

Verified correct copy of original made under court administrator's direction 9/27/2012.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

ENTERED

FILED  
STATE OF OREGON  
YAMHILL COUNTY  
TRIAL COURT  
12 JAN -3 PM 2:58  
TRIAL COURT CLERK  
BY: \_\_\_\_\_

*B 250.*

CIRCUIT COURT OF OREGON  
COUNTY OF YAMHILL

EAGLE INDUSTRIES, INC.,  
Plaintiff,  
v.  
MACPHERSON WESTERN TOOL &  
SUPPLY CO., INC., a California corporation  
and HANGSTERFER'S LABORATORIES,  
INC., a New Jersey corporation,  
Defendant.

Case No. CV 110400  
**FIRST AMENDED COMPLAINT  
(PRODUCTS LIABILITY, BREACH  
OF WARRANTY)**  
**(DEMAND FOR JURY TRIAL)**  
**CLAIM NOT SUBJECT TO  
MANDATORY ARBITRATION**  
**PRAYER AMOUNT: \$1,088,483**  
**FEE AUTHORITY: Oregon Laws 2011  
CH. 595, SEC. 15(1)(c)**

Plaintiff alleges as follows:

**PARTIES**

1.

Plaintiff Eagle Industries, Inc. is a corporation organized and existing under the laws of the State of Oregon, with its principal place of business in the State of Oregon.

2.

Defendant Macpherson Western Tool & Supply Co., Inc. ("Western") is a corporation organized and existing under the laws of the state of California, with its principal place of business in the State of California.

CV110400  
CMAM  
Complaint - Amended  
36910



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

3.

Defendant Hangsterfer's Laboratories, Inc. ("Hangsterfer's") is a corporation organized and existing under the laws of the State of New Jersey with its principal place of business in the State of New Jersey.

**FACTUAL ALLEGATIONS**

**(Plaintiff's Business)**

4.

Plaintiff is in the business of manufacturing precision parts, with an emphasis on precision milled and turned products. Plaintiff possesses a variety of Computerized Numerical Control and conventional machine tools to perform this type of manufacturing. Parts manufactured by Plaintiff are used in, among others, the industrial machinery, aerospace, and electronics industries.

5.

Because of the manner in which parts manufactured by plaintiff are used, the manufacturing standards for such parts are very high. Accordingly, Plaintiff's business depends on keeping its machines in precise working order.

**(Neosol 400 Coolant Product)**

6.

In furtherance of its business needs, Plaintiff purchased from Western a coolant, Neosol 400, for use in its machines. Hangsterfer's manufactured the Neosol 400.

7.

Over a period of several months, Plaintiff changed the coolant in all its machines to the Neosol 400.

**(Trouble-shooting Problems Identified with Neosol 400)**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

8.

Shortly after starting to use the last batch of Neosol 400 coolant, Plaintiff notified Randy Rice, a Hangsterfer's representative, that there was an odor problem with the product. Plaintiff sent Hangsterfer's samples of the used coolant for testing. Rice responded by recommending that Plaintiff try out a different Hangsterfer's coolant product in one of Plaintiff's machines.

9.

Hangsterfer's sent Plaintiff a sample of a new coolant, which Plaintiff began to use in one of its machines. Plaintiff continued to use Neosol 400 in its other machines.

10.

In or around December 2009, Plaintiff discovered etching on a key component of one of its machines, a vertical mill, in which Plaintiff was using the Neosol 400 coolant. Plaintiff notified Lance Castillo, a representative of Western, of this problem. Castillo and Rice came to inspect the damage on the vertical mill and recommended that Plaintiff stop using the Neosol 400 altogether and switch to a different product. Plaintiff followed this advice.

11.

In time Plaintiff noticed etching on its Mill Turn No. 2, as well as on other parts, tools, and machines that had come in contact with the last batch of Neosol 400 coolant.

12.

After Rice and Castillo's visit, Hangsterfer's sent a chemist to Plaintiff's facility to investigate Plaintiff's complaints about the Neosol 400. After investigating, the chemist explained that the Neosol 400 lost its rust preventative properties when it was in

1 | vapor form and that the vaporized Neosol 400 coolant caused the damage to Plaintiff's  
2 | machines.

3 | 13.

4 | Coolant vaporization always occurs at the high temperatures generated by the  
5 | machining process. But coolants are not supposed to lose their rust preventative properties in  
6 | vapor form as the Neosol 400 did.

7 | 14.

8 | The chemist recommended that Plaintiff use a specific process to flush and  
9 | clean all its machines in which Plaintiff had ever used the Neosol 400 coolant. With the help  
10 | of Rice and a crew from Western, Plaintiff followed the chemist's flush and cleaning  
11 | instructions and began using a different coolant, instead of the Neosol 400.

12 | **(Discovering Extent of Damage Caused by Neosol 400)**

13 | 15.

14 | During this process, which involved some disassembly of Plaintiff's machines,  
15 | Plaintiff discovered etching damage caused by the vaporized Neosol 400 to parts and tooling  
16 | pertaining to the following machines: a Doosan vertical mill, two Doosan mill turns, an  
17 | Enshu horizontal mill, a Crystal Lakes 4-C cylindrical grinder, and a Cincinnati 10" 4-U  
18 | universal grinder. The damage to the Doosan vertical mill is so extensive that the entire  
19 | machine needs to be replaced.  
20 |

21 | 16.

22 | Rice told Castillo and Plaintiff that Hangsterfer's would cover all the damage  
23 | that had been done to the machines.  
24 |  
25 |  
26 |

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

17.

Over the next several weeks, Castillo personally inspected Plaintiff's parts and tooling for damage, and Western replaced many tools and collets that had been damaged by the Neosol 400 coolant. Rice told Plaintiff to send the invoices for any replacement parts or tools to Western.

18.

In some cases Plaintiff had to rebuild coolant-damaged machines in-house. The in-house work on one particular machine, an Enshu horizontal mill, took over two weeks to complete, during which time the machine could not be used. Other machines too have and will experience down time during repairs made necessary by the Neosol 400.

19.

Western initially cooperated with Plaintiff to replace certain coolant-damaged parts and tools. But eventually Western and Hangsterfer's became unresponsive. When Plaintiff was finally able to contact a Hangsterfer's representative, Edward Jones, Jones refused to honor Hangsterfer's promise to cover the replacement costs of the coolant-damaged parts, tools, and machines.

**FIRST CLAIM FOR RELIEF**

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

**(Against Both Defendants)**

**COUNT I**

**(Manufacturing Defect)**

20.

Plaintiff realleges the preceding paragraphs.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

21.

Hangsterfer's is in the business of manufacturing the Neosol 400 coolant product.

22.

Hangsterfer's sold the Neosol 400 to Western.

23.

Western is a retail business that sells a variety of machining products, including the Neosol 400.

24.

Plaintiff purchased the Neosol 400 from Western.

25.

The Neosol 400 reached Plaintiff without substantial change to the condition in which it was sold.

26.

The Neosol 400 is dangerous to property to an extent beyond that which would be contemplated by the ordinary consumer who purchases it, with the ordinary knowledge common to the community as to its characteristics. Specifically, Plaintiff had no reason to expect that the Neosol 400, which was designed and sold by Defendants for use as a coolant in machines like those Plaintiff possessed, would cause damage to its machinery as it did.

27.

The defective Neosol 400 caused extensive damage to Plaintiff's property. Plaintiff has been damaged in the amount of \$1,055,483 for the cost of repairing and/or replacing coolant-damaged parts, tools, and machines.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**28.**

When it was sold to Plaintiff, the Neosol 400 was a defective product that was unreasonably dangerous to property. The Neosol 400 was unreasonably dangerous to property in that it lost its rust preventative properties in vapor form and caused damage to Plaintiff's machines due to a manufacturing defect.

**Count II  
(Design Defect)**

**29.**

Plaintiff realleges paragraphs 1-27.

**30.**

When it was sold to Plaintiff, the Neosol 400 was a defective product that was unreasonably dangerous to property. The Neosol 400 was unreasonably dangerous to property in that it lost its rust preventative properties in vapor form and caused damage to Plaintiff's machines due to a design defect.

**31.**

Hangsterfer's no longer manufacturers or sells Neosol 400.

**Count III  
(Failure to Warn)**

**32.**

Plaintiff realleges paragraphs 1-27.

**33.**

When it was sold to Plaintiff, the Neosol 400 was a defective product that was unreasonably dangerous to property. The Neosol 400 was unreasonably dangerous to property in that Defendants failed to warn Plaintiff that the Neosol 400 could cause damage

1 to Plaintiff's machines as it did.

2 **SECOND CLAIM FOR RELIEF**

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

4 **(Against Western)**

5 **34.**

6 Plaintiff realleges the preceding paragraphs.

7 **35.**

8 Western is a merchant within the meaning of the UCC with respect to the type  
9 of goods sold to Plaintiff.

10 **36.**

11 Plaintiff bought the Neosol 400 from Western; therefore there is privity of  
12 contract.

13 **37.**

14 Every contract for the sale of goods by a merchant of goods of the kind  
15 includes an implied warranty that the goods are in fact merchantable.

16 **38.**

17 Western breached the implied warranty of merchantability.

18 **39.**

19 Plaintiff gave notice to Western of the breach of the implied warranty of  
20 merchantability in or around December 2009 when it notified Western of the damage to its  
21 machines caused by the Neosol 400.

22 **40.**

23 Western's breach of the implied warranty of merchantability was the  
24 proximate cause of extensive damage to Plaintiff's machinery in the amount of \$1,055,483 in  
25  
26



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

repair and replacement costs.

41.

Western's breach has prevented Plaintiff from profiting from the use of its machines during the time they are being fixed. This has caused consequential economic damages to Plaintiff in the amount of \$33,000.

WHEREFORE, Plaintiff prays for the following relief:

- A. On its First Claim for Relief, for judgment in favor of Plaintiff and against Defendants in the amount of \$1,055,483;
- B. On its Second Claim for Relief, for judgment in favor of Plaintiff and against Western in the amount of \$1,088,483;
- C. Awarding Plaintiff its costs and disbursements incurred in this action;
- D. Granting such other and further relief as the Court finds just or equitable.

DATED this 29th day of December, 2011.

TONKON TORP LLP

By David M. Weiler  
 Steven D. Olson, OSB No. 003410  
 Direct Telephone: 503.802.2159  
 E-mail: steven.olson@tonkon.com  
 David M. Weiler, OSB No. 85639  
 Direct Telephone: 503.802.5766  
 E-mail: david.weiler@tonkon.com  
 1600 Pioneer Tower  
 888 SW Fifth Avenue  
 Portland, OR 97204  
 Attorneys for Plaintiff Eagle Industries, Inc.

Trial Attorney:  
 Steven D. Olson, OSB No. 003410

Verified correct copy of original made under court administrator's direction 9/27/2012.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **FIRST AMENDED COMPLAINT** on:

Paul R. Xochihua  
Davis Rothwell Earle & Xochihua, P.C.  
111 SW Fifth Avenue, Suite 2700  
Portland, OR 97204  
pxochihua@davisrothwell.com

Of Attorneys for MacPherson Western Tool & Supply Co., Inc.


Jeffrey W. Hansen  
Smith Freed & Eberhard PC  
111 SW Fifth Avenue  
Suite 4300  
Portland, OR 97204  
jhansen@smithfreed.com

Of Attorneys for Hangsterfer's Laboratories, Inc.

- by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to each attorney's last-known address and depositing in the U.S. mail at Portland, Oregon on the date set forth below;
- by causing a copy thereof to be e-mailed to each attorney at said attorney's last-known email address on the date set forth below;

DATED this 29th day of December 2011.

TONKON TORP LLP

By   
Steven D. Olson, OSB No. 3410  
David M. Weiler, OSB No. 85639  
Direct Telephone: 503.802.5766  
Attorneys for Plaintiff Eagle Industries, Inc.

036030/00001/3253111v1