

01-1787-CD
MICHAEL B. ROY et al -vs- MID CONSUMER GROUP, INC. et al

Date: 01/30/2006

Clearfield County Court of Common Pleas

User: LBENDER

Time: 08:57 AM

ROA Report

Page 1 of 2

Case: 2001-01787-CD

Current Judge: Fredric Joseph Ammerman

Michael B. Roy, Cheryl L. Roy vs. MTD Consumer Group, Inc., MTD Consumer Products, Inc., Dunlap Lawn && Garden Equipment, Inc.

Civil Other

Date	Judge
10/30/2001	No Judge
✓ Filing: Civil Complaint Paid by: Gregory Zimmerman, Esquire Receipt number: 1833437 Dated: 10/30/2001 Amount: \$80.00 (Check) One CC Sheriff One CC Attorney Zimmerman	
11/21/2001	No Judge
✓ Appearance on behalf of Defendant, DUNLAP LAWN & GARDEN EQUIPMENT, INC. s/Troy J. Harper, Esq. no cc	
11/30/2001	No Judge
✓ Praecipe for Appearance on behalf of MTD Consumer Group, Inc. and MTD Consumer Products, Inc. Filed by s/Mark F. McKenna, Esq. Cert of Svc no cc	
12/12/2001	No Judge
✓ Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	
01/14/2002	No Judge
✓ Plaintiffs' Motion to Amend Complaint and Caption. Filed by s/Gregory P. Zimmerman, Esq. no cc	
✓ Praecipe for Argument. Filed by s/Gregory P. Zimmerman, Esq. no cc Copy to CA	No Judge
01/18/2002	John K. Reilly Jr.
✓ ORDER, AND NOW, this 16th day of Jan. 2002, re: Rule issued upon Defendants, returnable the 8th day of Feb. 2002, at 9:00 a.m. By the Court, s/JKR,JR.,P.J. 3 cc atty	
01/24/2002	John K. Reilly Jr.
✓ Affidavit of Service, President Judge John K. Reilly, Jr's Order dated Jan. 16, 2002. upon all counsel of record. Filed by s/Gregory P. Zimmerman, Esq. no cc	
08/05/2002	John K. Reilly Jr.
✓ Praecipe For Appearance on behalf of the Plaintiffs, MICHAEL B. and CHERYL L. ROY. filed by s/Tara L. Maczuzak, Esq. no cc Copy CA	
08/19/2002	John K. Reilly Jr.
✓ Withdrawal of Appearance and Entry of Appearance. Withdrawal: s/Gregory P. Zimmerman, Esq. Entry: s/Tara L. Maczuzak, Esq. no cc Copy CA	
10/31/2002	John K. Reilly Jr.
✓ Verification. s/Michael B. Roy s/Cheryl L. Roy, Dated Feb. 14, 2002.	
✓ ORDER, AND NOW, this 21st day of Feb. 2002, re: Plaintiffs' Motion To Amend Complaint And Caption and Defendants' Responses, Motion is GRANTED, etc. by the Court, s/JKR,JR.,P.J. 1 cc Atty Harpes, McKenna, and Maczuzak (This Order was not filed in after being signed. It was discovered and filed 10/31/02. cc went to parties)	John K. Reilly Jr.
01/06/2003	John K. Reilly Jr.
✓ Amended Complaint, filed by Atty. Maczuzak No Cert. Copies.	
02/06/2003	John K. Reilly Jr.
✓ Answer, New Matter and New Matter Pursuant to Pa. R.C.P. 2252(d). filed by s/Troy J. Harper, Esquire Verification s/Sandra Dunlap Certificate of Service no cc	
02/24/2003	John K. Reilly Jr.
✓ Reply To New Matter Pursuant To Pa. R.C.P. 2252(d). Filed by s/Mark F. John K. Reilly Jr. McKenna, Esq. Verification s/Terry R. Hollister Certificate of Service no cc	
03/31/2003	John K. Reilly Jr.
✓ Answer and New Matter To Plaintiffs' Amended Complaint. filed by s/Mark F. McKenna, Esquire Verification s/Terry R. Hollister Certificate of Service no cc	
08/21/2003	John K. Reilly Jr.
✓ Motion For Special Admission Pro Hac Vice. filed by s/Mark F. McKenna, Esq. Certificate of Service 1 cc Atty McKenna	
08/22/2003	John K. Reilly Jr.
✓ ORDER OF COURT, AND NOW, this 22nd day of August, 2003, re; Christopher A. Corpus is permitted to appear and practice before this Court Pro Hac Vice. by the Court, s/JKR,JR.,P.J. 1 cc Atty McKenna	

Current Judge: Fredric Joseph Ammerman

Michael B. Roy, Cheryl L. Roy vs. MTD Consumer Group, Inc., MTD Consumer Products, Inc., Dunlap Lawn && Garden Equipment, Inc.

Civil Other

Date		Judge
01/05/2004	Certificate of Service, Defendant's, Dunlap Lawn & Garden Equipment, Inc.'s Answers and Responses to Plaintiff's First Set of Interrogatories and Request for Production of Documents upon: TARA L. Maczuzak, Esquire and Mark F. McKenna, Esquire filed by, s/Troy J. Harper, Esquire no cc	John K. Reilly Jr.
02/02/2004	Notice of Service of Response to Plaintiffs' First Set of Interrogatories and Request For Production of Documents Directed to MTD Consumer Group, Inc.; MTD Consumer Products, Inc. upon Tara L. Maczuzak, Esq. and Troy J. Harper, Esq. Certificate of Service no cc	John K. Reilly Jr.
01/06/2005	Notice of Deposition of Plaintiff Cheryl Roy, on behalf of Dunlap Lawn & Garden Equipment, Inc., Defendant, filed by s/ Troy J. Harper, Esquire. No CC	John K. Reilly Jr.
	Notice of Deposition of Plaintiff, Michael B. Roy, filed by s/ Troy J. Harper, John K. Reilly Jr. Esquire. No CC	
	Notice of Deposition of Shawn Roy, filed by s/ Troy J. Harper, Esquire. No CC	John K. Reilly Jr.
07/11/2005	Motion To Compel, filed by s/ Mark F. McKenna, Esquire. 1CC Atty	John K. Reilly Jr.
	Motion To Compel, filed by s/ Mark F. McKenna, Esquire. 1CC Atty	John K. Reilly Jr.
07/14/2005	Order, NOW, this 13th day of July, 2005, Argument to Compel scheduled for August 15, 2005, at 2:30 p.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. McKenna	Fredric Joseph Ammerman
07/18/2005	Order, NOW, this 13th day of July, 2005, Argument to Compel scheduled for August 15, 2005, at 2:30 p.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. McKenna	Fredric Joseph Ammerman
07/22/2005	Certificate of Service filed. An original and one certified copy of the Responses to Request for Product of Documents were served on the 20th day of July 2005 to Mark F. McKenna Esq., and to Tara L. Maczuzak Esq., filed by Troy J. Harper Esq. No CC.	Fredric Joseph Ammerman
08/01/2005	Praecipe To Withdraw, kindly withdraw from the argument list the Motion to Compel the Defendant Dunlap Lawn & Garden Equipment which is scheduled for Monday, August 15, 2005 at 2:30 p.m. Filed by s/ Mark F. McKenna, Esquire. no CC	Fredric Joseph Ammerman
08/03/2005	Praecipe to Withdraw, Motion to Compel the Plaintiffs, filed by s/Mark F. McKenna, Esq. No CC	Fredric Joseph Ammerman
08/26/2005	Certificate of Readiness for Jury Trial, filed. copy to C/A	Fredric Joseph Ammerman
01/23/2006	Order, NOW, this 20th day of Jan., 2006, following Pre-Trial Conference with counsel for the parties, Ordered that Jury Selection will be held on Feb. 2, 2006 commencing at 9:00 a.m. in Courtroom No. 1. Jury Trial is scheduled for Wednesday, March 15, Thursday March 16, and Friday March 17, 2006, commencing at 9:00 a.m. each day in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty: Maczuzak, McKenna, Harper	Fredric Joseph Ammerman

MICHAEL B. ROY and CHERYL L. ROY,) IN THE COURT OF COMMON PLEAS
 individually, and as the parents and natural) OF ~~████████~~ COUNTY, PENNSYLVANIA
 guardians of SHAWN ROY,) *Clearfield*
 Plaintiffs)
 v.) CIVIL ACTION - LAW
)
 MTD CONSUMER GROUP, INC.;)
 MTD CONSUMER PRODUCTS, INC; and)
 DUNLAP LAWN & GARDEN EQUIPMENT,)
 INC.)
 Defendant) NO. 01-1787-CO - 2001

NOTICE

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Clearfield County Courthouse
 One North Second Street
 P.O. Box 549
 Clearfield, PA 16830
 (814) 765-2641


 Gregory P. Zimmerman, Esquire
 MacDONALD, ILLIG, JONES & BRITTON LLP
 100 State Street, Suite 700
 Erie, Pennsylvania 16507-1498
 (814) 870-7663
 Attorneys for Plaintiffs, Michael B. Roy and
 Cheryl L. Roy

FILED

OCT 3 0 2001

William A. Shaw
 Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL B. ROY and CHERYL L. ROY, individually, and as the parents and natural guardians of SHAWN ROY,)	
Plaintiffs,)	CIVIL ACTION - LAW
)	
v.)	
)	NO. _____ - 2001
MTD CONSUMER GROUP, INC.;)	
MTD CONSUMER PRODUCTS, INC.; and)	
DUNLAP LAWN & GARDEN EQUIPMENT, INC.,)	
Defendants.)	JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs, Michael B. Roy & Cheryl L. Roy, individually and as the parents and natural guardians of Shawn Roy, by and through her attorneys, MacDonald, Illig, Jones & Britton LLP, file the following Complaint against defendants, MTD Consumer Group, Inc. and Dunlap Lawn & Garden Equipment, Inc., stating as follows:

1. Plaintiffs, Michael B. Roy and Cheryl L. Roy (hereinafter "Roy"), are married adult individuals who live at R.D. #3, Box 196, DuBois, Clearfield County, Pennsylvania. They are also the parents and natural guardians of plaintiff, Shawn Roy, a minor, who resides with them at the same address.
2. Defendant, MTD Consumer Group, Inc., is believed to be a corporation organized and existing under the laws of the State of Ohio, and is qualified to do business in the

Commonwealth of Pennsylvania. MTD's principle place of business is located in Valley City, Medina County, Ohio.

3. MTD Consumer Products, Inc., is believed to be either a subsidiary of MTD Consumer Group, Inc., or is a fictitious name under which MTD Consumer Group, Inc. operates, and is believed to be a Ohio Corporation.
4. At all times relevant hereto, defendants MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc. (hereinafter collectively referred to as "MTD") were engaged in the business of designing, manufacturing, assembling, distributing, selling and/or supplying lawn and garden power equipment including riding mowers and tractors under the trade name "White". White lawn tractors were sold and marketed to the general public.
5. Defendant, Dunlap Lawn & Garden Equipment, Inc. (hereinafter "Dunlap"), is a Pennsylvania corporation with its principle place of business located at R.R. #2, Box 478, DuBois, Clearfield County, Pennsylvania.
6. At all times relevant hereto, defendant Dunlap was engaged in the business of distributing, selling and/or supplying White lawn tractors manufactured by defendant MTD.
7. On or about April 26, 2000, plaintiffs purchased a White Outdoor LT 17 lawn tractor, (hereinafter "tractor") manufactured by defendant MTD, and sold by defendant Dunlap.
8. On or about June 8, 2000, Cheryl Roy accompanied her son Shawn to the detached garage at the Roy's home so that Shawn could use the tractor to cut the family's lawn. Mrs. Roy was to move the family's mini-van so that Shawn could drive the tractor from the garage and onto the lawn.

9. Mrs. Roy watched Shawn lift the hood of the tractor and observe that the gas tank of the tractor was one-half full. Shawn then closed the hood and mounted the tractor. As soon as Shawn started the engine, flames leapt from the vents of the hood of the tractor badly burning Shawn's upper body, arms and face. The fire in the tractor then spread across the garage, completely engulfing the structure of the garage and the family's mini-van.
10. Because of her position in the garage, Cheryl Roy was a witness to the incident.

COUNT I

Roy v. MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc.
Strict Liability

11. Paragraphs 1 through 10 above are incorporated herein by reference as if set forth in full.
12. It is believed and therefore averred, that defendant MTD expected that the subject tractor would reach its consumers without substantial change in the condition in which it was designed, manufactured, assembled, distributed, sold or supplied, and that the subject tractor did reach the plaintiffs without substantial change in the condition in which it was designed, manufactured, assembled, distributed, sold or supplied. In the alternative, any change or alteration made to the subject tractor after it was designed, manufactured, assembled, distributed, sold or supplied was reasonably expected and/or foreseen by defendant MTD.
13. During the time in which the plaintiffs had possession of the tractor, it was never subjected to any abnormal or unanticipated use.

14. It is believed and therefore averred, that the subject tractor was designed, manufactured, assembled, distributed, sold and/or supplied by defendant MTD, in a defective condition, unreasonably dangerous to users and consumers.
15. It is believed and therefore averred, that defendant MTD is strictly liable to plaintiffs under Section 402(a) of the Restatement (Second) of Torts for any or all of the following reasons:
 - a) in designing, manufacturing, assembling, distributing, selling and/or supplying the subject tractor without adequate safety devices, particularly ones which would prevent a fire from starting in the engine compartment;
 - b) in failing to adequately warn and/or instruct plaintiffs, or others similarly situated, of the fact that fuel and fuel vapors could leak into the engine compartment causing a fire under normal use when it knew, or should have known, of such dangers and hazards;
 - c) in designing, manufacturing, assembling, distributing, selling, and/or supplying the subject tractor with inadequate, impractical and/or defective safety devices or features;
 - d) in designing, manufacturing, assembling, distributing, selling, and/or supplying the subject tractor without adequate testing and/or inspection prior to its sale for use by consumers; and

- e) in failing to design, manufacture, assemble, distribute, sell and/or supply the subject tractor in an adequate and safe condition for its intended use and for reasonably foreseeable users, such as the plaintiffs.

16. The June 8, 2000, fire, and resulting property damage and personal injuries, were the direct and proximate result of the design, manufacture, assembly, distribution, sale and/or supply by the defendant MTD of the subject tractor in a defective and unreasonably dangerous condition, for the reasons set forth more fully in paragraph 15 above, the averments of which are incorporated herein by reference.

17. There were no reasonable secondary causes responsible for the fire, other than the defective design of the tractor.

18. As a direct and proximate result of defendant MTD designing, manufacturing, assembling, distributing, selling and/or supplying the subject tractor in a defective and/or unreasonably dangerous condition, plaintiffs have suffered both personal injuries and property damages as follows:

- a) Shawn Roy suffered severe burns to his head, neck, hands and arms;
- b) Shawn Roy endured pain, suffering, emotional distress and other personal and emotional injuries as a result of being burned;
- c) Cheryl Roy suffered emotional distress, depression, anxiety, fear and mental suffering as a result of witnessing the incident involving her son;

- d) Both Cheryl Roy and Michael Roy lost wages and time from work;
and
- e) Both Cheryl Roy and Michael Roy suffered property damage to their garage, mini-van and home and real property in an amount in excess of \$43,000.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

COUNT II

Roy v. MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc.
Breach of Implied Warranty for a Particular Purpose

- 19. Plaintiffs incorporate by reference, the averments contained in paragraphs 1 though 18, as if set forth in full.
- 20. At the time the subject tractor was purchased, the plaintiffs were relying upon the skill, expertise and judgment of defendant MTD to design, manufacture, assemble, distribute, sell, and supply lawn tractors with safe and adequate features and components, fit for the purpose of normal consumer use.

21. At the time the subject tractor was purchased by plaintiffs, defendant MTD knew, or had reason to know, the particular purpose for which the tractor would be used, and that the plaintiffs were relying upon the defendant's skill, expertise and judgment to design, manufacture, assemble, sell, and supply a lawn tractor with safe and adequate features and components fit for the purpose of normal consumer use.
22. The subject tractor was not fit for the particular purpose for which it was sold for the reasons more fully set forth in ¶ 15 above, the averments of which are incorporated herein by reference.
23. As a proximate result of defendant MTD's breach of the implied warranty of fitness for a particular purpose, the plaintiffs suffered damages as outlined in paragraph 18 of this Complaint, the averments of which are incorporated herein by reference as if set forth in full.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant, MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

COUNT III

Roy v. MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc.
Breach of Implied Warranty of Merchantability

24. Plaintiff incorporates by reference the averments contained in ¶ 1 through 23 above as if the same were more fully set forth herein.
25. At the time the subject tractor was purchased, defendant MTD impliedly warranted that the tractor was of fair, average quality and fit for the ordinary purpose for which it was used.
26. The subject tractor was not of a fair, average quality and was not fit for the ordinary purpose for which it was used for the reasons more fully set forth in ¶ 15 above, the averments of which are incorporated herein by reference.
27. As a proximate result of defendant MTD's breach of implied warranty of merchantability, plaintiffs suffered damages as outlined in paragraph 18 of this Complaint, the averments of which are incorporated herein by reference as if set forth in full.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant, MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

COUNT IV

Roy v. MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc.
Negligence

28. Plaintiffs incorporate by reference the averments contained in ¶ 1 through 27 above as if the same were more fully set forth herein.
29. Defendant MTD, as a manufacturer of lawn tractors, was required to exercise reasonable care in designing, manufacturing and distributing its product.
30. The June 8, 2000, fire and resulting damages sustained by the plaintiffs were the proximate and direct result of the negligence of defendant MTD, as more fully set forth in ¶ 15 above, the averments of which are incorporated herein by reference.
31. As a proximate result of defendant MTD's negligence, plaintiffs suffered damages as outlined in paragraph 18 of this Complaint, the averments of which are incorporated herein by reference as if set forth in full.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant, MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

COUNT V

Cheryl Roy v. MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc.
Negligent Infliction of Emotional Distress

32. Plaintiffs incorporate by reference the averments contained in ¶ 1 through 31 above as if the same were more fully set forth herein.
33. At the time of the June 8, 2000, incident in which Shawn Roy was burned, Cheryl Roy was standing in the garage. As a result, she witnessed the incident involving the tractor and her son. She subsequently came to her son's aid and called for emergency assistance.
34. As a direct and proximate result of defendant MTD's negligence and plaintiff Cheryl Roy's sensory and contemporaneous observation of the incident involving her son, Cheryl Roy experienced severe emotional distress and extreme mental pain and suffering.

WHEREFORE, plaintiff Cheryl Roy demands judgment in her favor and against defendant, MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

COUNT VI

Michael Roy v. MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc.
Loss of Consortium

35. Plaintiffs incorporate by reference the averments contained in ¶ 1 through 34 above as if the same were more fully set forth herein.
36. At the time of the June 8, 2000, incident, Michael and Cheryl Roy were married adult individuals.
37. As a result of the personal and emotional injuries sustained by Cheryl Roy, Michael Roy sustained a loss of the society, companionship and consortium of his wife.

WHEREFORE, plaintiff, Michael Roy, demands judgment in his favor and against defendant, MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

COUNT VII

Roy v. Dunlap Lawn & Garden Equipment, Inc.
Strict Liability

38. Paragraphs 1 through 37 above are incorporated herein by reference as if set forth in full.
39. It is believed and therefore averred, that defendant Dunlap expected that the subject tractor would reach its consumers without substantial change in the condition in which it was designed, manufactured, assembled, distributed, sold or supplied, and that the subject tractor

did reach the plaintiffs without substantial change in the condition in which it was designed, manufactured, assembled, distributed, sold or supplied. In the alternative, any change or alteration made to the subject tractor after it was designed, manufactured, assembled, distributed, sold or supplied was reasonably expected and/or foreseen by defendant Dunlap.

40. During the time in which the plaintiffs had possession of the tractor, it was never subjected to any abnormal or unanticipated use.
41. It is believed and therefore averred, that the subject tractor was designed, manufactured, assembled, distributed, sold and/or supplied by defendant Dunlap, in a defective condition, unreasonably dangerous to users and consumers.
42. It is believed and therefore averred, that defendant Dunlap is strictly liable to plaintiffs under Section 402(a) of the Restatement (Second) of Torts for any or all of the following reasons:
 - a) in designing, manufacturing, assembling, distributing, selling and/or supplying the subject tractor without adequate safety devices, particularly ones which would prevent a fire from starting in the engine compartment;
 - b) in failing to adequately warn and/or instruct plaintiffs, or others similarly situated, of the fact that fuel and fuel vapors could leak into the engine compartment causing a fire under normal use when it knew, or should have known, of such dangers and hazards;

- c) in designing, manufacturing, assembling, distributing, selling, and/or supplying the subject tractor with inadequate, impractical and/or defective safety devices or features.
- d) in designing, manufacturing, assembling, distributing, selling, and/or supplying the subject tractor without adequate testing and/or inspection prior to its sale for use by consumers; and
- e) in failing to design, manufacture, assemble, distribute, sell and/or supply the subject tractor in an adequate and safe condition for its intended use and for reasonably foreseeable users, such as the plaintiffs.

43. The June 8, 2000, fire, and resulting property damage and personal injuries, were the direct and proximate result of the design, manufacture, assembly, distribution, sale and/or supply by the defendant Dunlap of the subject tractor in a defective and unreasonably dangerous condition, for the reasons set forth more fully in paragraph 42 above, the averments of which are incorporated herein by reference.

44. There were no reasonable secondary causes responsible for the fire, other than the defective design and/or assembly of the tractor.

45. As a direct and proximate result of defendant Dunlap designing, manufacturing, assembling, distributing, selling and/or supplying the subject tractor in a defective and/or unreasonably dangerous condition, plaintiffs have suffered both personal injuries and property damages as follows:

- a) Shawn Roy suffered severe burns to his head, neck, hands and upper torso;
- b) Shawn Roy endured pain, suffering, emotional distress and other personal and emotional injuries as a result of being burned;
- c) Cheryl Roy suffered emotional distress, depression, anxiety, fear and mental suffering as a result of witnessing the incident;
- d) Both Cheryl Roy and Michael Roy lost wages and time from work; and
- e) Both Cheryl Roy and Michael Roy suffered property damage to their garage, mini-van and home and real property in an amount in excess of \$43,000.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant, Dunlap Lawn & Garden Equipment, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

COUNT VIII
Roy v. Dunlap Lawn & Garden Equipment, Inc.
Breach of Implied Warranty for a Particular Purpose

46. Plaintiffs incorporate by reference, the averments contained in paragraphs 1 though 45, as if set forth in full.

47. At the time the subject tractor was purchased, the plaintiffs were relying upon the skill, expertise and judgment of defendant Dunlap to design, manufacture, assemble, distribute, sell, and supply lawn tractors with safe and adequate features and components, fit for the purpose of normal consumer use.
48. At the time the subject tractor was purchased by plaintiffs, defendant Dunlap knew, or had reason to know, the particular purpose for which the tractor would be used, and that the plaintiffs were relying upon the defendant's skill, expertise and judgment to design, manufacture, assemble, sell, and supply a lawn tractor with safe and adequate features and components fit for the purpose of normal consumer use.
49. The subject tractor was not fit for the particular purpose for which it was sold for the reasons more fully set forth in ¶ 42 above, the averments of which are incorporated herein by reference.
50. As a proximate result of defendant Dunlap's breach of the implied warranty of fitness for a particular purpose, the plaintiffs suffered damages as outlined in paragraph 45 of this Complaint, the averments of which are incorporated herein by reference as if set forth in full.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant, Dunlap Lawn & Garden Equipment, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

COUNT IX
Roy v. Dunlap Lawn & Garden Equipment, Inc.
Breach of Implied Warranty of Merchantability

51. Plaintiff incorporates by reference the averments contained in ¶ 1 through 50 above as if the same were more fully set forth herein.
52. At the time the subject tractor was purchased, defendant Dunlap impliedly warranted that the tractor was of fair, average quality and fit for the ordinary purpose for which it was used.
53. The subject tractor was not of a fair, average quality and was not fit for the ordinary purpose for which it was used for the reasons more fully set forth in ¶ 42 above, the averments of which are incorporated herein by reference.
54. As a proximate result of defendant Dunlap's breach of implied warranty of merchantability, plaintiffs suffered damages as outlined in paragraph 45 of this Complaint, the averments of which are incorporated herein by reference as if set forth in full.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant, Dunlap Lawn & Garden Equipment, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

COUNT X
Roy v. Dunlap Lawn & Garden Equipment, Inc.
Negligence

55. Plaintiffs incorporate by reference the averments contained in ¶ 1 through 54 above as if the same were more fully set forth herein.
56. Defendant Dunlap knew, or reasonably should have known, that the subject tractor was unreasonably dangerous due to its defective design and that the subject tractor would reach and be used by consumers in the condition in which it was manufactured, and that it would be used without inspection for defects.
57. The June 8, 2000, fire, and resulting damages sustained by the plaintiffs were the proximate and direct result of the negligence of defendant Dunlap, as more fully set forth in ¶ 42 above, the averments of which are incorporated herein by reference.
58. As a proximate result of defendant Dunlap's negligence, plaintiffs suffered damages as outlined in paragraph 45 of this Complaint, the averments of which are incorporated herein by reference as if set forth in full.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant, Dunlap Lawn & Garden Equipment, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

COUNT XI
Cheryl Roy v. Dunlap Lawn & Garden Equipment, Inc.
Negligent Infliction of Emotional Distress

59. Plaintiffs incorporate by reference the averments contained in ¶ 1 through 58 above as if the same were more fully set forth herein.
60. At the time of the June 8, 2000, incident in which Shawn Roy was burned, Cheryl Roy was standing in the garage. As a result, she witnessed the incident involving the tractor and her son. She subsequently came to her son's aid and called for emergency assistance.
61. As a direct and proximate result of defendant Dunlap's negligence and plaintiff Cheryl Roy's sensory and contemporaneous observation of the incident involving her son, Cheryl Roy experienced severe emotional distress and extreme mental pain and suffering.

WHEREFORE, plaintiff Cheryl Roy demands judgment in her favor and against defendant, Dunlap Lawn & Garden Equipment, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

COUNT XII
Michael Roy v. Dunlap Lawn & Garden Equipment, Inc.
Loss of Consortium

62. Plaintiffs incorporate by reference the averments contained in ¶ 1 through 61 above as if the same were more fully set forth herein.

63. At the time of the June 8, 2000, incident, Michael and Cheryl Roy were married adult individuals.
64. As a result of the personal and emotional injuries sustained by Cheryl Roy, Michael Roy sustained a loss of the society, companionship and consortium of his wife.

WHEREFORE, plaintiff, Michael Roy, demands judgment in his favor and against defendant, Dunlap Lawn & Garden Equipment, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

A JURY TRIAL BY TWELVE (12) IS DEMANDED

Respectfully submitted,



Gregory P. Zimmerman
MacDONALD, ILLIG, JONES & BRITTON LLP
100 State Street, Suite 700
Erie, Pennsylvania 16507-1498
(814) 870-7663

Attorneys for Plaintiffs,
Michael B. Roy and Cheryl L. Roy
individually, and as the parents and
natural guardians of Shawn Roy

Dated: October ²⁹26, 2001

648103

VERIFICATION

I, Michael B. Roy and Cheryl L. Roy, hereby depose and state that we are the plaintiffs herein and that the averments set forth in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to intentional falsification to authorities.

Dated: 10/17/01, 2001

Michael B. Roy
Michael B. Roy

Dated: 10-17, 2001

Cheryl L. Roy
Cheryl L. Roy

FILED

Oct 3 0 2001
M 11/07/01
William A. Shaw
Prothonotary
Dd \$80.00

cc Shaw
cc atty Zimmerman

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MICHAEL B. ROY and CHERYL L. ROY,
individually and as the parents and natural
guardians of SHAWN ROY,
Plaintiffs,

vs.

MTD CONSUMER GROUP, INC.;
MTD CONSUMER PRODUCTS, INC.;
and DUNLAP LAWN & GARDEN
EQUIPMENT, INC.,
Defendants.

CIVIL ACTION - LAW

Number 2001 - 1787 C.D.

Type of Case: Civil Division

Type of Pleading: Appearance

Filed on behalf of: Defendant, Dunlap
Lawn & Garden Equipment, Inc.

Counsel of Record for this Party:

Troy J. Harper
Supreme Court Number: 74753

John C. Dennison, II
Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED

NOV-21 2001
112:50 AM
William A. Shaw
Prothonotary
No. C-For ECR

MICHAEL B. ROY and CHERYL L. ROY,
individually and as parents and natural
guardians of SHAWN ROY,
Plaintiffs,

vs.

MTD CONSUMER GROUP, INC.;
MTD CONSUMER PRODUCTS, INC.; and
DUNLAP LAWN & GARDEN
EQUIPMENT, INC.,

Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
*
*
* Civil Action - Law
*
*
*
*
* Number 2001 - 1787 C.D.

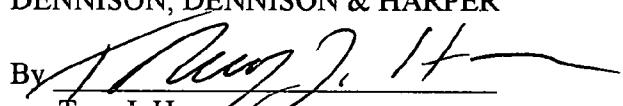
APPEARANCE

TO THE PROTHONOTARY OF CLEARFIELD COUNTY:

Please enter our Appearance on behalf of the Defendant, DUNLAP LAWN & GARDEN
EQUIPMENT, INC., in regard to the above entitled matter.

DENNISON, DENNISON & HARPER

By


Troy J. Harper
Attorneys for Defendant,
Dunlap Lawn & Garden Equipment, Inc.

Dated: 11/20/01

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Appearance was served on the
20th day of November, 2001, by United States Mail, First Class,
Postage Prepaid, addressed to the following:

Gregory P. Zimmerman, Esq.
MacDonald, Illig, Jones & Britton, LLP
100 State Street, Suite 700
Erie, Pennsylvania 16507

Mark F. McKenna, Esq.
436 Boulevard of the Allies
Pittsburgh, Pennsylvania 15219

DENNISON, DENNISON & HARPER

By



Troy J. Harper

Attorneys for the Defendant

FILED

NOV 21 2001

William A. Shaw
Prothonotary

~

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL B. ROY and CHERYL ROY,
individually and as parents and natural
guardians of SHAWN ROY,

PLAINTIFFS,

vs.

MTD CONSUMER GROUP, INC.; MTD
CONSUMER PRODUCTS, INC; and
DUNLAP LAWN & GARDEN
EQUIPMENT, INC.,

DEFENDANTS.

CIVIL ACTION NO. 01-1787-CD

TYPE OF PLEADING:

PRAECIPE FOR APPEARANCE

FILED ON BEHALF OF:

DEFENDANTS MTD CONSUMER
GROUP, INC. and MTD CONSUMER
PRODUCTS, INC.

COUNSEL OF RECORD FOR THIS
PARTY:

MARK F. McKENNA, ESQUIRE
PA I.D. #30297

McKENNA & CHIODO, P.C.
436 Boulevard of the Allies
Suite 500
Pittsburgh, PA 15219-1314

(412) 471-6226

FILED

NOV 30 2001

m11341wcc
William A. Shaw
Prothonotary

**IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA**

MICHAEL B. ROY and CHERYL ROY,
individually and as the parents and natural
guardians of SHAWN ROY,

CIVIL ACTION NO. 01-1787-CD

PLAINTIFFS,

vs.

MTD CONSUMER GROUP, INC.; MTD
CONSUMER PRODUCTS, INC.; and
DUNLAP LAWN & GARDEN
EQUIPMENT, INC.,

DEFENDANTS.

PRAECIPE FOR APPEARANCE

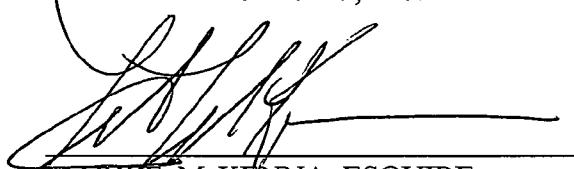
TO: PROTHONOTARY

Kindly enter my appearance on behalf of MTD Consumer Group, Inc. and MTD Consumer
Products, Inc., **only** in the above-captioned matter.

Respectfully submitted,

McKENNA & CHODO, P.C.

By:

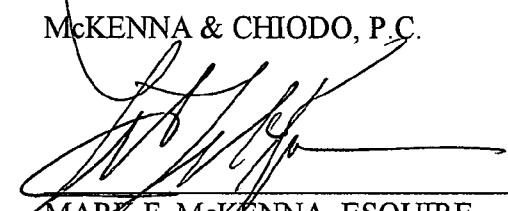

MARK F. MCKENNA, ESQUIRE
Attorneys for Defendants,
MTD Consumer Group, Inc. and MTD
Consumer Products, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Praeclipe for Appearance was mailed via U.S. first class mail, postage prepaid, to the following counsel of record on this 10th day of November, 2001:

Gregory P. Zimmerman, Esquire
MacDONALD, ILLIG, JONES & BRITTON, LLP
100 State Street, Suite 700
Erie, PA 16507-1498

McKENNA & CHIODO, P.C.

By: 

MARK F. McKENNA, ESQUIRE
Attorneys for Defendants, MTD Consumer
Group, Inc. and MTD Consumer Products,
Inc.

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11708

ROY, MICHAEL B. & CHERYL L.

01-1787-CD

VS.

MTD CONSUMER GROUP, INC.

COMPLAINT

SHERIFF RETURNS

NOW NOVEMBER 5, 2001 AT 10:30 AM EST SERVED THE WITHIN COMPLAINT
ON DUNLAP LAWN & GARDEN EQUIPMENT INC., DEFENDANT AT EMPLOYMENT,
RR#2 BOX 478, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO
JIM & NANCY DUNLAP, OWNERS A TRUE AND ATTESTED COPY OF THE ORIGINAL
COMPLAINT AND MADE KNOWN TO THEM THE CONTENTS THEREOF.

SERVED BY: SNYDER.

Return Costs

Cost	Description
30.69	SHFF. HAWKINS PAID BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.

FILED

01/04/01
DEC 12 2001

CR
KED

William A. Shaw
Prothonotary

So Answers,

Chester A. Hawkins
by Nancy Harry
Chester A. Hawkins
Sheriff

Sworn to Before Me This

12th Day Of December 2001
William A. Shaw

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2002
Clearfield Co. Clearfield, PA.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

MICHAEL B. ROY and CHERYL L. :
ROY, individually, and as the parents :
and natural guardians of SHAWN ROY :
: vs. : No. 01-1787-CD
: :
MTD CONSUMER GROUP, INC.; :
MTD CONSUMER PRODUCTS, INC.; :
and DUNLAP LAWN & GARDEN :
EQUIPMENT :
:

ORDER

AND NOW, this 16th day of January, 2002, upon consideration
of Plaintiffs' Motion to Amend Complaint and Caption, a Rule is hereby issued on
the Defendants to appear and show cause why the Motion should not be granted. Rule
Returnable the 20 day of February, 2002, at 9:00 A.M. in
Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

FILED

JAN 18 2002

0110:46/3cc aty
William A. Shaw
Prothonotary

BY THE COURT:

JOHN K. REILLY, JR.
President Judge

MICHAEL B. ROY and CHERYL L. ROY,) IN THE COURT OF COMMON PLEAS OF
individually, and as the parents and natural) CLEARFIELD COUNTY, PENNSYLVANIA
guardians of SHAWN ROY,)
Plaintiffs,)
)
v.) CIVIL ACTION - LAW
MTD CONSUMER GROUP, INC.;)
MTD CONSUMER PRODUCTS, INC.;)
and DUNLAP LAWN & GARDEN)
EQUIPMENT, INC.,)
Defendants.) NO. 2001 - 1787 C

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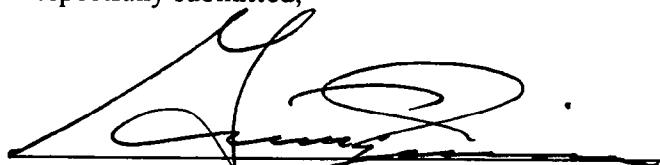
PRAECIPE FOR ARGUMENT

JAN 14 2002
10/10/02
William A. Shaw
Prothonotary

To the Prothonotary:

Please schedule the attached Motion to Amend Complaint and Caption for oral argument during the next available Petition, Motion and Argument Court pursuant to Local Rule 211. Based upon the nature of the Motion, the plaintiff does not believe that a briefing schedule will be necessary.

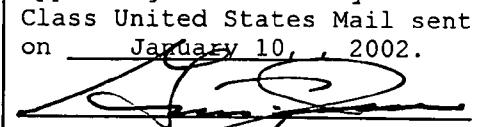
Respectfully submitted,


Gregory P. Zimmerman
MacDONALD, ILLIG, JONES & BRITTON LLP
100 State Street, Suite 700
Erie, Pennsylvania 16507-1498
(814) 870-7663

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served upon all other parties appearing of record by First-Class United States Mail sent on January 10, 2002.



669414

COPY

MICHAEL B. ROY and CHERYL L. ROY,) IN THE COURT OF COMMON PLEAS OF
individually, and as the parents and natural) CLEARFIELD COUNTY, PENNSYLVANIA
guardians of SHAWN ROY,)
Plaintiffs,)
)
v.) CIVIL ACTION - LAW
)
MTD CONSUMER GROUP, INC.;)
MTD CONSUMER PRODUCTS, INC;)
and DUNLAP LAWN & GARDEN)
EQUIPMENT, INC.,)
Defendants.) NO. 2001 - 1787 C.D.
)

FILED

JAN 14 2002

William A. Shaw
Prothonotary

PLAINTIFFS' MOTION TO AMEND COMPLAINT AND CAPTION

Plaintiffs, Michael B. Roy and Cheryl L. Roy, individually, and as the parents and natural guardians of Shawn Roy, file the following Motion To Amend Complaint and Caption, stating as follows:

1. This action was filed on October 30, 2001, by Michael B. Roy and Cheryl L. Roy as individuals and on behalf of their minor son, Shawn Roy. The action stems from a fire which occurred at the home of the plaintiffs on June 8, 2000, involving a tractor manufactured and/or sold by the defendants. As a result of the fire, the plaintiffs sustained property damage and Shawn Roy suffered personal injuries.
2. After the filing of the initial Complaint, plaintiffs Michael and Cheryl Roy decided that they no longer wished to pursue claims for personal injuries sustained by Cheryl Roy or Shawn Roy at this time. Rather, plaintiffs' only wish to pursue claims for property damage sustained in June 8, 2000, fire.
3. After counsel for both defendants had entered an appearance, counsel for the plaintiffs advised counsel for the defendants of this change in position, and obtained the consent of

counsel for the defendants to file an Amended Complaint, changing the caption and substance of the Complaint. (A verified copy of the Amended Complaint is attached hereto as Exhibit "1").

4. In their Amended Complaint, plaintiffs have withdrawn the claim of their minor son, Shawn Roy, and have also withdrawn the claim for personal injuries by Cheryl L. Roy. Since Shawn Roy is a minor, pursuant to Pa.R.C.P. 2039(a), plaintiffs seek this Court's approval to withdraw his claim, without prejudice at the present time.
5. Plaintiffs' requested amendment will merely amend the caption of the Complaint and eliminate two claims for personal injury. Since the applicable statute of limitations in this matter will not expire until at least June 8, 2002, the defendants are not prejudiced by this motion.

WHEREFORE, plaintiffs, Michael B. Roy and Cheryl L. Roy, respectfully request that this Honorable Court grant this Motion, permitting them to file the Amended Complaint attached as Exhibit "1".

Respectfully submitted,

CERTIFICATE OF SERVICE
I hereby certify that a copy of this document was served upon all other parties appearing of record by First-Class United States Mail sent on <u>January 10, 2002</u> .



Gregory P. Zimmerman
MacDONALD, ILLIG, JONES & BRITTON LLP
100 State Street, Suite 700
Erie, Pennsylvania 16507-1498
(814) 870-7663

Attorneys for Plaintiffs

MICHAEL B. ROY and CHERYL L. ROY,) IN THE COURT OF COMMON PLEAS
Plaintiffs,) OF CLEARFIELD COUNTY, PENNA.
)
v.) CIVIL ACTION - LAW
)
MTD CONSUMER GROUP, INC.;)
MTD CONSUMER PRODUCTS, INC; and)
DUNLAP LAWN & GARDEN EQUIPMENT,)
INC.)
Defendants.) NO. 1787 C.D. - 2001

NOTICE

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Clearfield County Courthouse
One North Second Street
P.O. Box 549
Clearfield, PA 16830
(814) 765-2641

Gregory P. Zimmerman, Esquire
MacDONALD, ILLIG, JONES & BRITTON LLP
100 State Street, Suite 700
Erie, Pennsylvania 16507-1498
(814) 870-7663
Attorneys for Plaintiffs, Michael B. Roy and
Cheryl L. Roy



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL B. ROY and CHERYL L. ROY,) CIVIL ACTION - LAW
Plaintiffs,)
)
v.) NO. 1787 C.D. - 2001
)
MTD CONSUMER GROUP, INC.;)
MTD CONSUMER PRODUCTS, INC.; and)
DUNLAP LAWN & GARDEN EQUIPMENT,)
INC.,)
Defendants.) JURY TRIAL DEMANDED

AMENDED COMPLAINT

Plaintiffs, Michael B. Roy & Cheryl L. Roy, by and through their attorneys, MacDonald, Illig, Jones & Britton LLP, file the following Amended Complaint against defendants, MTD Consumer Group, Inc., MTD Consumer Products, Inc. and Dunlap Lawn & Garden Equipment, Inc., stating as follows:

1. Plaintiffs, Michael B. Roy and Cheryl L. Roy (hereinafter "Roy"), are married adult individuals who live at R.D. #3, Box 196, DuBois, Clearfield County, Pennsylvania.
2. Defendant, MTD Consumer Group, Inc., is believed to be a corporation organized and existing under the laws of the State of Ohio, and is qualified to do business in the Commonwealth of Pennsylvania. MTD's principle place of business is located in Valley City, Medina County, Ohio.

3. MTD Consumer Products, Inc., is believed to be either a subsidiary of MTD Consumer Group, Inc., or is a fictitious name under which MTD Consumer Group, Inc. operates, and is believed to be a Ohio Corporation.
4. At all times relevant hereto, defendants MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc. (hereinafter collectively referred to as "MTD") were engaged in the business of designing, manufacturing, assembling, distributing, selling and/or supplying lawn and garden power equipment including riding mowers and tractors under the trade name "White".
White lawn tractors were sold and marketed to the general public.
5. Defendant, Dunlap Lawn & Garden Equipment, Inc. (hereinafter "Dunlap"), is a Pennsylvania corporation with its principle place of business located at R.R. #2, Box 478, DuBois, Clearfield County, Pennsylvania.
6. At all times relevant hereto, defendant Dunlap was engaged in the business of distributing, selling and/or supplying White lawn tractors manufactured by defendant MTD.
7. On or about April 26, 2000, plaintiffs purchased a White Outdoor LT 17 lawn tractor, (hereinafter "tractor") manufactured by defendant MTD, and sold by defendant Dunlap.
8. On or about June 8, 2000, Cheryl Roy accompanied her son Shawn to the detached garage at the Roy's home so that Shawn could use the tractor to cut the family's lawn. Mrs. Roy was to move the family's mini-van so that Shawn could drive the tractor from the garage and onto the lawn. --
9. Mrs. Roy watched Shawn lift the hood of the tractor and observe that the gas tank of the tractor was one-half full. Shawn then closed the hood and mounted the tractor. As soon as

Shawn started the engine, flames leapt from the vents of the hood of the tractor. The fire in the tractor then spread across the garage, completely engulfing the structure of the garage and the family's mini-van.

COUNT I

Roy v. MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc.
Strict Liability

10. Paragraphs 1 through 9 above are incorporated herein by reference as if set forth in full.
11. It is believed and therefore averred, that defendant MTD expected that the subject tractor would reach its consumers without substantial change in the condition in which it was designed, manufactured, assembled, distributed, sold or supplied, and that the subject tractor did reach the plaintiffs without substantial change in the condition in which it was designed, manufactured, assembled, distributed, sold or supplied. In the alternative, any change or alteration made to the subject tractor after it was designed, manufactured, assembled, distributed, sold or supplied was reasonably expected and/or foreseen by defendant MTD.
12. During the time in which the plaintiffs had possession of the tractor, it was never subjected to any abnormal or unanticipated use.
13. It is believed and therefore averred, that the subject tractor was designed, manufactured, assembled, distributed, sold and/or supplied by defendant MTD, in a defective condition, unreasonably dangerous to users and consumers.

14. It is believed and therefore averred, that defendant MTD is strictly liable to plaintiffs under Section 402(a) of the Restatement (Second) of Torts for any or all of the following reasons:

- a) in designing, manufacturing, assembling, distributing, selling and/or supplying the subject tractor without adequate safety devices, particularly ones which would prevent a fire from starting in the engine compartment;
- b) in failing to adequately warn and/or instruct plaintiffs, or others similarly situated, of the fact that fuel and fuel vapors could leak into the engine compartment causing a fire under normal use when it knew, or should have known, of such dangers and hazards;
- c) in designing, manufacturing, assembling, distributing, selling, and/or supplying the subject tractor with inadequate, impractical and/or defective safety devices or features to prevent the tractor from catching fire;
- d) in designing, manufacturing, assembling, distributing, selling, and/or supplying the subject tractor without adequate testing and/or inspection prior to its sale for use by consumers; and
- e) in failing to design, manufacture, assemble, distribute, sell and/or supply the subject tractor in an adequate and safe condition for its intended use and for reasonably foreseeable users, such as the plaintiffs.

15. The June 8, 2000, fire, and resulting property damage, were the direct and proximate result of the design, manufacture, assembly, distribution, sale and/or supply by the defendant MTD

of the subject tractor in a defective and unreasonably dangerous condition, for the reasons set forth more fully in paragraph 14 above, the averments of which are incorporated herein by reference.

16. There were no reasonable secondary causes responsible for the fire, other than the defective design of the tractor.

17. As a direct and proximate result of defendant MTD designing, manufacturing, assembling, distributing, selling and/or supplying the subject tractor in a defective and/or unreasonably dangerous condition, plaintiffs have suffered property damage to their garage, mini-van, the tractor and their home and real property in an amount in excess of \$43,000.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

COUNT II

Roy v. MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc.
Breach of Implied Warranty for a Particular Purpose

18. Plaintiffs incorporate by reference, the averments contained in paragraphs 1 though 17, as if set forth in full.

19. At the time the subject tractor was purchased, the plaintiffs were relying upon the skill, expertise and judgment of defendant MTD to design, manufacture, assemble, distribute, sell, and supply lawn tractors with safe and adequate features and components, fit for the purpose of normal consumer use.
20. At the time the subject tractor was purchased by plaintiffs, defendant MTD knew, or had reason to know, the particular purpose for which the tractor would be used, and that the plaintiffs were relying upon the defendant's skill, expertise and judgment to design, manufacture, assemble, sell, and supply a lawn tractor with safe and adequate features and components fit for the purpose of normal consumer use.
21. The subject tractor was not fit for the particular purpose for which it was sold for the reasons more fully set forth in ¶ 14 above, the averments of which are incorporated herein by reference.
22. As a proximate result of defendant MTD's breach of the implied warranty of fitness for a particular purpose, the plaintiffs suffered damages as outlined in paragraph 17 of this Amended Complaint, the averments of which are incorporated herein by reference as if set forth in full.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant, MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

COUNT III

Roy v. MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc.
Breach of Implied Warranty of Merchantability

23. Plaintiff incorporates by reference the averments contained in ¶ 1 through 22 above as if the same were more fully set forth herein.
24. At the time the subject tractor was purchased, defendant MTD impliedly warranted that the tractor was of fair, average quality and fit for the ordinary purpose for which it was used.
25. The subject tractor was not of a fair, average quality and was not fit for the ordinary purpose for which it was used for the reasons more fully set forth in ¶ 14 above, the averments of which are incorporated herein by reference.
26. As a proximate result of defendant MTD's breach of implied warranty of merchantability, plaintiffs suffered damages as outlined in paragraph 17 of this Amended Complaint, the averments of which are incorporated herein by reference as if set forth in full.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant, MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

COUNT IV

Roy v. MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc.
Negligence

27. Plaintiffs incorporate by reference the averments contained in ¶ 1 through 26 above as if the same were more fully set forth herein.
28. Defendant MTD, as a manufacturer of lawn tractors, was required to exercise reasonable care in designing, manufacturing and distributing its product.
29. The June 8, 2000, fire and resulting damages sustained by the plaintiffs were the proximate and direct result of the negligence of defendant MTD, as more fully set forth in ¶ 14 above, the averments of which are incorporated herein by reference.
30. As a proximate result of defendant MTD's negligence, plaintiffs suffered damages as outlined in paragraph 17 of this Amended Complaint, the averments of which are incorporated herein by reference as if set forth in full.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant, MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

COUNT VII
Roy v. Dunlap Lawn & Garden Equipment, Inc.
Strict Liability

31. Paragraphs 1 through 30 above are incorporated herein by reference as if set forth in full.
32. It is believed and therefore averred, that defendant Dunlap expected that the subject tractor would reach its consumers without substantial change in the condition in which it was designed, manufactured, assembled, distributed, sold or supplied, and that the subject tractor did reach the plaintiffs without substantial change in the condition in which it was designed, manufactured, assembled, distributed, sold or supplied. In the alternative, any change or alteration made to the subject tractor after it was designed, manufactured, assembled, distributed, sold or supplied was reasonably expected and/or foreseen by defendant Dunlap.
33. During the time in which the plaintiffs had possession of the tractor, it was never subjected to any abnormal or unanticipated use.
34. It is believed and therefore averred, that the subject tractor was designed, manufactured, assembled, distributed, sold and/or supplied by defendant Dunlap, in a defective condition, unreasonably dangerous to users and consumers.
35. It is believed and therefore averred, that defendant Dunlap is strictly liable to plaintiffs under Section 402(a) of the Restatement (Second) of Torts for any or all of the following reasons:
 - a) in designing, manufacturing, assembling, distributing, selling and/or supplying the subject tractor without adequate safety devices, particularly ones which would prevent a fire from starting in the engine compartment;

- b) in failing to adequately warn and/or instruct plaintiffs, or others similarly situated, of the fact that fuel and fuel vapors could leak into the engine compartment causing a fire under normal use when it knew, or should have known, of such dangers and hazards;
- c) in designing, manufacturing, assembling, distributing, selling, and/or supplying the subject tractor with inadequate, impractical and/or defective safety devices or features to prevent the tractor from catching fire.
- d) in designing, manufacturing, assembling, distributing, selling, and/or supplying the subject tractor without adequate testing and/or inspection prior to its sale for use by consumers; and
- e) in failing to design, manufacture, assemble, distribute, sell and/or supply the subject tractor in an adequate and safe condition for its intended use and for reasonably foreseeable users, such as the plaintiffs.

36. The June 8, 2000, fire, and resulting property damage, were the direct and proximate result of the design, manufacture, assembly, distribution, sale and/or supply by the defendant Dunlap of the subject tractor in a defective and unreasonably dangerous condition, for the reasons set forth more fully in paragraph 35 above, the averments of which are incorporated herein by reference.

37. There were no reasonable secondary causes responsible for the fire, other than the defective design and/or assembly of the tractor.

38. As a direct and proximate result of defendant Dunlap designing, manufacturing, assembling, distributing, selling and/or supplying the subject tractor in a defective and/or unreasonably dangerous condition, plaintiffs have suffered property damage to their garage, mini-van, the tractor and their home and real property in an amount in excess of \$43,000.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant, Dunlap Lawn & Garden Equipment, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

COUNT VIII
Roy v. Dunlap Lawn & Garden Equipment, Inc.
Breach of Implied Warranty for a Particular Purpose

39. Plaintiffs incorporate by reference, the averments contained in paragraphs 1 though 38, as if set forth in full.

40. At the time the subject tractor was purchased, the plaintiffs were relying upon the skill, expertise and judgment of defendant Dunlap to design, manufacture, assemble, distribute, sell, and supply lawn tractors with safe and adequate features and components, fit for the purpose of normal consumer use.

41. At the time the subject tractor was purchased by plaintiffs, defendant Dunlap knew, or had reason to know, the particular purpose for which the tractor would be used, and that the

plaintiffs were relying upon the defendant's skill, expertise and judgment to design, manufacture, assemble, sell, and supply a lawn tractor with safe and adequate features and components fit for the purpose of normal consumer use.

42. The subject tractor was not fit for the particular purpose for which it was sold for the reasons more fully set forth in ¶ 35 above, the averments of which are incorporated herein by reference.
43. As a proximate result of defendant Dunlap's breach of the implied warranty of fitness for a particular purpose, the plaintiffs suffered damages as outlined in paragraph 38 of this Amended Complaint, the averments of which are incorporated herein by reference as if set forth in full.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant, Dunlap Lawn & Garden Equipment, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

COUNT IX
Roy v. Dunlap Lawn & Garden Equipment, Inc.
Breach of Implied Warranty of Merchantability

44. Plaintiff incorporates by reference the averments contained in ¶ 1 through 43 above as if the same were more fully set forth herein.

45. At the time the subject tractor was purchased, defendant Dunlap impliedly warranted that the tractor was of fair, average quality and fit for the ordinary purpose for which it was used.
46. The subject tractor was not of a fair, average quality and was not fit for the ordinary purpose for which it was used for the reasons more fully set forth in ¶ 35 above, the averments of which are incorporated herein by reference.
47. As a proximate result of defendant Dunlap's breach of implied warranty of merchantability, plaintiffs suffered damages as outlined in paragraph 38 of this Amended Complaint, the averments of which are incorporated herein by reference as if set forth in full.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant, Dunlap Lawn & Garden Equipment, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

COUNT X
Roy v. Dunlap Lawn & Garden Equipment, Inc.
Negligence

48. Plaintiffs incorporate by reference the averments contained in ¶ 1 through 47 above as if the same were more fully set forth herein.
49. Defendant Dunlap knew, or reasonably should have known, that the subject tractor was unreasonably dangerous due to its defective design and that the subject tractor would reach

and be used by consumers in the condition in which it was manufactured, and that it would be used without inspection for defects.

50. The June 8, 2000, fire, and resulting damages sustained by the plaintiffs were the proximate and direct result of the negligence of defendant Dunlap, as more fully set forth in ¶ 35 above, the averments of which are incorporated herein by reference.

51. As a proximate result of defendant Dunlap's negligence, plaintiffs suffered damages as outlined in paragraph 38 of this Amended Complaint, the averments of which are incorporated herein by reference as if set forth in full.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant, Dunlap Lawn & Garden Equipment, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

A JURY TRIAL BY TWELVE (12) IS DEMANDED

Respectfully submitted,

Gregory P. Zimmerman
MacDONALD, ILLIG, JONES & BRITTON LLP
100 State Street, Suite 700
Erie, Pennsylvania 16507-1498
(814) 870-7663
Attorneys for Plaintiffs, Michael B. Roy and Cheryl L.
Roy

661539

VERIFICATION

We, **Michael B. Roy and Cheryl L. Roy**, hereby depose and state that we are the plaintiffs herein and that the averments set forth in the foregoing Amended Complaint are true and correct to the best of our knowledge, information and belief. This verification is made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to intentional falsification to authorities.

Dated: 12/30/01, 2001

Michael B. Roy
Michael B. Roy

Dated: 12/30/01, 2001

Cheryl L. Roy
Cheryl L. Roy

FILED

JAN 14 2002

10:50 AM CC
William A. Shaw
Prothonotary
[Signature]

MICHAEL B. ROY and CHERYL L. ROY,) IN THE COURT OF COMMON PLEAS OF
individually, and as the parents and natural) CLEARFIELD COUNTY, PENNSYLVANIA
guardians of SHAWN ROY,)
Plaintiffs,)
)
v.) CIVIL ACTION - LAW
)
MTD CONSUMER GROUP, INC.;)
MTD CONSUMER PRODUCTS, INC;)
and DUNLAP LAWN & GARDEN)
EQUIPMENT, INC.,)
Defendants.) NO. 2001 - 1787 CD

FILED

PRAECIPE FOR ARGUMENT

JAN 14 2002
10/10/02/roc
William A. Shaw
Prothonotary

To the Prothonotary:

Please schedule the attached Motion to Amend Complaint and Caption for oral argument during the next available Petition, Motion and Argument Court pursuant to Local Rule 211. Based upon the nature of the Motion, the plaintiff does not believe that a briefing schedule will be necessary.

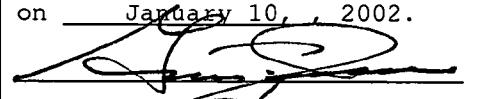
Respectfully submitted,


Gregory P. Zimmerman
MacDONALD, ILLIG, JONES & BRITTON LLP
100 State Street, Suite 700
Erie, Pennsylvania 16507-1498
(814) 870-7663

Attorneys for Plaintiffs

669414

CERTIFICATE OF SERVICE	
I hereby certify that a copy of this document was served upon all other parties appearing of record by First-Class United States Mail sent on <u>January 10, 2002</u> .	



MICHAEL B. ROY and CHERYL L. ROY,) IN THE COURT OF COMMON PLEAS OF
individually, and as the parents and natural) CLEARFIELD COUNTY, PENNSYLVANIA
guardians of SHAWN ROY,)
Plaintiffs,)
v.)
MTD CONSUMER GROUP, INC.;)
MTD CONSUMER PRODUCTS, INC.;)
and DUNLAP LAWN & GARDEN)
EQUIPMENT, INC.,)
Defendants.) NO. 2001 - 1787 C.D.

AFFIDAVIT OF SERVICE

To the Prothonotary:

I, Gregory P. Zimmerman, Esquire, counsel for the plaintiffs in the above-captioned matter, hereby attest that a copy of President Judge John K. Reilly, Jr.'s Order dated January 16, 2002, entering the Rule to Show Cause and return date of February 8, 2002, at 9:00 a.m., was served upon all counsel of record this date via first class United States mail. A copy of the Plaintiffs' Motion to Amend Complaint and Caption was previously served upon all counsel of record on January 10, 2002.

Respectfully submitted,

Gregory P. Zimmerman
MacDONALD, ILLIG, JONES & BRITTON LLP
100 State Street, Suite 700
Erie, Pennsylvania 16507-1498
(814) 870-7663
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served upon all other parties appearing of record by First-Class United States Mail sent on January 21, 2002.

FILED

671252

JAN 24 2002

M 11:05/ncc

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL B. ROY and CHERYL L. ROY, CIVIL ACTION – LAW

Plaintiffs,

v.

MTD CONSUMER GROUP, INC.;
MTD CONSUMER PRODUCTS, INC.; and
DUNLAP LAWN & GARDEN EQUIPMENT,
INC.

Defendants.

No. 1787 C.D. – 2001

PRAECIPE FOR APPEARANCE

FILED ON BEHALF OF:

Michael B. Roy and Cheryl L. Roy,
Plaintiffs

Counsel of Record for this Party:

TARA L. MACZUZAK, ESQUIRE
Pa. I.D. #86709

DiBELLA & GEER, P.C.
Firm I.D. #099

312 Boulevard of the Allies
Suite 300
Pittsburgh, PA 15222
412-261-2900

FILED

Aug 05 2002
7/11/02 noc
William A. Shaw

Prothonotary Copy CA

EKB

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL B. ROY and CHERYL L. ROY,) CIVIL ACTION – LAW
)
Plaintiffs,)
) No. 1787 C.D. – 2001
v.)
)
MTD CONSUMER GROUP, INC.;)
MTD CONSUMER PRODUCTS, INC.; and)
DUNLAP LAWN & GARDEN EQUIPMENT,)
INC.)
)
Defendants.)

PRAECIPE FOR APPEARANCE

TO: CLEARFIELD COUNTY PROTHONOTARY

Please enter the appearance of DiBella & Geer, P.C. and Tara L. Maczuzak, Esquire as counsel for Plaintiffs Michael B. Roy and Cheryl L. Roy in relation to the above-captioned case.

Respectfully submitted,

DiBELLA & GEER, P.C.



TARA L. MACZUZAK, ESQUIRE
Counsel for Plaintiffs Michael B. Roy and
Cheryl L. Roy

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Praeclipe for Appearance was forwarded by first class mail, on August 1, 2002, to the following counsel of record:

Counsel for MTD

Mark F. McKenna, Esquire
McKenna & Chiodo, P.C.
436 Boulevard of the Allies, Suite 500
Pittsburgh, PA 15219-1314

Counsel for Dunlap

Troy J. Harper, Esquire
John C. Dennison, II, Esquire
Dennison, Dennison & Harper
293 Main Street
Brookville, PA 15825

DiBELLA & GEER, P.C.

BY: 

TARA L. MACZUZAK, ESQUIRE
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL B. ROY, and CHERYL L. ROY,)
Plaintiffs) CIVIL DIVISION
)
v.)
)
MTD CONSUMER GROUP, INC;)
MTD CONSUMER PRODUCTS, INC; and)
DUNLAP LAWN & GARDEN EQUIPMENT)
INC.)
Defendants) No. 1787 C.D. - 2001

WITHDRAWAL OF APPEARANCE and ENTRY OF APPEARANCE

To the Prothonotary:

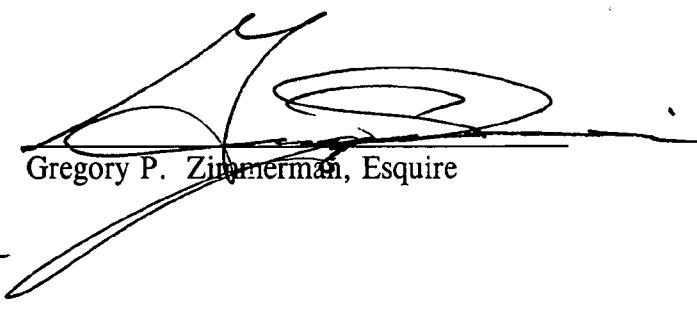
Please withdrawal my appearance on behalf of the plaintiffs, Michael B. Roy and Cheryl L. Roy, in the above-referenced matter.

Respectfully submitted,

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served upon all other parties appearing of record by First-Class United States Mail sent on 8/14/02.

Gregory P. Zimmerman, Esquire



To the Prothonotary:

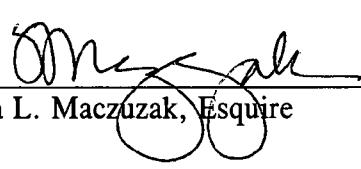
Please enter the appearance of DiBella & Geer, P.C. and Tara L. Maczuzak, Esquire as counsel for Plaintiffs, Michael B. Roy and Cheryl L. Roy, in the above-referenced matter.

Respectfully submitted,

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served upon all other parties appearing of record by First-Class United States Mail sent on 15 August, 2002.

Tara L. Maczuzak, Esquire

FILED
Aug 19 2002
m 19501 no cc
William A. Shaw Cpy
Prothonotary CA
E/S


VERIFICATION

We, **Michael B. Roy** and **Cheryl L. Roy**, individually, and as the parents and natural guardians of **Shawn Roy**, hereby depose and state that we are the plaintiffs herein and that the averments set forth in the foregoing Plaintiffs' Motion to Amend Complaint and Caption are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to intentional falsification to authorities.

Michael B. Roy
Michael B. Roy
Cheryl L. Roy
Cheryl L. Roy

Dated: Feb 14, 2002.

FILED

010247 8N
OCT 31 2002

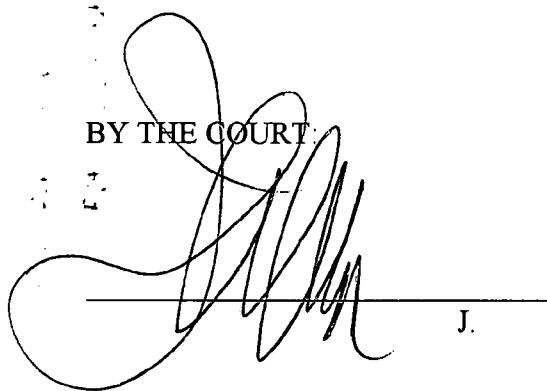
William A. Shaw
Prothonotary

MICHAEL B. ROY and CHERYL L. ROY,) IN THE COURT OF COMMON PLEAS OF
individually, and as the parents and natural) CLEARFIELD COUNTY, PENNSYLVANIA
guardians of SHAWN ROY,)
Plaintiffs,)
)
v.) CIVIL ACTION - LAW
)
MTD CONSUMER GROUP, INC.;)
MTD CONSUMER PRODUCTS, INC.;)
and DUNLAP LAWN & GARDEN)
EQUIPMENT, INC.,)
Defendants.) NO. 2001 - 1787 C.D.

ORDER

AND NOW, this 27 day of October, 2002, upon consideration of Plaintiffs' Motion To Amend Complaint And Caption and defendants' responses thereto, it is hereby ORDERED that said Motion is GRANTED. Plaintiffs are given twenty (20) days from the date of this Order to file the Amended Complaint attached to their motion as Exhibit "1". Further, the Prothonotary is directed to change the name of the plaintiffs in the caption from "Michael B. Roy and Cheryl L. Roy, individually, and as the parents and natural guardians of Shawn Roy" to "Michael B. Roy and Cheryl L. Roy." The action filed on behalf of the minor, Shawn Roy, is hereby dismissed without prejudice.

BY THE COURT



J.

FILED

OCT 31 2002

William A. Shaw
Prothonotary

This order was not filed in after
being signed. It was discovered and
filed 10-31-02. CC went to the parties.

FILED

1cc Atty Harper - Dunlap Law
01/3:09 PM
OCT 31 2002
1cc Atty McKenna - MTD - Defendants
1cc Atty Macmillan - PSS

William A. Shaw
Prothonotary

WAS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL B. ROY and CHERYL L. ROY, CIVIL ACTION – LAW

Plaintiffs,

v.

MTD CONSUMER GROUP, INC.;
MTD CONSUMER PRODUCTS, INC.; and
DUNLAP LAWN & GARDEN EQUIPMENT,
INC.

Defendants.

No. 1787 C.D. – 2001

AMENDED COMPLAINT

FILED ON BEHALF OF:

Michael B. Roy and Cheryl L. Roy,
Plaintiffs

Counsel of Record for this Party:

TARA L. MACZUZAK, ESQUIRE
Pa. I.D. #86709

DiBELLA & GEER, P.C.
Firm I.D. #099

312 Boulevard of the Allies
Suite 300
Pittsburgh, PA 15222
412-261-2900

FILED

JAN 06 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL B. ROY and CHERYL L. ROY,)	CIVIL ACTION – LAW
)	
Plaintiffs,)	
)	No. 1787 C.D. – 2001
v.)	
)	
MTD CONSUMER GROUP, INC.;)	
MTD CONSUMER PRODUCTS, INC.; and)	
DUNLAP LAWN & GARDEN EQUIPMENT,)	
INC.)	
)	
Defendants.)	

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within TWENTY (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Clearfield County Courthouse
One North Second Street
P.O. Box 549
Clearfield, PA 16830

Telephone: (814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL B. ROY and CHERYL L. ROY,) CIVIL ACTION – LAW
Plaintiffs,)
v.) No. 1787 C.D. – 2001
MTD CONSUMER GROUP, INC.;)
MTD CONSUMER PRODUCTS, INC.; and)
DUNLAP LAWN & GARDEN EQUIPMENT,)
INC.)
Defendants.)

AMENDED COMPLAINT

Plaintiffs, Michael B. Roy & Cheryl L. Roy, by and through their attorneys, DiBella & Geer, P.C. and Tara L. Maczuzak, Esquire, file the following Amended Complaint against defendants, MTD Consumer Group, Inc., MTD Consumer Products, Inc. and Dunlap Lawn & Garden Equipment, Inc., stating as follows:

1. Plaintiffs, Michael B. Roy and Cheryl L. Roy (hereinafter "Roy"), are married adult individuals who live at R.D. #3, Box 196, DuBois, Clearfield County, Pennsylvania.

2. Defendant, MTD Consumer Group, Inc., is believed to be a corporation organized and existing under the laws of the State of Ohio, and is qualified to do business in the Commonwealth of Pennsylvania. MTD's principle place of business is located in Valley City, Medina County, Ohio.

3. MTD Consumer Products, Inc., is believed to be either a subsidiary of MTD Consumer Group, Inc., or is a fictitious name under which MTD Consumer Group, Inc. operates, and is believed to be an Ohio Corporation.

4. At all times relevant hereto, defendants MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc. (hereinafter collectively referred to as "MTD") were engaged in the business of designing, manufacturing, assembling, distributing, selling and/or supplying lawn and garden power equipment including riding mowers and tractors under the trade name "White". White lawn tractors were sold and marketed to the general public.

5. Defendant, Dunlap Lawn & Garden Equipment, Inc. (hereinafter "Dunlap"), is a Pennsylvania corporation with its principle place of business located at R.R. #2, Box 478, DuBois, Clearfield County, Pennsylvania.

6. At all times relevant hereto, defendant Dunlap was engaged in the business of distributing, selling and/or supplying White lawn tractors manufactured by defendant MTD.

7. On or about April 26, 2000, plaintiffs purchased a White Outdoor LT 17 lawn tractor, (hereinafter "tractor") manufactured by defendant MTD, and sold by defendant Dunlap.

8. On or about June 8, 2000, Cheryl Roy accompanied her son Shawn to the detached garage at the Roy's home so that Shawn could use the tractor to cut the family's lawn. Mrs. Roy was to move the family's mini-van so that Shawn could drive the tractor from the garage and onto the lawn.

9. Mrs. Roy watched Shawn lift the hood of the tractor and observed that the gas tank of the tractor was one-half full. Shawn then closed the hood and mounted the tractor. As soon as Shawn started the engine, flames leapt from the vents of the hood of the tractor. The fire in the tractor then spread across the garage, completely engulfing the structure of the garage and the family's mini-van.

COUNT I

Roy v. MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc.
Strict Liability

10. Paragraphs 1 through 9 above are incorporated herein by reference as if set forth in full.

11. It is believed and therefore averred, that defendant MTD expected that the subject tractor would reach its consumers without substantial change in the condition in which it was designed, manufactured, assembled, distributed, sold or supplied, and that the subject tractor did reach the plaintiffs without substantial change in the condition in which it was designed, manufactured, assembled, distributed, sold or supplied. In the alternative, any change or alteration made to the subject tractor after it was designed, manufactured, assembled, distributed, sold or supplied was reasonably expected and/or foreseen by defendant MTD.

12. During the time in which the plaintiffs had possession of the tractor, it was never subjected to any abnormal or unanticipated use.

13. It is believed and therefore averred, that the subject tractor was designed, manufactured, assembled, distributed, sold and/or supplied by defendant MTD, in a defective condition, unreasonably dangerous to users and consumers.

14. It is believed and therefore averred, that defendant MTD is strictly liable to plaintiffs under Section 402(a) of the Restatement (Second) of Torts for any or all of the following reasons:

- a) in designing, manufacturing, assembling, distributing, selling and/or supplying the subject tractor without adequate safety devices, particularly ones which would prevent a fire from starting in the engine compartment;
- b) in failing to adequately warn and/or instruct plaintiffs, or others similarly situated, of the fact that fuel and fuel vapors could leak into the engine compartment causing a fire under normal use when it knew, or should have known, of such dangers and hazards;
- c) in designing, manufacturing, assembling, distributing, selling, and/or supplying the subject tractor with inadequate, impractical and/or defective safety devices or features to prevent the tractor from catching fire;
- d) in designing, manufacturing, assembling, distributing, selling, and/or supplying the subject tractor without adequate testing and/or inspection prior to its sale for use by consumers; and
- e) in failing to design, manufacture, assemble, distribute, sell and/or supply the subject tractor in an adequate and safe condition for its intended use and for reasonably foreseeable users, such as the plaintiffs.

15. The June 8, 2000, fire, and resulting property damage, were the direct and proximate result of the design, manufacture, assembly, distribution, sale and/or supply by the defendant MTD of the subject tractor in a defective and unreasonably dangerous condition, for the reasons set forth more fully in paragraph 14 above, the averments of which are incorporated herein by reference.

16. There were no reasonable secondary causes responsible for the fire, other than the defective design of the tractor.

17. As a direct and proximate result of defendant MTD designing, manufacturing, assembling, distributing, selling and/or supplying the subject tractor in a defective and/or unreasonably dangerous condition, plaintiffs have suffered property damage to their garage, mini-van, the tractor and their home and real property in an amount in excess of \$43,000.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

COUNT II

Roy v. MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc.
Breach of Implied Warranty for a Particular Purpose

18. Plaintiffs incorporate by reference, the averments contained in paragraphs 1 though 17, as if set forth at length herein.

19. At the time the subject tractor was purchased, the plaintiffs were relying upon the skill, expertise and judgment of defendant MTD to design, manufacture, assemble, distribute, sell, and supply lawn tractors with safe and adequate features and components, fit for the purpose of normal consumer use.

20. At the time the subject tractor was purchased by plaintiffs, defendant MTD knew, or had reason to know, the particular purpose for which the tractor would be

used, and that the plaintiffs were relying upon the defendant's skill, expertise and judgment to design, manufacture, assemble, sell, and supply a lawn tractor with safe and adequate features and components fit for the purpose of normal consumer use.

21. The subject tractor was not fit for the particular purpose for which it was sold for the reasons more fully set forth in paragraph 14 above, the averments of which are incorporated herein by reference.

22. As a proximate result of defendant MTD's breach of the implied warranty of fitness for a particular purpose, the plaintiffs suffered damages as outlined in paragraph 17 of this Amended Complaint, the averments of which are incorporated herein by reference as if set forth in full.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant, MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

COUNT III

Roy v. MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc.
Breach of Implied Warranty of Merchantability

23. Plaintiff incorporates by reference the averments contained in paragraph 1 through 22 above as if set forth at length herein.

24. At the time the subject tractor was purchased, defendant MTD impliedly warranted that the tractor was of fair, average quality and fit for the ordinary purpose for which it was used.

25. The subject tractor was not of a fair, average quality and was not fit for the ordinary purpose for which it was used for the reasons more fully set forth in paragraph 14 above, the averments of which are incorporated herein by reference.

26. As a proximate result of defendant MTD's breach of implied warranty of merchantability, plaintiffs suffered damages as outlined in paragraph 17 of this Amended Complaint, the averments of which are incorporated herein by reference as if set forth in full.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant, MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

COUNT IV
Roy v. MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc.
Negligence

27. Plaintiffs incorporate by reference the averments contained in paragraph 1 through 26 above as if the same were set forth at length herein.

28. Defendant MTD, as a manufacturer of lawn tractors, was required to exercise reasonable care in designing, manufacturing and distributing its product.

29. The June 8, 2000, fire and resulting damages sustained by the plaintiffs were the proximate and direct result of the negligence of defendant MTD, as

more fully set forth in paragraph 14 above, the averments of which are incorporated herein by reference.

30. As a proximate result of defendant MTD's negligence, plaintiffs suffered damages as outlined in paragraph 17 of this Amended Complaint, the averments of which are incorporated herein by reference as if set forth in full.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant, MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

COUNT V

Roy v. Dunlap Lawn & Garden Equipment, Inc. Strict Liability

31. Paragraphs 1 through 30 above are incorporated herein by reference as if set forth at length herein.

32. It is believed and therefore averred, that defendant Dunlap expected that the subject tractor would reach its consumers without substantial change in the condition in which it was designed, manufactured, assembled, distributed, sold or supplied, and that the subject tractor did reach the plaintiffs without substantial change in the condition in which it was designed, manufactured, assembled, distributed, sold or supplied. In the alternative, any change or alteration made to the subject tractor after it was designed, manufactured, assembled, distributed, sold or supplied was reasonably expected and/or foreseen by defendant Dunlap.

33. During the time in which the plaintiffs had possession of the tractor, it was never subjected to any abnormal or unanticipated use.

34. It is believed and therefore averred, that the subject tractor was designed, manufactured, assembled, distributed, sold and/or supplied by defendant Dunlap, in a defective condition, unreasonably dangerous to users and consumers.

35. It is believed and therefore averred, that defendant Dunlap is strictly liable to plaintiffs under Section 402(a) of the Restatement (Second) of Torts for any or all of the following reasons:

- a) in designing, manufacturing, assembling, distributing, selling and/or supplying the subject tractor without adequate safety devices, particularly ones which would prevent a fire from starting in the engine compartment;
- b) in failing to adequately warn and/or instruct plaintiffs, or others similarly situated, of the fact that fuel and fuel vapors could leak into the engine compartment causing a fire under normal use when it knew, or should have known, of such dangers and hazards;
- c) in designing, manufacturing, assembling, distributing, selling, and/or supplying the subject tractor with inadequate, impractical and/or defective safety devices or features to prevent the tractor from catching fire.
- d) in designing, manufacturing, assembling, distributing, selling, and/or supplying the subject tractor without adequate testing and/or inspection prior to its sale for use by consumers; and
- e) in failing to design, manufacture, assemble, distribute, sell and/or supply the subject tractor in an adequate and safe condition for its intended use and for reasonably foreseeable users, such as the plaintiffs.

36. The June 8, 2000, fire, and resulting property damage, were the direct and proximate result of the design, manufacture, assembly, distribution, sale and/or supply by the defendant Dunlap of the subject tractor in a defective and unreasonably dangerous condition, for the reasons set forth more fully in paragraph 35 above, the averments of which are incorporated herein by reference.

37. There were no reasonable secondary causes responsible for the fire, other than the defective design and/or assembly of the tractor.

38. As a direct and proximate result of defendant Dunlap designing, manufacturing, assembling, distributing, selling and/or supplying the subject tractor in a defective and/or unreasonably dangerous condition, plaintiffs have suffered property damage to their garage, mini-van, the tractor and their home and real property in an amount in excess of \$43,000.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant, Dunlap Lawn & Garden Equipment, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

COUNT VI
Roy v. Dunlap Lawn & Garden Equipment, Inc.
Breach of Implied Warranty for a Particular Purpose

39. Plaintiffs incorporate by reference, the averments contained in paragraphs 1 though 38 as if set forth at length herein.

40. At the time the subject tractor was purchased, the plaintiffs were relying upon the skill, expertise and judgment of defendant Dunlap to design,

manufacture, assemble, distribute, sell, and supply lawn tractors with safe and adequate features and components, fit for the purpose of normal consumer use.

41. At the time the subject tractor was purchased by plaintiffs, defendant Dunlap knew, or had reason to know, the particular purpose for which the tractor would be used, and that the plaintiffs were relying upon the defendant's skill, expertise and judgment to design, manufacture, assemble, sell, and supply a lawn tractor with safe and adequate features and components fit for the purpose of normal consumer use.

42. The subject tractor was not fit for the particular purpose for which it was sold for the reasons more fully set forth in paragraph 35 above, the averments of which are incorporated herein by reference.

43. As a proximate result of defendant Dunlap's breach of the implied warranty of fitness for a particular purpose, the plaintiffs suffered damages as outlined in paragraph 38 of this Amended Complaint, the averments of which are incorporated herein by reference as if set forth in full.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant, Dunlap Lawn & Garden Equipment, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

COUNT VII
Roy v. Dunlap Lawn & Garden Equipment, Inc.
Breach of Implied Warranty of Merchantability

44. Plaintiff incorporates by reference the averments contained in paragraph 1 through 43 above as if the same were set forth at length herein.

45. At the time the subject tractor was purchased, defendant Dunlap impliedly warranted that the tractor was of fair, average quality and fit for the ordinary purpose for which it was used.

46. The subject tractor was not of a fair, average quality and was not fit for the ordinary purpose for which it was used for the reasons more fully set forth in paragraph 35 above, the averments of which are incorporated herein by reference.

47. As a proximate result of defendant Dunlap's breach of implied warranty of merchantability, plaintiffs suffered damages as outlined in paragraph 38 of this Amended Complaint, the averments of which are incorporated herein by reference as if set forth in full.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant, Dunlap Lawn & Garden Equipment, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

COUNT VIII
Roy v. Dunlap Lawn & Garden Equipment, Inc.
Negligence

48. Plaintiffs incorporate by reference the averments contained in paragraphs 1 through 47 above as if the same were set forth at length herein.

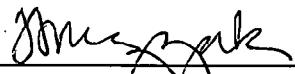
49. Defendant Dunlap knew, or reasonably should have known, that the subject tractor was unreasonably dangerous due to its defective design and that the subject tractor would reach and be used by consumers in the condition in which it was manufactured, and that it would be used without inspection for defects.

50. The June 8, 2000, fire, and resulting damages sustained by the plaintiffs were the proximate and direct result of the negligence of defendant Dunlap, as more fully set forth in paragraph 35 above, the averments of which are incorporated herein by reference.

51. As a proximate result of defendant Dunlap's negligence, plaintiffs suffered damages as outlined in paragraph 38 of this Amended Complaint, the averments of which are incorporated herein by reference as if set forth in full.

WHEREFORE, plaintiffs demand judgment in their favor and against defendant, Dunlap Lawn & Garden Equipment, Inc., in an amount in excess of the arbitration limits of this Court, together with interest, costs of suit and any other damages awarded by this Court as appropriate under the laws of the Commonwealth of Pennsylvania.

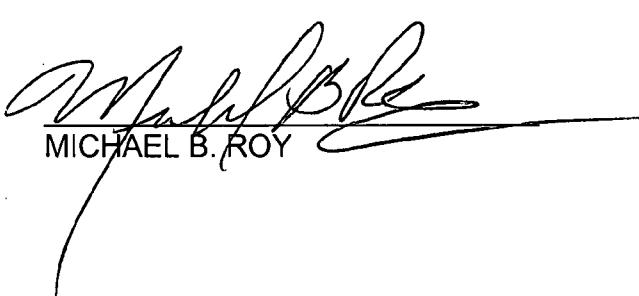
Respectfully submitted,
DiBELLA & GEER, P.C.



TARA L. MACZUZAK, ESQUIRE
Attorney for Plaintiffs, Michael B. Roy
and Cheryl L. Roy

VERIFICATION

I, MICHAEL B. ROY, verify that the statements of fact made in the foregoing AMENDED COMPLAINT are true and correct to the best of my knowledge, information and belief. I understand that any false statements herein are made subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsification to authorities.



MICHAEL B. ROY

Date: 12/15/02

VERIFICATION

I, CHERYL L. ROY, verify that the statements of fact made in the foregoing AMENDED COMPLAINT are true and correct to the best of my knowledge, information and belief. I understand that any false statements herein are made subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsification to authorities.

Cheryl L Roy
CHERYL L. ROY

Date: 12-15-02

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Amended Complaint was forwarded by first class mail, on January 3, 2003 to the following counsel of record:

Counsel for MTD

Mark F. McKenna, Esquire
McKenna & Chiodo, P.C.
436 Boulevard of the Allies, Suite 500
Pittsburgh, PA 15219-1314

Counsel for Dunlap

Troy J. Harper, Esquire
John C. Dennison, II, Esquire
Dennison, Dennison & Harper
293 Main Street
Brookville, PA 15825

DiBELLA & GEER, P.C.

BY: 

TARA L. MACZUZAK, ESQUIRE
Attorney for Plaintiffs

FILED

1/10/27 8:11 AM
JAN 06 2003
No CC

Scanned

William A. Shaw
Prothonotary

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MICHAEL B. ROY and CHERYL L. ROY,

CIVIL ACTION - LAW

Plaintiffs,

Number 2001 - 1787 C.D.

vs.

Type of Case: Civil Division

MTD CONSUMER GROUP, INC.;
MTD CONSUMER PRODUCTS, INC.;
and DUNLAP LAWN & GARDEN
EQUIPMENT, INC.,

Type of Pleading: Answer, New Matter
and New Matter Pursuant to
Pa.R.C.P. 2252(d)

Defendants.

Filed on behalf of: Defendant, Dunlap
Lawn & Garden Equipment, Inc.

Counsel of Record for this Party:

Troy J. Harper
Supreme Court Number: 74753

John C. Dennison, II
Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED

FEB 06 2003

William A. Shaw
Prothonotary

MICHAEL B. ROY and CHERYL L. ROY,

Plaintiffs,

vs.

MTD CONSUMER GROUP, INC.;
MTD CONSUMER PRODUCTS, INC.; and
DUNLAP LAWN & GARDEN
EQUIPMENT, INC.,

Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
*
* Civil Action - Law
*
*
*
*
* Number 2001 - 1787 C.D.

NOTICE TO PLEAD

TO: MICHAEL B. ROY and CHERYL L. ROY, PLAINTIFFS:

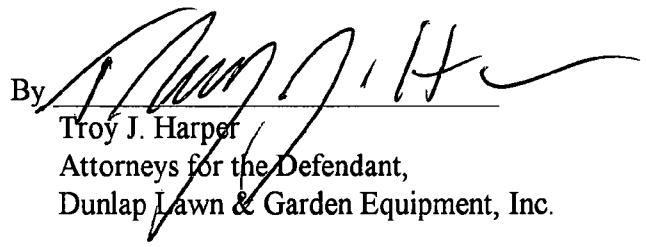
You are hereby notified to plead to the enclosed New Matter within twenty (20) days from service hereof or a default judgment may be entered against you.

TO: DEFENDANTS, MTD CONSUMER GROUP, INC. AND MTD CONSUMER PRODUCTS, INC. :

You are hereby notified to plead to the enclosed New Matter Pursuant to Pa.R.C.P. 2252(d) within twenty (20) days from service hereof or a default judgment may be entered against you.

DENNISON, DENNISON & HARPER

By


Troy J. Harper

Attorneys for the Defendant,
Dunlap Lawn & Garden Equipment, Inc.

MICHAEL B. ROY and CHERYL L. ROY,

Plaintiffs,

vs.

MTD CONSUMER GROUP, INC.;
MTD CONSUMER PRODUCTS, INC.; and
DUNLAP LAWN & GARDEN
EQUIPMENT, INC.,

Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
*
* Civil Action - Law
*
*
*
*
* Number 2001 - 1787 C.D.

**ANSWER, NEW MATTER AND NEW MATTER
PURSUANT TO PA.R.C.P. 2252(D)**

AND NOW, comes the Defendant, Dunlap Lawn & Garden Equipment, Inc., Defendant, by and through its attorneys, Dennison, Dennison & Harper who file the following Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) in response to the Plaintiffs' Amended Complaint:

1. Admitted.
2. After reasonable investigation, the Defendant, Dunlap Lawn & Garden Equipment, Inc., is without sufficient knowledge and information to form a belief as to the truth of the averments of Paragraph 2 of the Plaintiffs' Amended Complaint, and said averments are therefore denied.
3. After reasonable investigation, the Defendant, Dunlap Lawn & Garden Equipment, Inc., is without sufficient knowledge and information to form a belief as to the truth of the averments of Paragraph 3 of the Plaintiffs' Amended Complaint, and said averments are therefore denied.

4. The averments of Paragraph 4 of the Plaintiffs' Amended Complaint are directed to a party other than the answering Defendant, Dunlap Lawn & Garden Equipment, Inc., and no response is required. After reasonable investigation, the Defendant, Dunlap Lawn & Garden Equipment, Inc., is without sufficient knowledge and information to form a belief as to the truth of the averments of Paragraph 4 of the Plaintiffs' Amended Complaint, and said averments are therefore denied.

5. Admitted.

6. The averments of Paragraph 6 of the Plaintiffs' Complaint are admitted only insofar as the Defendant, Dunlap Lawn & Garden Equipment, Inc., was engaged in the business of retail selling of White lawn tractors. By way of additional response, the Defendant, Dunlap Lawn & Garden Equipment, Inc., has no specific knowledge as to the exact name of the manufacturer of the White lawn tractor, but it is believed that the manufacturer may have been known as White Outdoor Products Company, which may be a division, related company or trade name of MTD.

7. The averments of Paragraph 7 of the Plaintiffs' Amended Complaint that on or about April 26, 2000, the Plaintiffs purchased a White Outdoor LT 17 lawn tractor sold by the Defendant, Dunlap Lawn & Garden Equipment, Inc., are admitted. After reasonable investigation, the Defendant, Dunlap Lawn & Garden Equipment, Inc., is without sufficient knowledge and information to form a belief as to the truth of the remaining averments, and said averments are therefore denied. In addition, the averments of Paragraph 6 of this Answer are incorporated herein by reference thereto.

8. After reasonable investigation, the Defendant, Dunlap Lawn & Garden Equipment,

Inc., is without sufficient knowledge and information to form a belief as to the truth of the averments of Paragraph 8 of the Plaintiffs' Amended Complaint, and said averments are therefore denied.

9. After reasonable investigation, the Defendant, Dunlap Lawn & Garden Equipment, Inc., is without sufficient knowledge and information to form a belief as to the truth of the averments of Paragraph 9 of the Plaintiffs' Amended Complaint, and said averments are therefore denied.

COUNT I
ROY V. MTD CONSUMER GROUP, INC. and/or MTD CONSUMER
PRODUCTS, INC.
STRICT LIABILITY

10. Paragraph 10 of the Plaintiffs' Amended Complaint contains no averments of fact and is merely an incorporation clause, and no response is deemed required. To the extent that any response is deemed required, the averments of Paragraphs 1 through 9 of this Answer are incorporated herein by reference thereto.

11. through 17. The averments of Paragraphs 11 through 17 of the Plaintiffs' Amended Complaint are directed to a party other than the answering Defendant, Dunlap Lawn & Garden Equipment, Inc., and no response is required. In addition, said averments are denied pursuant to Pa.R.C.P. 1029(e), and the averments of Paragraphs 31 through 51 of this Answer are incorporated herein by reference thereto.

WHEREFORE, the Defendant, Dunlap Lawn & Garden Equipment, Inc., demands judgment in its favor and against all other parties. **JURY TRIAL DEMANDED.**

COUNT II
ROY V. MTD CONSUMER GROUP, INC. and/or MTD CONSUMER
PRODUCTS, INC.
BREACH OF IMPLIED WARRANTY FOR A PARTICULAR PURPOSE

18. Paragraph 18 of the Plaintiffs' Amended Complaint contains no averments of fact and is merely an incorporation clause, and no response is deemed required. To the extent that any response is deemed required, the averments of Paragraphs 1 through 17 of this Answer are incorporated herein by reference thereto.

19. through 22. The averments of Paragraphs 19 through 22 of the Plaintiffs' Amended Complaint are directed to a party other than the answering Defendant, Dunlap Lawn & Garden Equipment, Inc., and no response is required. In addition, said averments are denied pursuant to Pa.R.C.P. 1029(e), and the averments of Paragraphs 31 through 51 of this Answer are incorporated herein by reference thereto.

WHEREFORE, the Defendant, Dunlap Lawn & Garden Equipment, Inc., demands judgment in its favor and against all other parties. **JURY TRIAL DEMANDED.**

COUNT III
ROY V. MTD CONSUMER GROUP, INC. and/or MTD CONSUMER
PRODUCTS, INC.
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

23. Paragraph 23 of the Plaintiffs' Amended Complaint contains no averments of fact and is merely an incorporation clause, and no response is deemed required. To the extent that any response is deemed required, the averments of Paragraphs 1 through 22 of this Answer are incorporated herein by reference thereto.

24. through 26. The averments of Paragraphs 22 through 26 of the Plaintiffs' Amended Complaint are directed to a party other than the answering Defendant, Dunlap Lawn & Garden Equipment, Inc., and no response is required. In addition, said averments are denied pursuant to Pa.R.C.P. 1029(e), and the averments of Paragraphs 31 through 51 of this Answer are incorporated herein by reference thereto.

WHEREFORE, the Defendant, Dunlap Lawn & Garden Equipment, Inc., demands judgment in its favor and against all other parties. **JURY TRIAL DEMANDED.**

COUNT IV
ROY V. MTD CONSUMER GROUP, INC. and/or MTD CONSUMER
PRODUCTS, INC.
NEGLIGENCE

27. Paragraph 27 of the Plaintiffs' Amended Complaint contains no averments of fact and is merely an incorporation clause, and no response is deemed required. To the extent that any response is deemed required, the averments of Paragraphs 1 through 26 of this Answer are incorporated herein by reference thereto.

28. through 30. The averments of Paragraphs 22 through 30 of the Plaintiffs' Amended Complaint are directed to a party other than the answering Defendant, Dunlap Lawn & Garden Equipment, Inc., and no response is required. In addition, said averments are denied pursuant to Pa.R.C.P. 1029(e), and the averments of Paragraphs 31 through 51 of this Answer are incorporated herein by reference thereto.

WHEREFORE, the Defendant, Dunlap Lawn & Garden Equipment, Inc., demands judgment in its favor and against all other parties. **JURY TRIAL DEMANDED.**

COUNT V
ROY V. DUNLAP LAWN & GARDEN EQUIPMENT, INC.
STRICT LIABILITY

31. Paragraph 31 of the Plaintiffs' Amended Complaint contains no averments of fact and is merely an incorporation clause, and no response is deemed required. To the extent that any response is deemed required, the averments of Paragraphs 1 through 30 of this Answer are incorporated herein by reference thereto.

32. The averments of Paragraph 32 of the Plaintiffs' Amended Complaint constitute conclusions of law, and no further response is required. To the extent any further response is deemed required, said averments are denied pursuant to Pa.R.C.P. 1029(e).

33. After reasonable investigation, the Defendant, Dunlap Lawn & Garden Equipment, Inc., is without sufficient knowledge and information to form a belief as to the truth of the averments of Paragraph 33 of the Plaintiffs' Amended Complaint, and said averments are therefore denied.

34. The averments of Paragraph 34 of the Plaintiffs' Amended Complaint are admitted only insofar as the Defendant, Dunlap Lawn & Garden Equipment, Inc., sold the tractor in its capacity as a retail seller to the Plaintiffs. By way of additional response, the Defendant, Dunlap Lawn & Garden Equipment, Inc., only attached the seat and steering wheel onto the tractor. It is specifically denied that the Defendant, Dunlap Lawn & Garden Equipment, Inc., designed, manufactured, supplied or distributed the tractor or otherwise assembled the tractor except as set forth herein. With respect to the remaining averments of Paragraph 34 of the Plaintiffs' Amended Complaint, said averments constitute conclusions of law, and no further response is required.

35. The averments of Paragraph 35 of the Plaintiffs' Amended Complaint constitute conclusions of law, and no further response is required. To the extent any further response is deemed required, said averments are denied pursuant to Pa.R.C.P. 1029(e). By way of additional response, the averments of Paragraph 34 of this Answer are incorporated herein by reference thereto.

36. The averments of Paragraph 36 of the Plaintiffs' Amended Complaint constitute conclusions of law, an no further response is required. To the extent any further response is deemed required, said averments are denied pursuant to Pa.R.C.P. 1029(e). By way of additional response, the averments of Paragraph 34 of this Answer are incorporated herein by reference thereto.

37. With respect to the averments of Paragraph 37 of the Plaintiffs' Amended Complaint alleging any defective design and/or assembly, said averments constitute conclusions of law, and no further response is required and the averments of Paragraph 34 of this Answer are incorporated herein by reference thereto. With respect to the remaining averments of Paragraph 37 of the Plaintiffs' Amended Complaint, after reasonable investigation the Defendant, Dunlap Lawn & Garden Equipment, Inc., is without sufficient knowledge and information to form a belief as to the truth of the averments, and said averments are therefore denied.

38. With respect to the averments of Paragraph 38 of the Plaintiffs' Amended Complaint alleging any damages, after reasonable the Defendant, Dunlap Lawn & Garden Equipment, Inc., is without sufficient knowledge and information to form a belief as to the truth of the averments, and said averments are therefore denied. The remaining averments of Paragraph 38 of the

Plaintiffs' Amended Complaint are admitted only insofar as the Defendant, Dunlap Lawn & Garden Equipment, Inc., sold the tractor in its capacity as a retail seller to the Plaintiffs. By way of additional response, the Defendant, Dunlap Lawn & Garden Equipment, Inc., only assembled the seat and steering wheel on the tractor. It is specifically denied that the Defendant, Dunlap Lawn & Garden Equipment, Inc., designed, manufactured, supplied or distributed the tractor or otherwise assembled the tractor except as set forth herein. With respect to the remaining averments of Paragraph 38 of the Plaintiffs' Amended Complaint, said averments constitute conclusions of law, and no further response is required.

WHEREFORE, the Defendant, Dunlap Lawn & Garden Equipment, Inc., demands judgment in its favor and against all other parties. **JURY TRIAL DEMANDED.**

COUNT VI

ROY V. DUNLAP LAWN & GARDEN EQUIPMENT, INC.
BREACH OF IMPLIED WARRANTY FOR A PARTICULAR PURPOSE

39. Paragraph 39 of the Plaintiffs' Amended Complaint contains no averments of fact and is merely an incorporation clause, and no response is deemed required. To the extent that any response is deemed required, the averments of Paragraphs 1 through 38 of this Answer are incorporated herein by reference thereto.

40. The averments of Paragraph 40 of the Plaintiffs' Amended Complaint are denied pursuant to Pa.R.C.P. 1029(e). By way of additional response, the averments of Paragraph 34 of

this Answer are incorporated herein by reference thereto.

41. The averments of Paragraph 41 of the Plaintiffs' Amended Complaint are denied pursuant to Pa.R.C.P. 1029(e). By way of additional response, the averments of Paragraph 34 of this Answer are incorporated herein by reference thereto.

42. The averments of Paragraph 42 of the Plaintiffs' Amended Complaint constitute conclusions of law, and no further response is required. By way of additional response, said averments are denied pursuant to Pa.R.C.P. 1029(e), and the averments of Paragraph 34 of this Answer are incorporated herein by reference thereto.

43. With respect to the averments of Paragraph 43 of the Plaintiffs' Amended Complaint alleging any damages, after reasonable investigation the Defendant, Dunlap Lawn & Garden Equipment, Inc., is without sufficient knowledge and information to form a belief as to the truth of the averments, and said averments are therefore denied. The remaining averments of Paragraph 43 of the Plaintiffs' Amended Complaint constitute conclusions of law and are denied pursuant to Pa.R.C.P. 1029(e), and the averments of Paragraph 34 of this Answer are incorporated herein by reference thereto.

WHEREFORE, the Defendant, Dunlap Lawn & Garden Equipment, Inc., demands judgment in its favor and against all other parties. **JURY TRIAL DEMANDED.**

COUNT VII
ROY V. DUNLAP LAWN & GARDEN EQUIPMENT, INC.
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

44. Paragraph 44 of the Plaintiffs' Amended Complaint contains no averments of fact and is merely an incorporation clause, and no response is deemed required. To the extent that any response is deemed required, the averments of Paragraphs 1 through 43 of this Answer are incorporated herein by reference thereto.

45. The averments of Paragraph 45 of the Plaintiffs' Amended Complaint constitute conclusions of law, and are denied pursuant to Pa.R.C.P. 1029(e).

46. The averments of Paragraph 46 of the Plaintiffs' Amended Complaint constitute conclusions of law, and are denied pursuant to Pa.R.C.P. 1029(e).

47. With respect to the averments of Paragraph 47 of the Plaintiffs' Amended Complaint alleging any damages, after reasonable investigation the Defendant, Dunlap Lawn & Garden Equipment, Inc., is without sufficient knowledge and information to form a belief as to the truth of the averments, and said averments are therefore denied. The remaining averments of Paragraph 47 of the Plaintiffs' Amended Complaint constitute conclusions of law, and are denied pursuant to Pa.R.C.P. 1029(e).

WHEREFORE, the Defendant, Dunlap Lawn & Garden Equipment, Inc., demands judgment in its favor and against all other parties. **JURY TRIAL DEMANDED.**

COUNT VIII
ROY V. DUNLAP LAWN & GARDEN EQUIPMENT, INC.
NEGLIGENCE

48. Paragraph 48 of the Plaintiffs' Amended Complaint contains no averments of fact and is merely an incorporation clause, and no response is deemed required. To the extent that any response is deemed required, the averments of Paragraphs 1 through 47 of this Answer are incorporated herein by reference thereto.

49. The averments of Paragraph 49 of the Plaintiffs' Amended Complaint constitute conclusions of law, and are denied pursuant to Pa.R.C.P. 1029(e).

50. With respect to the averments of Paragraph 50 of the Plaintiffs' Amended Complaint alleging any damages, after reasonable investigation the Defendant, Dunlap Lawn & Garden Equipment, Inc., is without sufficient knowledge and information to form a belief as to the truth of the averments, and said averments are therefore denied. With respect to any averments of Paragraph 50 of the Plaintiffs' Amended Complaint alleging any negligence by the Defendant, Dunlap Lawn & Garden Equipment, Inc., said averments are denied pursuant to Pa.R.C.P. 1029(e). The remaining averments of Paragraph 50 of the Plaintiffs' Amended Complaint constitute conclusions of law, and no further response is required.

51. With respect to the averments of Paragraph 51 of the Plaintiffs' Amended Complaint alleging any damages, after reasonable investigation the Defendant, Dunlap Lawn & Garden Equipment, Inc., is without sufficient knowledge and information to form a belief as to the truth of the averments, and said averments are therefore denied. With respect to any averments of

Paragraph 51 of the Plaintiffs' Amended Complaint alleging any negligence by the Defendant, Dunlap Lawn & Garden Equipment, Inc., said averments are denied pursuant to Pa.R.C.P. 1029(e). The remaining averments of Paragraph 51 of the Plaintiffs' Amended Complaint constitute conclusions of law, and no further response is required.

NEW MATTER DIRECTED TO PLAINTIFFS

52. All of the Plaintiffs' claims are barred by the applicable statute of limitations.

53. The Plaintiffs have failed to state a claim against the Defendant, Dunlap Lawn & Garden Equipment, Inc., upon which relief can be granted.

54. The alleged injuries and/or damages sustained by the Plaintiffs, without admission of the same, and without admission of liability for the same, were caused or contributed to, in whole or in part, by persons or entities other than the Defendant, Dunlap Lawn & Garden Equipment, Inc., and over whom the Defendant, Dunlap Lawn & Garden Equipment, Inc., had no control, and for whose actions the Defendant, Dunlap Lawn & Garden Equipment, Inc., is not liable.

NEW MATTER PURSUANT TO PA.R.C.P. 2252(d) DIRECTED TO DEFENDANTS, MTD CONSUMER GROUP, INC. AND MTD CONSUMER PRODUCTS, INC.

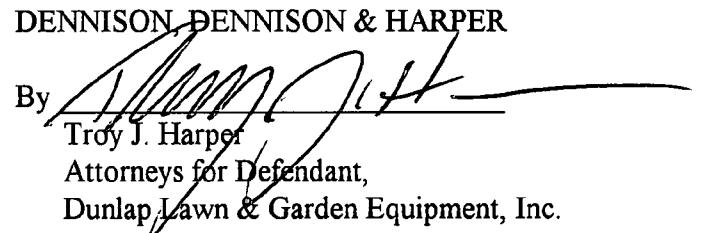
55. The Defendants, MTD Consumer Group, Inc. and MTD Consumer Products, Inc., are solely liable to the Plaintiffs for any alleged damages suffered by them, and the averments of the Plaintiffs' Amended Complaint directed against the Defendants, MTD Consumer Group, Inc. and MTD Consumer Products, Inc., are incorporated herein by reference thereto without admitting or adopting the truth of the same solely for the purpose of establishing a claim for sole liability.

56. If the Defendant, Dunlap Lawn & Garden Equipment, Inc., is held liable to the Plaintiffs on any cause of action as set forth in the Plaintiffs' Amended Complaint, such liability being expressly denied, then the Defendants, MTD Consumer Group, Inc. and MTD Consumer Products, Inc., are liable over to the Defendant, Dunlap Lawn & Garden Equipment, Inc., for contribution and/or indemnity, and the averments of the Plaintiffs' Seconded Amended Complaint directed against the Defendants, MTD Consumer Group, Inc. and MTD Consumer Products, Inc., are incorporated herein by reference thereto without admitting or adopting the truth of the same solely for the purpose of establishing a claim against the Defendants, MTD Consumer Group, Inc. and MTD Consumer Products, Inc., for indemnity and contribution.

WHEREFORE, the Defendant, Dunlap Lawn & Garden Equipment, Inc., joins the Defendants, MTD Consumer Group, Inc. and MTD Consumer Products, Inc., as Additional Defendants and demands judgment against them as being solely liable for the damages claimed by the Plaintiffs, or in the alternative, as being liable over to the Defendant, Dunlap Lawn & Garden Equipment, Inc., for indemnity and/or contribution. **JURY TRIAL DEMANDED.**

DENNISON, DENNISON & HARPER

By

Troy J. Harper

Attorneys for Defendant,
Dunlap Lawn & Garden Equipment, Inc.

VERIFICATION

I verify that the averments made in the forgoing Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 2252(d) are true and correct to the best of my knowledge, information and belief. I understand that false statements herein made are subject to the penalties of 18 Pa.C.S.A. Section 4904, relating to unsworn falsification to authorities.

DUNLAP LAWN & GARDEN EQUIPMENT, INC.

By Sandra Dunlap, President
(Title)

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Answer, New Matter and New matter Pursuant to Pa.R.C.P. 2252(d) was served on the 4th day of February, 2003, by United States Mail, First Class, Postage Prepaid, addressed to the following:

Tara L. Maczuzak, Esq.
DiBella & Geer, P.C.
312 Boulevard of the Allies
Suite 300
Pittsburgh, Pennsylvania 15222

Mark F. McKenna, Esq.
McKenna & Chiodo, P.C.
436 Boulevard of the Allies, Suite 500
Pittsburgh, Pennsylvania 15219

DENNISON, DENNISON & HARPER
By 
Troy J. Harper
Attorneys for the Defendant,
Dunlap Lawn & Garden Equipment, Inc.

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

MICHAEL B. ROY and CHERYL ROY,
individually, and as parents and natural
guardians of SHAWN ROY,

PLAINTIFFS,

vs.

MTD CONSUMER GROUP, INC.; MTD
CONSUMER PRODUCTS, INC.; and
DUNLAP LAWN & GARDEN
EQUIPMENT, INC.,

DEFENDANTS.

CIVIL DIVISION

CASE NO. 01-1787-CD

TYPE OF PLEADING:

**REPLY TO NEW MATTER PURSUANT
TO Pa.R.C.P. 2252(d)**

FILED ON BEHALF OF:

DEFENDANTS, MTD CONSUMER
GROUP, INC., and MTD CONSUMER
PRODUCTS, INC.

COUNSEL OF RECORD FOR THIS PARTY:

MARK F. McKENNA, ESQUIRE
PA I.D. #30297

McKENNA & CHODO, P.C.
436 Boulevard of the Allies
Suite 500
Pittsburgh, PA 15219-1314

(412) 471-6226

FILED

FEB 24 2003

**William A. Shaw
Prothonotary**

REPLY TO NEW MATTER

The Defendants, MTD Consumer Group, Inc., and MTD Consumer Products Inc., by and through their attorneys, McKENNA & CHIODO, P.C., file the following Reply to New Matter Pursuant to Pa.R.C.P. 2252(d), and aver as follows:

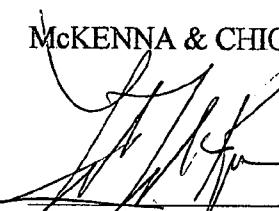
55. Paragraph 55 is a conclusion of law to which no responsive pleading is required. To the extent that a responsive pleading is required, said allegations are denied.

56. Paragraph 56 is a conclusion of law to which no responsive pleading is required. To the extent that a responsive pleading is required, said allegations are denied. By way of further answer, these Defendants incorporate by reference hereto their Answer to Plaintiffs' Amended Complaint as if set forth herein at length.

WHEREFORE, Defendants, MTD Consumer Group, Inc. and MTD Consumer Products, Inc., respectfully request that judgment be entered their favor and against the other parties.

Respectfully submitted,

McKENNA & CHIODO, P.C.

By: 

MARK F. McKENNA, ESQUIRE
PA I.D. #30297

Attorneys for Defendants, MTD Consumer Group, Inc., and MTD Consumer Products, Inc.

VERIFICATION

I, Terry R. Hollister, representative of MTD Products Inc., depose and say subject to the Penalties of 18 Pa. C.S., Section 4904 relating to unsworn falsification to authorities, that the facts set forth in the foregoing Reply to New Matter Pursuant to Pa.R.C.P. 2252(d) are true and correct to the best of my knowledge, information, and belief.

MTD Products Inc.

2/15/03
Date

By:

Terry R. Hollister

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Reply to New Matter Pursuant to Pa.R.C.P. 2252(d) was forwarded by U.S. first class mail to the following this 20th day of February, 2003:

Tara L. Maczuzak, Esquire
DiBELLA & GEER, P.C.
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222

Troy J. Harper, Esquire
DENNISON, DENNISON & HARPER
293 Main Street
Brookville, PA 15825-1291

McKENNA & CHIODO, P.C.

By: 

MARK F. McKENNA, ESQUIRE
Attorneys for Defendants, MTD Consumer
Group, Inc. and MTD Consumer Products, Inc.

FILED

MO
M 1:40 PM
FEB 24 2003
cc

William A. Shaw
Prothonotary

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

MICHAEL B. ROY and CHERYL ROY,

CIVIL DIVISION

PLAINTIFFS,

CASE NO. 01-1787-CD

VS.

MTD CONSUMER GROUP, INC.; MTD CONSUMER PRODUCTS, INC.; and DUNLAP LAWN & GARDEN EQUIPMENT, INC.,

DEFENDANTS.

FILED ON BEHALF OF:

DEFENDANTS, MTD CONSUMER GROUP, INC., and MTD CONSUMER PRODUCTS, INC.

COUNSEL OF RECORD FOR THIS PARTY:

MARK F. McKENNA, ESQUIRE
PA I.D. #30297

McKENNA & CHODO, P.C.

436 Boulevard of the Allies
Suite 500
Pittsburgh, PA 15219-1314

(412) 471-6226

TO: Plaintiff

You are hereby notified to plead to the enclosed ANSWER AND NEW MATTER within twenty (20) days from service hereof or a default judgment may be entered against you.

McKENNA & CHODO, P.C.

BY:

Mark F. McKenna, Esquire
Attorney for Defendants, MTD Consumer Group, Inc. and MTD Consumer Products, Inc.

FILED

MAR 3 1 2003

William A. Shaw
Prothonotary

ANSWER AND NEW MATTER OF DEFENDANTS MTD CONSUMER GROUP, INC.,
AND MTD CONSUMER PRODUCTS, INC. TO PLAINTIFFS' AMENDED
COMPLAINT

AND NOW come the Defendants, MTD Consumer Group, Inc., and MTD Consumer Products Inc., by and through their attorneys and file the following Answer to Amended Complaint in Civil Action, and aver as follows:

1. After reasonable investigation, MTD Consumer Group, Inc., and MTD Consumer Products, Inc., are without sufficient knowledge and/or information with which to form a belief as to the truth or falsity of the allegations contained in Paragraph 1, inclusive, of Plaintiffs' Amended Complaint and accordingly, said allegations are denied.
2. Denied. It is admitted that MTD Products Inc., is an Ohio Corporation with its principal place of business located at 5965 Grafton Road, Valley City, Ohio 44280.
3. It is denied that MTD Consumer Products Inc., is a subsidiary of or fictitious name under which MTD Consumer Products Inc., does business.
4. It is denied that MTD Consumer Group, Inc., and/or MTD Consumer Products, Inc., were engaged in the business of designing, manufacturing, assembling, distributing, selling and/or supplying lawn and garden power equipment including riding mowers and tractors under the trade name "White". To the contrary, White lawn tractors were manufactured, assembled, distributed, sold and/or supplied by MTD Products Inc.
5. After reasonable investigation, these Defendants are without sufficient knowledge and/or information with which to form a belief as to the truth or falsity of the allegations contained in Paragraph 5, inclusive, of Plaintiffs' Amended Complaint and accordingly, said allegations are denied.

6. After reasonable investigations these Defendants are without sufficient knowledge and/or information for which to form a belief as to the truth or falsity of the allegations contained in Paragraph 6, inclusive, of Plaintiffs' Amended Complaint and, accordingly, said allegations are denied.

7. After reasonable investigations these Defendants are without sufficient knowledge and/or information for which to form a belief as to the truth or falsity of the allegations contained in Paragraph 7, inclusive, of Plaintiffs' Amended Complaint and, accordingly, said allegations are denied.

8. After reasonable investigations these Defendants are without sufficient knowledge and/or information for which to form a belief as to the truth or falsity of the allegations contained in Paragraph 8, inclusive, of Plaintiffs' Amended Complaint and, accordingly, said allegations are denied.

9. After reasonable investigations these Defendants are without sufficient knowledge and/or information for which to form a belief as to the truth or falsity of the allegations contained in Paragraph 9, inclusive, of Plaintiffs' Amended Complaint and, accordingly, said allegations are denied.

COUNT I

Roy v. MTD Consumer Group, Inc., and/or MTD Consumer Products, Inc.
Strict Liability

10. These Defendants incorporate by reference hereto their answers to Paragraphs 1 through 9, inclusively, as though more fully set forth herein at length.

11. After reasonable investigations these Defendants are without sufficient knowledge

and/or information for which to form a belief as to the truth or falsity of the allegations contained in Paragraph 11, inclusive, of Plaintiffs' Amended Complaint and accordingly, said allegations are denied.

12. After reasonable investigations these Defendants are without sufficient knowledge and/or information for which to form a belief as to the truth or falsity of the allegations contained in Paragraph 12, inclusive, of Plaintiffs' Amended Complaint and accordingly, said allegations are denied.

13. Paragraph 13 is a conclusion of law to which no responsive pleading is required. To the extent that a responsive pleading is required, said allegations are denied.

14. Paragraph 14 and its subparts are conclusions of law to which no responsive pleadings are required. To the extent that a responsive pleading is required, said allegations are denied.

15. Paragraph 15 is a conclusion of law to which no responsive pleading is required. To the extent that a responsive pleading is required, said allegations are denied.

16. After reasonable investigations these Defendants are without sufficient knowledge and/or information for which to form a belief as to the truth or falsity of the allegations contained in Paragraph 16, inclusive, of Plaintiffs' Amended Complaint and accordingly, said allegations are denied.

17. Paragraph 17 is a conclusion of law to which no responsive pleading is required. To the extent that a responsive pleading is required, said allegations are denied.

WHEREFORE, these Defendants request that judgment be entered in their favor and against the Plaintiffs.

COUNT II

Roy v. MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc.
Breach of Implied Warranty for a Particular Purpose

18. These Defendants incorporate by reference hereto their answers to Paragraphs 1 through 17, inclusively, as though more fully set forth herein at length.

19. After reasonable investigation these Defendants are without sufficient knowledge and/or information for which to form a belief as to the truth or falsity of the allegations contained in Paragraph 19, inclusive, of Plaintiffs' Amended Complaint and accordingly, said allegations are denied.

20. After reasonable investigation these Defendants are without sufficient knowledge and/or information for which to form a belief as to the truth or falsity of the allegations contained in Paragraph 20, inclusive, of Plaintiffs' Amended Complaint and accordingly, said allegations are denied.

21. Paragraph 21 is a conclusion of law to which no responsive pleading is required. To the extent that a responsive pleading is required, said allegations are denied.

22. Paragraph 22 is a conclusion of law to which no responsive pleading is required. To the extent that a responsive pleading is required, said allegations are denied.

WHEREFORE, these Defendants request that judgment be entered in their favor and against the Plaintiffs.

COUNT III

Roy v. MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc.
Breach of Implied Warranty of Merchantability

23. These Defendants incorporate by reference hereto their answers to Paragraphs 1 through 22, inclusively, as though more fully set forth herein at length.
24. Paragraph 24 is a conclusion of law to which no responsive pleading is required.
25. Paragraph 25 is a conclusion of law to which no responsive pleading is required. To the extent that a responsive pleading is required, said allegations are denied.
26. Paragraph 26 is a conclusion of law to which no responsive pleading is required. To the extent that a responsive pleading is required, said allegations are denied.

WHEREFORE, these Defendants request that judgment be entered in their favor and against the Plaintiffs.

COUNT IV

Roy v. MTD Consumer Group, Inc. and/or MTD Consumer Products, Inc.
Negligence

27. These Defendants incorporate by reference hereto their answers to Paragraphs 1 through 26, inclusively, as though more fully set forth herein at length.
28. Paragraph 28 is a conclusion of law to which no responsive pleading is required.
29. Paragraph 29 is a conclusion of law to which no responsive pleading is required. To the extent that a responsive pleading is required, said allegations are denied.
30. Paragraph 30 is a conclusion of law to which no responsive pleading is required. To the extent that a responsive pleading is required, said allegations are denied.

WHEREFORE, these Defendants request that judgment be entered in their favor and against the Plaintiffs.

COUNT VII

Roy v. Dunlap Lawn & Garden Equipment, Inc.
Strict Liability

31. These Defendants incorporate by reference hereto their answers to Paragraphs 1 through 30, inclusively, as though more fully set forth herein at length.

32-38. The allegations contained in paragraphs 32 through 38, inclusive, pertain to a party other than these defendants and, accordingly, no responsive pleading is required. By way of further answer said allegations are denied.

WHEREFORE, these Defendants request that judgment be entered in their favor and against the Plaintiffs.

COUNT VIII

Roy v. Dunlap Lawn & Garden Equipment, Inc.
Breach of Implied Warranty for a Particular Purpose

39. These Defendants incorporate by reference hereto their answers to Paragraphs 1 through 38, inclusively, as though more fully set forth herein at length.

40-43. The allegations contained in paragraphs 40 through 43, inclusive, pertain to a party other than these defendants and, accordingly, no responsive pleading is required. By way of further answer said allegations are denied.

WHEREFORE, these Defendants request that judgment be entered in their favor and against the Plaintiffs.

COUNT IX

Roy v. Dunlap Lawn & Garden Equipment, Inc.
Breach of Implied Warranty of Merchantability

44. These Defendants incorporate by reference hereto their answers to Paragraphs 1 through 43, inclusively, as though more fully set forth herein at length.

45-47. The allegations contained in paragraphs 45 through 47, inclusive, pertain to a party other than these defendants and, accordingly, no responsive pleading is required. By way of further answer said allegations are denied.

WHEREFORE, these Defendants request that judgment be entered in their favor and against the Plaintiffs.

COUNT X

Roy v. Dunlap Lawn & Garden Equipment, Inc.
Negligence

48. These Defendants incorporate by reference hereto their answers to Paragraphs 1 through 47, inclusively, as though more fully set forth herein at length.

49-51. The allegations contained in paragraphs 49 through 51, inclusive, pertain to a party other than these defendants and, accordingly, no responsive pleading is required. By way of further answer said allegations are denied.

WHEREFORE, these Defendants request that judgment be entered in their favor and against the Plaintiffs.

NEW MATTER OF DEFENDANTS MTD CONSUMER GROUP, INC.
AND MTD CONSUMER PRODUCTS, INC.

52. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.
53. The claims set forth in Plaintiffs' Amended Complaint are barred, in whole or in part, by the comparative and/or contributory negligence of the Plaintiffs.
54. The claims set forth in Plaintiffs' Amended Complaint are barred, in whole or in part, by the informed voluntary assumption of the risk of the Plaintiffs.
55. The claims set forth for breach of warranty are barred for failure to give timely notice as required by statute.
56. The injuries to the Plaintiff were causes by the Plaintiffs' own negligence, carelessness, recklessness and not the acts or omissions of these Defendants.
57. In the event Plaintiff sustained any injuries or damages, that may have been caused by the negligence of others, and their negligence may constitute a superseding intervening cause of the alleged injuries and damages.
58. In the event Plaintiff sustained any injuries or damages, they were caused by and were the proximate result of the negligence of the Plaintiffs, and, if so, said negligence constitutes a superseding, intervening cause of the alleged injures and damages.
59. In the event Plaintiffs sustained any injuries and/or damages, they resulted solely from an unforeseeable act of omission of persons or parties other than these Defendants for which acts or omissions these Defendants are not responsible.
60. In the event Plaintiffs sustained any injuries and/or damages, they were solely the result of the product having been changed, altered, or modified in a condition substantially different than when it left the control of these Defendants.

61. In the event Plaintiffs sustained any injuries and/or damages, they were solely the result of Plaintiffs' voluntary disregard of an open and obvious danger which could be readily determined through common knowledge and experience of the Plaintiffs.

62. In the event Plaintiffs sustained any injuries and/or damages, these Defendants aver that the product was safe for normal operation and was not in any sense defective, nor was it unreasonably dangerous.

63. In the event Plaintiffs sustained any injuries and/or damages, they were solely the result of Plaintiffs' misuse or abuse of the product.

64. In the event that Plaintiffs prove that the subject lawn tractor was defective, any such alleged defect was neither substantial nor a proximate cause of the Plaintiffs' injuries and, therefore, these Defendants are not liable for the same.

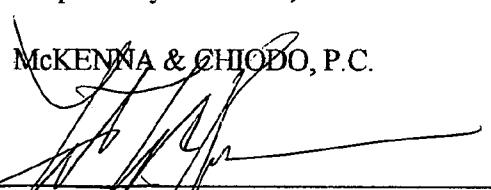
65. In the event Plaintiffs sustained any injuries and/or damages, they were caused by Plaintiffs' failure to use the product in accordance with the warnings and instructions as provided by these Defendants.

66. Plaintiffs' cause of actions are barred by the applicable statute of limitations.

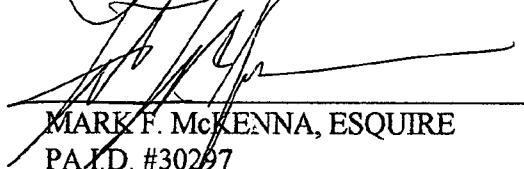
WHEREFORE, these Defendants request that judgment be entered in their favor and against the Plaintiffs.

JURY TRIAL DEMANDED

Respectfully submitted,


McKENNA & CHIODO, P.C.

By:


MARK F. McKENNA, ESQUIRE
P.A.I.D. #30297

Attorneys for Defendants, MTD Consumer Group, Inc., and MTD Consumer Products, Inc.

CERTIFICATE OF SERVICE

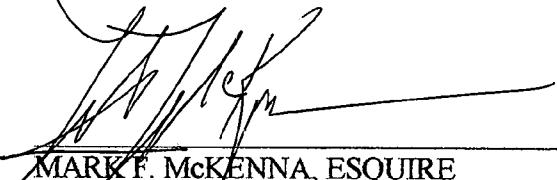
The undersigned hereby certifies that a true and correct copy of the foregoing Answer and New Matter to Plaintiffs' Amended Complaint was forwarded by U.S. first class mail to the following this 27th day of March, 2003:

Tara L. Maczuzak, Esquire
DiBELLA & GEER, P.C.
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222

Troy J. Harper, Esquire
DENNISON, DENNISON & HARPER
293 Main Street
Brookville, PA 15825-1291

McKENNA & CHODO, P.C.

By:



MARK F. MCKENNA, ESQUIRE
Attorneys for Defendants, MTD Consumer
Group, Inc. and MTD Consumer Products, Inc.

CA

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

MICHAEL B. ROY and CHERYL ROY,
individually, and as parents and natural
guardians of SHAWN ROY,

PLAINTIFFS,

vs.

MTD CONSUMER GROUP, INC.; MTD
CONSUMER PRODUCTS, INC.; and
DUNLAP LAWN & GARDEN
EQUIPMENT, INC.,

DEFENDANTS.

CIVIL DIVISION

CASE NO. 01-1787-CD

TYPE OF PLEADING:

**MOTION FOR SPECIAL ADMISSION
PRO HAC VICE**

FILED ON BEHALF OF:

DEFENDANTS, MTD CONSUMER
GROUP, INC., and MTD CONSUMER
PRODUCTS, INC.

COUNSEL OF RECORD FOR THIS
PARTY:

MARK F. McKENNA, ESQUIRE
PA I.D. #30297

McKENNA & CHIODO, P.C.
436 Boulevard of the Allies
Suite 500
Pittsburgh, PA 15219-1314

(412) 471-6226

FILED

AUG 21 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MICHAEL B. ROY and CHERYL ROY,
individually and as natural guardian of
SHAWN ROY

CIVIL DIVISION

CASE NO. 01-1787-CD

PLAINTIFF,

vs.

MTD CONSUMER GROUP, INC., et al.,
DEFENDANT.

MOTION FOR SPECIAL ADMISSION
PRO HAC VICE

Now comes Mark F. McKenna, Esquire, McKENNA & CHIODO, P.C., attorneys for the Defendants, MTD Consumer Group, Inc., and MTD Products Inc., and moves this Court to specifically admit Christopher A. Corpus, Esquire to practice before the Commonwealth of Pennsylvania. In support thereof, counsel states the following:

1. Christopher A. Corpus is not admitted to practice law in the Commonwealth of Pennsylvania.
2. Mr. Corpus was admitted to practice law in the State of Ohio in 2000, and is a member in good standing with the Bar of the State of Ohio. Mr. Corpus is a member of WEGMAN, HESSLER & VANDERBURG, 6055 Rockside Woods Boulevard, Suite 200, Cleveland, Ohio 44131.

3. Mr. Corpus does not regularly practice law in the Commonwealth of Pennsylvania.

4. Mr. Corpus has been requested by MTD Consumer Group, Inc. and MTD Products Inc. to appear as co-counsel in the above captioned matter.

5. The movant, Mark F. McKenna, is trial counsel in this case and has entered his appearance herein. He is currently admitted to practice law in the Commonwealth of Pennsylvania and is presently in good standing therein. Mr. McKenna maintains an office at 436 Boulevard of the Allies, Suite 500, Pittsburgh, PA 15219. Mr. McKenna will remain responsible for the receipt, review, service and filing of all documents in this case, the adherence to all rules applicable herein and will participate in the trial of this action.

6. A copy of the proposed Order of Court entering the appearance of Christopher A. Corpus herein and specifically admitting him to practice in the Commonwealth of Pennsylvania for the limited purpose of acting as co-counsel in this case is attached.

Respectfully submitted,

McKENNA & CHIODO, P.C.

By:

MARK F. McKENNA, ESQUIRE
Counsel of the Defendants, MTD Consumer Group, Inc. and MTD Products Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion for Special Admission Pro Hac Vice was forwarded by ordinary U.S., postage prepaid, to the following, this 10 day of August, 2003:

Tara L. Maczuzak, Esquire
DiBELLA & GEER, P.C.
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222

McKENNA & CHIODO, P.C.
By: _____
MARK F. McKENNA, ESQUIRE
Attorney for the Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MICHAEL B. ROY and CHERYL ROY,
individually and as natural guardian of
SHAWN ROY

CIVIL DIVISION

CASE NO. 01-1787-CD

PLAINTIFF,

vs.

MTD CONSUMER GROUP, INC., et al.,

DEFENDANT.

ORDER OF COURT

AND NOW, this 23rd day of August, 2003, upon consideration of the foregoing Motion of Specail Admission Pro Hac Vice, it is hereby ORDERED that Christopher A. Corpus is permitted to appear and practice before this Court *Pro Hac Vice* for all purposes in the above-captioned matter pursuant to the Pennsylvania Rules of Civil Procedure.

BY THE COURT:



J.

FILED

AUG 22 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL B. ROY and CHERYL ROY,) CASE NO. 01-1787-CD
Individually, and as parents and natural)
guardians of SHAWN ROY,) JUDGE
)
Plaintiffs,) AFFIDAVIT OF CHRISTOPHER A.
) CORPUS
v.)
)
MTD CONSUMER GROUP, et al.,)
)
Defendants.)

STATE OF OHIO :

COUNTY OF CUYAHOGA :

I, Christopher A. Corpus declare as follows:

1. I am an attorney at law duly licensed to practice before all the courts of the State of Ohio, and am a member of the law firm of Wegman, Hessler & Vanderburg, whose office is located in Cleveland, Ohio. Wegman, Hessler & Vanderburg represents MTD Products Inc.

2. I am one of the attorneys responsible for the handling of this case and, as such, have personal knowledge of the facts surrounding the present action and all facts herein-stated. If called upon to testify, I could and would competently do so under oath as to the truth of the matters stated herein.

3. I am a resident of the State of Ohio; my office address is: Wegman, Hessler & Vanderburg, 6055 Rockside Woods Boulevard, Suite 200, Cleveland, Ohio 44131.

4. I was admitted to practice in the following courts on the following dates:
a. U. S. District Court for the Northern District of Ohio in 2002;

b. All Ohio courts in 2000. My Ohio bar registration number is 0072620. A copy of my registration card is attached. (Please see Exhibit "A".)

5. I am a member in good standing in all of these courts.

6. I am not currently suspended or disbarred in any court. I have never been disbarred or the subject of any disciplinary proceedings.

7. Mark F. McKenna, McKenna & Chiodo, 436 Boulevard of the Allies, Suite 500, Pittsburgh, Pennsylvania 15219 is an active member of the State Bar of Pennsylvania and is the attorney of record in this matter.

8. I have not been denied admission to the courts of any state or to any Federal Court during the preceding five (5) years.

I declare under penalty of perjury under the laws of the Commonwealth of Pittsburgh that the foregoing is true and correct and that this declaration was executed on the 11th day of August, 2003.


Christopher A. Corpus

STATE OF OHIO :
: ss.

COUNTY OF CUYAHOGA :

Before me a notary public in and for said county and state, personally appeared the above named Christopher A. Corpus who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Cleveland, Ohio, this 11th day of August, 2003.


Notary Public

DEBORAH L. SOBOSLAY
Notary Public, State of Ohio
My Comm. Expires 10-30-07

CHRISTOPHER ANDREW CORPUS

Registration Number 0072620

Signature:

Christopher A. Corpus

EXHIBIT A

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William A. Shaw
Prothonotary/Clerk of Courts

Atty McKenna

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COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MICHAEL B. ROY and CHERYL L. ROY,

CIVIL ACTION - LAW

Plaintiffs,

Number 2001 - 1787 C.D.

vs.

Type of Case: Civil Division

MTD CONSUMER GROUP, INC.;
MTD CONSUMER PRODUCTS, INC.;
and DUNLAP LAWN & GARDEN
EQUIPMENT, INC.,

Type of Pleading: Certificate of Service

Defendants.

Filed on behalf of: Defendant, Dunlap
Lawn & Garden Equipment, Inc.

Counsel of Record for this Party:

Troy J. Harper
Supreme Court Number: 74753

John C. Dennison, II
Supreme Court Number: 29408

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED

JAN 05 2004

William A. Shaw
Prothonotary/Clerk of Courts

MICHAEL B. ROY and CHERYL L. ROY,

Plaintiffs,

vs

MTD CONSUMER GROUP, INC.;
MTD CONSUMER PRODUCTS, INC.; and
DUNLAP LAWN & GARDEN
EQUIPMENT, INC..

Defendants.

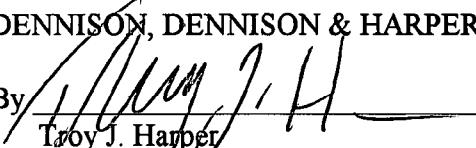
CERTIFICATE OF SERVICE

I certify that an original and one true and correct copy of the Defendant's, Dunlap Lawn & Garden Equipment, Inc.'s, Answers and Responses to Plaintiff's First Set of Interrogatories and Request for Production of Documents was served on the 2nd day of January, 2004, by United States Mail, First Class, Postage Prepaid, addressed to the following:

Tara L. Maczuzak, Esq.
DiBella & Geer, P.C.
312 Boulevard of the Allies
Suite 300
Pittsburgh, Pennsylvania 15222

and one certified copy of the same on the following:

Mark F. McKenna, Esq.
McKenna & Chiodo, P.C.
436 Boulevard of the Allies, Suite 500
Pittsburgh, Pennsylvania 15219

DENNISON, DENNISON & HARPER
By 
Troy J. Harper
Attorneys for the Defendant,
Dunlap Lawn & Garden Equipment, Inc.

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

MICHAEL B. ROY and CHERYL ROY,

Plaintiffs,

v.

MTD CONSUMER GROUP INC, MTD CONSUMER PRODUCTS INC; and DUNLAP LAWN & GARDEN EQUIPMENT, INC.

Defendants.

CIVIL DIVISION

CASE NO. 01-1787-CD

TYPE OF PLEADING:

**NOTICE OF SERVICE OF RESPONSE
TO PLAINTIFFS' FIRST SET OF
INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS
DIRECTED TO MTD CONSUMER
GROUP, INC.; MTD CONSUMER
PRODUCTS, INC.**

FILED ON BEHALF OF:..

**COUNSEL OF RECORD FOR THESE
PARTIES:**

MARK F. McKENNA, ESQUIRE
PA I.D.#30297

McKENNA & CHODO, P.C.
436 Boulevard of the Allies
Suite 500
Pittsburgh, PA 15219-1314

(412) 471-6226

FILED

FEB 02 2004
m/11/15/2004
William A. Shaw
Prothonotary/Clerk of Courts
No. CF-04-1515

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

PITTSBURGH WIRE & CABLE, INC., a
Pennsylvania Corporation,

CIVIL DIVISION

CASE NO. AR 01-6644

Plaintiff,

v.

BEAVER ELECTRIC, INC., a Pennsylvania
Corporation,

Defendants.

NOTICE OF SERVICE

The undersigned hereby certifies Defendants' MTD Consumer Group Inc. and MTD Consumer Products Inc.'s Response to Plaintiffs' First Set of Interrogatories and Request for Production of Documents. were forwarded to the following via certified mail, postage prepaid, and via first class U.S. mail, postage prepaid, on this 29th day of January, 2004:

Tara L. Maczuzak, Esquire
DiBELLA & GEER, P.C.
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222

Troy J. Harper, Esquire
DENNISON, DENNISON & HARPER
293 Main Street
Brookville, PA 15825-1291

By:

MARK F. MCKENNA, ESQUIRE
Attorneys for Defendants, MTD Consumer Group Inc and MTD Consumer Products Inc.
Attorneys for Defendant

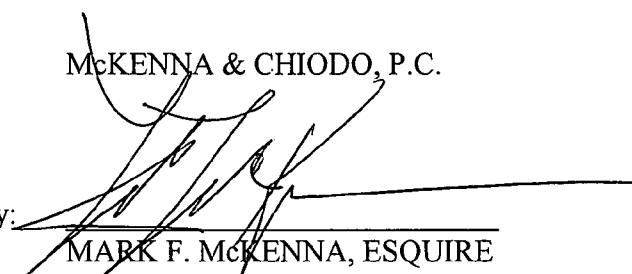
McKENNA & CHIODO, P.C.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Notice of Service of Defendants' MTD Consumer Group Inc. and MTD Consumer Products Inc.'s Response to Plaintiffs' First Set of Interrogatories and Request for Production of Documents was forwarded to the following via U.S. first class mail, postage prepaid, on this 29th day of January, 2004:

Tara L. Maczuzak, Esquire
DiBELLA & GEER, P.C.
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222

Troy J. Harper, Esquire
DENNISON, DENNISON & HARPER
293 Main Street
Brookville, PA 15825-1291

By: 
MARK F. MCKENNA, ESQUIRE
Attorneys for Defendants, MTD Consumer
Group Inc and MTD Consumer Products
Inc.

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MICHAEL B. ROY and CHERYL ROY,

Plaintiffs,

vs.

MTD CONSUMER GROUP, INC.;
MTD CONSUMER PRODUCTS, INC.;
and DUNLAP LAWN & GARDEN
EQUIPMENT, INC.,

Defendants.

CIVIL ACTION - LAW

Number 01 - 1787 C. D.

Type of Case: Civil Division

Type of Pleading: Notice of
Deposition of Plaintiff, Cheryl Roy

Filed on behalf of: Dunlap Lawn &
Garden Equipment, Inc., Defendant

Counsel of Record for this Party:
Troy J. Harper

Supreme Court Number: 74753

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED

6K JAN 06 2005
m/1130a
William A. Shaw
Prothonotary/Clerk of Courts
no Court

MICHAEL B. ROY and CHERYL ROY,
Plaintiffs,

vs.

MTD CONSUMER GROUP, INC.;
MTD CONSUMER PRODUCTS, INC.;
and DUNLAP LAWN & GARDEN
EQUIPMENT, INC.,

Defendants.

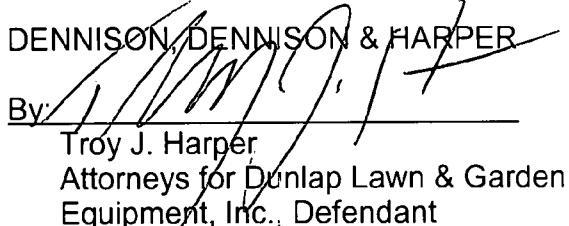
* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
*
* Civil Action Law
*
*
*
*
*
*
*
* Number 01 - 1787 C.D.

NOTICE OF DEPOSITION

TO: Cheryl Roy
c/o Tara L. Maczuzak, Esq.
DiBELLA & GEER, P.C.
312 Boulevard of the Allies
Suite 300
Pittsburgh, PA 15222

Take notice that the deposition of **CHERYL ROY** will be taken pursuant to the Pennsylvania Rules of Civil Procedure, as amended, before a Notary Public duly authorized by law to administer oaths, on Wednesday, January 26, 2005, at 11:00 a.m., at the law offices of Dennison, Dennison & Harper, 293 Main Street, Brookville, Pennsylvania 15825. The deposition will be taken upon oral examination for all purposes provided for and allowed by the Pennsylvania Rules of Civil Procedure.

Date: January 4, 2005

DENNISON, DENNISON & HARPER
By: 
Troy J. Harper
Attorneys for Dunlap Lawn & Garden
Equipment, Inc., Defendant

CERTIFICATE OF SERVICE

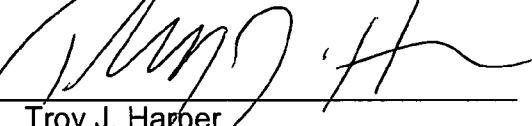
I hereby certify that on the 5th day of January, 2005, a true and correct copy of the foregoing Notice of Deposition for Cheryl Roy was mailed by United States mail, first class, postage prepaid, addressed to the following:

Tara L. Maczuzak, Esq.
DiBELLA & GEER, P.C.
312 Boulevard of the Allies
Suite 300
Pittsburgh, PA 15222

Mark F. McKenna, Esq.
McKENNA & CHIODO, P.C.
436 Boulevard of the Allies
Suite 500
Pittsburgh, PA 15219

S. E. Manno & Associates, Inc.
Court Reporting Service
1066 Corn Crib Drive
First Floor
Huntingdon Valley, PA 19006

DENNISON, DENNISON & HARPER

By: 

Troy J. Harper
Attorneys for Dunlap Lawn & Garden
Equipment, Inc., Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MICHAEL B. ROY and CHERYL ROY,

Plaintiffs,

vs.

MTD CONSUMER GROUP, INC.;
MTD CONSUMER PRODUCTS, INC.;
and DUNLAP LAWN & GARDEN
EQUIPMENT, INC.,

Defendants.

CIVIL ACTION - LAW

Number 01 - 1787 C. D.

Type of Case: Civil Division

Type of Pleading: Notice of
Deposition of Plaintiff, Michael B. Roy

Filed on behalf of: Dunlap Lawn &
Garden Equipment, Inc., Defendant

Counsel of Record for this Party:
Troy J. Harper

Supreme Court Number: 74753

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED

6K JAN 06 2005
w/ 1:26
William A. Shaw
Prothonotary/Clerk of Courts
to Clerk

MICHAEL B. ROY and CHERYL ROY,
Plaintiffs,

vs.

MTD CONSUMER GROUP, INC.;
MTD CONSUMER PRODUCTS, INC.;
and DUNLAP LAWN & GARDEN
EQUIPMENT, INC..

Defendants.

NOTICE OF DEPOSITION

TO: Michael B. Roy
c/o Tara L. Maczuzak, Esq.
DiBELLA & GEER, P.C.
312 Boulevard of the Allies
Suite 300
Pittsburgh, PA 15222

Take notice that the deposition of **MICHAEL B. ROY** will be taken pursuant to the Pennsylvania Rules of Civil Procedure, as amended, before a Notary Public duly authorized by law to administer oaths, on Wednesday, January 26, 2005, at 10:00 p.m., at the law offices of Dennison, Dennison & Harper, 293 Main Street, Brookville, Pennsylvania 15825. The deposition will be taken upon oral examination for all purposes provided for and allowed by the Pennsylvania Rules of Civil Procedure.

Date: January 4, 2005

DENNISON, DENNISON & HARPER
By: 
Troy J. Harper
Attorneys for Dunlap Lawn & Garden
Equipment, Inc., Defendant

CERTIFICATE OF SERVICE

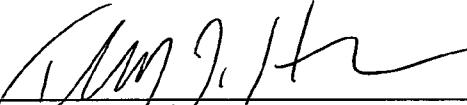
I hereby certify that on the 5th day of January, 2004, a true and correct copy of the foregoing Notice of Deposition for Michael B. Roy was mailed by United States mail, first class, postage prepaid, addressed to the following:

Tara L. Maczuzak, Esq.
DiBELLA & GEER, P.C.
312 Boulevard of the Allies
Suite 300
Pittsburgh, PA 15222

Mark F. McKenna, Esq.
McKENNA & CHIODO, P.C.
436 Boulevard of the Allies
Suite 500
Pittsburgh, PA 15219

S. E. Manno & Associates, Inc.
Court Reporting Service
1066 Corn Crib Drive
First Floor
Huntingdon Valley, PA 19006

DENNISON, DENNISON & HARPER

By: 

Troy J. Harper
Attorneys for Dunlap Lawn & Garden
Equipment, Inc., Defendant

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MICHAEL B. ROY and CHERYL ROY,

Plaintiffs,

vs.

MTD CONSUMER GROUP, INC.;
MTD CONSUMER PRODUCTS, INC.;
and DUNLAP LAWN & GARDEN
EQUIPMENT, INC.,

Defendants.

CIVIL ACTION - LAW

Number 01 - 1787 C. D.

Type of Case: Civil Division

Type of Pleading: Notice of
Deposition of Shawn Roy

Filed on behalf of: Dunlap Lawn &
Garden Equipment, Inc., Defendant

Counsel of Record for this Party:
Troy J. Harper

Supreme Court Number: 74753

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, Pennsylvania 15825
(814) 849-8316

FILED

6th JAN 06 2005
1/1/2005
William A. Shaw
Prothonotary/Clerk of Courts
No. 1787

MICHAEL B. ROY and CHERYL ROY,

Plaintiffs,

vs.

MTD CONSUMER GROUP, INC.;
MTD CONSUMER PRODUCTS, INC.;
and DUNLAP LAWN & GARDEN
EQUIPMENT, INC.,

Defendants.

* In the Court of Common Pleas of
* Clearfield County, Pennsylvania
*
* Civil Action Law
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*
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*
*
*
* Number 01 - 1787 C.D.

NOTICE OF DEPOSITION

TO: Shawn Roy
c/o Tara L. Maczuzak, Esq.
DiBELLA & GEER, P.C.
312 Boulevard of the Allies
Suite 300
Pittsburgh, PA 15222

Take notice that the deposition of **SHAWN ROY** will be taken pursuant to the Pennsylvania Rules of Civil Procedure, as amended, before a Notary Public duly authorized by law to administer oaths, on Wednesday, January 26, 2005, at 12:00 p.m., at the law offices of Dennison, Dennison & Harper, 293 Main Street, Brookville, Pennsylvania 15825. The deposition will be taken upon oral examination for all purposes provided for and allowed by the Pennsylvania Rules of Civil Procedure.

DENNISON, DENNISON & HARPER

By:


Troy J. Harper
Attorneys for Dunlap Lawn & Garden
Equipment, Inc., Defendant

Date: January 4, 2005

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of January, 2005, a true and correct copy of the foregoing Notice of Deposition for Shawn Roy was mailed by United States mail, first class, postage prepaid, addressed to the following:

Tara L. Maczuzak, Esq.
DiBELLA & GEER, P.C.
312 Boulevard of the Allies
Suite 300
Pittsburgh, PA 15222

Mark F. McKenna, Esq.
McKENNA & CHIODO, P.C.
436 Boulevard of the Allies
Suite 500
Pittsburgh, PA 15219

S. E. Manno & Associates, Inc.
Court Reporting Service
1066 Corn Crib Drive
First Floor
Huntingdon Valley, PA 19006

DENNISON, DENNISON & HARPER

By: 

Troy J. Harper
Attorneys for Dunlap Lawn & Garden
Equipment, Inc., Defendant

CA

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

MICHAEL B. ROY and CHERYL
ROY, individually and as natural
guardian of SHAWN ROY

CIVIL DIVISION

CASE NO. 01-1787-CD

PLAINTIFF,

v.

MTD CONSUMER GROUP INC, MTD
CONSUMER PRODUCTS INC; and
DUNLAP LAWN & GARDEN
EQUIPMENT, INC.

DEFENDANTS.

TYPE OF PLEADING:
MOTION TO COMPEL

FILED ON BEHALF OF:
DEFENDANTS, MTD CONSUMER
GROUP INC, MTD CONSUMER
PRODUCTS INC

**COUNSEL OF RECORD FOR THIS
PARTY:**

MARK F. McKENNA, ESQUIRE
PA ID#30297

McKENNA & CHODO, P.C.
436 Boulevard of the Allies
Suite 500
Pittsburgh, PA 15219-1314

(412) 471-6226

FILED
M 11:41a B4 1cc
JUL 11 2005 Atty

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MICHAEL B. ROY and CHERYL
ROY, individually and as natural
guardian of SHAWN ROY

CIVIL DIVISION

CASE NO. 01-1787-CD


PLAINTIFF,

v.

MTD CONSUMER GROUP INC, MTD
CONSUMER PRODUCTS INC; and
DUNLAP LAWN & GARDEN
EQUIPMENT, INC.

DEFENDANTS.

MOTION TO COMPEL

AND NOW, comes the Defendants, MTD Consumer Group Inc., MTD Consumer Products Inc., by and through their attorneys McKENNA & CHIODO, P.C., and files a Motion to Compel and in support thereof aver as follows:

1. On May 17, 2005, Plaintiffs' counsel was served with Request for Production of Documents Directed to Plaintiffs, a copy of the May 17, 2005, letter is attached hereto and marked as Exhibit "A".
2. Defendant's counsel sent correspondence on June 20, 2005, to Plaintiffs' counsel requesting counsel to advise when answers to the discovery could be expected , a copy of the June 20, 2005, letter is attached hereto and marked as Exhibit "B."
3. To date, Plaintiffs have not responded to the discovery request that was forwarded on May 17, 2005.
4. No extensions have been given to Plaintiffs by Defendant's counsel.

WHEREFORE, Defendants, MTD Consumer Group Inc., MTD Consumer Products Inc., respectfully requests this Honorable Court to grant its Motion to Compel and compel the Plaintiffs to provide full and complete Responses to Request for Production of Documents within twenty (20) days of the date of its Order of Court.

Respectfully submitted,

McKENNA & CHIODO, P.C.

By:

MARK F. McKENNA, ESQUIRE
Attorneys for Defendants, MTD
Consumer Group Inc., MTD
Consumer Products Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Compel was forwarded by U.S. first class mail, postage prepaid to the following this ____ day of July, 2005:

Tara L. Maczuzak, Esquire
DiBELLA & GEER, P.C.
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222

Troy J. Harper, Esquire
DENNISON, DENNISON & HARPER
293 Main Street
Brookville, PA 15825-1291

McKENNA & CHIODO, P.C.

By: _____

MARK F. McKENNA, ESQUIRE
Attorneys for Defendants, MTD
Consumer Group Inc., MTD
Consumer Products Inc.

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

MICHAEL B. ROY and CHERYL
ROY, individually and as natural
guardian of SHAWN ROY

CIVIL DIVISION
CASE NO. 01-1787-CD

PLAINTIFF,

v.

MTD CONSUMER GROUP INC, MTD
CONSUMER PRODUCTS INC; and
DUNLAP LAWN & GARDEN
EQUIPMENT, INC.

DEFENDANTS.

ORDER OF COURT

AND NOW, to wit, this _____ day of _____, 2005, upon
consideration of Defendants', MTD Consumer Group Inc., MTD Consumer Products
Inc., Motion to Compel Responses to Request for Production of Documents, it is hereby
ORDERED that Plaintiffs shall provide full and complete Responses to Request for
Production of Documents within twenty (20) days from the date of this Order.

BY THE COURT:

J.

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

MICHAEL B. ROY and CHERYL
ROY, individually and as natural
guardian of SHAWN ROY

CIVIL DIVISION

CASE NO. 01-1787-CD

PLAINTIFF,

v.

MTD CONSUMER GROUP INC, MTD
CONSUMER PRODUCTS INC; and
DUNLAP LAWN & GARDEN
EQUIPMENT, INC.

DEFENDANTS.

NOTICE OF PRESENTATION

TAKE NOTICE that the following Motion to Compel will be presented before the
Motions Judge at _____ on _____ at which time you are
invited to appear and be heard. Your failure to appear and be heard as to this matter will
be deemed as consent to the relief requested herein.

McKENNA & CHIODO, P.C.

By:

MARK F. McKENNA, ESQUIRE
Attorneys for Defendants, MTD
Consumer Group Inc., MTD
Consumer Products Inc.

**IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY,
PENNSYLVANIA**

MICHAEL B. ROY and CHERYL ROY,
individually and as natural guardian of
SHAWN ROY

CIVIL DIVISION

CASE NO. 01-1787-CD

PLAINTIFF,

V.

MTD CONSUMER GROUP INC, MTD CONSUMER PRODUCTS INC; and DUNLAP LAWN & GARDEN EQUIPMENT, INC.

DEFENDANTS.

FILED ^{1cc}
01/12/23 ⁶⁰¹ Atty
JUL 14 2005 McHenry
@

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

AND NOW, this 13th day of July, 2005 after due consideration of the Defendants'

Motion to Compel, it is hereby ORDERED, ADJUDGED and DECREED that:

1. Argument on Motion to Compel has been scheduled in the above-captioned matter before the Honorable Frederic J. Ammerman, President Judge of the Court of Common Pleas of Clearfield County, Pennsylvania, for August 15, 2005, at 2:30 ~~a.m.~~ p.m., or as soon thereafter as the Court may conveniently hear the same. Defendants shall file a brief in support of said Motion _____ days prior to said argument and Plaintiff shall file a reply brief within _____ days to said argument.

BY THE COURT:

Frederick J. Zimmerman J.

MCKENNA & CHIODO
ATTORNEYS & AT LAW

A Professional Corporation

436 Boulevard of the Allies • Suite 500 • Pittsburgh, Pennsylvania • 15219-1314

Telephone (412) 471-6226

Faxsimile (412) 471-6658

E-Mail: mckch@nauticom.net

May 17, 2005

Tara L. Maczuzak, Esquire
DiBELLA & GEER, P.C.
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222

RE: Michael B. Roy and Cheryl Roy vs. MTD Consumer Group, Inc., et al.
Case No. 01-1787-CD

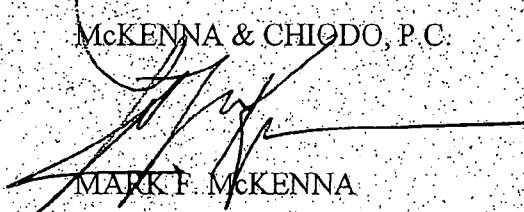
Dear Ms. Maczuzak:

Enclosed is the original and one (1) copy of Request for Production of Documents Directed to Plaintiff Michael B. Roy and Cheryl Roy.

If you have any questions with regard to this matter, please do not hesitate to contact me.

Very truly yours,

McKENNA & CHIODO, P.C.


MARK F. MCKENNA

MFM/lb

cc: Troy J. Harper, Esquire (w/encl.)

EXHIBIT

tabbies®

A

MCKENNA & CHIODO
ATTORNEYS & AT LAW

A Professional Corporation

436 Boulevard of the Allies • Suite 500 • Pittsburgh, Pennsylvania • 15219-1314

Telephone (412) 471-6226

Facsimile (412) 471-6658

E-Mail: mckch@nauticom.net

June 20, 2005

Tara L. Maczuzak, Esquire
DiBELLA & GEER, P.C.
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222

RE: Michael B. Roy and Cheryl Roy vs. MTD Consumer Group, Inc., et al.
Case No. 01-1787

Dear Ms. Maczuzak:

Under cover of my letter to you dated May 17, 2005, I forwarded to you a copy of Request for Production of Documents Directed to Plaintiff Michael B. Roy and Cheryl Roy. Accordingly, the Request for Production of Documents was due on June 16, 2005. If you would kindly advise as to when I may anticipate receiving the answers to the aforementioned discovery request.

If you have any questions with regard to this matter, please do not hesitate to contact me.

Very truly yours,

McKENNA & CHIODO, P.C.

MARK F. McKENNA

MFM/llb

cc: Troy J. Harper, Esquire

EXHIBIT

B

(8)

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

MICHAEL B. ROY and CHERYL
ROY, individually and as natural
guardian of SHAWN ROY

CIVIL DIVISION

CASE NO. 01-1787-CD

PLAINTIFF,

v.

MTD CONSUMER GROUP INC, MTD
CONSUMER PRODUCTS INC; and
DUNLAP LAWN & GARDEN
EQUIPMENT, INC.

DEFENDANTS.

TYPE OF PLEADING:
MOTION TO COMPEL

FILED ON BEHALF OF:
DEFENDANTS, MTD CONSUMER
GROUP INC, MTD CONSUMER
PRODUCTS INC

**COUNSEL OF RECORD FOR THIS
PARTY:**

MARK F. McKENNA, ESQUIRE
PA ID#30297

McKENNA & CHIODO, P.C.
436 Boulevard of the Allies
Suite 500
Pittsburgh, PA 15219-1314

(412) 471-6226

FILED *rec*
m1146ab *Atty*
JUL 11 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MICHAEL B. ROY and CHERYL
ROY, individually and as natural
guardian of SHAWN ROY

CIVIL DIVISION

CASE NO. 01-1787-CD

PLAINTIFF,

v.

MTD CONSUMER GROUP INC, MTD
CONSUMER PRODUCTS INC; and
DUNLAP LAWN & GARDEN
EQUIPMENT, INC.

DEFENDANTS.

MOTION TO COMPEL

AND NOW, comes the Defendants, MTD Consumer Group Inc., MTD Consumer Products Inc., by and through their attorneys McKENNA & CHIODO, P.C., and files a Motion to Compel and in support thereof aver as follows:

1. On May 11, 2005, Defendant's counsel was served with Request for Production of Documents Directed to Defendant Dunlap Lawn & Garden Equipment ("Dunlap"), a copy of the May 11, 2005, letter is attached hereto and marked as Exhibit "A".

2. Defendant's counsel sent correspondence on June 20, 2005, to Defendant Dunlap's counsel requesting counsel to advise when answers to the discovery could be expected , a copy of the June 20, 2005, letter is attached hereto and marked as Exhibit "B."

3. To date, Defendant Dunlap has not responded to the discovery request that was forwarded on May 11, 2005.

4. No extensions have been given to Defendant Dunlap by Defendant's counsel.

WHEREFORE, Defendants, MTD Consumer Group Inc., MTD Consumer Products Inc., respectfully requests this Honorable Court to grant its Motion to Compel and compel Defendant Dunlap to provide full and complete Responses to Request for Production of Documents within twenty (20) days of the date of its Order of Court.

Respectfully submitted,

McKENNA & CHIODO, P.C.

By:

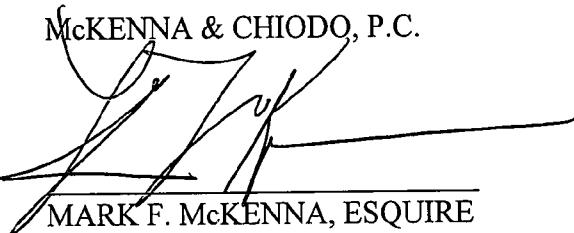
MARK F. MCKENNA, ESQUIRE
Attorneys for Defendants, MTD
Consumer Group Inc., MTD
Consumer Products Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Compel was forwarded by U.S. first class mail, postage prepaid to the following this ____ day of July, 2005:

Tara L. Maczuzak, Esquire
DiBELLA & GEER, P.C.
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222

Troy J. Harper, Esquire
DENNISON, DENNISON & HARPER
293 Main Street
Brookville, PA 15825-1291

By: 
MARK F. MCKENNA, ESQUIRE
Attorneys for Defendants, MTD
Consumer Group Inc., MTD
Consumer Products Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MICHAEL B. ROY and CHERYL
ROY, individually and as natural
guardian of SHAWN ROY

CIVIL DIVISION
CASE NO. 01-1787-CD

PLAINTIFF,

v.

MTD CONSUMER GROUP INC, MTD
CONSUMER PRODUCTS INC; and
DUNLAP LAWN & GARDEN
EQUIPMENT, INC.

DEFENDANTS.

ORDER OF COURT

AND NOW, to wit, this _____ day of _____, 2005, upon
consideration of Defendants', MTD Consumer Group Inc., MTD Consumer Products
Inc., Motion to Compel Responses to Request for Production of Documents, it is hereby
ORDERED that Defendant Dunlap Lawn & Garden Equipment shall provide full and
complete Responses to Request for Production of Documents within twenty (20) days
from the date of this Order.

BY THE COURT:

J.

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

MICHAEL B. ROY and CHERYL
ROY, individually and as natural
guardian of SHAWN ROY

CIVIL DIVISION

CASE NO. 01-1787-CD

PLAINTIFF,

v.

MTD CONSUMER GROUP INC, MTD
CONSUMER PRODUCTS INC; and
DUNLAP LAWN & GARDEN
EQUIPMENT, INC.

DEFENDANTS.

NOTICE OF PRESENTATION

TAKE NOTICE that the following Motion to Compel will be presented before the
Motions Judge at _____ on _____ at which time you are
invited to appear and be heard. Your failure to appear and be heard as to this matter will
be deemed as consent to the relief requested herein.

McKENNA & CHIODO, P.C.

By:

MARK F. MCKENNA, ESQUIRE
Attorneys for Defendants, MTD
Consumer Group Inc., MTD
Consumer Products Inc.

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY,
PENNSYLVANIA

MICHAEL B. ROY and CHERYL ROY,
individually and as natural guardian of
SHAWN ROY

CIVIL DIVISION

CASE NO. 01-1787-CD

PLAINTIFF,

v.

MTD CONSUMER GROUP INC, MTD
CONSUMER PRODUCTS INC; and
DUNLAP LAWN & GARDEN
EQUIPMENT, INC.

DEFENDANTS.

FILED ^{ICC}
01/25/01 Atty
JUL 14 2005 McKenna
68

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

AND NOW, this 13th day of July, 2005 after due consideration of the Defendants' Motion to Compel, it is hereby ORDERED, ADJUDGED and DECREED that:

1. Argument on Motion to Compel has been scheduled in the above-captioned matter before the Honorable Frederic J. Ammerman, President Judge of the Court of Common Pleas of Clearfield County, Pennsylvania, for August 15, 2005, at 2:30 ~~am or~~ p.m., or as soon thereafter as the Court may conveniently hear the same. Defendants shall file a brief in support of said Motion _____ days prior to said argument and Plaintiff shall file a reply brief within _____ days to said argument.

BY THE COURT:

Frederic J. Ammerman J.

McKENNA & CHIODO
ATTORNEYS AT LAW

A Professional Corporation

436 Boulevard of the Allies • Suite 500 • Pittsburgh, Pennsylvania • 15219-1314

Telephone (412) 471-6226

Faxsimile (412) 471-6658

E-Mail: mckch@nauticom.net

May 11, 2005

Troy J. Harper, Esquire
DENNISON, DENNISON & HARPER
293 Main Street
Brookville, PA 15825-1291

RE: Michael B. Roy and Cheryl Roy vs. MTD Consumer Group, Inc., et al.
Case No. 01-1787-CD

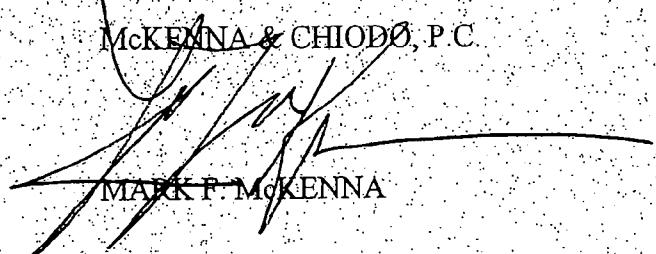
Dear Mr. Harper:

Enclosed is the original and one (1) copy of Request for Production of Documents Directed to Defendant Dunlap Lawn & Garden Equipment.

If you have any questions with regard to this matter, please do not hesitate to contact me.

Very truly yours,

McKENNA & CHIODO, P.C.


MARK F. MCKENNA

MFM/aem

cc: Tara L. Maczuzak, Esquire (w/encl.)

EXHIBIT

A

McKENNA & CHIODO
ATTORNEYS & AT LAW

A Professional Corporation

436 Boulevard of the Allies • Suite 500 • Pittsburgh, Pennsylvania • 15219-1314

Telephone (412) 471-6226

Faxsimile (412) 471-6658

E-Mail: mckch@nauticomm.net

June 20, 2005

Troy J. Harper, Esquire
DENNISON, DENNISON & HARPER
293 Main Street
Brookville, PA 15825-1291

RE: Michael B. Roy and Cheryl Roy vs. MTD Consumer Group, Inc., et al.
Case No. 01-1787-CD

Dear Mr. Harper:

Under cover of my letter to you dated May 11, 2005, I forwarded to you a copy of Request for Production of Documents Directed to Plaintiff Michael B. Roy and Cheryl Roy. Accordingly, the Request for Production of Documents was due on June 10, 2005. If you would kindly advise as to when I may anticipate receiving the answers to the aforementioned discovery request.

If you have any questions with regard to this matter, please do not hesitate to contact me.

Very truly yours,

Mark F. McKenna
McKENNA & CHIODO, P.C.

Mark F. McKenna
MARK F. MCKENNA

MFM/lb

cc: Tara L. Maczuzak, Esquire

EXHIBIT

tabbies

B

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MICHAEL B. ROY and CHERYL ROY,

CIVIL ACTION - LAW

Plaintiffs,

Number 2001 - 1787 C.D.

vs.

Type of Case: Civil Division

MTD CONSUMER GROUP, INC., MTD
CONSUMER PRODUCTS, INC.; and
DUNLAP LAWN & GARDEN
EQUIPMENT, INC.,

Type of Pleading: Certificate of Service

Defendants.

Filed on behalf of: Defendant, Dunlap Lawn &
Garden Equipment, Inc.

Counsel of Record for this Party:
Troy J. Harper

Supreme Court ID Number: 74753

DENNISON, DENNISON & HARPER
293 Main Street
Brookville, PA 15825
(814)849-8316

FILED NO CC
7/22/05
JUL 22 2005
WM

William A. Shaw
Prothonotary/Clerk of Courts

MICHAEL B. ROY and CHERYL ROY,

Plaintiffs,

vs.

MTD CONSUMER GROUP, INC., MTD
CONSUMER PRODUCTS, INC.; and
DUNLAP LAWN & GARDEN
EQUIPMENT, INC.,

Defendants.

* In the Court of Common Pleas of

* Clearfield County, Pennsylvania

* Civil Action - Law

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* Number 2001 - 1787 C.D.

CERTIFICATE OF SERVICE

I certify that an original and one certified copy of the Responses to Request for Product of
Documents were served on the 20th day of July, 2005, by United States Mail, First Class,
Postage Prepaid, addressed to the following:

Mark F. McKenna, Esq.
McKENNA & CHIODO, P.C.
436 Boulevard of the Allies
Suite 500
Pittsburgh, Pennsylvania 15219

and one certified copy of the same was served on the same date and in the same manner on the
following:

Tara L. Maczuzak, Esq.
DiBELLA & GEER, P.C.
312 Boulevard of the Allies

Third Floor
Pittsburgh, Pennsylvania 15222

DENNISON, DENNISON & HARPER

By


Troy J. Harper
Attorneys for Dunlap Lawn & Garden
Equipment, Inc., Defendant

CA

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

MICHAEL B. ROY and CHERYL ROY,
individually and as natural guardian of
SHAWN ROY

PLAINTIFF,

v.

MTD CONSUMER GROUP INC, MTD
CONSUMER PRODUCTS INC; and
DUNLAP LAWN & GARDEN
EQUIPMENT, INC.

DEFENDANTS.

CIVIL DIVISION

CASE NO. 01-1787-CD

TYPE OF PLEADING:

PRAECIPE TO WITHDRAW

FILED ON BEHALF OF:
PLAINTIFFS

COUNSEL OF RECORD FOR THESE
PARTIES:

MARK F. McKENNA, ESQUIRE
PA ID #30297

McKENNA & CHIODO, P.C.
436 Boulevard of Allies
Suite 500
Pittsburgh, PA 15219

(412) 471-6226

FILED *No CC*
m 112:43 AM *W*
AUG 01 2005

William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

MICHAEL B. ROY and CHERYL ROY,
individually and as natural guardian of
SHAWN ROY

CIVIL DIVISION

CASE NO. 01-1787-CD

PLAINTIFF,

v.

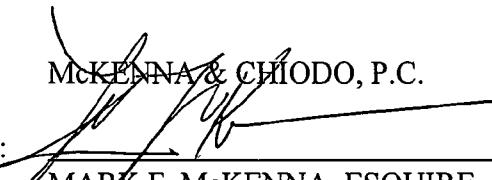
MTD CONSUMER GROUP INC, MTD
CONSUMER PRODUCTS INC; and
DUNLAP LAWN & GARDEN
EQUIPMENT, INC.

DEFENDANTS.

PRAECIPE TO WITHDRAW

TO: PROTHONOTARY

Kindly withdraw from the argument list the Motion to Compel the Defendant Dunlap Lawn & Garden Equipment which is scheduled for Monday, August 15, 2005, at 2:30 p.m.

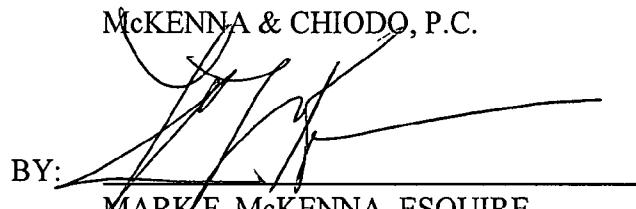

MCKENNA & CHODO, P.C.
BY: _____
MARK F. MCKENNA, ESQUIRE
Attorneys for Defendants, MTD
Consumer Group Inc., MTD
Consumer Products Inc.

CERTIFICATE OF SERVICE

The undersigned herein certifies that a true and correct copy of the foregoing **Praecipe to Withdraw** was forwarded, via U.S. first-class mail, postage pre-paid, to the following counsel of record, this 27th day of July, 2005:

Tara L. Maczuzak, Esquire
DiBELLA & GEER, P.C.
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222

Troy J. Harper, Esquire
DENNISON, DENNISON & HARPER
293 Main Street
Brookville, PA 15825-1291

BY: 
MARK F. McKENNA, ESQUIRE
Attorneys for Defendants, MTD
Consumer Group Inc., MTD
Consumer Products Inc.

CA

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

MICHAEL B. ROY and CHERYL ROY,
individually and as natural guardian of
SHAWN ROY

PLAINTIFF,

v.

MTD CONSUMER GROUP INC, MTD
CONSUMER PRODUCTS INC; and
DUNLAP LAWN & GARDEN
EQUIPMENT, INC.

DEFENDANTS.

CIVIL DIVISION

CASE NO. 01-1787-CD

TYPE OF PLEADING:

PRAECIPE TO WITHDRAW

FILED ON BEHALF OF:

DEFENDANTS, MTD CONSUMER
GROUP INC. and MTD CONSUMER
PRODUCTS INC.

COUNSEL OF RECORD FOR THESE
PARTIES:

MARK F. McKENNA, ESQUIRE
PA ID #30297

McKENNA & CHODO, P.C.
436 Boulevard of Allies
Suite 500
Pittsburgh, PA 15219

(412) 471-6226

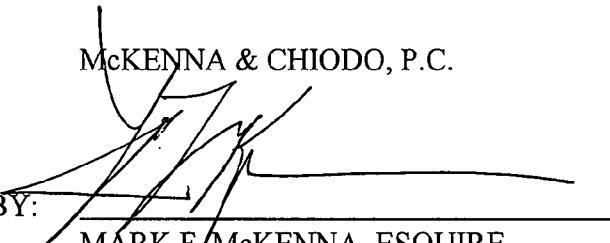
FILED *mjh:ble* ^{NO CC}
AUG 03 2005
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

The undersigned herein certifies that a true and correct copy of the foregoing **Praecipe to Withdraw** was forwarded, via U.S. first-class mail, postage pre-paid, to the following counsel of record, this 1st day of August, 2005:

Tara L. Maczuzak, Esquire
DiBELLA & GEER, P.C.
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222

Troy J. Harper, Esquire
DENNISON, DENNISON & HARPER
293 Main Street
Brookville, PA 15825-1291

BY: 
MARK F. McKENNA, ESQUIRE
Attorneys for Defendants, MTD
Consumer Group Inc., MTD
Consumer Products Inc.

2001-1787-00

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL TRIAL LISTING

CERTIFICATE OF READINESS		TO THE PROTHONOTARY
<u>To be executed by Trial Counsel Only</u>		
Case Number 2001 - 1787 C.D.	Type Trial Requested	Estimate Trial Time
Date Complaint Filed: 10/30/2001	(X) Jury <input type="checkbox"/> Non-jury <input type="checkbox"/> Arbitration	2 days

Plaintiff(s):

Michael B. Roy and Cheryl Roy

()

Defendant(s):

MTD Consumer Group, Inc.; MTD Consumer Products, Inc.; and Dunlap Lawn & Garden Equipment, Inc. ()

Check block
if a minor
is a party
to the case

Additional Defendant(s)

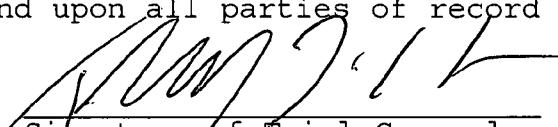
N/A

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Jury Demand Filed By: <u>Plaintiffs</u>	Date Jury Demand Filed: <u>10/30/2001</u>
Amount at Issue <u>\$<\$20,000.00</u>	Consolidation <u>() Yes (x) No</u>
	Date Consolidation Ordered <u>N/A</u>

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel.



Signature of Trial Counsel

COUNSEL WHO WILL ACTUALLY TRY CASE

For the Plaintiffs: <u>Tara L. Maczuzak, Esq.</u>	Telephone Number <u>(412) 261-2900</u>
For the Defendants: MTD Consumer Group, Inc., and MTD Consumer Products, Inc.: <u>Mark F. McKenna, Esq.</u>	Telephone Number <u>(412) 471-6226</u>
For the Defendant, Dunlap Lawn & Garden Equipment, Inc.: <u>Troy J. Harper, Esq.</u>	Telephone Number <u>(814) 849-8316</u>

FILED

AUG 26 2005 (W)
n 12:30 10
William A. Shaw
Prothonotary/Clerk of Courts
COPY TO CJA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MICHAEL B. ROY and CHERYL L. ROY,
Plaintiffs

vs.

MTD CONSUMER GROUP, INC.,
MTD CONSUMER PRODUCTS, INC.,
and DUNLAP LAWN & GARDEN
EQUIPMENT INC.,

Defendants

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* NO. 01-1787-CD
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FILED

01/06/06
JAN 23 2006

William A. Shaw
Prothonotary/Clerk of Courts

cc: Atty's:
Maczak
McKenna
Harper
OK

O R D E R

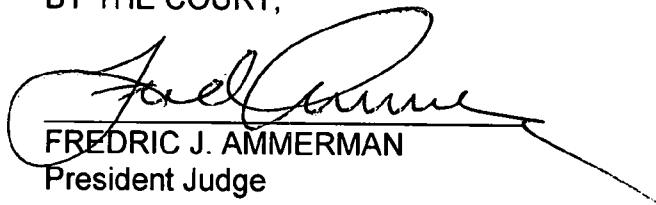
NOW, this 20th day of January, 2006, following Pre-Trial Conference with
counsel for the parties as set forth above, it is the ORDER of this Court as follows:

1. Jury Selection will be held on February 2, 2006 commencing at 9:00 a.m. in
Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania. This
will be the first case picked.
2. Jury Trial is hereby scheduled for Wednesday, March 15th, Thursday, March 16th,
and Friday, March 17th, 2006, commencing at 9:00 a.m. each day in Courtroom No. 1
of the Clearfield County Courthouse, Clearfield, Pennsylvania.
- 3 Any party making objections relative the testimony to be provided by any witness
in the form of a deposition at the time of trial shall submit said objections to the Court,
in writing, no later than thirty (30) days prior to the commencement of trial. All
objections shall reference specific page and line numbers within the deposition(s) in
question along with that party's brief relative same. The opposing shall submit its brief
in opposition to said objection no later than fifteen (15) days prior to the
commencement of trial.

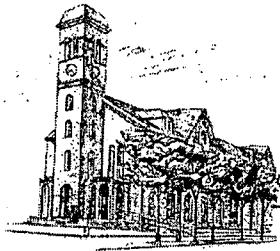
4. Any party filing any Motion of Petition regarding limitation or exclusion of evidence or testimony to be presented at time of trial, including but not limited to Motions in Limine, shall file the same no more than thirty (30) days prior to the trial date. The party's Petition or Motion shall be accompanied by an appropriate brief. The responding party thereto shall file its Answer and submit appropriate response brief no later than fifteen (15) days prior to trial.

5. At time of jury selection the Plaintiff will receive four (4) preemptory challenges while each of the two Defendants will receive two (2) preemptory challenges.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

DATE: 1/23/06

 You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

X Plaintiff(s)/Attorney(s)

X Defendant(s)/Attorney(s)

 Other

 Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL B. ROY and CHERYL L. ROY, CIVIL ACTION – LAW

Plaintiffs,

v.

MTD CONSUMER GROUP, INC.;
MTD CONSUMER PRODUCTS, INC.; and
DUNLAP LAWN & GARDEN EQUIPMENT,
INC.

Defendants.

No. 1787 C.D. – 2001

**PRAECIPE TO SETTLE AND
DISCONTINUE**

FILED ON BEHALF OF:

Michael B. Roy and Cheryl L. Roy,
Plaintiffs

Counsel of Record for this Party:

TARA L. MACZUZAK, ESQUIRE
Pa. I.D. #86709

DiBELLA GEER McALLISTER BEST
Firm I.D. #099

312 Boulevard of the Allies
Suite 300
Pittsburgh, PA 15222
412-261-2900

FILED ^{No cc}
APR 12 2007 ^{cert of}
APR 02 2007 ^{disc issued}
to AMY
Maczuzak
WM
William A. Shaw & copy to C/A
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MICHAEL B. ROY and CHERYL L. ROY,) CIVIL ACTION – LAW
Plaintiffs,)
v.) No. 1787 C.D. – 2001
MTD CONSUMER GROUP, INC.;)
MTD CONSUMER PRODUCTS, INC.; and)
DUNLAP LAWN & GARDEN EQUIPMENT,)
INC.)
Defendants.)

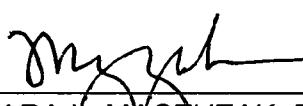
PRAECIPE TO SETTLE AND DISCONTINUE

TO: PROTHONOTARY

Please settle and discontinue the above-captioned matter.

Respectfully submitted,

DiBELLA GEER McALLISTER BEST

BY: 

TARA L. MACZUZAK, ESQUIRE
Attorney for Plaintiffs, Michael B.
Roy and Cheryl L. Roy

CERTIFICATE OF SERVICE

I, TARA L. MACZUZAK, ESQUIRE, hereby certify that a true and correct copy of the within Praecipe to Settle and Discontinue was forwarded by first class mail, this 30th day of March, to the following counsel of record:

Mark F. McKenna, Esquire
McKenna & Chiodo, P.C.
436 Boulevard of the Allies, Suite 500
Pittsburgh, PA 15219-1314

Troy J. Harper, Esquire
Dennison, Dennison & Harper
293 Main Street
Brookville, PA 15825

DiBELLA GEER McALLISTER BEST

BY: 
TARA L. MACZUZAK, ESQUIRE
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Michael B. Roy
Cheryl L. Roy

Vs.
MTD Consumer Group, Inc.
MTD Consumer Products, Inc.
Dunlap Lawn & Garden Equipment, Inc.

No. 2001-01787-CD

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on April 2, 2007, marked:

Settled and discontinued

Record costs in the sum of \$80.00 have been paid in full by Gregory Zimmerman Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 2nd day of April A.D. 2007.



William A. Shaw, Prothonotary