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STATE OF OREGON  
YAMHILL COUNTY  
TRIAL COURT  
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TRIAL COURT CLERK  
BY \_\_\_\_\_

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

*505*

EAGLE INDUSTRIES, INC.,	)	Case No. CV 110400
	)	
Plaintiff,	)	<b>DEFENDANT MACPHERSON</b>
	)	<b>WESTERN TOOL &amp; SUPPLY CO.,</b>
v.	)	<b>INC.'S ANSWER AND AFFIRMATIVE</b>
	)	<b>DEFENSES</b>
MACPHERSON WESTERN TOOL &	)	
SUPPLY CO., INC., a California	)	
corporation and HANGSTERFER'S	)	Prayer: \$974,182.62
LABORATORIES, INC., a New Jersey	)	
corporation,	)	Fee Authority: Oregon Laws 2011
	)	Ch. 595, Sec. 15(1)(c)
Defendants.	)	

Defendant Macpherson Western Tool & Supply Co., Inc. ("Western Tool")

answers plaintiff's Complaint as follows:

- 1.
- 2.
- 3.


Admit paragraphs 1-3.

Admit, based on information and belief, that plaintiff is in the business of manufacturing milled and turned products, among other things, and that plaintiff possesses a variety of computerized and conventional machine tools. Western Tool is without knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraphs 4-5, and therefore denies the remaining allegations of paragraphs 4-5.

Admit, based on information and belief, that defendant Hangsterfer's

Laboratories, Inc. ("Hangsterfer's") manufactured Neosol 400, and admit that Hangsterfer's sold

CV110400  
ANAD  
Answer - Affirmative Defense  
36907



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1 Neosol 400 to Western Tool. Further admit that Western Tool sold Neosol 400 to plaintiff in  
2 December of 2007, July of 2008, December of 2008 and finally in June of 2009. Deny the  
3 remaining allegations of paragraph 6.

4 4.

5 Admit plaintiff purchased Neosol 400 from Western Tool on four different  
6 occasions. Further admit, based on information and belief, that plaintiff made use of the Neosol  
7 400 in some number of its machines. Western Tool is without knowledge sufficient to form a  
8 belief as to the truth of the remaining allegations of paragraph 7, and therefore denies the  
9 remaining allegations of paragraph 7.

10 5.

11 Based on information and belief, admit Hangsterfer's sent plaintiff trial samples  
12 of a different coolant product, S-787, in 2009 and that Hangsterfer's performed tests on samples  
13 of Neosol 400 taken from plaintiff's facility in 2009 and samples of S-787 in 2009 and 2010.  
14 Western Tool is without knowledge sufficient to form a belief as to the truth of the remaining  
15 allegations of paragraphs 8-9, and therefore denies the remaining allegations of paragraphs 8-9.

16 6.

17 Admit that Lance Castillo visited plaintiff's facilities with Randy Rice during the  
18 spring of 2010, and that Mr. Castillo observed what appeared to be corrosion on some of  
19 plaintiff's machines and equipment during that visit. Based on information and belief, admit  
20 plaintiff had used Neosol 400 in some number of machines prior to that meeting. Based on  
21 information and belief, admit that at some point in time, Hangsterfer's recommended plaintiff  
22 change from Neosol 400 to S-787 and that plaintiff did in fact make such change. Western Tool  
23 is without knowledge sufficient to form a belief as to the truth of the remaining allegations of  
24 paragraph 10, and therefore denies the remaining allegations of paragraph 10.

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7.

Admit Western Tool personnel observed what appeared to be corrosion on plaintiff's Mill Turn No. 2 and certain other property after the spring of 2010. Based on information and belief, admit Hangsterfer's sent a technician of some kind to plaintiff's facilities later in 2010 to investigate. Western Tool is without knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraphs 11-12, and therefore denies the remaining allegations of paragraphs 11-12.

8.

Western Tool is without knowledge sufficient to form a belief as to the truth of the allegations of paragraph 13 and therefore denies the allegations of paragraph 13.

9.

Admit Western Tool personnel assisted plaintiff and Hangsterfer's in cleaning and flushing certain of plaintiff's machines, beginning in 2010, pursuant to instructions from Hangsterfer's. Further admit that Western Tool personnel observed what appeared to be corrosion on some number of plaintiff's machines and equipment during this process. Based on information and belief, plaintiff started using S-787 in place of Neosol 400 at some point in time. Western Tool is without knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 14, and therefore denies the remaining allegations of paragraph 14.

10.

Admit Western Tool personnel have observed what appeared to be corrosion on some number of plaintiff's machines and equipment since the spring of 2010. Western Tool is without knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 15 and therefore denies the remaining allegations of paragraphs 15.

11.

Admit that in December of 2010 or January of 2011, Mr. Castillo was present when Mr. Rice made statements to both Mr. Castillo and plaintiff's owner, Jim Tucker, relating

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1 to the topic of payment for damages allegedly caused by Neosol 400. Such statements are or may  
2 be protected from disclosure under OEC 408 as a confidential offer of compromise. Western  
3 Tool did not make these statements, and the statements may ultimately be protected from  
4 disclosure in a public record. As such, deny the remaining allegations of paragraph 16.

5  
6 **12.**

7 Admit Mr. Castillo has inspected some number of plaintiff's machines and  
8 equipment since the spring of 2010 and has observed what appeared to be corrosion to certain  
9 components. Further admit Western Tool has replaced and/or repaired certain equipment since  
10 the spring of 2010, and that it has forwarded invoices to both Hangsterfer's and plaintiff for  
11 payment, many of which remain unpaid. Deny the remaining allegations of paragraph 17.

12 **13.**

13 Based on information and belief, admit plaintiff performed work on some number  
14 of its machines and equipment, including an Enshu Mill. Further admit that Mr. Castillo  
15 observed what appeared to be corrosion on the Enshu Mill. Western Tool is without knowledge  
16 sufficient to form a belief as to the truth of the remaining allegations of paragraph 18, and  
17 therefore denies the remaining allegations of paragraph 18.

18 **14.**

19 Admit Western Tool has replaced and/or repaired certain of plaintiff's equipment  
20 since the spring of 2010, and that it has forwarded invoices to both Hangsterfer's and plaintiff for  
21 payment. Deny Western became unresponsive. Western Tool is without knowledge sufficient to  
22 form a belief as to the truth of the remaining allegations of paragraph 19, and therefore denies the  
23 remaining allegations of paragraph 19.

24 **15.**

25 In response to paragraph 20, Western Tool re-alleges its previous admissions and  
26 denials as set forth herein.

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16.

Based on information and belief, admit paragraph 21.

17.

Admit, based on information and belief, that Hangsterfer's manufactured Neosol 400, and admit that Hangsterfer's sold Neosol 400 to Western Tool. Further admit that Western Tool is a retail business that sells a variety of machining products, and that Western Tool sold Neosol 400 to plaintiff in December of 2007, July of 2008, December of 2008 and finally in June of 2009. Deny the remaining allegations of paragraphs 22-24.

18.

Western Tool is without knowledge sufficient to form a belief as to the truth of paragraphs 25-28, and therefore denies paragraphs 25-28.

19.

In response to paragraph 29, Western Tool re-alleges its previous admissions and denials as set forth herein.

20.

Western Tool is without knowledge sufficient to form a belief as to the truth of paragraphs 30-31, and therefore denies paragraphs 30-31.

21.

In response to paragraph 32, Western Tool re-alleges its previous admissions and denials as set forth herein.

22.

Western Tool is without knowledge sufficient to form a belief as to the truth of paragraph 33, and therefore denies paragraph 33.

23.

In response to paragraph 34, Western Tool re-alleges its previous admissions and denials as set forth herein.

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24.

Admit, based on information and belief, that Hangsterfer's manufactured Neosol 400, and admit that Hangsterfer's sold Neosol 400 to Western Tool. Further admit that Western Tool is a retail business that sells a variety of machining products, and that Western Tool sold Neosol 400 to plaintiff in December of 2007, July of 2008, December of 2008 and finally in June of 2009. Deny the remaining allegations of paragraphs 35-41.

25.

Except as expressly admitted herein, Western Tool denies all remaining allegations of the Complaint.

For its affirmative defenses, Western Tool alleges as follows:

**FIRST AFFIRMATIVE DEFENSE**

**(Statute of Limitations)**

26.

Plaintiff failed to assert its strict product liability claim within the two year statute of limitations.

**SECOND AFFIRMATIVE DEFENSE**

**(Comparative Fault)**

27.

Any losses or damages sustained by Plaintiff are or may be the result of Plaintiff's own negligence and/or the negligence of its agents in failing to properly maintain its facilities, including the machines and equipment contained within those facilities, and failure to properly use those machines and equipment in conjunction with the Neosol 400 under the circumstances then and there existing.

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**THIRD AFFIRMATIVE DEFENSE**

**(Failure to Mitigate)**

28.

Any losses or damages sustained by Plaintiff are or may be the consequence of Plaintiff's failure to mitigate those losses or damages.

WHEREFORE, having fully answered plaintiff's Complaint, Western Tool prays for judgments as follows:

- 1) For dismissal of all claims against Western Tool together with Western Tool's costs and disbursements incurred herein.
- 2) Any such further relief this Court deems equitable.

DATED this 30<sup>th</sup> day of December, 2011.

DAVIS ROTHWELL  
EARLE & XÓCHIHUA P.C.



Paul R. Xóchihua, OSB No. 883340  
[pxochihua@davisrothwell.com](mailto:pxochihua@davisrothwell.com)  
Brandon W. Stuber, OSB No. 075223  
[bstuber@davisrothwell.com](mailto:bstuber@davisrothwell.com)  
Of Attorneys for Defendant MacPherson Western  
Tool & Supply Co., Inc.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served the foregoing **DEFENDANT MACPHERSON WESTERN**  
3 **TOOL & SUPPLY CO., INC.'S ANSWER AND AFFIRMATIVE DEFENSES** on the  
4 following attorneys of record:

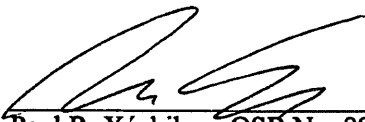
5 **VIA HAND DELIVERY**

6 Mr. David M. Weiler  
7 Tonkon Torp, LLP  
8 888 SW Fifth Avenue, Suite 1600  
9 Portland, OR 97204  
10 Facsimile: 503/972-7466  
11 Email: david.weiler@tonkon  
12 *Of Attorneys for Plaintiff*

Ms. Rachel Nies  
Lorber Greenfield & Polito, LLP  
520 SW Yamhill Street, Suite 238  
Portland, OR 97204  
Facsimile: 503/296-2982  
Email: rnies@lorberlaw.com  
*Of Attorneys for Hangsterfer's  
Laboratories, Inc.*

11 on December 30, 2011, by mailing to said attorneys a true copy thereof, contained in a sealed  
12 envelope, with postage paid, addressed to said attorneys at said attorneys' last known addresses,  
13 and deposited in the post office at Portland, Oregon on said day.

14 **DAVIS ROTHWELL**  
15 **EARLE & XÓCHIHUA P.C.**

16 

17 Paul R. Xóchihua, OSB No. 883340  
18 pxochihua@davisrothwell.com  
19 Brandon W. Stuber, OSB No. 075223  
20 bstuber@davisrothwell.com  
21 Of Attorneys for Defendant MacPherson Western  
22 Tool & Supply Co., Inc.

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