

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE: WELDING RODS PRODUCTS )  
LIABILITY LITIGATION )

Case No. 1:05 17793

THIS DOCUMENT RELATES TO: )

(MDL Docket No. 1535)

Sabo v. Lincoln Electric Co., *et al.* )

JUDGE O'MALLEY

Jury Trial Demanded

**ILLINOIS TOOL WORKS INC.'S  
ANSWER TO THE COMPLAINT**

Defendant, ILLINOIS TOOL WORKS INC. ("ITW"), by and through its attorneys, BROTHERS & THOMPSON, P.C., answers Plaintiffs' Complaint as follows:

1. Plaintiff Stephen Sabo is a resident of the City of Monessen, County of Westmoreland and State of Pennsylvania and is currently residing with his spouse, Shirley (hereinafter "Plaintiff/Spouse") at 477 Knox Avenue, Monessen, Pennsylvania 15062. Plaintiff Stephen Sabo ("Plaintiff") has suffered and continues to suffer physical and emotional injuries, some or all of which may be permanent, and has incurred and will incur medical expenses, as a result of exposure to toxic fumes from welding rods.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

2. Lincoln Electric Company ("Lincoln"), Defendant herein, is a corporation incorporated under the laws of Ohio and its registered agent is H. Jay Elliott, 22801 St. Clair Ave., Cleveland, Ohio 44117.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

3. Hobart Brothers Company ("Hobart"), Defendant herein, is a corporation incorporated under the laws of Ohio, and its registered agent is C.T. Corporation System, 1300 E. Ninth Street, Cleveland, Ohio 44114.

**ANSWER:** ITW admits the allegations contained in this paragraph of the complaint.

4. Illinois Tool Works, Inc. ("Illinois Tool Works"), Defendant herein, is a corporation incorporated under the laws of Delaware, and its registered agent is C.T. Corporation System, 1300 E. Ninth Street, Cleveland, Ohio 44114.

**ANSWER:** ITW admits the allegations contained in this paragraph of the complaint.

5. The ESAB Group, Inc. (“ESAB”), Defendant herein, is a corporation incorporated under the laws of Ohio, and its registered agent is C.T. Corporation System, 1300 E. Ninth Street, Cleveland, Ohio 44114.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

6. Select-Arc, Inc. (“Select-Arc”), Defendant herein is a corporation incorporated under the laws of Ohio, and its registered agent is Paul E. Zimmer, 2700 Ketting Tower, 40 N. Main St., Dayton, OH 45423.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

7. Boc Group, Inc. f/k/a Airco, Inc. (“Airco”), Defendant herein, is a corporation incorporated under the laws of Delaware, and its registered agent is C.T. Corporation System, 1300 Ninth Street, Cleveland, Ohio 44114.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

8. Praxair, Inc. (“Praxair”), Defendant herein, is a corporation incorporated under the laws of Delaware, and its registered agent is Prentice-Hall Corporation System, 50 West Broad Street, Suite 1800, Columbus, Ohio 43215.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

9. Viacom, Inc. (“Viacom”), Defendant herein, is a corporation incorporated under the laws of Delaware, and its registered agent is Csc-Lawyers Incorporating Service 50 West Broad Street, Suite 1800, Columbus, Ohio 43215.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

10. Westinghouse Electric Corporation (“Westinghouse”), Defendant herein, is a corporation incorporated under the laws of Pennsylvania, and its registered agent is Corporation Service Company, 80 State Street, Albany, New York 12207.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

11. Caterpillar, Inc. (“Caterpillar”), Defendant herein, is a corporation incorporated under the laws of Delaware, and its registered agent is C.T. Corporation System, 1300 E. Ninth Street, Cleveland, OH 44114.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

12. General Electric Company (“General Electric”) Defendant herein, is a corporation incorporated under the laws of New York, and its registered agent is C.T. Corporation System, 1300 E. Ninth St., Cleveland, OH 44114.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

13. Union Carbide Corporation (“Union Carbide”), Defendants herein, is a corporation incorporated under the laws of New York, and its registered agent is C.T. Corporation System, 1300 E. Ninth St., Cleveland, Ohio 44114.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

14. Union Carbide Chemical and Plastics Company, Inc., n/k/a Union Carbide Corporation (“Union Carbide”), Defendant herein, is a corporation incorporated under the laws of New York, and its registered agent is C.T. Corporation System, 1300 E. Ninth St., Cleveland, Ohio 44114.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

15. Eutectic Corporation (“Eutectic”), Defendant herein, is a corporation organized under the laws of New York, and it can be served through its Chief Executive Officer, John Kirkwood, Eutectic Corporation, N 94 W 14355 Garwin Mace Drive, Menomonee Falls, WI 53051 and through Quarles & Brady LLP, Mitchell S. Moser, 411 E. Wisconsin Ave., Suite 2040, Milwaukee, Wisconsin 53202.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

16. A.O. Smith Corporation (“Smith”), Defendant herein is a corporation incorporated under the laws of Delaware, and its registered agent is Prentice-Hall Corporation System, Inc., 80 State Street, Albany, New York 12207.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

17. Sandvik, Inc. (“Sandvik”), Defendant herein, is a corporation incorporated under the laws of Delaware, and its registered agent is C.T. Corporation System, 1300 E. Ninth St., Cleveland, Ohio 44114.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

18. Deloro Stellite Company, Inc., (“Deloro”), Defendant herein, is a corporation incorporated under the laws of Delaware, and its registered agent is at 555 No. New Ballas Rd., Suite 305, Creve Coeur, MO 63141.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

19. Arcos Industries, LLC f/k/a Arcos Alloys d/b/a Hoskins Manufacturing Company (“Arcos”), Defendant herein is a limited liability company organized under the laws of the state of Michigan and may be served with process through its registered agent, Mark A. Sturing, 31731 Northwestern Highway, STE 250W, Farmington Hills, MI 48334

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

20. Metropolitan Life Insurance Company, Defendant herein is a corporation duly organized under the laws of the State of New York and may be served with process through Donald J. Harman, Metropolitan Life Insurance Co., One Madison Ave., New York, New York 10010.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

21. Miller Electric Manufacturing Co., Inc. (“Miller Electric”), a corporation duly organized under the laws of Wisconsin and may be served with process through its registered agent C.T. Corporation System, 1300 E. Ninth St., Cleveland, Ohio 44114.

**ANSWER:** ITW admits that Miller Electric Mfg. Co. is a corporation organized under the laws of Wisconsin and may be served with service of process through C.T. Corporation System 1300 E. Ninth St., Cleveland, Ohio 44114. ITW denies the remaining allegations of this paragraph of the complaint.

22. Avesta Polarit Welding (“Avesta Polarit”), Defendant herein, is a corporation incorporated under the laws of New Jersey, and its registered agent is C.T. Corporation System, 111 Eighth Avenue, New York, NY 10011.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

23. TDY Industries, Inc. (“TDY Industries”) Defendant herein, is a corporation incorporated under the laws of California, and its registered agent is C.T. Corporation System, 1300 E. Ninth St., Cleveland, OH 44114.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

24. Thermadyne Holdings Corporation (“Thermadyne Holdings”), Defendant herein, is a corporation incorporated under the laws of Delaware, and its registered agent is the Corporation Trust Company, 1209 Orange Street, Wilmington DE 19801.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

25. John Doe Defendants A-Z, whose identities are unknown to the Plaintiffs at this time, but when those parties’ true identities are discovered, the pleadings will be amended by substituting their true names and giving proper notice under the Rules of this Court. These Defendants include sellers, suppliers, distributors, and manufacturers that, at any time relevant to these proceedings, supplied welding equipment, supplies, and steel/metal products containing manganese to the site(s) at which Plaintiff was exposed to toxic fumes, and by virtue of which Plaintiff sustained damages alleged herein. John Doe Defendants A-Z also include unknown members of AWS, NEMA and TFA, whose negligence and breaches caused or contributed to cause the Plaintiffs’ damages and injuries.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

#### **JURISDICTION AND VENUE**

26. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between Plaintiff and Defendants and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

27. Venue is proper in this District because one or more Defendants, including Lincoln Electric, are domiciled in this District. Further, one or more Defendants reside in this District insofar as they manufactured, sold and/or marketed welding rods within this District, as well as in the District of residence of the Plaintiff, and throughout the United States, with the expectation that this product would be purchased and or used throughout this District and the United States. Further, venue is proper in that the multidistrict litigation to which this case is related, being In Re: Welding Rods Product Liability, MDL 1535, has been transferred to this District.

**ANSWER:** ITW admits that venue is proper and that MDL 1535 has been transferred to this District. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

## FACTS

28. At all times relevant hereto, Plaintiff was exposed to toxic fumes resulting from welding operations.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

29. The ordinary and intended use of welding products causes emission of fumes that contain manganese (“welding fumes”).

**ANSWER:** ITW denies the allegations contained in this paragraph of the complaint.

30. Since 1837, manganese has been medically recognized as toxic to the human central nervous system in levels that exceed the trace amounts normally found in the human body. Toxicity of manganese causes progressive, disabling neurological damage known alternatively as Parkinsonism secondary to manganese exposure, manganese induced Parkinsonism, manganese poisoning, manganism or neurological injury. People who suffer from manganese poisoning suffer from debilitating neurological problems that affect their ability to think, talk, eat, move, sleep, and work.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

31. Persons exposed to welding fumes are exposed to manganese primarily through inhalation. Cases involving manganese exposure for a period as short as 49 days causing manganese poisoning and progressive, disabling, neurological damage have been documented.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

32. Plaintiff was exposed to welding fumes while using welding products and equipment or working in the proximity of other persons using welding products or equipment.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

33. As a direct and proximate result of exposure to welding fumes, the Plaintiff developed neurological injury.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

34. As a direct and proximate result of exposure to welding fumes, the Plaintiff suffered, continues to suffer permanent neurological and physical damage, severe physical and mental

pain, loss of wages, loss of earning capacity, disability, medical expenses, and loss of enjoyment of life.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

35. At all relevant times, the Plaintiff was unaware of the dangerous nature of welding fumes, manganese, and the neurological injuries that could occur because of exposure to welding fumes.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

36. Any reasonable persons, including the Plaintiff, if adequately informed of the hazards of exposure to welding fumes, would not have willingly exposed him or herself to welding fumes in workplaces without necessary precautionary measures.

**ANSWER:** The allegations of this paragraph are vague and legal conclusions and therefore, ITW denies the allegations contained in this paragraph of the complaint.

37. All of the Defendants are or were manufacturers, sellers, suppliers, or large industrial consumers of welding products or conspiracy defendants.

**ANSWER:** ITW admits that it manufactures certain welding products. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

38. Through industry and medical studies, unknown to the Plaintiff, the Defendants knew or should have known of the health hazards inherent in the products they were selling, distributing, or using.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

39. The Defendants ignored or deliberately and fraudulently concealed that information, or condoned the concealment, and/or conspired with, advised, encouraged, or aided others and/or each other to do so, in order to sell their products and/or avoid the costs of safety precautions, and/or avoid litigation by people injured by welding fumes.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

40. Defendants' actions and omissions constitute gross negligence and demonstrate a reckless disregard for the rights and safety of others, justifying punitive damages against the Defendants.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

41. The Defendants committed numerous tortious acts that included fraudulently and negligently misrepresenting, concealing, suppressing, and omitting material information about the health effects of welding fumes and precautionary measures as specifically alleged below.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

42. NEMA is a trade organization comprised of manufacturers that has a section devoted to the manufacturers of welding products known as "NEMA Electric Welding Section" or "NEMA Arc Welding Section" ("NEMA Welding Section").

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

43. TFA is an industry advocacy group consisting of producers of chromium, manganese, silicon, and vanadium ferroalloys that sponsored a manganese subcommittee that includes representatives from welding manufacturers, the AWS and NEMA. The TFA membership included management representatives of companies that produce welding products and consumers that purchase large quantities of the products for use in their operations.

**ANSWER:** ITW is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph of the complaint.

44. The Defendants created committees within these trade organizations and then used the committees to fraudulently and negligently misrepresent, conceal, suppress, and omit material information about the health effects of welding fumes and necessary precautionary measures.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

45. Specific examples of the trade association committees controlled by Defendants and their activities are identified below.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

46. The defendants controlled and used the committees to conceal the dangers from people exposed to welding fumes by:

- a. limiting individual membership on relevant committees exclusively or primarily to employees of the Defendants or their designated representatives;
- b. maintaining, through Defendants' delegates, majority or exclusive voting control of the committees at all times;
- c. selecting the assignments or proposals considered by each committee;
- d. funding projects chosen by Defendants;
- e. using the Defendants' delegates to prepare the written records of the business transacted by each committee; and/or



- f. reviewing and editing, to the satisfaction of the Defendants, studies performed by consultants hired by the committees.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint, including subparagraphs (a) through (f).

47. From at least 1937 to the present, the Defendants, by their actions and through trade association committees they controlled, undertook studies, issued precautionary product labels and other health and safety information, and issued specifications and standards for ventilation, safety equipment and other precautionary measures.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

48. At all times, the Defendants acted to conceal the health hazards of welding fumes, and specifically manganese, knowing that their studies, publications, specifications, and standards would be adopted and relied upon by manufacturers, sellers, and consumers of large amounts of welding products as the authoritative source for warnings, instructions, and precautionary measures printed on product labels and otherwise distributed in the stream of commerce.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

49. The Defendants had actual knowledge about the causal relationship between manganese-containing welding fumes and neurological injury. The Defendants concealed this information from workers exposed to welding fumes.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

50. The causal connection between neurological injuries and welding fumes containing manganese has been scientifically documented since 1932.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

51. In 1932, a medical article authorized by Dr. Erich Beintker was published documenting two cases of welders with neurological injury caused by manganese poisoning from welding fumes. The copy of this article or a summary of the medical article was received in the libraries of many or all Defendants at or near the time of publication.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

52. In 1937, NEMA's Welding Section received further notice of the contents of the 1932 medical article through a welding safety booklet published by an insurance company stating that manganese in welding fumes "causes a disease similar to *paralysis agitans* [Parkinson's disease]."

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

53. In 1944, NEMA's Welding Section received notice of a claim of manganese poisoning in a welder.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

54. In 1958, the AWS sponsored Z49 Committee issued a technical document, (not intended for use by welders) approved by the AWS Technical Committee, an oversight committee for AWS activities, reflecting its knowledge that manganese in welding fumes is a potentially toxic substance.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

55. In 1966, at a meeting of a task group of the AWS Filler Metal Committee, members of the committee reviewed an industrial hygiene article identifying manganese as a toxic substance in welding fumes, and the Committee discussed neurological injuries in welders.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

56. In 1970, the AWS Task Group on Welding Fumes received notice, through a literature search submitted by a consultant hired by the Task Group on Welding Fumes, that welding fumes were reported to cause neurological damage due to manganese poisoning, and that the symptoms of manganese poisoning resemble the symptoms of Parkinson's Disease.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

57. In 1970, the AWS Task Group on Welding Fumes received notice, through a welding fume study conducted by a consultant hired by the Task Group on Welding Fumes, that welding fumes could easily exceed the recommended occupational exposure guidelines, even when ventilation standards specified by Defendants were followed.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

58. Beginning in at least the late 1970s, the AWS Safety and Health Committee received notice of claims of welders suffering neurological injuries from manganese in welding fumes.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

59. In 1978, the AWS Safety and Health Committee received notice, through a literature search report submitted by a consultant hired by the Committee, that welders can incur neurological damages from manganese in welding fumes. A portion of this report is quoted below:

Although a number of cases...have been reported, there are no recent studies reported in the literature which explore the magnitude of the problem of chronic manganese poisoning in welders. In future epidemiological studies of various welding populations, the prevalence of this disease should be investigated.

...

Early symptoms of chronic manganese include restlessness, irritability and a tendency to laugh or cry without purpose. These symptoms may be followed by apathy, visual hallucinations, uncontrollable impulse, flight of ideas, mental confusion or euphoria.

Mask like facial expression, spastic grin muscle rigidity, slow gait with sliding of the feet, increased and abnormal reflexes, monotonous blurred speech with poor articulation, tremors, irregular handwriting, impaired hearing, double vision, abnormal reactions to pain, touch, heat and pressure, excessive salivation and perspiration, sexual impotence and diminution of libido have been described by various authors... Mental activity is reported to be slowed, judgment impaired and memory weakened, but intelligence remains normal.

The observation that manganism resembles Parkinson's Disease deserves emphasis. Although no data on the prevalence of Parkinsonism in welders are available, there is a concern that some cases of manganese poisoning could be mistakenly diagnosed as Parkinson's Disease. Further investigation may be warranted.

Manganism, like Parkinsonism, responds favorably to treatment with drug levodopa (L-dopa), indicating that the two diseases may share certain biological abnormalities: depletion of dopamine (a neurotransmitter in the basal ganglia of the brain; and depletion of melanin pigment content of the nerve cells of the substantia nigra, also in the brain."

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

60. In 1978, the same consultant described above in paragraph 60 [sic] reported to the AWS Safety and Health Committee that manganese poisoning from welding fumes could be misdiagnosed as idiopathic Parkinson's Disease, and that the problem was so widespread that it required an epidemiological study be conducted.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

61. In 1979, the AWS Research Committee and the AWS Executive Committee on Safety and Health concluded that there was sufficient evidence to justify the funding of an

epidemiological study that would include the study of neurological problems in welders. The committee voted to undertake this epidemiological study, although it was never completed.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

62. In 1983, the AWS Safety and Health Committee received notice through an independent literature search that manganese poisoning is "readily confused with Parkinson's Disease," and also that in a study in India, 40% of the welders studied suffered "neurological injury."

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

63. Beginning in the late 1970s and early 1980s, the Defendants through the AWS Safety and Health Committee and NEMA Welding Section sponsored "Industry Defense Committee," receiving notice of claims of manganese poisoning filed as lawsuits against companies in the welding industry.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

64. In 1984, the chairperson of the AWS Safety and Health Committee admitted that "manganese fumes can cause a disease quite similar to Parkinson's disease after six months to two years of exposure." The Defendants knew or should have known of this admission.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

65. Beginning in 1985 and continuing to the present, certain Defendants admitted in their Manufacturer Safety Data Sheets (MSDS), that are technical documents not intended for reading by welders, their knowledge that manganese in welding fumes could cause neurological damage.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

66. Because not all Defendants attended each meeting, it was a regular practice of the trade association committees to publish written minutes that were disseminated to all committee members, including those not in attendance, for the purpose of ratifying and adopting the actions taken and decisions made at the meetings.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

67. At a meeting of NEMA'S Welding Section held on March 16, 1937, the Defendants in attendance agreed to and did intentionally, knowingly, and recklessly conceal known hazards associated with welding fumes by forming a "Dust and Smoke Committee" to preempt investigation of welding fume hazards by independent sources that were not controlled by the Defendants.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

68. During meetings of NEMA's Welding Section held between January 20 and June 23, 1938, the Defendants in attendance agreed to and did intentionally, knowingly, and recklessly conceal known hazards of welding fumes by changing the language of a publication issued by an insurance company to delete the original statement in the publication that manganese in welding fumes causes a disabling illness similar to Parkinson's Disease.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

69. In 1939-40, at meetings of NEMA's Welding Section, the Defendants in attendance agreed to and did intentionally, knowingly, and recklessly conceal the hazards of welding fumes by purporting to undertake an investigation of the health hazards of welding fumes and then, upon its completion, changing the conclusions of the study, so as to falsely represent that welding fumes were not harmful to welders.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

70. In 1949, as part of a scheme to create and disseminate false evidence useful in defending against claims brought by persons injured by exposure to welding fumes, Defendant members of NEMA's Arc Welding Section agreed to and did intentionally, knowingly, and recklessly conceal known hazards of welding fumes by providing information for and causing publication in a welding trade journal of a two-part article that made the misrepresentation that welding fumes were not toxic.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

71. In 1949 and 1951, at meetings of NEMA's Arc Welding Section which considered precautionary measures, the Defendants in attendance agreed to and did intentionally, knowingly, and recklessly conceal the health hazards of welding fumes by rejecting the adoption of any precautionary product labels for welding products because the Defendants feared that welders would be afraid to use welding products if they saw precautionary product labels, and therefore sales of welding products would be reduced.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

72. In 1952, the Defendants reorganized the AWS Safety Recommendations Committee and called a meeting to consider the furnishing of safety and health information at which they agreed to, and did intentionally, knowingly, and recklessly conceal the health hazards of welding fumes by rejecting the adoption of any precautionary product labels for welding products.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

73. In 1952, at a meeting of the AWS Safety Recommendations Committee, the Defendants in attendance agreed to, and did intentionally, knowingly, and recklessly adopt a policy of refuting existing reports of welding fume hazards by publishing their own reports which misrepresented exposure to welding fumes as safe.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

74. In 1957, the Defendants agreed to, and did intentionally, knowingly, and recklessly conceal the health hazards of welding fumes by sponsoring the publication of an article in the *Welding Engineer* trade publication that made the misrepresentation that "toxic gases are not produced by electrode coatings."

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

75. In 1966 at a meeting of the AWS A5 Filler Metal Committee and a task group, the Defendants in attendance intentionally, knowingly, and recklessly agreed to publication in a trade journal of an article misrepresenting the health hazards of welding fumes as causing only "temporary disability".

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

76. In 1966, at a meetings of the A5 Filler Metal Committee of the AWS and a Task Group of that committee, the Defendants in attendance agreed to, and did intentionally, knowingly, and recklessly conceal health hazards of welding fumes by establishing industry-wide specifications for precautionary product labels which failed to warn workers of the danger of manganese in welding fume. This precautionary label stated:

Welding may produce fumes and gases hazardous to health. Avoid breathing these fumes and gases. Use adequate ventilation. See USAS Z49.1 "Safety in Welding & Cutting", published by the American Welding Society.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

77. In 1966, at meetings of the A5 Filler Metal Committee of the AWS and a Task Group of that committee, the Defendants in attendance established industry-wide specifications for precautionary product labels which did intentionally, knowingly, and recklessly omit instructions about necessary ventilation, precautionary measures, and other information needed to protect workers against the toxic effects of manganese.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

78. In 1966-67, through votes on a ballot distributed to the Defendants through the A5 Filler Metal Committee of the AWS, the Defendants did intentionally, knowingly, and recklessly approve, as part of the AWS required specifications for most welding products, a precautionary product label concealing health hazards from welding fumes and omitting instructions about necessary ventilation, precautionary measures, and other information.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

79. From 1975-79, the Defendants, through the AWS Committee on Safety and Health, did intentionally, knowingly, and recklessly conceal the known hazards of welding fumes by providing information that misrepresented the hazards associated with welding fumes as part of a deliberate scheme to prevent an independent standard-setting organization from lowering the occupational exposure guidelines for iron oxide and general welding fumes.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

80. In 1979, at meetings of a joint AWS-NEMA committee consisting of a special Task Group of the A5 Filler Metal Committee of the AWS and the Labeling and Safe Practices Committee of NEMA's Arc Welding Section, the Defendants intentionally, knowingly, and recklessly established industry-wide specifications for precautionary product labels that concealed the health hazards of welding fumes by omitting any reference to the toxic effects of manganese in welding fumes.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

81. In 1979, at meetings of a joint AWS-NEMA committee consisting of a special Task Group of the A5 Filler Metal Committee of the AWS and the Labeling and Safe Practices Committee of NEMA, the Defendants did intentionally, knowingly and recklessly establish industry specifications for precautionary measures and other information needed by workers to protect against the toxic effects of manganese in welding fumes.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

82. In 1979, through votes on a ballot distributed to the Defendants through the AWS-NEMA Joint Committee On Precautionary Labels and the A5 Filler Metal Committee of the AWS, the Defendants did intentionally, knowingly, and recklessly approve as part of the required industry-wide specifications for most welding products a precautionary product label concealing health hazards and omitting instructions about necessary ventilation, precautionary measures, and other information. This precautionary label stated in pertinent part:

"WARNING: Protect yourself and others. Read and understand this label.

FUMES AND GASES can be dangerous to your health.

Read and understand the manufacturer's instructions and your employer's safety practices.

Keep your head out of the fumes.

Use enough ventilation, exhaust at the arc, or both, to keep the fumes and gases from your breathing zone, and the general area.

See American National Standard Z49.1 "Safety in Welding and Cutting" published by the American Welding Society."

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

83. Beginning in 1979 and continuing until the present time, at meetings of the AWS Technical Council and Board of Directors, defendants in attendance did intentionally, knowingly, and recklessly conceal the health hazards of welding fumes by failing and refusing to perform an epidemiological study, recommended by other AWS Committees and an independent consultant retained by the Defendants, to investigate the neurological effects of welding fumes on persons exposed to such fumes.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

84. In 1980, at meetings of NEMA's Ad Hoc Committee on Precautionary Labeling, the Defendants in attendance did intentionally, knowingly, and recklessly conceal health hazards of welding fumes by approving industry specifications for precautionary product labels for welding power sources that omitted reference to the toxic effects of manganese in welding fumes on persons exposed to welding fumes.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

85. Beginning in 1980, at meetings of the NEMA Ad Hoc Committee on Precautionary Labeling, the Defendants in attendance did intentionally, knowingly, and recklessly approve industry specifications for precautionary product labels for welding power sources that omitted necessary instructions about ventilation, precautionary measures, and other information needed to protect against the toxic effects of manganese in welding fumes.



**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

86. Beginning in 1980 and continuing until 1996, at meetings of the NEMA MSDS Task Force Committee and the AWS SH-4 Ad Hoc Committee on Suggestions and Changes to NEMA Publication EW 5-1982, the Defendants in attendance did intentionally, knowingly, and recklessly agree to conceal health hazards of welding fumes by adopting a recommended format for the Hazardous Material and Health Hazard Data sections of the Material Safety Data Sheets (MSDS) for welding products that omitted reference to the manganese content of welding fumes, the neurological damage caused by manganese in welding fumes, and necessary instructions for protection against the health hazards of welding fumes.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

87. Beginning in 1993 and continuing to the present time, the Defendants, through the AWS Safety and Health Committee and NEMA Welding Section, did intentionally, knowingly, and recklessly seek to conceal the health hazards of manganese in welding fumes by appointing designated representatives to become committee members of, and providing funding for, a trade organization called The Ferroalloys Association (“TFA”), which opposes restrictions on the guidelines for manganese exposure levels established by various authorities.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

88. In 1993-1995, the Defendants, through the above described organization sponsored by the AWS Safety and Health Committee and NEMA Welding Section, as part of a scheme to prevent the lowering of occupational exposure guidelines for manganese in welding fumes established by the American Conference of Governmental Industrial Hygienists (ACGIH), did intentionally, knowingly, and recklessly seek to conceal the health hazards of manganese in welding fumes by providing false and misleading information that exposure to manganese in welding fumes did not cause neurological injury.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint. ITW is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the complaint.

#### **FIRST CLAIM - - CONSPIRACY AND FRAUDULENT CONCEALMENT**

89. The Plaintiffs re-allege and incorporate the foregoing allegations.

**ANSWER:** ITW restates its answers to the foregoing allegations as its answer to this paragraph of the complaint.

90. At all relevant times, the Defendants, with knowledge of the health hazards of manganese in welding fumes acted in concert and conspired in pursuance of a common plan or design to commit the following tortious acts against Plaintiffs.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

91. Defendants combined with each other, and with non-defendants, to engage in unlawful conduct. In furtherance of the conspiracy, the Defendants committed the following overt and tortious acts:

- a. fraudulently conceal, misrepresent, and suppress material scientific and medical information about the toxic effects of manganese in welding fumes;
- b. deliberately fail to warn persons in proximity of welding fumes of the known health hazards of manganese in welding fumes;
- c. deliberately breach their duty to instruct about proper ventilation, safety equipment, or other precautionary measures which would protect against the health hazards of manganese in the welding process;
- d. deliberately breach their duty to investigate the health hazards of manganese welding;
- e. sell welding products in a defective condition without necessary warnings of the catastrophic health hazards or instructions concerning precautionary measures; and
- f. avoid the results of the scrutiny of governmental and safety organizations that would have occurred had Defendants not concealed the true nature and extent of the dangers of their manganese containing welding consumables.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint, including subparagraphs (a) through (f).

92. The Defendants knowingly agreed to participate in the conspiracy by one or more of the following means:

- a. actively taking part;
- b. furthering it by cooperation; and/or
- c. ratifying and adopting acts of other conspirators done for their benefit.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint, including subparagraphs (a) through (c).

93. The Defendants participated in furthering the unlawful purposes of the conspiracy by delegating responsibilities to and carrying these out through the trade association committees.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

94. Upon information and belief, the Defendants committed numerous other overt and tortious acts, that are unknown to Plaintiffs at this time, in furtherance of the conspiracy through letters, memoranda, publications, meetings, telephone conversations, and other forms of communication directly between the Defendants and through the trade organization committees.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

95. Plaintiff relied on Defendants' misrepresentation and fraud; but for Defendants' misrepresentation and fraud, he would have not have been exposed to manganese in welding

rod fumes. As a direct and proximate result of the Defendants' conspiratorial acts, the Plaintiff was exposed to toxic welding fumes resulting in neurological injuries and damages.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

96. Because Defendants have engaged in the conspiracy outlined above, all Defendants are jointly and severally liable for Plaintiffs' damages.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

### **SECOND CLAIM - COMMON LAW FRAUD - FAILURE TO DISCLOSE**

97. The Plaintiffs re-allege and incorporate the foregoing allegations.

**ANSWER:** ITW restates its answers to the foregoing allegations as its answer to this paragraph of the complaint.

98. Defendants committed common law fraud against the Plaintiff.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

99. These Defendants failed to disclose and concealed material facts within their knowledge.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

100. These Defendants knew that the Plaintiff was ignorant of the fact and did not have an equal opportunity to discovery [sic] the truth about the dangers presented by Defendants' products.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

101. These Defendants intended to induce the Plaintiff to take some action, among other things, to buy and use their products, by failing to disclose the fact.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

102. Plaintiff relied on Defendants' fraud; but for Defendants' fraud, he would not have been exposed to manganese in welding rod fumes.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

103. Plaintiffs suffered injury as a result of acting without knowledge of the undisclosed facts.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

### **THIRD CLAIM – NEGLIGENCE**

104. The Plaintiffs re-allege and incorporate the foregoing allegations.

**ANSWER:** ITW restates its answers to the foregoing allegations as its answer to this paragraph of the complaint.

105. At all relevant times, it was reasonably foreseeable by the Defendants that welders and persons in proximity to welding fumes, including Plaintiffs and those similarly situated whom they represent, would be exposed to welding fumes containing manganese by using welding products or working in proximity of other workers using welding products.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

106. The Defendants have a duty imposed by law, or have assumed that duty, to exercise reasonable care for the safety of the Plaintiff and similarly situated persons.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

107. Because exposure to welding fumes presents a risk of physical harm, all Defendants had a legal duty to exercise reasonable care for the safety of the Plaintiffs and those similarly situated that they represent when making representations about welding safety and health in warning labels, publications, and instructions for ventilation and other precautionary measures.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

108. The Defendants knew, or in the exercise of ordinary care should have known, that persons exposed to welding fumes would act in reliance upon representations made by the Defendants about the health hazards associated with welding fumes and the precautionary measures required to protect against those health hazards.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

109. The Defendants knew, or in the exercise of ordinary care should have known, that welding fumes would cause neurological damage to workers like Plaintiffs.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

110. The Defendants breached their duty of reasonable care and were negligent without regard to whether such acts were intentional, knowing, or reckless.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

111. Beginning in 1970, the Defendants violated OSHA standards about publication of information about health hazards through MSDS guidelines that omitted necessary instructions about target organs, ventilation, precautionary measures, and other information needed to protect against the toxic effects of manganese in welding fumes.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

112. The Defendants violated industry standards about health and safety as set forth in the Z49 documents adopted by the AWS sponsored Z49.1 committee beginning in 1950 by failing to publish adequate warning of precautionary instructions and other information to welders or persons in the proximity to welding fumes about the standard.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

113. Defendants' negligent acts and omissions were the direct and proximate causes of the occurrence in question and Plaintiff's injuries and damages.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

**FOURTH CLAIM -- NEGLIGENCE - SALE OF PRODUCT**

114. The Plaintiffs re-allege and incorporate the foregoing allegations.

**ANSWER:** ITW restates its answers to the foregoing allegations as its answer to this paragraph of the complaint.

115. Certain Defendants, during some or all relevant times, manufactured, sold, or distributed welding products that were supplied to the Plaintiff for use.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

116. The Plaintiff was exposed to welding fumes containing manganese from products sold by these Defendants, while using the products and/or working in the proximity of others using the products.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

117. These Defendants had the duty, as product sellers, to exercise reasonable care for the safety of the Plaintiff.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

118. These duties included the responsibility for the following safety and health matters relating to welding fumes:

- a. the investigation of the health hazards;
- b. writing and publishing adequate and timely precautionary product labels and other health and safety information; and
- c. writing and publishing adequate and timely specifications and standards about ventilation, safety equipment, and other precautionary measures.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint, including subparagraphs (a) through (c).

119. The Defendants knew, or in the exercise of reasonable care should have known, that welding fumes would cause neurological damage to welders like the Plaintiff.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

120. The Defendants breached their duty of reasonable care to the Plaintiffs and were negligent, without regard to whether the acts were intentional, knowing, or reckless.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

121. Beginning in 1970, the Defendants violated OSHA standards about publication of information about health hazards through MSDS guidelines that omitted necessary instructions about target organs, ventilation, precautionary measures, and other information needed to protect against the toxic effects of manganese in welding fumes.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

122. The Defendants violated industry standards about health and safety as set forth in the Z49 documents adopted by the AWS-sponsored Z49.1 committee beginning in 1950 by failing to publish adequate and timely warning of precautionary instructions and other information to welders or persons in the proximity to welding fume about the standard.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

123. Defendants' negligent acts and omissions were the direct and proximate causes of the occurrence in question and Plaintiff's injuries and damages.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

**FIFTH CLAIM - STRICT LIABILITY**  
**UNREASONABLY DANGEROUS PRODUCT**  
**MARKETING DEFECT – MISREPRESENTATION**

124. The Plaintiffs reallege and incorporate the foregoing allegations.

**ANSWER:** ITW restates its answers to the foregoing allegations as its answer to this paragraph of the complaint.

125. Certain defendants are manufacturers, sellers, or distributors of welding products that produce manganese-containing welding fumes. These products were expected to and did reach various industrial and commercial locations, where Plaintiff's exposure occurred, without substantial change in the condition of the product from that in which it was sold.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

126. The Plaintiff was exposed to welding fumes containing manganese from products sold by the seller Defendants, while using the products or working in the proximity of others using the products.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

127. The Defendants' products are unreasonably dangerous because, when used for their reasonably foreseeable and intended purposes in the welding process, they produce harmful fumes that cause neurological injuries.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

128. The seller Defendants' products are defective because:  
a. adequate and timely warnings were not provided to users that the products produce harmful fumes;

- b. adequate and timely instructions were not provided to users about ventilation, safety equipment, or other precautionary measures;
- c. the Defendants failed to test or investigate the health hazards associated with the products;
- d. the Defendants represented to the public that welding was generally safe when it was not, Plaintiff relied on the representation and was damages, and Plaintiff invokes Restatement (Second) of Torts §402B for all purposes.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint, including subparagraphs (a) through (d).

129. The defects in the seller Defendants' products existed when the products left the Defendants' control.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

130. The defects in the seller Defendants' products were the producing and proximate causes of the occurrences in question and Plaintiff's injuries and damages.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

131. At all relevant times, the Plaintiff had no knowledge of the defects in the seller Defendants' products.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

#### **SIXTH CLAIM – WARRANTY**

132. The Plaintiffs re-allege and incorporate the foregoing allegations.

**ANSWER:** ITW restates its answers to the foregoing allegations as its answer to this paragraph of the complaint.

133. At all relevant times, Defendants expressly warranted in words and substance that welding products were generally safe which proved to be false. That wrongful and misleading conducts was a producing and/or proximate cause of the occurrence and Plaintiff's injuries and damages.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

134. Plaintiff relied upon Defendants' warranties to his detriment.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

#### **SEVENTH CLAIM –LOSS OF CONSORTIUM**

135. The Plaintiffs re-allege and incorporate the foregoing allegations.

**ANSWER:** ITW restates its answers to the foregoing allegations as its answer to this paragraph of the complaint.

136. As a direct and proximate result of Defendants' wrongful conduct detailed above, Plaintiff/spouse of Plaintiff who was exposed to toxic fumes from welding rods was and continue to be deprived of the care, consideration, compassion, consortium and concern of Plaintiff, and has suffered, and will suffer, injuries and damages thereby, entitling Plaintiff/spouse to an award of damages for loss or consortium.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

#### **EIGHTH CLAIM – DAMAGES / PUNITIVE DAMAGES**

137. The Plaintiffs re-allege and incorporates the foregoing allegations.

**ANSWER:** ITW restates its answers to the foregoing allegations as its answer to this paragraph of the complaint.

138. As a proximate result of all the Defendants' breaches of their duties to the Plaintiff sustained, and will sustain, welding fume-related injuries, conditions, and damages, including past and future pain and suffering; past and future medical treatment and medical expenses; past and future rehabilitation, life care expenses, and medical monitoring; past lost wages and future disability; past and future impairment of earning capacity; a diminution in quality and enjoyment of life; and emotional distress.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

139. All Defendants were grossly negligent, malicious and acted in reckless disregard of the safety of the Plaintiff and others, justifying the imposition of punitive damages. The Plaintiff is entitled to punitive damages because of the Defendants' gross negligence and reckless disregard of the Plaintiffs' safety.

**ANSWER:** ITW denies the allegations against it contained in this paragraph of the complaint.

#### **AFFIRMATIVE DEFENSES**

NOW COMES defendant, ILLINOIS TOOL WORKS INC. ("ITW"), by and through its attorneys, and as its affirmative defenses to the Complaint, states as follows:

##### **FIRST AFFIRMATIVE DEFENSE**

Plaintiff's injuries did not result from exposure to, or use of, any product manufactured, distributed or sold by ITW.

##### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff's alleged injuries, to the extent they have occurred, were solely and proximately caused, or were contributed to, by his own negligence or fault, and any recovery by the plaintiff must be reduced accordingly or barred completely.



**THIRD AFFIRMATIVE DEFENSE**

If Plaintiff suffered injuries as a result of the use of any products manufactured, distributed or sold by ITW, said injuries were proximately caused by the plaintiff's misuse of the product.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's employers were sophisticated employers charged with the duty to warn of any danger incident to use, exposure or installation of products provided by such employers. Plaintiff's employers were learned intermediaries charged with the duty to furnish plaintiff with a reasonably safe place within which to work, including all necessary and adequate warnings and safety appliances, and if plaintiff received any injury or suffered any damage from working with any product manufactured, distributed or sold by ITW, the failure of plaintiff's employers to discharge their duties was the sole proximate cause of any such injury or damage, if any, or, in the alternate, was such an intervening cause as to relieve ITW from any liability.

**FIFTH AFFIRMATIVE DEFENSE**

The injuries of which plaintiff complains are due solely, or in substantial part, to disease and other causes that are not related to or connected with any product manufactured, distributed or sold by ITW.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are preempted by state and federal law relating to the use and labeling of welding products.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's failure to warn claim is pre-empted by the Federal Hazard Communication Standard and OSHA, 29 USC §667(a), 29 CFR § 1920.1200(a)(2) and 29 CFR § 1910.252, *et seq.*

**EIGHTH AFFIRMATIVE DEFENSE**

Any product manufactured, distributed or sold by ITW to which Plaintiff was exposed was neither defective nor unreasonably dangerous in that it complied, at all relevant times, with all applicable government safety standards.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's exposure to any product manufactured, distributed or sold by ITW was so minimal as to be insufficient to establish to a reasonable degree of probability that ITW's product substantially factored in or was the proximate cause of the plaintiff's alleged injuries.

**TENTH AFFIRMATIVE DEFENSE**

Liability may not be imposed on ITW because any products manufactured, distributed or sold by ITW to which Plaintiff was exposed were changed, altered, or modified after they left ITW's control, or were otherwise not in substantially the same condition as when they left ITW's hands.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's allegations fail to state with particularity the circumstances allegedly constituting fraud by ITW, as required by the Federal Rules of Civil Procedure.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff's allegations are improperly vague and ambiguous. As such, ITW reserves the right to seek more definite allegations from Plaintiff and to amend his Answer.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by applicable statutes of limitations, the doctrine of laches, unclean hands, waiver and/or estoppel.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiff failed to mitigate his damages, if any.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, due to a lack of personal and/or subject matter jurisdiction, improper venue, insufficiency of process, insufficiency of service of process, and/or failure to join a necessary party.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Any damages awarded in this action are subject to set-off, settlement credit, reduction for contributory negligence, and, to the extent applicable, apportionment.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

ITW incorporates all defenses available to a product manufacturer, distributor or seller, as recognized by common law, including, but not limited to, assumption of the risk, open and obvious danger, and the learned intermediary doctrine.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

ITW asserts and hereby incorporates by reference all affirmative defenses made by any of the other defendants in this action, that are not inconsistent with ITW's defenses, when and where applicable to the circumstances herein. ITW specifically reserves the right to raise additional affirmative defenses as may become available through investigation and discovery.

WHEREFORE, ITW, denies that the plaintiff is entitled to judgment for any of the relief prayed and, therefore, requests this Honorable Court to enter judgment in its favor and against plaintiff.

Respectfully submitted,

**ILLINOIS TOOL WORKS INC.**

s/Alan W. Brothers  
Alan W. Brothers  
Ronald Austin, Jr.  
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**CERTIFICATE OF SERVICE**

I hereby certify that on August 10, 2005, ILLINOIS TOOL WORKS INC.'S ANSWER TO THE COMPLAINT was filed electronically. 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/Alan W. Brothers  
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Ronald Austin, Jr.  
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