

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

JAMES POLSON and SUSAN POLSON,)

Plaintiffs,)

vs.)

3M COMPANY)

Serve Registered Agent:
CSC-LAWYERS INC. SERVICE CO.
221 BOLIVAR ST
JEFFERSON CITY, MO 65101

and)

SCOTT TECHNOLOGIES, INC.
D/B/A/ 3M SCOTT FIRE & SAFETY

Serve Registered Agent:
CSC-LAWYERS INC. SERVICE CO.
221 BOLIVAR ST
JEFFERSON CITY, MO 65101

and)

LEO M. ELLEBRACHT CO.

Serve Agent:
104 MULLACH COURT
SUITE 1028
WENTZVILLE MO 63385

Defendants.)

PETITION

Come now Plaintiffs James Polson and Susan Polson and state as follows for their
Petition against Defendants 3M Company (3M), Scott Technologies, Inc. d/b/a 3M Scott Fire &
Safety (Scott), and Leo M. Ellebracht Co. (LME):

1. On January 13, 2022, Benjamin Polson (Polson), age 33, died tragically of smoke
inhalation while working as a firefighter for the St. Louis City Fire Department, when, as he

searched for victims in a house fire at 5791 Cote Brilliant Avenue, he became lost and trapped and, despite adequate time, could not be located or rescued before his death.

2. Polson's 3M Scott 5.5 Air Pak x3 Pro Self-Contained Breathing Apparatus (SCBA) and Personal Alert Safety System (PASS) device (the "subject equipment") – designed, manufactured, and sold by the Defendants – was defective, causing Polson to run out of oxygen and die from smoke inhalation, while the connected PASS device failed to properly alarm, so that Polson could not be promptly located and rescued.

3. At no point from the time Polson was lost until his body was eventually found, deceased, did anyone hear Polson's PASS device alarms. As a result, firefighters spent precious time searching for Polson far from his actual location, including on the first floor and even in the basement of the structure. Sadly, Polson was on the second floor, not far from the top of the stairs originating at the front door of the home, where he could have been easily located and quickly rescued if his PASS alarms had worked properly. Polson was eventually found, deceased, properly wearing the subject equipment, with no alarm sounding.

4. Defendants represented to users that the subject equipment provided a breathable atmosphere and emergency protection to firefighters, like Polson, while fighting fires in extreme conditions, and Defendants knew that St. Louis City firefighters, in performing their jobs to protect lives and property, would be depending upon the proper design and functioning of the equipment for their survival, or as 3M Scott advertises: the products are "forged for the fight" to provide "performance to protect the family of firefighters who expect the best in the most demanding conditions".

5. Defendants 3M and Scott have been sued for, and repeatedly put on notice of, the defective and unsafe condition of their SCBA/PASS equipment, including in *Dryer v. Scott*

Technologies, Madison County Court, New York (\$10.6 million dollar personal injury verdict) (see also *Dryer v. Musacchio*, 117 A.D.3d 1115, 1116 (App. Div. 3rd Dept.)); *Estate of Joyce Craig v. Scott Health and Safety, et al.*, Philadelphia County Court of Common Pleas, Pennsylvania (2016); *Deem et al. v. 3M Company et al.*, District Court of Bexar County, Texas, (2019); *Figuroa et al. v. 3M Company, et al.*, Superior Court of the State of California, County of Los Angeles (2022).

6. Before this suit, Plaintiffs requested that Defendants share the information in their possession regarding the subject equipment – including electronic data downloaded from Polson’s equipment after his death – but Defendants ignored and refused Plaintiffs’ request.

7. At all times herein mentioned, Defendants 3M and Scott have been foreign corporations doing business, making contracts, and committing tortious conduct in the State of Missouri, including in marketing, selling, distributing, inspecting, and servicing the products and subject equipment at issue in this case.

8. At all times herein mentioned, Defendant LME has been a domestic corporation doing business, making contracts, and committing tortious conduct in the State of Missouri, including in marketing, selling, distributing, inspecting, and servicing the products and subject equipment at issue in this case.

9. Plaintiffs James Polson and Susan Polson are the natural parents of Polson, who died without a spouse or children, and they have standing to bring this action pursuant to R.S.Mo. 537.080. At all times mentioned, Plaintiffs have been residents of the State of Missouri.

COUNT I - STRICT LIABILITY OF 3M AND SCOTT – PRODUCT DEFECT

10. Defendants 3M and Scott sold the subject equipment in the course of Defendants’ business.

11. On January 13, 2022, the subject equipment was used in a manner reasonably anticipated.

12. On January 13, 2022, the subject equipment was then in a defective and unreasonably dangerous condition when put to reasonably anticipated use. The subject equipment:

- a. lacked necessary safety features to protect users;
- b. lacked adequate and safe component parts, masks, regulators, and hoses capable of withstanding use in foreseeable firefighting environments;
- c. had an inadequate PASS device, incapable of withstanding foreseeable firefighting environments or providing adequate, perceptible warnings/alarms;
- d. failed to provide users sufficient breathable air; and,
- e. failed to work in foreseeable heat, water, and/or firefighting conditions.

13. As a direct and proximate result of the defective and unreasonably dangerous condition of Defendant's subject equipment, Polson suffered extreme pain, fear, suffering, injury, and harm and was killed, resulting in pecuniary losses, funeral expenses, and the loss of Polson's services, consortium, companionship, comfort, instruction, guidance, counsel, training, and support, all caused and occasioned by aggravating circumstances.

WHEREFORE, Plaintiffs pray that judgment be entered in their favor and against Defendants 3M Company and Scott Technologies, Inc., on Count I of this Petition in a fair and reasonable amount in excess of Twenty-Five Thousand Dollars (\$25,000.00), plus costs, interest, and such other relief as the Court deems just and proper.

COUNT II - STRICT LIABILITY OF 3M AND SCOTT – FAILURE TO WARN

14. Defendants 3M and Scott sold the subject equipment in the course of Defendants' business.

15. On January 13, 2022, the subject equipment was used in a manner reasonably anticipated.

16. On January 13, 2022, the subject equipment was in a defective and unreasonably dangerous condition when put to reasonably anticipated use without knowledge of its characteristics.

17. Defendants 3M and Scott did not give an adequate warning of the danger of the subject equipment, including that the subject equipment, hoses, regulators, mask, and PASS device were not properly designed, manufactured, tested, inspected, labeled, analyzed, distributed, serviced, maintained, repaired, replaced, merchandised, advertised, promoted, marketed, and/or sold for the use and purpose for which they were intended and/or foreseeable firefighting conditions.

18. As a direct and proximate result of the of subject equipment being sold without an adequate warning, Polson suffered extreme pain, fear, suffering, injury, and harm and was killed, resulting in pecuniary losses, funeral expenses, and the loss of Polson's services, consortium, companionship, comfort, instruction, guidance, counsel, training, and support, all caused and occasioned by aggravating circumstances.

WHEREFORE, Plaintiffs pray that judgment be entered in their favor and against Defendants 3M Company and Scott Technologies, Inc., on Count II of this Petition in a fair and reasonable amount in excess of Twenty-Five Thousand Dollars (\$25,000.00), plus costs, interest, and such other relief as the Court deems just and proper.

COUNT III - NEGLIGENCE OF 3M AND SCOTT

19. Defendants 3M and Scott manufactured, designed, and sold the subject equipment in the course of Defendants' business.

20. Defendants 3M and Scott failed to use ordinary care to either manufacture or design the subject equipment to be reasonably safe and/or to adequately warn of the risk of harm in the use of the subject equipment in that Defendants:
- a. designed, manufactured, and sold its subject equipment in a defective and unreasonably dangerous condition, which was not reasonably fit, suitable or safe for its intended and represented purpose;
 - b. designed, manufactured, and sold a product which lacked necessary safety features to protect users;
 - c. designed, manufactured, and sold the subject equipment with defective component parts, masks, regulators, hoses, and PASS devices incapable of withstanding use in foreseeable firefighting environments;
 - d. designed, manufactured, and sold a product that failed to adhere to applicable safety regulations and standards;
 - e. failed to adequately inform and warn distributors, dealers, purchasers and users of the subject equipment's defective and inadequate design and manufacture;
 - f. designed, manufactured, and sold the subject equipment with a defective PASS device incapable of providing adequate warning;
 - g. designed, manufactured, and sold defective SCBA equipment which failed to provide adequate, breathable air;
 - h. failed to adequately and properly test the subject equipment before and/or after its design and/or manufacture;
 - i. failed to recall and/or retrofit the subject equipment with safety measures that would have prevented the risk of injury or death to its users;
 - j. failed to adequately or effectively notify users of the subject equipment that it was assembled, manufactured, sold, supplied and distributed with defective, unreasonably unsafe, and inadequate safety equipment, including after receiving repeated notice of same from other users and by way of repeated lawsuits;
 - k. failed to provide adequate inspections, maintenance and repairs of the subject equipment;
 - l. designed, manufactured, and sold the subject equipment which did not comply with applicable NFPA regulations; and,

m. designed, manufactured, and sold the subject equipment which did not comply with 29 CFR 1910.

21. As a direct and proximate result of such negligent acts and/or omissions, Polson suffered extreme pain, fear, suffering, injury, and harm and was killed, resulting in pecuniary losses, funeral expenses, and the loss of Polson's services, consortium, companionship, comfort, instruction, guidance, counsel, training, and support, all caused and occasioned by aggravating circumstances.

WHEREFORE, Plaintiffs pray that judgment be entered in their favor and against Defendant 3M Company on Count III of this Petition in a fair and reasonable amount in excess of Twenty-Five Thousand Dollars (\$25,000.00), plus costs, interest, and such other relief as the Court deems just and proper.

COUNT IV - NEGLIGENCE OF LME

22. Defendant LME investigated, marketed, advertised, recommended, inspected, selected, and sold the subject equipment in the course of Defendant's business.

23. Defendant LME purports to provide its clients, such as the St. Louis City Fire Department and its employees, expertise in the selection, purchase, inspection, and maintenance of SCBA/PASS equipment, including the "service [LME] provide[s] to departments 'after the sale'", and on the training for and use of such equipment "to ensure first responders are prepared to serve their community"

24. Prior to its marketing, advertising, recommending, selecting, and selling of the subject equipment, Defendant LME knew, could have known, and had reason to know that the subject equipment was dangerous for the use for which it was supplied.

25. Prior to its marketing, advertising, recommending, selecting, and selling of the subject equipment, Defendant LME knew, could have known, and had reason to know of the

lawsuits and claims identified in Paragraph 5 above.

26. Defendant LME was independently negligent and failed to use ordinary care with respect to the subject equipment in that Defendant LME:

- a. marketed, recommended, selected, and sold the subject equipment despite actual and/or constructive knowledge of its defective and unreasonably dangerous condition;
- b. marketed, recommended, selected, and sold the subject equipment without necessary safety features to protect users;
- c. marketed, recommended, selected, and sold the subject equipment despite actual and/or constructive knowledge of its defective component parts, masks, regulators, hoses, and PASS devices incapable of withstanding use in foreseeable firefighting environments;
- d. marketed, recommended, selected, and sold the subject equipment despite actual and/or constructive knowledge that it failed to adhere to applicable safety regulations and standards;
- e. failed to adequately inform and warn St. Louis City Fire Department, St. Louis City Firefighters (including Polson) and users of the subject equipment's defects and hazards;
- f. failed to adequately and properly inspect, test, and/or maintain the subject equipment despite agreeing to do so to ensure safety;
- g. failed to recall and/or retrofit the subject equipment with safety measures that would have prevented the risk of injury or death to its users despite actual and/or constructive knowledge of the subject equipment's defects;
- h. failed to ensure that the subject equipment complied with applicable NFPA regulations before marketing, recommending, selecting, and selling same; and,
- i. failed to ensure that the subject equipment complied with applicable 29 CFR 1910 before marketing, recommending, selecting, and selling same.

27. As a direct and proximate result of the of Defendant LME's independent negligent acts and/or omissions, Polson suffered extreme pain, fear, suffering, injury, and harm and was killed, resulting in pecuniary losses, funeral expenses, and the loss of Polson's services, consortium, companionship, comfort, instruction, guidance, counsel, training, and support, all

caused and occasioned by aggravating circumstances.

WHEREFORE, Plaintiffs pray that judgment be entered in their favor and against Defendant Leo M. Ellebracht Co. on Count IV of this Petition in a fair and reasonable amount in excess of Twenty-Five Thousand Dollars (\$25,000.00), plus costs, interest, and such other relief as the Court deems just and proper.

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