

**PLAINTIFF(S)** Louis E. Summerlin and Joanna M. Summerlin **DEFENDANT(S)** Philip Morris USA, et. al.

Plaintiff Atty Michael C. Shepard, Esq. Type Defendant's Attorney Name \_\_\_\_\_  
 Address The Shepard Law Firm, 10 High St. Defendant Atty \_\_\_\_\_  
 City Boston State MA Zip Code 02110 City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
 Tel. 6174519191 BBO# 567842

**TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)**  
 CODE NO. TYPE OF ACTION (specify) TRACK IS THIS A JURY CASE?

B05 Product Liability - Average Track **RECEIVED** JUN 10 2015

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

**TORT CLAIMS**  
 (Attach additional sheets as necessary)

A. Documented medical expenses to date:  
 1. Total hospital expenses \$ unknown  
 2. Total doctor expenses \$ unknown  
 3. Total chiropractic expenses \$ none  
 4. Total physical therapy expenses \$ unknown  
 5. Total other expenses (describe) \$ unknown  
 Subtotal \$ unknown  
 B. Documented lost wages and compensation to date \$ unknown  
 C. Documented property damages to date \$ none  
 D. Reasonably anticipated future medical expenses \$ 500,000  
 E. Reasonably anticipated lost wages and compensation to date \$ unknown  
 F. Other documented items of damages (describe) Pain and Suffering; Loss of Consortium \$ millions  
 G. Brief description of plaintiff's injury, including nature and extent of injury (describe)  
Lung cancer caused by exposure to toxic substances. Plaintiff is not likely to survive.  
 Total \$ millions

**CONTRACT CLAIMS**  
 (Attach additional sheets as necessary)

Provide a detailed description of claim(s):  
 \_\_\_\_\_  
 TOTAL \$.....

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT  
 \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT  
~~DEPARTMENT OF THE~~  
TRIAL COURT

\_\_\_\_\_ X

LOUIS E. SUMMERLIN and  
JOANNA M. SUMMERLIN,

Plaintiffs,

v.

CIVIL ACTION NO.

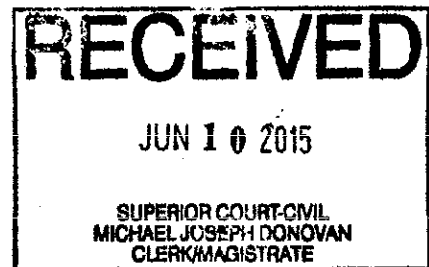
15-1718 F

COMPLAINT  
PLAINTIFFS DEMAND  
A TRIAL BY JURY

PHILIP MORRIS USA  
RJ REYNOLDS TOBACCO COMPANY  
FORD MOTOR COMPANY  
HAMPDEN AUTOMOTIVE SALES CORPORATION  
HENNESSY INDUSTRIES, INC.  
HONEYWELL INTERNATIONAL INC.  
PNEUMO ABEX CORPORATION

Defendants

\_\_\_\_\_ X



**PARTY PLAINTIFFS**

1. The Plaintiffs, LOUIS E. SUMMERLIN and JOANNA M. SUMMERLIN, reside at 100 Calef Rd., Auburn, New Hampshire 03032.

**PARTY DEFENDANTS – TOBACCO (“TOBACCO DEFENDANTS”)**

2. PHILIP MORRIS USA is a Virginia corporation with its principal place of business at 3601 Commerce Rd., Richmond, Virginia 23234. PHILIP MORRIS USA has conducted business in and has derived substantial revenue from the Commonwealth of Massachusetts.

3. RJ REYNOLDS TOBACCO COMPANY is a North Carolina corporation with its principal place of business at 401 N. Main St., Winston-Salem, North Carolina 27101. RJ

REYNOLDS TOBACCO COMPANY has conducted business in and has derived substantial revenue from the Commonwealth of Massachusetts.

4. The defendants identified in paragraphs 2 and 3 shall be collectively referred to as “Tobacco Defendants” in this complaint unless referred to individually.

**PARTY DEFENDANT – PRODUCTS LIABILITY (“PRODUCTS DEFENDANT”)**

5. HENNESSY INDUSTRIES INC. is a Delaware corporation with its principal place of business at 1601 J.P. Hennessy Dr., La Vergne, Tennessee 37086. HENNESSY INDUSTRIES INC. has conducted business in and has derived substantial revenue from the Commonwealth of Massachusetts. This defendant shall also be referred to as “Products Defendant” in this complaint.

**PARTY DEFENDANTS – ASBESTOS (“ASBESTOS DEFENDANTS”)**

6. FORD MOTOR COMPANY is a Delaware corporation with its principal place of business at One American Road, Dearborn, Michigan 48126. FORD MOTOR COMPANY has conducted business in and has derived substantial revenue from the Commonwealth of Massachusetts.

7. HAMPDEN AUTOMOTIVE SALE CORPORATION is a Massachusetts corporation with its principal place of business at 117 Heath St., Boston, Massachusetts 02130.

8. HONEYWELL INTERNATIONAL INC., f/k/a AlliedSignal, Inc., f/k/a The Bendix Corporation, is a Delaware corporation with its principal place of business at 101 Columbia Road, Morristown, New Jersey, 07962. HONEYWELL INTERNATIONAL INC.,

f/k/a AlliedSignal, Inc., f/k/a The Bendix Corporation has conducted business in and has derived substantial revenue from the Commonwealth of Massachusetts.

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9. PNEUMO ABEX CORPORATION is a Delaware corporation with its principal place of business at Third Street and Jefferson Avenue, Camden, New Jersey 08104. PNEUMO ABEX CORPORATION has conducted business in and has derived substantial revenue from the Commonwealth of Massachusetts.

10. The Defendants identified in paragraphs 6 through 9 shall be collectively referred to as "Asbestos Defendants" in this complaint unless referred to individually.

11. The legal claims directed against all corporations herein are directed against the corporation named in this Complaint, as well as their predecessors and successors, which shall include, but is not limited to, any person, corporation, company or business entity which formed part of any combination, consolidation, merger or reorganization from which any party defendant was created or was the surviving corporation or other entity, or into which any party defendant was merged, consolidated or reorganized; whose assets, stock, property, employees, customers, good will, products or product line was acquired by or from any party defendant; whose patent rights, trademark rights, trade secrets or goodwill was acquired by or from any party defendant; or, which was dominated or controlled by any party defendant to such an extent that said party defendant was the "alter ego" of said corporation.

12. The Plaintiffs' cause of action arises from all named Defendants: (a) transacting business in Massachusetts; (b) contracting to supply and/or sell goods in Massachusetts; (c) doing or causing a tortious act to be done within Massachusetts; and/or, (d) causing the consequence of a tortious act to occur within Massachusetts.

## **JURISDICTION AND VENUE**

13. Jurisdiction is proper pursuant to M.G.L. Ch. 223A in that all of MR.

SUMMERLIN'S asbestos exposure and the overwhelming majority of MR. SUMMERLIN'S cigarette smoking occurred in the Commonwealth of Massachusetts, and all of the named Defendants have conducted business in and have derived substantial revenue from the Commonwealth of Massachusetts. Venue is proper in that MR. SUMMERLIN lived and worked in Suffolk County for many years, and therefore a substantial portion of the smoking and work activities that form the basis of the claims herein took place in Suffolk County. Furthermore, the principal place of business of Defendant HAMPDEN AUTOMOTIVE SALES CORPORATION is located in Suffolk County.

## **FACTUAL BACKGROUND**

14. In March 2015, Plaintiff LOUIS E. SUMMERLIN ("MR. SUMMERLIN") was diagnosed with terminal, metastatic lung cancer. MR. SUMMERLIN'S lung cancer was caused by: (1) cigarette smoking resulting from his addiction to nicotine in cigarettes manufactured and/or sold by the Tobacco Defendants; and (2) his exposure to asbestos from the use of products manufactured and/or sold by the Products and Asbestos Defendants. All of MR. SUMMERLIN'S asbestos exposure and the overwhelming majority of MR. SUMMERLIN'S cigarette smoking occurred in Massachusetts.

15. Asbestos exposure and cigarette smoking are both well-established causes of lung cancer. Cigarette smoking and asbestos exposure act "synergistically" and act in combination to cause lung cancer in persons, such as MR. SUMMERLIN, who regularly smoked cigarettes and were regularly exposed to asbestos. Cigarette smoking and asbestos exposure acted as

concurrent causes in producing MR. SUMMERLIN's lung cancer. Both cigarette smoking and asbestos exposure were substantial causes of MR. SUMMERLIN's lung cancer.

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16. MR. SUMMERLIN was born on March 26, 1942. He started smoking when he was a teenager in the 1950s when there were no warnings on cigarette packs and no warnings on cigarette advertisements. Due to his addiction to nicotine in cigarettes manufactured and/or sold by the Tobacco Defendants, MR. SUMMERLIN smoked approximately two packs a day or more from the time he was a teenager in the 1950s up through 2009. Prior to quitting smoking in 2009, MR. SUMMERLIN had previously attempted to quit smoking on many occasions but was unable to do so because of his addiction to the cigarettes manufactured and/or sold by the Tobacco Defendants.

17. MR. SUMMERLIN smoked Kool cigarettes, which were manufactured and/or sold by Brown & Williamson (predecessor by merger with RJ REYNOLDS TOBACCO COMPANY). MR. SUMMERLIN also smoked Salem cigarettes, which were manufactured and/or sold by RJ REYNOLDS TOBACCO COMPANY. MR. SUMMERLIN also smoked Marlboro Menthol cigarettes, which were manufactured and/or sold by PHILIP MORRIS USA.

18. MR. SUMMERLIN worked as an auto mechanic beginning as a teenager in the 1950s through the 1980s. MR. SUMMERLIN was frequently and regularly exposed to asbestos from the use of products manufactured and/or sold by the Asbestos Defendants, and from using equipment manufactured and/or sold by the Products Defendant. MR. SUMMERLIN frequently and regularly was exposed to asbestos from products, including brakes, and from work activities including but not limited to: grinding asbestos-containing brakes, re-lining brakes with asbestos-containing brake linings, blowing out asbestos-containing brake dust with compressed air and cleaning up asbestos-containing brake dust.

19. As a direct and proximate result of the tortious misconduct of all the named Defendants, which is set forth herein, MR. SUMMERLIN developed lung cancer. He has and will suffer from serious personal injuries, great pain of body and mind, and severe mental anguish and distress. He has been prevented from transacting business and taking care of his home and his family; he has been required to undergo medical treatment, care and expense. Further, his wife and his family have been deprived of his services, protection, care, assistance, society, companionship, comfort, affection, guidance, counsel and advice. Plaintiffs are entitled to damages to fully compensate them for all of these damages and all other damages arising from MR. SUMMERLIN'S lung cancer.

#### **COUNT I**

##### **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (TOBACCO DEFENDANTS)**

20. The Plaintiffs incorporate by reference paragraphs 1 through 19 above as if expressly alleged and set forth herein.

21. The Tobacco Defendants are liable because they breached their implied warranty of merchantability in their sale of cigarettes smoked by MR. SUMMERLIN because such cigarettes were defective and unreasonably dangerous for the ordinary purpose for which MR. SUMMERLIN used the product and the product caused injury to MR. SUMMERLIN.

22. The Tobacco Defendants' cigarettes were expected to and did reach MR. SUMMERLIN in substantially the same condition they were in when originally manufactured, distributed and/or sold by the Tobacco Defendants. The Tobacco Defendants, as the manufacturers, sellers, marketers and/or distributors of their cigarettes, impliedly warranted that such cigarettes were merchantable and fit for the ordinary purposes for which they were intended.

23. The Tobacco Defendants breached this warranty because the cigarettes manufactured, sold and/or distributed by them to MR. SUMMERLIN were defective and unreasonably dangerous to users and consumers, including MR. SUMMERLIN, because such cigarettes were defectively designed, carcinogenic, addictive, and contained dangerous levels of tar, nicotine and other substances. The foreseeable risks posed by the Tobacco Defendants' cigarettes sold to MR. SUMMERLIN could have been reduced or avoided by the Tobacco Defendants' adoption of a reasonable alternative design.

24. The Tobacco Defendants further breached this warranty by failing to give users and consumers of their cigarettes prior to July 1, 1969, including MR. SUMMERLIN, an adequate warning of the health hazards and addictive properties of their cigarettes, all of which were known or should have been known to the Tobacco Defendants.

25. At all times relevant to this Complaint, MR. SUMMERLIN used and consumed the cigarettes manufactured, sold and distributed by the Tobacco Defendants in the manner in which they intended and expected such cigarettes to be used.

26. As a proximate result of the Tobacco Defendants' wrongful conduct, MR. SUMMERLIN developed lung cancer and other personal injuries and Plaintiffs are entitled to recover the damages sought in this Complaint.

## **COUNT II**

### **FRAUDULENT MISPRESENTATION AND CONCEALMENT (TOBACCO DEFENDANTS)**

27. The Plaintiffs incorporate by reference paragraphs 1 through 26 above as if expressly alleged and set forth herein.

28. The Tobacco Defendants had a duty to disclose to the American public, including MR. SUMMERLIN, all material facts about the health hazards of smoking cigarettes, including



their highly addictive qualities. The Tobacco Defendants owed a legal duty to disclose all material facts regarding the health effects of cigarettes, including addiction, as a matter of law in light of the fact that they were a manufacturer and seller of cigarettes transacting business with consumers including MR. SUMMERLIN. The Tobacco Defendants also owed this legal duty to disclose material facts because they affirmatively undertook this duty by voluntarily and repeatedly communicating with the American public about smoking and health effects, including addiction. Indeed, the Tobacco Defendants affirmatively undertook the duty to disclose materials facts by publicly representing that it: accepted an interest in the public's health as a basic and paramount responsibility; would cooperate closely with those who safeguarded the public health; would aid and assist the research effort into all aspects of tobacco use and human health; would continue to research and otherwise undertake all possible efforts to team all the facts and to discover the truth about smoking and health; and would disclose to the American public, including MR. SUMMERLIN, complete and accurate information about the effects of cigarette smoking on human health.

29. The Tobacco Defendants directly and through its trade associations, including but not limited to the Tobacco Industry Research Committee (TIRC), Council for Tobacco Research (CTR) and the Tobacco Institute (TI) repeatedly made representations and statements, from the 1950s through the 2000s, about the safety of cigarettes and their effect on human health and the issue of nicotine addiction. The Tobacco Defendants, both directly and through their trade associations including but not limited to the TIRC, CTR and TI, from the 1950s through the 2000s, repeatedly and consistently made public statements, *inter alia*: (1) denying that cigarettes were hazardous; (2) denying that cigarettes caused lung cancer or any other serious illness; (3) denying that cigarettes contained any harmful ingredients; (4) denying that the ingredients of cigarettes including nicotine

and other chemicals were manipulated to cause people to continue to smoking or initiate or sustain addiction; (5) denying that nicotine in cigarettes is addictive. Such statements and representations were materially false, incomplete and fraudulent at the time the Tobacco Defendants, and their agents, made them and the Tobacco Defendants and their agents knew their falsity. The Tobacco Defendants willfully and intentionally made false statements, and failed to disclose material facts, in order to create and maintain a false controversy as to whether cigarettes were hazardous, cancer-causing and addictive. The Tobacco Defendants intended for the American Public, including MR. SUMMERLIN, to rely upon such false statements so that: people would start smoking; current smokers would continue to smoke; fewer smokers would attempt to quit or recognize the urgent need to quit; and lawmakers would not pass laws intended to reduce smoking and/or exposure to cigarette smoke.

30. As a proximate result of the Tobacco Defendants' wrongful conduct, MR. SUMMERLIN developed lung cancer and other personal injuries and Plaintiffs are entitled to recover the damages sought in this Complaint.

### **COUNT III**

#### **NEGLIGENCE (TOBACCO DEFENDANTS)**

31. Plaintiff restates and incorporates herein the foregoing paragraphs 1 through 30 of this Complaint.

32. The Tobacco Defendants owed MR. SUMMERLIN a duty to exercise reasonable care.

33. The Tobacco Defendants breached their duty to exercise reasonable care in numerous respects, including but not limited to the following:

- a. They failed to exercise reasonable care in the design, development, testing, marketing, promotion, packaging, sale and/ or distribution of its cigarettes;
- ~~b. They failed to exercise reasonable care in warning consumers, including MR.~~  
SUMMERLIN, prior to July 1, 1969, of the health hazards, including addiction, of smoking cigarettes;
- c. They failed to exercise reasonable care in making representations and providing complete and accurate information to the public, including MR. SUMMERLIN, about smoking, health and addiction;
- d. They failed to exercise reasonable care in marketing its cigarettes by intentionally and/or negligently inducing minors, including MR. SUMMERLIN, to smoke cigarettes.

34. As a proximate result of the Tobacco Defendants' wrongful conduct, MR. SUMMERLIN developed lung cancer and other personal injuries and Plaintiffs are entitled to recover the damages sought in this Complaint.

**COUNT IV**  
**NEGLIGENCE**  
**(ASBESTOS AND PRODUCTS DEFENDANTS)**

35. The Plaintiffs incorporate by reference paragraphs 1 through 34 above as if expressly alleged and set forth herein.

36. It was the duty of the Asbestos and Products Defendants to use and exercise reasonable and due care in the manufacture, design, fabrication, testing, inspection, production, marketing, packaging, contracting, distribution and sale of their products.

37. It was also the duty of the Asbestos and Products Defendants to provide detailed and adequate instructions relative to the proper and safe handling and use of their products, and to provide detailed and adequate warnings concerning any and all dangers, characteristics, and potentialities of their products.

38. It was the continuing duty of the Asbestos and Products Defendants to advise and warn purchasers, consumers, users, and prior purchasers, prior consumers, and prior users of all

dangers, characteristics, potentialities and defects discovered subsequent to their initial marketing or sale of their products.

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39. Yet, nevertheless, wholly disregarding the aforesaid duties, the Asbestos Defendants breached their duties by: (a) failing to warn MR. SUMMERLIN of the dangers, characteristics, and potentialities of their asbestos-containing products when the Asbestos Defendants knew or should have known that exposure to their asbestos-containing products would cause disease and injury; (b) failing to warn MR. SUMMERLIN of the dangers to which he was exposed when they knew or should have known of the dangers; (c) failing to exercise reasonable care to warn MR. SUMMERLIN of what would be safe, sufficient, and proper protective clothing, equipment, and appliances when working with or near or being exposed to their asbestos-containing products; (d) failing to provide safe, sufficient and proper protective clothing, equipment and appliances with their asbestos-containing products; (e) failing to test its asbestos-containing products in order to ascertain the extent of danger involved upon exposure thereto; (f) failing to conduct such research as should have been conducted in the exercise of reasonable care, in order to ascertain the dangers involved upon exposure to their asbestos-containing products; (g) failing to remove the products from the market when the Asbestos Defendants knew or should have known of the hazards of exposure to their asbestos-containing products; (h) failing upon discovery of the dangers, hazards, and potentialities of exposure to asbestos to adequately warn and apprise MR. SUMMERLIN of said dangers, hazards, and potentialities discovered; (i) failing upon discovery of the dangers, hazards, and potentialities of exposure to asbestos to package said asbestos-containing products so as to eliminate said dangers, hazards, and potentialities; and (j) generally using unreasonable, careless, and negligent

conduct in the manufacture, design, fabrication, supply, and/or sale of their asbestos-containing products.

40. Further, with reference to the Products Defendant, Hennessy Industries, Inc. (“Hennessy”) MR. SUMMERLIN regularly used Ammco brake grinders for which Hennessy is legally responsible. Although Hennessy’s product did not include asbestos when originally manufactured and/or sold, such as is the case with the Asbestos Defendants’ products, Hennessy’s Ammco brake grinders were designed for the sole purpose of grinding asbestos-containing brake linings. Hennessy owed the same duties as the Asbestos Defendants alleged above and breached its duty to exercise reasonable care in the same manner alleged above, for example, by failing to properly test the levels of asbestos released into the air when its product ground asbestos-containing brakes; by failing to substantially reduce asbestos exposures by equipping its grinders with a dust collection system such as an exhaust bag; and by failing to adequately warn about the hazards of asbestos dust that was necessarily created every time consumers such as MR. SUMMERLIN, used Ammco brake grinders.

41. As a proximate result of the Asbestos and Products Defendants’ wrongful conduct, MR. SUMMERLIN developed lung cancer and other personal injuries and Plaintiffs are entitled to recover the damages sought in this Complaint.

#### COUNT V

#### BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (ASBESTOS AND PRODUCTS DEFENDANTS)

42. The Plaintiffs incorporate by reference paragraphs 1 through 41 above as if expressly alleged and set forth herein.

43. MR. SUMMERLIN is a person whom the Asbestos and Products Defendants could reasonably have expected to use, consume, or be affected by their products and asbestos-

containing products within the meaning of Massachusetts General Laws c. 106, secs. 2-314 and 2-318, as the Asbestos and Products Defendants knew or had reason to know that their products and asbestos-containing products would be used in the automotive repair industries and that individuals such as MR. SUMMERLIN would come in contact with such products.

44. The Asbestos and Products Defendants impliedly warranted that their products and asbestos-containing products described above were merchantable, safe, and fit for their ordinary purposes, and the particular purposes and requirements of consumers such as MR. SUMMERLIN.

45. The Asbestos and Products Defendants had reason to know of the particular purposes for which their products and asbestos-containing products would be used.

46. MR. SUMMERLIN relied upon the Asbestos and Products Defendants' skill or judgment in selecting suitable products for safe use.

47. The Asbestos and Products Defendants breached these warranties, in that the products and asbestos-containing products they sold were not merchantable, safe, suitable, or fit for their ordinary or particular purposes. The Asbestos and Products Defendants breached these warranties by both failing to provide adequate warnings with their products used by MR. SUMMERLIN and by defectively designing their products used by MR. SUMMERLIN.

48. As a proximate result of the Asbestos and Products Defendants' wrongful conduct, MR. SUMMERLIN developed lung cancer and other personal injuries and Plaintiffs are entitled to recover the damages sought in this Complaint.

**COUNT VI**

**LOSS OF CONSORTIUM  
(ALL DEFENDANTS)**

49. The Plaintiffs incorporate by reference paragraphs 1 through 48 above as if expressly alleged and set forth herein.

50. From June 23, 2002, through the present, JOANNA SUMMERLIN has been the loving wife of MR. SUMMERLIN.

51. As a proximate result of the wrongful conduct of the defendants that resulted in the lung cancer and other personal injuries of MR. SUMMERLIN, Plaintiff JOANNA SUMMERLIN has suffered, and will continue to suffer, a loss of her right to consortium with her husband and the loss of her husband's services, guidance, affection, comfort, protection, society, counsel, advice, and companionship, and she has suffered, and will continue to suffer, great mental anguish.

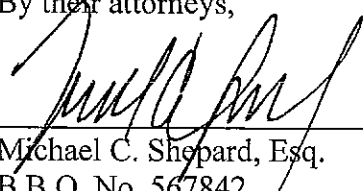
WHEREFORE, Plaintiffs demand judgment against the defendants for a reasonable amount plus statutory interest and costs and for such other relief as shall be appropriate.

**DEMAND FOR TRIAL BY JURY**

The Plaintiffs hereby demand a trial by jury on each claim asserted or hereafter asserted by the Plaintiffs and on each defense asserted or hereafter asserted by the defendants.

Dated: June 10, 2015

Respectfully submitted,  
The Plaintiffs,  
By their attorneys,

  
\_\_\_\_\_  
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