

**IN THE CIRCUIT COURT OF PHILLIPS COUNTY ARKANSAS  
CIVIL DIVISION**

MICHAEL R. SNYDER,

Plaintiff,

vs.

ELAINE PETROLEUM DISTRIBUTOR,  
INC., ROBERT BOSCH, LLC, ACCU  
INDUSTRIES a/k/a ACCU TURN, and  
QINGDAO XIYINGMEN DOUBLE  
CAMEL TYRE CO., LTD.

Defendants.

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Cause No. 54-CV-13-204

**FILED**  
At 10:50 O'Clock 9 M  
SEP 12 2013

LYNN STILLWELL  
PHILLIPS COUNTY CIRCUIT CLERK  
By  D.C.

**PLAINTIFF'S FIRST AMENDED COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW MICHAEL R. SNYDER (hereinafter called "Plaintiff"), complaining of ELAINE PETROLEUM DISTRIBUTOR, INC. (hereinafter referred to as Defendant "ELAINE PETROLEUM"), ROBERT BOSCH, LLC (hereinafter referred to as Defendant "BOSCH"), ACCU INDUSTRIES a/k/a ACCU TURN, (hereinafter referred to as Defendant "ACCU"), and QINGDAO XIYINGMEN DOUBLE CAMEL TYRE CO., LTD (hereinafter referred to as Defendant "QINGDAO") and for a cause of action would show:

**I. JURISDICTION AND VENUE**

1. The Circuit Court of Phillips County, Arkansas, has jurisdiction of this case as Plaintiff is seeking damages against the Defendants in this civil proceeding for personal injury thereby giving this court jurisdiction under Ark. Const. Art. 7, Section 11 and Ark. Code Ann. Section 16- 13-201.

2. The venue for this action is in Phillips County, Arkansas, pursuant to the provisions

of Ark. Code Ann. Section 16-60-1 12 and the Civil Justice Reform Act of 2003, found at Ark. Code Ann. Section 16-55-213.

## II. PARTIES

3. Plaintiff MICHAEL R. SNYDER is a citizen and resident of Phillips County, Arkansas, residing at 831 Airport Rd., West Helena, AR 72390.

4. Defendant ELAINE PETROLEUM DISTRIBUTOR, INC. is an Arkansas Corporation doing business in Phillips County, Arkansas and may be served with process by serving its registered agent DAVID GRIFFIN or any other registered agent therein at 34913 HWY 44, ELAINE, AR 72333, or where ever may be found.

5. Defendant ROBERT BOSCH, LLC. is a Delaware Corporation which has committed acts in this state sufficient to give Plaintiff a cause of action against it pursuant to the Arkansas Long Arm Statute, Ark. Code Ann. § 16-58-120 (West), and as such is deemed to have appointed the Secretary of State as his or her agent for service of process in any suit arising out of the acts committed by said resident or nonresident. Service of process may be had in accordance with the Arkansas Long Arm Statute by serving the Arkansas Secretary of State, Main Offices, State Capitol, RM 256, Little Rock, AR 72201, who shall then forward a copy of this petition upon Defendant by serving its President Mike Mansueti and/or Vice-President at 2800 S. 25<sup>th</sup> Ave., Broadview, IL 60155-4594. It is believed, and therefore alleged, that the tire changer at issue herein was produced by ACCU INDUSTRIES a/k/a ACCU TURN, a subsidiary of ROBERT BOSCH, LLC. Therefore, ROBERT BOSCH, LLC. is liable to the Plaintiffs under the facts and circumstances of this case due to the fact that ROBERT BOSCH, LLC. is the parent company of ACCU INDUSTRIES a/k/a ACCU TURN and the parent and/or subsidiary designed, manufactured, marketed, distributed and sold the

product, in the stream of commerce in the United States, so that it was utilized by the Plaintiff, a resident of Phillips County, Arkansas. This Court has jurisdiction over the parent and the subsidiary as this product was sold and distributed in the United States and utilized by Plaintiff in Phillips County, Arkansas, at the time of the incident described herein. Defendant BOSCH placed a substantial number of like tire changers in the stream of commerce in the State of Arkansas. Defendant BOSCH derives substantial income and benefit from Defendant BOSCH's placement of tire changers of this nature in the stream of commerce within the State of Arkansas.

6. Defendant ACCU INDUSTRIES a/k/a ACCU TURN is a Virginia Corporation which has committed acts in this state sufficient to give Plaintiff a cause of action against it pursuant to the Arkansas Long Arm Statute, Ark. Code Ann. § 16-58-120 (West), and as such is deemed to have appointed the Secretary of State as his or her agent for service of process in any suit arising out of the acts committed by said resident or nonresident. Service of process may be had in accordance with the Arkansas Long Arm Statute by serving the Arkansas Secretary of State, Main Offices, State Capitol, RM 256, Little Rock, AR 72201, who shall then forward a copy of this petition upon Defendant by serving its President and/or Vice-President at 11126 Air Park Road, Ashland, Virginia, 23005. ACCU INDUSTRIES a/k/a ACCU TURN is a subsidiary of ROBERT BOSCH, LLC, and the parent and/or subsidiary designed, manufactured, marketed, distributed and sold the product, in the stream of commerce in the United States, so that it was utilized by the Plaintiff, a resident of Phillips County, Arkansas. This Court has jurisdiction over the parent and the subsidiary as this product was sold and distributed in the United States and utilized by Plaintiff in Phillips County, Arkansas, at the time of the incident described herein. Defendant ACCU placed a substantial number of like tire changers in the stream of commerce in the State of Arkansas. Defendant ACCU

derives substantial income and benefit from Defendant ACCU's placement of tire changers of this nature in the stream of commerce within the State of Arkansas.

7. Defendant QINGDAO XIYINGMEN DOUBLE CAMEL TYRE CO., LTD., is a Chinese corporation which has committed acts in this state sufficient to give Plaintiff a cause of action against it and may be served pursuant to Article 5 of the Hague Convention at No. 177 Xiucheng Road, Chengyang District, Qingdao, 266109. Defendant QINGDAO manufactured, distributed and sold the tire, in the stream of commerce in the United States, so that it was utilized by the Plaintiff, a resident of Phillips County, Arkansas. This Court has jurisdiction over Defendant because it sold and distributed this product in the United States and which was utilized by Plaintiff in Phillips County, Arkansas, at the time of the incident described herein. Defendant QINGDAO placed a substantial number of like tires in the stream of commerce in the United States of America, in particular in the State of Arkansas. Defendant QINGDAO derives substantial income and benefit from Defendant QINGDAO's placement of tires of this nature in the stream of commerce within the State of Arkansas.

### **III. FACTUAL BACKGROUND**

8. On or about July 25<sup>th</sup>, 2011, a customer brought in two Pac Star DC 902 7.50-16 tires to Snyder Automotive, Plaintiff's place of business, for mounting onto new tire rims. The customer purchased the tires new from Defendant ELAINE. At the time of the incident, Plaintiff was using an ACCU-Turn tire changer, Model ACCU 3500, Serial No. 04931467, to mount the tires. As Plaintiff was attempting to mount the tire onto the rim with the ACCU-TURN tire changer, the tire exploded and the tire was propelled off of the tire changer causing serious injury to Plaintiff.

Plaintiff injured his head, neck, back and other parts of his body necessitating flight by helicopter for medical treatment and attention.

9. The tires were designed, manufactured, and marketed by Defendant QINGDAO and sold and placed into the stream of commerce by Defendant ELAINE.

10. The tire changer was designed, manufactured, and marketed by Defendants BOSCH and ACCU.

11. The injuries and damages complained of by Plaintiff were caused by a defect in the design, manufacturing, and marketing of the subject tire and subject tire changer, and negligence of the defendants herein.

#### COUNT ONE-THE TIRE

##### STRICT LIABILITY

12. As a cause of action and ground for relief, Plaintiff alleges the factual matters described in Paragraphs Nos. 1 through 11, inclusive, of the Complaint as a part of this count.

13. Plaintiff contends that Defendants ELAINE and QINGDAO were engaged in the business of designing, manufacturing, marketing, assembling, and/or selling of tires. The tire in question was supplied by Defendants in a defective condition which rendered it unreasonably dangerous and that defective condition was a proximate cause of the Plaintiff's injuries and damages. Plaintiff contends the Defendants are absolutely or strictly liable to the Plaintiff under Arkansas Law in these circumstances.

## NEGLIGENCE

14. The injuries and damages complained of by the Plaintiff were caused by the defective tire, and Defendants ELAINE and QINGDAO were guilty of negligence, which negligence was a proximate cause of the alleged injuries and damages sustained by the Plaintiff, which negligence consists of, but is not limited to, the following:

- A. Negligent design.
- B. Negligent manufacture.
- C. Failing to warn.
- D. Using a weftless design bead without disclosing the risk of bead breakage.
- E. Using a bead design that is inadequate for the size tire in question.
- F. Using a bead that fails under stress of mounting.
- G. Failing to have adequate quality control
- H. Delivering tires when Defendants knew of the high propensity for defects.
- I. Failing to adopt adequate quality assurance for tires.
- J. Selling defective tires and using the customers as guinea pigs to find the defect.
- K. Failing to notify consumers of the need for an inflation cage.
- L. Failing to provide guard and safety devices to prevent injury.
- M. Providing inadequate and unsafe equipment.
- N. Representing the maximum p.s.i. tire pressure was 35 when the tire bead could fail on mounting at less than 35 p.s.i.
- O. Failure to recall the tire.
- P. Failure to provide adequate warning.
- Q. Negligent inspection of the tire.
- R. Failure to adequately test the tire.
- S. Failure to safely manufacture the tire.
- T. Advertising and representing the tire was safe when it was not.
- U. Failing to provide instructions on how to safely inflate the tire.
- V. Failing to develop safe adequate procedures to inflate the tire.
- W. Failing to train its representatives and customers on the hazards and procedures involved in inflating the tire.

- X. Failure to advise potential buyers and users of the hazards involved in the use of the tire which would render the tire unsafe.
- Y. Failure to use due care in testing and inspecting the tire to determine its function ability for the purposes intended.
- Z. Failure to supply safety equipment or devices to assure the tire would operate safely.
- AA. Failure to keep reasonably informed and advised of available public and private reports, studies, statistics and other information concerning the type, nature and frequency of accidents involving this type of tire and the number, nature and severity of injuries and death resulting from same.
- BB. If Defendants claim to have such knowledge and information aforesaid, then the failure to act as a reasonably prudent manufacturer would act when so informed, to so design, market, manufacture and use such tire which would eliminate or reduce the frequency or severity of such accidents and the injuries and death resulting from same.
- CC. Failure to take notice of, heed and comply with all federal, state or other laws and regulations enacted for the protection of the public.
- EE. Failing to recall the tires as required by the Federal Motor Vehicle Safety Standards Act.
- FF. Other acts of negligence.

### COUNT TWO-THE TIRE CHANGER

#### STRICT LIABILITY

15. As a cause of action and ground for relief, Plaintiff alleges the factual matters described in Paragraphs Nos. 1 through 14, inclusive, of the Complaint as a part of this count.

16. Alternatively, and without waiving the foregoing, Plaintiff contends that Defendants BOSCH and ACCU were engaged in the business of designing, manufacturing, marketing, assembling, and selling tire changers. The tire changer in question was supplied by Defendants in a defective condition which rendered it unreasonably dangerous and that the defective condition was a proximate cause of the Plaintiff's injuries and damages. Plaintiff contends the Defendants are

absolutely or strictly liable to the Plaintiff under Arkansas Law in these circumstances.

NEGLIGENCE

17. The injuries and damages complained of by the Plaintiff were caused by the defective tire changer, and Defendants BOSCH and ACCU were guilty of negligence, which negligence was a proximate cause of the alleged injuries and damages sustained by the Plaintiff, which negligence consists of, but is not limited to, the following:

- A. Negligent design.
- B. Negligent manufacture.
- C. Failing to warn.
- D. Failing to design an inflation cage for the tire changer.
- E. Failing to notify consumers of the need for an inflation cage.
- F. Designing a tire changer that would act as a launching pad for an exploding tire.
- G. Failing to have adequate quality control
- H. Failing to provide guards and safety devices to prevent injury.
- I. Providing inadequate and unsafe equipment.
- J. Failure to recall the tire changer.
- K. Failure to provide adequate warnings.
- L. Negligent inspection of the tire changer.
- M. Failure to adequately test the tire changer.
- N. Failure to safely manufacture the tire changer.
- O. Advertising and representing the tire changer was safe when it was not.
- P. Failing to provide instructions on how to safely mount a tire.
- Q. Failing to develop safe adequate procedures to mount a tire.
- R. Failing to train its representatives and customers on the hazards and procedures involved in inflating a tire.
- S. Failure to advise potential buyers and users of the hazards involved in the use of the tire changer which would render the tire changer unsafe.
- T. Failure to use due care in testing and inspecting the tire changer to determine its function ability for the purposes intended.



- U. Failure to supply safety equipment or devices to assure the tire changer would operate safely.
- V. Failure to keep reasonably informed and advised of available public and private reports, studies, statistics and other information concerning the type, nature and frequency of accidents involving this type of tire changer and the number, nature and severity of injuries and death resulting from same.
- W. If Defendants claim to have such knowledge and information aforesaid, then the failure to act as a reasonably prudent manufacturer would act when so informed, to so design, market, manufacture and use such tire which would eliminate or reduce the frequency or severity of such accidents and the injuries and death resulting from same.
- X. Failure to take notice of, heed and comply with all federal, state or other laws and regulations enacted for the protection of the public.
- Y. Other acts of negligence.

### COUNT THREE

18. As a cause of action and ground for relief, Plaintiff alleges the factual matters described in Paragraphs Nos. 1 through 17, inclusive, of the Complaint as a part of this count.

19. Alternatively, and without waiving the foregoing, Plaintiff contends that the Defendants impliedly warranted that the subject tire and tire changer were merchantable at the time those products were sold. Plaintiff contends that there was a breach of the implied warranty of merchantability. Neither the subject tire nor the tire changer were fit for the particular purposes for which they were used, the tire and tire changer were not adequately constructed, and they did not conform to the promises and affirmations of the Defendants.

20. Plaintiff contends the Defendants breached the warranty of merchantability and that Plaintiff sustained injuries and damages as a result of the tire and tire changer placed into the stream of commerce by Defendants, which were not merchantable and the unmerchantable condition was a proximate cause of the injuries and damages sustained by the Plaintiff.

21. Plaintiff was an individual whom Defendants would reasonably expect to use, consume, and be affected by the subject tire and tire changer.

22. Sufficient notice has been given to Defendants, and Defendants have been reasonably and timely notified of their breach of warranty in order to comply with the law in the State of Arkansas.

#### COUNT FOUR

23. As a cause of action and ground for relief, Plaintiff alleges the factual matters described in Paragraphs Nos. 1 through 23, inclusive, of the Complaint as a part of this count.

24. Plaintiff claims damages from the Defendants on the ground that neither the subject tire nor the tire changer were fit for the particular purpose for which they were intended. Defendants, at the time of placing the tire and tire changer in the stream of commerce, at the time of the manufacturing of the tire and tire changer, and when the tire and tire changer was sold, had reason to know the particular purpose for which the tire and the tire changer were required.

25. Defendants knew the Plaintiff and other persons reasonably expected by Defendants to use the tire and tire changer, were relying upon the Defendants' skill and judgment to select and furnish a suitable tire and tire changer.

26. Neither the tire nor the tire changer were fit for the particular purpose for which they were required and this unfitness was a proximate cause of Plaintiff's injuries and damages.

27. Plaintiff was an individual whom Defendants would reasonably have expected to use,

consume, and be affected by the subject tire and tire changer.

28. Sufficient notice has been given to Defendants, and Defendants have been reasonably and timely notified of their breach of warranty in order to comply with the law in the State of Arkansas.

#### COUNT FIVE

29. As a cause of action and ground for relief, Plaintiff alleges the factual matters described in Paragraphs Nos. 1 through 28, inclusive, of the Complaint as a part of this count.

30. Plaintiff claims damages from Defendants on the ground that the Defendants made and breached certain express warranties concerning the subject tire and tire changer.

31. Plaintiff contends express warranties were created by contract executed between the parties and/or through the literature and sale by Defendants, their agents, servants, and employees to Plaintiff and/or his customers. With respect to the subject tire, Plaintiff was a permissive user of the purchaser, and, therefore, he is entitled to rely on the express warranties under the circumstances.

32. The tire and tire changer, utilized by Plaintiff at the time of his incident, did not conform to the express warranties created. The failure of the tire and the tire changer to conform to the express warranties was a proximate cause of the Plaintiff's injuries and damages.

33. Plaintiff was an individual whom Defendants might reasonably expect to use, consume, and be affected by the subject tire and tire changer.

34. Sufficient notice has been given to Defendants, and Defendants have been reasonably and timely notified of their breach of warranty in order to comply with the law in the State of

Arkansas.

#### **IV. DAMAGES**

35. As a direct result of the occurrence, Plaintiff suffered bodily injuries and damages, which injuries and damages consist of, but are not limited to the following:

- a. Past and future medical expense.
- b. Past and future pain and suffering.
- c. Physical impairment.
- d. Past and future mental anguish.
- e. Loss of earnings and earning capacity.
- f. Disfigurement.
- g. Hedonic damages.
- h. Other damages that will be more particularly described during the course of the litigation.

36. Plaintiff did not cause, contribute to the cause, or fail to mitigate his damages in any fashion.

37. For the reasons stated above the Plaintiff seeks a prayer for punitive damages against the Defendants.

38. Plaintiff seeks damages against Defendants for a sum in excess of \$75,000.00 or the minimum amount required for federal court jurisdiction.

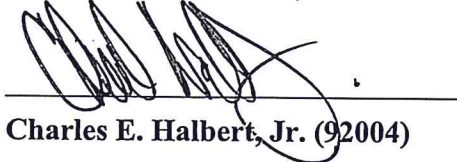
#### **V. JURY DEMAND**

39. Plaintiff, pursuant to Rule 38 of the Arkansas Rules of Civil Procedure, demand a jury trial on all factual issues in this case.

**WHEREFORE, PREMISES CONSIDERED**, Plaintiff requests that the Defendants be cited to appear and answer, and that upon final trial, Plaintiff have judgment against Defendants for all relief requested, for pre-judgment interest, post judgment interest, for costs of this suit, punitive damages and for such other and further relief, general and special, at law or in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

**CHARLES E. HALBERT, JR.**

A handwritten signature in black ink, appearing to read 'Charles E. Halbert, Jr.', is written over a horizontal line.

**Charles E. Halbert, Jr. (92004)**

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