

IN THE CHANCERY COURT OF _____ COUNTY, _____				
NAME OF PLAINTIFF)			
)			
)			
V.)		NO.	
)			
)			
NAME OF DEFENDANT)			
)			

COMPLAINT

COMES NOW the Plaintiff _____, ("_____") by and through his attorney, and makes this his Complaint to recover damages against the Defendants, and in support thereof would show unto the Court the following:

1. The Plaintiff, _____, is an adult resident citizen of the State of _____ and was residing in _____ County when the losses alleged herein occurred.

2. The Defendant, _____, ("_____"), is a corporation duly organized and existing under the laws of the State of _____, and does business within the State of _____, and whose registered agent for service of process.

3. The Defendant, _____ ("_____"), is a corporation duly organized and existing under the laws of the State of _____ and domiciled in _____ County, _____ and whose registered agent for service of process is _____.

4. At all times herein material, Defendant _____ was engaged in the design, manufacture, sale and distribution of industrial woodworking machinery, those machines being ultimately sold in the State of _____, among other states.

5. At all times herein material, Defendant _____ was engaged in the retail sale of industrial woodworking machinery, including the sale of industrial woodworking machinery that were designed, manufactured and sold by Defendant _____ including the _____ hereinafter described and purchased by the Plaintiff.

6. Defendant _____ designed, manufactured, sold and placed into the stream of commerce a Delta Model No. _____ two-speed heavy duty wood shaper, bearing identification No. _____ equipped with a Safe Guard II shaper spindle guard (hereafter collectively referred to as the "_____"). This Delta Shaper

was purchased by the Plaintiff from Defendant _____ on _____, 20____.

7. On _____, 20____, Plaintiff was operating the Delta Shaper in the County of _____, State of _____.

8. While operating the Delta Shaper, Plaintiff was shaping a piece of 9 x 12 fiber core wood material through the machine, at which time Plaintiff's left hand came in contact with the spindle guard (Safe Guard II) and cutterhead causing Plaintiff to suffer the damages and injuries as hereafter described.

9. At the time and as a result of the aforesaid incident, Plaintiff sustained the following serious, painful, disabling injuries and conditions, some or all of which are permanent in nature:

(a) mangling injury to left hand, resulting in amputation of the fourth and fifth fingers on that hand;

(b) open joint injury to left third finger requiring the joint to be pinned;

(c) skin graft to left third finger from amputated part;

(d) lacerations and other disfiguring characteristics;

(e) severe embarrassment and great emotional disturbance and attendant nervous disorders;

(f) was made sick, sore, lame and disabled and was obliged to endure great pain and suffering of body and anguish of mind;

(g) has sustained a loss of energy, strength, and ability to enjoy life; and

(h) was prevented from attending his usual occupations and will thereby be prevented from attending to his usual occupations for a period or periods in the future.

10. The injuries suffered by Plaintiff in the accident are of a permanent nature and have caused him severe injuries resulting in pain and suffering, medical expenses, lost wages and a lost earning capacity, all of which will continue in the future for the rest of his life.

11. The acts and/or omissions of the Defendants were the proximate cause of the aforesaid incident complained of and the resulting injuries to Plaintiff, and the acts and/or omissions of Defendants constitute the combined, concurrent and joint negligence, breach of express warranty, breach of implied warranty of fitness, breach of implied warranty of merchantability, and strict liability for which Defendants are jointly and/or severally liable to Plaintiff.

COUNT ONE STRICT LIABILITY

12. All of the averments contained in paragraphs 1 through 11 are incorporated herein be reference as if fully set forth below.

13. Immediately prior to the time Plaintiff sustained the injuries set forth above, Plaintiff had removed the Delta Shaper from the sealed packaging furnished by _____. Plaintiff is informed and believes that the Delta Shaper was then in the condition existing when _____ sold and/or delivered the product to _____. Plaintiff is informed and believes that the same condition of the Delta Shaper existed when _____ sold and delivered the product to Plaintiff, and the condition of the product remained substantially unchanged when Plaintiff removed it from the packaging and

sustained injuries while using it.

14. The Delta Shaper was defective in its design, workmanship, construction, manufacture, marketing and testing and investigation of component parts, and as a result was defective, unsafe and inadequate for the use for which it was made, intended to be used and was being used.

15. The Delta Shaper, because of its defective design, workmanship, construction, manufacture, marketing and testing and investigation of component parts, was inherently dangerous and capable of causing serious bodily injury when wood was being fed into it for shaping and, as a result, was unreasonably dangerous to potential purchasers and users and the Plaintiff.

16. The Delta Shaper was additionally defective in design, workmanship, manufacture, production, marketing and testing and investigation of component parts, and inherently dangerous in that the exposed spindle guard (Safe Guard II) was so defectively designed and manufactured as to offer an accident hazard in itself in that it rotated at the same or approximate same speed as the cutterhead and failed to adequately protect the operator's hand from injury from contact with the cutterhead, the spindle guard itself, or both. The Delta Shaper was so defectively designed and manufactured in that the point of operation of the machine exposed the operator to unreasonable risks of injury. As a result, the Delta Shaper was unreasonably dangerous to potential purchasers and users and to the Plaintiff.

17. The Defendants knew, or should have known, that the Delta Shaper would be used in the manner complained of, and, nevertheless, permitted the purchase of said machine by purchasers and in particularly the Plaintiff for such use without adequate point of operation guarding and without adequate safety warnings and/or safety instructions.

18. The Delta Shaper, were it properly designed, manufactured and marketed would not have been inherently dangerous but, because of its defective design, manufacturing and marketing, it was unreasonably dangerous to Plaintiff who was unaware of its dangers, hazards, and peril.

19. As a direct and proximate result of the defects in Defendants' Delta Shaper and of the failure of Defendants to give Plaintiff adequate safety warnings of those defects, Plaintiff sustained serious and permanent bodily injuries as set forth above.

COUNT TWO BREACH OF EXPRESS WARRANTY

20. All of the averments contained in paragraphs 1 through 19 are incorporated herein be reference as if fully set forth below.

21. Plaintiff avers that Defendants are jointly and/or severally liable for the injuries to Plaintiff and for the resulting damages in that the Delta Shaper was defectively designed and manufactured and in a defective condition when sold to the Plaintiff thereby violating the express warranties which were attached to and accompanied this product.

22. Before Plaintiff purchased the Delta Shaper, Defendants described the product to Plaintiff as being free from defects in material and workmanship. Defendants expressly warranted that the spindle guard (Safe Guard II) was a special safety guard for wood shapers that would provide

adequate point of operation guarding to protect the operator's hands from coming in contact with the revolving cutterhead, spindle guard, or both. To the Plaintiff, this description meant that the Delta Shaper with the spindle guard (Safe Guard II) installed could be safely used as warranted. This description was made a part of the basis of the bargain and created an express warranty that the product would conform to description and be safe for use in the manner it was being used at the time of the accident and occurrence described in this complaint.

23. In purchasing the Delta Shaper, Plaintiff relied upon the skill and judgment of Defendants and upon Defendants express warranty as specified above.

24. As a result of the defects in material and workmanship described above, Defendants breached their express warranty that the Delta Shaper was in a marketable condition, safe for use by ultimate users and consumers and in particular the Plaintiff.

25. As a direct and proximate result of the breach of express warranty by Defendants, and each of them, Plaintiff sustained serious and permanent bodily injuries as set forth above.

COUNT THREE BREACH OF IMPLIED WARRANTY OF FITNESS

26. All of the averments contained in paragraphs 1 through 25 are incorporated herein be reference as if fully set forth below.

27. Defendants impliedly warranted that the Delta Shaper when used with the spindle guard (Safe Guard II) installed was fit for the purpose for which it was designed, that it was a safe and suitable machine to be used in shaping wood, that the product was equipped with safety features that would protect the operator's hands at the point of operation from the revolving cutterhead, the spindle guard, or both, and that said product was fit and suitable for that purpose. In reliance upon Defendants skill and judgment and the implied warranties of fitness for that purpose, Plaintiff purchased the Delta Shaper as hereinabove described.

28. The Delta Shaper was, in fact, not fit for use for its intended purpose and Defendants breached the implied warranties set forth above.

29. As a direct and proximate result of that breach of warranty, Plaintiff sustained serious and permanent bodily injuries as set forth above.

30. Defendants' actions constitute a breach of the implied warranty.

COUNT FOUR IMPLIED WARRANTY OF MERCHANTABILITY

31. All of the averments contained in paragraphs 1 through 30 are incorporated herein be reference as if fully set forth below.

32. Defendants impliedly warranted that the above mentioned Delta Shaper was of merchantable quality, fit, safe, and in proper condition for the ordinary use for which Delta Shapers are designed and used.

33. In reliance upon said warranty of merchantability, Plaintiff purchased the Delta Shaper as hereinabove described.

34. The Delta Shaper was not of merchantable quality and was unfit, unsafe, and unsuitable for the purpose for which it was intended.

35. As a direct and proximate result of that breach of warranty, Plaintiff sustained serious and permanent bodily injuries as set forth above.

36. Defendants' actions constitute a breach of the implied warranty set.

COUNT FIVE NEGLIGENCE

37. All of the averments contained in paragraphs 1 through 36 are incorporated herein by reference as if fully set forth below.

38. Defendants were careless and negligent in designing, manufacturing, testing, selling and placing into the stream of commerce, the Delta Shaper described in this complaint in such defective condition, and in failing to warn potential purchasers and users of the inherently dangerous characteristics of that product.

39. The direct negligent acts of the Defendant was the proximate result of Plaintiff sustaining serious and permanent bodily injuries as set forth above.

COUNT SIX PUNITIVE DAMAGES

40. All of the averments contained in paragraphs 1 through 39 are incorporated herein by reference as if fully set forth below.

41. Defendants had actual knowledge that the purchasers and users of the Delta Shaper as described in this complaint and in particular the Plaintiff would be operating those machines in a manner as described in this complaint, and that that operation would create a positive and substantial risk of serious bodily harm for people in the same or similar position as Plaintiff.

42. Even though Defendants knew that for persons in the position of Plaintiff the likelihood of harm was great, Defendants failed to provide adequate safeguards, failed to warn or adequately warn of the inherent dangers, and did not warn Plaintiff of the inability of the spindle guard (Safe Guard II) to provide adequate point of operation guarding to prevent the operator hand from coming in contact with the revolving cutterhead and/or revolving spindle guard (Safe Guard II) during the normal operation of the Delta Shaper as purchased by the Plaintiff.

43. The conduct on the part of Defendants was reckless and wanton in that the likelihood of harm was highly probable and that the resultant foreseeable harm could be devastating. Due to this wanton and reckless conduct of Defendants, Plaintiff is entitled to punitive damages.

WHEREFORE, Plaintiff demands judgment against Defendants on Counts One, Two, Three, Four and Five for actual damages in an amount to be determined at the trial of this cause and judgment against Defendants on Count Six for punitive damages in an amount to be determined at the trial of this cause plus interest and costs.

PLAINTIFF REQUESTS TRIAL BY JURY.

Respectfully submitted,
