

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

PAULINE JENSEN, Individually and as Personal
Representative of the Estate of ALVIN JENSEN,

Plaintiffs,

v.

SABERHAGEN HOLDINGS, INC., et al.

Defendants.

No. 04-2-20249-3 SEA

PLAINTIFF'S OBJECTION AND
MOTION TO STRIKE
SUPPLEMENTAL DECLARATION
OF J. MICHAEL MATTINGLY

Plaintiff vigorously objects to the inclusion of Mr. Mattingly's supplemental declaration filed late in the day on August 30, 2005 and respectfully move to strike it from the summary judgment record.

First, a clarification. The documents that this firm re-submitted to the Court as attachments to the undersigned's declaration dated August 29, 2005 was pursuant to a specific request that the Court made from the bench during oral argument on Friday, August 26th. Nothing new was submitted to the Court that was not already in the voluminous summary judgment record that began in this case last January and which was responded to, initially, by this firm on April 15, 2005 in conjunction with a motion to compel the production of documents

PLAINTIFF'S OBJECTION AND MOTION TO STRIKE
SUPPLEMENTAL DECLARATION OF J. MICHAEL
MATTINGLY I

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1 from Warren Pumps (a motion that was granted). Any suggestion that this firm was trying to
2 submit new evidence or new arguments to the Court by filing a supplemental declaration
3 (requested by the Court) that simply directed the Court back to the place in the record where
4 certain documents were located and where certain documents were discussed is patently and
5 utterly a misrepresentation of what was filed by this firm on Monday, August 29th. Nothing new
6 was submitted nor were new arguments raised.

7 To that end, Warren Pumps makes the remarkable assertion that it only learned for the
8 first time – *on Friday, August 26* - that part of the argument in this case related to the
9 specification of asbestos containing materials by Warren or Quimby in connection with their
10 pumps. Apparently, Warren failed to read this firm's briefing throughout this matter, including
11 the initial one that was submitted back on April 15, 2005. That brief clearly put Warren on
12 notice that part of the argument in this case related directly to the specification of asbestos
13 materials in Quimby pumps, but advised the Court that since Warren had played semantic games
14 and decided not to produce documents, it was unclear what the as yet to be produced documents
15 would reveal. Specifically the brief stated:

16 Second, if Warren does in fact have documents reflecting not only their
17 purchase of Quimby Pumps, but also their continued maintenance of Quimby
18 pumps on the Hornet or other ships, that information could certainly be
19 corroborative of Alvin Jensen's testimony about his work with various pumps on
20 the Hornet. They could have documents from the US Navy reflecting repair or
21 maintenance on these pumps. Technical manuals about Quimby pumps that may
22 be in Warren's possession may show that in the 1940s and 1950s, asbestos
23 containing materials were being installed with or applied in conjunction with
these pumps. ***Schematic and engineering diagrams related to Quimby fuel oil
pumps could very well show that these asbestos containing materials were
specified by Quimby.*** Documents relating to maintenance on Quimby pumps
(again Warren continued to provide aftermarket support for Quimby pumps for
more than 50 years) could provide information to be relied on by Plaintiff's
experts who are entitled to opine on any ultimate factual issue in the case.

The point is: we do not know what information or documents Warren has

PLAINTIFF'S OBJECTION AND MOTION TO STRIKE
SUPPLEMENTAL DECLARATION OF J. MICHAEL
MATTINGLY 2

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1 on all of these issues because of their entirely inadequate discovery responses.
2 Given that the discovery cutoff is more than four months away, it would be
3 grossly unfair to dismiss a very serious wrongful death claim without making
4 Warren adhere to its reciprocal discovery obligations.

5 See Plaintiff's April 15th brief at pp. 6-7 (emphasis supplied).

6 Moreover, the April 15th brief also included a discussion of Warren specifications
7 of asbestos containing materials on the emergency feed pump on the CV 12 – a steam
8 reciprocating pump similar to the fire and bilge pumps that Alvin Jensen worked on.

9 This document was discussed on p. 12 of the April 15th brief – four months ago:

10 Documents produced by Warren Pumps in the previous litigation also
11 indicate that Warren manufactured emergency feed pumps on Essex class
12 carriers, such as the CV 12. A materials section in the diagram specifically
13 lists "asbestos metallic cloth" and 85% Magnesia insulation, which is an
14 asbestos insulation. **Thus, Warren specifically specified the use of**
15 **asbestos containing materials for its pumps.** Shipboard personnel
16 working in the fireroom would have likely been exposed to that material
17 as well as asbestos packing, when it was disturbed during routine
18 maintenance on emergency feed pumps.

19 See April 15th brief at pp. 12, fn. 8 (emphasis supplied). This document was referenced in
20 Everett Cooper's original declaration in this case (the April 15th declaration) at ¶ 16.

21 Similarly, in Plaintiffs' August 15th brief, the Plaintiff discussed – extensively – the
22 evidence derived from documents finally produced by Warren only after this Court directed
23 Warren to produce documents last April. Again, Warren's assertion that they "didn't know" that
24 Plaintiffs would argue that they or their predecessor in interest, Quimby, specified the use of
25 asbestos materials on or within their equipment shows either a non-awareness of what Plaintiff's
26 argued or a brazen attempt at revisionist history, both of which should be rejected wholesale by

1 this Court.¹ The August 15th brief (to which Warren has already been granted by right – an
2 opportunity to reply to) stated as follows:

3 In point of fact, correspondence produced by Warren Pumps indicates that
4 Quimby contracted with the Crane Co. for Crane to provide Quimby with dozens
5 of high pressure globe valves for incorporation into the Quimby pumps that were
6 installed on Essex class carriers including the CV 12. Frockt Dec., Ex. 14
7 (“Supplemental Cooper Declaration dated Aug. 15, 2005 – “Cooper Dec.”) at ¶
8 14.² The *material specifications for these globe valves indicate that they were
specified to use braided asbestos packing and that the Crane valves were
incorporated into fuel oil service, booster and transfer pumps typically located
in the firerooms on these ships, including the CV 12.*³ Cooper Dec, at ¶14 & 16;
Frockt Dec. Ex. 15 JEN 000410, 000411, 000420, 000422, 000001, 000016,
000019, 000033, 000919-922).

9 See August 15th brief at pp. 32. Indeed, JEN 000411 is correspondence from Crane Co back to
10 Quimby related to materials to be supplied in connection with valves for Quimby Pumps. The
11 correspondence implies that it was Quimby’s requirements that asbestos packing be used. It
12 states, “ We now wish to quote you the material which we propose to furnish, *showing our*
13 *interpretation of your [Quimby’s] requirements.*” This document was produced by Warren after
14 the first summary judgment hearing in April.

15 Additionally, Plaintiff discussed again in the August brief the very same document
16 related to lagging on the emergency feed pumps on the CV 12 that it discussed last April but
17 related that document to the new evidence it had acquired about Warren manufactured fire and
18 bilge pumps being located on the same ship. Thus, it cannot be said that the issue of
19 specifications was raised for the first time on August 26th (at oral argument):

21 ¹ Warren’s argument that it was “unaware” until last Friday that material specifications were at issue reminds one of
22 the famous line from *Casablanca* wherein Humphrey Bogart was “shocked” to learn that gambling was occurring in
the hotel.

23 ² At the initial oral argument on this motion, the Court indicated from the bench that it was not going to strike Mr.
Cooper’s expert declaration pursuant to a motion by Warren.

³ Braided asbestos packing also appears to have been a material specified for use in the stuffing box on Quimby
designed vertical gear in head screw pumps. See JEN 000921.

PLAINTIFF’S OBJECTION AND MOTION TO STRIKE
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1 Mr. Jensen also testified that he worked with bilge pumps in the fire room
2 on the Hornet on several occasions and that he disassembled those pumps and
3 worked with packing including the removal of packing from those pumps. *Id.* at
4 338. The bilge pumps were also manufactured by Warren. Cooper Dec. ¶ 21;
5 Frockt Dec. Ex. 17.

6 Additionally, Plaintiffs previously submitted to the Court document
7 WP24-000086, a Warren produced document from other litigation that specifies
8 asbestos lagging on emergency feed pumps on Essex class carriers, including the
9 CV 12. *See* Frockt Dec. Ex. 16. ***This is a reciprocating pump and Warren***
10 ***specifically called for the use of asbestos cloth and 85% Magnesia insulation on***
11 ***it.*** The bilge pumps on the Hornet are also steam reciprocating pumps and it can
12 easily be inferred that the same type of insulation would have been specified for
13 this equipment. To this end, Mr. Jensen testified that the bilge pumps were
14 insulated to his recollection. *Id.* at 337.

15 *See* August 15th brief at pp. 37 (emphasis supplied).⁴

16 CONCLUSION

17 The Court requested that this firm submit a supplemental declaration on Monday
18 pertaining to evidence already in the record. We did so. In response, Warren has, sua sponte,
19 submitted new evidence never before presented in this case.

20 This Court has now been briefed to death on this case. Accordingly, Plaintiff's are not
21 going to add anything else to the record but felt the need to clarify for the Court what was argued
22 below since Warren has at the eleventh hour submitted brand new evidence on the issue of
23 materials specification – evidence not submitted in their initial motion for summary judgment
nor any of the several reply briefs it has filed as of right in this case.

Accordingly, this supplemental declaration should be stricken from the summary
judgment record. Even if the Court considers it, at best, it creates issues of material fact since it
will be established at trial that the Navy never prevented any contractor from warning about
asbestos hazards.

⁴ Warren has never denied that its fire and bilge pumps were installed on the CV 12.

1 The extensive record in this case demonstrates that there are numerous issues of material
2 fact related to Mr. Jensen's exposure to and work with both Warren and Quimby pumps on the
3 USS Hornet (CV 12). Summary judgment must, accordingly, be denied.

4 DATED this 31st day of August, 2005.

5 BERGMAN & FROCKT

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8 David S. Frockt, WSBA #28568
9 Counsel for Plaintiff
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THE HONORABLE SHARON ARMSTRONG

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

PAULINE JENSEN, Individually and as
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Plaintiff,

v.

SABERHAGEN HOLDINGS, INC., et al.

Defendants.

NO. 04-2-20249-3 SEA

DECLARATION OF SERVICE

I, Wil John Cabatic, declare and state as follows:

1. I am and at all times herein was a citizen of the United States, a resident of King County, Washington, and am over the age of 18 years.

2. On the 31st day of August, 2005, I caused to be served true and correct copies, of: (1) Plaintiffs Objection and Motion to Strike Supplemental Declaration of J. Michael Mattingly; and (2) Declaration of Service, on the following:

I. Via Fascimilie:

Counsel for Saberhagen Holdings, Inc.

Timothy Thorson
CARNEY, BADLEY & SPELLMAN
700 Fifth Avenue, Suite 5800
Seattle, WA 98104

DECLARATION OF SERVICE- 1

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4 **Counsel for Borg Warner Corporation**

Christopher W Tompkins

5 Steven W Block

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7 **Counsel for Honeywell International, Inc.**

8 James F. Williams

PERKINS COIE

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Seattle, WA 98101

10 **Counsel for Warren Pumps, Inc.**

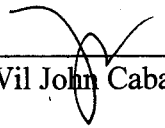
11 J. Michael Mattingly

STEVEN V. RIZZO, P.C.

12 Lincoln Place, Suite 350
1620 S.W. Taylor Street
13 Portland, OR 97205

14 I declare under penalty of perjury under the laws of the State of Washington that the
15 foregoing is true and correct.

16 DATED at Seattle, Washington this 31st day of August, 2005.

17
18 
19
20
21
22
23
Wil John Cabatic

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DAVID S. FROCKT

LEANN McDONALD

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

PAULINE JENSEN, Individually and as
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Plaintiff,

v.

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Defendants.

NO. 04-2-20249-3 SEA

DECLARATION OF SERVICE

I, Wil John Cabatic, declare and state as follows:

1. I am and at all times herein was a citizen of the United States, a resident of King County, Washington, and am over the age of 18 years.

2. On the 1st day of September, 2005, I caused to be served true and correct copies, of: (1) Plaintiffs Objection and Motion to Strike Supplemental Declaration of J. Michael Mattingly; and (2) Declaration of Service, on the following:

I. Via Fascimilie [08.31.05] and Legal Messenger:

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7 **Counsel for Honeywell International, Inc.**

8 James F. Williams

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Seattle, WA 98101

10 **I. Via Fascimilie [08.31.05] and U.S. Mail:**

11 **Counsel for Warren Pumps, Inc.**

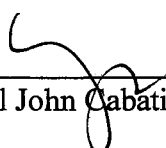
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13 Lincoln Place, Suite 350
1620 S.W. Taylor Street
14 Portland, OR 97205

15
16 I declare under penalty of perjury under the laws of the State of Washington that the
foregoing is true and correct.

17 DATED at Seattle, Washington this 1st day of September, 2005.

18
19 

Wil John Cabatic



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Pls Objection and Motion to Strike Supp Dec of Mattingly;
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MESSENGER SERVICE LAST DAY	FIRM NAME Bergman & Frockt	PHONE 206.957.9510	EXT.#	EMAIL (SECRETARY) wil@bergmanlegal.com
DATE/TIME 09.01.05 5:00pm	ADDRESS 705 Second Avenue, Suite 1601	ATTY	SECRETARY Wilc	
	CASE NAME ALVIN JENSEN V. SABERHAGEN, ET AL.	YOUR ABC ACCT. NO 430		
	CAUSE NO.	CLIENT MATER # ALVIN JENSEN	DATE 9/1/2005	

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Dec Of Service**

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1 Diane Kero
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Seattle, WA 98101

2

3

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1-800-828-0199
FAX: 360-357-3302
oly@abclegal.com

MESSENGER SERVICE	FIRM NAME	PHONE	EXT.#	EMAIL (SECRETARY)
LAST DAY	Bergman & Frockt	206.957.9510		wil@bergmanlegal.com
DATE/TIME	ADDRESS	ATTY		
09.01.05	705 Second Avenue, Suite 1601			
5:00pm	CASE NAME	YOUR ABC ACCT. NO		
	ALVIN JENSEN V. SABERHAGEN, ET AL.	430		
	CAUSE NO.	CLIENT MATER #	DATE	
		ALVIN JENSEN	9/1/2005	

DOCUMENTS

Pls Objection and Motion to Strike Supp Dec of Mattingly;
Dec Of Service

SIGNATURE REQUIRED ON DOCUMENTS	RETURN CONFORMED ABC SLIP ONLY	☒ RETURN CONFORMED COPY	CONFORM ORIGINAL DO NOT FILE
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OTHER INSTRUCTIONS

1 Christopher W Tompkins Steven W Block BETTS PATTERSON & MINES, P.S. 701 Pike Street, Suite 1400 Seattle, WA 98101	3
2	4

FILING	COUNTY	SUPERIOR COURT	DISTRICT COURT (INDICATE DISTRICT)	AUDITOR	APPEALS		FEDERAL COURT		SEA	TAC	STATE SUPREME COURT	SEC STATE CORP.
					I-SEA	I-TAC	CIVIL	BANKRUPTCY				

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1-800-828-0199
FAX: 360-357-3302
oly@abclegal.com

MESSANGER SERVICE LAST DAY	FIRM NAME Bergman & Frockt	PHONE 206.957.9510	EXT.#	EMAIL (SECRETARY) wil@bergmanlegal.com
DATE/TIME 09.01.05 5:00pm	ADDRESS 705 Second Avenue, Suite 1601	ATTY	SECRETARY Wilc	
	CASE NAME ALVIN JENSEN V. SABERHAGEN, ET AL.	YOUR ABC ACCT. NO 430		
	CAUSE NO.	CLIENT MATER # ALVIN JENSEN	DATE 9/1/2005	

DOCUMENTS

**Pls Objection and Motion to Strike Supp Dec of Mattingly;
Dec Of Service**

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OTHER INSTRUCTIONS

1 **James F. Williams**
PERKINS COIE
1201 Third Avenue, Suite 4800
Seattle, WA 98101

2

4

FILING	COUNTY	SUPERIOR COURT	DISTRICT COURT (INDICATE DISTRICT)	AUDITOR	APPEALS		FEDERAL COURT		SEA	TAC	STATE SUPREME COURT	SEC STATE CORP.
					I-SEA	II-TAC	CIVIL	BANKRUPTCY				

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FAX: 360-357-3302
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MESSANGER SERVICE	FIRM NAME	PHONE	EXT. #	EMAIL (SECRETARY)
LAST DAY	Bergman & Frockt	206.957.9510		wil@bergmanlegal.com
DATE/TIME	ADDRESS	ATTY	SECRETARY	
09.01.05	705 Second Avenue, Suite 1601		Wilc	
4:30pm	CASE NAME	YOUR ABC ACCT. NO		
	ALVIN JENSEN V. SABERHAGEN, ET AL.	430		
	CAUSE NO.	CLIENT MATER #	DATE	
		ALVIN JENSEN	9/1/2005	

DOCUMENTS

Dec Of Service

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OTHER INSTRUCTIONS

1	3
2	4

FILING	COUNTY	SUPERIOR COURT	DISTRICT COURT (INDICATE DISTRICT)	AUDITOR	APPEALS		FEDERAL COURT		SEA	TAC	STATE SUPREME COURT	SEC STATE CORP.
					I-SEA	II-TAC	CIVIL	BANKRUPTCY				
	KING	X										

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