

1 Craig A. Marvinney, 0004951 (OH)
 2 John M. Skeriotis, 0069263 (OH)
 3 Anastasia J. Wade, 0082797 (OH)
 4 BROUSE MCDOWELL
 5 388 S. Main Street, Suite 500
 6 Akron, Ohio 44311-4407
 7 Telephone: 330-535-5711
 8 Email: cmarvinney@brouse.com,
 9 jskeriotis@brouse.com,
 10 awade@brouse.com

Admitted pro hac vice

11 Donald L. Myles, Jr., 007464 (AZ)
 12 JONES, SKELTON & HOCHULI, P.L.C.
 13 2901 N. Central Ave., Suite 800
 14 Phoenix, Arizona 85012
 15 Telephone: 602-263-1700
 16 Email: dmyles@jshfirm.com

17 *Attorneys for Defendant/Counterclaimant*
 18 *Midwest Industrial Supply, Inc.*

19 **UNITED STATES DISTRICT COURT**
 20 **IN AND FOR THE DISTRICT OF ARIZONA**

21 SOILWORKS, LLC, an Arizona
 22 corporation,

23 Plaintiff / Counterdefendant /
 24 Counterclaimant,

v.

25 MIDWEST INDUSTRIAL SUPPLY,
 26 INC., an Ohio corporation authorized to do
 27 business in Arizona,

28 Defendant / Counterclaimant /
 Counterdefendant.

NO.: 2:06-CV-2141-DGC

**MIDWEST INDUSTRIAL SUPPLY,
 INC.'S PROPOSED JURY VERDICT
 FORMS**

As part of the Court's October 16, 2008 Order (ECF Docket No. 135), the Court requested that the parties jointly file jury verdict forms. The parties were unable to agree on one set of proposed jury verdict forms. Thus, the parties decided to each submit their own version of the requested proposed verdict forms. According to the Court's October

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

16, 2008 Order, the Court's requested verdict forms should "clearly identify the issues to be decided by the jury." Midwest Industrial Supply, Inc. asserts that its proposed jury verdict forms comply with the Court's Order and respectfully submits the following.

VERDICT FORM # 1

Soilworks' False Advertising Cause of Action

1a. Do you find by the greater weight of the evidence that Midwest advertised a false or misleading statement of fact about Soilworks or Soilworks' products which deceived Soilworks' customers and injured Soilworks?

_____ Yes _____ No

1b. If you answered "Yes" to 1a, do you find by clear and convincing evidence that Midwest made the statements in bad faith?

_____ Yes _____ No

Juror 1

Juror 7

Juror 2

Juror 8

Juror 3

Juror 9

Juror 4

Juror 10

Juror 5

Juror 11

Juror 6

Foreperson

Please proceed to Verdict Form #2.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERDICT FORM #2

Midwest's False Advertising Cause of Action

2. Do you find by the greater weight of the evidence that Soilworks advertised a false or misleading statement of fact about Soilworks' own products which deceived Midwest's customers and injured Midwest?

_____ Yes

_____ No

Juror 1

Juror 7

Juror 2

Juror 8

Juror 3

Juror 9

Juror 4

Juror 10

Juror 5

Juror 11

Juror 6

Foreperson

Please proceed to Verdict Form #3.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERDICT FORM #3

Midwest's Trademark Infringement Cause of Action

3a. Do you find that Soilworks willfully or deliberately infringed Midwest's Soil-Sement® trademark entitling Midwest to monetary relief?

_____ Yes _____ No

3b. If your answer is "Yes" to 3a, please indicate the amount of damages Midwest is entitled to:

Actual Damages \$ _____
Soilworks' Profits \$ _____

_____ Juror 1	_____ Juror 7
_____ Juror 2	_____ Juror 8
_____ Juror 3	_____ Juror 9
_____ Juror 4	_____ Juror 10
_____ Juror 5	_____ Juror 11
_____ Juror 6	_____ Foreperson

Please proceed to Verdict Form #4.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERDICT FORM #4

Midwest's Patent Infringement Cause of Action

Claim 1 of U.S. Patent No. 7,074,266

4a. Do you find by the greater weight of the evidence that Soilworks' Durasoil product contains a synthetic isoalkane?

_____ Yes

_____ No

Juror 1

Juror 7

Juror 2

Juror 8

Juror 3

Juror 9

Juror 4

Juror 10

Juror 5

Juror 11

Juror 6

Foreperson

If your answer is "Yes" to 4a, please proceed to Question 4b.

If your answer is "No" to 4a, please proceed to Verdict Form #5.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4b. Do you find by the greater weight of the evidence that Soilworks' Durasoil product contains a binder that is a carboxylic acid, an ester or a thermoplastic polyolefin?

_____ Yes _____ No

Juror 1

Juror 7

Juror 2

Juror 8

Juror 3

Juror 9

Juror 4

Juror 10

Juror 5

Juror 11

Juror 6

Foreperson

Please proceed to Question 4c.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4c. Do you find by the greater weight of the evidence that Soilworks' Durasoil product contains an ingredient that is *equivalent* to a binder and is a carboxylic acid, an ester or a thermoplastic polyolefin?

_____ Yes _____ No

Juror 1

Juror 7

Juror 2

Juror 8

Juror 3

Juror 9

Juror 4

Juror 10

Juror 5

Juror 11

Juror 6

Foreperson

If your answers are "Yes" to **either 4b or 4c**, please proceed to Question 4d.

If your answers are "No" to **both 4b and 4c**, then please proceed to Verdict Form #5.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Claim 7 of U.S. Patent No. 7,074,266

4d. Do you find by the greater weight of the evidence that Soilworks' Durasoil product's synthetic isoalkane is a synthetic or semi-synthetic hydrocarbon?

_____ Yes

_____ No

Juror 1

Juror 7

Juror 2

Juror 8

Juror 3

Juror 9

Juror 4

Juror 10

Juror 5

Juror 11

Juror 6

Foreperson

If your answer is "Yes" to 4d, please proceed to Question 4e.

If your answer is "No" to 4d, please proceed to Question 4g (damages).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Claim 8 of U.S. Patent No. 7,074,266

4e. Do you find by the greater weight of the evidence that Soilworks' Durasoil product's synthetic isoalkane is produced from either hydrotreating, hydrocracking or hydroisomerization?

_____ Yes _____ No

Juror 1

Juror 7

Juror 2

Juror 8

Juror 3

Juror 9

Juror 4

Juror 10

Juror 5

Juror 11

Juror 6

Foreperson

Please proceed to Question 4f.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Claim 9 of U.S. Patent No. 7,074,266

4f. Do you find by the greater weight of the evidence that Soilworks' Durasoil product contains isoalkanes or branched iso-paraffins?

_____ Yes _____ No

Juror 1

Juror 7

Juror 2

Juror 8

Juror 3

Juror 9

Juror 4

Juror 10

Juror 5

Juror 11

Juror 6

Foreperson

Please proceed to Question 4g.

1 4g. Damages for Patent Infringement of U.S. Patent No. 7,074,266

2 Your answers above found Soilworks' Durasoil product infringes at least one claim of
3 Midwest's U.S. Patent No. 7,074,266. You now need to indicate the amount of damages
4 that Midwest is entitled to for Soilworks' infringement of Midwest's Patent No.
5 7,074,266. Your response below should indicate either lost profits to Midwest in a lump
6 sum or a reasonable royalty, not both. At a minimum, you must determine a reasonable
7 royalty as a percentage of Soilworks' sales of its Durasoil product.
8

9
10 Please indicate the amount of damages Midwest is entitled to for Soilworks' infringement
11 of Midwest's U.S. Patent, No. 7,074,266:

12 (i) Lost Profits \$ _____ or

13 (ii) Reasonable Royalty _____% (percentage of Soilworks' Durasoil
14 product sales)

15
16 _____
17 Juror 1

Juror 7

18 _____
19 Juror 2

Juror 8

20 _____
21 Juror 3

Juror 9

22 _____
23 Juror 4

Juror 10

24 _____
25 Juror 5

Juror 11

26 _____
27 Juror 6

Foreperson

28 Please proceed to Question 4h.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Claim 3 of U.S. Patent No. 7,081,270

4h. Do you find by a greater weight of the evidence that Durasoil is applied neat to the surface soil?

_____ Yes _____ No

Juror 1

Juror 7

Juror 2

Juror 8

Juror 3

Juror 9

Juror 4

Juror 10

Juror 5

Juror 11

Juror 6

Foreperson

Please proceed to Question 4i.

1 4i. Damages for Patent Infringement of U.S. Patent No. 7,081,270.

2 Your answers above found Soilworks' Durasoil product infringes at least one claim of
3 Midwest's U.S. Patent No. 7,081,270. You now need to indicate the amount of damages
4 that Midwest is entitled to for Soilworks' infringement of Midwest's Patent No.
5 7,081,270. Your response below should indicate either lost profits to Midwest in a lump
6 sum or a reasonable royalty, not both. At a minimum, you must determine a reasonable
7 royalty as a percentage of Soilworks' sales of its Durasoil product.
8

9
10 Please indicate the amount of damages Midwest is entitled to for Soilworks' infringement
11 of Midwest's U.S. Patent, No. 7,081,270:

12 (i) Lost Profits \$ _____ or

13 (ii) Reasonable Royalty _____% (percentage of Soilworks' Durasoil
14 product sales)

15
16 _____
17 Juror 1

16 _____
Juror 7

18 _____
19 Juror 2

18 _____
Juror 8

20 _____
21 Juror 3

20 _____
Juror 9

22 _____
23 Juror 4

22 _____
Juror 10

24 _____
25 Juror 5

24 _____
Juror 11

26 _____
27 Juror 6

26 _____
Foreperson

28 Please proceed to Verdict Form #5.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERDICT FORM #5

Midwest's Unjust Enrichment Cause of Action

5a. Do you find by the greater weight of the evidence that Soilworks was unjustly enriched by its business practices to the detriment of Midwest?

_____ Yes _____ No

5b. If your answer is "Yes" to 5a, please indicate the amount of Soilworks' unjust enrichment:

\$ _____

Juror 1

Juror 7

Juror 2

Juror 8

Juror 3

Juror 9

Juror 4

Juror 10

Juror 5

Juror 11

Juror 6

Foreperson

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully Submitted,

By: /s/ John M. Skeriotis
Craig A. Marvinney, 0004951 (OH)
John M. Skeriotis, 0069263 (OH)
Anastasia J. Wade, 0082797 (OH)
BROUSE MCDOWELL
388 S. Main Street, Suite 500
Akron, Ohio 44311-4407
Telephone: 330-535-5711
Facsimile: 330-253-8601
Email: cmarvinney@brouse.com,
jskeriotis@brouse.com,
awade@brouse.com

Admitted pro hac vice

Donald L. Myles, Jr., 007464 (AZ)
JONES, SKELTON & HOCHULI, P.L.C.
2901 N. Central Ave., Suite 800
Phoenix, Arizona 85012
Telephone: 602-263-1700
Facsimile: 602-263-1784
Email: dmyles@jshfirm.com

*Attorneys for Defendant/Counterclaimant
Midwest Industrial Supply, Inc.*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **MIDWEST INDUSTRIAL SUPPLY, INC.'S PROPOSED JURY VERDICT FORMS** has been electronically filed on this 9th day of January, 2009. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ John M. Skeriotis

735411 v2