

STATE OF INDIANA)
COUNTY OF HAMILTON)

IN THE HAMILTON SUPERIOR COURT I
SS: CAUSE NO. 29 D 01 0607 CT 719

FRANK L. ROLAND)
Plaintiff,)

vs.)

WESTERN INDUSTRIES, INC.,)
WESTERN INDUSTRIES KSQ)
DIVISION, WESTERN)
INDUSTRIES CHILTON)
DIVISION, WESTERN)
INDUSTRIES ENGINEERED)
PRODUCTS GROUP, WESTERN)
INDUSTRIES PROPANE AND)
SPECIALTY CYLINDER GROUP,)
THERMADYNE HOLDINGS)
CORPORATION, VICTOR)
EQUIPMENT COMPANY,)
TURBOTORCH, TWECO)
PRODUCTS, INC., F/K/A)
TWECO/ARCAIR, THERMAL)
DYNAMICS CORPORATION,)
THERMAL ARC, STOODY,)
C & G SYSTEMS, INC.,)
FIREPOWER, NEWELL)
RUBBERMAID, INC., and)
BERNZOMATIC.)

Defendants.)

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James Davis

COMPLAINT

Plaintiff, Frank L. Roland, by counsel, for his cause of action against Defendants,
alleges and states as follows:

1. Plaintiff Frank L. Roland is and was at all times relevant hereto a resident
of Johnson County, Indiana.

2. Defendant, Western Industries, Inc. ("Western"), upon information and belief, is, and was at all relevant times hereto, a corporation located in Milwaukee, Wisconsin, and Western is engaged in the design, manufacture and distribution of metal and large plastic canisters including MAPP gas canisters.

3. Defendant, Western Industries KSQ Division ("KSQ"), upon information and belief, is, and was at all relevant times hereto, a subsidiary of Western, located in Winfield, Kansas, engaged in the design, manufacture, and national distribution of products.

4. Defendant, Western Industries Chilton Division ("Chilton"), upon information and belief, is, and was at all relevant times hereto, a subsidiary of Western, located in Chilton, Wisconsin, and is engaged in the design, manufacture, and national distribution of products.

5. Defendant, Western Industries Engineered Products Group ("Engineered Products Group"), upon information and belief, is, and was at all relevant times hereto, a subsidiary of Western, located in Watertown, Wisconsin, and is engaged in the design, manufacture, and national distribution of appliance and commercial engineered products.

6. Defendant, Western Industries Propane and Specialty Cylinder Group ("Propane and Specialty Cylinder Group"), upon information and belief, was at all relevant times hereto, a subsidiary of Western, located in Chilton, Wisconsin, and engaged in the design, manufacture, and national distribution of propane and specialty canisters.

7. Defendant, Thermadyne Holdings Corporation, ("Thermadyne"), upon information and belief, is, and was at all relevant times hereto, a corporation located in

St. Louis, Missouri, and engaged in the design, manufacture, and national distribution of welding, cutting, and other commercial products, including a Model 44 TurboTorch.

8. Defendant, Victor Equipment Company ("Victor"), upon information and belief, is, and was at all relevant times hereto, a subsidiary of Thermadyne, located in Denton, Texas, and engaged in the design, manufacture, and national distribution of gas apparatus including handheld torches and attachments, including the Model 44 TurboTorch.

9. Defendant, TurboTorch, upon information and belief, is, and was at all relevant times hereto, a subsidiary of Victor Equipment Company, located in Denton, Texas, and is engaged in the design, manufacture, and national distribution of gas apparatus including handheld torches and attachments, including the Model 44 TurboTorch.

10. Defendant, Tweco Products, Inc., f/k/a Tweco/Arcair, upon information and belief, is, and was at all relevant times hereto, a subsidiary of Thermadyne, located in Wichita, Kansas, and engaged in the design, manufacture, and national distribution of Mig guns and cable, manual arc welding electrode holders, air carbon arc products and accessories, including the Model 44 TurboTorch.

11. Defendant, Thermal Dynamics Corporation ("Thermal Dynamics"), upon information and belief, is, and was at all relevant times hereto, a subsidiary of Thermadyne, located in West Lebanon, New Hampshire, and engaged in the design, manufacture, and national distribution of commercial products, including the Model 44 TurboTorch.

12. Defendant, Thermal Arc, upon information and belief, is, and was at all relevant times hereto, a subsidiary of Thermadyne, located in Troy, Ohio, and is engaged in the design, manufacture, and national distribution of welders and welding products, including the Model 44 TurboTorch.

13. Defendant, Stooddy, upon information and belief, is, and was at all relevant times hereto, a subsidiary of Thermadyne, located in St. Louis, Missouri, and is engaged in the design, manufacture, and national distribution of welding products, including the Model 44 TurboTorch.

14. Defendant, C & G Systems, Inc. ("C & G"), upon information and belief, is, and was at all relevant times hereto, a subsidiary of Thermadyne, located in Itasca, Illinois, and engaged in the design, manufacture, and national distribution of commercial products, including the Model 44 TurboTorch.

15. Defendant, Firepower, upon information and belief, is, and was at all relevant times hereto, a subsidiary of Thermadyne, located in St. Louis, Missouri, and engaged in the design, manufacture, and national distribution of cutting, welding, and safety products, including the Model 44 TurboTorch.

16. Defendant, Newell Rubbermaid, Inc. ("Newell"), upon information and belief, is, and was at all relevant times hereto, a corporation located in Atlanta, Georgia, and engaged in the design, manufacture and national distribution of branded consumer and commercial products, including gas canisters and Model 44 TurboTorch.

17. Defendant, BernzOmatic, upon information and belief, is, and was at all relevant times hereto, a subsidiary of Newell Rubbermaid, Inc., located in Huntersville,

North Carolina, and is engaged in the design, manufacture, and national distribution of Model 44 TurboTorch, MAPP gas canisters, and accessories.

18. All Defendants in this action conduct business and commerce within the State of Indiana, and, therefore, the courts of this state have personal jurisdiction over Defendants pursuant to Ind. Trial Rule 4.4(A)(1), (3), and (4).

19. On or about August 2, 2004, the Plaintiff was using a MAPP gas canister and a Model 44 TurboTorch both of which had been designed, manufactured, and distributed by the Defendants.

20. While using the Model 44 TurboTorch, the apparatus exploded and Plaintiff was severely injured.

21. Defendants, Western, KSQ, Chilton, Engineered Products Group, Propane and Specialty Cylinder Group, Newell Rubbermaid, Inc, and BernzOmatic designed, manufactured, and sold the MAPP gas canister.

22. Defendants, Thermadyne, Victor, TurboTorch, Tweco Products, Inc., f/k/a Tweco/Arcair, Thermal Dynamics, Thermal Arc, C & G, Firepower, Newell Rubbermaid, and BernzOmatic designed, manufactured, and sold the Turbo Model 44 Hand Torch.

23. Defendants placed the canister and torch in the stream of commerce in a defective and unreasonably dangerous condition, and as a direct and proximate result, Plaintiff was severely injured.

COUNT I
NEGLIGENCE

Plaintiff incorporates herein by reference the allegations set forth above as fully and effectively as if repeated verbatim, and in addition, states:

24. It was Defendants' duty to exercise ordinary care in the design, manufacture, distribution, and sale of the torch and canister so as not to be defective and/or unreasonably dangerous when put to its intended use or use which Defendants knew or should have known would have occurred or taken place.

25. Defendants breached their duty by negligently and carelessly designing, manufacturing, distributing, and selling the torch and canister.

26. The torch and canister used by Roland was negligently designed, manufactured, and sold by the Defendants.

27. As a direct and proximate result of Defendants' negligence, Plaintiff was seriously injured.

COUNT II
PRODUCTS LIABILITY

Plaintiff incorporates herein by reference the allegations set forth above as fully and effectively as if repeated verbatim, and in addition, states:

28. Defendants, Western, KSQ, Chilton, Engineered Products Group, Propane and Specialty Cylinder Group, Newell Rubbermaid, Inc, and BernzOmatic, were, at all material times, engaged in the business of manufacturing, selling, and distributing MAPP gas canisters.

29. Defendants, Thermadyne, Victor, TurboTorch, Tweco Products, Inc., f/k/a Tweco/Arcair, Thermal Dynamics, Thermal Arc, C & G, Firepower, Newell Rubbermaid, and BernzOmatic are engaged in the business of manufacturing, selling, and distributing the Model 44 TurboTorch.

30. On August 2, 2004, Plaintiff used the products in the manner intended by Defendants.

31. Defendants placed the canister and torch into the stream of commerce in a defective and unreasonably dangerous condition.

32. When Plaintiff used the torch and canister on August 2, 2004, the torch and canister were substantially in the same condition in which they were manufactured and sold by Defendants.

33. At all times, Defendants knew or should have known the torch and canister could cause sudden and major damage, but Defendants failed to suitably prevent or warn of the potential for damage.

34. As a direct and proximate result of Defendants' defective and unreasonably dangerous product, Plaintiff has suffered damages.

35. Defendants are strictly liable to Plaintiff for damages suffered as a direct and proximate result of Defendants' manufacturing, sale, and distribution of the torch and canister.

36. Defendants are liable to the Plaintiff under product liability per IND. CODE § 34-20-2, et seq.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

Plaintiff incorporates herein by reference the allegations set forth above as fully and effectively as if repeated verbatim, and in addition, states:

37. Defendants, Western, KSQ, Chilton, Engineered Products Group, Propane and Specialty Cylinder Group, Newell Rubbermaid, Inc, and BernzOmatic, were, at all relevant times hereto, merchants with respect to gas canisters, including the canister obtained and used by Plaintiff.

38. Defendants, Thermadyne, Victor, TurboTorch, Tweco Products, Inc., f/k/a Tweco/Arcair, Thermal Dynamics, Thermal Arc, C & G, Firepower, Newell Rubbermaid, and BernzOmatic were, at all relevant times hereto, merchants with respect to handheld torches, including the handheld torch obtained and used by Plaintiff.

39. The canister and torch used by Plaintiff were sold by Defendants and obtained by Plaintiff.

40. Defendants impliedly warranted that the canister and torch were of good and merchantable quality and fit for use.

41. The canister and torch were defective and unfit for use, and the products therefore breached an implied warranty of merchantability per IND. CODE § 26-1-2-314.

42. As a direct and proximate result of using the defective canister and torch, Plaintiff suffered severe and extensive damages.

COUNT IV

BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE

Plaintiff incorporates herein by reference the allegations set forth above as fully and effectively as if repeated verbatim, and in addition, states:

43. Defendants, having reason to know the particular purpose for which the torch and canister were to be used, impliedly warranted that the torch and canister were fit for such use.

44. The canister and torch were not fit for the particular purpose for which it was used in that it caused injury to the Plaintiff rather than causing beneficial results to Plaintiff's business operations.

45. As a direct and proximate result of Defendants' breach of implied warranty for a particular purpose, Plaintiff has been severely and extensively injured.

COUNT V

FAILURE TO WARN

Plaintiff incorporates herein by reference the allegations set forth above as fully and effectively as if repeated verbatim, and in addition, states:

46. Defendants sold the hazardous torch and canister in the ordinary course of Defendants' businesses.

47. The torch and canister were then unreasonably dangerous when put to a reasonably anticipated use without knowledge of their characteristics.

48. Defendants did not give adequate warning of the dangers associated with the use of the canister and torch.

49. The canister and torch were used in a manner reasonably anticipated.


50. As a direct and proximate result of the condition that existed when the torch and canister were sold, Plaintiff sustained severe and extensive damages.

WHEREFORE, Plaintiff prays for judgment against Defendants in a sum which will compensate him for all his damages, including, but not limited to medical expenses, lost wages, physical and emotional injuries, pain, suffering, loss of enjoyment of life, scarring and disfiguring, and for all other relief deemed just and proper under Indiana law.

Respectfully submitted,

PARR RICHEY OBREMSKEY & MORTON

Attorneys for Plaintiff

By 
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