOIS)
)SS
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

ERIC REJDAK and DARIUSZ)
KLIMEK,)
)
 Plaintiffs,)
)
v.)
)
WORTHINGTON CYLINDERS)
WISCONSIN, LLC, WORTHINGTON)
CYLINDER CORP., WORTHINGTON)
INDUSTRIES, INC., NEWELL)
RUBBERMAID, INC., IRWIN)
INDUSTRIAL TOOL CO., NEWELL)
OPERATING CO., HOME DEPOT)
U.S.A., INC. and WESTERN)
INDUSTRIES, INC.,)
)
 Defendants.)

No.

2015L009390
CALENDAR/ROOM E
TIME 00:00
Product Liability

COMPLAINT

NOW COME plaintiff ERIC REJDAK, by his attorneys, HETHERINGTON, KARPEL, BOBBER & MILLER, LLC and THE ACCURSO LAW FIRM, and plaintiff DARIUSZ KLIMEK, by his attorneys, BELLAS & WACHOWSKI and THE ACCURSO LAW FIRM, and complaining of the defendants, WORTHINGTON CYLINDERS WISCONSIN, LLC, WORTHINGTON CYLINDER CORP., WORTHINGTON INDUSTRIES, INC., NEWELL RUBBERMAID, INC., IRWIN INDUSTRIAL TOOL CO., NEWELL OPERATING CO., HOME DEPOT U.S.A., INC. and WESTERN INDUSTRIES, INC., state:

BACKGROUND

1. Plaintiff Eric Rejdak is an individual who is domiciled in Prospect Heights, Illinois.

2. Plaintiff Dariusz Klimek is an individual who is domiciled in Silver Lake, Wisconsin.

3. On September 17, 2013, plaintiffs were present inside the garage of a residence at 2092 Sherwin Avenue, Des Plaines, Illinois, when MAPP gas escaped from a MAPP Gas BernzOmatic handheld torch and ignited, causing a flash fire that resulted in serious injuries to both plaintiffs.

4. The BernzOmatic handheld torch (hereafter "the torch assembly") consists of two main component parts, a MAPP gas cylinder (hereafter "the cylinder") and a trigger-start torch (hereafter "the torch"). The torch is designed to be screwed on to a threaded metal neck of the cylinder. Once attached to the cylinder, the torch is designed and intended to be ignited when the user activates a trigger that is part of the trigger-start switch.

5. The cylinder consists of a foot ring, a lower half, an upper half, a center valve housing and a pressure relief valve.

6. It was reasonably foreseeable by defendants that the torch assembly was subject to the following uses and/or misuses:

- (a) It could be dropped or fall over with resulting damage to the cylinder;
- (b) Holding the torch assembly by the torch could place

an excessive amount of stress on the cylinder and cause the cylinder to fail and allow gas to escape; and

- (c) Screwing the torch on to the cylinder could place an excessive amount of stress on the cylinder and cause the cylinder to fail and allow gas to escape.

7. Defendant Worthington Cylinders Wisconsin, LLC (hereafter defendant "WCW") is an Ohio limited liability company with its principal place of business in Chilton, Wisconsin. It is a subsidiary of defendant Worthington Cylinder Corp.

8. Defendant Worthington Cylinder Corp. (hereafter defendant "WCC") is an Ohio corporation with its principal place of business in Columbus, Ohio. It is a subsidiary of Worthington Industries, Inc.

9. Defendant Worthington Industries, Inc. (hereafter defendant "Worthington") is an Ohio corporation with its principal place of business in Columbus, Ohio.

10. Defendant Newell Rubbermaid Inc. (hereafter defendant "Newell") is a Georgia corporation with its principal place of business in Atlanta, Georgia.

11. Defendant Irwin Industrial Tool Co. (hereafter defendant "Irwin") is a Delaware corporation with its principal place of business in Huntersville, North Carolina. It is a subsidiary of defendant Newell.

12. BernzOmatic is or was an unincorporated division of defendant Irwin.

13. Defendant Newell Operating Co. (hereafter defendant "NOC") is a Delaware corporation and is a subsidiary of defendant Newell.

14. Defendant NOC is the holder of certain trademark registrations for BernzOmatic.

15. Defendant Western Industries, Inc. (hereafter defendant "Western") is a corporation located in Watertown, Wisconsin and is and/or was engaged in the design, manufacture and distribution of metal and plastic cylinders, including MAPP gas cylinders.

16. Defendant Home Depot U.S.A., Inc. (hereafter defendant "Home Depot") is a corporation whose corporate office is located in Atlanta, Georgia.

17. In 1876, Otto Bernz founded Otto Bernz Co., which sold plumbing tools, furnaces and torches. In the 1940s, Otto Bernz Co. changed its name to BernzOmatic. In the 1950s, BernzOmatic developed propane torches and gas cylinders.

18. BernzOmatic was the first company to commercially develop a one-pound handheld torch that was portable and easy to use. Since such development more than 50 years ago, BernzOmatic has been the market leader in handheld torches and handheld torch cylinders.

19. Since as early as 1954, BERNZOMATIC® has been registered as a trademark on the principal register in connection with gas cylinders and other related goods. Registration numbers for

BERNZOMATIC® include Reg. Nos. 593884, 58728, 737112, 759196 and 759059 and are or were owned by defendant NOC. Defendant Irwin is or was the exclusive licensee of the BERNZOMATIC® trademarks.

20. Since at least 1954, BernzOmatic was engaged in the business of designing, preparing, manufacturing, maintaining, advertising, distributing, supplying and selling various types of handheld torches and accessories, including but not limited to handheld torches and component parts thereof.

21. BernzOmatic (or its successors in interest) has used the trademark BERNZOMATIC® exclusively since at least 1954 in connection with gas cylinders and related goods. BERNZOMATIC® is well known to consumers of such goods and has come to be recognized as the single source for such BernzOmatic products through decades of distribution, sales and advertising to customers throughout the United States. BernzOmatic has invested and continues to invest enormous amounts of time, money and resources building its reputation and developing the BERNZOMATIC® brand. The BernzOmatic trade dress, including the recognizable color of its hand torch cylinders, is well known to BernzOmatic's customers.

22. For over twenty years, defendant Worthington and its predecessor, defendant Western, have supplied BernzOmatic with the handheld torch cylinders that BernzOmatic sells under the BERNZOMATIC® brand.

23. On or about September 17, 2004, defendant Worthington

acquired the propane and specialty gas cylinder assets of defendant Western. Defendant Western's Propane & Specialty Cylinder Group manufactured 14.1 ounce and 16.4 ounce disposable cylinders for handheld torches, company stoves, portable heaters and table top grills.

24. Under a previous supply agreement originally entered into by defendant Western, but whose rights and obligations were assumed by defendant Worthington when defendant Worthington purchased the torch cylinder assets of defendant Western, defendant Worthington agreed to supply BernzOmatic's requirements for certain specified hand torch cylinders at set prices. Under that agreement, BernzOmatic was the sole outlet for the cylinders supplied by defendant Worthington and had the exclusive right to sell such cylinders to all distributors and retailers.

25. In or about the summer of 2005, BernzOmatic and Worthington negotiated and entered into a new supply agreement (the "Supply Agreement"). The Supply Agreement was made as of January 1, 2006 and its initial term continued through December 31, 2008.

26. On or about July 5, 2011, defendant Worthington acquired BernzOmatic from defendant Irwin.

27. On a date prior to September 17, 2013, one of the plaintiffs purchased the subject torch assembly, commonly known and described as a BernzOmatic Trigger-Start Torch Kit, from defendant Home Depot. The torch assembly was designed, prepared,

manufactured, advertised, distributed, supplied and sold by one or more of the defendants.

28. On September 17, 2013, and at all times prior thereto, the plaintiffs exercised ordinary care for their own safety.

29. At all relevant times, defendants had a duty to design, test, prepare, manufacture, advertise, distribute, supply and sell handheld torch assemblies with adequate control devices to prevent the escape of gas from the torch assembly for the safety and protection of plaintiffs and others.

30. At all relevant times, defendants knew and intended that the BERNZOMATIC Brand MAPP Gas handheld torches that they designed, tested, manufactured, marketed and sold would be purchased and used by consumers without the requisite knowledge of what constitutes material defects in the product.

31. The torch assembly that caused plaintiffs' injuries failed to contain the following necessary instructions and warnings, namely, that:

- a. Torches may spontaneously leak and cause severe injury;
- b. Torches should not be placed indoors, should not be left unattended and should not be in the presence of open flame, as torches have been known to malfunction and/or leak;

c. MAPP gas may corrode the brazed bushing joint, causing it to separate, resulting in severe injury or death; and

d. MAPP gas cylinders may fail and explode unexpectedly, causing severe injury or death.

32. These dangers and risks were known or should have been known to defendants at the time the torch assembly was designed, manufactured, distributed, marketed and sold.

33. Defendants' torch assembly design has an inherent design defect because the torch assembly has been proven to spontaneously leak, combust, explode and cause severe injuries.

34. Defendants knew for at least five years preceding plaintiffs' injuries that the brazed bushing joint of their MAPP Gas cylinders had a tendency to breach and cause severe injuries due to design or manufacturing defects.

35. Defendants knew for at least five years preceding plaintiffs' injuries that the torch assembly had defects that allowed gas to escape from the torch assembly and thereby causing flash fires with resulting severe injuries.

36. Defendants knew of the above-described defects additionally because they have been sued numerous times over these defects.

COUNT I
STRICT LIABILITY - DEFECTIVE PRODUCT

37. Defendants designed, manufactured and sold the subject torch assembly.

38. Defendants designed, manufactured and sold the torch assembly in the course of their business.

39. The torch assembly was in a defective and unreasonably dangerous condition when manufactured and sold by defendants and when put to a reasonably anticipated use, for the following reasons:

- (a) The torch assembly was not manufactured and designed to function properly and fail safe during its reasonably anticipated useful life;
- (b) The metal used for the cylinder is too thin and/or weak to be used as part of a torch assembly, with the result that the cylinder frequently fails and allows gas to escape;
- (c) The method of attaching the torch to the cylinder puts an excessive amount of stress on the cylinder and thereby causes the cylinder to fail and allow gas to escape;
- (d) The design of the torch assembly is such that if it is dropped or falls, an excessive amount of stress is placed on the cylinder, causing the cylinder to fail and allow gas to escape;

- (e) MAPP gas may corrode the brazed bushing joint, causing the cylinder to fail and allow gas to escape; and
- (f) The torch assembly design has an inherent design defect, as shown by the fact that the torch assembly has been proven to spontaneously leak, combust, explode and cause severe injuries.

40. The torch assembly was used by plaintiffs in a reasonably anticipated manner.

41. The torch assembly was unreasonably dangerous when put to a reasonably anticipated use without knowledge of its characteristics.

42. As a direct and proximate result of the aforesaid defective conditions, an explosive mixture of MAPP gas accumulated in the garage, resulting in a flash fire.

43. As a direct and proximate result of the flash fire, plaintiff Eric Rejdak sustained burns to his corneas which adversely affected his vision and burns to approximately 40% of his body, including his face, arms, hands, back and torso, which required several lengthy hospitalizations and multiple skin graft and contracture surgeries. As a result of these permanent, disabling and disfiguring injuries, Mr. Rejdak has endured and will continue to endure severe pain, anguish and suffering. He has also incurred and will continue to incur medical expenses, and he has

lost and will continue to lose earnings from work.

44. As a direct and proximate result of the flash fire, Dariusz Klimek sustained burns to approximately 20% of his body, including his face, forearms and hands, which required several lengthy hospitalizations and multiple skin graft surgeries. As a result of these permanent, disabling and disfiguring injuries, Mr. Klimek has endured severe pain, anguish and suffering. He has also incurred and will continue to incur medical expenses, and he has lost and will continue to lose earnings from work.

WHEREFORE, plaintiffs pray for judgment against defendants, and each of them, for damages in excess of \$30,000.00 plus costs.

COUNT II
NEGLIGENCE

45. At all relevant times, defendants had a duty to exercise ordinary care in designing, manufacturing and testing the torch assembly so as to ensure that it was reasonably safe for use by plaintiffs and others.

46. Defendants failed to use ordinary care in designing, manufacturing and testing the torch assembly.

47. Defendants failed to adequately test the torch assembly for reasonably foreseeable uses and misuses.

48. Defendants negligently designed and/or manufactured the torch assembly in the following respects:

- (a) The torch assembly was not manufactured and designed to function properly and fail safe during its reasonably anticipated useful life;
- (b) The metal used for the cylinder is too thin and/or weak to be used as part of a torch assembly, with the result that the cylinder frequently fails and allows gas to escape;
- (c) The method of attaching the torch to the cylinder puts an excessive amount of stress on the cylinder and thereby causes the cylinder to fail and allow gas to escape;
- (d) The design of the torch assembly is such that if the torch assembly is dropped or falls, an excessive amount of stress is placed on the cylinder, causing the cylinder to fail and allow gas to escape;
- (e) MAPP gas may corrode the brazed bushing joint, causing the cylinder to fail and allow gas to escape;
- (f) The torch assembly design has an inherent design defect, as shown by the fact that the torch assembly has been proven to spontaneously leak, combust, explode and cause severe injuries.

49. Defendants failed to warn or adequately warn plaintiffs

and others of the risk of harm presented by the torch assembly.

50. Such failures directly caused or directly contributed to cause plaintiffs' injuries and damages.

51. As a direct and proximate result of the negligent acts and omissions of defendants, an explosive mixture of MAPP gas accumulated in the garage, resulting in a flash fire.

52. As a direct and proximate result of the flash fire, plaintiff Eric Rejdak sustained burns to his corneas which adversely affected his vision and burns to approximately 40% of his body, including his face, arms, hands, back and torso, which required several lengthy hospitalizations and multiple skin graft and contracture surgeries. As a result of these permanent, disabling and disfiguring injuries, Mr. Rejdak has endured severe pain, anguish and suffering. He has also incurred and will continue to incur medical expenses, and he has lost and will continue to lose earnings from work.

53. As a direct and proximate result of the flash fire, Dariusz Klimek sustained burns to approximately 20%, of his body, including his face, forearms and hands, which required several lengthy hospitalizations and multiple skin graft surgeries. As a result of these permanent, disabling and disfiguring injuries, Mr. Klimek has endured severe pain, anguish and suffering. He has also incurred and will continue to incur medical expenses, and he has lost and will continue to lose earnings from work.

WHEREFORE, plaintiffs pray for judgment against defendants, and each of them, for damages in excess of \$30,000.00 plus costs.

COUNT III
BREACH OF WARRANTIES

54. Defendants sold the torch assembly.

55. Plaintiffs purchased the torch assembly and/or were a member of the purchaser's family or household, and defendants should have reasonably expected that plaintiffs would use or be affected by the torch assembly.

56. Defendants impliedly warranted to plaintiffs that the torch assembly was merchantable and fit for its intended use.

57. When sold by defendants, the torch assembly was not merchantable or fit for its intended use.

58. The plaintiffs used the torch assembly for its intended purposes.

59. Defendants' implied warranties of merchantability and fitness were breached in that the torch assembly was not safe for its intended use.

60. As a direct and proximate result of the breach of warranties, an explosive mixture of MAPP gas accumulated in the garage and ignited, resulting in a flash fire.

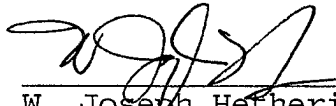
61. As a direct and proximate result of the flash fire, plaintiff Eric Rejdak sustained burns to his corneas which adversely affected his vision and burns to approximately 40% of his

body, including his face, arms, hands, back and torso, which required several lengthy hospitalizations and multiple skin graft and contracture surgeries. As a result of these permanent, disabling and disfiguring injuries, Mr. Rejdak has endured severe pain, anguish and suffering. He has also incurred and will continue to incur medical expenses, and he has lost and will continue to lose earnings from work.

62. As a direct and proximate result of the flash fire, Dariusz Klimek sustained burns to approximately 20%, of his body, including his face, forearms and hands, which required several lengthy hospitalizations and multiple skin graft surgeries. As a result of these permanent, disabling and disfiguring injuries, Mr. Klimek has endured severe pain, anguish and suffering. He has also incurred and will continue to incur medical expenses, and he has lost and will continue to lose earnings from work.

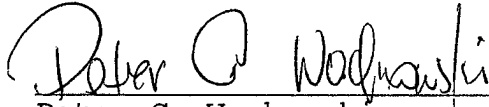
WHEREFORE, plaintiffs pray for judgment against defendants, and each of them, for damages in excess of \$30,000.00 plus costs.

HETHERINGTON, KARPEL, BOBBER & MILLER, LLC



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ATTORNEYS FOR PLAINTIFFS

PERSON SERVED Robert A Schneider
ADDRESSES SERVED AT 1141 S. 10 St
Watertown
Served ☒ PERSONAL ☐ SUBSTITUTE
SERVED 28 DAY OF September 2015
at 10:38 A.M.
SHERIFF, JEFFERSON COUNTY
JEFFERSON, WI 53549
Dep. Signature: Dep Allan Brawley

SEP 21 2015