

UNITED STATES OF AMERICA

IN THE U.S. DISTRICT COURT FOR THE 6TH CIRCUIT
WESTERN DISTRICT OF MICHIGAN – SOUTHERN DIVISION

SARA ARRINGTON LACAVA and
MATTHEW B. ARRINGTON, as Joint Personal
Representatives of the Estate of Susan K. Arrington,
ESTATE OF SUSAN K. ARRINGTON,
by Joint Personal Representatives Sara Arrington
LaCava and Matthew Arrington,

Plaintiffs,

v.

13-
Hon.:
Maj.:

PALOMA INDUSTRIES OF NAGOYA, JAPAN,
a foreign corporation,
RHEEM MANUFACTURING COMPANY, a Delaware corporation,
EMERSON ELECTRIC CO. a Missouri corporation,
FISHER CONTROLS INTERNATIONAL, INC., an Iowa corporation,
GRUNDFOS PUMPS CORPORATION, a Kansas corporation,

TJERNLUND PRODUCTS, INC., a Minnesota corporation,
A. O. SMITH CORPORATION, a Wisconsin corporation,
REGAL-BELOIT ELECTRIC MOTORS, INC., a Wisconsin corporation,

PHELPS PLUMBING & HEATING, INC., a Michigan corporation
NO-CHE-MO, INC., a Michigan corporation,
HERBERT B. PHELPS, BRADLEY PHELPS, DAVID A. SHARLOW,
KEVIN G. ELLIOTT, MICHAEL ELLIS, individuals,
CRYSTAL FLASH LIMITED PARTNERSHIP OF MICHIGAN,
a Michigan limited partnership, TRECHA BROTHERS SUPPLY CO.,
a Michigan corporation, GAS & LUBE EQUIPMENT REPAIR, INC,
a Michigan corporation,

MICHAEL DEAN GREEN, d/b/a GREEN CONSTRUCTION,
RESIDENTIAL IMAGES, LLC, a Michigan limited liability company
FARM BUREAU MUTUAL INSURANCE COMPANY OF
MICHIGAN, a Michigan corporation,
LAKE COUNTY, MICHIGAN, a Michigan municipal entity,

Defendants,

MARK L. MENCZER (P43802)
MARK L. MENCZER, P.L.L.C.
TIMOTHY M. LESSING (P54394)
FREEDMAN, LESSING,
KUTINSKY & FREEDMAN, P.C.
Attorneys for Plaintiffs
6304 Orchard Lake Road
West Bloomfield, Michigan 48322
248.354.9000/248.354.9775fx _____/

**There is no other litigation arising from the same
transaction and occurrence as alleged in this matter.**

COMPLAINT AND DEMAND FOR JURY

NOW COME Plaintiffs, SARA ARRINGTON LACAVA and MATTHEW ARRINGTON as Joint Personal Representatives of the Estate of Susan K. Arrington, by her attorneys of record MARK L. MENCZER, P.L.L.C. by MARK L. MENCZER and FREEDMAN, LESSING, KUTINSKY & FREEDMAN, P.C. by TIMOTHY M. LESSING and, and for their *Complaint and Demand for Jury* states as follows:

Parties, Jurisdiction and Venue

1. Plaintiff, SARA ARRINGTON LaCAVA, is the joint personal representative of the Estate of Susan K. Arrington. She resides in the State of California.
2. Plaintiff, MATTHEW B. ARRINGTON, is the joint personal representative of the Estate of Susan K. Arrington. He resides in the State of Indiana.
3. Plaintiff, ESTATE OF SUSAN K. ARRINGTON, is a Lake County Michigan probate estate assigned case number 13-12138-DE.
4. Defendant, PALOMA INDUSTRIES OF NAGOYA, JAPAN, is a foreign corporation with its principal place of business in Nagoya, Japan though it transacts business in the City of Chase, County of Lake, State of Michigan.

5. Defendant, RHEEM MANUFACTURING COMPANY, is a Delaware corporation that maintains its principal place of business in the State of Georgia but has transacted business in the City of Chase, County of Lake, State of Michigan. RHEEM is a wholly-owned subsidiary of PALOMA INDUSTRIES OF NAGOYA, JAPAN.

6. Defendant, EMERSON ELECTRIC CO, is a Missouri corporation with its principal place of business in the State of Missouri though it transacts or has transacted business in the Western District of Michigan.

7. Defendant, FISHER CONTROLS INTERNATIONAL, INC., has its principal place of business in the State of Iowa though it transacts or has transacted business in the City of Chase, County of Lake, State of Michigan. Fisher Controls International, Inc. is a wholly-owned subsidiary of EMERSON ELECTRIC CO.

8. Defendant, GRUNDFOS PUMPS CORPORATION, is a foreign corporation registered in the State of Kansas that does business in the State of Michigan.

9. Defendant, TJERNLUND PRODUCTS, INC., is a Minnesota company doing business in the City of Chase, County of Lake, State of Michigan.

10. Defendant, A. O. SMITH CORPORATION, is a Wisconsin corporation doing business in the City of Chase, County of Lake, State of Michigan.

11. Defendant, REGAL-BELOIT ELECTRIC MOTORS, INC., is a Wisconsin corporation doing business in the City of Chase, County of Lake, State of Michigan.

12. Defendant, PHELPS PLUMBING & HEATING, INC., is a Michigan corporation doing business in the City of Chase, County of Lake, State of Michigan.

13. Defendant, NO-CHE-MO, INC., is a Michigan corporation doing business in the City of Chase, County of Lake, State of Michigan.

14. Defendant, HERBERT B. PHELPS, is a resident of and/or does business in the City of Hersey, County of Osceola, State of Michigan.

15. Defendant, BRAD PHELPS, is a resident of and/or does business in the City of Hersey, County of Osceola, State of Michigan.

16. Defendant, DAVID A. SCHARLOW, is a resident of and/or does business in Reed City, County of Osceola, State of Michigan.

17. Defendant, KEVIN G. ELLIOTT, is a resident and/or does business in the City of Sparta, County of Kent, State of Michigan.

18. Defendant, MICHAEL ELLIS, is a resident of the State of Michigan.

19. Defendant, CRYSTAL FLASH LIMITED PARTNERSHIP OF MICHIGAN, is a Michigan Limited Partnership doing business in the City of Chase, County of Lake, State of Michigan. Crystal Flash Energy is an assumed name of Crystal Flash Limited Partnership of Michigan.

20. Defendant, TRECHA BROTHERS SUPPLY COMPANY, INC., is a Michigan corporation doing business in the City of Chase, County of Lake, State of Michigan.

21. Defendant, GAS & LUBE EQUIPMENT REPAIR, INC., is a Michigan corporation doing business in Reed City, County of Osceola, State of Michigan.

22. Defendant, GREEN CONSTRUCTION, is a Michigan business and/or d/b/a operating and doing business in the City of Chase, County of Lake, State of Michigan.

23. Defendant, MICHAEL DEAN GREEN, an individual, does business as Green Construction, and operates in the City of Chase, County of Lake, State of Michigan.

24. Defendant, RESIDENTIAL IMAGES, LLC, is a Michigan limited liability company doing business in the City of Chase, County of Lake, State of Michigan.

25. Defendant, FARM BUREAU GENERAL INSURANCE COMPANY OF MICHIGAN, is domiciled in the State of Michigan and licensed to do business here.

26. Defendant, LAKE COUNTY, MICHIGAN, is a municipal corporation located in the City of Baldwin, County of Lake, State of Michigan.

27. That the amount in controversy exceeds Seventy Five Thousand Dollars (\$75,000.00).

28. This Court has jurisdiction pursuant to 28 U.S.C. §1332 and §1331; and supplemental jurisdiction over any remaining claims arising from the same core of operative facts.

29. That multiple defendants herein are companies located in foreign countries.

Common Allegations

30. That on or about December 27, 2012, Susan K. Arrington, aged 63, died in her home at 7736 East 64th Street, Chase, Michigan.

31. That her death was determined by the medical examiner to have been caused by carbon monoxide poisoning.

32. That the source of the carbon monoxide was determined to have come from the heating, ventilation, plumbing, mechanical and/or water heating systems (*hereinafter* the at-issue systems) and/or their related parts, components, and/or accessories that were installed and maintained in the home.

33. That upon a post-incident/death inspection of the at-issue systems and/or their parts, components and accessories, it is believed that a contributory cause of Plaintiff's injury/death includes but is not limited to a hole that developed in the heat exchange(r) causing the deceased to be poisoned by carbon monoxide that leaked into the living quarters of the home.

34. That the Plaintiffs, along with those parties set forth under Michigan's wrongful death statute, are entitled to recovery for damages related to Sarah K. Arrington's death. MCL 600.2922. In addition to claims set forth herein, Plaintiffs are hereby seeking all damages available under the statute including but not limited to "medical, hospital, funeral and burial expense for which the estate is liable; reasonable compensation for the pain and suffering, while conscious, undergone by the deceased during the period intervening between the time of the injury and death; and damages for the loss of financial support and the loss of the society and companionship of the deceased."

35. That on or about December 26, 2012 emergency personal, both private and city, were called to render treatment and bring Ms. Arrington to the hospital. That despite complaints of symptoms that matched carbon monoxide poisoning, no testing was done on Ms. Arrington or her residence that would have revealed the presence of carbon monoxide.

COUNT I – DESIGN DEFECT

36. That the Plaintiffs hereby incorporate the previous common allegations contained herein as if repeated herein paragraph by paragraph and word for word.

37. That upon information and belief, the Defendants designed, manufactured, produced, licensed, sold, distributed and/or marketed the at-issue systems including but not limited to their parts, components and accessories.

38. That at the time the at-issue systems and/or their parts, components and accessories left the control of Defendants, they were designed in a defective manner and such defect rendered the products unreasonably dangerous to Plaintiff. The design defect proximately caused the damages for which recovery is sought herein.

39. That at the time the at-issue systems and/or their parts, components and accessories left the control of Defendants, Defendants knew, or in light of reasonably available

knowledge or in the exercise of reasonable care, should have known about the danger that caused the damage for which recovery is sought herein.

40. That the at-issue systems and/or their parts, components and accessories failed to function as expected and there existed feasible design alternatives that would have, to a reasonable probability prevented the harm suffered by Plaintiff without impairing the utility, usefulness, practicality or desirability of the at-issue systems and/or their parts, components and accessories.

WHEREFORE Plaintiffs, SARA ARRINGTON LACAVA and MATTHEW ARRINGTON, as joint personal representatives for the Estate of Susan K. Arrington, pray that this Honorable Court award fair and just compensation in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) to which Plaintiff is entitled together with interest, costs, and attorney fees wrongfully sustained in this matter.

COUNT II – MANUFACTURING DEFECT

41. That the Plaintiffs hereby incorporate the previous common allegations and count contained herein as if repeated paragraph by paragraph and word for word.

42. That the injuries suffered by Plaintiff were proximately caused by the defective and/or unreasonably dangerous condition of the at-issue systems and/or their parts, components and accessories. Accordingly, Defendants are liable and/or strictly liable to Plaintiff for all damages resulting from Plaintiff's injuries.

43. That at the time the at-issue systems and/or their parts, components and accessories left the control of Defendants, they were defective because they deviated in a material way from Defendants' specifications and/or from otherwise identical units manufactured to the same manufacturing specifications. The at-issue systems and/or their parts, components and accessories malfunctioned during normal and proper use by Plaintiff.

44. This defective condition rendered the at-issue systems and/or their parts, components and accessories unreasonably dangerous and said defective and unreasonably dangerous condition of the products proximately caused the damages for which recovery is sought by the Plaintiff herein.

WHEREFORE Plaintiffs pray that this Honorable Court award fair and just compensation in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) to which Plaintiffs are entitled together with interest, costs, and attorney fees wrongfully sustained in this matter.

COUNT III – FAILURE TO WARN

45. That the Plaintiffs hereby incorporate the previous common allegations and counts contained herein as if repeated paragraph by paragraph and word for word.

46. That the injuries sustained by Plaintiff were proximately caused by Defendants' failure to provide a reasonably adequate warning considering the unreasonably dangerous propensity of the at-issue systems and/or their parts, components and accessories to malfunction and cause injury or death.

47. That the at-issue systems and/or their parts, components and accessories had a significantly greater propensity to fail to operate properly and leak carbon monoxide or other harmful gases/substances than systems and/or parts, components and accessories that had been designed in a reasonably safe manner. At the time the at-issue systems and/or their parts, components and accessories left the control of Defendants, Defendants knew, or in light of reasonably available knowledge should have known, about the danger that caused the damages for which Plaintiff seeks recovery and the ordinary user or consumer would not realize the at-issue systems and/or their parts, components and accessories' dangerous condition.

48. The unreasonable risk of danger posed by the at-issue systems and/or their parts, components and accessories' design is not known, nor is it open and obvious, to the user or consumer of the product, nor should it have been known or open and obvious to the user or consumer, taking into account the characteristics of, and the ordinary knowledge to, the persons who ordinarily use this product.

49. Defendants are liable and/or strictly liable to Plaintiff for damages resulting from injuries to Plaintiff, proximately caused by Defendants' failure to provide reasonably adequate warnings concerning the at-issue systems and/or their parts, components and accessories, including warnings after Defendants first placed the systems and/or their parts, components and accessories into the stream of commerce.

50. The injuries to Plaintiff were proximately caused by Defendants' failure to provide reasonably adequate instructions and warnings concerning the at-issue systems and/or their parts, components and accessories.

51. Defendants are liable and/or strictly liable to Plaintiff for damages resulting from the malfunction of the at-issue systems and/or their parts, components and accessories, proximately caused by Defendants' failure to instruct and/or warn Plaintiff as to the correct procedure for operating the at-issue systems and/or their parts, components and accessories.

52. The above failures to warn rendered the at-issue systems and/or their parts, components and accessories unreasonably dangerous and defective.

WHEREFORE Plaintiffs pray that this Honorable Court award fair and just compensation in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) to which Plaintiffs are entitled together with interest, costs, and attorney fees wrongfully sustained in this matter.

COUNT IV – BREACH OF EXPRESS WARRANTY

53. That the Plaintiffs hereby incorporate the previous common allegations and counts contained herein as if repeated paragraph by paragraph and word for word.

54. That Defendants expressly warranted to the public, including Plaintiff, by and through statements made by Defendants or their authorized agents or sales representatives, orally and in publications that the at-issue systems and/or their parts, components and accessories were safe, effective and proper for their intended use.

55. That in purchasing and using the at-issue systems and/or their parts, components and accessories, Plaintiff reasonably relied on the skill, judgment, representations and foregoing expressed warranties of the Defendants, these warranties and representations proved to be false because the product(s) was neither safe, nor fit for the uses for which it was intended.

56. That as a direct and proximate cause of Defendants' breach of warranties, Plaintiff suffered injuries.

WHEREFORE Plaintiffs pray that this Honorable Court award fair and just compensation in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) to which Plaintiffs are entitled together with interest, costs, and attorney fees wrongfully sustained in this matter.

COUNT V – BREACH OF IMPLIED WARRANTY

57. That the Plaintiffs hereby incorporate the previous common allegations and counts contained herein as if repeated paragraph by paragraph and word for word.

58. That Defendants have breached the implied warranty of merchantability in that the at-issue systems and/or their parts, components and accessories were not reasonably fit for the purpose for which they were sold, intended, or reasonably foreseen to be used. The at-issue

systems and/or their parts, components and accessories were defective on the date of their delivery to Plaintiff.

35. That Defendants have also breached the implied warranty of fitness for a particular purpose. The at-issue systems and/or their parts, components and accessories were not reasonably fit for the specific purchase for which Defendants knowingly sold them and for which the Plaintiff purchased in reliance on Defendants.

36. That as a direct and proximate result of Defendants' breach of warranty, Plaintiff suffered injuries.

WHEREFORE Plaintiffs pray that this Honorable Court award fair and just compensation in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) to which Plaintiffs are entitled together with interest, costs, and attorney fees wrongfully sustained in this matter.

COUNT VI – NEGLIGENCE AND/OR GROSS NEGLIGENCE

59. That the Plaintiffs hereby incorporate the previous common allegations and counts contained herein as if repeated paragraph by paragraph and word for word.

60. That Defendants had a duty to Plaintiff to design, manufacture and install the at-issue systems and/or their parts, components and accessories that were reasonably safe for their intended use. Defendants breached this duty and were negligent and/or grossly negligent by designing, manufacturing, selling and installing these systems and/or their parts, components and accessories that were defective and unfit for the purpose for which they were designed and manufactured.

61. That Defendants were negligent and/or grossly negligent in designing, manufacturing, selling and installing the at-issue systems and/or their parts, components and accessories when Defendants knew, or should have known in light of reasonably available

knowledge or the exercise of reasonable care, that the at-issue systems and/or their parts, components and accessories were manufactured, designed and/or installed in a defective condition that rendered the at-issue systems and/or their parts, components and accessories unreasonably dangerous.

62. That Defendants were negligent and/or grossly negligent by failing to test the at-issue systems and/or their parts, components and accessories sufficiently to ensure that they would not malfunction/break/fail thereby causing carbon monoxide or some other gas/substance to leak into Plaintiff's home.

63. That Defendants failed to exercise the degree of care that a designer, manufacturer, or installer of ordinary prudence would have used under the same or similar circumstances, or doing that which a designed, manufacturer, or installer of ordinary prudence would not have done under the same or similar circumstances.

64. That Defendants knew or should have known that the exercise of ordinary care and diligence would avert injury to the Plaintiff.

65. That Defendants had the ability to avert the injury to Plaintiff with the exercise of ordinary care and diligence.

66. That Defendants' conduct shows their intent to harm or their indifference to the injury that occurred to Plaintiff.

67. That Defendants' negligence and/or gross negligence, as described above, was a direct and proximate cause of the injuries sustained by Plaintiff and Defendants are liable for all damages resulting there from.

WHEREFORE Plaintiffs pray that this Honorable Court award fair and just compensation in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) to which

Plaintiffs are entitled together with interest, costs, and attorney fees wrongfully sustained in this matter.

COUNT VII – STRICT LIABILITY

68. That the Plaintiffs hereby incorporate the previous common allegations and counts contained herein as if repeated paragraph by paragraph and word for word.

69. That the Plaintiff was injured by a product(s) designed, manufactured, or sold by the Defendants.

70. That the product, products, or parts were defective at the time that they left the hands of the retailer(s).

71. That the Defendants are, in whole or in part, strictly liable for the injuries suffered by the Plaintiff.

WHEREFORE Plaintiffs pray that this Honorable Court award fair and just compensation in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) to which Plaintiffs are entitled together with interest, costs, and attorney fees wrongfully sustained in this matter.

COUNT VIII - MISREPRESENTATION

72. That the Plaintiffs hereby incorporate the previous common allegations and counts contained herein as if repeated paragraph by paragraph and word for word.

73. That Defendants made representations of material facts, as alleged herein, concerning the character and quality of the at-issue systems and/or their parts, components and accessories of such nature as to render them liable and/or strictly liable for Plaintiff's injuries.

74. That Defendants engaged in a course of advertising, marketing and promotion of its products which included express and implied misrepresentation of material facts concerning the character and quality of the at-issue systems and/or their parts, components and accessories

through advertising, marketing and promotional activities, the totality of which, if taken as a whole, falsely represented that:

- a. The at-issue systems and/or their parts, components and accessories were suitable for their normal and intended use when in fact they were dangerous and unsafe devices;
- b. The at-issue systems and/or their parts, components and accessories were suitable for safe use as depicted in the advertising, marketing and promotional material distributed to the public;
- c. The at-issue systems and/or their parts, components and accessories were suitable for use by individuals without special training or expertise in the operation of such equipment;
- d. The at-issue systems and/or their parts, components and accessories were safe products.

75. That all of this conduct, under the circumstances of this case, was intended by Defendants to induce the purchase and use of the at-issue systems and/or their parts, components and accessories and, by so doing, proximately caused injuries to the Plaintiff.

WHEREFORE Plaintiffs pray that this Honorable Court award fair and just compensation in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) to which Plaintiffs are entitled together with interest, costs, and attorney fees wrongfully sustained in this matter.

COUNT IX – MARKETING DEFECT

76. That the Plaintiffs hereby incorporate the previous common allegations and counts contained herein as if repeated paragraph by paragraph and word for word.

77. That Defendants failed to give adequate warning of the known danger of using the at-issue systems and/or their parts, components and accessories in circumstances where carbon monoxide could leak and cause injury or death. The product dangers were known, or by the application of reasonably developed skill and foresight should have been known to Defendants.

78. That alternatively, Defendants failed to give adequate instructions to avoid such dangers, which rendered the at-issue systems and/or their parts, components and accessories unreasonably dangerous as marketed.

79. That the operator's manual and any warning stickers on the HVAC system and/or its parts, components and accessories concerning such dangers could not have drawn the attention of a reasonable operator because they did not exist. These dangers and unsafe uses of the at-issue systems and/or their parts, components and accessories as they were equipped are beyond that which would be contemplated by the ordinary user with the ordinary knowledge common to their community as to the at-issue systems and/or their parts, components and accessories' characteristics.

80. That such marketing defect was a direct and proximate cause of Plaintiff's injuries.

WHEREFORE Plaintiffs pray that this Honorable Court award fair and just compensation in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) to which Plaintiffs are entitled together with interest, costs, and attorney fees wrongfully sustained in this matter.

COUNT X – VIOLATION OF MICHIGAN BUILDING CODES

81. That the Plaintiffs hereby incorporate the previous common allegations and counts contained herein as if repeated paragraph by paragraph and word for word.

82. That the State of Michigan has established and passed public laws/codes regulating the installation, alteration, maintenance, improvements and inspection of certain systems including those involved in the death of Susan Arrington.

83. That these acts/codes include but are not limited to the following:

- a. Stille-DeRossett-Hale Single State Construction Code Act (1972 PA 230) MCL 125.1501
- b. Electrical Administration Act (1956 PA 217) MCL 338.881.
- c. Forbes Mechanical Contractors Act (1984 PA 192) MCL 338.971
- d. State Plumbing Act (2002 PA 733) MCL 338.3511.
- e. Boiler Act of 1964 (1965 PA 290) MCL 408.751.

84. That the Defendants responsible for the installation, alteration, maintenance, improvements and inspection of these at-issue systems/parts failed to follow established laws/codes in the execution of their duties, and caused some or all of the systems/parts to fail and/or malfunction.

85. That Defendants' conduct herein was the direct cause of Plaintiff's injuries, including death.

WHEREFORE Plaintiffs pray that this Honorable Court award fair and just compensation in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) to which Plaintiffs are entitled together with interest, costs, and attorney fees wrongfully sustained in this matter.

COUNT XI – DEFECTIVE WORKMANSHIP/BREACH OF CONTRACT

86. That the Plaintiffs hereby incorporate the previous common allegations and counts contained herein as if repeated paragraph by paragraph and word for word.

87. That multiple Defendants entered into a contract with Plaintiff and/or her agents to provide certain services including but not limited to construction, installation, and

improvement of the property and its systems, including an at-issue systems and/or their parts, components and accessories.

88. That in exchange for Plaintiff's agreement to pay and eventual payment, these Defendants provided said construction, installation, improvement, and maintenance services.

89. That the Defendants failed to provide said services in a safe and proper manner thus breaching the contract that resulted in certain malfunctions of the at-issue systems and/or their parts, components and accessories.

90. That as a result of this breach(es) the Plaintiff suffered damages and injury including death.

WHEREFORE Plaintiffs pray that this Honorable Court award fair and just compensation in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) to which Plaintiffs are entitled together with interest, costs, and attorney fees wrongfully sustained in this matter.

COUNT XII - VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT

91. That the Plaintiffs hereby incorporate the previous common allegations and counts contained herein as if repeated paragraph by paragraph and word for word.

92. That Defendants engaged in conduct that violated the Michigan Consumer Protection Act, MCL 445.901 *et seq.*

93. That specifically, as set forth in MCL 445.903, the Defendants individually or as a group violated one or more of the subsections of this Act.

94. That specifically, as a result of their deceptive and/or unfair acts and practices, said Defendant's violated this Act.

95. That as a result of said violations, the Plaintiff suffered certain damages and injuries, including death.

WHEREFORE Plaintiffs pray that this Honorable Court award fair and just compensation in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) to which Plaintiffs are entitled together with interest, costs, and attorney fees wrongfully sustained in this matter.

COUNT XIII - FAILURE TO PROPERLY INSPECT PREMISES

96. That the Plaintiffs hereby incorporate the previous common allegations and counts contained herein as if repeated paragraph by paragraph and word for word.

97. That Defendants, including but not limited to Lake County, Michigan and/or Reed City, Michigan (*hereinafter* municipalities) were responsible for entering the Plaintiff's home on multiple occasions, meeting with Plaintiff and/or her contractors/agents and conducting multiple inspections of the subject-matter property, inside and out, during the installation, alteration, and/or improvements of the at-issue systems and/or their parts, components and accessories.

98. That Plaintiff and/or her agents requested permits for approval of said installation, alteration and/or improvement of the at-issue systems/parts and inspectors were requested by Plaintiff and/or required by local ordinance and/or statute.

99. That these circumstances meet the requirements of an exception to the public duty doctrine, namely the special relationship factor, which can shield Defendants from liability. That specifically:

- a. There was an assumption by the municipalities, through promises and actions, of an affirmative duty to act on behalf of the Plaintiff;
- b. Knowledge on the part of the municipalities' agent(s) that inaction could lead to harm;
- c. Direct contact between the municipalities' agents and Plaintiff;
- d. Plaintiff justifiably relied upon the municipalities' affirmative undertaking.

100. That in addition, the Defendants herein are not protected from suit by governmental immunity.

101. That as alleged above herein, the Defendants have committed gross negligence against the Plaintiff, namely that they have engaged in conduct so reckless as to demonstrate a substantial lack of concern for whether injury would result to the Plaintiff.

102. That specifically, the Defendants had a duty to exercise reasonable care and diligence to avert Plaintiff's injury.

103. That it was within the Defendants' ability to avoid this injury to Plaintiff by exercising said care and diligence.

104. That the Defendants showed indifference to the harm that could and ultimately did befall Plaintiff, specifically her death.

105. That as a result, the Plaintiff suffered injury, including death.

WHEREFORE Plaintiffs pray that this Honorable Court award fair and just compensation in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) to which Plaintiffs are entitled together with interest, costs, and attorney fees wrongfully sustained in this matter.

COUNT XIV – BREACH OF CONTRACT

106. That the Plaintiffs hereby incorporate the previous common allegations and counts contained herein as if repeated paragraph by paragraph and word for word.

107. That Plaintiff entered into a contract or contracts with Defendants, including Lake County, Michigan and Reed City, Michigan to obtain permits, inspections, reviews, recommendations, and future approval of the construction, installation, and functioning of the at-issue systems/parts.

108. That in exchange for this service, Plaintiff agreed to pay and/or was required to pay certain fees.

109. That in addition, Plaintiff paid certain amounts to contractors and installers, in reliance upon the statements/actions of the Defendants to complete the construction/installation and to obtain a Certificate of Occupancy that represented to the Plaintiff that her home was habitable.

110. That the Defendants failed to properly and adequately complete these inspections, testing, and reviews, which constituted a breach of the contract they had with the Plaintiff.

111. That despite their breach, Defendant Lake County by its agents/employees issued a Certificate of Occupancy on September 1, 2005, stating that Plaintiff's home was habitable.

112. That Plaintiff's home was and/or became uninhabitable resulting in the Plaintiff's death.

WHEREFORE Plaintiffs pray that this Honorable Court award fair and just compensation in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) to which Plaintiffs are entitled together with interest, costs, and attorney fees wrongfully sustained in this matter.

COUNT XV - LOSS OF CONSORTIUM

113. That the Plaintiffs hereby incorporate the previous common allegations and counts contained herein as if repeated paragraph by paragraph and word for word.

114. That Plaintiffs are, and at all times mentioned, were the children of Susan K. Arrington. In addition, she had children, descendants, and/or brothers or sisters who relied upon her for support, society and companionship.

115. That as set forth above, on December 26, 2012, Susan K. Arrington died as a result of the acts/omissions/conduct of the Defendants herein and is entitled to recover for pain and suffering.

116. That Susan K. Arrington's children, descendants, brothers and/or sisters have suffered the loss of her affection, society, and companionship.

WHEREFORE Plaintiffs pray that this Honorable Court award fair and just compensation in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) to which Plaintiffs are entitled together with interest, costs, and attorney fees wrongfully sustained in this matter.

COUNT XVI - SPOILATION OF EVIDENCE

117. That the Plaintiff hereby incorporates the previous common allegations and counts contained herein as if repeated paragraph by paragraph and word for word.

118. That Defendants, including Lake County, Michigan, were aware after the death of Ms. Arrington that the potential for a civil action existed.

119. That Defendants had a legal or contractual duty to preserve evidence relevant to this possible civil action.

120. That evidence was lost, destroyed or allowed to be lost or destroyed.

121. That the loss of this evidence has significantly impaired and/or prejudiced the Plaintiff's ability to prove its causes of action.

122. That there is a causal relationship between the destruction of evidence and the Plaintiff's inability to prove their suit.

123. That damages have been incurred by the loss and/or destruction of this evidence.

124. That as a result, the at-fault Defendants should be penalized beyond a negative evidentiary inference and damages awarded to Plaintiffs.

WHEREFORE Plaintiffs pray that this Honorable Court award fair and just compensation in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) to which Plaintiffs are entitled together with interest, costs, and attorney fees wrongfully sustained in this matter.

JURY DEMAND

125. Plaintiff respectfully demands a trial by jury on all triable issues.

WHEREFORE Plaintiffs pray that this Honorable Court award fair and just compensation in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) to which Plaintiffs are entitled together with interest, costs, and attorney fees wrongfully sustained in this matter.

Respectfully submitted,

/S/ MARK L. MENCZER
MARK L. MENCZER, P.L.L.C.
/S/ TIMOTHY M. LESSING
TIMOTHY M. LESSING (P54394)
FREEDMAN, LESSING,
KUTINSKY & FREEDMAN, P.C.
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DATED: December 20, 2013