

CIVIL SUIT NUMBER _____

TIMMY WELCH AND VIRGINIA WELCH 4TH JUDICIAL DISTRICT COURT

VERSUS PARISH OF OUACHITA

NEWELL RUBBERMAID INC. STATE OF LOUISIANA
d/b/a BERNZOMATIC, WORTHINGTON
INDUSTRIES INCORPORATED, IRWIN
INDUSTRIAL TOOL COMPANY, AND
TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA

PETITION FOR DAMAGES

The petition of **TIMMY WELCH AND VIRGINIA WELCH**, a resident and domiciliary of the city of Monroe, Parish of Ouachita, State of Louisiana, respectfully represents that:

1.

Made defendants herein are:

- A. **NEWELL RUBBERMAID INC. d/b/a BERNZOMATIC**, a foreign corporation domiciled in Delaware, upon information and belief, a business authorized to do and doing business in the State of Louisiana, who may be served through its registered agent for service of process, Corporation Process Company, 180 Cherokee Street NE, Marietta, Georgia 30060 via Louisiana Long Arm Statute;
- B. **NEWELL RUBBERMAID INC. d/b/a BERNZOMATIC**, a foreign corporation domiciled in Delaware, upon information and belief, a business authorized to do and doing business in the State of Louisiana, who may be served through its registered agent for service of process, The Corporation Trust Company, 1209 Orange Street, New Castle, Delaware 19801 via Louisiana Long Arm Statute.
- C. **WORTHINGTON INDUSTRIES INCORPORATED**, a foreign corporation domiciled in Ohio, who may be served through its registered agent for service of process, Dale T. Brinkman, 200 Wilson Bride Road, Columbus, Ohio 43085 via Louisiana Long Arm Statute.
- D. **IRWIN INDUSTRIAL TOOL COMPANY**, a foreign corporation domiciled in Delaware, who may be served through its registered agent for service of process, CT Corporation System, 1300 East 9th Street, Cleveland, Ohio 44114 via Louisiana Long Arm Statute.
- E. **TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA**, a foreign insurance company, domiciled in Connecticut, authorized to do and doing business in The Louisiana Secretary of State, 8549 United Plaza Blvd., Baton Rouge, Louisiana 70809, as it's registered agent for Service of Process on causes of action arising within the State of Louisiana;

2.

On or about July 3, 2006, plaintiff, **TIMMY WELCH**, was on private property in the city of Monroe, Parish of Ouachita, State of Louisiana.

3.

On or about July 3, 2006, plaintiff, **TIMMY WELCH**, was using a one pound Bernzomatic mapp gas cylinder and torch.

4.

On or about July 3, 2006, while using the Bernzomatic mapp gas cylinder and torch, su
and without warning, the gas bottle exploded.

5.

As a result of the above described accident, plaintiff, **TIMMY WELCH**, sustained the
following, injuries:

- (a) Injuries and burns to the face;
- (b) Injuries and burns to the head;
- (c) Injuries and burns to the neck;
- (d) Injuries and burns to the wrist;
- (e) Injuries and burns to the hand;
- (f) Injuries and burns to the abdomen; and
- (g) Psychological Injuries.

6.

As a result of the above described accident, plaintiff, **TIMMY WELCH**, sustained the
following, damages:

- (a) Physical pain and suffering, past and future;
- (b) Mental anguish, humiliation and embarrassment, past and future;
- (c) Physical disability, past and future;
- (d) Medical expenses, past and future;
- (e) Loss of enjoyment of life;
- (f) Loss of earning and earning capacity;
- (g) Disfigurement; and
- (h) Grief, shock, humiliation and emotional distress.

7.

The accident and resulting injuries and damages were caused by the fault, negligence and/or
strict liability of the defendants in the following, non-exclusive particulars:

- a. Failing to properly construct, design, manufacture, composition
and/or warn of the unreasonably dangerous gas bottle which is the
subject of this litigation;
- b. Selling a product in a defective condition;
- c. Manufacturing and selling a product which is unreasonably dangerous
in construction and/or composition and/or warning or failure to warn;
- d. Manufacturing and selling a product which is unreasonably dangerous
for its intended use;

- e. Failing to give proper warning;
- f. Failure to properly design, manufacture and assemble the gas bottle in question;
- g. Failure to safely and properly warn of explosion of the gas bottle in question;
- h. Defective and/or improper composition of materials in the manufacture of the gas bottle in question;
- i. Failure to properly assemble the gas bottle;
- j. Failure to warn users of its inherent defects and the failure to warn users and purchasers of subsequent modifications through appropriate recall, notices, services bulletins, etc.;
- k. The manufacturer of the gas bottle in question is liable for damages to plaintiff by the characteristics of the product that make it unreasonably dangerous from the reasonably anticipated use of the product;
- l. The gas bottle in question was unreasonably dangerous in its construction, and/or composition, and/or design, and/or warning, and/or express warranty.

8.

In the alternative, plaintiff shows that the defendants should be held strictly liable for designing, manufacturing and distributing the gas bottle in question when it knew or should have known that it contained defects that presented an unreasonable risk of harm to users of the gas bottle.

9.

In the further alternative, plaintiff shows that the defendants are liable to him as a result of selling and distribution of the gas bottle in question when it knew or should have known of the gas bottle's inherent design and/or manufacturing defects referred to above and is additionally liable for its failure to warn consumers and purchasers of the potential dangers involved through its use.

10.

Plaintiff shows that the defendants, the actual manufacturer of the product in question, are presumed to know of any vices or defects in its original design and manufacture. Therefore, plaintiff shows that the defendants should be held strictly liable for designing, manufacturing and distributing the gas bottle described above when it knew or should have known that it contained defects presenting an unreasonable dangerous or hazardous condition creating an unreasonable risk of harm to plaintiff.

11.

Plaintiff shows that the defendants are liable unto him as a result of the sale of the gas bottle in question when they knew or should have known of its design, composition, construction, and/or manufacturing defects. Defendants are additional liable for their failure to warn customers and

purchasers of the potential dangers involved through its use of the gas bottle in question and/or manufacturing defects.

12.

At the time the gas bottle left the control of the manufacturer, said manufacturer had full knowledge of the dangerous characteristics of the gas bottle in question and was aware of alternative designs which would have rendered the product safe for normal, anticipated use.

13.

The petitioners plead the doctrine of res ipsa loquitur.

WHEREFORE, plaintiffs pray:

1. That defendants be served with a copy of this petition and duly cited to appear and answer same;
2. That after due proceedings had, there be judgment rendered herein in favor of plaintiffs, **TIMMY WELCH AND VIRGINIA WELCH**, and against the defendant, **NEWELL RUBBERMAID INC. d/b/a BERNZOMATIC, WORTHINGTON INDUSTRIES INCORPORATED, IRWIN INDUSTRIAL TOOL COMPANY, TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA**, in solido, for such damages as are reasonable in the premises, together with the maximum legal interest from date of judicial demand until paid and for all costs of this proceeding;
3. For full, general and equitable relief; and
4. Prays for trial by jury.

Respectfully Submitted

ORIGINAL SIGNED BY
PAUL J. TELLARICO

PAUL J. TELLARICO # 19401
NEBLETT, BEARD & ARSENAULT
P.O. Box 1190
Alexandria, LA 71309-1190
(318) 487-9874
ATTORNEYS FOR PLAINTIFFS

PLEASE SERVE:

NEWELL RUBBERMAID INC. d/b/a BERNZOMATIC
Through their registered agent for service
Corporation Process Company
180 Cherokee Street NE
Marietta, Georgia 30060
via Louisiana Long Arm Statute;

NEWELL RUBBERMAID INC. d/b/a BERNZOMATIC

Through their registered agent for service
The Corporation Trust Company
1209 Orange Street
New Castle, Delaware 19801 via Louisiana Long Arm Statute.

WORTHINGTON INDUSTRIES INCORPORATED

Through their registered agent for service
Dale T. Brinkman
200 Wilson Bride Road
Columbus, Ohio 43085 via Louisiana Long Arm Statute.

IRWIN INDUSTRIAL TOOL COMPANY

Through their registered agent for service
CT Corporation System
1300 East 9th Street
Cleveland, Ohio 44114 via Louisiana Long Arm Statute.

TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA

Through their registered agent for service
The Louisiana Secretary of State
8549 United Plaza Blvd.
Baton Rouge, Louisiana 70809

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TIMMY WELCH AND VIRGINIA 4TH JUDICIAL DISTRICT COURT
WELCH

VERSUS PARISH OF OUACHITA

NEWELL RUBBERMAID INC. STATE OF LOUISIANA
d/b/a BERNZOMATIC, WORTHINGTON
INDUSTRIES INCORPORATED, IRWIN
INDUSTRIAL TOOL COMPANY, AND
TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA

REQUEST FOR PRODUCTION OF DOCUMENTS

TO: NEWELL RUBBERMAID INC. d/b/a BERNZOMATIC

Through their registered agent for service
Corporation Process Company
180 Cherokee Street NE
Marietta, Georgia 30060
via Louisiana Long Arm Statute;

NEWELL RUBBERMAID INC. d/b/a BERNZOMATIC

Through their registered agent for service
The Corporation Trust Company
1209 Orange Street
New Castle, Delaware 19801 via Louisiana Long Arm Statute.

WORTHINGTON INDUSTRIES INCORPORATED

Through their registered agent for service
Dale T. Brinkman
200 Wilson Bride Road
Columbus, Ohio 43085 via Louisiana Long Arm Statute.

IRWIN INDUSTRIAL TOOL COMPANY

Through their registered agent for service
CT Corporation System
1300 East 9th Street
Cleveland, Ohio 44114 via Louisiana Long Arm Statute.

TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA

Through their registered agent for service
The Louisiana Secretary of State
8549 United Plaza Blvd.
Baton Rouge, Louisiana 70809

PLEASE TAKE NOTICE that you are hereby requested by plaintiffs to produce for inspection and copying at the offices of Neblett, Beard & Arsenault, 2220 Bonaventure Court, Alexandria, Louisiana within the delays provided by the Louisiana Code of Civil Procedure, the following documents:

1. Please produce all written and recorded statements from any individual concerning the incident at issue;
2. Please produce all written material which accompanied or would have accompanied the product at the time of purchase;

3. Please produce all written and recorded investigative reports concerning the claims alleged in plaintiff's petition;
4. Please produce the written or recorded reports developed as a result of any expert inspections, testings, or investigations conducted regarding the alleged injuries or damages or regarding the subject product;
5. Please produce any documents which you have identified through any computer bases, web sites, Internet or otherwise, or identified through any tracking program or data base, similar to the incident described in plaintiff's petition;
6. Please describe the manufacturing process of the gas bottle in question. If purchased complete from a supplier, please provide the name and address where the particular gas bottle alleged in plaintiff's petition would have been purchased and the date of such purchase;
7. Please provide all drawings for the manufacturing of the gas bottle in question;
9. Please provide any industry standards for the manufacturing of gas bottle;
10. Please provide any internal standards for the manufacturing of the gas bottle in question;
11. Any and all reports to the federal government on product safety regarding the gas bottle in question for the last ten (10) years;
12. Copies of any and all complaints that you have received on explosions of gas bottles within the last ten (10) years.

Respectfully Submitted

ORIGINAL SIGNED BY
PAUL J. TELLARICO

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NEBLETT, BEARD & ARSENAULT
P.O. Box 1190
Alexandria, LA 71309-1190
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ATTORNEYS FOR PLAINTIFFS

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WELCH

VERSUS PARISH OF OUACHITA

NEWELL RUBBERMAID INC. STATE OF LOUISIANA
d/b/a BERNZOMATIC, WORTHINGTON
INDUSTRIES INCORPORATED, IRWIN
INDUSTRIAL TOOL COMPANY, AND
TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA**INTERROGATORIES****TO: NEWELL RUBBERMAID INC. d/b/a BERNZOMATIC**Through their registered agent for service
Corporation Process Company
180 Cherokee Street NE
Marietta, Georgia 30060
via Louisiana Long Arm Statute;**NEWELL RUBBERMAID INC. d/b/a BERNZOMATIC**Through their registered agent for service
The Corporation Trust Company
1209 Orange Street
New Castle, Delaware 19801 via Louisiana Long Arm Statute.**WORTHINGTON INDUSTRIES INCORPORATED**Through their registered agent for service
Dale T. Brinkman
200 Wilson Bride Road
Columbus, Ohio 43085 via Louisiana Long Arm Statute.**IRWIN INDUSTRIAL TOOL COMPANY**Through their registered agent for service
CT Corporation System
1300 East 9th Street
Cleveland, Ohio 44114 via Louisiana Long Arm Statute.**TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA**Through their registered agent for service
The Louisiana Secretary of State
8549 United Plaza Blvd.
Baton Rouge, Louisiana 70809

The plaintiffs request that the defendant, **NEWELL RUBBERMAID INC. d/b/a BERNZOMATIC**, answer in writing and in accordance with the Louisiana Rules of Civil Procedure, the following interrogatories:

INTERROGATORY NO. 1:

What is the name and address of the person answering these interrogatories and, if applicable, the person's official position or relationship with the party to whom the interrogatories are directed?

INTERROGATORY NO. 2:

Did any of the above named defendants manufacture the product which is the subject of this lawsuit? If your answer is in the affirmative, please state the following:

- (a) The date and time that the product was manufactured;
- (b) The location of the manufacturing plant;
- (c) The date the product was shipped from the manufacturer and to whom it was shipped to.

INTERROGATORY NO. 3:

With respect to the product which is the subject of this lawsuit, please identify the name, brand name, trademark, and/or model of same which plaintiff has alleged to be a defective product.

INTERROGATORY NO. 4:

Please state whether any express oral warranties were given by defendant to plaintiff. If your answer is in the affirmative, please state:

- (a) The person who gave you the warranty;
- (b) The substance of any conversation concerning the warranty;
- (c) The exact language of the statement containing the warranty;
- (d) The persons present when the warranty was given.

INTERROGATORY NO. 5:

Please state whether any express written warranties were given by defendant to plaintiff for prospective purchasers. If your answer is in the affirmative, please state:

- (a) Please describe the procedures, tools, and actions used in the initial use of the product which is the subject of this lawsuit;
- (b) Please identify any difficulties encountered during the initial use of the subject product;
- (c) Please state whether any parts were replaced either at the time of the initial use or any time subsequent thereto;
- (d) Please state whether any alterations or modifications were made to the product after its date of initial use and, if so, please identify the exact description of the alteration or modification.

INTERROGATORY NO. 6:

Please state with particularity the identity of those individuals or departments that are responsible for product control and quality control which would or may or should have examined the product for any defects of the product which is the subject of this lawsuit before or at the time it left the manufacturer.

INTERROGATORY NO. 7:

Please state each and every claim and each and every lawsuit that has been brought against any of the above defendants for a defective gas bottle for five (5) years preceding the date of this accident. Please provide the following:

- (a) The caption of any lawsuit, including the name, civil action number, court, and

location of the court; also include the name, address and telephone number of each and every attorney bringing such a claim;

- (b) Please provide the name, address and telephone number of any individual or entity who has claimed a defective gas bottle within the last five (5) years but which may have not resulted in a lawsuit;
- (c) The disposition of each and every claim cited above and an indication of those claims and lawsuits that are still pending.

INTERROGATORY NO. 8:

Please state whether there were any repairs, alterations or modifications made to the product which is the subject of this lawsuit subsequent to the manufacturing of this particular product. If your answer is in the affirmative, please state:

- (a) The date and time of each repair, alteration or modification;
- (b) The person responsible for initiating the repair, alteration or modification;
- (c) The actual nature of each repair, alteration or modification;
- (d) Whether there were any tests or inspections conducted prior to, during or subsequent to each repair, alteration or modification subsequent to the manufacturer of the gas bottle in question.

INTERROGATORY NO. 9:

Please state whether any inspection and/or tests were performed on the subject product, or any component part of the subject product, after the incident to which reference is made in your Complaint. If your answer is in the affirmative, please state:

- (a) The name, address, telephone number, and qualifications of any persons involved in the examination(s);
- (b) The results/conditions regarding the possible causes of the alleged malfunction;
- (c) Whether any reports or statements were made concerning the product upon or after each such examination(s);
- (d) If any reports or statements were made concerning the subject product upon or after each such examination, please identify the author of same, the date and time of same, the content of same, and, if written, the present location and custodian of said reports.

INTERROGATORY NO. 10:

Please describe in detail the manufacturing process of the gas bottle in question.

INTERROGATORY NO. 11:

Please provide the name and address of the person who can give information regarding the manufacturing process of the gas bottle in question. Also, please provide information of how the gas bottle is manufactured, and how it is inspected.

INTERROGATORY NO. 12:

Please provide the manufacturer's cost for the gas bottle in question.

INTERROGATORY NO. 13:

Please provide whether there are any industry standards for the manufacturing of gas bottle,

and if there are, what are they, and attach a copy of same.

INTERROGATORY NO. 14:

Please provide any internal standards for the manufacturing of the gas bottle in question.

INTERROGATORY NO. 15:

Please provide the type of glass that was used to manufacture the gas bottle in question.

Respectfully Submitted

ORIGINAL SIGNED BY
PAUL J. TELLARICO

PAUL J. TELLARICO # 19401
NEBLETT, BEARD & ARSENAULT
P.O. Box 1190
Alexandria, LA 71309-1190
(318) 487-9874
ATTORNEYS FOR PLAINTIFFS

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VERSUS PARISH OF OUACHITA

NEWELL RUBBERMAID INC. STATE OF LOUISIANA
d/b/a BERNZOMATIC, WORTHINGTON INDUSTRIES INCORPORATED, IRWIN INDUSTRIAL TOOL COMPANY, AND TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA

NOTICE TO TAKE 1442 DEPOSITION

TO: NEWELL RUBBERMAID INC. d/b/a BERNZOMATIC
Through their registered agent for service
Corporation Process Company
180 Cherokee Street NE
Marietta, Georgia 30060
via Louisiana Long Arm Statute;

NEWELL RUBBERMAID INC. d/b/a BERNZOMATIC
Through their registered agent for service
The Corporation Trust Company
1209 Orange Street
New Castle, Delaware 19801 via Louisiana Long Arm Statute.

WORTHINGTON INDUSTRIES INCORPORATED
Through their registered agent for service
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TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA
Through their registered agent for service
The Louisiana Secretary of State
8549 United Plaza Blvd.
Baton Rouge, Louisiana 70809

PLEASE TAKE NOTICE that the testimony of NEWELL RUBBERMAID INC. d/b/a BERNZOMATIC, defendants in this proceeding, will be taken by deposition for all purposes pursuant to the authority contained in the Louisiana Code of Civil Procedure, before a duly qualified court report, a Notary Public for the State of Louisiana, or some other officer authorized by law to administer oaths, at the office of NEBLETT, BEARD & ARSENAULT, 2220 Bonaventure Court, Alexandria, Louisiana 71301, commencing at 9'clock a.m. on the 9th day of July, 2007, and continuing thereafter until said deposition has been concluded, at which time and place you are

hereby invited to attend.

PLEASE TAKE FURTHER NOTICE that petitioner, through their undersigned counsel, intends to examine **NEWELL RUBBERMAID INC. d/b/a BERNZOMATIC** their managing agents, officers, directors, or other persons designated by them to give testimony in this deposition with reference to the facts and circumstances of the incident herein sued upon, and in particular, the following:

1. Who was responsible for the manufacturing process of the gas bottle in question?
2. Who was responsible for the construction of the gas bottle in question?
3. Who was responsible for the marketing of the gas bottle in question?
4. Who was responsible for the sale of the gas bottle in question?
5. Who was the insurer for the manufacturer of the gas bottle in question?
6. Who owned the manufacturing plant that manufactured the gas bottle in question?
7. Who owns **NEWELL RUBBERMAID INC. d/b/a BERNZOMATIC**?
8. Who insures **NEWELL RUBBERMAID INC. d/b/a BERNZOMATIC**?
9. Who owns **WORTHINGTON INDUSTRIES INCORPORATED**?
10. Who insures **WORTHINGTON INDUSTRIES INCORPORATED**?
11. Who owns **IRWIN INDUSTRIAL TOOL COMPANY**?
12. Who insures **IRWIN INDUSTRIAL TOOL COMPANY**?
13. Who is the insurer that provides coverage for the type claims asserted in the captioned litigation?

Respectfully Submitted

ORIGINAL SIGNED BY
PAUL J. TELLARICO
JCO

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