

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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NEW YORK CITY ASBESTOS LITIGATION

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MARY MURPHY-CLAGETT as Temporary Administrator :

for the Estate of PIETRO MACALUSO, : Index No.: 190311/2015

Plaintiff, : Plaintiff designates
: New York
-against- : County as the place of trial

A.O. SMITH CORPORATION, et al., : The basis of the venue is
: **Defendant's Place of Business**

Defendants. : **SECOND AMENDED
SUMMONS**


See Attached Rider – FULL CAPTION :
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TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on the Plaintiffs' Attorney within 20 days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York). In the case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Date: New York, New York
February 8, 2017

SIMMONS HANLY CONROY
Attorneys for Plaintiffs
112 Madison Avenue
New York, NY 10016
Tel.: (212)784-6400

By: 
Daniel P. Blouin, Esq.

Defendants:

SEE ATTACHED RIDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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NEW YORK CITY ASBESTOS LITIGATION
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MARY MURPHY-CLAGETT as Temporary Administrator,
for the estate of PIETRO MACALUSO,

Index No. 190311/2015

Plaintiff,

-against-

**SECOND AMENDED
FULL CAPTION RIDER**

- A.O. SMITH CORPORATION;
- AERCO INTERNATIONAL, INC.;
- AII ACQUISITION, LLC;
- BMCE INC., in itself and as successor to United
Centrifugal Pump Co.;
- BURNHAM LLC;
- CARRIER CORPORATION, individually and as
successor-in-interest to BRYANT HEATING &
COOLING SYSTEMS;
- CBS CORPORATION, a Delaware Corporation, f/k/a
VIACOM INC., successor by merger to CBS
CORPORATION, a Pennsylvania Corporation, f/k/a:
WESTINGHOUSE ELECTRIC CORPORATION;
- CERTAIN-TEED CORPORATION;
- CRANE CO.;
- CROWN CORK & SEAL COMPANY, INC.;
- DURO DYNE CORPORATION;
- FOSTER WHEELER ENERGY CORPORATION;
- GENERAL ELECTRIC COMPANY;
- GEORGIA-PACIFIC LLC;
- GOULDS PUMPS, INCORPORATED;
- HONEYWELL INTERNATIONAL INC.;
- IMO INDUSTRIES INC.;
- INDUSTRIAL HOLDINGS CORPORATION f/k/a THE
CARBORUNDUM COMPANY;
- INGERSOLL-RAND COMPANY;
- ITT CORPORATION;
- JOHN CRANE INC.;
- KOHLER COMPANY;
- LENNOX INDUSTRIES INC.;
- METROPOLITAN LIFE INSURANCE COMPANY;
- PEERLESS INDUSTRIES INC.;

SCHNEIDER ELECTRIC (USA), INC. f/k/a Square D :
Company; :
TRANE U.S. INC. f/k/a AMERICAN STANDARD INC.; :
UNION CARBIDE CORPORATION; :
WEIL-MCLAIN INC.; :
JOHN DOE 1 through JOHN DOE 75 (fictitious), :
: :
Defendants. :
-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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NEW YORK CITY ASBESTOS LITIGATION
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MARY MURPHY-CLAGETT, as Temporary Administrator
for the estate of PIETRO MACALUSO, :

Index No.: 190311/2015

Plaintiff, :

-against- :

**SECOND AMENDED
VERIFIED COMPLAINT**

A.O. SMITH CORPORATION; :
AERCO INTERNATIONAL, INC.; :
AII ACQUISITION, LLC; :
BMCE Inc., in itself and as successor to United :
Centrifugal Pump Co.; :
BURNHAM LLC; :
CARRIER CORPORATION individually and as :
successor-in-interest to BRYANT HEATING & :
COOLING SYSTEMS; :
CBS CORPORATION, a Delaware Corporation, f/k/a :
VIACOM INC., successor by merger to CBS :
CORPORATION, a Pennsylvania corporation, f/k/a :
WESTINGHOUSE ELECTRIC CORPORATION; :
CERTAIN-TEED CORPORATION; :
CRANE CO.; :
CROWN CORK & SEAL COMPANY, INC.; :
DURO DYNE CORPORATION; :
FOSTER WHEELER ENERGY CORPORATION; :
GENERAL ELECTRIC COMPANY; :
GEORGIA-PACIFIC LLC; :
GOULDS PUMPS, INCORPORATED; :
HONEYWELL INTERNATIONAL INC.; :
IMO INDUSTRIES INC.; :
INDUSTRIAL HOLDINGS CORPORATION f/k/a THE :
CARBORUNDUM COMPANY; :
INGERSOLL-RAND COMPANY; :
ITT CORPORATION; :
JOHN CRANE INC.; :
KOHLER COMPANY; :
LENNOX INDUSTRIES INC.; :
METROPOLITAN LIFE INSURANCE COMPANY; :
PEERLESS INDUSTRIES INC.; :
SCHEIDER ELECTRIC (USA), INC. f/k/a Square D :
Company; :

TRANE U.S. INC. f/k/a AMERICAN STANDARD INC.; :
 UNION CARBIDE CORPORATION; :
 WEIL-MCLAIN INC.; :
 JOHN DOE 1 through JOHN DOE 75 (fictitious), :
 :
 Defendants. :

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Plaintiff's complaint of the defendants, by SIMMONS HANLY CONROY, their attorneys, respectfully alleges, upon information and belief, at all times hereinafter mentioned, as follows:

PARTIES – PLAINTIFFS

1. Plaintiff, MARY MURPHY-CLAGETT, resides at 2253 Lago Ventana Chula Vista, CA 91914. Pietro Macaluso was exposed to asbestos while working as a laborer and construction worker at various locations in and around New York City. While working at these jobs and at other times and places, he was exposed to dust from asbestos and asbestos containing products and he contracted mesothelioma on or about July 27, 2015. Said injury meeting the criteria for placement on the New York City Asbestos Litigation (“NYCAL”) active docket as set forth in the NYCAL Case management order.

2. Pietro Macaluso died of mesothelioma on or about July 8, 2016.

3. Mary Murphy-Clagett, as Temporary Administrator for the Estate of Pietro Macaluso.

4. Plaintiff respectfully repeats and realleges, and incorporates as set forth more fully herein all allegations contained in Simmons Hanly Conroy Standard Complaint for New York City Asbestos Litigation filed with the Court under Index No. 40,000 on June 16, 2015 as it pertains to the defendants in the aforementioned caption.

5. Reference herein to plaintiff and/or plaintiff's decedents is reference to all the persons set forth above as is syntactically and contextually correct.

PARTIES - DEFENDANTS

6. Defendant A.O. SMITH CORPORATION, is a corporation and was doing business in the State of New York.

7. Defendant, AERCO INTERNATIONAL, INC., is a corporation and was doing business in the State of New York.

8. Defendant AII ACQUISITION, LLC, is a corporation and was doing business in the State of New York.

7. Defendant, BMCE INC., in itself and as successor to United Centrifugal Pump Co., is a corporation and was doing business in the State of New York.

8. Defendant, BURNHAM LLC is a corporation and was doing business in the State of New York.

9. Defendant, CARRIER CORPORATION, Individually and as successor-in-interest to BRYANT HEATING & COOLING SYSTEMS is a corporation and was doing business in the State of New York.

10. Defendant, CBS CORPORATION, a Delaware Corporation f/k/a VIACOM INC., f/k/a VIACOM INC., successor by merger to CBS CORPORATION, a Pennsylvania Corporation, f/k/a WESTINGHOUSE ELECTRIC CORPORATION, is a corporation and was doing business in the State of New York.

11. Defendant, CERTAIN-TEED CORPORATION is a corporation and was doing business in the State of New York.

12. Defendant, CRANE CO. is a corporation and was doing business in the State of New York.

13. Defendant, CROWN CORK & SEAL COMPANY INC. is a corporation and was doing business in the State of New York.

14. Defendant, DURO DYNE CORPORATION is a domestic corporation and was doing business in the State of New York.

15. Defendant, FOSTER WHEELER ENERGY CORPORATION is a corporation and was doing business in the State of New York.

16. Defendant, GENERAL ELECTRIC COMPANY is a domestic corporation and was doing business in the State of New York.

17. Defendant, GEORGIA-PACIFIC LLC is a corporation and was doing business in the State of New York.

18. Defendant, GOULDS PUMPS, INCORPORATED is a corporation and was doing business in the State of New York.

19. Defendant, HONEYWELL INTERNATIONAL INC. is a corporation and was doing business in the State of New York.

20. Defendant, IMO INDUSTRIES INC. is a corporation and was doing business in the State of New York.

21. Defendant, INDUSTRIAL HOLDINGS CORPORATION f/k/a THE CARBORUNDUM COMPANY is a domestic corporation and was doing business in the State of New York.

22. Defendant, INGERSOLL-RAND COMPANY is a corporation and was doing business in the State of New York.

23. Defendant, ITT CORPORATION is a corporation and was doing business in the State of New York.

24. Defendant, JOHN CRANE INC. is a corporation and was doing business in the State of New York.

25. Defendant, KOHLER COMPANY is a corporation and was doing business in the State of New York.

26. Defendant, LENNOX INDUSTRIES INC. is a corporation and was doing business in the State of New York.

27. Defendant, METROPOLITAN LIFE INSURANCE COMPANY is a corporation and was doing business in the State of New York.

28. Defendant PEERLESS INDUSTRIES INC. is a corporation and was doing business in the State of New York.

29. Defendant SCHNEIDER ELECTRIC (USA), INC., f/k/a Square D Company is a corporation and was doing business in the State of New York.

30. Defendant TRANE U.S. INC. f/k/a AMERICAN STANDARD INC. is a domestic corporation with its principal place of business in the State of New York.

31. Defendant UNION CARBIDE CORPORATION is a domestic corporation with its principal place of business in the State of New York.

32. Defendant, WEIL-MCLAIN INC. is a corporation and was doing business in the State of New York.

33. Defendant John Doe 1 (believed to be Johns-Manville Sales Corporation); John Doe 2 (believed to be Johns-Manville Sales Corporation, successor to Johns-Manville Products Corporation); John Doe 3 (believed to be Johns-Manville Corporation); John Doe 4 (believed to

be Johns-Manville Canada, Inc., formerly known as Canadian Johns-Manville Co., Ltd.); John Doe 5 (believed to be Canadian Johns-Manville Amiante Ltd., formerly known as Canadian Johns-Manville Asbestos, Ltd.); John Doe 6 (believed to be Manville Corporation); and John Doe 7 (believed to be International Johns-Manville Corporation, Ltd.) are the fictitious names of corporations, partnerships, or other business entities or organizations, whose identities are not presently known.

34. John Doe 8 through John Doe 50, are the fictitious names of corporations, partnerships, or other business entities or organizations whose identities are not presently known, and who mined, manufactured, sold, marketed, installed or removed, asbestos or asbestos containing products which plaintiff used or was exposed to.

35. John Doe 51 through John Doe 75 are the fictitious names of corporations, partnerships, or other business entities or organizations whose identities are not presently known, and who are the alter ego of or are otherwise responsible for the conduct or liability of those who mined, milled, manufactured, sold, marketed, installed or removed asbestos or asbestos containing products which plaintiff used or to which plaintiff was exposed.

36. The term “defendant” is used hereafter to refer to all of the entities named above.

37. At all relevant times the defendants have done business in this state, have transacted business in this state, have committed one or more tortuous acts within this state, and otherwise have performed acts within or without the state which have given rise to the injuries and losses hereafter described, and which subjects them to jurisdiction of the courts of this state.

38. Plaintiff hereby incorporates by reference all allegations set forth in the Standard Verified Complaint filed with the Court under Index No. 40,000 on June 16, 2015 in accordance with the Case Management Order entered by Justice Freedman respecting asbestos litigation.

Copies of the Standard Complaint are available upon written request.

FOR THE SECOND CAUSE OF ACTION FOR WRONGFUL DEATH DAMAGES BASED ON NEGLIGENCE BY PLAINTIFF INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF THE DECEDENT, EXCEPT NO CLAIMS ALLEGING A MANUFACTURE OR DESIGN DEFECT, OTHER THAN FAILURE TO WARN, ARE MADE FOR ANY ASBESTOS EXPOSURES WHICH ARE ALLEGED TO HAVE OCCURRED ABOARD ANY MILITARY VESSEL OR VEHICLE, ON OR AT ANY SHIPYARD OR ON OR AT ANY GOVERNMENT FACILITY OR LOCATION

1. Plaintiff(s) repeats, reiterates and realleges each and every allegation contained in paragraphs of the Simmons Hanly Conroy standardized Complaint filed on June 16, 2015, inclusive with the same force and effect as if hereinafter set forth at length.

2. As a proximate result of the exposure to the asbestos-containing product of these defendants, and the unavoidable and necessary inhalation of said asbestos, the plaintiff's decedent developed an asbestos related disease which resulted in his death.

3. During the scope and course of plaintiff's decedent's employment, the plaintiff's decedent was necessarily and unavoidably exposed to and did inhale asbestos dust and/or asbestos fibers emanating from the asbestos-containing products and/or equipment of the defendants.

4. The defendants, knew or should have known that the asbestos products and/or equipment and materials which they were providing were inherently dangerous beyond the scope contemplated by the ordinary user or handler who would come into contact with these products.

5. The defendants failed to communicate any warnings concerning the dangers of the use of said products and/or equipment and materials to those persons using, handling or coming into contact with these products.

6. The defendants failed to warn and failed to provide adequate instructions of

any safe handling methods which should have been utilized by users, handlers or other persons who were reasonably and foreseeably known to come into contact with their asbestos-containing products and/or equipment and materials.

7. The defendants failed to investigate and/or test for the hazards of asbestos products and materials.

8. To the extent that some defendants may have inquired as to the hazards of said materials, the defendants failed to relate whatever knowledge they may have had to the users and consumers of their asbestos-containing products.

9. The defendants failed to develop, make available and/or provide non-hazardous materials which could have been used for the same purpose as their asbestos-containing products and/or equipment.

10. The defendants failed to design asbestos-containing products in such a fashion as to prohibit the release of airborne inhalable asbestos dust and/or fibers.

11. As a direct result of working with or near the asbestos materials supplied by the defendants and the unavoidable and necessary inhalation and ingestion of said asbestos fibers, plaintiff's decedent developed an asbestos related disease and subsequently died. He suffered and endured great pain and mental anguish during repeated hospitalizations, was required to undergo extensive medical treatment, care and expense, and suffered a loss of enjoyment of his life.

12. The death of plaintiff's decedent was proximately caused by the defendants' negligent actions in that they negligently designed, processed, manufactured, packaged, distributed, delivered, installed and/or sold the asbestos-containing products and/or

equipment to which decedent was exposed. Additionally, the defendants negligently failed to render warnings, advise, give instruction and/or information to the decedent so that he may have made an adequate and informed judgment as to the use of the products.

13. The defendants totally failed to use any reasonable care under all the circumstances and defendants' actions were a proximate cause of plaintiff's decedent's death.

14. The plaintiff's decedent left his surviving next of kin, who have sustained pecuniary damages, including loss of the plaintiff's decedent's income, support, services, protection, care assistance, guidance, counsel, consortium and advice, mental anguish, funeral and burial expenses and other just damages.

15. By reason of the aforesaid wrongful death, the plaintiff's decedent's next of kin lost advice, guidance, inheritance, contribution and income.

16. By reason of the foregoing, plaintiff(s) individually and as Representative of the Estate of the decedent has been damaged as against each defendant in compensatory damages and punitive damages.

AS AND FOR A THIRD CAUSE OF ACTION FOR WRONGFUL DEATH DAMAGES BASED ON STRICT LIABILITY BY PLAINTIFF INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF THE DECEDENT, EXCEPT NO CLAIMS ALLEGING A MANUFACTURE OR DESIGN DEFECT, OTHER THAN FAILURE TO WARN, ARE MADE FOR ANY ASBESTOS EXPOSURE WHICH ARE ALLEGED TO HAVE OCCURRED ABOARD ANY MILITARY VESSEL OR VEHICLE, ON OR AT ANY SHIPYARD OR ON OR AT ANY GOVERNMENTAL FACILITY OR LOCATION

17. Plaintiff(s) repeats, reiterates and alleges each and every allegation contained in the Simmons Hanly Conroy standardized Complaint filed on June 16, 2015, as if fully set forth herein at length.

18. At all relevant times, defendants, as part of their business, manufactured, designed, supplied, developed, fashioned, packaged, distributed, delivered, installed, sold and/or otherwise placed asbestos products and materials into the stream of commerce in a defective, unsafe and inherently dangerous condition and the products and materials were expected to and did reach users, handlers and persons coming into contact with the said products without substantial change in the condition in which they were sold.

19. The asbestos-containing products and/or equipment sold by the defendants did not contain a warning and information concerning the dangers to persons using, handling or coming into contact therewith.

20. The asbestos-containing products and/or equipment sold by the defendants did not contain adequate and correct warnings and instructions of safety precautions to be observed by users, handlers and persons who would reasonably and foreseeably come into contact with said products and/or equipment.

21. At all relevant times, the asbestos products and/or equipment and materials were used and employed for the purpose for which they were manufactured, supplied, developed, designed, fashioned, packaged, distributed, delivered, sold and intended to be used and in a manner foreseeable to the defendants.

22. Plaintiff's decedent's death and the resulting damages were caused by the defective, dangerous and unsafe conditions of the asbestos products and/or equipment and materials which the defendants manufactured, supplied, developed, fashioned, packaged, distributed, installed, delivered, sold and/or otherwise placed in the stream of commerce.

23. Defendants are strictly liable to plaintiff for plaintiff's decedent's death resulting from said defective products.

24. By reason of the foregoing, defendants are strictly liable to plaintiff(s) for plaintiff's decedent's death, resulting from said defective products, individually and as Representative of the Estate of the decedent as against each defendant in compensatory damages and punitive damages.

AS AND FOR A FOURTH CAUSE OF ACTION FOR WRONGFUL DEATH DAMAGES BASED ON BREACH OF WARRANTY BY PLAINTIFF INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF THE DECEDENT, EXCEPT NO CLAIMS ALLEGING A MANUFACTURE OR DESIGN DEFECT, OTHER THAN FAILURE TO WARN, ARE MADE FOR ANY ASBESTOS EXPOSURE WHICH ARE ALLEGED TO HAVE OCCURRED ABOARD ANY MILITARY VESSEL OR VEHICLE, ON OR AT ANY SHIPYARD OR ON OR AT ANY GOVERNMENTAL FACILITY OR LOCATION

25. Plaintiff repeats, reiterates and alleges each and every allegation contained in paragraphs of the Simmons Hanly Conroy standardized Complaint filed on April 26, 2015, as if fully set forth herein at length.

26. Defendants breached said warranties in that said asbestos materials and products and/or equipment were not of merchantable quality, fit and safe for the purposes for which they were manufactured, designed, supplied, developed, fashioned, distributed, sold, intended and used.

27. The resulting death of plaintiff's decedent was caused by the breach of said warranties in that said asbestos materials and products and/or equipment were not of merchantable quality, fit and safe for the purpose for which they were manufactured, designed, supplied, developed, fashioned, distributed, sold, intended and used.

28. The resulting death of plaintiff's decedent was caused by the breach of said warranties by the defendants.

29. Plaintiff's decedent was and is still survived by his wife and children, who have sustained damages, including loss of the decedent's income, support, services, protection, care, assistance, guidance, counsel, consortium and advice, mental anguish, funeral and burial expenses and other just damages.

30. That by reason of the foregoing, plaintiff(s) individually and as Representative of the Estate of the decedent has been damaged as against each defendant in compensatory damages and in punitive damages.

WHEREFORE, plaintiff(s) demand judgment against the defendants jointly and severally on each cause of action with interest together with costs and disbursements in this action.

Dated: February 8, 2017

SIMMONS HANLY CONROY
Attorneys for Plaintiffs
112 Madison Avenue
New York, NY 10016
Tel.: (212)784-6400

By: 
Daniel P. Blouin, Esq.


STATE OF NEW YORK)

COUNTY OF NEW YORK)

The undersigned, an attorney admitted to practice in the Courts of New York State, shows:

Deponent is a member of the firm SIMMONS HANLY CONROY, Trial Counsel for the Plaintiff(s) in the within action; deponent has read the foregoing Summons and Verified Complaint and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. This Verification is made by deponent and not by Plaintiff(s) because Plaintiff(s) resides outside of the County of New York where the deponent maintains his office.

Dated: _____



Daniel P. Blouin, Esq.