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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

YVONNE HOWETH, *et al.*

Plaintiffs,

vs.

ARAMARK CORPORATION, *et al.*

Defendants.

THIRD AMENDED COMPLAINT

Case No. 2:10-cv-00221
Judge Ted Stewart

Plaintiffs, by and through counsel, hereby complain and allege against Defendants as follows:

PARTIES

1. Yvonne Howeth is a resident and citizen of Arizona and the widow and personal representative of the estate of Glenn Howeth. Glenn Howeth was a resident and citizen of Arizona before his death.

2. Travis Howeth and Tenniel Howeth are residents and citizens of the state of Arizona and the surviving children of Glenn Howeth and entitled to recover for his wrongful death.

3. Plaintiff James Marc Beltran is a minor and a resident and citizen of Arizona.

4. Plaintiff Ken Shultz is a resident and citizen of Arizona.

5. Plaintiff Amy Shultz is a resident and citizen of Arizona.

6. Plaintiff Michael Schultz is a resident and citizen of Arizona.

7. Plaintiff Robert Howeth is a resident and citizen of Arkansas.

8. Plaintiff Rebecca Howeth is a resident and citizen of Arkansas.

9. Plaintiff Wesley Howeth is a resident and citizen of Arkansas.

10. ARAMARK Corporation is a Delaware corporation doing regular business in the State of Illinois with its principal place of business in Pennsylvania, and ARAMARK Sports and Entertainment Services, LLC is a Delaware limited liability company doing regular business in the State of Illinois with its principal place of business in Pennsylvania (collectively and individually "ARAMARK").

11. The sole member of Aramark Sports and Entertainment Services, LLC is Aramark/HMC, LLC. Aramark/HMS, LLC is a Delaware limited liability company with its principal place of business in Pennsylvania and, as such, is a citizen of Delaware and Pennsylvania.

12. The sole member of Aramark/HMC, LLC is Aramark Sports and Entertainment Group, LLC. Aramark Sports and Entertainment Group, LLC is a Delaware limited liability

company with its principal place of business in Pennsylvania and, as such, is a citizen of Delaware and Pennsylvania.

13. The sole member of Aramark Sports and Entertainment Group, LLC is Aramark Corporation. As previously stated, Aramark Corporation is a Delaware corporation with its principal place of business in Pennsylvania. Therefore, because each member of Aramark Sports and Entertainment Services, LLC is a citizen of Delaware and Pennsylvania, Aramark Sports and Entertainment Services, LLC is a citizen of Delaware and Pennsylvania.

14. Twin Anchors Marine Limited (“Twin Anchors”) is a citizen of a foreign state. It is a Canadian company doing regular business in the State of Illinois with its principal place of business in British Columbia, Canada.

15. Centek Industries Inc. (“Centek”) is a Georgia corporation doing regular business in the State of Illinois with its principal place of business in Georgia.

16. Marine Technologies Inc. (“MTI”) is an Illinois corporation with its principal place of business in Illinois.

17. Westerbeke Corporation (“Westerbeke”) is a Delaware corporation doing regular business in the State of Illinois with its principal place of business in Massachusetts.

JURISDICTION AND VENUE

18. This Court has jurisdiction pursuant to 28 U.S.C. §1332(a)(3). This is a civil action and involves, exclusive of interest and costs, a sum in excess of \$75,000. Every issue of law and fact in this action is wholly between citizens of different states and in which citizens or subjects of a foreign state are additional parties.

19. Venue in the Central District of Utah is appropriate under 28 U.S.C. § 1391(a)(2), because a substantial part of the events giving rise to this complaint occurred in Utah.

FACTS COMMON TO ALL CLAIMS

20. This action involves a wrongful death claim brought on behalf of the wife and children of Glenn Howeth, as well as a survival action for personal injuries suffered by Glenn Howeth prior to his death. A claim for personal injuries and other damages is also asserted herein on behalf of James Marc Beltran, Robert Howeth, Rebecca Howeth, Wesley Howeth, Ken Shultz, Amy Shultz, and Michael Shultz. The claims herein arise from carbon monoxide poisoning suffered by the Plaintiffs while on a rented houseboat on Lake Powell in Utah/Arizona.

21. Plaintiffs allege generally that carbon monoxide produced by a generator on the houseboat became trapped under, around, and within the houseboat resulting in the death of Glenn Howeth and injuries to the other Plaintiffs.

22. Defendant ARAMARK is a concessionaire on Lake Powell on the Utah/Arizona border. ARAMARK owns and rented the subject houseboat to Plaintiffs and others, and was responsible for its safety, maintenance, and upkeep. Aramark was also responsible for providing sufficient warnings and instructions to lessees of houseboats in order to prevent CO poisoning events during rental houseboat operation.

23. Defendant Twin Anchors is the manufacturer of the subject houseboat.

24. Defendant Westerbeke is the manufacturer of the engine for the generator used on the subject houseboat.

25. Defendant Centek is the manufacturer of the “GenSep” water separator, a critical component of the generator used on the subject houseboat.

26. Defendant MTI is the manufacturer of the “Safe-T-Alert” carbon monoxide detectors that were in use on the subject houseboat.

27. The “Safe-T-Alert” carbon monoxide detectors were the Model 60 Series, with serial numbers BK905589, BK856363, and BJ490465 (the “Carbon Monoxide Detectors”). The BK905589 carbon monoxide detector was located near the helm. The BK856363 carbon monoxide detector was located in the forward hallway. The BJ490465 carbon monoxide detector was located in the aft hallway.

28. Defendants are involved in the marine manufacturing industry.

29. In 1986, more than twenty-two (22) years prior to the catastrophic accident involving plaintiffs, the United States Coast Guard issued a report which informed boat and boat equipment manufacturers, distributors and dealers, among others, that engine emissions on boats were causing a significant number of injuries and deaths to boat occupants due to exposure to toxic levels of carbon monoxide.

30. By at least 2001, the houseboat manufacturing, component and houseboat rental industries, including the Defendants, were aware that carbon monoxide poisoning injuries and deaths were still occurring at unacceptable levels and were still considered to be a serious hazard to public health by the United States Coast Guard (“USCG”) and by the National Park Service (“NPS”). Additionally, by this date, the USCG and NPS had informed the marine industry and these Defendants that the problem was particularly severe at Lake Powell.

31. Further, by at least 2001 and continuing through 2008, these Defendants were or should have been aware that most operators and users of houseboats, especially those who rented houseboats, were not informed of and did not understand the frequency of serious injuries or deaths resulting to the operators of houseboats from carbon monoxide poisoning, nor were they informed of or understood the fact that houseboat generators, when operated at night in calm weather conditions, posed a significant risk of death or brain injury to sleeping houseboat occupants.

32. By 2004, each of the Defendants knew or had reason to know that carbon monoxide poisoning from water craft and houseboats was a national problem with more than seven hundred (700) known poisonings before 2004, including more than one hundred (100) confirmed deaths, many of which occurred at Lake Powell.

33. By 2001, Defendants Twin Anchors, ARAMARK, Centek, and Westerbeke knew that an onboard generator on a houseboat produces as much as 48,000 parts per million of carbon monoxide.

34. By 2001, each of the Defendants knew or had reason to know that the World Health Organization limit for human exposure to carbon monoxide is 87 parts per million in a fifteen (15) minute time period, and that 1,200 parts per million is immediately dangerous to life and health with 12,800 parts per million producing death in one to three minutes.

35. By 2001, Defendants Twin Anchors, ARAMARK, Centek, and Westerbeke knew or had reason to know that their products would be used in such a manner that, under certain foreseeable weather conditions, would expose owners, lessees operators and users of houseboats

to levels of carbon monoxide from their products that would pose a danger of death or serious injury including death.

36. By 2005, each of the Defendants knew or had reason to know as part of the marine manufacturing industry of published data showing that at Lake Powell alone, there had been approximately one hundred seventy-nine (179) known cases of carbon monoxide poisoning during that period and seventy-two (72) deaths there.

37. By this time Defendants knew or had reason to know that as many as one half of all boat related drowning may have been carbon monoxide related.

38. By this time Defendants knew or had reason to know that the number of carbon monoxide poisonings and deaths were under-reported.

39. By 2004, each of the Defendants knew or had reason to know that carbon monoxide posed an imminent risk of injury and death on houseboats.

40. By 2004, each of the Defendants knew or had reason to know that carbon monoxide posed an imminent risk of injury and death on houseboats with a generator and exhaust configuration such as that on the houseboat rented to Plaintiffs.

41. The number of deaths and serious carbon monoxide injures nationwide, and particularly at Lake Powell had reached such a degree that by at least 1995 it was incumbent upon the Defendants to make the general public aware of the severity, extent, and frequency of the problem by publicizing the problem prominently, and especially to those who occasionally rented houseboats. Moreover, by 2001 or earlier, the severity and frequency of such injuries made it incumbent that the Defendants and members of the houseboat industry aggressively pursue not only education and warnings, but the development of “belt and suspenders” systems

to reduce CO emissions from engines and generators and by designing systems to ventilate houseboats to prevent further injuries.

42. Although some work was undertaken in regard to education, warnings and design improvements, the work was grossly insufficient and between 1995 and 2008, hundreds of documented injuries and deaths continued to occur unabated.

43. In particular, the Defendants, and others in the industry, did not prominently advise the U.S. boating public, generally and particularly those persons who leased boats at Lake Powell, that a high number of deaths and serious brain injuries related to CO poisoning were occurring, nor of the circumstances of those events, so houseboat occupants could protect themselves from such injuries.

44. The houseboat industry, along with Defendant MTI, determined to utilize carbon monoxide detectors in houseboats but did not adequately advise the operators of houseboats of the inherent limitations which affected the reliability of such systems, nor did they adequately instruct houseboat regarding the proper use of CO alarms.

45. On June 21, 2008, Robert Howeth, Glenn Howeth's brother, rented a Twin Anchors constructed houseboat from ARAMARK at Wahweap Marina near Page, Arizona, on Lake Powell.

46. Howeth family members, including Glenn Howeth, James Marc Beltran, Robert Howeth, Rebecca Howeth, Wesley Howeth, Amy Schultz, Ken Schultz, and Michael Schultz used the subject houseboat for a family vacation on Lake Powell.

47. At the time of renting the houseboat, an ARAMARK employee went over the operation of the houseboat with Robert Howeth and some of the party.

48. The houseboat was equipped with the Carbon Monoxide Detectors.

49. The ARAMARK employee did not properly and adequately instruct Robert Howeth or the houseboat party in the proper operation of the Carbon Monoxide Detectors.

50. ARAMARK and its employee failed to adequately and properly instruct Robert Howeth or any of his party about the risks of carbon monoxide poisoning posed by the houseboat, including when operating the generator at night, or how to minimize or avoid those risks.

51. Neither ARAMARK nor its employees adequately warned the Plaintiffs of the imminent danger of carbon monoxide on houseboats generally.

52. Neither ARAMARK nor its employees warned the Plaintiffs of the imminent danger of carbon monoxide when operating the houseboat while the boat was moored or docked overnight during windless or low wind conditions.

53. Defendants Twin Anchors, Centek, and Westerbeke likewise failed to adequately warn houseboat operators, including Plaintiffs, of the severity and degree of risk associated with carbon monoxide poisoning in connection with the use of their products, including but not limited to the risk of operating the generator when the boat was moored or docked overnight during windless or low wind conditions.

54. The subject houseboat was equipped with a generator to supply electricity to the electrical appliances including the air conditioner.

55. The generator was attached to a dry stack exhaust system. The purpose of a generator exhaust system is to vent carbon monoxide and other hazardous gases away from the houseboat and its occupants.

56. The exhaust system also included a water separator which, if designed, manufactured, and plumbed properly, is intended to safely separate water and exhaust expelled by the generator and vent carbon monoxide and other hazardous gases away from the houseboat and its occupants.

57. The generator, including the dry stack exhaust system and water separator, was defective and unreasonably dangerous and inappropriate for its intended use and/or not installed or plumbed correctly, including, but not exclusively, that it did not meet American Boating and Yacht Council guidelines for dry stack exhaust systems.

58. On information and belief, Twin Anchors and ARAMARK knew or had reason to know that the dry stack exhaust system as installed was unreasonably dangerous.

59. On the third night of their use of the subject houseboat, the Howeth family had anchored their boat near some steep vertical cliffs within the state of Utah.

60. The weather conditions that evening were calm with little or no wind.

61. Plaintiffs were operating the boat's generator that evening for air conditioning and other electrical appliances.

62. On information and belief, water entered the tubing for the exhaust system and blocked deadly carbon monoxide gas from properly exiting the exhaust system, and instead, forced the gas to be expelled through the generator's water drain into the water under the boat.

63. The carbon monoxide exiting the water drain caused carbon monoxide to build up under, around, and within the subject houseboat

64. As a result of the excessive accumulation of carbon monoxide under and around the subject houseboat, carbon monoxide levels in the cabin of the houseboat rose to levels that imperiled the lives of the Howeth family.

65. On the third night during the buildup of carbon monoxide inside the subject houseboat, the Carbon Monoxide Detectors failed to alarm and alert the Howeth family of the presence of toxic and injurious levels of carbon monoxide.

66. The Carbon Monoxide Detectors were hard-wired to the houseboat, so their failure to alarm and alert the Howeth family was not a result of a battery failure.

67. Glenn Howeth and his grandson were sharing a room on the houseboat. Glenn Howeth was awakened by his grandson vomiting. Glenn became aware of the danger, woke the family members, and radioed for assistance.

68. All the members of the Howeth family showed various signs of carbon monoxide poisoning at the time Glenn Howeth attempted to wake them, including but not exclusively, loss of consciousness, vomiting, headaches, and nausea.

69. All members of the Howeth family were later diagnosed with carbon monoxide poisoning by medical professionals and were life-flighted to the hospital.

70. While continuing to aid his family and radio for assistance, Glenn Howeth suffered a fatal heart attack induced by carbon monoxide poisoning. Prior to his death, Glenn Howeth suffered severe personal injuries including, but not limited to, pain, suffering, disability, and mental and emotional distress.

71. The actions of Glenn Howeth prior to his death saved the lives of his family members.

72. James Marc Beltran was injured because of carbon monoxide poisoning.
73. Robert Howeth was injured because of carbon monoxide poisoning.
74. Rebecca Howeth was injured because of carbon monoxide poisoning.
75. Wesley Howeth was injured because of carbon monoxide poisoning.
76. Ken Shultz was injured because of carbon monoxide poisoning.
77. Amy Shultz was injured because of carbon monoxide poisoning.
78. Michael Shultz was injured because of carbon monoxide poisoning.

FIRST CLAIM FOR RELIEF

(Negligence--Against Twin Anchors, ARAMARK, Centek, and Westerbeke)

79. All of the above-stated allegations of the Complaint are incorporated herein by this reference.

80. Defendants Twin Anchors, ARAMARK, Centek, and Westerbeke as the manufacturer, owner, and component part manufacturers, respectively, were negligent and committed acts and/or omissions which led to the accident that occurred and caused the death of Glenn Howeth and the personal injuries to James Marc Beltran, Robert Howeth, Rebecca Howeth, Wesley Howeth, Ken Shultz, Amy Shultz, and Michael Shultz.

81. Said Defendants owed a duty of care to ensure that the houseboat and its generator, water separator and ventilation and exhaust systems were safe and would not present hazards or cause injurious and toxic levels of carbon monoxide to be discharged in an area where it would be a danger to the houseboat occupants.

82. Said Defendants breached their duties of care and were negligent by failing to ensure that the generator, separator and exhaust system were properly installed.

83. Defendants breached these duties of care, causing the death of Glenn Howeth and the personal injuries to James Marc Beltran, Robert Howeth, Rebecca Howeth, Wesley Howeth, Ken Shultz, Amy Shultz, and Michael Shultz.

84. As a direct result of said Defendants' breach of their duties of care and negligence, Plaintiffs James Mark Beltran, Robert Howeth, Rebecca Howeth, Wesley Howeth, Ken Shultz, Amy Shultz, and Michael Shultz have been injured and damaged in amounts to be determined at trial.

SECOND CLAIM FOR RELIEF

(Strict Product Liability--Against Twin Anchors, ARAMARK, Centek, and Westerbeke)

85. All of the above-stated allegations are incorporated herein by this reference.

86. At the time the houseboat was placed in the stream of commerce by Defendants Twin Anchors, ARAMARK, Centek, and Westerbeke, the houseboat, and its generator, separator, ventilation system and exhaust assembly of the houseboat generator were defective and unreasonably dangerous, without limitation, as follows:

1. Defects in the design of the generator, permitting it to expel excessive levels of toxic carbon monoxide.
2. Defects in the design of the exhaust system;
3. Defects in the installation of the exhaust system;
4. Defects in the manufacture of the exhaust system;
5. Defects in the design and manufacture of the houseboat's ventilation system
6. Defects in the warnings, labels and instructions for use accompanying the exhaust system; and

7. Other defects that may later be revealed during discovery.

87. The failure of the houseboat and its generator, exhaust system, ventilation system and water separator proximately caused the death of Glenn Howeth and injuries to James Marc Beltran, Robert Howeth, Rebecca Howeth, Wesley Howeth, Ken Shultz, Amy Shultz, and Michael Shultz were a direct and proximate result of these defects.

88. Said Defendants are strictly liable for the injuries and damages sustained by said Plaintiffs.

THIRD CLAIM FOR RELIEF

(Failure to Warn – Against Twin Anchors, ARAMARK, Centek, and Westerbeke)

89. All of the above-stated allegations of the Complaint are incorporated herein by this reference.

90. Defendants Twin Anchors, ARAMARK, Centek, and Westerbeke knew their products were inherently dangerous in that they produced lethal amounts of carbon monoxide and would be used in a manner by the public that placed people in imminent risk of serious harm or death.

91. Defendants Twin Anchors, ARAMARK, Centek, and Westerbeke knew that their products or ones essentially the same had caused carbon monoxide poisoning in the past.

92. Defendants Twin Anchors, ARAMARK, Centek, and Westerbeke had a duty to adequately warn Plaintiffs of the dangers posed by operation of the houseboat generator while moored or docked, particularly during nights that were windless or where winds were light, and how to avoid or minimize such dangers.

93. Defendants Twin Anchors, ARAMARK, Centek, and Westerbeke breached their duty to adequately warn Plaintiffs of such dangers and how to avoid or minimize them, which led to the accident that occurred and caused the death of Glenn Howeth and the personal injuries to James Marc Beltran, Robert Howeth, Rebecca Howeth, Wesley Howeth, Ken Shultz, Amy Shultz, and Michael Shultz.

94. Defendants' breach of their duty to warn, caused the death of Glenn Howeth and the personal injuries to James Marc Beltran, Robert Howeth, Rebecca Howeth, Wesley Howeth, Ken Shultz, Amy Shultz, and Michael Shultz.

95. As a direct result of said Defendants' breach of their duty to warn, Plaintiffs James Mark Beltran, Robert Howeth, Rebecca Howeth, Wesley Howeth, Ken Shultz, Amy Shultz, and Michael Shultz have been injured and damaged in amounts to be determined at trial.

FOURTH CLAIM FOR RELIEF

(Breach of Express Warranties--Against Twin Anchors, ARAMARK, Centek, and Westerbeke)

96. All of the above-stated allegations are incorporated herein by this reference.

97. On information and belief, Defendants Twin Anchors, ARAMARK, Centek and Westerbeke expressly warranted that the houseboat, its ventilation systems, generator, exhaust system and separator were free from defects.

98. Said Defendants breached their express warranties, and these breaches of warranty were a proximate cause of the exhaust system failure, and the resulting death of Glenn Howeth, and injuries and damages to James Marc Beltran, Robert Howeth, Rebecca Howeth, Wesley Howeth, Ken Shultz, Amy Shultz, and Michael Shultz.

FIFTH CLAIM FOR RELIEF

(Breach of Implied Warranty of Merchantability--Against Twin Anchors, ARAMARK, Centek, and Westerbeke)

99. All of the above-stated allegations are incorporated herein by this reference.

100. Defendants Twin Anchors, ARAMARK, Centek, and Westerbeke were merchants with respect to the type of goods that included the generator, exhaust system and separator, and implicitly warranted that the products were merchantable.

101. Said Defendants breached their implied warranty of merchantability, and their breach of warranty was a proximate cause of the exhaust system failure and Plaintiffs' resulting injuries and damages.

SIXTH CLAIM FOR RELIEF

(Breach of Implied Warranty of Fitness for a Particular Purpose--Against Twin Anchors, ARAMARK, Centek, and Westerbeke)

102. All of the above-stated allegations are incorporated herein by this reference.

103. Defendants Twin Anchors, ARAMARK, Centek and Westerbeke had reason to know (A) the particular purpose for which the houseboat and exhaust system would be used, and(B) that Plaintiffs and others were relying on Defendants' skill and judgment to provide a suitable product.

104. Said Defendants implicitly warranted that the houseboat and its components were fit for the particular purpose for which it was required.

105. Said Defendants breached their implied warranty of fitness for a particular purpose, and their breach of warranty was a proximate cause of the nut and lock ring failure and Plaintiffs' resulting injuries and damages.

SEVENTH CLAIM FOR RELIEF

(Punitive Damages – Against All Defendants)

106. All of the above-stated allegations of the Complaint are incorporated herein by this reference.

107. As more fully alleged in the general allegations plead above, for many years prior to the decedent's catastrophe, the Defendants were aware that a large number of carbon monoxide caused deaths and/or serious injuries were occurring each year on and around houseboats and pleasure boats, particularly at Lake Powell due to the excessive carbon monoxide produced by marine engines and generators and the failure of systems on houseboats and pleasure boats to ventilate toxic levels of CO away from boat occupants.

108. Further, Defendants knew that such deaths and injuries would continue to occur unless major changes were made in the design of engines, ventilation systems, separators and warnings and instructions on houseboats.

109. However, Defendants also knew that if the public came to understand and appreciate how many deaths and serious injuries were resulting, especially at Lake Powell and nationwide, sales and rentals of houseboats would decline and/or public pressure would require them to undertake design and manufacturing changes which the Defendants and others were not willing to undertake.

110. Consequently, Defendants, individually and collectively, knowingly and consciously minimized and failed to educate the boating public, and in particular, those persons considering rental of houseboats in inland lakes such as Lake Powell, concerning the number and severity of carbon monoxide deaths, the reasons those deaths occurred, and the means and methods by which accidental houseboat deaths could be prevented.

111. Defendants Twin Anchors, ARAMARK, Centek, and Westerbeke recognized the extreme nature of their conduct in failing to make their products safe and in failing to warn Plaintiffs in light of their knowledge about the imminent threat to health and safety their products posed. Their conduct and omissions were callous, reckless and extreme. They acted in knowing and reckless disregard of Plaintiffs' safety. The imposition of punitive damages is justified and proper.

EIGHTH CLAIM FOR RELIEF

(Negligence--Against MTI)

112. All of the above-stated allegations of the Complaint are incorporated herein by this reference.

113. Defendant MTI owed a duty of care to Plaintiffs to design and manufacture the Carbon Monoxide Detectors so that they would detect the presence of carbon monoxide and would alarm and alert the Plaintiffs of the presence of carbon monoxide.

114. The Carbon Monoxide Detectors were designed and manufactured to detect carbon monoxide and to alarm and alert houseboat occupants about the presence of carbon monoxide. They were equipped with memory chips that indicate how much carbon monoxide each one detected.

115. The memory chips in the carbon monoxide detectors BK856363 and BJ490465 indicated that they failed to detect any carbon monoxide. The memory chip in the carbon monoxide detector BK905589 indicated that it detected some carbon monoxide, but it failed to alarm and alert the Plaintiffs.

116. The Carbon Monoxide Detectors' failure to either detect carbon monoxide and/or to alarm and alert the Plaintiffs after detecting carbon monoxide is a result of a defect in the design of the Carbon Monoxide Detectors and/or a result of a manufacturing defect in the Carbon Monoxide Detectors.

117. These defects made the Carbon Monoxide Detectors unreasonably dangerous, and the defects were the result of Defendant MTI's failure to use reasonable care in the design and/or manufacturing of the Carbon Monoxide Detectors.

118. Defendant MTI owed a duty of care to Plaintiffs to provide adequate warnings and instructions with respect to the Carbon Monoxide Detectors.

119. Defendant MTI was aware long before this incident about the dangers associated with carbon monoxide poisoning in the marine industry.

120. By 2001, Defendant MTI was aware of scores of illnesses and deaths caused by carbon monoxide poisonings in houseboat cabins and understood that carbon monoxide produced by motors and gasoline generators was one of the most dangerous factors associated with recreational boating.

121. By 2003, Defendant MTI's management recognized that many boaters did not understand that boat motors and generators produced carbon monoxide or how dangerous the carbon monoxide actually was.

122. By 2007, Defendant MTI was aware that some of its Model 60 Series carbon monoxide detectors that were manufactured between March 2006 and November 2006 would not detect carbon monoxide at certain levels. One of the Carbon Monoxide Detectors was manufactured on August 24, 2006.

123. Defendant MTI was also aware that its carbon monoxide detectors would sometimes alarm in the presence of no or very low (non-harmful) levels of carbon monoxide, and that they would sometimes fail to alarm in the presence of hazardous levels of carbon monoxide. Defendant MTI did not prominently warn the public or boat manufacturers or lessors of these problems.

124. Defendant MTI also knew that the Carbon Monoxide Detectors would be used in a marine environment in connection with products emitting dangerous levels of carbon monoxide.

125. Defendant MIT failed to exercise reasonable care in providing adequate warnings and/or instructions with the Carbon Monoxide Detectors in that Defendant MTI failed to (a) adequately warn and instruct Plaintiffs that the Carbon Monoxide Detectors would not detect carbon monoxide, (b) adequately warn and instruct Plaintiffs that the Carbon Monoxide Detectors would not alarm and alert the Plaintiffs of the presence of carbon monoxide, and/or (c) other defects in the warnings and instructions that may later be discovered.

126. This lack of inadequate warnings and/or instructions made the Carbon Monoxide Detectors unreasonably dangerous and defective.

127. The defects in the Carbon Monoxide Detectors, as described above, was a cause of the Plaintiffs injuries and damages.

NINTH CLAIM FOR RELIEF

(Strict Liability – MTI)

128. All of the above-stated allegations are incorporated herein by this reference.

129. At the time the Carbon Monoxide Detectors were placed into the stream of commerce by Defendant MTI, they contained design and/or manufacturing defects.

130. The Carbon Monoxide Detectors are designed and manufactured to detect carbon monoxide and to alarm and alert houseboat occupants about the presence of carbon monoxide. They are equipped with memory chips that indicate how much carbon monoxide each one detected.

131. The memory chips in the carbon monoxide detectors BK856363 and BJ490465 indicated that they failed to record any carbon monoxide. The memory chip in the carbon monoxide detector BK905589 indicated that it detected some carbon monoxide, but it failed to alarm and alert the Plaintiffs.

132. The Carbon Monoxide Detectors' failure to either detect the presence of carbon monoxide and/or to alarm and alert the Plaintiffs after detecting the presence of carbon monoxide is a result of a defect in the design of the Carbon Monoxide Detectors and/or a result of a manufacturing defect in the Carbon Monoxide Detectors.

133. These defects made the Carbon Monoxide Detectors unreasonably dangerous to the Plaintiffs. Further, (a) as a result of the design defects, the Carbon Monoxide Detectors failed to perform as safely as an ordinary user would expect when the Carbon Monoxide Detectors were used in a manner reasonably foreseeable to Defendant MTI; and (b) at

the time the Carbon Monoxide Detectors were designed, a safer alternative design was available that was technically and economically feasible under the circumstances.

134. Defendant MTI was required to provide adequate warnings and instructions with respect to the Carbon Monoxide Detectors about a danger from the Carbon Monoxide Detectors' foreseeable use which Defendant MTI knew or reasonably have known and that the Plaintiffs would not expect.

135. The dangers of carbon monoxide detectors not detecting carbon monoxide or failing to alarm and alert houseboat occupants about the presence of carbon monoxide was not generally known or recognized by the Plaintiffs.

136. Defendant MTI was aware long before this incident about the dangers associated with carbon monoxide poisoning in the marine industry.

137. By 2001, Defendant MTI was aware of hundreds of illnesses and deaths caused by carbon monoxide poisonings in houseboat cabins and understood that carbon monoxide produced by motors and gasoline generators was one of the most dangerous factors associated with recreational boating.

138. By 2003, Defendant MTI's management recognized that many boaters did not understand that boat motors and generators produced carbon monoxide or how dangerous the carbon monoxide actually was.

139. By 2007, Defendant MTI was aware that some of its Model 60 Series carbon monoxide detectors that were manufactured between March 2006 and November 2006 would not detect carbon monoxide at certain levels. One of the Carbon Monoxide Detectors was manufactured on August 24, 2006.

140. Defendant MTI was also aware that its carbon monoxide detectors would sometimes alarm in the presence of no or very low (non-harmful) levels of carbon monoxide, and that they would sometimes fail to alarm in the presence of hazardous levels of carbon monoxide. Defendant MTI did not prominently warn the public or boat manufacturers or lessors of these problems.

141. Defendant MTI also knew that the Carbon Monoxide Detectors would be used in a marine environment in connection with products emitting dangerous levels of carbon monoxide.

142. At the time Defendant MTI placed the Carbon Monoxide Detectors into the stream of commerce, Defendant MIT failed to provide adequate warnings and/or instructions with the Carbon Monoxide Detectors in that Defendant MTI failed to (a) adequately warn and instruct Plaintiffs that the Carbon Monoxide Detectors would not detect carbon monoxide, (b) adequately warn and instruct Plaintiffs that the Carbon Monoxide Detectors would not alarm and alert the Plaintiffs of the presence of carbon monoxide, and/or (c) other defects in the warnings that may later be discovered.

143. This lack of inadequate warnings and/or instructions made the Carbon Monoxide Detectors unreasonably dangerous and defective.

144. The defects in the Carbon Monoxide Detectors, as described above, was a cause of the Plaintiffs injuries and damages.

TENTH CLAIM FOR RELIEF

(Breach of Express Warranties – Against MTI)

145. All of the above-stated allegations are incorporated herein by this reference.

146. On information and belief, Defendant MTI expressly warranted that the Carbon Monoxide Detectors were free from defects, including those defects described above.

147. Said Defendant breached its express warranties, because the Carbon Monoxide Detectors were not free from those defects described above, and this breach of warranty is a cause of the Plaintiffs injuries and damages.

ELEVENTH CLAIM FOR RELIEF

(Breach of Implied Warranty of Merchantability--Against MTI)

148. All of the above-stated allegations are incorporated herein by this reference.

149. Defendant MTI was a merchant of carbon monoxide detectors and implicitly warranted that its products were merchantable.

150. Said Defendant breached its implied warranty of merchantability, because the Carbon Monoxide Detectors were not fit for the ordinary purposes for which they were used in that they failed to detect carbon monoxide and failed to alarm and alert the Plaintiffs of the presence of carbon monoxide. Defendant MTI's breach of warranty was a cause of the injuries and damages sustained by the Plaintiffs.

TWELFTH CLAIM FOR RELIEF

(Breach of Implied Warranty of Fitness for a Particular Purpose--Against MTI)

151. All of the above-stated allegations are incorporated herein by this reference.

152. Defendant MTI had reason to know (A) the particular purpose for which the Carbon Monoxide Detectors would be used, as Defendant MIT was in the marine manufacturing industry and was aware of the hazards that carbon monoxide posed as stated above; and (B) that

Plaintiffs and others were relying on Defendant MTI's skill and judgment to provide a suitable product.

153. Said Defendant implicitly warranted that the Carbon Monoxide Detectors were fit for the particular purpose for which they were required, which was to detect the presence of carbon monoxide and to alarm and alert the Plaintiffs of the presence of carbon monoxide.

154. Said Defendants breached their implied warranty of fitness for a particular purpose, and their breach of warranty was a cause of the damages and injuries sustained by the Plaintiffs.

THIRTEENTH CLAIM FOR RELIEF

(Punitive Damages – Against MTI)

155. All of the above-stated allegations of the Complaint are incorporated herein by this reference.

156. Defendant MTI recognized the extreme nature of its conduct in failing to make its products safe and in failing to warn Plaintiffs. Its conduct and omissions, as stated above, were callous, reckless and extreme. It acted in knowing and reckless disregard of Plaintiffs' safety. The imposition of punitive damages is justified and proper.

JURY DEMAND AND PRAYER FOR RELIEF

Plaintiffs demand a trial by jury of all issues and claim triable to a jury in this matter. WHEREFORE, Plaintiffs pray for judgment on all causes of judgment in an amount to be determined at trial and for such other relief as is just and proper, including without limitation, an award of costs and attorneys fees incurred in bringing this action.

Dated this 13th day of April 2011.

EISENBERG & GILCHRIST

/s/ Jordan P. Kendell

Jeffrey D. Eisenberg

Robert G. Gilchrist

Jordan P. Kendell

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of April 2011, a true and correct copy of the **THIRD AMENDED COMPLAINT** was served via Notice of Electronic Filing through CM/ECF to the following:

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