

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

TROY SHANE SMITH and ALLYSON JANE SMITH,

Plaintiffs,

**VERIFIED ANSWER TO
SECOND AMENDED
VERIFIED COMPLAINT**

v.

Index No.: 814633/2023

84 LUMBAR COMPANY, et al.

Defendants.

Defendant, FORD MOTOR COMPANY, by its attorneys, Bennett Schechter Arcuri & Will LLP, for its Verified Answer to the Plaintiffs' Second Amended Verified Complaint, dated May 3, 2024:

1. Repeats and realleges its Verified Answer to Plaintiffs' First Amended Verified Complaint, dated May 2, 2024 to Plaintiffs' First Amended Verified Complaint, dated April 9, 2024, as if fully set forth herein.
2. Denies knowledge and information sufficient to form a belief as to the truth of the allegations as to FORD as set forth in Paragraphs "1", "3", "4" and "6" of the Plaintiffs' Second Amended Verified Complaint.
3. With respect to the allegations contained in Paragraphs "2" and "5" of the Plaintiffs' Second Amended Verified Complaint, Defendant denies such allegations as to FORD, and denies knowledge and information sufficient to form a belief with respect to the remaining allegations.
4. Denies each and every other remaining allegation of the Plaintiffs' Second Amended Verified Complaint not hereinbefore specifically admitted or otherwise denied.

FIRST DEFENSE

1. The First Amended Verified Complaint, and any amendments thereto, fails to state a claim upon which relief can be granted.

SECOND DEFENSE

2. Plaintiffs' claims are barred by the doctrine of laches.

THIRD DEFENSE

3. Each of Plaintiffs' claims are barred by prior accord and satisfaction.

FOURTH DEFENSE

4. Plaintiffs lack capacity, standing or authority to bring this action in whole or in part.

FIFTH DEFENSE

5. To the extent that Plaintiffs seek damages for loss of consortium, Plaintiffs' loss of consortium claim is barred as a matter of law because the alleged asbestos exposure by Plaintiffs pre-dates the date of Plaintiffs' marriage.

SIXTH DEFENSE

6. This Court lacks personal jurisdiction.

SEVENTH DEFENSE

7. Venue is improper and/or is inconvenient.

EIGHTH DEFENSE

8. To the extent Plaintiffs have another action pending against FORD for the same cause of action in another court, this action must be dismissed.

NINTH DEFENSE

9. To the extent Plaintiffs executed a settlement agreement releasing and discharging FORD from all claims arising out of the Plaintiffs' alleged injuries, FORD is relieved from any

liability.

TENTH DEFENSE

10. Plaintiffs' sole and exclusive remedy is under the Worker's Compensation Law of the State of New York.

ELEVENTH DEFENSE

11. Any injuries and/or damages sustained by the Plaintiffs are the result of the actions or inactions of persons or entities for whose conduct FORD is not legally responsible.

TWELFTH DEFENSE

12. The allegations set forth in the First Amended Verified Complaint, and any amendments thereto, are barred by the applicable statute of limitations.

THIRTEENTH DEFENSE

13. To the extent Plaintiffs' claims are barred because of discharge in bankruptcy, FORD is relieved from liability.

FOURTEENTH DEFENSE

14. FORD reserves the right to amend its Verified Answer and to assert additional cross-claims and/or to otherwise counterclaim as to any parties named in the First Amended Verified Complaint, and any amendments thereto, who may have, are, or will be declared bankrupt or otherwise file petitions under the Bankruptcy Code.

FIFTEENTH DEFENSE

15. All claims brought under an Act of the New York State Legislature, entitled Toxic Tort – Statute of Limitations Laws of 1986, Chapter 682, Section 4, are time barred in that the statute is in violation of the Constitution of the United States and the Constitution of the State of New York.

SIXTEENTH DEFENSE

16. Plaintiffs' alleged injuries and/or damages, if any, arose in whole or in part out of the risks, hazards, and dangers which, whether related to asbestos or not, were open, obvious, and well known to Plaintiff.

SEVENTEENTH DEFENSE

17. To the extent that Plaintiffs contributed to his or her injuries by the use and/or misuse, either in whole or in part, of other substances, products, medications and/or drugs, including but not limited to any tobacco products, welding fumes or other foreign toxic substances, any liability on the part of FORD should be reduced by the extent of any such use and injuries related thereto or caused thereby.

EIGHTEENTH DEFENSE

18. Plaintiffs failed to mitigate or otherwise act to lessen or reduce the alleged injuries, disabilities, and/or damages.

NINETEENTH DEFENSE

19. Insofar as the First Amended Verified Complaint, and any amendments thereto, and each claim for relief contained therein, considered separately, alleges a claim accruing before September 1975, each such claim is barred by reason of the culpable conduct attributable to Plaintiffs including, but without limitation thereof, contributory negligence and assumption of risk.

TWENTIETH DEFENSE

20. Plaintiffs' injuries, if any, were proximately caused by an unforeseeable, independent, intervening and/or superseding event(s) beyond the control, and unrelated to any conduct of FORD. FORD's actions or omissions, if any, were superseded by the negligence and wrongful conduct of others.

TWENTY-FIRST DEFENSE

21. FORD did not make any express warranties that Plaintiffs could allege formed the benefit of the bargain.

TWENTY-SECOND DEFENSE

22. Plaintiffs' claims are barred by collateral estoppel.

TWENTY-THIRD DEFENSE

23. Plaintiffs' claims are barred by res judicata.

TWENTY-FOURTH DEFENSE

24. The damages, if any, alleged by Plaintiffs in the First Amended Verified Complaint, and any amendments thereto, were proximately caused by the misuse, alteration and/or modification of FORD products or material referred to in the First Amended Verified Complaint, and any amendments thereto, if any, either by Plaintiffs or others.

TWENTY-FIFTH DEFENSE

25. Plaintiffs failed to give notice to FORD, within a reasonable time, of the claimed breach of warranty alleged in the First Amended Verified Complaint, and any amendments thereto, in the manner and form prescribed by law.

TWENTY-SIXTH DEFENSE

26. Plaintiffs' employer or employers, including said employers' agents, servants, and employees, by reason of the warnings and handling information given to them and their own longstanding and continuous experience with the products or materials, if any, referred to in the First Amended Verified Complaint, and any amendments thereto, are and were sophisticated users of any and all such products or materials, and thereby acquired a separate and affirmative duty to warn their employees, including Plaintiffs, of any alleged potential harmful effects from the use or misuse of

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