

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

DENNIS KILKENNY AND PATRICIA  
KILKENNY,

Plaintiffs,

-against-

AIR & LIQUID SYSTEMS CORPORATION, ind.  
And as suc. To SUCCESSOR BY MERGER TO  
BUFFALO PUMPS, INC., et al.

Defendants.

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**VERIFIED ANSWER OF DEFENDANT FLOWSERVE US, INC., SOLELY AS  
SUCCESSOR TO ROCKWELL MANUFACTURING COMPANY, EDWARD VALVES,  
INC., NORDSTROM VALVES, AND GESTRA INC., TO PLAINTIFFS' THIRD  
AMENDED COMPLAINT**

Defendant, Flowserve US, Inc., solely as successor to Rockwell Manufacturing Company, Edward Valves, Inc., Nordstrom Valves, and Gestra Inc. (improperly named as Flowserve US, Inc. ind. and as suc. to Edward Valves, Inc., Rockwell Manufacturing Inc., Gestra Inc., Aldrich Pumps, Durco Pumps, Cameron Pumps, Vogt Valves, Nordstrom Valves, and Wilson-Snyder Centrifugal Pumps) (hereinafter "Defendant"), by its attorneys, McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP, hereby response to Plaintiffs' Third Amended Complaint as follows:

**COMPLAINT**

1. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint.



2. Except to admit that it has conducted business in the State of New York, the defendant denies the allegations of Paragraph 2 of the Complaint to the extent they are directed towards it.

3. Defendant denies the allegations contained in Paragraphs 3 through 9 of the Complaint to the extent that they are directed toward Defendant and refers all questions of law to the Court.

### **FIRST CAUSE OF ACTION**

Defendant repeats and reaffirms each and every response to Paragraphs 1 through 9 of the Complaint as if set forth at length herein.

4. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs 10 through 35 (inclusive) of the Complaint insofar as these allegations are not directed at Defendant, otherwise generally denies the truth of the allegations, and refers all questions of law to the Court.

### **SECOND CAUSE OF ACTION**

Defendant repeats and realleges each and every response as to Paragraphs 1 through 35 of the Complaint as if more fully set forth herein.

5. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs 36 through 39 of the Complaint insofar as these allegations are not directed at Defendant, otherwise generally denies the truth of the allegations, and refers all questions of law to the Court.

### **THIRD CAUSE OF ACTION**

Defendant repeats and realleges each and every response as to Paragraphs 1 through 39 of the Complaint as if more fully set forth herein.

6. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs 40 and 41 of the Complaint insofar as these allegations are not directed at Defendant, otherwise generally denies the truth of the allegations, and refers all questions of law to the Court.

#### **FOURTH CAUSE OF ACTION**

Defendant repeats and realleges each and every response as to Paragraphs 1 through 41 of the Verified Complaint as if more fully set forth herein.

7. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs 42 through 68 (inclusive) of the Complaint insofar as these allegations are not directed at Defendant, otherwise generally denies the truth of the allegations, and refers all questions of law to the Court.

#### **FIFTH CAUSE OF ACTION**

Defendant repeats and realleges each and every response as to Paragraphs 1 through 68 of the Complaint as if more fully set forth herein.

8. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs 69 through 82 (inclusive) of the Complaint insofar as these allegations are not directed at Defendant, otherwise generally denies the truth of the allegations, and refers all questions of law to the Court.

#### **SIXTH CAUSE OF ACTION**

Defendant repeats and realleges each and every response as to Paragraphs 1 through 82 of the Complaint as if more fully set forth herein.

9. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs 83 through 98 (inclusive) of the Complaint insofar as these

allegations are not directed at Defendant, otherwise generally denies the truth of the allegations, and refers all questions of law to the Court.

### **SEVENTH CAUSE OF ACTION**

Defendant repeats and realleges each and every response as to Paragraphs 1 through 98 of the Complaint as if more fully set forth herein.

10. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 99 of the Complaint insofar as these allegations are not directed at Defendant, otherwise generally denies the truth of the allegations, and refers all questions of law to the Court.

### **AFFIRMATIVE DEFENSES**

#### **FIRST SEPARATE DEFENSE**

With respect to plaintiffs' claim of a duty owed to them, this answering defendant denies breaching any duty that it may have owed to the plaintiffs.

#### **SECOND SEPARATE DEFENSE**

The answering defendant is free of any and all negligence.

#### **THIRD SEPARATE DEFENSE**

Damages, if any, were the result of the sole negligence of the plaintiffs.

#### **FOURTH SEPARATE DEFENSE**

Damages, if any, which may have been sustained by the plaintiffs, and for which this defendant may become liable, were the result of the actions of third-parties over whom the answering defendant exercised no control and, therefore, plaintiffs are barred from any recovery against the answering defendant.

#### **FIFTH SEPARATE DEFENSE**

Any damages or injuries that may have been sustained by the plaintiffs were the result of the sole negligence of the remaining defendants and/or third-party defendants.

**SIXTH SEPARATE DEFENSE**

The answering defendant did not make, nor did it breach, any warranty to the plaintiffs.

**SEVENTH SEPARATE DEFENSE**

While the answering defendant denies that plaintiff used its products, defendant states that if it is shown that plaintiff did use its products then the incident and injury alleged in the Complaint were caused by the unauthorized, unintended and improper use of the product complained of and as a result there can be no recovery.

**EIGHTH SEPARATE DEFENSE**

Plaintiffs failed to give the defendant notice of alleged breach of warranty and damage as required by law.

**NINTH SEPARATE DEFENSE**

Any liability that might otherwise be imposed upon the answering defendant is subject to reduction or barred by virtue of the doctrine of comparative negligence.

**TENTH SEPARATE DEFENSE**

The answering defendant hereby invokes the provisions of Article 16 of the New York Civil Practice Law and Rules (“CPLR”) and requests that the jury herein be charged accordingly.

**ELEVENTH SEPARATE DEFENSE**

The action of the plaintiff is barred by the Statute of Limitations.

**TWELFTH SEPARATE DEFENSE**

The Complaint fails to state a claim upon which relief can be granted as against the answering defendant.

**THIRTEENTH SEPARATE DEFENSE**

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