

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

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DENNIS KILKENNY and PATRICIA KILKENNY,

*Plaintiffs,*

- against -

**VERIFIED**  
**ANSWER TO**  
**VERIFIED**  
**FIRST**  
**AMENDED**  
**COMPLAINT**

Index No. 190011/2024

AII ACQUISITION, LLC, F/K/A AII  
ACQUISITION CORP., F/K/A ATHLONE  
INDUSTRIES, INC., F/K/A HOLLAND  
FURNACE COMPANY, et al.,

*Defendants.*  
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Defendant, BW/IP, INC. AND ITS WHOLLY-OWNED SUBSIDIARIES (incorrectly named as “BW/IP INTERNATIONAL COMPANY” and “BW/IP INTERNATIONAL CORPORATION (formerly BORG WARNER INDUSTRIAL PRODUCTS) ind. and as suc. to SUCCESSOR IN INTEREST TO BYRON JACKSON PUMPS”) (“BW/IP” or “Defendant”) by its attorneys, Segal McCambridge Singer & Mahoney, Ltd. for its answer to the Verified First Amended Complaint (the “Complaint”), alleges on information and belief:

1. Denies all material allegations in the Complaint as they pertain to BW/IP.
2. Denies knowledge or information sufficient to form a belief as to the truth

of each and every other allegation contained in the Complaint.

**AFFIRMATIVE DEFENSES**

3. The venue of this action is improper.
4. The Complaint fails to set forth a cause of action upon which relief can be granted.
5. This Court lacks personal jurisdiction over BW/IP.

6. Plaintiffs' causes of action are barred by the applicable Statute of Limitations.

7. The Complaint fails to allege any cause of action specific to BW/IP.

8. BW/IP was improperly served with process.

9. All claims against BW/IP have been discontinued by prior release and/or settlement agreement.

10. BW/IP was not negligent.

11. BW/IP was not reckless.

12. BW/IP did not engage in misconduct or willful misconduct.

13. BW/IP did not act with wanton disregard for the rights, safety, and position of the Plaintiffs or any other person.

14. BW/IP did not distort or cause to be distorted any medical examinations, results, or data.

15. BW/IP did not edit or alter medical literature.

16. BW/IP did not attempt to prevent the publication of medical literature.

17. BW/IP did not distort or cause to be distorted medical information.

18. Any asbestos products which may have been sold by BW/IP were not inherently defective, ultrahazardous, dangerous, deleterious, poisonous, and/or otherwise legally harmful.

19. Any asbestos products which may have been sold or used by BW/IP were not unsafe.

20. Any asbestos products which may have been sold or used by BW/IP were not incorrectly packaged.

21. BW/IP did not fail to adequately test any asbestos products which it might have sold or used.

22. Any acts or omissions of BW/IP alleged to constitute negligence were not substantial causative factors of the injuries and/or losses alleged to have been sustained.

23. The injuries and/or losses alleged to have been sustained were caused entirely by or contributed to by the negligent acts or omission of individuals and/or entities other than BW/IP.

24. Any asbestos products which may have been sold or used by BW/IP may have been substantially changed in their condition after said products left the possession of BW/IP.

25. BW/IP provided all necessary, required, and adequate warnings or instructions.

26. Negligent acts and/or omissions of individuals and/or entities other than BW/IP constituted intervening and/or superseding acts of negligence.

27. BW/IP extended no warranty to the Plaintiffs.

28. BW/IP did not breach any warranty or warranties it may have extended.

29. Plaintiffs failed to provide BW/IP with proper and timely notice of any alleged breached warranty.

30. BW/IP did not take part in and was not a part of or party to any conspiracy.

31. BW/IP did not make any misrepresentation and/or commit any fraudulent acts.

32. BW/IP did not distribute its products without proper and adequate identification labeling.

33. Any asbestos products which may have been sold and/or used by BW/IP were not within the exclusive control of BW/IP.

34. BW/IP entered into no tacit agreement and/or industry-wide standards or procedures as alleged.

35. For any plaintiff alleging exposure during United States military service, U.S. government activity or at any U.S. government-owned premises including any U.S. government vessel, BW/IP was acting as a government contractor in supplying products to the U.S. government. The U.S. government approved reasonably precise specifications for the products supplied by BW/IP. The BW/IP products conformed to those specifications; and the U.S. government was knowledgeable of any dangers associated with the use of those products.

36. The imposition of punitive damages violates the Due Process Clause of the U.S. Constitution and the Constitution of the State of New York.

37. The imposition of punitive damages violates the Equal Protection Clause of the U.S. Constitution and the Constitution of the State of New York.

38. In the event Plaintiffs recover a verdict or judgment against this Defendant, then said verdict or judgment must be reduced pursuant to CPLR § 4545 by those amounts which have replaced or indemnified or will, with reasonable certainty, replace or indemnify Plaintiffs in whole or in part, for any past or future claimed economic loss, from any collateral source such as insurance, social security, workers' compensation, or employee benefit programs.

39. The imposition of punitive damages violates the U.S. Constitution's Eighth Amendment guarantee against excessive fines.

40. That insofar as the Complaint and each cause of action considered separately, alleges a cause of action accruing before September 1, 1975, any recovery by Plaintiffs for each such cause of action is barred by reason of contributory negligence or assumption of risk of Plaintiffs.

41. All causes of action pleaded in the Complaint have not been maintained in a timely fashion and Plaintiffs have neglected same and should be barred by the doctrine of laches.

42. All claims brought under New York Law, L. 1986 C. 682 § 4 (enacted August 31, 1986) are time-barred in that said statute is in violation of the U.S. Constitution and the Constitution of the State of New York.

43. This action must be dismissed because Plaintiffs have not joined necessary parties to the adjudication of the claims asserted in the Complaint, in whose absence complete relief cannot be accorded and whose absence impedes the ability of Defendant to protect its interests.

44. In the event the allegedly injured Plaintiff was employed by any of the defendants herein, then Plaintiffs' sole and exclusive remedy is under the Workers' Compensation Law of the State of New York.

45. That at all of the times during the conduct of its corporate operations, the agents, servants or employees of Defendant utilized proper methods in the conduct of its operations, in conformity with the available knowledge and research of the scientific and industrial communities.

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