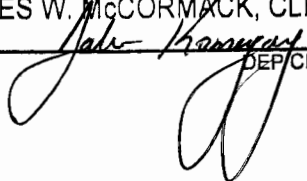


UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
JONESBORO DIVISION  
CIVIL ACTION NO.: 3:17-cv-00300-BSM

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS

NOV 17 2017

JAMES W. McCORMACK, CLERK  
By:  DEP. CLERK

LIBERTY MUTUAL FIRE INSURANCE )  
COMPANY, as subrogee of BlueOak )  
Arkansas LLC, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
RHI US Ltd., RHI AG and )  
RHI MAGNESITA NV, )  
 )  
Defendants. )  
\_\_\_\_\_ )

**AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, Liberty Mutual Fire Insurance Company (“Liberty Mutual”), by and through its counsel, pursuant to Fed. R. Civ. P. 15 (a) respectfully submits this Amended Complaint against defendants RHI US Ltd., RHI AG and RHI Magnesita NV and states as follows:

**THE PARTIES**

1. Plaintiff, Liberty Mutual Fire Insurance Company (“Liberty Mutual”) is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, with its principal place of business located at 175 Berkeley Street, Boston, Massachusetts. Liberty Mutual is duly authorized and licensed in the State of Arkansas to write property and casualty insurance coverage.

2. Plaintiff’s subrogor, BlueOak Arkansas LLC (hereinafter referred to as “BlueOak”) is a limited liability company organized and existing under the laws of the State of Arkansas. At

all times relevant hereto, BlueOak owned and operated an electronic waste recycling facility located at 1024 Ohlendorf Road, Osceola, Arkansas.

3. Defendant RHI US Ltd. is a duly organized and existing corporation under the laws of the State of Delaware, having its principal place of business at 3956 Virginia Avenue, Cincinnati, Ohio. At all times hereinafter mentioned, Defendant RHI US Ltd. was engaged in, *inter alia*, the design and manufacture of refractory materials used in high temperature furnaces. RHI US Ltd. may be served with process by serving its registered agent at: The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

4. Defendant RHI AG is a corporation organized and existing under the laws of Austria with its principal place of business at Velperweg 81, Arnhem, 6824 NH, Netherlands. At all times hereinafter mentioned, Defendant RHI AG was engaged in, *inter alia*, the design and manufacture of refractory materials used in high temperature furnaces.

5. Defendant RHI Magnesita NV is a corporation organized and existing under the laws of the Netherlands with its principal place of business at Velperweg 81, Arnhem, 6824 NH, Netherlands. Per merger between RHI AG and a Brazilian company known as Magnesita, RHI Magnesita NV became the sucesor in interest of RHI AG. At all times hereinafter mentioned, Defendant RHI Magnesita NV was engaged in, *inter alia*, the design and manufacture of refractory materials used in high temperature furnaces.

6. Defendants RHI US Ltd., RHI AG and RHI Magnesita NV are hereafter collectively referred to as “the RHI Defendants.”

**JURISDICTION AND VENUE**

7. Venue is proper in this Court in that a substantial part of the events and/or omissions giving rise to the claim occurred in Mississippi County, Arkansas and thus within this Court's jurisdiction.

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332, because the matter in controversy exceeds \$75,000.00, exclusive of interest and costs, and is between citizens of different states in that the citizenship of plaintiff is completely diverse from the citizenship of the defendants.

**FACTUAL ALLEGATIONS**

9. In or about March 2014, BlueOak retained Tetronics (International) Limited to provide a plasma recovery system to enable BlueOak to recycle and recover precious metals from e-waste.

10. Tetronics supplied, among other things, the plasma recovery system which included an electric plasma furnace ("the Furnace") and its power supply and feed system.

11. Tetronics subcontracted the design and manufacture of the refractory lining materials for the Furnace to the RHI Defendants.

12. During multiple unsuccessful startup attempts of the Furnace, a hole developed in the Furnace's hearth.

13. The RHI defendants were aware of the potential danger in performing multiple unsuccessful startups of the Furnace and the hole in the refractory material resulting from these unsuccessful startups.

14. On November 16, 2015, a leak developed in the Furnace hearth and molten metal broke out and spread from the Furnace. The molten metal breakout destroyed the furnace and

resulted in fire, heat, and smoke damage to the concrete slab foundation supporting the furnace, as well as damaging/destroying electrical and filtration equipment, hydraulic cylinders, hoses, wiring, and conduits associated with the plasma recovery system.

15. The molten metal breakout occurred due to deficiencies in the design and manufacture of the refractory material for the Furnace.

16. Plaintiff, in consideration of the payment of a premium by BlueOak, issued to BlueOak a policy of insurance which was in full force and effect at all relevant times herein.

17. As a direct and proximate result of the defective refractory material designed and manufactured by the RHI Defendants as described hereinafter, substantial damage resulted to BlueOak's real and personal property.

18. Plaintiff Liberty Mutual paid to BlueOak in an amount in excess of Ten Million Five Hundred Thousand Dollars (\$10,500,000.00) representing the damages caused by defendants' design and manufacture of defective refractory material. As a result of its payments, Plaintiff Liberty Mutual is subrogated to the rights of BlueOak to recover damages from responsible third persons to the extent of its payments and brings these claims as BlueOak's subrogee.

**COUNT I - NEGLIGENCE**  
**(PLAINTIFF v. THE RHI DEFENDANTS)**

19. Plaintiff hereby incorporates by reference paragraphs 1 through 18 as if fully stated herein.

20. The RHI Defendants owed a duty to the general public and specifically to the Plaintiff's subrogee to exercise reasonable care in the design, development, manufacture, and sale of their furnace refractory material including the furnace refractory material at issue in this lawsuit.

21. These defendants breached their duty and were negligent in their actions toward the Plaintiff's subrogee as follows:

- a) Failed to use due care in designing the refractory material to be installed in the Furnace to ensure that the refractory material was capable of withstanding the temperatures in the Furnace to which the refractory material would be exposed;
- b) Failed to use due care in testing the refractory material to ensure that the refractory material was capable of withstanding the temperatures in the Furnace to which the refractory material would be exposed;
- c) Failed to use due care in manufacturing the refractory material to ensure that the refractory material was capable of withstanding the temperatures in the Furnace to which the refractory material would be exposed;
- d) Failed to use due care in designing, testing and manufacturing the refractory material that was to be installed in the Furnace to ensure that the refractory material met the specifications for the Furnace;
- e) recommending and authorizing that multiple startups be performed when it knew or should have known of the damages of performing multiple startups without first shutting down the furnace and replacing the steel block that provided protection to the carbon disc;
- f) recommending and authorizing multiple startups when it knew or should have known of the dangers presented by an existing hole in the existing refractory material; and
- g) otherwise failing to use due care under the circumstances.

22. The refractory material was in substantially the same condition when it was installed in the Furnace as it was when it left the control of the RHI Defendants.

23. By reason of the aforesaid negligence, carelessness, and negligent omissions of the RHI Defendants and their employees, servants, and/or agents, Plaintiff suffered damages in an amount in excess of Ten Million Five Hundred Thousand Dollars (\$10,500,000.00).

**COUNT II – STRICT LIABILITY**  
**(PLAINTIFF v. THE RHI DEFENDANTS)**

24. Plaintiff hereby incorporates by reference paragraphs 1 through 18 as if fully stated herein.

25. The RHI Defendants are liable under the theory of strict products liability. The RHI Defendants were at all times relevant to this lawsuit engaged in the business of designing, testing, manufacturing, selling, and placing into the stream of commerce refractory material for use in high temperature furnaces used by members of the public including the Plaintiff's subrogee.

26. The refractory material designed and manufactured by the RHI Defendants was installed in the Furnace in the same substantial condition as it was when it left the control of the RHI Defendants.

27. The refractory material designed and manufactured by the RHI Defendants was defective and unreasonably dangerous when it entered the stream of commerce and installed in the Furnace.

28. The RHI Defendants knew the purpose for which the refractory material was designed and manufactured and therefore knew that if the refractory material was defective, it would create an unreasonably dangerous risk for those who would use the product.

29. The defective and unreasonably dangerous design and manufacture of the refractory material used in the Furnace was a direct and proximate cause of the damages suffered by the Plaintiff's subrogee. Under strict products liability theories set forth in the Restatement (Second) Torts, the RHI Defendants are liable to the Plaintiff for all damages in amount in excess of Ten Million Five Hundred Thousand Dollars (\$10,500,000.00).

**COUNT III – BREACH OF WARRANTY**  
**(PLAINTIFF v. THE RHI DEFENDANTS)**

30. Plaintiff hereby incorporates by reference paragraphs 1 through 18 as if fully stated herein.

31. The RHI Defendants were at the time of the acts forming the basis of this lawsuit merchants with respect to the refractory material at issue in this matter. The RHI Defendants impliedly warranted to the public and specifically to the Plaintiff's subrogee that the refractory material installed in the Furnace was merchantable and fit for the particular purpose for which it was intended.

32. The refractory material installed in the Furnace was not merchantable nor fit for its intended purpose as warranted because it was not capable of withstanding the temperatures to which it was exposed in the Furnace.

33. As a direct and proximate result of the RHI Defendants breach of the warranties of merchantability and fitness for a particular purpose, Plaintiff suffered damages in an amount in excess of Ten Million Five Hundred Thousand Dollars (\$10,500,000.00).

WHEREFORE, Plaintiff seeks relief as follows:

1. That judgment be entered in Plaintiff's favor and against defednants RHI US Ltd, RHI AG and RHI Magnesita NV for an amount of Ten Million Five Hundred Thousand Dollars (\$10,500,000.00) as proved at trial, together with pre-judgment interest as allowed by law;
2. That Plaintiff recover its costs, including reasonable attorney fees, if appropriate;
3. That the Court empanel a jury to hear all issues of fact; and
4. For such other and further relief as the Court deems just and proper.

This 14th day of November, 2017.

SALTZ MATKOV P.C.



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