

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN

SHAWN SHAUN DONNELLY, SUZANNE GOODFELLOW, ROBERT SCHEURICH
and ROBERT ANDRESS
Plaintiffs

and

UNITED TECHNOLOGIES CORPORATION, CARRIER CORPORATION
and UTC CANADA CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT(S)

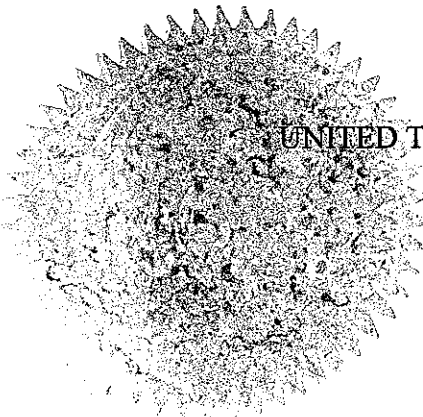
A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

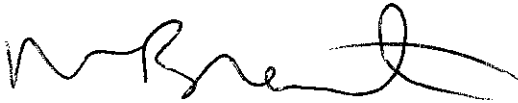
IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF



AMENDED THIS Dec-13/06 PURSUANT TO
MODIFIE CE CONFORMEMENT A
 RULE/LA REGLE 26.02 ()
 THE ORDER OF THE Honorable Justice Winkler
L'ORDONNANCE DU
DATED AT LA Dec. 7, 2006
M. J. Winkler
REGISTRAR GREFFIER
SUPERIOR COURT OF JUSTICE COUR SUPERIEURE DE JUSTICE

YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: *October 10, 2006*

Issued by: 
Registrar (*M. Brenton*)

Address of court office:

393 University Avenue
10th Floor
Toronto, Ontario
M5G 1E6

TO: UNITED TECHNOLOGIES CORPORATION
Secretary of State
30 Trinity Square
Hartford, CT 06106
U.S.A.

AND TO: CARRIER CORPORATION
C T CORPORATION SYSTEM
One Commercial Plaza
Hartford, CT 06103
U.S.A.

AND TO: UTC CANADA CORPORATION
1 Brunswick Square, Suite 1500
Post Office Box 1324
Saint John, NB E2L 4H8

AND TO: UTC CANADA CORPORATION
1515 Drew Rd.
Mississauga, ON L5S 1Y8

CLAIM

DEFINITIONS

1. The following definitions apply for the purposes of this statement of claim:

- (a) **“Act”** means the *Class Proceedings Act, 1992*, S.O. 1992 c. 6, as amended;
- (b) **“Carrier”** means the Defendant, Carrier Corporation;
- (c) **“Class” or “Class Members”** means all persons resident in Canada who own or have owned a Furnace;
- (d) **“Courts of Justice Act”** means the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (e) **“Defendants”** means collectively, UTC, UTC Canada Corporation and Carrier;
- (f) **“Furnace”** means one of the following furnaces:

Brand	Model No.	Production Dates
Bryant	340A	8/05-Present
Bryant*	340M	7/93-8/05
Bryant*	345M	6/96-8/05
Bryant	350A	8/05-Present
Bryant*	350M	7/93-8/05
Bryant	352A	8/05-Present
Bryant*	352M	4/01-8/05
Bryant	355A	8/05-Present
Bryant*	355M	7/93-8/05
Bryant*	398A	8/84-7/93
Bryant*	398B	9/87-9/92
Bryant*	398B	9/87-9/92
Bryant*	399A	9/87-7/93
Bryant*	320A	9/92-7/93
Bryant*	321A	9/92-7/93
Carrier	58SX	8/84-10/89
Carrier	58SXA	10/89-9/91
Carrier	58SXB	9/87-9/92

Carrier	58SXC	9/94-7/939/91-7/93
Carrier	58DX	9/87-10/89
Carrier	58DXA	10/89-9/91
Carrier	58DXC	9/91-7/93
Carrier	58VCA	9/92-7/93
Carrier	58VUA	9/92-7/93
Carrier	58MCB	8/05-Present
Carrier	58MXA	7/93-8/05
Carrier	58MXB	8/05-Present
Carrier	58MCA	7/93-8/05
Carrier	58MVB	8/05-Present
Carrier	58MVP	8/93-8/05
Carrier	58MTA	4/01-8/05
Carrier	58MTB	8/05-Present
Carrier	58MSA	6/96-8/05
Payne*	490A	7/93-4/97
Payne	PG9M	4/97-Present

* may have also been marketed under the brand name "Day & Night"

- (g) "PPL" means polypropylene laminate;
- (h) "Robert" means the plaintiff, Robert Andress;
- (i) "Scheurich" means the plaintiff, Robert Scheurich;
- (j) "Shawn" "Shaun" means the plaintiff, Shawn Shaun Donnelly;
- (k) "Suzanne" means the plaintiff, Suzanne Goodfellow;
- (l) "UTC" means the Defendant, United Technologies Corporation; and
- (m) "UTC Canada" means the Defendant, UTC Canada Corporation;

RELIEF SOUGHT

2. Shawn Shaun, Suzanne, Scheurich and Robert claim on their own behalf and on behalf of Class Members:

- (a) an Order certifying this action as a class proceeding and appointing them as the representative plaintiffs for the Class;
- (b) a declaration that the Defendants were negligent in the development, testing, design, manufacture, licensing, assembly, distribution and sale of the Furnaces and that they are liable to the Class for damages;
- (c) damages in an amount to be determined at trial or such other sum this Honourable Court deems appropriate;
- (d) punitive damages in the amount of \$10,000,000.00 or such other sum this Honourable Court deems appropriate;
- (e) costs of administering the plan of distribution of the recovery in an amount that this Honourable Court deems appropriate;
- (f) alternatively, damages assessed equal to the gross revenue or, in the further alternative, damages assessed equal to the net income received by the Defendants as a result of the sale of the Furnaces;
- (g) such further and other special damages as may be incurred from the date hereof until the trial of the common issues, or final disposition of this action, particulars of which will be provided to the Defendants;
- (h) an Order that the Defendants be required to disgorge all profits earned from the sale of the Furnaces based on the principles of unjust enrichment;

- (i) an Order directing a reference or such other procedure as may be necessary to determine issues not determined at the trial of the common issues;
- (j) prejudgment and postjudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (k) costs of this action on a substantial indemnity basis, or in the alternative, in an amount that provides full indemnity, plus a premium, plus applicable taxes; and
- (l) such further and other relief as this Honourable Court deems just.

THE NATURE OF THIS ACTION

3. This action concerns the Defendants' negligent design, testing, development, manufacturing, assembly, marketing, distribution and sale of the Furnaces.

4. The plaintiffs allege that the Furnaces are defective in several respects, as discussed below. As a result of the defects in the Furnaces, the plaintiffs have been exposed to the risk of carbon monoxide and have been put to significant out of pocket expenses to effect repairs or to replace the Furnaces.

THE PLAINTIFFS

5. Shawn Shaun is a resident of Campbellville, Ontario. On or about August 1, 2001, Shawn Shaun moved into his newly built home. The home was equipped with a Carrier 58 MSA Furnace. In or about September 2005, as a result of repeated Furnace failures, Shawn Shaun was required to have his Furnace replaced. The replacement cost to Shawn Shaun was approximately \$6,000.00.

6. Suzanne resides in Campbellville, Ontario. In or about September 2001, Suzanne moved into a newly built home. The home was equipped with a Carrier 58 MSA Furnace. On or about January 17, 2005, Suzanne's Furnace failed. She was required to replace the heat exchanger and subsequently had to replace her entire furnace at a cost of approximately \$6,000.00.

7. Robert resides in Brockville, Ontario. On or about July 7, 1997, he bought a Carrier 58 MVP high efficiency gas furnace. The Furnace was installed in or around August 1997. In May 2006, it was discovered that the primary and secondary heat exchangers in Robert's Furnace had been thoroughly corroded as a result of rust. Robert was required to replace his Furnace at his own expense.

8. Scheurich resides in Mississauga, Ontario. On or about August 5, 1992, he installed a Carrier 58 SXC high efficiency furnace into his home. On or about October 10, 2006, Scheurich had to have his secondary heat exchanger replaced as a result of rust and corrosion. Scheurich has incurred approximately \$500.00 in labour charges to replace his heat exchanger.

THE DEFENDANTS

9. UTC is a Delaware corporation headquartered in Hartford, Connecticut. At all material times UTC was the parent corporation of UTC Canada and Carrier.

10. Carrier is a wholly owned subsidiary of UTC with its headquarters in Farmington, Connecticut. Carrier is one of the largest furnace manufacturers in the United States. Carrier designed, manufactured, warranted, advertised and sold the Furnaces at issue.

11. UTC Canada is a wholly owned subsidiary of UTC and is incorporated pursuant to the laws of New Brunswick with its head office located in Saint John, New Brunswick. UTC Canada carries on business as a manufacturer and distributor of plumbing, heating and air conditioning equipment. UTC Canada warranted, advertised and sold the Furnaces, which were manufactured by Carrier and UTC to Canadian residents under the brand names "Carrier", "Bryant", "Payne" and "Day & Night".

THE FURNACES

12. The Furnaces are known as high efficiency condensing furnaces because they purport to maximize efficiency by employing a second heat exchanger to extract more heat from the hot gases through condensation. They are referred to as 90% Furnaces simply because 90% of the fuel is being used to heat the home and only 10% escapes as exhaust.

13. The condensate formed in the secondary heat exchanger of the Furnaces is acidic, creating a highly corrosive environment. Therefore, most furnaces manufactured by competitors are manufactured from corrosion-resistant stainless steel, which is more costly than ordinary carbon steel or other engineering materials. Indeed, stainless steel is the industry standard for the manufacture of furnaces.

14. However, because of the high cost of manufacturing the secondary heat exchangers with stainless steel, the Defendants have looked to more cost effective methods of manufacturing the secondary heat exchangers since 1983.

15. By 1988, the Defendants replaced the stainless steel with PPL laminated steel. This was notwithstanding the corrosion problems they observed with its PPL laminated secondary heat exchangers in 1985.

16. The use of the PPL laminated steel by the Defendants resulted in corrosion in the secondary heat exchangers and operational problems with the Furnaces.

17. The resulting corrosion introduces solids into the condensate. The solids plug the Furnace system causing the condensate to back up into the fan or otherwise leak from the secondary heat exchanger. This causes damage to other components of the Furnaces, leading to several operational problems including premature failure of the Furnaces and the potential release of dangerous levels of carbon monoxide.

18. At all material times, the Defendants knew or ought to have known that the industry standard for the manufacture of the Furnaces is stainless steel because the condensate inside the heat exchangers is acidic and can lead to rust formation.

19. Failure of the secondary heat exchanger and/or rust in the secondary heat exchanger, results in out of pocket expenses to diagnose and repair the failure in the secondary heat exchanger. Furthermore, as a result of not being able to fix the Furnace in time, some Class

Members were unable to heat their homes in the winter months and were at risk of the release of dangerous levels of carbon monoxide. Furthermore, the plaintiffs allege that other parts of the Furnaces are defective. Specifically, the coupling box, cold spot baffle and the inlet plate are defective in their design and choice of material. The defective nature of these parts contributes to the operational problems and ultimate failure of the Furnaces.

THE DEFENDANTS' NEGLIGENCE

20. The Defendants owed a duty of care to the plaintiffs and the Class.

21. The Defendants breached their duty of care by negligently designing, developing, testing, manufacturing, licensing, assembling, distributing, marketing and selling the Furnaces. Particulars of some, but not all, of the acts of negligence are as follows:

- (a) The Defendants knew or ought to have known that the Furnaces were susceptible to operational problems and carbon monoxide leaks;
- (b) The Defendants knew or ought to have known that the Furnaces were defective;
- (c) The Defendants failed to warn the plaintiffs and the Class of the defects in the Furnaces;
- (d) The Defendants continued to sell the defective Furnaces although they were aware of the corrosion problems with the PPL-laminated secondary heat exchangers since 1985;
- (e) The Defendants failed to adequately design, manufacture and/or test the Furnaces to ensure the safety of the Furnaces prior to selling or distributing them;
- (f) The Defendants failed to properly train their employees responsible for the design, testing, assembly and manufacturing of the Furnaces;

- (g) The Defendants failed to ensure that their employees complied with the appropriate industry-wide quality system standards applicable to the manufacturing process;
- (h) The Defendants failed to properly supervise their employees and any subsidiary corporation;
- (i) The Defendants distributed and sold the Furnaces without conducting adequate testing to ensure they were defect-free;
- (j) The Defendants failed to take any steps to cure the defects in the Furnaces after they knew or ought to have known of the defects and risks associated with the use of the Furnaces and further concealed such defects to the Class Members;
- (k) The Defendants failed to ensure that non-corrosive engineering metals were used to manufacture the secondary heat exchangers in the Furnaces; and
- (l) The Defendants applied a PPL to protect the corrosion-vulnerable material when they knew or should have known that PPL was ineffective in preventing corrosion.

22. As a result of the Defendants' breaches, the plaintiffs and the Class Members have suffered damages as discussed below.

BREACH OF CONTRACT

23. The plaintiffs further claim that, ~~on information and belief~~, the Defendants expressly and impliedly warranted the Furnaces as being free from manufacturing defects for at least one full year from the date of installation. The Defendants, in most instances, also provided an extended 19-year limited warranty on the heat exchanger from the 2nd to the 20th years.

24. The Defendants breached their warranty to the plaintiffs and other Class Members in that the Furnaces were defective from the day they were installed and failed well in advance of the applicable warranty periods forcing the Class Members to incur significant out of pocket expenses in relation to the repair and/or replacement of the Furnaces.

DAMAGES

25. As a direct result of the negligence and breach of contract described above including the failure of the secondary heat exchangers and other defects, the plaintiffs and the Class have incurred and will continue to incur expenses related to the diagnosis, repair, and replacement of the Furnaces and/or secondary heat exchangers.

26. The plaintiffs plead that they and the Class would not have purchased the Furnaces, or would have paid less for the Furnaces had they known the Furnaces were defective.

27. As a result of the Defendants' conduct described above, Robert, Suzanne, Shawn, Shaun, Scheurich, and the Class have suffered damage and losses, including but not limited to:

- a) the cost of inspections and repairs caused by the defective heat exchangers not covered by the warranty;
- b) the cost of replacing their Furnaces and/or secondary heat exchangers prematurely;
- c) the risk of serious injury as a result of not having an operational Furnace to heat their homes; and
- d) out of pocket expenses incurred by the plaintiffs and the Class, including hotel expenses from not being able to live in their homes.

PUNITIVE DAMAGES

28. The plaintiffs plead that the Defendants' conduct in the design, development, testing, manufacturing, licensing, assembly, distribution, marketing and sale of the Furnaces as pleaded above was high-handed, reckless, wanton, deliberate, callous, and exhibits an intentional disregard of the Class Members' rights and safety. Furthermore, the Defendants were indifferent to the consequences of their actions and were motivated by economic considerations such as the maintaining of revenue and market share. Such conduct renders the Defendants liable to pay punitive damages.

WAIVER OF TORT

29. As a result of the Defendants' conduct described herein, the plaintiffs reserve the right to elect at the trial of the common issues to waive the tort of negligence and to have damages assessed in an amount equal to the gross revenues earned by the Defendants, or the net income received by the Defendants, or a percent of the sale of the Furnaces.

LEGISLATION

30. The plaintiffs plead and rely upon the *Act*, the *Courts of Justice Act*, the *Negligence Act*, R.S.O. 1990, c.N-1, all as amended.

SERVIS EX JURIS

31. The Plaintiff relies on the facts and allegations set out above, and upon subsections 17.02(a)(g) and (h) of the *Rules of Civil Procedure* in support of service of the statement of claim upon the defendants Carrier and UTC outside of Ontario.

32. The plaintiffs plead that this action has a real and substantial connection with Ontario because, among other things:

- (a) the Defendants carry on business in Ontario, with the Carrier Division head office located in Mississauga, Ontario;
- (b) the Defendants distribute and sell their products in Ontario and derive substantial revenue from such sales;
- (c) Robert's, Suzanne's, Scheurich's and Shawn's Shaun's damages and those of the other Class Members resident in Ontario were sustained in Ontario; and
- (d) the Defendants advertised their products, including the Furnaces in Ontario

THE PLACE OF TRIAL

33. The plaintiffs propose that this action be tried at the City of Toronto, in the Province of Ontario.

Date: *October 10, 2006*

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Solicitors for the Plaintiffs

DONNELLY, *et al.* v. UNITED TECHNOLOGIES CORPORATION, *et al*
(Plaintiff) (Defendants)

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT
TORONTO

AMENDED STATEMENT OF CLAIM

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